

Status of 2017 Anti-Fraud Legislation Around the Nation

By: Denise Johnson

Workers' compensation premium fraud, restricting crash reports and extending the time in which to investigate fraud rings are the focus of just a few of the anti-fraud legislation pending across the nation, according to Howard Goldblatt, director of Government Affairs for the Coalition Against Insurance Fraud.

The Florida legislative session began March 7 and one area garnering significant attention is the issue of assignment of benefits (AOB), Goldblatt said. It's a legal tool that allows vendors to act on behalf of homeowners in getting services paid under a homeowner's insurance claim.

According to Florida's Insurance Consumer Advocate Sha'Ron James, "Some argue that this legal arrangement allows unscrupulous contractors to overinflate or submit improper claims, causing legal battles between the contractor and the insurance company, with the consumer left out of the picture."

Senate Bill 1038 prohibits attorney fee awards relating to assignment agreements that aren't valid unless specific conditions are met. The Personal Insurance Federation of Florida said that AOBs are commonly abused and used by shady contractors to inflate claims, file lawsuits against insurers and drive up attorneys' fees.

Another Florida bill, (SB 1012) would require insurers to develop and submit fraud plans to the state. In addition, insurers will need to have special investigation unit (SIU) staff attend anti-fraud training. The bill is tied to another that seeks to make fraud plans exempt from public records.

Fraud plans are considered proprietary, he said.

On the one hand, Florida is requiring fraud claims to be submitted to the Department of Financial Services (DFS) while, on the other hand, the state is exempting them from the public records law. "It's proprietary. No state that requires fraud claims allows it to be open to be inspected by anyone," Goldblatt said. "Insurer A doesn't even want their competitor, insurer B, to see their fraud claim."

Workers' compensation payroll fraud is the focus of Indiana legislation (SB 0463). The bill seeks to create a payroll fraud task force to address premium fraud schemes.

Arkansas is considering a bill to restrict crash reports for the first 30 days, Goldblatt said.

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Coalition Against Insurance Fraud

"Arkansas has a bill that would restrict access to crash reports, so that only legitimate media and those parties to the crash could see it within the first 30 days," he said.

Kentucky has several fraud-related bills pending this year. SB 128, which sought stricter consumer protections from shady contractors was signed into law. Another law relating to the release of crash reports, HB 215, is pending. The law provides a definition of a news organization, Goldblatt said.

"Basically, if you're a publication for a professional group and it is used for solicitation purposes, that's not considered media," Goldblatt explained. "If someone has a chiropractic newsletter, for instance, they would not be defined as a news organization. They're trying to restrict who has access to the crash reports."

Two South Carolina bills (H3410 and H3422) seek to double the funding the Attorney General's office receives to fight insurance fraud and to expand the use of the grand jury to investigate and prosecute insurance fraud.

"They're trying to do two things. One is increase the monies that would basically double the funding for the attorney general's anti fraud effort.

The other bill is one that almost got through last year...which would help expand the use of the statewide grand jury by the attorney general to investigate and prosecute insurance fraud. By doing that, it gives the attorney general's office a leg up in bringing cases for insurance fraud by giving greater weight to the statewide grand jury system," explained Goldblatt.

In Texas, HB 2053, seeks to move investigation of workers' compensation-related fraud from the state's Department of Insurance to the state's Workers' Comp Commission.

Bills Signed into Law

Some anti-fraud legislation has already been signed into law this year.

Colorado House bill (HB17-1048) sought to extend the period of time to pursue the prosecution of insurance fraud and to extend immunity to secondary agencies that report insurance fraud. The bill was passed into law on March 23.

Prior to the passing of the bill, the period within which prosecution of criminal offenses relating to insurance fraud began upon discovery of the act providing a three year statute of limitation from the time the crime was committed.

"The problem with insurance fraud is that the crime usually is not discovered until down the road," Goldblatt said. "It may happen, say, in January, but an insurer may not discover it until much later, maybe even a year later. If the clock starts ticking from the moment the false claim is submitted, they could lose quite some time before the clock runs out."

The legislation will allow for additional time to conduct a full investigation. Goldblatt said it offers a better chance at pursuing fraud rings.

"It would change the concept from the time the crime is committed to the time the crime was discovered. That will certainly enhance going after fraud rings that are doing multiple false claims," Goldblatt explained.

In addition, current law provided immunity to persons, insurers and authorized agencies that act in good faith to cooperate, provide evidence or provide information concerning an actual or suspected fraudulent insurance act. The bill extends this immunity to secondary agencies that do the same.

Like Colorado, Arkansas legislation (SB 223) amending the statute of limitations for insurance fraud cases was enacted into law recently (now known as Act 695). The statute of limitations has been extended to three years from the last act of fraud. In the case of fraudulent motor vehicle accidents, the time extended to pursue an insurance fraud claim is five years from the last alleged act of fraud, but can be extended an additional three years if the fraud was not

reasonably discovered until long after it was committed.

Another success, according to Goldblatt, occurred in Washington state earlier this year. A bill that sought to restrict how insurers use examinations under oath died in committee. Most insurance industry stakeholders were opposed to this bill, he said.

"The anti fraud community, insurers of the coalition, the insurance commissioner all came out opposed to this bill. We really were afraid that there were forces behind the bill that had the votes to move it forward, but it died in committee before the crossover date. When the crossover date occurred, it hadn't gotten out of either chamber, which killed it for the year. One of the attributes of the year was we stopped the bad bill from going forward."

Other states with pending anti-fraud legislation include Georgia and Massachusetts where counterfeit airbag laws are being considered.

Visit the Coalition Against Insurance Fraud's webpage tracking pending legislation: <http://www.insurancefraud.org/state-legislation.htm>