

1 A bill to be entitled
2 An act relating to insurer anti-fraud efforts;
3 amending s. 440.50, F.S.; removing the Justice
4 Administrative Commission as an entity whose funds
5 revert to the Worker's Compensation Trust Fund under
6 certain conditions; reordering and amending s.
7 626.9891, F.S.; requiring every insurer to designate
8 at least one primary anti-fraud employee for certain
9 purposes; requiring certain insurers to adopt an anti-
10 fraud plan under certain circumstances; revising
11 insurer requirements in providing anti-fraud
12 information to the Department of Financial Services;
13 requiring anti-fraud plans and statistics to be filed
14 annually with the department; revising the information
15 to be provided by insurers who write workers'
16 compensation insurance; requiring each insurer to
17 provide annual anti-fraud education and training;
18 requiring insurers who submit an application for a
19 certificate of authority after a specified date to
20 comply with the section; providing penalties for
21 failure to submit the annual anti-fraud statistical
22 report; creating s. 626.9896, F.S.; creating a grant
23 program to fund the dedicated insurance fraud
24 prosecutor program within the department; requiring
25 moneys that appropriated for the program be used to

26 fund specific attorney and paralegal positions;
 27 specifying procedures to be used by state attorney's
 28 offices when applying for biennial grants; specifying
 29 that grants are for two years but authorizing the
 30 division to renew the grants; specifying procedures to
 31 be used by the department in awarding grant funds;
 32 requiring the Division of Investigative and Forensic
 33 Services to provide an annual report to the Executive
 34 Office of the Governor and Legislature; specifying
 35 information to be contained in the report; authorizing
 36 the department to adopt rules to administer and
 37 implement the insurance fraud dedicated prosecutor
 38 program; amending s. 641.3915, F.S.; deleting obsolete
 39 provisions; providing an effective date.

40

41 Be It Enacted by the Legislature of the State of Florida:

42

43 Section 1. Subsection (5) of section 440.50, Florida
 44 Statutes, is amended to read:

45 440.50 Workers' Compensation Administration Trust Fund.—

46 (5) Funds appropriated by an operating appropriation or a
 47 nonoperating transfer from the Workers' Compensation
 48 Administration Trust Fund to the Agency for Health Care
 49 Administration, the Department of Business and Professional
 50 Regulation, the Department of Management Services, and the First

51 District Court of Appeal, ~~and the Justice Administrative~~
52 ~~Commission~~ remaining unencumbered as of June 30 or undisbursed
53 as of September 30 each year shall revert to the Workers'
54 Compensation Administration Trust Fund.

55 Section 2. Section 626.9891, Florida Statutes, is
56 reordered and amended to read:

57 626.9891 Insurer anti-fraud investigative units; reporting
58 requirements; penalties for noncompliance.-

59 (1) (a) (5) For purposes of this section, the term "unit or
60 division" includes the assignment of fraud investigation to
61 employees whose principal responsibilities are the investigation
62 and disposition of claims. If an insurer creates a distinct unit
63 or division, hires additional employees, or contracts with
64 another entity to fulfill the requirements of this section, the
65 additional cost incurred must be included as an administrative
66 expense for ratemaking purposes.

67 (b) Every insurer shall designate at least one primary
68 anti-fraud employee to be responsible for meeting the
69 requirements set forth in this section.

70 (2) (1) Every insurer admitted to do business in this state
71 who estimates it wrote in the previous calendar year, ~~at any~~
72 ~~time during that year,~~ had \$10 million or more in direct
73 premiums in the previous year ~~written~~ shall:

74 (a) Adopt an anti-fraud plan and establish and maintain a
75 unit or division within the company to investigate possible

76 | fraudulent insurance acts ~~claims~~ by insureds or by persons
 77 | making claims for services or repairs against policies held by
 78 | insureds; or

79 | (b) Contract with others to investigate possible
 80 | fraudulent insurance acts ~~claims~~ for services or repairs against
 81 | policies held by insureds.

82 |
 83 | An insurer subject to this subsection shall electronically file
 84 | with the Division of Investigative and Forensic Services of the
 85 | department on or before September 1, 2017, and annually
 86 | thereafter ~~July 1, 1996~~, a detailed description of the unit or
 87 | division established pursuant to paragraph (a) or a copy of the
 88 | contract and related documents required by paragraph (b).

89 | (3)~~(2)~~ Every insurer admitted to do business in this
 90 | state, which in the previous calendar year had less than \$10
 91 | million in direct premiums written, must adopt an anti-fraud
 92 | plan and file it electronically with the Division of
 93 | Investigative and Forensic Services of the department on or
 94 | before September 1, 2017, and annually thereafter ~~July 1, 1996~~.
 95 | An insurer may, in lieu of adopting and filing an anti-fraud
 96 | plan, comply with the provisions of paragraph (2) (b) ~~subsection~~
 97 | ~~(1)~~.

98 | (4)~~(3)~~ Each ~~insurers~~ anti-fraud plan ~~must~~ ~~plans~~ shall
 99 | include:

100 | (a) An acknowledgement that the insurer has established

101 procedures for detecting and investigating possible fraudulent
102 insurance acts relating to the different types of insurance by
103 that insurer ~~A description of the insurer's procedures for~~
104 ~~detecting and investigating possible fraudulent insurance acts;~~

105 (b) An acknowledgment that the insurer has established ~~A~~
106 ~~description of the insurer's~~ procedures for the mandatory
107 reporting of possible fraudulent insurance acts to the Division
108 of Investigative and Forensic Services of the department;

109 (c) An acknowledgement that the insurer provides ~~A~~
110 ~~description of the insurer's plan for~~ anti-fraud education and
111 training ~~to~~ of its claims adjusters or other personnel; ~~and~~

112 (d) A description of the anti-fraud education and training
113 required under subsection (7) that is provided to the designated
114 anti-fraud investigative unit or contractor, as applicable, that
115 is designed to assist in identifying and evaluating instances of
116 suspected fraudulent insurance acts in underwriting or claims
117 activities;

118 ~~(e)-(d)~~ (e) A written description or chart outlining the
119 organizational arrangement of the insurer's anti-fraud personnel
120 who are responsible for the investigation and reporting of
121 possible fraudulent insurance acts;

122 (f) The rationale for the level of staffing and resources
123 being provided for the anti-fraud investigative unit, which may
124 include objective criteria, such as the number of policies
125 written, the number of claims received on an annual basis, the

126 volume of suspected fraudulent claims detected on an annual
127 basis, an assessment of the optimal caseload that one
128 investigator can handle on an annual basis, and other factors;
129 and

130 (g) A description of the insurer's public awareness
131 efforts focused on the costs and frequency of insurance fraud
132 and methods by which the public can prevent such fraud.

133 (5) Every insurer shall also submit anti-fraud statistics
134 annually by September 1 for the lines written by that insurer
135 for the calendar year. The statistics must include, at a
136 minimum:

137 (a) The number of policies in effect;

138 (b) The amount of premiums written for policies;

139 (c) The number of claims received;

140 (d) The number of claims referred to the anti-fraud
141 investigative unit;

142 (e) The number of other insurance fraud matters referred
143 to the anti-fraud investigative unit that were nonclaim related;

144 (f) The number of claims investigated or accepted by the
145 anti-fraud investigative unit;

146 (g) The number of other insurance fraud matters
147 investigated or accepted by the anti-fraud investigative unit
148 that were nonclaim related;

149 (h) The number of cases referred to the Division of
150 Investigative and Forensic Services;

151 (i) The number of cases referred to other law enforcement
152 agencies;

153 (j) The number of cases referred to other entities; and

154 (k) The estimated dollar amount of damages on cases
155 referred to the Division of Investigative and Forensic Services
156 or other agencies.

157 (6) In addition to providing the information required
158 under subsections (2), (3), and (5), each insurer writing
159 workers' compensation insurance shall also report the following
160 information to the department, on or before September 1 August 1
161 of each year, on its experience in implementing and maintaining
162 an anti-fraud investigative unit or an anti-fraud plan. The
163 report must include, at a minimum:

164 (a) The estimated dollar amount of losses attributable to
165 workers' compensation fraud delineated by the type of fraud,
166 including claimant, employer, provider, agent, or other type.

167 (b) The estimated dollar amount of recoveries attributable
168 to workers' compensation fraud delineated by the type of fraud,
169 including claimant, employer, provider, agent, or other type.

170 (c) The number of cases referred to the Division of
171 Insurance and Forensic Services, delineated by the type of
172 fraud, including claimant, employer, provider, agent, or other
173 type.

174 ~~(a) The dollar amount of recoveries and losses~~
175 ~~attributable to workers' compensation fraud delineated by the~~

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176 ~~type of fraud: claimant, employer, provider, agent, or other.~~

177 ~~(b) The number of referrals to the Bureau of Workers'~~
178 ~~Compensation Fraud for the prior year.~~

179 ~~(d)(e)~~ A description of the organization of the anti-fraud
180 investigative unit, if applicable, including the position titles
181 and descriptions of staffing.

182 ~~(d) The rationale for the level of staffing and resources~~
183 ~~being provided for the anti-fraud investigative unit, which may~~
184 ~~include objective criteria such as number of policies written,~~
185 ~~number of claims received on an annual basis, volume of~~
186 ~~suspected fraudulent claims currently being detected, other~~
187 ~~factors, and an assessment of optimal caseload that can be~~
188 ~~handled by an investigator on an annual basis.~~

189 ~~(e) The inservice education and training provided to~~
190 ~~underwriting and claims personnel to assist in identifying and~~
191 ~~evaluating instances of suspected fraudulent activity in~~
192 ~~underwriting or claims activities.~~

193 ~~(f) A description of a public awareness program focused on~~
194 ~~the costs and frequency of insurance fraud and methods by which~~
195 ~~the public can prevent it.~~

196 (7) Every insurer shall provide at least 2 hours of
197 initial anti-fraud training to the designated anti-fraud
198 investigative unit or contractor, as applicable, and shall
199 provide an annual 1-hour refresher course that addresses
200 detection, referrals, investigations, and reporting of suspected

201 insurance fraud for the types of insurance lines written by the
 202 insurer. In addition, the insurer shall require the anti-fraud
 203 investigative unit or contractor, as applicable, to complete an
 204 annual 1-hour training provided by the department.

205 (8)-(4) An Any insurer who submits an application to obtain
 206 ~~obtains~~ a certificate of authority after September 1, 2017, must
 207 ~~July 1, 1995, shall have 18 months in which to~~ comply with the
 208 requirements of this section before receiving such authority.

209 (9)-(7) If an insurer fails to timely submit a final
 210 acceptable anti-fraud plan or anti-fraud investigative unit
 211 description, fails to implement the provisions of a plan or an
 212 anti-fraud investigative unit description, fails to submit the
 213 annual anti-fraud statistical report, or otherwise refuses to
 214 comply with the provisions of this section, the department,
 215 office, or commission may:

216 (a) Impose an administrative fine of not more than \$2,000
 217 per day for such failure by an insurer to submit an acceptable
 218 anti-fraud plan or anti-fraud investigative unit description, or
 219 the anti-fraud statistical report, until the department, office,
 220 or commission deems the insurer to be in compliance;

221 (b) Impose an administrative fine for failure by an
 222 insurer to implement or follow the provisions of an anti-fraud
 223 plan or anti-fraud investigative unit description; or

224 (c) Impose the provisions of both paragraphs (a) and (b).

225 (10)-(8) The department may adopt rules to administer this

226 section.

227 Section 3. Section 626.9896, Florida Statutes, is created
228 to read:

229 626.9896 Dedicated Insurance Fraud Prosecutor Program.—

230 (1) LEGISLATIVE INTENT.—The Legislature recognizes the
231 increasing problem of insurance fraud, the need to adequately
232 investigate and prosecute insurance fraud, and the need to
233 create a program dedicated to the prosecution of insurance
234 fraud. The Legislature recognizes that the Division of
235 Investigative and Forensic Services of the department can
236 efficiently and effectively manage and monitor such a program,
237 and can direct and reallocate resources as insurance fraud
238 trends change and demand for prosecutorial resources shift
239 between judicial circuits.

240 (2) ESTABLISHMENT OF THE INSURANCE FRAUD DEDICATED
241 PROSECUTOR PROGRAM.—There is created within the department a
242 grant program to fund the Insurance Fraud Dedicated Prosecutor
243 Program. The Division of Investigative and Forensic Services of
244 the department shall administer appropriated moneys to fund
245 attorney and paralegal positions dedicated to the prosecution of
246 insurance fraud. The program shall consist only of funds
247 appropriated by the state specifically for this program.

248 (3) GRANT APPLICATIONS.—Beginning in 2018, a state
249 attorney's office seeking grant funds must submit an application
250 to the Division of Investigative and Forensic Services detailing

251 the proposed number of dedicated prosecutors and staff requested
252 for the prosecution of insurance fraud. Applications must be
253 received by July 1 of each even numbered year and shall identify
254 funding needs for two years. Contingent upon legislative
255 appropriation, the grants shall be for a period of 2 years and
256 subject to renewal by the department. The division shall compile
257 and review the timely submitted applications to establish its
258 legislative budget request for the program for the upcoming two
259 years.

260 (4) AWARD OF GRANTS.—Contingent upon legislative
261 appropriation, the Division of Investigative and Forensic
262 Services shall award grants to state attorney's offices
263 according to prosecutorial needs, using an allocation formula
264 composed of internal metrics and data compiled by the division.
265 The division may alter the allocation formula to achieve the
266 most effective and efficient allocation of funds necessary to
267 meet the purpose of the program. Each grant that is awarded to a
268 state attorney's office shall be equal to the total annual
269 salary, including benefits, for each attorney and paralegal
270 whose duties are solely dedicated to the prosecution of
271 insurance fraud. The grants are subject to the provisions of s.
272 215.971. The department shall establish the annual maximum grant
273 amount, based on funds appropriated to the department for
274 funding the Insurance Fraud Dedicated Prosecutor Program.

275 (5) REPORTING.—The Division of Investigative and Forensic

276 Services must track and report on the effectiveness and
277 efficiency of each state attorney's office's use of the awarded
278 grant funds. In completing its report, the division shall
279 require each state attorney's office that is awarded a grant
280 under this section to submit performance and output information
281 as determined by the division. The report must be provided to
282 the Executive Office of the Governor and to the Legislature
283 annually by December 30. The report must include, but is not
284 limited to, the following:

285 (a) The amount of grant funds received and expended by
286 each state attorney's office;

287 (b) A description of the purposes for which the funds were
288 expended, including payment of salaries, expenses, and any other
289 costs needed to support delivery of services;

290 (c) The prosecutorial results achieved from the
291 expenditures made, including the number of complaints filed, the
292 number of investigations initiated, the number of arrests made,
293 and the number of convictions resulting from the cases presented
294 for prosecution.

295 (6) RULES.—The department may adopt rules pursuant to ss.
296 120.536(1) and 120.54 for the administration and implementation
297 of the Insurance Fraud Dedicated Prosecutor Program. Such rules
298 may establish procedures for the Insurance Fraud Dedicated
299 Prosecutor Program, including forms to be used by the state
300 attorney's offices. The department may establish eligibility

301 criteria, renewal requirements, and standards for evaluating the
302 effectiveness and efficiency of expended funds.

303 Section 4. Section 641.3915, Florida Statutes, is amended
304 to read:

305 641.3915 Health maintenance organization anti-fraud plans
306 and investigative units.—Each authorized health maintenance
307 organization and applicant for a certificate of authority shall
308 comply with the provisions of ss. 626.989 and 626.9891 as though
309 such organization or applicant were an authorized insurer. ~~For~~
310 ~~purposes of this section, the reference to the year 1996 in s.~~
311 ~~626.9891 means the year 2000 and the reference to the year 1995~~
312 ~~means the year 1999.~~

313 Section 5. This act shall take effect July 1, 2017.