

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 427 Session of
2011

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

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 3, 2011

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," providing for antifraud plans; and
12 making a related repeal.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. The act of May 17, 1921 (P.L.682, No.284), known
16 as The Insurance Company Law of 1921, is amended by adding an
17 article to read:

18 ARTICLE XXVI

19 ANTIFRAUD PLANS

20 Section 2601. Definitions.

21 The following words and phrases when used in this article
22 shall have the meanings given to them in this section unless the
23 context clearly indicates otherwise:

1 "Commissioner." The Insurance Commissioner of the
2 Commonwealth.

3 "Comprehensive database system." A centralized organization
4 or entity designed to collect and disseminate insurance claims
5 information and data from and among its members or subscribers
6 for, but not limited to, the prevention and suppression of
7 fraud.

8 "Department." The Insurance Department of the Commonwealth.

9 "Insurance fraud." Malicious or intentional concealment,
10 distortion or fabrication of a material fact, knowing and
11 willful misrepresentation of a material fact or any activity
12 defined as an offense under 18 Pa.C.S. § 4117 (relating to
13 insurance fraud).

14 "Insurer." The term shall have the meaning set forth in
15 section 201-A of the act of May 17, 1921 (P.L.789, No.285),
16 known as The Insurance Department Act of 1921, and it shall also
17 include any insurer licensed to do business in this
18 Commonwealth.

19 Section 2602. Filing of plans.

20 Each insurer licensed to do business in this Commonwealth
21 shall institute an insurance antifraud plan. The antifraud plan
22 of insurers licensed on the effective date of this article shall
23 be filed with the department on or before December 31, 2011. All
24 insurers licensed after the effective date of this article shall
25 file within six months of licensure. All changes to the
26 antifraud plan shall be filed with the department within 30 days
27 after it has been modified.

28 Section 2603. Content of plan.

29 The antifraud plans of each insurer shall establish specific
30 procedures:

1 (1) To prevent insurance fraud, including internal fraud
2 involving employees or company representatives, fraud
3 resulting from misrepresentation on applications for
4 insurance coverage and claims fraud.

5 (2) To review claims in order to detect evidence of
6 possible insurance fraud and to investigate claims where
7 fraud is suspected.

8 (3) To report fraud to appropriate law enforcement
9 agencies and to cooperate with such agencies in their
10 prosecution of fraud cases.

11 (4) To undertake civil actions against persons who have
12 engaged in fraudulent activities.

13 (5) To report fraud-related data to a comprehensive
14 database system.

15 (6) To ensure that costs incurred as a result of
16 insurance fraud are not included in any rate base affecting
17 the premiums charged by insurers.

18 Section 2604. Review by commissioner.

19 Antifraud plans shall be filed with the department. If, after
20 the review, the commissioner finds that the antifraud plan does
21 not comply with the provisions of this article, the antifraud
22 plan may be disapproved. Notice of disapproval shall include a
23 statement of the specific reasons for such disapproval. Any plan
24 disapproved by the commissioner must be refiled within 60 days
25 of the date of the notice of disapproval. The commissioner shall
26 audit insurers to ensure compliance with antifraud plans as a
27 part of the examinations performed in accordance with the act of
28 May 17, 1921 (P.L.789, No.285), known as The Insurance
29 Department Act of 1921.

30 Section 2605. Report on antifraud activities.

1 All insurers shall annually provide to the department a
2 summary report on actions taken under the plan to prevent and
3 combat insurance fraud, including, but not limited to, measures
4 taken to protect and ensure the integrity of electronic data
5 processing-generated data and manually compiled data,
6 statistical data on the amount of resources committed to
7 combating fraud and the amount of fraud identified and recovered
8 during the reporting period. Insurance fraud referrals made by
9 an insurer shall be issued in accordance with the insurer's
10 antifraud plan.

11 Section 2606. Penalties.

12 Insurers that fail to file timely antifraud plans as required
13 by this article shall be assessed a civil penalty of \$500 per
14 day of noncompliance, which moneys shall be deposited into the
15 Insurance Fraud Prevention Trust Fund. Insurers that do not make
16 a good faith attempt to file an antifraud plan which complies
17 with this article shall also be subject to the penalty
18 provisions of section 320, except that no penalty may be imposed
19 for the first filing made by an insurer under this article.

20 Insurers that fail to follow the antifraud plan shall be subject
21 to a civil penalty not to exceed \$10,000 for each violation at
22 the discretion of the commissioner after consideration of all
23 relevant factors, including the willfulness of any violation.

24 Section 2607. Confidentiality of plans and reports.

25 The antifraud plans and reports which insurers file with the
26 department and any reports or materials related to such reports
27 are not public records and shall not be subject to public
28 inspection.

29 Section 2608. Reporting of insurance fraud.

30 The following shall apply:

1 (1) Every insurer licensed to do business in this
2 Commonwealth, and its employees, insurance producers, brokers
3 and public adjusters, or public adjuster solicitors, who has
4 a reasonable good faith cause to believe that insurance fraud
5 has occurred shall refer suspected insurance fraud to the
6 appropriate law enforcement authorities. All reports of
7 insurance fraud to law enforcement authorities shall be made
8 in the form and manner jointly approved by the department and
9 the Attorney General.

10 (2) Where insurance fraud involves insurance producers,
11 brokers, public adjusters or public adjuster solicitors, a
12 copy of the report shall also be sent to the department.

13 (3) A copy of each referral sent to a law enforcement
14 authority under this article shall be sent by the law
15 enforcement authority to the Insurance Fraud Prevention
16 Authority for review for use in accordance with the duties
17 and responsibilities of the authority.

18 Section 2609. Civil immunity.

19 No person shall be subject to civil liability for libel,
20 violation of privacy or otherwise by virtue of the filing of
21 reports or furnishing of other information, in good faith and
22 without malice, required by this article.

23 Section 2610. Fraud referral training.

24 A comprehensive insurance fraud referral training program as
25 established by the Insurance Fraud Prevention Authority may be
26 made available to insurers.

27 Section 2. Article XII of the act of June 2, 1915 (P.L.736,
28 No.338), known as the Workers' Compensation Act, is repealed to
29 the extent that it is inconsistent with the provisions of
30 Article XXVI of the act.

1 Section 3. This act shall take effect immediately.