

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 267 False and Fraudulent Insurance Claims

**SPONSOR(S):** Hays

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 752

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| REFERENCE  | ACTION          | ANALYST           | STAFF DIRECTOR  |
|--|-----------------|-------------------|-----------------|
| 1) <u>Committee on Homeland Security &amp; Public Safety</u> | <u>8 Y, 0 N</u> | <u>Cunningham</u> | <u>Kramer</u>   |
| 2) <u>Safety &amp; Security Council</u>                      | <u></u>         | <u>Cunningham</u> | <u>Havlicak</u> |
| 3) <u>Policy &amp; Budget Council</u>                        | <u></u>         | <u></u>           | <u></u>         |
| 4) <u></u>   | <u></u>         | <u></u>           | <u></u>         |
| 5) <u></u>   | <u></u>         | <u></u>           | <u></u>         |

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### SUMMARY ANALYSIS

Under Florida's Motor Vehicle No-Fault Law, motor vehicle owners are required to maintain \$10,000 worth of first-party insurance known as Personal Injury Protection, commonly referred to as PIP. PIP coverage provides up to \$10,000 per person for loss sustained as a result of bodily injury, sickness, disease, or death that arises from owning, maintaining, or using an insured motor vehicle.

Over time, PIP has been subject to a variety of fraudulent activities. The penalties for insurance fraud are set forth in s. 817.234, F.S., which provides that if the value of the property involved in a violation:

- Is less than \$20,000, the offender commits a 3<sup>rd</sup> degree felony;
- Is \$20,000 or more, but less than \$100,000, the offender commits a 2<sup>nd</sup> degree felony;
- Is \$100,000 or more, the offender commits a 1<sup>st</sup> degree felony.

HB 267 provides minimum mandatory penalties for persons who commit insurance fraud that involves a PIP claim. First violations are punishable by a mandatory minimum term of imprisonment of 2 years and a mandatory minimum fine of \$200,000. Second and subsequent violations are punishable by a mandatory minimum term of imprisonment of 10 years and a mandatory minimum fine of \$500,000.

The bill also specifies that health care practitioners who are convicted of insurance fraud that involves a PIP claim must be punished by a minimum mandatory suspension of their professional license for 12 months.

The Criminal Justice Impact Conference met on February 26, 2008, and determined this bill would have an insignificant prison bed impact.

Additionally, this bill establishes mandatory fines and while indeterminate, any proceeds collected from these funds would increase clerks of court revenues.

This bill takes effect October 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – This bill provides minimum mandatory penalties for persons who commit insurance fraud that involves a PIP claim.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Florida's Motor Vehicle No-Fault Law**

Under Florida's Motor Vehicle No-Fault Law, motor vehicle owners are required to maintain \$10,000 worth of first-party insurance known as Personal Injury Protection, commonly referred to as PIP. PIP coverage provides up to \$10,000 per person for loss sustained as a result of bodily injury, sickness, disease, or death that arises from owning, maintaining, or using an insured motor vehicle. PIP benefits are available for certain express damages sustained in a motor vehicle accident regardless of fault.<sup>1</sup>

Over time, PIP has been subject to a variety of fraudulent activities. Examples of PIP fraud include: solicitation of individuals to participate in fraud; staging motor vehicle accidents; billing for treatment that never occurred; and overbilling of legitimate claims. From 2002 to 2005, PIP fraud referrals to the Division of Insurance Fraud (DIF) increased 300%, from 615 referrals to 2,628 referrals. During fiscal year 2005-2006, there were 225 convictions for PIP fraud - this made up 36% of the 620 total insurance fraud convictions for that year.<sup>2</sup>

##### **Insurance Fraud**

A person commits insurance fraud if they, with the intent to injure, defraud, or deceive any insurer:

- Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim;
- Prepares or makes any written or oral statement that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim; or
- Knowingly:
  - o Presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer, purported insurer, servicing corporation, insurance broker, or insurance agent, or any employee or agent thereof, any false, incomplete, or misleading information or written or oral statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a health maintenance organization subscriber or provider contract; or
  - o Conceals information concerning any fact material to such application.<sup>3</sup>

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<sup>1</sup> House of Representative Staff Analysis, House Bill 13C, October, 2007.

<sup>2</sup> *Id.*

<sup>3</sup> s. 817.234, F.S.

Section 817.234, F.S., also specifies ways in which physicians, practitioners, attorneys, and certain governmental units may commit insurance fraud. Specifically, s. 817.234, F.S., provides:

- Any physician licensed under chapter 458, osteopathic physician licensed under chapter 459, chiropractic physician licensed under chapter 460, or other practitioner licensed under the laws of this state who knowingly and willfully assists, conspires with, or urges any insured party to fraudulently violate any of the provisions of this section or part XI of chapter 627, or any person who, due to such assistance, conspiracy, or urging by said physician, osteopathic physician, chiropractic physician, or practitioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud, commits insurance fraud.
- Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this section or part XI of chapter 627, or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud, commits insurance fraud.
- Any person or governmental unit licensed under chapter 395 to maintain or operate a hospital, and any administrator or employee of any such hospital, who knowingly and willfully allows the use of the facilities of said hospital by an insured party in a scheme or conspiracy to fraudulently violate any of the provisions of this section or part XI of chapter 627 commits insurance fraud

### Penalties

The penalties for insurance fraud are set forth in s. 817.234, F.S., which provides that if the value of the property involved in a violation:

- Is less than \$20,000, the offender commits a 3<sup>rd</sup> degree felony<sup>4</sup>;
- Is \$20,000 or more, but less than \$100,000, the offender commits a 2<sup>nd</sup> degree felony<sup>5</sup>;
- Is \$100,000 or more, the offender commits a 1<sup>st</sup> degree felony<sup>6</sup>.

Section 817.234, F.S., also states that if a physician, osteopathic physician, chiropractic physician, or practitioner is adjudicated guilty of insurance fraud, the appropriate licensing authority must hold an administrative hearing to consider the imposition of administrative sanctions.

### Minimum Penalties

The insurance fraud statute currently contains provisions that require minimum penalties. Specifically, s. 817.234(8)(a), F.S., makes it unlawful for a person intending to defraud another person to solicit or cause to be solicited any business from a person involved in a motor vehicle accident for the purpose of making, adjusting, or settling motor vehicle tort claims or claims for PIP benefits. The penalty for violating this provision is a minimum term of imprisonment of two years.

In addition, s. 817.234(9), F.S., provides that a person may not organize, plan, or knowingly participate in an intentional motor vehicle crash or a scheme to create documentation of a motor vehicle crash that did not occur for the purpose of making motor vehicle tort claims or claims for PIP benefits. The penalty for violating this provision is a minimum terms of imprisonment of two years.

### **Effect of the Bill**

HB 267 provides minimum mandatory penalties for persons who, on or after October 1, 2008, commit insurance fraud that involves a PIP claim. First violations are punishable by a mandatory minimum term of imprisonment of 2 years and a mandatory minimum fine of \$200,000. Second and subsequent

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<sup>4</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

<sup>5</sup> A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

<sup>6</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

violations are punishable by a mandatory minimum term of imprisonment of 10 years and a mandatory minimum fine of \$500,000.

The bill also specifies that health care practitioners<sup>7</sup> who are convicted of insurance fraud that involves a PIP claim must be punished by a minimum mandatory suspension of their professional license for 12 months. "Conviction" means "that there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication was withheld."

C. SECTION DIRECTORY:

**Section 1.** Amends s. 817.234, F.S., relating to false and fraudulent insurance claims.

**Section 2.** This bill takes effect October 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care practitioners may be affected in that they are subject to having their professional licenses suspended under the provisions of the bill.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, to the extent that this bill creates a new crime with minimum mandatory penalties, there may be an additional prison bed impact. Additionally, this bill establishes mandatory fines and while indeterminate, any proceeds collected from these funds would increase clerks of court revenues.

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<sup>7</sup> The term "health care practitioners" is defined by s. 456.001, F.S., as any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The provisions that specify the minimum mandatory penalties may be better located in subsection (11) of s. 817.234, F.S., in that subsection (11) provides penalties for insurance fraud.

The provision relating to professional licenses may be located in subsection (2) of s. 817.234, F.S., in that subsection (2) currently contains provisions relating to the suspension of one's professional license due to insurance fraud.

#### D. STATEMENT OF THE SPONSOR

The sponsor submitted the following statement: Passage of HB 267 will discourage fraudulent abuse of insurance companies. This legislation will establish significant penalties on those found guilty of PIP Insurance fraud. Curbing the number of fraudulent claims and decreasing the amounts of those claims will help Floridians control insurance premium rates.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 6, 2008, the Homeland Security & Public Safety Committee adopted a strike-all amendment and reported the bill favorably as amended. The amendment address the issues raised in the bill analysis by reorganizing the bill's provisions into existing subsections of the insurance fraud statute. The amendment also adds technical language recommended by the Department of Health.