

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 752

INTRODUCER: Banking and Insurance Committee and Senator Baker

SUBJECT: Penalties for Insurance Fraud Involving Personal Injury Protection Benefit Claims

DATE: March 18, 2008 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Fav/CS
2.			HR	
3.			CJ	
4.			JA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Committee Substitute for Senate Bill 752 provides for minimum mandatory terms of imprisonment and fines for persons convicted of the insurance fraud provisions under s. 817.243, F.S., that involve a claim for benefits under Florida’s motor vehicle no-fault law. For a first violation, the minimum mandatory prison term is 2 years with a minimum mandatory fine of \$200,000, and for a second or subsequent violation, the minimum mandatory prison term is 10 years with a minimum mandatory fine of \$500,000.

The legislation also provides that a physician, osteopathic physician, chiropractic physician or any practitioner licensed in Florida who is convicted of insurance fraud that involves a claim for benefits under Florida’s motor vehicle no-fault law, must have his or her professional license suspended for 12 months by the appropriate licensing board. The term “convicted” means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

This bill substantially amends the following section of the Florida Statutes: 817.234, F.S.

II. Present Situation:

Insurance Fraud

Section 817.234, F.S., outlines various violations which constitute insurance fraud and provides for penalties which range in severity depending on the amount or value of the property involved in the violation. For example, a person commits insurance fraud if he or she prepares, makes, causes to present or presents written or oral statements¹ as part of a claim for payment under an insurance policy or health maintenance contract, knowing that such statement contains any false, incomplete or misleading information concerning any fact or thing material to such claim. Physicians and other practitioners and attorneys who knowingly and willfully assist, conspire with or urge an insured party or claimant to fraudulently violate s. 817.234, F.S., or Part XI of ch. 627, F.S. (Florida Motor Vehicle law) commit insurance fraud. Persons operating hospitals commit insurance fraud if they knowingly and willfully allow the use of the hospital facilities by an insured party in a scheme or conspiracy to fraudulently violate s. 817.234, F.S., or Part XI of ch. 627, F.S. It shall constitute insurance fraud for any service provider, other than a hospital, to engage in a general business practice of billing amounts as its usual and customary charge, if such provider has agreed with the insured to waive deductibles or copayments. The provisions of s. 817.234, F.S., also apply to insurers or agents who, with intent, defraud or deceive any claimant with regard to any claim.

Section 817.234, F.S., further provides 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.

The penalties provided under s. 817.234, F.S., provide that if the value of the property involved in a violation:

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

The insurance fraud law contains provisions that provide for minimum mandatory penalties. Under s. 817.234(8)(a), F.S., it is 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 personal injury protection (PIP) benefits. The penalty for violating this provision is a second degree felony with 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. It is a second degree felony to violate this provision with a minimum mandatory term of imprisonment of two years.

¹ A "statement" is defined to mean any notice, proof of loss, bill of lading, invoice, account, estimate of damages, bill for services, diagnosis, prescription, hospital or doctor records, X-ray, test result, or other evidence of loss, injury or expense.

Motor Vehicle Personal Injury Protection Benefits

Under the state's no-fault law, owners or registrants of motor vehicles are required to purchase \$10,000 of personal injury protection (PIP) insurance which compensates persons injured in accidents regardless of fault. Policyholders are indemnified by their own insurer with the intent being to provide such persons with prompt medical treatment. This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.

Section 626.737, F.S., of the PIP law provides procedures for claim payments by insureds and medical providers; charges for treatment of injured persons by providers; medical provider billing requirements and protocols; discovery of information about injured persons by insurers; mental and physical examinations of injured persons; attorneys' fees; pre-suit demand letters and provisions for civil actions by insurers. Under this section, PIP benefits cover the named insured, relatives residing in the same household, passengers, persons operating the insureds vehicle and persons struck by the motor vehicle. With respect to injuries sustained in a motor vehicle accident, a vehicle owner's PIP coverage will pay 80 percent of medical costs, 60 percent of disability benefits and a \$5,000 per-person death benefit, up to a limit of \$10,000.

Medical benefits are limited to services provided by specified physicians as well as hospitals, emergency medical providers and certain health care clinics. Reimbursement for benefits payable from PIP coverage is limited to 80 percent of a schedule of specified maximum charges.

III. Effect of Proposed Changes:

Section 1. Amends s. 817.234, F.S., relating to false and fraudulent insurance claims to provide that any person convicted of insurance fraud that involves a PIP benefit claim under s. 627.736, F.S., shall be sentenced as follows:

- For a first conviction, to serve a minimum mandatory prison term of 2 years and pay a minimum mandatory fine of \$200,000;
- For a second or subsequent conviction, to serve a minimum mandatory prison term of 10 years and pay a minimum mandatory fine of \$500,000.

The term "convicted" has the same meaning as defined in s. 775.0837, F.S., which means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

The legislation further provides that if a physician licensed under ch. 458, F.S.,² an osteopathic physician licensed under ch. 459, F.S.,³ a chiropractic physician licensed under ch. 460, F.S.,⁴ or any practitioner licensed in Florida is convicted of insurance fraud that involves a claim for personal injury protection (PIP) benefits under s. 627.736, F.S., the Board of Medicine under ch. 458, F.S., the Board of Osteopathic Medicine under ch. 459, F.S., the Board of Chiropractic Medicine under ch. 460, F.S., or other appropriate licensing authority shall suspend the license of such practitioner for 12 months., in addition to any other lesser punishment.

² Chapter 458, F.S., governs the licensing and regulation of physicians.

³ Chapter 459, F.S., governs the licensing and regulation of osteopathic medicine.

⁴ Chapter 460, F.S., governs the licensing and regulation of chiropractic medicine.

Section 2. Provides that the act shall take effect on October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who are convicted of insurance fraud involving a PIP benefit claim will be subject to minimum mandatory terms of imprisonment and fines. Physicians, osteopaths, chiropractors and practitioners who are licensed in Florida and convicted of insurance fraud involving a PIP benefit claim will be subject to having their professional license suspended for 12 months by the appropriate medical board.

C. Government Sector Impact:

The Criminal Justice Impact Conference has determined that this bill will have an insignificant impact on prison beds. The legislation establishes mandatory fines and while indeterminate, any proceeds collected from these fines would increase clerks of court revenues.

VI. Technical Deficiencies:

The phrase “ any practitioner” on line 39 is vague and should be clarified to mean “health care practitioner” which is defined in s. 456.001(4), 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.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Banking and Insurance on March 18, 2008:**

- Reorganizes the bill's provisions into existing subsections of the insurance fraud statute under s. 817.234, F.S., and clarifies that persons "convicted" of insurance fraud are subject to mandatory penalties and fines.
- States that the term "conviction" has the same meaning as defined in s. 775.0837, F.S.
- Refers to medical boards and other appropriate licensing authorities that must suspend the license of specified medical providers and practitioners who are convicted of insurance fraud involving personal injury protection benefit claims.

B. Amendments:

None.