

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 429 Session of
1989

INTRODUCED BY RYBAK, MANDERINO, COLAFELLA, YANDRISEVITS, DURHAM,
MICHLOVIC, LLOYD, CAWLEY, LaGROTTA, MELIO, COLAIZZO, MORRIS,
LUCYK, FEE, JAROLIN, McCALL, BELFANTI, TRELLO, NAHILL,
HARPER, BATTISTO, BELARDI, MICOZZIE, HALUSKA, E. Z. TAYLOR,
PERZEL, LAUGHLIN, J. L. WRIGHT, BISHOP, CORNELL, SEMMEL,
COHEN, SALOOM, RAYMOND, CIVERA, COLE, WOZNIAK, KUKOVICH,
CALTAGIRONE, D. W. SNYDER, GRUITZA, McNALLY, JOSEPHS, FOX,
MAIALE AND VEON, FEBRUARY 14, 1989

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 20, 1989

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, adding provisions relating to
3 insurance fraud in making insurance claims and applications;
4 FURTHER PROVIDING FOR THE SALE OF TOBACCO; imposing <—
5 penalties; and ~~making repeals~~ FURTHER PROVIDING FOR THE <—
6 EFFECT OF RESTRICTION OF OPERATING PRIVILEGES ON INSURANCE
7 PREMIUMS.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 911(h) of Title 18 of the Pennsylvania
11 Consolidated Statutes is amended to read:

12 § 911. Corrupt organizations.

13 * * *

14 (h) Definitions.--As used in this section:

15 (1) "Racketeering activity" means:

16 (i) any act which is indictable under any of the
17 following provisions of this title:

Chapter 25 (relating to criminal homicide)

Section 2706 (relating to terroristic threats)

Chapter 29 (relating to kidnapping)

Chapter 33 (relating to arson, [etc.] criminal mischief and other property destruction)

Chapter 37 (relating to robbery)

Chapter 39 (relating to theft and related offenses)

Section 4108 (relating to commercial bribery and breach of duty to act disinterestedly)

Section 4109 (relating to rigging publicly exhibited contest)

Section 4117 (relating to insurance fraud)

Chapter 47 (relating to bribery and corrupt influence)

Chapter 49 (relating to [perjury and other falsification in official matters]) falsification and intimidation)

[Section 5512 through 5514 (relating to gambling)]

Sections 5512 (relating to lotteries, etc.) through 5514 (relating to pool selling and bookmaking)

Chapter 59 (relating to public indecency)

(ii) any offense indictable under section 13 of the act of April 14, 1972 (P.L.233, No.64), known as ["The Controlled Substance, Drug, Device and Cosmetic Act[" (relating to the sale and dispensing of narcotic drugs);

(iii) any conspiracy to commit any of the offenses set forth in subparagraphs (i) and (ii) of this

1 paragraph; or

2 (iv) the collection of any money or other property
3 in full or partial satisfaction of a debt which arose as
4 the result of the lending of money or other property at a
5 rate of interest exceeding 25% per annum or the
6 equivalent rate for a longer or shorter period, where not
7 otherwise authorized by law.

8 Any act which otherwise would be considered racketeering
9 activity by reason of the application of this paragraph,
10 shall not be excluded from its application solely because the
11 operative acts took place outside the jurisdiction of this
12 Commonwealth, if such acts would have been in violation of
13 the law of the jurisdiction in which they occurred.

14 (2) "Person" means any individual or entity capable of
15 holding a legal or beneficial interest in property.

16 (3) "Enterprise" means any individual, partnership,
17 corporation, association or other legal entity, and any union
18 or group of individuals associated in fact although not a
19 legal entity, engaged in commerce.

20 (4) "Pattern of racketeering activity" refers to a
21 course of conduct requiring two or more acts of racketeering
22 activity one of which occurred after the effective date of
23 this section.

24 (5) "Racketeering investigator" means an attorney,
25 investigator or investigative body so designated in writing
26 by the Attorney General and charged with the duty of
27 enforcing or carrying into effect the provisions of this
28 section.

29 (6) "Racketeering investigation" means any inquiry
30 conducted by any racketeering investigator for the purpose of

1 ascertaining whether any person has been involved in any
2 violation of this section or of any order, judgment, or
3 decree of any court duly entered in any case or proceeding
4 arising under this section.

5 (7) "Documentary material" means any book, paper,
6 record, recording, tape, report, memorandum, written
7 communication, or other document relating to the business
8 affairs of any person or enterprise.

9 Section 2. Title 18 is amended by adding a section to read:

10 § 4117. Insurance fraud.

11 (a) Offense defined.--A person AN ENTITY commits an offense <—
12 if he IT: <—

13 (1) KNOWINGLY AND WITH THE INTENT TO DEFRAUD A
14 GOVERNMENT OR LOCAL AGENCY FILES, PRESENTS OR CAUSES TO BE
15 FILED WITH OR PRESENTED TO SUCH GOVERNMENT OR LOCAL AGENCY
16 ANY DOCUMENT THAT CONTAINS FALSE, INCOMPLETE OR MISLEADING
17 INFORMATION CONCERNING ANY FACT OR THING MATERIAL TO THE
18 AGENCY'S DETERMINATION IN APPROVING OR DISAPPROVING A FILING,
19 TRANSACTION OR OTHER ACTION WHICH IS REQUIRED OR FILED IN
20 RESPONSE TO AN AGENCY'S REQUEST;

21 (2) ENGAGES IN UNLICENSED AGENT OR BROKER ACTIVITY AS
22 DEFINED BY THE ACT OF MAY 17, 1921 (P.L.789, NO.285), KNOWN
23 AS THE INSURANCE DEPARTMENT ACT OF ONE THOUSAND NINE HUNDRED
24 AND TWENTY-ONE, KNOWINGLY AND WITH THE INTENT TO DEFRAUD ANY
25 ENTITY OR THE PUBLIC;

26 ~~(1)~~ (3) knowingly and with the intent to defraud, ANY <—
27 ENTITY, presents or causes to be presented to any insurer <—
28 ENTITY any statement forming a part of, or in support of, an <—
29 insurance application or an insurance claim that contains any
30 false, incomplete or misleading information concerning any

fact or thing material to the insurance application or
insurance claim;

~~(2)~~ (4) knowingly and with the intent to defraud, ANY
ENTITY, assists, abets, solicits or conspires with another to
prepare or make any statement that is intended to be
presented to any insurer ENTITY in connection with, or in
support of, any insurance application or insurance claim that
contains any false, incomplete or misleading information
concerning any fact or thing material to the insurance claim;

~~(3) engages in unlicensed agent or broker activity as
defined by the act of May 17, 1921 (P.L.789, No.285), known
as The Insurance Department Act of one thousand nine hundred
and twenty one, knowingly and with the intent to defraud an
insurer or the public;~~

~~(4)~~ (5) solicits, offers, pays or receives a kickback or
bribe in connection with the furnishing of goods or services
for which payment is or may be made in whole or in part by an
insurer, or receives a rebate of a fee or charge for
referring an individual to another person for the furnishing
of benefits; or

~~(5)~~ (6) borrowes or uses another person's insurance
identification or permits his insurance identification to be
used by another, knowingly and with intent to present a
fraudulent claim for reimbursement to an insurer.

(b) Electronic claims submission.--If a claim for a benefit
is made by means of computer billing tapes or other electronic
means, it shall be a rebuttable presumption that the person
ENTITY knowingly made the claim if the person ENTITY has advised
the insurer in writing that claims for benefits will be
submitted by use of computer billing tapes or other electronic

1 means.

2 (c) Penalty GRADING.--A person who violates any provision of <—
3 this section commits a felony of the third degree for each such
4 violation and shall, upon conviction, be sentenced to pay a fine
5 of not more than \$15,000 or to imprisonment for not more than
6 seven years, or both.

7 (d) Restitution.--The court shall, in addition to any other
8 sentence authorized by law, sentence a person AN ENTITY <—
9 convicted of violating this section to make restitution under
10 section 1106 (relating to restitution for injuries to person or
11 property).

12 (e) Civil penalties. In addition to the penalties provided <—
13 under subsections (c) and (d), the trial court shall order any
14 person convicted of violating this section to pay to the insurer
15 an amount not to exceed three times the amount of excess
16 benefits or payments, plus any attorney fees incurred by the
17 insurer, to help contain the cost of insurance.

18 (f) Immunity from liability.--

19 (1) In the absence of fraud or bad faith, no person or
20 his employees or agents shall be subject to civil liability
21 and no civil cause of action shall arise against any of them
22 with respect to any of the following:

23 (i) Information relating to suspected fraudulent
24 insurance acts furnished by them to, or received by them
25 from, law enforcement officials, their agents and
26 employees.

27 (ii) Information relating to suspected fraudulent
28 insurance acts furnished by them to, or received by them
29 from, other persons subject to the provisions of this
30 act.

~~(iii) Information furnished by them in reports to the Insurance Department, National Association of Insurance Commissioners or another organization established to detect and prevent fraudulent insurance acts, their agents, employees or designees.~~

~~(2) The Insurance Commissioner and employees of the Insurance Department, in the absence of fraud or bad faith, shall not be subject to civil liability. No civil cause of action shall arise against any of them by virtue of the publication of a report or bulletin related to the official activities of the Insurance Department.~~

~~(3) Nothing in this section is intended to abrogate or modify a common law or statutory immunity heretofore enjoyed by any person.~~

(E) IMMUNITY FROM LIABILITY.--NOTHING IN THIS SECTION IS INTENDED TO ABROGATE OR MODIFY A COMMON LAW OR STATUTORY IMMUNITY HERETOFORE ENJOYED BY ANY PERSON.

~~(g)~~ (F) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"ENTITY." ANY INDIVIDUAL, CORPORATION, ASSOCIATION, PARTNERSHIP, RECIPROCAL EXCHANGE, INTER-INSURER, LLOYD'S INSURER, FRATERNAL BENEFIT SOCIETY, BENEFICIAL ASSOCIATION AND ANY OTHER LEGAL ENTITY ENGAGED OR PROPOSING TO BECOME ENGAGED, EITHER DIRECTLY OR INDIRECTLY, IN THE BUSINESS OF INSURANCE, INCLUDING AGENTS, BROKERS, ADJUSTERS AND HEALTH CARE PLANS AS DEFINED IN 40 PA.C.S. CHS. 61 (RELATING TO HOSPITAL PLAN CORPORATIONS, 63 (RELATING TO PROFESSIONAL HEALTH SERVICES PLAN CORPORATIONS), 65 (RELATING TO FRATERNAL BENEFIT SOCIETIES) AND 67 (RELATING TO BENEFICIAL SOCIETIES) AND THE ACT OF DECEMBER

29, 1972 (P.L.1701, NO.364), KNOWN AS THE HEALTH MAINTENANCE ORGANIZATION ACT. FOR PURPOSES OF THIS SECTION, HEALTH CARE PLANS, FRATERNAL BENEFIT SOCIETIES AND BENEFICIAL SOCIETIES SHALL BE DEEMED TO BE ENGAGED IN THE BUSINESS OF INSURANCE.

"Insurance application." A document submitted by a prospective insured which requests insurance coverage and which provides information requested by an insurer to evaluate the risk.

"Insurance claim." A claim for payment or other benefit pursuant to an insurance policy, contract, certificate or subscription requirement.

"Insurance policy." A document setting forth the terms and conditions of a contract of insurance.

~~"Insurer." A company, association or exchange defined by section 101 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921; an unincorporated association of underwriting members; a hospital plan corporation; a professional health services plan corporation; a health maintenance organization; a fraternal benefit society; a self insured health care entity under the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act; and any legal entity which is self insured and provides benefits to its employees.~~

~~"Person." An individual, corporation, partnership, association, joint stock company, trust or unincorporated organization or any other legal entity.~~

"Statement." Any oral or written presentation REPRESENTATION or other evidence of loss, injury or expense, including, but not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of

1 property damages, bill for services, diagnosis, prescription,
2 hospital or doctor records, X-ray, test result or computer-
3 generated documents.

4 ~~Section 3. The Insurance Department shall promulgate~~ <—
5 ~~regulations to the extent necessary to carry out the provisions~~
6 ~~of this act.~~

7 ~~Section 4. The following acts and parts of acts are~~
8 ~~repealed:~~

9 ~~Section 349 of the act of May 17, 1921 (P.L.682, No.284),~~
10 ~~known as The Insurance Company Law of 1921.~~

11 ~~Sections 604 and 623 of the act of May 17, 1921 (P.L.789,~~
12 ~~No.285), known as The Insurance Department Act of one thousand~~
13 ~~nine hundred and twenty one.~~

14 ~~Section 5. This act shall take effect immediately.~~

15 SECTION 3. SECTION 6305 OF TITLE 18 IS AMENDED TO READ: <—
16 § 6305. SALE OF TOBACCO.

17 (A) OFFENSE DEFINED.--A PERSON IS GUILTY OF A SUMMARY
18 OFFENSE IF HE SELLS TOBACCO, IN ANY FORM, TO ANY MINOR UNDER THE
19 AGE OF [16] 18 YEARS, OR BY PURCHASE, GIFT OR OTHER MEANS,
20 FURNISHES TOBACCO, IN ANY FORM, TO A MINOR UNDER THE AGE OF [16]
21 18 YEARS.

22 (B) PENALTY.--A PERSON WHO VIOLATES THIS SECTION SHALL, UPON
23 CONVICTION, BE SENTENCED TO PAY A FINE OF NOT LESS THAN \$25 FOR
24 A FIRST OFFENSE AND NOT LESS THAN \$100 FOR A SUBSEQUENT OFFENSE.

25 SECTION 4. SECTION 6310.4(D) OF TITLE 18 IS AMENDED TO READ:
26 § 6310.4. RESTRICTION OF OPERATING PRIVILEGES.

27 * * *

28 (D) INSURANCE PREMIUMS.--AN INSURER SHALL NOT INCREASE
29 PREMIUMS, IMPOSE ANY SURCHARGE OR RATE PENALTY, OR MAKE ANY
30 DRIVER RECORD POINT ASSIGNMENT FOR AUTOMOBILE INSURANCE, NOR

1 SHALL AN INSURER CANCEL OR REFUSE TO RENEW AN AUTOMOBILE
2 INSURANCE POLICY ON ACCOUNT OF A SUSPENSION UNDER THIS SECTION.
3 HOWEVER, THE PROVISIONS OF THIS SUBSECTION SHALL NOT APPLY WHERE
4 VIOLATIONS OF SECTION 6307 (RELATING TO MISREPRESENTATION OF AGE
5 TO SECURE LIQUOR OR MALT OR BREWED BEVERAGES), 6308 (RELATING TO
6 PURCHASE, CONSUMPTION, POSSESSION OR TRANSPORTATION OF LIQUOR OR
7 MALT OR BREWED BEVERAGES) OR 6310.3 (RELATING TO CARRYING A
8 FALSE IDENTIFICATION CARD) OCCUR IN CONNECTION WITH THE
9 OPERATION OF A MOTOR VEHICLE.

10 SECTION 4 5. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.

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