

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 422 Session of
2011

INTRODUCED BY GODSHALL, MICOZZIE, CALTAGIRONE, CLYMER, DeLUCA,
DENLINGER, HENNESSEY, SWANGER AND J. TAYLOR, FEBRUARY 3, 2011

REFERRED TO COMMITTEE ON TRANSPORTATION, FEBRUARY 3, 2011

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 75 (Vehicles) of
2 the Pennsylvania Consolidated Statutes, further providing for
3 insurance fraud, for penalties relating to antifraud plans,
4 for reinstatement of operating privilege or vehicle
5 registration, for reports by police and for admissibility of
6 department records.

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

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

11 § 4117. Insurance fraud.

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

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

1 or other motor vehicle insurance action which is required or
2 filed in response to an agency's request.

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

9 (3) Knowingly and with the intent to defraud any insurer
10 or self-insured, assists, abets, solicits or conspires with
11 another to prepare or make any statement that is intended to
12 be presented to any insurer or self-insured in connection
13 with, or in support of, a claim that contains any false,
14 incomplete or misleading information concerning any fact or
15 thing material to the claim, including information which
16 documents or supports an amount claimed in excess of the
17 actual loss sustained by the claimant.

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

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

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

1 (7) Borrows or uses another person's financial
2 responsibility or other insurance identification card or
3 permits his financial responsibility or other insurance
4 identification card to be used by another, knowingly and with
5 intent to present a fraudulent claim to an insurer.

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

16 (9) Knowingly and willfully violates an emergency rule
17 or order of the Insurance Department pertaining to insurance
18 fraud or a provision of 31 Pa. Code (relating to insurance)
19 pertaining to insurance fraud.

20 (10) Organizes, plans or knowingly participates in an
21 intentional motor vehicle accident or a scheme to create
22 documentation of a motor vehicle accident that did not occur
23 for the purpose of making a tort claim or claim for personal
24 injury protection benefits.

25 (11) Creates, markets or presents a false or fraudulent
26 financial responsibility or other insurance identification
27 card with intent to deceive.

28 (12) Pays a bribe, in cash or in kind, to induce the
29 referral of patients from or to a service provider or health
30 care facility.

1 (13) Solicits or receives a commission, bonus, referral
2 fee, kickback, rebate or bribe, in cash or in kind, or
3 engages in a split-fee arrangement of any sort in return for
4 acceptance or acknowledgment of treatment from a health care
5 provider or a health care facility.

6 (b) Additional offenses defined.--

7 (1) A lawyer may not compensate or give anything of
8 value to a nonlawyer to recommend or secure employment by a
9 client or as a reward for having made a recommendation
10 resulting in employment by a client; except that the lawyer
11 may pay:

12 (i) the reasonable cost of advertising or written
13 communication as permitted by the rules of professional
14 conduct; or

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

17 Upon a conviction of an offense provided for by this
18 paragraph, the prosecutor shall certify such conviction to
19 the disciplinary board of the Supreme Court for appropriate
20 action. Such action may include a suspension or disbarment.

21 (2) With respect to an insurance benefit or claim
22 covered by this section, a health care provider may not
23 compensate or give anything of value to a person to recommend
24 or secure the provider's service to or employment by a
25 patient or as a reward for having made a recommendation
26 resulting in the provider's service to or employment by a
27 patient; except that the provider may pay the reasonable cost
28 of advertising or written communication as permitted by rules
29 of professional conduct. Upon a conviction of an offense
30 provided for by this paragraph, the prosecutor shall certify

1 such conviction to the appropriate licensing board in the
2 Department of State which shall suspend or revoke the health
3 care provider's license.

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

17 (4) A person may not knowingly and with intent to
18 defraud any insurance company, self-insured or other person
19 file an application for insurance containing any false
20 information or conceal for the purpose of misleading
21 information concerning any fact material thereto.

22 (5) An insurer may not waive a deductible or copay by a
23 service provider.

24 (c) Electronic claims submission.--If a claim is made by
25 means of computer billing tapes or other electronic means, it
26 shall be a rebuttable presumption that the person knowingly made
27 the claim if the person has advised the insurer in writing that
28 claims will be submitted by use of computer billing tapes or
29 other electronic means.

30 (d) Grading.--An offense under subsection (a) (1) through (8)

1 is a felony of the third degree. An offense under subsection (b)
2 is a misdemeanor of the first degree.

3 (e) Restitution.--The court may, in addition to any other
4 sentence authorized by law, sentence a person convicted of
5 violating this section to make restitution.

6 (e.1) License revocation.--In addition to any other penalty,
7 the Department of Transportation shall revoke for three years
8 the driver's license of any person convicted of violating this
9 section.

10 (f) Immunity.--An insurer, and any agent, servant or
11 employee thereof acting in the course and scope of his
12 employment, shall be immune from civil or criminal liability
13 arising from the supply or release of written or oral
14 information to any entity duly authorized to receive such
15 information by Federal or State law, or by Insurance Department
16 regulations.

17 (g) Civil action.--An insurer damaged as a result of a
18 violation of this section may sue therefor in any court of
19 competent jurisdiction to recover compensatory damages, which
20 may include reasonable investigation expenses, costs of suit and
21 attorney fees. An insurer may recover treble damages if the
22 court determines that the defendant has engaged in a pattern of
23 violating this section.

24 (h) Criminal action.--

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

28 (2) In addition to the authority conferred upon the
29 Attorney General by the act of October 15, 1980 (P.L.950,
30 No.164), known as the Commonwealth Attorneys Act, the

1 Attorney General shall have the authority to investigate and
2 to institute criminal proceedings for any violation of this
3 section or any series of such violations involving more than
4 one county of the Commonwealth or involving any county of the
5 Commonwealth and another state. No person charged with a
6 violation of this section by the Attorney General shall have
7 standing to challenge the authority of the Attorney General
8 to investigate or prosecute the case, and, if any such
9 challenge is made, the challenge shall be dismissed and no
10 relief shall be available in the courts of the Commonwealth
11 to the person making the challenge.

12 (i) Regulatory and investigative powers additional to those
13 now existing.--Nothing contained in this section shall be
14 construed to limit the regulatory or investigative authority of
15 any department or agency of the Commonwealth whose functions
16 might relate to persons, enterprises or matters falling within
17 the scope of this section.

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

19 (1) If a person is found by court of competent
20 jurisdiction, pursuant to a claim initiated by a prosecuting
21 authority, to have violated any provision of this section,
22 the person shall be subject to civil penalties of not more
23 than \$5,000 for the first violation, \$10,000 for the second
24 violation and \$15,000 for each subsequent violation. The
25 penalty shall be paid to the prosecuting authority to be used
26 to defray the operating expenses of investigating and
27 prosecuting insurance fraud. The court may also award court
28 costs and reasonable attorney fees to the prosecuting
29 authority.

30 (2) Nothing in this subsection shall be construed to

1 prohibit a prosecuting authority and the person accused of
2 violating this section from entering into a written agreement
3 in which that person does not admit or deny the charges but
4 consents to payment of the civil penalty. A consent agreement
5 may not be used in a subsequent civil or criminal proceeding,
6 but notification thereof shall be made to the licensing
7 authority if the person is licensed by a licensing authority
8 of the Commonwealth so that the licensing authority may take
9 appropriate administrative action. Penalties paid under this
10 section shall be deposited into the Insurance Fraud
11 Prevention Trust Fund created under the act of December 28,
12 1994 (P.L.1414, No.166), known as the Insurance Fraud
13 Prevention Act.

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

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

18 (1) All applications for insurance and all claim forms
19 shall contain or have attached thereto the following notice:

20 Any person who knowingly and with intent to defraud
21 any insurance company or other person files an
22 application for insurance or statement of claim
23 containing any materially false information or
24 conceals for the purpose of misleading, information
25 concerning any fact material thereto commits a
26 fraudulent insurance act, which is a crime and
27 subjects such person to criminal and civil penalties.

28 (l) Definitions.--As used in this section, the following
29 words and phrases shall have the meanings given to them in this
30 subsection:

1 "Insurance policy." A document setting forth the terms and
2 conditions of a contract of insurance or agreement for the
3 coverage of health or hospital services.

4 "Insurer." A company, association or exchange defined by
5 section 101 of the act of May 17, 1921 (P.L.682, No.284), known
6 as The Insurance Company Law of 1921; an unincorporated
7 association of underwriting members; a hospital plan
8 corporation; a professional health services plan corporation; a
9 health maintenance organization; a fraternal benefit society;
10 and a self-insured health care entity under the act of October
11 15, 1975 (P.L.390, No.111), known as the Health Care Services
12 Malpractice Act.

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

30 "Self-insured." Any person who is self-insured for any risk

1 by reason of any filing, qualification process, approval or
2 exception granted, certified or ordered by any department or
3 agency of the Commonwealth.

4 "Statement." Any oral or written presentation or other
5 evidence of loss, injury or expense, including, but not limited
6 to, any notice, statement, proof of loss, bill of lading,
7 receipt for payment, invoice, account, estimate of property
8 damages, bill for services, diagnosis, prescription, hospital or
9 doctor records, X-ray, test result or computer-generated
10 documents.

11 Section 2. Sections 1815, 1960, 3751 and 6328 of Title 75
12 are amended to read:

13 § 1815. Penalties.

14 Insurers that fail to file timely antifraud plans as required
15 by sections 1811 (relating to filing of plans) and 1813
16 (relating to review by commissioner) [are subject to the penalty
17 provisions of section 320 of the act of May 17, 1921 (P.L.682,
18 No.284), known as The Insurance Company Law of 1921] shall be
19 assessed a civil penalty of \$500 for each day of noncompliance,
20 which moneys shall be deposited into the Insurance Fraud
21 Prevention Trust Fund. Insurers that do not make a good faith
22 attempt to file an antifraud plan which complies with section
23 1812 (relating to content of plans) shall also be subject to the
24 penalty provisions of section 320 of the act of May 17, 1921
25 (P.L.682, No.284), known as The Insurance Company Law of 1921,
26 provided that no penalty may be imposed for the first filing
27 made by an insurer under this subchapter. Insurers that fail to
28 follow the antifraud plan shall be subject to a civil penalty
29 for each violation, not to exceed \$10,000, at the discretion of
30 the commissioner after consideration of all relevant factors,

1 including the willfulness of any violation.

2 § 1960. Reinstatement of operating privilege or vehicle
3 registration.

4 [The] (a) General rule.--Except as provided in subsection
5 (b), the department shall charge a fee of \$25 or, if section
6 1379 (relating to suspension of registration upon sixth unpaid
7 parking violation in cities of the first class) or 1786(d)
8 (relating to required financial responsibility) applies, a fee
9 of \$50 to restore a person's operating privilege or the
10 registration of a vehicle following a suspension or revocation.

11 (b) Insurance fraud.--The department shall charge a fee of
12 \$150 to restore a person's operating privilege following a
13 suspension or revocation for insurance fraud.

14 § 3751. Reports by police.

15 (a) General rule.--Every police department that investigates
16 a vehicle accident for which a report must be made as required
17 in this subchapter and prepares a written report as a result of
18 an investigation either at the time and at the scene of the
19 accident or thereafter by interviewing the participants or
20 witnesses shall, within 15 days of the accident, forward an
21 initial written report of the accident to the department. If the
22 initial report is not complete, a supplemental report shall be
23 submitted at a later date.

24 (b) Furnishing copies of report.--

25 (1) [Police] Except as provided in subsection (c),
26 police departments shall, upon request, furnish a certified
27 copy of the full report of the police investigation of any
28 vehicle accident to any person involved in the accident, his
29 attorney or insurer, and to the Federal Government, branches
30 of the military service, Commonwealth agencies, and to

officials of political subdivisions and to agencies of other states and nations and their political subdivisions.

(2) Except as provided in paragraph (3), the cost of furnishing a copy of a report under this subsection shall not exceed \$15.

(3) In a city of the first class, the cost of furnishing a copy of a report under this subsection shall not exceed \$25.

(4) The copy of the report shall not be admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident.

(5) Police departments may refuse to furnish the complete copy of investigation of the vehicle accident whenever there are criminal charges pending against any persons involved in the vehicle accident unless the Pennsylvania Rules of Criminal Procedure require the production of the documents.

(c) Confidentiality.--

(1) Except as provided in paragraph (2), the following information in a written police report or traffic citation pertaining to a motor vehicle accident shall be confidential for a period of 60 days from the date on which the written report or citation was filed:

(i) the identity of a party who was involved in the accident;

(ii) the home address and telephone number of a party;

(iii) the employment address and telephone number of a party; and

(iv) other personal information pertaining to a

1 party.

2 (2) Paragraph (1) shall not apply to any of the
3 following:

4 (i) a party to the accident;

5 (ii) a legal representative of a party;

6 (iii) a licensed insurer of a party;

7 (iv) an insurer with whom a party has filed a claim
8 or otherwise applied for reimbursement in connection with
9 the accident;

10 (v) a person under contract with an insurer to
11 provide underwriting or claims information;

12 (vi) prosecutorial authorities;

13 (vii) radio and television stations licensed by the
14 Federal Communications Commission;

15 (viii) newspapers qualified to publish legal
16 notices;

17 (ix) free newspapers of general circulation; and

18 (x) victim services programs.

19 § 6328. Admissibility of department records.

20 [The] (a) General rule.--Except as provided in subsection
21 (b), the department may send to any authorized user by
22 electronic transmission any certification of record or abstract
23 of records maintained by the department. Permissible uses shall
24 include, but not be limited to, certifications of driving
25 records and motor vehicle records. The department may also
26 certify electronically any documents certified to it
27 electronically. Authorized users include State and local police,
28 district attorneys, employees of the department and the Office
29 of Attorney General and other persons or entities as determined
30 by the department and listed by notice in the Pennsylvania

Bulletin. In any proceeding before the courts or administrative bodies of this Commonwealth, documents certified by the department under this section and offered into evidence by an authorized user shall be admissible into evidence.

(b) Confidentiality.--

(1) Except as provided in paragraph (2), the following information in a written police report or traffic citation pertaining to a motor vehicle accident shall be confidential for a period of 60 days from the date on which the written report or citation was filed:

(i) the identity of a party who was involved in the accident;

(ii) the home address and telephone number of a party;

(iii) the employment address and telephone number of a party; and

(iv) other personal information pertaining to a party.

(2) Paragraph (1) shall not apply to any of the following:

(i) a party to the accident;

(ii) a legal representative of a party;

(iii) a licensed insurer of a party;

(iv) an insurer with whom a party has filed a claim or otherwise applied for reimbursement in connection with the accident;

(v) a person under contract with an insurer to provide underwriting or claims information;

(vi) prosecutorial authorities;

(vii) radio and television stations licensed by the

1 Federal Communications Commission;

2 (viii) newspapers qualified to publish legal
3 notices;

4 (ix) free newspapers of general circulation; and

5 (x) victim services programs.

6 Section 3. This act shall take effect in 60 days.