

## LEGISLATIVE BILL 385

Approved by the Governor May 10, 1995

Introduced by Landis, 46

AN ACT relating to insurance; to amend section 44-3,133, Reissue Revised Statutes of Nebraska, and sections 25-21,247, 28-101, and 44-112.01, Revised Statutes Supplement, 1994; to adopt the Insurance Fraud Act; to provide criminal penalties for insurance fraud; to create a division within the Department of Insurance; to change and eliminate provisions relating to insurance fraud; to repeal the original sections; and to outright repeal sections 44-391 and 44-3,132, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 8 of this act shall be known and may be cited as the Insurance Fraud Act.

Sec. 2. The purpose of the Insurance Fraud Act is to confront the problem of insurance fraud in Nebraska by facilitating the detection of insurance fraud, eliminating the occurrence of insurance fraud through the development of fraud prevention programs, authorizing imposition of civil penalties, authorizing restitution of fraudulently obtained insurance benefits, and reducing the amount of premium dollars used to pay fraudulent claims.

Sec. 3. For purposes of the Insurance Fraud Act:

(1) Insurer means any person or entity transacting insurance as defined in section 44-102 with or without a certificate of authority issued by the Director of Insurance. Insurer also means health maintenance organizations, legal service insurance corporations, prepaid limited health service organizations, dental and other similar health service plans, and entities licensed pursuant to the Intergovernmental Risk Management Act and the Comprehensive Health Insurance Pool Act; and

(2) Statement includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or medical records, X-rays, test result, or other evidence of loss, injury, or expense, whether oral, written, or computer-generated.

Sec. 4. For purposes of the Insurance Fraud Act, a person or entity commits a fraudulent insurance act if he or she:

(1) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of, in support of, or in denial of a claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(2) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;

(3) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;

(4) Knowingly and willfully transacts any contract, agreement, or instrument which violates this section;

(5) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;

(6) Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance;

(7) Issues fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(8) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Department of Insurance; or

(9) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or

person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or person engaged in the business of insurance.

Sec. 5. (1) Except as provided in subsection (2) of this section, any person or entity, including the Department of Insurance, acting without malice, fraudulent intent, or bad faith shall be immune from civil liability for furnishing any information relating to suspected fraudulent insurance acts to:

(a) The Director of Insurance or his or her agents or employees;

(b) Law enforcement officials or their agents or employees;

(c) The Nebraska Workers' Compensation Court or its agents or employees;

(d) Persons or entities subject to Chapter 44 or their agents or employees; or

(e) The National Association of Insurance Commissioners or any organization established to detect and prevent fraudulent insurance acts or its agents, employees, or designees.

(2) Subsection (1) of this section does not apply to the furnishing of information relating to suspected fraudulent insurance acts between or among insurers.

(3) This section does not abrogate or modify in any way any common-law or statutory privilege or immunity.

Sec. 6. Section 44-112.01, Revised Statutes Supplement, 1994, is amended to read:

44-112.01: (1) In order to investigate activities involving insurance fraud, the Director of Insurance shall appoint a sufficient staff to be known as the Insurance Fraud Prevention Division which may include two investigators and one attorney, and such attorney shall have the same powers and prerogatives in each of the several counties of the state as the county attorneys have in their respective counties-

(2) The division shall:

(a) Initiate independent inquiries and conduct independent investigations when the division has cause to believe that an act of insurance fraud has been or is currently being committed;

(b) Review reports or complaints of alleged insurance fraud to determine whether such reports require further investigation and to conduct such investigation;

(c) Conduct independent examinations of alleged fraudulent insurance acts and undertake independent studies to determine the extent of fraudulent insurance acts; and

(d) Cooperate with federal, state, and local law enforcement, prosecuting attorneys, and the Attorney General in the investigation and prosecution of insurance fraud violations. At the request of the division, through the Director of Insurance, the Attorney General shall prosecute fraudulent insurance acts through criminal or civil proceedings as authorized by the Insurance Fraud Act if, after investigation, the Attorney General is convinced that there is sufficient legal merit to justify the proceeding. The Attorney General, after consultation with the director, may refer cases of fraudulent insurance acts to a special assistant attorney general or county attorney for prosecution. Any costs directly associated with the prosecution and attorney's fees for any special assistant attorney general shall be paid by the division.

(3) If the division seeks evidence, documentation, or related materials located outside this state pertinent to an investigation or examination, it may designate representatives or deputies, including officials of the state where the matter is located, to secure and inspect the evidence, documentation, or materials on its behalf.

(4) The papers, documents, reports, and evidence of the Department of Insurance regarding the subject of an investigation of insurance fraud shall not be subject to public inspection for so long as the director deems reasonably necessary to complete the investigation or to protect the person investigated from unwarranted injury or so long as the director deems it to be in the public interest. Such papers, documents, reports, and evidence regarding the subject of an investigation of insurance fraud shall not be subject to subpoena until they are opened for public inspection by the department, unless the director consents, or until after notice to the department and a hearing, the court determines the department would not be unnecessarily hindered by such subpoena. Department investigators shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge regarding a pending insurance fraud investigation by the department.

(3) (5) On or before March 1, 1995, and on or before each March 1

thereafter each year, each insurer as defined in section 44-103 holding a certificate of authority to transact the business of insurance in this state shall pay a fee as established by the director not to exceed one hundred dollars to the director to be remitted to the State Treasurer for credit to the Department of Insurance Cash Fund, which fees may be appropriated only to carry out the purposes of this section the Insurance Fraud Act. Assessment associations and unincorporated mutual associations shall not be subject to this subsection.

Sec. 7. (1) A person or entity who is found by a court of competent jurisdiction, pursuant to an action initiated by the Director of Insurance, to have committed a fraudulent insurance act set forth in section 4 of this act is subject to a civil penalty not to exceed five thousand dollars for the first violation, ten thousand dollars for the second violation, and fifteen thousand dollars for each subsequent violation. An action under this section shall be in lieu of a prosecution under section 10 of this act.

(2) Costs and expenses incurred in any investigation or other action arising out of a violation under the Insurance Fraud Act may be sought in any judgment, court decree, or other final result. Any recovered costs, except civil or criminal penalties, shall be deposited by the director in the fund from which the costs were expended. The court may make such additional orders or judgments as may be necessary to restore to any person in interest any compensation which may have been acquired by means of any act prohibited in section 4 of this act.

(3) This section shall not be construed to prohibit the director and the alleged violator from entering into a written agreement upon commencement of a civil action in which the alleged violator does not admit or deny the charges but consents to payment of the civil penalty. A consent agreement may not be used in a subsequent civil or criminal proceeding relating to any violation of the act.

Sec. 8. The Insurance Fraud Act does not:

(1) Preempt the authority or relieve the duty of any other law enforcement agency to investigate, examine, and prosecute suspected violations of law;

(2) Prevent or prohibit a person from voluntarily disclosing any information concerning insurance fraud to any law enforcement agency;

(3) Limit any of the powers granted elsewhere by the laws of this state to the Director of Insurance or the Department of Insurance to investigate and examine possible violations of law and to take appropriate action; or

(4) Limit any of the powers granted elsewhere by the laws of this state to the Nebraska Workers' Compensation Court to investigate and examine possible violations of law and to take appropriate action.

Sec. 9. Section 25-21,247, Revised Statutes Supplement, 1994, is amended to read:

25-21,247. (1) For purposes of this section, health care payor shall include, but not be limited to:

- (a) An insurer;
- (b) A health maintenance organization;
- (c) Medicare or medicaid;
- (d) A legal entity which is self-insured and provides health care benefits for its employees; or

(e) A person responsible for administering the payment of health care expenses for another person or entity.

(2) Any health care payor or employee thereof who has reasonable cause to believe that there has been a violation of section 71-147 or 71-148 or a fraudulent insurance act as defined in subdivision (1) of section 44-3,132 described in the Insurance Fraud Act or section 10 of this act may discuss or inquire of other health care payors about such violation or act. Any health care payor or employee so discussing or inquiring or responding to such an inquiry from another health care payor shall be immune from criminal penalty or from civil liability for slander, libel, defamation, or breach of the physician-patient privilege if the discussion, inquiry, or response is made in good faith without reckless disregard for the truth.

Sec. 10. (1) A person or entity commits a fraudulent insurance act if he or she:

(a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of, in support of, or in denial of a claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(b) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;

(c) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;

(d) Knowingly and willfully transacts any contract, agreement, or instrument which violates this section;

(e) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;

(f) Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance;

(g) Issues fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(h) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Department of Insurance; or

(i) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or person engaged in the business of insurance.

(2)(a) A violation of subdivisions (1)(a) through (f) of this section is a Class III felony when the amount involved is one thousand five hundred dollars or more.

(b) A violation of subdivisions (1)(a) through (f) of this section is a Class IV felony when the amount involved is five hundred dollars or more but less than one thousand five hundred dollars.

(c) A violation of subdivisions (1)(a) through (f) of this section is a Class I misdemeanor when the amount involved is two hundred dollars or more but less than five hundred dollars.

(d) A violation of subdivisions (1)(a) through (f) of this section is a Class II misdemeanor when the amount involved is less than two hundred dollars.

(e) For any second or subsequent conviction under subdivision (2)(c) of this section, the violation is a Class IV felony.

(f) A violation of subdivisions (1)(g) through (i) of this section is a Class IV felony.

(3) A prosecution under this section shall be in lieu of an action under section 7 of this act.

(4) For purposes of this section:

(a) Insurer means any person or entity transacting insurance as defined in section 44-102 with or without a certificate of authority issued by the Director of Insurance. Insurer also means health maintenance organizations, legal service insurance corporations, prepaid limited health service organizations, dental and other similar health service plans, and entities licensed pursuant to the Intergovernmental Risk Management Act and the Comprehensive Health Insurance Pool Act; and

(b) Statement includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or medical records, X-rays, test result, or other evidence of loss, injury, or expense, whether oral, written, or computer-generated.

Sec. 11. Section 28-101, Revised Statutes Supplement, 1994, is amended to read:

28-101. Sections 28-101 to 28-1348 and section 10 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 12. Section 44-3,133, Reissue Revised Statutes of Nebraska, is amended to read:

44-3,133. No person with a reasonable cause to believe the truth of the information shall be subject to civil liability for libel, slander, or any other relevant tort cause of action (1) Any person acting without malice, fraudulent intent, or bad faith shall be immune from any civil liability by virtue of filing reports without malice or furnishing other information without malice, required by Chapter 44 or required by the Director of Insurance under the authority granted in Chapter 44. No civil cause of action of any nature shall arise against such person who has reasonable cause to

believe the truth of the information (1) for any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials or their agents or employees; (2) for any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to Chapter 44, or (3) for any such information furnished in reports to the Department of Insurance, National Association of Insurance Commissioners, or any organization established to detect and prevent fraudulent insurance acts, or their agents, employees, or designees.

(2) The Director of Insurance or any employee of the Department of Insurance, who has reasonable cause to believe the truth of the information, shall not be subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature shall arise against such person acting without malice, fraudulent intent, or bad faith shall be immune from any civil liability by virtue of the publication of any report or bulletin related to the official activities of the Department of Insurance. Nothing in section 44-3,132 and this

(3) This section shall not abrogate or modify in any way any common-law or statutory privilege or immunity, heretofore enjoyed by any person.

Sec. 13. Original section 44-3,133, Reissue Revised Statutes of Nebraska, and sections 25-21,247, 28-101, and 44-112.01, Revised Statutes Supplement, 1994, are repealed.

Sec. 14. The following sections are outright repealed: Sections 44-391 and 44-3,132, Reissue Revised Statutes of Nebraska.