

By Senator Gruters

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1 A bill to be entitled
2 An act relating to fraud prevention; amending s.
3 501.165, F.S.; requiring sellers to allow consumers to
4 cancel in a specified manner and by specified means
5 service contracts that have automatic renewal
6 provisions; amending s. 626.854, F.S.; revising
7 maximum fines for public adjusters and public adjuster
8 apprentices for certain violations under a specified
9 circumstance; revising maximum fines for certain
10 violations by certain persons under a specified
11 circumstance; amending s. 626.989, F.S.; redefining
12 the term "active"; deleting provisions relating to
13 circumstances under which investigations are
14 considered active; authorizing the Department of
15 Financial Services to impose an administrative fine on
16 insurers under certain circumstances; authorizing the
17 Division of Investigative and Forensic Services to
18 adopt certain rules; amending s. 633.112, F.S.;
19 redefining the term "active"; deleting provisions
20 relating to circumstances under which investigations
21 are considered active; amending s. 633.126, F.S.;
22 authorizing the department to impose an administrative
23 fine on insurance companies under certain
24 circumstances; deleting criminal penalties;
25 authorizing the division to adopt certain rules;
26 amending s. 634.095, F.S.; revising requirements for
27 advertisements issued or caused to be issued by
28 service agreement companies or salespersons; amending
29 s. 775.15, F.S.; revising felony violations for which

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30 prosecutions must be commenced within a specified
31 timeframe; amending s. 817.234, F.S.; providing that
32 certain insurers are entitled to recover specified
33 expenses at the trial and appellate courts under
34 certain circumstances; providing effective dates.
35

36 Be It Enacted by the Legislature of the State of Florida:
37

38 Section 1. Subsection (2) of section 501.165, Florida
39 Statutes, is amended to read:

40 501.165 Automatic renewal of service contracts.—

41 (2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.—

42 (a) A ~~Any~~ seller that sells, leases, or offers to sell or
43 lease any service to a consumer pursuant to a service contract
44 that has an automatic renewal provision, unless the consumer
45 cancels that contract, shall disclose the automatic renewal
46 provision clearly and conspicuously in the contract or contract
47 offer.

48 (b) A ~~Any~~ seller that sells or offers to sell any service
49 to a consumer pursuant to a service contract the term of which
50 is a specified period of 12 months or more and that
51 automatically renews for a specified period of more than 1
52 month, unless the consumer cancels the contract, shall provide
53 the consumer with written or electronic notification of the
54 automatic renewal provision. Notification shall be provided to
55 the consumer no less than 30 days or no more than 60 days before
56 the cancellation deadline pursuant to the automatic renewal
57 provision. Such notification shall disclose clearly and
58 conspicuously:

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59 1. That unless the consumer cancels the contract the
60 contract will automatically renew.

61 2. Methods by which the consumer may obtain details of the
62 automatic renewal provision and cancellation procedure, whether
63 by contacting the seller at a specified telephone number or
64 address, by referring to the contract, or by any other method.

65 (c) A seller that fails to comply with the requirements of
66 this subsection violates ~~is in violation of~~ this subsection
67 unless the seller demonstrates that:

68 1. As part of the seller's routine business practice, the
69 seller has established and implemented written procedures to
70 comply with this section and enforces compliance with the
71 procedures;

72 2. Any failure to comply with this subsection is the result
73 of error; and

74 3. As part of the seller's routine business practice, where
75 an error has caused the failure to comply with this subsection,
76 the unearned portion of the contract subject to the automatic
77 renewal provision is refunded as of the date on which the seller
78 is notified of the error.

79 (d) A seller shall allow a consumer to cancel a service
80 contract that has an automatic renewal provision in the same
81 manner, and by the same means, as the service contract was
82 entered into.

83 (e) This subsection does not apply to:

84 1. A financial institution as defined in s. 655.005 or any
85 depository institution as defined in 12 U.S.C. s. 1813(c)(2).

86 2. A foreign bank maintaining a branch or agency licensed
87 under the laws of any state of the United States.

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88 3. Any subsidiary or affiliate of an entity described in
89 subparagraph 1. or subparagraph 2.

90 4. A health studio as defined in s. 501.0125.

91 5. Any entity licensed under chapter 624, chapter 627,
92 chapter 634, chapter 636, or chapter 641.

93 6. Any electric utility as defined in s. 366.02.

94 7. Any private company as defined in s. 180.05 providing
95 services described in chapter 180 which is competing against a
96 governmental entity or has a governmental entity providing
97 billing services on its behalf.

98 (f)~~(e)~~ A violation of this subsection renders the automatic
99 renewal provision void and unenforceable.

100 Section 2. Paragraphs (b) and (c) of subsection (22) of
101 section 626.854, Florida Statutes, are amended, and paragraph
102 (a) of that subsection is republished, to read:

103 626.854 "Public adjuster" defined; prohibitions.—The
104 Legislature finds that it is necessary for the protection of the
105 public to regulate public insurance adjusters and to prevent the
106 unauthorized practice of law.

107 (22) (a) Any following act by a public adjuster, a public
108 adjuster apprentice, or a person acting on behalf of a public
109 adjuster or public adjuster apprentice is prohibited and shall
110 result in discipline as applicable under this part:

111 1. Offering to a residential property owner a rebate, gift,
112 gift card, cash, coupon, waiver of any insurance deductible, or
113 any other thing of value in exchange for:

114 a. Allowing a contractor, a public adjuster, a public
115 adjuster apprentice, or a person acting on behalf of a public
116 adjuster or public adjuster apprentice to conduct an inspection

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117 of the residential property owner's roof; or

118 b. Making an insurance claim for damage to the residential
119 property owner's roof.

120 2. Offering, delivering, receiving, or accepting any
121 compensation, inducement, or reward for the referral of any
122 services for which property insurance proceeds would be used for
123 roofing repairs or replacement.

124 (b) Notwithstanding the fine set forth in s. 626.8698, a
125 public adjuster or public adjuster apprentice may be subject to
126 a fine not to exceed \$10,000 per act for a violation of this
127 subsection and a fine not to exceed \$20,000 per act for a
128 violation of this subsection that occurs during a state of
129 emergency declared by executive order or proclamation of the
130 Governor pursuant to s. 252.36.

131 (c) A person who engages in an act prohibited by this
132 subsection and who is not a public adjuster or a public adjuster
133 apprentice, or is not otherwise exempt from licensure, is guilty
134 of the unlicensed practice of public adjusting and may be:

135 1. Subject to all applicable penalties set forth in this
136 part.

137 2. Notwithstanding subparagraph 1., subject to a fine not
138 to exceed \$10,000 per act for a violation of this subsection and
139 a fine not to exceed \$20,000 per act for a violation of this
140 subsection that occurs during a state of emergency declared by
141 executive order or proclamation of the Governor pursuant to s.
142 252.36.

143 Section 3. Present subsections (7), (8), and (9) of section
144 626.989, Florida Statutes, are redesignated as subsections (9),
145 (10), and (11), respectively, new subsections (7) and (8) and

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146 subsection (12) are added to that section, and subsections (5)
147 and (6) of that section are amended, to read:

148 626.989 Investigation by department or Division of
149 Investigative and Forensic Services; compliance; immunity;
150 confidential information; reports to division; division
151 investigator's power of arrest.—

152 (5) The office's and the department's papers, documents,
153 reports, or evidence relative to the subject of an investigation
154 under this section are confidential and exempt from ~~the~~
155 ~~provisions of s. 119.07(1) until such investigation is completed~~
156 ~~or ceases to be active. For purposes of this subsection, the~~
157 ~~term an investigation is considered "active" has the same~~
158 ~~meaning as in s. 119.011(3)(d) while the investigation is being~~
159 ~~conducted by the office or department with a reasonable, good~~
160 ~~faith belief that it could lead to the filing of administrative,~~
161 ~~civil, or criminal proceedings. An investigation does not cease~~
162 ~~to be active if the office or department is proceeding with~~
163 ~~reasonable dispatch and has a good faith belief that action~~
164 ~~could be initiated by the office or department or other~~
165 ~~administrative or law enforcement agency. After an investigation~~
166 ~~is completed or ceases to be active, portions of records~~
167 ~~relating to the investigation shall remain exempt from the~~
168 ~~provisions of s. 119.07(1) if disclosure would:~~

169 (a) Jeopardize the integrity of another active
170 investigation;

171 (b) Impair the safety and soundness of an insurer;

172 (c) Reveal personal financial information;

173 (d) Reveal the identity of a confidential source;

174 (e) Defame or cause unwarranted damage to the good name or

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175 reputation of an individual or jeopardize the safety of an
176 individual; or

177 (f) Reveal investigative techniques or procedures. Further,
178 such papers, documents, reports, or evidence relative to the
179 subject of an investigation under this section shall not be
180 subject to discovery until the investigation is completed or
181 ceases to be active. Office, department, or division
182 investigators shall not be subject to subpoena in civil actions
183 by any court of this state to testify concerning any matter of
184 which they have knowledge pursuant to a pending insurance fraud
185 investigation by the division.

186 (6) Any person, other than an insurer, agent, or other
187 person licensed under the code, or an employee thereof, having
188 knowledge or who believes that a fraudulent insurance act or any
189 other act or practice which, upon conviction, constitutes a
190 felony or a misdemeanor under the code, or under s. 817.234, is
191 being or has been committed may send to the Division of
192 Investigative and Forensic Services a report or information
193 pertinent to such knowledge or belief and such additional
194 information relative thereto as the department may request. Any
195 professional practitioner licensed or regulated by the
196 Department of Business and Professional Regulation, except as
197 otherwise provided by law, any medical review committee as
198 defined in s. 766.101, any private medical review committee, and
199 any insurer, agent, or other person licensed under the code, or
200 an employee thereof, having knowledge or who believes that a
201 fraudulent insurance act or any other act or practice which,
202 upon conviction, constitutes a felony or a misdemeanor under the
203 code, or under s. 817.234, is being or has been committed shall

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204 send to the Division of Investigative and Forensic Services a
205 report or information pertinent to such knowledge or belief and
206 such additional information relative thereto as the department
207 may require.

208 (7) If an insurer fails or otherwise refuses to comply with
209 this section, the department may impose an administrative fine
210 of not more than \$2,000 per day for such failure until the
211 department deems the insurer to be in compliance.

212 (8) The Division of Investigative and Forensic Services
213 shall review such information or reports and select such
214 information or reports as, in its judgment, may require further
215 investigation. It shall then cause an independent examination of
216 the facts surrounding such information or report to be made to
217 determine the extent, if any, to which a fraudulent insurance
218 act or any other act or practice which, upon conviction,
219 constitutes a felony or a misdemeanor under the code, or under
220 s. 817.234, is being committed. The Division of Investigative
221 and Forensic Services shall report any alleged violations of law
222 which its investigations disclose to the appropriate licensing
223 agency and state attorney or other prosecuting agency having
224 jurisdiction with respect to any such violation, as provided in
225 s. 624.310. If prosecution by the state attorney or other
226 prosecuting agency having jurisdiction with respect to such
227 violation is not begun within 60 days of the division's report,
228 the state attorney or other prosecuting agency having
229 jurisdiction with respect to such violation shall inform the
230 division of the reasons for the lack of prosecution.

231 (12) The Division of Investigative and Forensic Services
232 may adopt reasonable rules as are necessary to administer this

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233 section. Such rules must meet all of the following requirements:

234 (a) They may not enlarge upon or extend the provisions of
235 this section.

236 (b) They must identify specific factors that determine the
237 grades of penalty.

238 (c) They must specify mitigating and aggravating factors
239 for a violation of this section.

240 Section 4. Subsection (7) of section 633.112, Florida
241 Statutes, is amended to read:

242 633.112 State Fire Marshal; hearings; investigations;
243 recordkeeping and reports; subpoenas of witnesses; orders of
244 circuit court.—

245 (7) The State Fire Marshal shall keep a record of all fires
246 and explosions occurring in this state upon which she or he had
247 caused an investigation to be made and all facts concerning the
248 same. These records, obtained or prepared by the State Fire
249 Marshal pursuant to her or his investigation, include documents,
250 papers, letters, maps, diagrams, tapes, photographs, films,
251 sound recordings, and evidence. These records are confidential
252 and exempt from ~~the provisions of s. 119.07(1) until the~~
253 ~~investigation is completed or ceases to be active. For purposes~~
254 ~~of this section, the term an investigation is considered~~
255 ~~“active” has the same meaning as in s. 119.011(3)(d) while such~~
256 ~~investigation is being conducted by the department with a~~
257 ~~reasonable, good faith belief that it may lead to the filing of~~
258 ~~administrative, civil, or criminal proceedings. An investigation~~
259 ~~does not cease to be active if the department is proceeding with~~
260 ~~reasonable dispatch, and there is a good faith belief that~~
261 ~~action may be initiated by the department or other~~

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262 ~~administrative or law enforcement agency.~~ Further, these
263 documents, papers, letters, maps, diagrams, tapes, photographs,
264 films, sound recordings, and evidence relative to the subject of
265 an investigation are ~~shall~~ not ~~be~~ subject to subpoena until the
266 investigation is completed or ceases to be active, unless the
267 State Fire Marshal consents. These records shall be made daily
268 from the reports furnished the State Fire Marshal by her or his
269 agents or others.

270 Section 5. Subsection (9) of section 633.126, Florida
271 Statutes, is amended, subsection (10) is added to that section,
272 and subsection (2) of that section is republished, to read:

273 633.126 Investigation of fraudulent insurance claims and
274 crimes; immunity of insurance companies supplying information.-

275 (2) If an insurance company has reason to suspect that a
276 fire or explosion loss to its insured's real or personal
277 property was caused by intentional means, the company shall
278 notify the State Fire Marshal and shall furnish her or him with
279 all material acquired by the company during its investigation.
280 The State Fire Marshal may adopt rules to implement this
281 subsection.

282 (9) If an insurance company fails or otherwise refuses to
283 comply with this section, the department may impose an
284 administrative fine of not more than \$2,000 per day for such
285 failure until the department deems the insurance company to be
286 in compliance ~~A person who willfully violates this section~~
287 ~~commits a misdemeanor of the first degree, punishable as~~
288 ~~provided in s. 775.082 or s. 775.083.~~

289 (10) The Division of Investigative and Forensic Services
290 may adopt reasonable rules as are necessary to administer this

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291 section. Such rules must meet all of the following requirements:

292 (a) They may not enlarge upon or extend the provisions of
293 this section.

294 (b) They must identify specific factors that determine the
295 grades of penalty.

296 (c) They must specify mitigating and aggravating factors
297 for a violation of this section.

298 Section 6. Effective January 1, 2023, present paragraphs
299 (b), (c), and (d) of subsection (3) of section 634.095, Florida
300 Statutes, are redesignated as paragraphs (d), (e), and (f),
301 respectively, new paragraphs (b) and (c) are added to that
302 subsection, and paragraph (a) of that subsection is amended, to
303 read:

304 634.095 Prohibited acts.—Any service agreement company or
305 salesperson that engages in one or more of the following acts
306 is, in addition to any applicable denial, suspension,
307 revocation, or refusal to renew or continue any appointment or
308 license, guilty of a misdemeanor of the second degree,
309 punishable as provided in s. 775.082 or s. 775.083:

310 (3) Issuing or causing to be issued any advertisement that
311 ~~which~~:

312 (a) Does not fully disclose in a written advertisement, in
313 at least 12-point, boldface ~~boldfaced~~ type, the name, address,
314 and Florida Company Code ~~license number~~ of the service agreement
315 company.

316 (b) Does not fully disclose in a radio or television
317 advertisement the full legal name of the licensed salesperson or
318 the service agreement company.

319 (c) Does not fully identify the soliciting licensed

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320 salesperson's full legal name and license number when the
321 salesperson begins, and the soliciting salesperson's telephone
322 number when the salesperson concludes, each telephone
323 solicitation. For the purposes of this paragraph, the actual
324 telephone number of the salesperson may be the number on file
325 with the department or the number at which the salesperson may
326 be contacted.

327 Section 7. Subsection (11) of section 775.15, Florida
328 Statutes, is amended to read:

329 775.15 Time limitations; general time limitations;
330 exceptions.-

331 (11) A prosecution for a felony violation of s. 440.105 or
332 s. 817.234 ~~ss. 440.105 and 817.234~~ must be commenced within 5
333 years after the violation is committed.

334 Section 8. Subsection (5) of section 817.234, Florida
335 Statutes, is amended to read:

336 817.234 False and fraudulent insurance claims.-

337 (5) (a) Any insurer damaged as a result of a violation of
338 any provision of this section when there has been a criminal
339 adjudication of guilt shall have a cause of action to recover
340 compensatory damages, plus all reasonable investigation and
341 litigation expenses, including attorney ~~attorneys'~~ fees, at the
342 trial and appellate courts.

343 (b) If an insurer damaged as a result of a violation of any
344 provision of this section has reported the possible fraudulent
345 insurance act to the Division of Investigative and Forensic
346 Services pursuant to s. 626.9891 and if there has been a
347 criminal adjudication of guilt, the insurer is entitled to
348 recover reasonable investigation and litigation expenses,

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349 including attorney fees, at the trial and appellate courts.

350 Section 9. Except as otherwise expressly provided in this

351 act, this act shall take effect upon becoming a law.