Model Insurance Fraud Act

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Proposed by the Coalition Against Insurance Fraud

February 1999

MODEL INSURANCE FRAUD ACT

(Adopted March 2, 1995; amended September 20, 1995)

Summary of Provisions

COALITION AGAINST INSURANCE FRAUD

Background

Insurance fraud in the United States — whether committed by claimants, providers, employees or insurers — is pervasive and expensive; its cost to consumers, the insurance industry and governments in 1996 was an estimated $85.4 billion. Direct or indirect costs attributable to insurance fraud amounted to more than $1,000 per American family.

Insurance fraud increases premiums, thus decreasing consumer capital for other goods and services, and overall lowers our nation's standard of living. Businesses have been forced to reduce staff, restrict growth and in some cases, relocate because of high levels of fraud. Further, a high percentage of insurance company insolvencies have been linked to internal fraud, and have left claimants in financial ruin. Insurance fraud is perceived to be a high-reward, low-risk endeavor; without substantive penalties, it's viewed as an easy way to make a buck.

The coalition believes the effort to combat insurance fraud must be a partnership among consumers, the insurance industry and government. Currently, states vary in their statutory efforts to fight insurance fraud. A total of 44 states currently define insurance fraud as a specific crime, and 37 states further define certain classifications of insurance fraud as a felony.

Insurance fraud laws are essential to combat the increasing effect of fraud on the cost of insurance. There are three major categories of fraud: claims fraud, applications fraud, and fraud committed by employees in the insurance industry including agents, adjusters, brokers or persons claiming to be in the business of insurance. Any comprehensive insurance fraud act should address all three categories. Then, strict enforcement will help restrain prices and keep the insurance system financially sound. Also, enforcement brings fairness to the system so honest consumers don't subsidize, through unnecessarily high premiums, those who cheat the system.

Purpose

This legislation establishes insurance fraud as a specific crime and as a felony in felony cases. It attacks insurance fraud at the source and can be used as a framework for additional laws, such as creating an insurance fraud bureau. The model will help reduce fraudulent claims paid by insurers. Since the model also covers fraud committed by insurers and those who purport to be insurers, it would curtail fraud committed against consumers and lessen financial disruption of the insurance industry.

Specifically, the model includes a cohesive attack on fraud with both civil and criminal penalties for committing what's defined as either a fraudulent insurance act or an unlawful insurance act. The model addresses all forms of insurance fraud, including claims fraud, underwriting fraud, deceptive sales practices and scams by insurance operators.

The fraudulent act is an act based on an intent to defraud someone, whether an insurance company or a consumer. The unlawful insurance act requires a lower standard of proof and is designed to attack scams such as medical mills and fraud rings in which the leaders often are able to shield themselves from prosecution under current laws.

The model significantly expands the definition of insurance fraud that currently exists in state laws and other models, as well as the remedies available to both the consumer and insurer when defrauded. The bill affords the consumer an additional level of protection particularly when it comes to shutting down the bogus insurance companies. The bill also sets strict penalties for licensed practitioners who are found in violation of the fraud act.

The legislation puts insurers on the front line in the fight against fraud. Insurers would be required to cooperate with law enforcement in cases of suspected fraud. In return, the model contains the broadest civil immunity for anyone who shares information about suspected fraud. The model also requires insurers to draft anti-fraud plans and to place fraud warnings on applications and claims forms, but avoids micro-management of anti-fraud efforts by insurance departments.

Since the coalition first proposed this model in 1995, several states have utilized its provisions in their efforts to enact anti-fraud legislation. Tennessee enacted this model as a workers compensation fraud law in 1996. Colorado utilized the fraud plan provisions in enacting its fraud law in 1996. Arkansas utilized the fraud plan language in writing its regulations to meet the requirements of the 1997 state law requiring anti-fraud initiatives. Nevada utilized the practitioner penalties provisions in drafting its 1997 law requiring license review; and New Jersey enacted in 1998 very strict medical provider sanctions similar to the coalition's model language. New Mexico, Maine and Virginia all used elements of the model in enacting stricter anti-fraud laws in 1998.

SUMMARY AND RATIONALE OF THE PROVISIONS

Section 1. Definitions

This section defines terms used in the legislation, including "insurance transaction" and "insurer." The term "insurer" includes anyone purported to be in the business of insurance as well as those authorized to do business in that state.

The bill also defines "practitioner" as any individual who is, or is required to be, a licensee of the state and whose services are compensated in whole or part by insurance proceeds. This includes medical providers, lawyers, agents, building contractors, adjusters and automotive repair shops.

These definitions are written to cover all forms of insurance fraud, as discussed above, as well as those who are most likely to commit fraud, and are designed to establish greater consistency from state to state.

Section 2. Fraudulent Insurance Act

A fraudulent insurance act is defined as an act committed by anyone who, knowingly and with intent, defrauds another person for gain. A fraudulent act includes claims fraud, application fraud and the legislation has a separate provision dealing with insurer fraud. Individuals who conspire, aid and/or abet a fraudulent act also are covered by the definition. A conviction under these provisions must meet the criminal burden of proof beyond a reasonable doubt.

Among the actions that fall under the fraudulent act is the preparation and presentation of false information affecting:

- the application for any insurance policy;
- an insurance claim pursuant to any policy;
- any payments made pursuant to any insurance policy.

The actions that would fall under the insurer fraud elements of the fraudulent act include:

- the solicitation for sale of any policy or purported policy;
- an application for certificate of authority;
- misrepresentation of the financial condition of any insurer.

This section makes all forms of insurance fraud, as well as attempts to commit fraud, a specific crime. Without definite language targeting attempts, conspiracies, and aiding or abetting fraud, an insurer often must pay false claims before a crime can be said to be committed; even then, others involved in the fraud may go free. The provision protects consumers from unscrupulous operators by expanding the definition of fraud to include schemes perpetrated by insurers or those who claim to be in the insurance business.

Section 3. Unlawful Insurance Act

An unlawful insurance act is defined as an act committed by anyone who commits or allows to be com-

mitted an act with "an intent to induce reliance." Unlike the fraudulent insurance act, "intent to defraud" is not required; the act utilizes a form of recklessness standards. Convictions under this section must meet the civil standard of proof, which requires a preponderance of evidence.

The legislation separates the definition for unlawful insurance actions affecting claims and applications fraud from fraud committed by insurers. Actions falling under the claims/applications fraud portion of the unlawful act include:

- the application for any insurance policy;
- an insurance claim pursuant to any policy;
- payments made in accordance with the terms of any policy.

Actions falling under the insurer fraud portion of the unlawful act include:

- an application for certificate of authority;
- misrepresentation of the financial condition of an insurer;
- the solicitation for sale of any policy or purported policy.

This section expands the legal definition of insurance fraud into an entirely new arena. Those who have shielded themselves from the actual act of fraud—signing a false claim form, for example—can be charged through a civil action, which requires a different standard of proof. This provision is designed to punish individuals who create a fraudulent scheme, such as a medical mill, but have underlings execute it as the schemers reap the bulk of the illegal reward. Like the provisions against fraudulent acts, this section also protects consumers from unscrupulous operators by expanding the definition of fraud.

Section 4. Criminal Penalties

The criminal penalties only apply to those persons charged with committing a fraudulent insurance act. The penalties use a stepladder approach and increase based on the amount defrauded and/or previous convictions for fraud. The provisions are meant to dovetail with the existing penalties already in place in the states for other similar crimes. The penalties would allow the courts and the prosecution to segregate or aggregate the economic loss suffered by the persons defrauded. The highest felony charge includes those charged with committing a fraudulent insurance act where the offense places anyone at risk of death or serious bodily injury.

Criminal sanctions must be severe enough to act as a deterrent rather than be treated by perpetrators as part of the cost of doing the business of fraud. The commonly used stepladder approach deters repeat offenders as well as particularly egregious forms of fraud; states are left free to define those levels as the legislature sees fit.

Section 5. Restitution

Anyone convicted of committing a fraudulent act would be required to make monetary restitution for any financial loss due to the violation. The legislation grants the court the ability to order the restitution to be paid in a lump sum or installments.

Restitution for victims is codified both for the purpose of providing justice and as a way to seize perpetrators' ill-gotten gains. Also, by allowing the court to decide the payment schedule, you assure that the

person involved has the financial ability to give restitution to the victims of the fraud.

Section 6. Administrative Penalties

The legislation includes language requiring notification of the appropriate state licensing authority if any practitioner is found guilty of a fraudulent insurance act. The licensing authority would be required to hold a hearing to consider whether administrative sanctions (including license revocation) are in order against practitioners convicted of a fraudulent insurance act. Practitioner is defined in the act to include all individuals who are licensed by the state and compensated through the insurance system.

Appropriate sanctions against licensed practitioners are included because depriving them of their primary livelihood is an additional deterrent, especially against repeat offenses. By mandating licensing authorities to have hearings on those practitioners who have violated this act, you assure that the public will be protected from those individuals who through their fraudulent activity violate the public trust.

Section 7. Civil Remedies

Individuals charged with an unlawful insurance act face these provisions. Anyone defrauded by an unlawful insurance act can recover the profit or payment lost as a result of the violation, plus reasonable attorney fees and legal fees not to exceed $5,000.

These provisions also can be used against those charged with a fraudulent insurance act. The state attorney general or any appropriate prosecuting agency would have the authority to conduct civil proceedings on behalf of the state insurance department and the victims of a fraudulent insurance act. If the court finds the person has committed the fraudulent act, a $5,000 fine for each violation would be assessed. Victims can recover the profit or payment lost because of the violation, reasonable attorney fees and court costs, and all other economic damages resulting from the violation. The legislation also allows victims to recover treble damages if there's clear evidence the offense was part of a pattern or practice of violations of the fraudulent insurance act.

The legislation also would allow the states to set a statute of limitations either based on the amount of years after the commission of the act or the amount of years after the act was discovered.

Civil remedies may be sought in cases where it's difficult to prove charges beyond a reasonable doubt; this is often true for acts defined as "unlawful." Attorney and legal fees in these cases are limited to $5,000 to eliminate any profit motive, which should deter frivolous suits. In criminal cases, civil penalties and the threat of collecting treble damages is an additional deterrent. This provision also makes it easier for prosecutors to bring charges against anyone who commits a fraudulent act. Again, victims are assured of restitution and recovery.

Section 8. Exclusivity of Remedies

The legislation restricts the civil remedies provisions so they may not be used in conjunction with, or in addition to, any other remedies available under law.

The exclusion avoids the potential for a plaintiff to bring actions under more than one statute for the same act, a kind of double jeopardy.

Section 9. Cooperation

Insurers are required to disclose information about suspected insurance fraud to any court, law enforcement agency or insurance department. The bill allows a disclosing insurer to have the right to receive case-related information from the agency to which the insurer submitted material. The legislation would protect any information that is privileged. Also, the provision would preclude anyone from receiving restitution if they fail to cooperate with the request for information.

This section prevents insurers from simply paying fraudulent claims and then passing the costs on in the form of higher premiums. Under this provision, suspected cases could no longer be ignored. To assist insurers in their in-house attempts to curtail fraud, government agencies in turn would have to disclose relevant information about reported cases.

Section 10. Immunity

The bill grants civil immunity to anyone who, in the absence of actual malice, furnishes information about insurance fraud. The bill allows exchange of information between insurers and any other organization if it's for the purpose of detecting and deterring insurance fraud. The section further allows for recovery of reasonable legal fees if any action is brought against any person in which they have been found to be immune from liability.

This section encourages reporting of suspected fraud. It allows anyone who has that information to report it without fear of being sued for defamation, libel, slander or similar offenses, which has had a chilling effect in many cases. Also, many frauds, especially organized rings, are uncovered only when insurers discover the same claims are filed with multiple insurers, or the same names or addresses appear in many claims. This provision protects insurers who share information among themselves as long as the information is used exclusively for the prevention, detection and prosecution of fraud. The restrictions helps protect individual privacy and help deter abuses of using such information.

Section 11. Regulatory Requirements

All insurers have six months after the law's effective date to prepare, implement and maintain an anti-fraud plan. The legislation establishes a framework for the plan that includes procedures to:

- prevent and detect all forms of fraud;
- educate appropriate employees on detection and the anti-fraud plan;
- hire or contract for fraud investigators;
- report fraud to the appropriate authorities for investigation and prosecution.

The anti-fraud plan may be reviewed by the insurance commissioner and he or she may examine the insurer's compliance with its anti-fraud plan. The anti-fraud plans that are submitted to the insurance department would be exempt from the state's public records act. Insurers also are required to print or attach fraud warnings on all applications and claims forms no later than six months after the effective date of the law. Insurers face a fine for failing to prepare, implement, maintain and submit an anti-fraud plan to the insurance department.

There's considerable evidence showing that insurers who invest in an active fight against fraud receive a substantial return on the investment. However, not all insurers fight fraud voluntarily; their customers bear

that cost. By requiring all insurers to have a plan to fight fraud, and then ensuring they comply with that plan, the playing field is leveled. All insured consumers will benefit. Also, printed fraud warnings are a reminder against illegal acts and will help deter claims fraud.

January 1999

MODEL INSURANCE FRAUD ACT

(Adopted March 1995; amended September 1998)

Model Language

COALITION AGAINST INSURANCE FRAUD

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____

The legislature finds that insurance fraud is pervasive and expensive, costing consumers and the business community of this state millions of dollars each year. Each family spends in excess of several hundreds of dollars each year in direct and indirect costs attributable to insurance fraud. Insurance fraud increases premiums, places businesses at risk and is a leading cause of insurance company insolvencies. Insurance fraud reduces consumers ability to raise their standard of living and decreases the economic vitality of this state.

Therefore, the legislature believes that the state of _____ must aggressively confront the problem of insurance fraud by facilitating the detection, reducing the occurrence through stricter enforcement and deterrence, requiring restitution and increasing the partnership among consumers, the insurance industry and the state in coordinating efforts to combat insurance fraud by enacting the following Act.

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Section 1. Definitions

As used in this act, unless the context requires otherwise, the following terms have the meaning ascribed to them in this section.

Actual Malice. "Actual Malice" means knowledge that information is false, or Reckless disregard of whether it is false.

Conceal. "Conceal" means to take affirmative action to prevent others from discovering information. Mere failure to disclose information does not constitute concealment. Action by the holder of a legal privilege, or one who has a reasonable belief that a privilege exists, to prevent discovery of privileged information does not constitute concealment.

Insurance Policy. "Insurance Policy" means the written instrument in which are set forth the terms of any certificate of insurance, binder of coverage or contract of insurance (including a certificate, binder or contract issued by a state-assigned risk plan); benefit plan; nonprofit hospital service plan; motor club service plan; or surety bond, cash bond or any other alternative to insurance authorized by a state's financial responsibility act. Insurance Policy also is any other instruments authorized or regulated by the department of insurance.

Insurance Professional. "Insurance Professional" means sales agents, managing general agents, brokers, producers, adjusters and third party administrators.

Insurance Transaction. "Insurance Transaction" means a transaction by, between or among: (1) an Insurer or a Person who acts on behalf of an Insurer; and (2) an insured, claimant, applicant for insurance, public adjuster, Insurance Professional, Practitioner, or any Person who acts on behalf of any of the foregoing, for the purpose of obtaining insurance or reinsurance, calculating insurance Premiums, submitting a claim, negotiating or adjusting a claim, or otherwise obtaining insurance, self-insurance, or reinsurance or obtaining the benefits thereof or therefrom.

Insurer. "Insurer" means any Person purporting to engage in the business of insurance or authorized to do business in the state or subject to regulation by the state, who undertakes to indemnify another against loss, damage or liability arising from a contingent or unknown event. "Insurer" includes, but is not limited to, an insurance company; self-insurer; reinsurer; reciprocal exchange; interinsurer; risk retention group; Lloyd's insurer; fraternal benefit society; surety; medical service, dental, optometric or any other similar health service plan; and any other legal entity engaged or purportedly engaged in the business of insurance, including any Person or entity which falls within the definition of "Insurer" found within the _____ Insurance Code §_____.

Pattern or practice. "Pattern or practice" means repeated, routine or generalized in nature, and not merely isolated or sporadic.

Person. "Person" means a natural person, company, corporation, unincorporated association, partnership, professional corporation, agency of government and any other entity.

Practitioner. "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic or law or any other licensee of the state or Person required to be licensed in the state whose services are compensated either in whole or in part, directly or indirectly, by insurance proceeds, including but not limited to automotive repair shops, building contractors and insurance adjusters, or a licensee similarly licensed in other states and nations or the licensed practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.

Premium. "Premium" means consideration paid or payable for coverage under an Insurance Policy. "Premium" includes any payments, whether due within the Insurance Policy term or otherwise, and deductible payments whether advanced by the Insurer or Insurance Professional and subject to reimbursement by the insured or otherwise, any self insured retention or payments, whether advanced by the Insurer or Insurance Professional and subject to reimbursement by the insured or otherwise, and any collateral or security to be provided to collateralize obligations to pay any of the above.

Premium Finance Company. "Premium Finance Company" means a Person engaged or purporting to engage in the business of advancing money, directly or indirectly, to an Insurer or producer at the request of

an insured pursuant to the terms of a premium finance agreement, including but not limited to loan contracts, notes, agreements or obligations, wherein the insured has assigned the unearned Premiums, accrued dividends, or loss payments as security for such advancement in payment of Premiums on Insurance Policies only, and does not include the financing of insurance Premiums purchased in connection with the financing of goods and services.

Premium Finance Transaction. "Premium Finance Transaction" means a transaction by, between or among an insured, a producer or other party claiming to act on behalf of an insured and a third-party Premium Finance Company, for the purposes of purportedly or actually advancing money directly or indirectly to an Insurer or producer at the request of an insured pursuant to the terms of a premium finance agreement, wherein the insured has assigned the unearned Premiums, accrued dividends or loan payments as security for such advancement in payment of Premiums on Insurance Policies only, and does not include the financing of insurance Premiums purchased in connection with the financing of goods and services.

Reckless. "Reckless" means without reasonable belief of the truth, or, for the purposes of Section 3(c), with a high degree of awareness of probable insolvency.

Withhold. "Withhold" means to fail to disclose facts or information which any law (other than this act) requires to be disclosed. Mere failure to disclose information does not constitute "withholding" if the one failing to disclose reasonably believes that there is no duty to disclose.

Section 2. Fraudulent Insurance Act

Any Person who, knowingly and with intent to defraud, and for the purpose of depriving another of property or for pecuniary gain, commits, participates in or aids, abets, or conspires to commit or solicits another Person to commit, or permits its employees or its agents to commit any of the following acts, has committed a Fraudulent Insurance Act:

(a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured, claimant or applicant to an Insurer, Insurance Professional or Premium Finance Company in connection with an Insurance Transaction or Premium Finance Transaction, any information which contains false representations as to any material fact, or which Withholds or Conceals a material fact concerning any of the following:

(1) The application for, rating of, or renewal of, any Insurance Policy;

(2) A claim for payment or benefit pursuant to any Insurance Policy;

(3) Payments made in accordance with the terms of any Insurance Policy;

(4) The application used in any Premium Finance Transaction;

(b) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an Insurer, Insurance Professional or a Premium Finance Company in connection with an Insurance Transaction or Premium Finance Transaction, any information which contains false representations as to any material fact, or which Withholds or Conceals a material fact, concerning any of the following:

(1) The solicitation for sale of any Insurance Policy or purported Insurance Policy;

(2) An application for certificate of authority;

(3) The financial condition of any Insurer;

(4) The acquisition, formation, merger, affiliation or dissolution of any Insurer;

(c) Solicits or accepts new or renewal insurance risks by or for an insolvent Insurer.

(d) Removes the assets or records of assets, transactions and affairs or such material part thereof, from the home office or other place of business of the Insurer, or from the place of safekeeping of the Insurer, or destroys or sequesters the same from the Department of Insurance.

(e) Diverts, misappropriates, converts or embezzles funds of an Insurer, an insured, claimant or applicant for insurance in connection with:

(1) An Insurance Transaction;

(2) The conduct of business activities by an Insurer or Insurance Professional;

(3) The acquisition, formation, merger, affiliation or dissolution of any Insurer.

It shall be unlawful for any Person to commit, or to attempt to commit, or aid, assist, abet or solicit another to commit, or to conspire to commit a Fraudulent Insurance Act.

Section 3. Unlawful Insurance Act

Any Person who commits, participates in, or aids, abets, or conspires to commit, or solicits another Person to commit, or permits its employees or its agents to commit any of the following acts with an intent to induce reliance, has committed an Unlawful Insurance Act:

(a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured, claimant or applicant to an Insurer, Insurance Professional or a Premium Finance Company in connection with an Insurance Transaction or Premium Finance Transaction, any information which the Person knows to contain false representations, or representations the falsity of which the Person has Recklessly disregarded, as to any material fact, or which Withholds or Conceals a material fact, concerning any of the following:

(1) The application for, rating of, or renewal of, any Insurance Policy;

(2) A claim for payment or benefit pursuant to any Insurance Policy;

(3) Payments made in accordance with the terms of any Insurance Policy;

(4) The application for the financing of any insurance Premium;

(b) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an Insurer, Insurance Professional or a Premium Finance Company in connection with an Insurance Transaction or Premium Finance Transaction, any information which the Person knows to contain false representations, or representations the falsity of which the Person has Recklessly disregarded, as to any material fact, or which Withholds or Conceals a material fact, concerning any of the following:

(1) The solicitation for sale of any Insurance Policy or purported Insurance Policy;

(2) An application for certificate of authority;

(3) The financial condition of any Insurer;

(4) The acquisition, formation, merger, affiliation or dissolution of any Insurer;

(c) Solicits or accepts new or renewal insurance risks by or for an Insurer which the Person knows was

insolvent or the insolvency of which the Person Recklessly disregards.

It shall be unlawful for any Person to commit, or to attempt to commit, or aid, assist, abet or solicit another to commit, or to conspire to commit an Unlawful Insurance Act.

Section 4. Criminal Penalties

A Person who violates Section 2 of this Act is guilty of:

(a) A Class A misdemeanor if the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is less than _____;

(b) A Class B misdemeanor if:

(1) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is _____ or more but less than _____; or

(2) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is less than _____, and the defendant has been previously convicted of any class or degree of insurance fraud in any jurisdiction;

(c) A Class C misdemeanor if the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is _____ or more but less than _____;

(d) A felony in the third degree if:

(1) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is _____ or more but less than _____; or

(2) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is less than _____, and the defendant has been previously convicted two or more times of any class or degree of insurance fraud in any jurisdiction;

(e) A felony in the second degree if the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is _____ or more but less than _____

(f) A felony in the first degree if:

(1) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is _____ or more but less than _____; or

(2) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or

Persons as a result of his violation of Section 2, is less than _____ and the defendant has been previously convicted two or more times of any degree of felony insurance fraud in any jurisdiction; or

(3) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is less than _____ and his violation of Section 2 of this Act placed any Person at risk of death or serious bodily injury.

Drafting Note: It is the intent of the coalition that the criminal penalties for fraudulent insurance acts should track the existing criminal penalties for fraud.

Section 5. Restitution

A Person convicted of a violation of Section 2 of this Act shall be ordered to make monetary restitution for any financial loss or damages sustained by any other Person as a result of the violation. Financial loss or damage shall include, but is not necessarily limited to, loss of earnings, out-of-pocket and other expenses, paid deductible amounts under an Insurance Policy, Insurer claim payments, cost reasonably attributed to investigations and recovery efforts by owners, Insurers, Insurance Professionals, law enforcement and other public authorities, and cost of prosecution.

When restitution is ordered, the court shall determine its extent and methods. Restitution may be imposed in addition to a fine and, if ordered, any other penalty, but not in lieu thereof. The court shall determine whether restitution, if ordered, shall be paid in a single payment or installments and shall fix a period of time, not in excess of _____, within which payment of restitution is to be made in full.

Section 6. Administrative Penalties

(1) (A) Any Practitioner determined by the Court to have violated Section 2 shall be deemed to have committed an act involving moral turpitude that is inimical to the public well being. The court or prosecutor shall notify the appropriate licensing authority in this state of the judgment for appropriate disciplinary action, including revocation of any such professional license(s), and may notify appropriate licensing authorities in any other jurisdictions where the Practitioner is licensed. Any victim may notify the appropriate licensing authorities in this State and any other jurisdiction where the Practitioner is licensed, of the conviction.

(B) Upon notification of a conviction of the crimes enumerated in Section 2 of this Act or a substantially similar crime under the laws of another state or the United States, this State's appropriate licensing authority shall hold an administrative hearing, or take other appropriate administrative action authorized by state law, to consider the imposition of the administrative sanctions as provided by law against the Practitioner. Where the Practitioner has been convicted of a felony violation of Section 2 of this Act or a substantially similar crime under the laws of another state or of the United States, this state's appropriate licensing authority shall hold an administrative hearing, or take other appropriate administrative action authorized by state law, and shall summarily and permanently revoke the license. It is hereby recommended by the legislature that the [name of the highest court in the state] shall summarily and permanently disbar any attorney found guilty of such felony.

(C) All such referrals to the appropriate licensing or other agencies, and all dispositive actions thereof, shall be a matter of public record.

(2) (A) A Person convicted of a felony involving dishonesty or breach of trust shall not participate in the business of insurance.

(B) A Person in the business of insurance shall not knowingly or intentionally permit a Person convicted of a felony involving dishonesty or breach of trust to participate in the business of insurance.

Section 7. Civil Remedies

(a) Any Person injured in his business or property by reason of a violation of Section 3 may recover therefor from the Person[s] violating Section 3, in any appropriate _____ Court the following:

(1) Return of any profit, benefit, compensation or payment received by the Person violating Section 3 directly resulting from said violation;

(2) Reasonable attorneys fees, related legal expenses, including internal legal expenses and court costs, not to exceed $5,000;

An action maintained under this subparagraph may neither be certified as a class action nor be made part of a class action.

(b) Any Person injured in his business or property by reason of a violation of Section 2 may recover therefor from the Person[s] violating Section 2, in any appropriate _____ Court the following:

(1) Return of any profit, benefit, compensation or payment received by the Person violating Section 2 directly resulting from said violation;

(2) Reasonable attorneys fees, related legal expenses, including internal legal expenses and court costs;

(3) All other economic damages directly resulting from the violation of Section 2;

(4) Reasonable investigative fees based on a reasonable estimate of the time and expense incurred in the investigation of the violation(s) of Section 2 proved at trial:

(5) A penalty of no less than $_____ and no greater than $_____.

An action maintained under this subparagraph may neither be certified as a class action nor be made part of a class action.

(c) Any Person injured in his or her business or property by a Person violating Section 2, upon a showing of clear and convincing evidence that such violation was part of a Pattern or Practice of such violations, shall be entitled to recover threefold the injured Person's economic damages. An action for treble damages must be brought within _____ year(s) of such violation. One third of the treble damages awarded shall be payable to the state to be used solely for the purpose of investigation and prosecution of violations of this Act or other fraudulent behavior relating to Insurance Transactions, and/or for public education relating to insurance fraud. An action maintained under this subparagraph may neither be certified as class action nor be made part of a class action, unless the violations of Section 2 giving rise to the action resulted in criminal conviction of the violator[s] under Section 4.

(d) The State Attorney General, District Attorney or prosecutorial agency shall have authority to maintain

Civil proceedings on behalf of the State Insurance Department and any victims of violations of Section 2. In any such action, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(1) The _____ Courts of the state shall have jurisdiction to prevent and restrain violations of Section 2 of this Chapter by issuing appropriate orders.

(2) In any action commenced under this subparagraph (d), the Court, upon finding that any Person has violated Section 2, shall levy a fine of up to $5,000 for each violation.

Any court in which a prosecution for violation of Section 2 is pending shall have authority to stay or limit proceedings in any civil action regarding the same or related conduct. Any court in which is pending a civil action brought pursuant to subparagraph (d) of this Section 7 may stay or limit proceedings in actions brought pursuant to subparagraphs (a)-(c) regarding the same or related conduct or may transfer such actions or consolidate them before itself or allow the plaintiffs in such actions to participate in the action brought pursuant to subparagraph (d), as it shall prescribe.

Any cause of action under this section for violation of Section 2 or Section 3 must be brought within _____ years of the commission of the acts constituting such violation, or within _____ years of the time the plaintiff discovered (or with reasonable diligence could have discovered) such acts, whichever is later.

An insurer shall not pay damages awarded under this Section 7, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification. A third party who has asserted a claim against an insured shall have no cause of action under this Section against the Insurer of the insured arising out of the Insurer's processing or settlement of the third party's claim. An obligee under a surety bond shall not have a cause of action under this section against the surety arising out of the surety's processing or settlement of the obligee's claim against the bond.

Any Person injured in his business or property by reason of a violation of Section 2 or Section 3 of this Chapter may recover under only one of the subparagraphs in this Section.

Section 8. Exclusivity of Remedies

The remedies expressly provided in Section 7 shall be the only private remedies for violations of this Act and no additional remedies shall be implied. The remedies available under Section 7 shall not be used in conjunction with or in addition to any other remedies available at law or in equity to duplicate recovery for the same element of economic damage. Further, in any civil action pleading both exemplary damages and the treble damages available in Section 7(c), plaintiff shall elect one or the other remedy, but not both, at the conclusion of the evidentiary phase of the trial.

However, nothing in this Act shall limit or abrogate any right of action which would have existed in the absence of this Act, but no action based on such a right shall rely on this Act to establish a standard of conduct or for any other purpose.

Section 9. Cooperation

(a) When any law enforcement official or authority, any insurance department, state division of insurance fraud, or state or federal regulatory or licensing authority requests information from an Insurer or

Insurance Professional for the purpose of detecting, prosecuting or preventing insurance fraud, the Insurer or Insurance Professional shall take all reasonable actions to provide the information requested, subject to any legal privilege protecting such information.

(b) Any Insurer or Insurance Professional that has reasonable belief that an act violating Sections 2 or 3 will be, is being, or has been committed shall furnish and disclose any information in its possession concerning such act to the appropriate law enforcement official or authority, insurance department, state division of insurance fraud, or state or federal regulatory or licensing authority, subject to any legal privilege protecting such information.

(c) An Insurer or Insurance Professional providing information to any law enforcement, regulatory, licensing or other governmental agency under subparagraphs (a) or (b) of this section, shall have the right to request information in the possession or control of the agency relating to the suspected violation or to a pattern of related activity, except information which was privileged or confidential under the laws of this state prior to its submission to the agency. In instances where disclosure would not jeopardize an ongoing investigation or prosecution, the agency shall provide the requested information to the Insurer or Insurance Professional. The agency may request that the Insurer or Insurance Professional keep the disclosed information confidential.

(d) Any Person that has a reasonable belief that an act violating this Chapter will be, is being, or has been committed; or any Person who collects, reviews or analyzes information concerning insurance fraud may furnish and disclose any information in its possession concerning such act to an authorized representative of an Insurer that requests the information for the purpose of detecting, prosecuting or preventing insurance fraud.

(e) Failure to cooperate with a request for information from an appropriate local, state or federal governmental authority shall bar a Person's eligibility for restitution from any proceeds resulting from such governmental investigation and prosecution.

Section 10. Immunity

In the absence of Actual Malice, no Person furnishing, disclosing or requesting information pursuant to Section 9 shall be subject to civil liability for libel, slander, or any other cause of action arising from the furnishing, disclosing or requesting of such information. No Person providing information pursuant to Section 9(a) shall be subject to civil liability for any cause of action arising from the Person's provision of requested information. Any Person against whom any action is brought who is found to be immune from liability under this section, shall be entitled to recover reasonable attorney's fees and costs from the Person or party who brought the action. This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any Person.

Section 11. Regulatory Requirements

(a) Anti-Fraud Plans

Within six months of the effective date of this legislation, every Insurer with direct written premiums shall prepare, implement, maintain and submit to the department of insurance an insurance anti-fraud plan.

Each Insurer's anti-fraud plan shall outline specific procedures, appropriate to the type of insurance the

Insurer writes in this state, to:

(1) prevent, detect and investigate all forms of insurance fraud, including fraud involving the Insurer's employees or agents; fraud resulting from misrepresentations in the application, renewal or rating of insurance policies; claims fraud; and security of the Insurer's data processing systems.

(2) educate appropriate employees on fraud detection and the Insurer's anti-fraud plan.

(3) provide for the hiring of or contracting for fraud investigators.

(4) report insurance fraud to appropriate law enforcement and regulatory authorities in the investigation and prosecution of insurance fraud.

(5) pursue restitution for financial loss caused by insurance fraud, where appropriate.

The Commissioner may review each Insurer's anti-fraud plan to determine if it complies with the requirements of this subparagraph.

It shall be the responsibility of the Commissioner to assure Insurer compliance with anti-fraud plans submitted to the Commissioner. The Commissioner may require reasonable modification of the Insurer's anti-fraud plan, or may require other reasonable remedial action if the review or examination reveals substantial non-compliance with the terms of the Insurer's own anti-fraud plan.

The Commissioner may require each Insurer to file a summary of the Insurer's anti-fraud activities and results. The anti-fraud plans and the summary of the Insurer's anti-fraud activities and results are not public records and are exempt from the _____ public records act, and shall be proprietary and not subject to public examination, and shall not be discoverable or admissible in civil litigation.

This section confers no private rights of action.

(b) Fraud Warnings

(1) (A) No later than six months after the effective date of this Act, all applications for insurance, and all claim forms regardless of the form of transmission provided and required by an Insurer or required by law as a condition of payment of a claim, shall contain a statement, permanently affixed to the application or claim form, that clearly states in substance the following:

"It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits."

(B) The lack of a statement required in this subparagraph does not constitute a defense in any criminal prosecution under Section 2 nor in any civil action under Sections 2 or 3.

(2) The warning required by this subsection shall not be required on forms relating to reinsurance.

(c) Enforcement

Notwithstanding any other provision of the Insurance Code, the following are the exclusive monetary penalties for violation of this Section. Insurers that fail to prepare, implement, maintain and submit to the department of insurance an insurance anti-fraud plan are subject to a penalty of $500 per day, not to exceed $25,000.