

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1156 Session of  
1993

INTRODUCED BY COLAFELLA, MICOZZIE, COLAIZZO, REINARD, SATHER,  
DeLUCA, E. Z. TAYLOR, ROONEY, GLADECK, CESSAR, GODSHALL AND  
TRELLO, APRIL 19, 1993

REFERRED TO COMMITTEE ON INSURANCE, APRIL 19, 1993

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, further providing for insurance fraud.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Section 4117 of Title 18 of the Pennsylvania  
6 Consolidated Statutes is amended to read:

7 § 4117. Insurance fraud.

8 (a) Offense defined.--A person commits an offense if the  
9 person does any of the following:

10 (1) Knowingly and with the intent to defraud a State or  
11 local government agency files, presents or causes to be filed  
12 with or presented to the government agency a document that  
13 contains false, incomplete or misleading information  
14 concerning any fact or thing material to the agency's  
15 determination in approving or disapproving a motor vehicle  
16 insurance rate filing, a motor vehicle insurance transaction  
17 or other motor vehicle insurance action which is required or

1 filed in response to an agency's request.

2 (2) Knowingly and with the intent to defraud any insurer  
3 or self-insured, presents or causes to be presented to any  
4 insurer or self-insured any statement forming a part of, or  
5 in support of, [an insurance] a claim that contains any  
6 false, incomplete or misleading information concerning any  
7 fact or thing material to the [insurance] claim.

8 (3) Knowingly and with the intent to defraud any insurer  
9 or self-insured, assists, abets, solicits or conspires with  
10 another to prepare or make any statement that is intended to  
11 be presented to any insurer or self-insured in connection  
12 with, or in support of, [an insurance] a claim that contains  
13 any false, incomplete or misleading information concerning  
14 any fact or thing material to the [insurance] claim.

15 (4) Engages in unlicensed agent [or], broker or  
16 unauthorized insurer activity as defined by the act of May  
17 17, 1921 (P.L.789, No.285), known as The Insurance Department  
18 Act of one thousand nine hundred and twenty-one, knowingly  
19 and with the intent to defraud an insurer, a self-insured or  
20 the public.

21 (5) Knowingly benefits, directly or indirectly, from the  
22 proceeds derived from a violation of this section due to the  
23 assistance, conspiracy or urging of any person.

24 (6) Is the owner, administrator or employee of any  
25 health care facility and knowingly allows the use of such  
26 facility by any person in furtherance of a scheme or  
27 conspiracy to violate any of the provisions of this section.

28 (7) Borrows or uses another person's financial  
29 responsibility or other insurance identification card or  
30 permits his financial responsibility or other insurance

1 identification card to be used by another, knowingly and with  
2 intent to present a fraudulent insurance claim to an insurer.

3 (8) If, for pecuniary gain for himself or another, he  
4 directly or indirectly solicits any person to engage, employ  
5 or retain either himself or any other person to manage,  
6 adjust or prosecute any claim or cause of action against any  
7 person for damages for negligence or for pecuniary gain for  
8 himself or another, directly or indirectly solicits other  
9 persons to bring causes of action to recover damages for  
10 personal injuries or death, provided, however, that this  
11 paragraph shall not apply to any conduct otherwise permitted  
12 by law or by rule of the Supreme Court.

13 (b) Additional offenses defined.--

14 (1) A lawyer may not compensate or give anything of  
15 value to a nonlawyer to recommend or secure employment by a  
16 client or as a reward for having made a recommendation  
17 resulting in employment by a client; except that the lawyer  
18 may pay:

19 (i) the reasonable cost of advertising or written  
20 communication as permitted by the rules of professional  
21 conduct; or

22 (ii) the usual charges of a not-for-profit lawyer  
23 referral service or other legal service organization.

24 Upon a conviction of an offense provided for by this  
25 paragraph, the prosecutor shall certify such conviction to  
26 the disciplinary board of the Supreme Court for appropriate  
27 action. Such action may include a suspension or disbarment.

28 (2) With respect to an insurance benefit or claim, a  
29 health care provider may not compensate or give anything of  
30 value to a person to recommend or secure the provider's

1 service to or employment by a patient or as a reward for  
2 having made a recommendation resulting in the provider's  
3 service to or employment by a patient; except that the  
4 provider may pay the reasonable cost of advertising or  
5 written communication as permitted by rules of professional  
6 conduct. Upon a conviction of an offense provided for by this  
7 paragraph, the prosecutor shall certify such conviction to  
8 the appropriate licensing board in the Department of State  
9 which shall suspend or revoke the health care provider's  
10 license.

11 (3) A lawyer or health care provider may not compensate  
12 or give anything of value to a person for providing names,  
13 addresses, telephone numbers or other identifying information  
14 of individuals seeking or receiving medical or rehabilitative  
15 care for accident, sickness or disease, except to the extent  
16 a referral and receipt of compensation is permitted under  
17 applicable professional rules of conduct. A person may not  
18 knowingly transmit such referral information to a lawyer or  
19 health care professional for the purpose of receiving  
20 compensation or anything of value. Attempts to circumvent  
21 this paragraph through use of any other person, including,  
22 but not limited to, employees, agents or servants, shall also  
23 be prohibited.

24 (4) A person knowingly and with intent to defraud any  
25 insurance company, self-insured or other person files an  
26 application for insurance containing any false information,  
27 or conceals for the purpose of misleading information  
28 concerning any fact material thereto.

29 (c) Electronic claims submission.--If an insurance claim is  
30 made by means of computer billing tapes or other electronic

1 means, it shall be a rebuttable presumption that the person  
2 knowingly made the claim if the person has advised the insurer  
3 in writing that claims will be submitted by use of computer  
4 billing tapes or other electronic means.

5 (d) Grading.--An offense under subsection (a)(1) through  
6 [(7)] (8) is a felony of the third degree. An offense under  
7 subsection (b) is a misdemeanor of the first degree.

8 (e) Restitution.--The court may, in addition to any other  
9 sentence authorized by law, sentence a person convicted of  
10 violating this section to make restitution [under section 1106  
11 (relating to restitution for injuries to person or property)].

12 (f) Immunity.--An insurer, and any agent, servant or  
13 employee thereof acting in the course and scope of his  
14 employment[, and the Motor Vehicle Fraud Index Bureau, as  
15 designated by the Insurance Commissioner pursuant to 75 Pa.C.S.  
16 § 1821 (relating to designation), acting pursuant to its plan of  
17 operation,] shall be immune from civil or criminal liability  
18 arising from the supply or release of written or oral  
19 information to any entity duly authorized to receive such  
20 information by Federal or State law, or by Insurance Department  
21 regulations[, only if both of the following conditions exist:

22 (1) the information is supplied to the agency in  
23 connection with an allegation of fraudulent conduct on the  
24 part of any person relating to a violation of this section;  
25 and

26 (2) the insurer, agent, servant or employee or the Motor  
27 Vehicle Fraud Index Bureau has reason to believe that the  
28 information supplied is related to the allegation of fraud].

29 (g) Civil action.--An insurer damaged as a result of a  
30 violation of this section may sue therefor in any court of

1 competent jurisdiction to recover compensatory damages, which  
2 may include reasonable investigation expenses, costs of suit and  
3 attorney fees. An insurer may recover treble damages if the  
4 court determines that the defendant has engaged in a pattern of  
5 violating this section.

6 (h) Criminal action.--

7 (1) The district attorneys of the several counties shall  
8 have authority to investigate and to institute criminal  
9 proceedings for any violation of this section.

10 (2) In addition to the authority conferred upon the  
11 Attorney General by the act of October 15, 1980 (P.L.950,  
12 No.164), known as the Commonwealth Attorneys Act, the  
13 Attorney General shall have the authority to investigate and  
14 to institute criminal proceedings for any violation of this  
15 section or any series of such violations involving more than  
16 one county of the Commonwealth or involving any county of the  
17 Commonwealth and another state. No person charged with a  
18 violation of this section by the Attorney General shall have  
19 standing to challenge the authority of the Attorney General  
20 to investigate or prosecute the case, and, if any such  
21 challenge is made, the challenge shall be dismissed and no  
22 relief shall be available in the courts of the Commonwealth  
23 to the person making the challenge.

24 (i) Regulatory and investigative powers additional to those  
25 now existing.--Nothing contained in this section shall be  
26 construed to limit the regulatory or investigative authority of  
27 any department or agency of the Commonwealth whose functions  
28 might relate to persons, enterprises or matters falling within  
29 the scope of this section.

30 (j) Violations, penalties, etc.--

1       (1) If a person is found by court of competent  
2       jurisdiction, pursuant to a claim initiated by a prosecuting  
3       authority, to have violated any provision of this section,  
4       the person shall be subject to a civil penalty of not more  
5       than \$5,000 for the first violation, \$10,000 for the second  
6       violation and \$15,000 for each subsequent violation. The  
7       penalty shall be paid to the prosecuting authority to be  
8       deposited into the Insurance Fraud Prevention Fund created  
9       under the act of                19       (P.L.       , No.       ), known as  
10       the Insurance Fraud Prevention Act. The court may also award  
11       court costs and reasonable attorney fees to the prosecuting  
12       authority.

13       (2) Nothing in this subsection shall be construed to  
14       prohibit a prosecuting authority and the person accused of  
15       violating this section from entering into a written agreement  
16       in which that person does not admit or deny the charges but  
17       consents to payment of the civil penalty. A consent agreement  
18       may not be used in a subsequent civil or criminal proceeding,  
19       but notification thereof shall be made to the licensing  
20       authority if the person is licensed by a licensing authority  
21       of the Commonwealth so that the licensing authority may take  
22       appropriate administrative action. Penalties paid under this  
23       section shall be deposited into the Insurance Fraud  
24       Prevention Fund created under the Insurance Fraud Prevention  
25       Act.

26       (3) The imposition of any fine or other remedy under  
27       this section shall not preclude prosecution for a violation  
28       of the criminal laws of this Commonwealth.

29       (k) Insurance forms and verification of services.--

30       (1) All applications for insurance and all claim forms

1 shall contain or have attached thereto the following notice:

2 "Any person who knowingly and with intent to defraud any  
3 insurance company or other person files an application  
4 for insurance or statement of claim containing any  
5 materially false information or conceals for the purpose  
6 of misleading, information concerning any fact material  
7 thereto commits a fraudulent insurance act, which is a  
8 crime and subjects such person to criminal and civil  
9 penalties."

10 (2) Persons seeking payment for services or materials  
11 which will be directly or indirectly reimbursed by an insurer  
12 must verify, under oath, that the services and materials  
13 furnished were necessary and were, in fact, furnished. The  
14 furnishing of such verification shall be a condition  
15 precedent to payment by the insurer and to recourse against  
16 the insured by the person seeking payment.

17 [(j)] (1) Definitions.--As used in this section, the  
18 following words and phrases shall have the meanings given to  
19 them in this subsection:

20 "Insurance claim." A claim for payment or other benefit  
21 pursuant to an insurance policy or agreement for coverage of  
22 health or hospital services.

23 "Insurance policy." A document setting forth the terms and  
24 conditions of a contract of insurance or agreement for the  
25 coverage of health or hospital services.

26 "Insurer." A company, association or exchange defined by  
27 section 101 of the act of May 17, 1921 (P.L.682, No.284), known  
28 as The Insurance Company Law of 1921; an unincorporated  
29 association of underwriting members; a hospital plan  
30 corporation; a professional health services plan corporation; a



1 health maintenance organization; a fraternal benefit society;  
2 and a self-insured health care entity under the act of October  
3 15, 1975 (P.L.390, No.111), known as the Health Care Services  
4 Malpractice Act.

5 "Person." An individual, corporation, partnership,  
6 association, joint-stock company, trust or unincorporated  
7 organization. The term includes any individual, corporation,  
8 association, partnership, reciprocal exchange, interinsurer,  
9 Lloyd's insurer, fraternal benefit society, beneficial  
10 association and any other legal entity engaged or proposing to  
11 become engaged, either directly or indirectly, in the business  
12 of insurance, including agents, brokers, adjusters and health  
13 care plans as defined in 40 Pa.C.S. Chs. 61 (relating to  
14 hospital plan corporations), 63 (relating to professional health  
15 services plan corporations), 65 (relating to fraternal benefit  
16 societies) and 67 (relating to beneficial societies) and the act  
17 of December 29, 1972 (P.L.1701, No.364), known as the Health  
18 Maintenance Organization Act. For purposes of this section,  
19 health care plans, fraternal benefit societies and beneficial  
20 societies shall be deemed to be engaged in the business of  
21 insurance.

22 "Self-insured." Any person who is self-insured for any risk  
23 by reason of any filing, qualification process, approval or  
24 exception granted, certified or ordered by any department or  
25 agency of the Commonwealth.

26 "Statement." Any oral or written presentation or other  
27 evidence of loss, injury or expense, including, but not limited  
28 to, any notice, statement, proof of loss, bill of lading,  
29 receipt for payment, invoice, account, estimate of property  
30 damages, bill for services, diagnosis, prescription, hospital or

- 1 doctor records, X-ray, test result or computer-generated
- 2 documents.
- 3     Section 2. This act shall take effect in 60 days.