

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 627 w/CS Insurance Fraud
SPONSOR(S): Bilirakis, Cantens
TIED BILLS: **IDEN./SIM. BILLS:** SB 1694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation	5 Y, 0 N	Cheek	Schulte
2) Insurance	18 Y, 0 N w/CS	Cheek	Schulte
3) Commerce&Local Affairs Appropriations (sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

Under s. 624.310, F.S., the Department of Financial Services or the Office of Insurance Regulation may take disciplinary action against an affiliated party or a licensee, and such persons may be removed from participating in the affairs of an insurer. Disciplinary action may include issuing cease-and-desist orders, ordering the removal of affiliated parties, suspending or revoking the rights and privileges of the licensee, or imposing administrative fines against any person who violates the Insurance Code. The bill accomplishes the following:

- Names the Act the "Peter Orr Anti-Fraud Act".
- Provides that it is unlawful for any affiliated party who is removed or prohibited from participating in the affairs of an insurer, or for a licensee whose rights and privileges under such license have been suspended or revoked, to act as an affiliated party or to transact insurance until expressly authorized by the Department of Financial Services or the Office of Insurance Regulation.
- Provides for civil remedy by private parties for violations of s. 624.401, F.S., prohibiting persons from acting as unauthorized insurers.
- Provides that a person acting as an insurer without a valid certificate of authority commits insurance fraud. The bill increases felony penalties for operating an unauthorized insurer based on the amount of premiums handled. Up to \$20,000 is a 3rd degree felony, between \$20,000 and \$100,000 is a 2nd degree felony, and over \$100,000 is a 1st degree felony.
- Authorizes investigators to also be considered state law enforcement officer for all purposes.
- Provides for a third degree felony to sell used goods as new and overcharging for repairs and parts.
- Updates the Offense Severity Ranking Chart or sentencing guidelines, to include felonies provided for in the bill.

There does not appear to be a substantial fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0627b.in.doc
DATE: April 23, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background

Under s. 624.310, F.S., the Department of Financial Services or the Office of Insurance Regulation may take disciplinary action against an affiliated party or a licensee and such persons may be removed from participating in the affairs of an insurer. Disciplinary action may include issuing cease-and-desist orders, ordering the removal of affiliated parties, suspending or revoking the rights and privileges of the licensee, or imposing administrative fines against any person who violates the Insurance Code. An affiliated party who is removed or prohibited from participation in the affairs of a licensee may petition the department or office for modification or termination of the removal, restriction, or prohibition. According to representatives with the department and office, criminal penalties are needed to impose severe sanctions against those persons previously removed from the insurance industry from reappearing and becoming affiliated with insurance companies.

Under current law, it is a first-degree misdemeanor for a seller, engaged in a transaction where the purchase of goods exceeds \$100, to misrepresent orally, in writing, or by failure to speak, that such goods are new when they are used, repossessed, or have been used for a sales demonstration. This provision applies to the purchase of all goods, including motor vehicles.

Also under present law, it is a second-degree misdemeanor for a person to knowingly charge for any services on motor vehicles not actually performed, to knowingly and falsely charge for any parts and accessories for motor vehicles not actually furnished, or to knowingly and fraudulently substitute parts when such substitution has no relation to repairing or servicing of the motor vehicle. Representatives with the Division of Insurance Fraud within the Department of Financial Services state that a specific criminal provision with an increased sanction should be provided for motor vehicle goods that are misrepresented (sold as new goods when they are used) and involve charges paid from the proceeds of motor vehicle insurance policies to effectively reduce misrepresentation practices among certain body shops. Further, the division recommends a similar criminal sanction specifically for overcharging for vehicle repairs and parts.

Under the present criminal code, the offense severity ranking chart (s. 921.0022, F.S.) has 10 offense levels ranked from least severe to most severe, and each felony offense is assigned to a level according to the severity of the offense. Crimes included in the chart are assigned "points," and the total amount of points determines a penalty range for a judge to consider when determining a sentence. This provision is similar to accumulating points on a person's driver's license based on the number and severity of the traffic violations committed.

Major Changes to Current Law

Civil Remedy

The bill Provides for civil remedy by private parties for violations of s. 624.401, F.S., prohibiting persons from acting as unauthorized insurers.

Criminal Enforcement

The bill creates a new subsection under the enforcement provisions of the Insurance Code and provides for a third-degree criminal penalty. It provides that it is unlawful for any affiliated party who is removed or prohibited from participating in the affairs of an insurer, or for a licensee whose rights and privileges under such license have been suspended or revoked, to act as an affiliated party or to transact insurance until expressly authorized by the Department of Financial Services or the Office of Insurance Regulation.

Provides that a person acting as an insurer without a valid certificate of authority commits insurance fraud. The bill increases felony penalties for operating an unauthorized insurer based on the amount of premiums handled. Up to \$20,000 is a 3rd degree felony, between \$20,000 and \$100,000 is a 2nd degree felony, and over \$100,000 is a 1st degree felony.

The bill authorizes investigators to also be considered state law enforcement officer for all purposes

Overcharging for repairs and parts

Currently under this section, it is a second-degree misdemeanor for a person to knowingly charge for any services on motor vehicles not actually performed, to knowingly and falsely charge for any parts and accessories for motor vehicles not actually furnished, or to knowingly and fraudulently substitute parts when such substitution has no relation to repairing or servicing of the motor vehicle. The bill provides that it is a third-degree felony if the charges are paid from the proceeds of a motor vehicle insurance policy.

The bill increases the penalty to a third-degree felony from a first-degree misdemeanor to sell used goods as new. However, this provision limits the application to the sale of used motor vehicle goods, when charges which are paid from the proceeds of a motor vehicle insurance policy.

Thus, the third-degree penalty applies to selling used motor vehicle goods as new with respect to a transaction for which any charges will be paid from the proceeds of a motor vehicle insurance policy, and which the purchase price of such goods exceeds \$100. It provides that it is unlawful for the seller to misrepresent orally, in writing or by failure to speak, that the goods are new or original when they are used, repossessed, or have been used for a sales demonstration.

C. SECTION DIRECTORY:

Section 1: Names the Act the "*Peter Orr Anti-Fraud Act*".

Section 2: Amends section 624.115, F.S., relating to *Civil remedy*.

Section 3: Amends s. 624.310, F.S., relating to *Enforcement; cease and desist orders; removal of certain person; fines*.

Section 4: Amends s. 624.401, F.S, relating to *Certificate of authority required*.

Section 5: Amends s. 626.989, F.S. – *Investigation by department or Division of Insurance Fraud; compliance; immunity; confidential information; reports to division; division investigator’s power of arrest.*

Section 6: Amends s. 817.413 – *Sale of used motor vehicle goods as new; penalty.*

Section 7: Amends s. 860.15, F.S. – Overcharging for repairs and parts; penalty.

Section 8: Amends s. 921.0022, F.S., relating to Criminal Punishment Code, offense severity ranking chart.

Section 9: Provides that if any provision of the act is held invalid, the invalidity does not affect other provisions of the act and the provisions of the act are declared severable.

Section 10: Provides that the act takes effect on July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who have been damaged by the actions of unauthorized insurers will benefit under the provisions of this bill, because they may now file a civil law suit against the unauthorized insurer under the civil remedies provisions of the Insurance Code and obtain specified damages as well as costs, reasonable attorney’s fees, and in certain instances, punitive damages. The provisions of this bill will impact unauthorized insurers, because the bill increases criminal penalties against such illegal enterprises and allows persons injured by such enterprises to sue in civil court.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other comments:

Increased penalties against unauthorized insurers provided for under this bill will aid investigators with the Division of Insurance Fraud and prosecutors in obtaining prison sentences against these illegal enterprises.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The committee substitute differs from the bill as filed in several ways. The most significant difference is that the committee substitute removes provisions that:

- Provided that it is unlawful for any person to solicit or cause to be solicited any business from a person involved in a motor vehicle accident. Provides that it is unlawful for any attorney, chiropractor, or medical provider, after 60 days have elapsed from an accident, to solicit any business from a person involved in an accident by means of any personal, telephone contact at the person's residence, other than by mail.
- Provided that it is unlawful for any person to organize, plan, or in any way participate in staged motor vehicle accidents. Any person who violates this commits a felony of the second degree.
- Provided increased penalties for false and fraudulent motor vehicle insurance application from a first-degree misdemeanor to a third-degree felony.
- Provided that any person who deceives any other person by creating, marketing, or presenting a false motor vehicle insurance card commits a felony of the third degree.

Additional changes to the committee substitute include the following:

- Names the Act the "Peter Orr Anti-Fraud Act". Provides for civil remedy by private parties for violations of s. 624.401, F.S., prohibiting persons from acting as unauthorized insurers.
- Amends s. 624.401, F.S., regarding *Certificate of authority required*. The bill provides that a person acting as an insurer without a valid certificate of authority commits insurance fraud. The bill increases felony penalties for operating an unauthorized insurer based on the amount of premiums handled. Up to \$20,000 is a 3rd degree felony, between \$20,000 and \$100,000 is a 2nd degree felony, and over \$100,000 is a 1st degree felony.
- Updates the Offense Severity Ranking Chart or sentencing guidelines, to include felonies provided for in the bill.