



INFORMATIONAL BULLETIN 96-001

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Florida Department of Insurance

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Treasurer, Insurance Commissioner and Fire Marshal

All Insurers Authorized to Do Business in Florida Fraud Legislation

Chapter 95-340, Laws of Florida created new statutory requirements applicable to all insurers doing business in Florida. This bulletin highlights three areas which warrant your attention. You are also responsible for reading the law and compliance therewith. Copies are available upon request at the address below.

IMMEDIATE ATTENTION REQUIRED

I. NEW PROVISIONS REGARDING APPLICATION FRAUD

FS 817.234(1)(a)

Effective **March 1, 1996**, all **APPLICATION** forms shall contain a fraud warning similar to the one required on claim forms. The fraud warning must be approved by the Department of Insurance and must clearly state in substance: "Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree."

Upon development of an application form that complies with the fraud warning language, an insurer may use such form for new and renewal business on March 1, 1996. However, the form must be submitted to the Florida Department of Insurance to the appropriate Bureau of Forms and Rates for formal approval not later than June 1, 1996.

At the insurer's discretion, a rubber stamp or other stick-on device that contains the approved fraud warning will suffice until new forms can be printed.

II. SPECIAL INVESTIGATIVE UNITS AND ANTI-FRAUD PLANS (MANDATORY COMPLIANCE BY JULY 1, 1996)

Chapter 95-340, Laws of Florida created section 626.9891, Florida Statutes, requiring the establishment of special investigative units and the filing of anti-fraud plans for small insurers. By July 1, 1996, insurers writing **\$10 million** or more in direct written premium in Florida during the previous calendar year shall either establish and maintain a special investigative unit (SIU) to investigate possible fraudulent claims or contract with others to investigate possible fraudulent claims.

Insurers must submit detailed written descriptions of the SIU or copies of the investigative service contract and related documents to the Division of Insurance Fraud by July 1, 1996. Insurers that receive certificates of authority after July 1, 1995, have 18 months to comply with these requirements.

Costs incurred in the creation of an SIU or in contracting for investigative services to fulfill the requirements of

Section 626.9891, F.S., must be included as an administrative expense for ratemaking purposes.

Authorized insurers, regardless of size, which create and maintain an SIU or provide proof of an investigative service contract ARE NOT required to submit a separate anti-fraud plan.

Anti-Fraud Plan Requirements

By July 1, 1996, insurers writing **less than \$10 million** in direct premiums in Florida for the previous calendar year and which did not otherwise establish an SIU or contract for investigative services, shall file an Anti-Fraud Plan with the Division of Insurance Fraud.

Insurers which obtain certificates of authority after July 1, 1995, and otherwise qualify for this option, have 18 months to meet these requirements.

The Anti-Fraud Plan at a minimum shall include:

- (1) a description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts;
- (2) a description of the insurer's procedures for the mandatory reporting of possible fraudulent insurance acts to the Division of Insurance Fraud;
- (3) a description of the insurer's plan for anti-fraud education and training of claims adjusters and other personnel; and
- (4) a written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel for the investigation and reporting of possible fraudulent insurance acts.

After an initial review for sufficiency by the Division of Insurance Fraud, there will be no formal approval process. Insurers which have already submitted plans pursuant to this section but have not addressed each of the four elements required will be notified of any deficiencies by the Division of Insurance Fraud and given an opportunity to amend the plan. Thereafter, submitted plans will be maintained by the Division of Insurance Fraud until market conduct examinations are conducted by the Division of Insurer Services.

INSURERS FAILING TO TIMELY COMPLY WITH THE PROVISIONS OF CHAPTER 95-340, LAWS OF FLORIDA ARE SUBJECT TO FINES AND PENALTIES.

III. ADDITIONAL IMMUNITY PROVISIONS

Finally, Chapter 95-340, Laws of Florida created an additional immunity from civil liability for insurers.

Section 626.989(4)(d), F.S., reads:

(d) In addition to the immunity granted in paragraph (c), persons identified as designated employees whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts may share information relating to persons suspected of committing fraudulent insurance acts with other designated employees employed by the same or other insurers whose responsibilities include the investigation and disposition of claims relating to fraudulent insurance acts, provided the department has been given written notice of the names and job titles of such designated employees prior to such designated employees sharing information. Unless the designated employees of the insurer act in bad faith or in reckless disregard for the rights of any insured, neither the insurer nor its designated employees are civilly liable for libel, slander, or any other relevant tort, and a civil action does not arise against the insurer or its designated employees:

1. For any information related to suspected fraudulent insurance acts

provided to an insurer; or

2. For any information relating to suspected fraudulent insurance acts provided to the National Insurance Crime Bureau or the National Association of Insurance Commissioners.

Provided, however, that the qualified immunity against civil liability conferred on any insurer or its designated employees shall be forfeited with respect to the exchange or publication of any defamatory information with third persons not expressly authorized by this paragraph to share in such information.

THIS PROVISION IS NOT MANDATORY. However, immunity is forfeited when insurers or designated employees exchange or publish defamatory information with or to third parties not authorized by this Section to share such information.

If an insurer does not provide the Division with a list of designated employees, it simply will not enjoy the immunity provided under this new provision.

Insurers must update this list on file with the Division of Insurance Fraud when new employees are so designated or when employees leave or change job titles. Because the master list of "designated employees" maintained by the Division of Insurance Fraud is subject to constant change, it will be nearly impossible to publish an accurate list at any given time. Thus, in order to protect an insurer's designated employees pursuant to this provision, it is suggested that written communications between insurers read substantially as follows:

I am a designated employee pursuant to s. 626.989(4)(d), F.S., for the _____ Insurance Company and request the following information..... Please ensure that the person who responds to this request is also a designated employee pursuant to s. 626.989(4)(d), F.S.

IV. FILING INFORMATION

Anti-fraud plans or SIU information required to be filed must be submitted to the Division of Fraud by July 1, 1996 at the following address:

Florida Department of Insurance
Division of Insurance Fraud
200 E. Gaines Street, Larson Building
Tallahassee, Florida 32399-0324

Questions or requests for copies of the law may be directed to the above address or telephone 904/413-4000.