

No. 1994-165

AN ACT

SB 849

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

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

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

§ 4117. Insurance fraud.

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

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

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

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

(4) Engages in unlicensed agent [or], broker *or unauthorized insurer* 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, *a self-insured* or the public.

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

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

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

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

(b) Additional offenses defined.—

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

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

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

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

(2) With respect to an insurance benefit or claim *covered by this section*, a health care provider may not compensate or give anything of value to a person to recommend or secure the provider's service to or employment by a patient or as a reward for having made a recommendation resulting in the provider's service to or employment by a patient; except that the provider may pay the reasonable cost of advertising or written communication as permitted by rules of professional conduct. Upon a conviction of an offense provided for by this paragraph, the prosecutor shall certify such conviction to the appropriate licensing board in the Department of State which shall suspend or revoke the health care provider's license.

(3) A lawyer or health care provider may not compensate or give anything of value to a person for providing names, addresses, telephone numbers or other identifying information of individuals seeking or receiving medical or rehabilitative care for accident, sickness or disease, except to the extent a referral and receipt of compensation is permitted

under applicable professional rules of conduct. A person may not knowingly transmit such referral information to a lawyer or health care professional for the purpose of receiving compensation or anything of value. Attempts to circumvent this paragraph through use of any other person, including, but not limited to, employees, agents or servants, shall also be prohibited.

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

(c) Electronic claims submission.—If [an insurance] a claim is made by means of computer billing tapes or other electronic means, it shall be a rebuttable presumption that the person knowingly made the claim if the person has advised the insurer in writing that claims will be submitted by use of computer billing tapes or other electronic means.

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

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

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

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

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

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

(h) Criminal action.—

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

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

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

(j) Violations, penalties, etc.—

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

(2) Nothing in this subsection shall be construed to prohibit a prosecuting authority and the person accused of violating this section from entering into a written agreement in which that person does not admit or deny the charges but consents to payment of the civil penalty. A consent agreement may not be used in a subsequent civil or criminal proceeding, but notification thereof shall be made to the licensing authority if the person is licensed by a licensing authority of the Commonwealth so that the licensing authority may take appropriate administrative action. Penalties paid under this section shall be deposited into the Insurance Fraud Prevention Trust Fund created under the act of December 28, 1994 (P.L.1414, No.166), known as the Insurance Fraud Prevention Act.

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

(k) Insurance forms and verification of services.—

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

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

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

[(j)] (l) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

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

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

"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; and 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.

"Person." An individual, corporation, partnership, association, joint-stock company, trust or unincorporated organization. The term includes any individual, corporation, association, partnership, reciprocal exchange, interinsurer, 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.

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

“Statement.” Any oral or written presentation 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 property damages, bill for services, diagnosis, prescription, hospital or doctor records, X-ray, test result or computer-generated documents.

Section 2. This act shall take effect in 60 days.

APPROVED—The 28th day of December, A.D. 1994.

ROBERT P. CASEY