

LEGISLATIVE BILL 547

Approved by the Governor March 18, 2002

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-6603 and 44-6604, Reissue Revised Statutes of Nebraska, section 28-631, Revised Statutes Supplement, 2000, and section 44-6606, Revised Statutes Supplement, 2001; to redefine terms and change insurance fraud provisions; to change a fee provision; and to repeal the original sections.

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

Section 1. Section 28-631, Revised Statutes Supplement, 2000, is amended to read:

28-631. (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 from an insurer or 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 from an insurer or 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 or a covered person 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) Knowingly and with intent to defraud or deceive issues fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(h) Knowingly and with intent to defraud or deceive possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(i) 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

(j) 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), (i), and (j) of this section is a Class IV felony.

(g) A violation of subdivision (1)(h) of this section is a Class I misdemeanor.

(3) Amounts taken pursuant to one scheme or course of conduct from one person, entity, or insurer may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(4) In any prosecution under this section, if the amounts are aggregated pursuant to subsection (3) of this section, the amount involved in the offense shall be an essential element of the offense that must be proved beyond a reasonable doubt.

(5) A prosecution under this section shall be in lieu of an action under section 44-6607.

(6) 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. Insurer also means an employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer; 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. 2. Section 44-6603, Reissue Revised Statutes of Nebraska, is amended to read:

44-6603. For purposes of the Insurance Fraud Act:

(1) Department means the Department of Insurance;

(2) Director means the Director of Insurance;

(3) 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. 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. Insurer also means an employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer; and

(4) 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. 3. Section 44-6604, Reissue Revised Statutes of Nebraska, is amended to read:

44-6604. 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 from an insurer or 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 from an insurer or 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 or a covered person 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) Knowingly and with intent to defraud or deceive issues or possesses 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; 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. 4. Section 44-6606, Revised Statutes Supplement, 2001, is amended to read:

44-6606. (1) In order to investigate activities involving insurance fraud, the director shall appoint a sufficient staff to be known as the Insurance Fraud Prevention Division.

(2) (a) As specified by the director, division investigators who are certified law enforcement officers of the State of Nebraska shall be vested with the authority and power of a peace officer to carry out the laws of this state administered by the director. The general laws of this state applicable to peace officers shall be applicable to such investigators. Such investigators shall be empowered, among other powers, to search and arrest with or without a warrant, file and serve any lien, seize property, serve and return a summons, warrant, or subpoena issued by a court of law or the director, and bring an offender before any court with jurisdiction in this state, except that such investigators shall not be authorized to enforce any laws other than laws administered by the director.

(b) Subdivision (a) of this subsection shall not be construed to restrict any other law enforcement officer of this state from enforcing any state law, insurance or otherwise.

(3) 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, 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.

(4) (a) The director or his or her designee may: Administer oaths and affirmations; subpoena witnesses; compel attendance of witnesses; take evidence; and require the production of any books, papers, correspondence, memoranda, agreements, documents, records, and other tangible things which constitute or contain evidence that is deemed relevant or material to an investigation or enforcement of the Insurance Fraud Act, when it shall appear that such action is necessary and proper. The attendance of witnesses and the production of records shall be required from any place within the State of Nebraska. Witnesses summoned by the director or by his or her designee shall be paid the same fees that are paid witnesses in the courts of the State of Nebraska and mileage at the rate provided in section 81-1176.

(b) A subpoena of the director or of his or her designee may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by certified mail or personal delivery of the subpoena to him or her. Service may be made upon a domestic or foreign insurer, corporation, or partnership, upon a domestic or foreign limited liability company, or upon any other unincorporated association which is

subject to suit under a common name, or any other entity by delivering the subpoena to an officer, a managing or general agent, a member, or any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

(c) If any person refuses to obey a subpoena issued by the director or by his or her designee, the director or his or her designee may invoke the aid of any court of the State of Nebraska within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, carries on business, or may otherwise be found, to compel compliance with such subpoena.

(d) The court may issue an order requiring the subpoenaed person to appear before the director or his or her designee to produce records, if so ordered, or to give testimony concerning the matter under investigation. Nothing in this section shall be construed to suspend or otherwise interfere with the operation of the Free Flow of Information Act.

(e) Any failure to obey the order of the court may be punished by the court as contempt. All process in any such case may be served in the judicial district in which the subpoenaed person is an inhabitant, carries on business, or may otherwise be found.

(5) 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.

(6) The papers, documents, reports, and evidence of the department 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.

(7) (a) The director may provide the papers, documents, reports, and evidence described in subsection (6) of this section to other state, federal, foreign, and international regulatory and law enforcement agencies and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees in writing to maintain the confidentiality of the information.

(b) The director may receive papers, documents, reports, and evidence described in subsection (6) of this section from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged information received pursuant to this subdivision if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subdivision, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subdivision as a result of information sharing authorized by this section.

(8) (a) On or before March 1 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 two 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 the Insurance Fraud Act. Assessment associations and unincorporated mutual associations shall not be subject to this subsection.

(b) On or before March 1 each year, each employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer shall pay a fee as established by the director not to exceed one thousand dollars to the Nebraska Workers' Compensation Court 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 the Insurance Fraud Act. Willful refusal by any such self-insurer to pay the fee required under this subdivision shall be grounds for the compensation court to suspend or revoke the approval of such self-insurer to provide self-insurance coverage of workers' compensation liability pursuant to section 48-145.

Sec. 5. Original sections 44-6603 and 44-6604, Reissue Revised Statutes of Nebraska, section 28-631, Revised Statutes Supplement, 2000, and section 44-6606, Revised Statutes Supplement, 2001, are repealed.