
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 849 Session of
1993

INTRODUCED BY SCANLON AND HOLL, MARCH 30, 1993

REFERRED TO BANKING AND INSURANCE, MARCH 30, 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.