

House Bill 4682
Sponsor: Rep. Eric Bush
Committee: Insurance

Complete to 5-2-95

A SUMMARY OF HOUSE BILL 4682 AS INTRODUCED 3-30-95

The bill would add a new Chapter 45 to the Insurance Code dealing with insurance fraud. It would, among other things, define a "fraudulent insurance act" and provide penalties for such acts; specify what kinds of information could be exchanged between insurance companies and law enforcement and regulatory agencies and in what circumstances; and provide immunity from civil liability and criminal prosecution for activities related to investigating insurance fraud.

Fraudulent insurance act. Such acts would, generally speaking, consist of participation in false, incomplete, or misleading applications for insurance and false, incomplete, or misleading claims for benefits. A fraudulent insurance act would include, but not be limited to, acts or omissions committed by anyone who knowingly, or with an intent to injure, defraud, or deceive:

-- presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, reinsurer, broker, or an agent, any oral or written statement knowing that the statement contains false, incomplete, or misleading information concerning any fact material to an application for the issuance of an insurance policy.

-- prepares or assists, abets, solicits, or conspires with another to prepare or make, an oral or written statement intended to be presented to an insurer in connection with, or in support of, any application for an insurance policy, knowing that the statement contains false, incomplete, or misleading information material to the application.

-- presents or causes to be presented to an insurer any oral or written statement, including a computer-generated document as a part of, or in support of, a claim for payment or other benefit under an insurance policy, knowing the statement contains false, incomplete, or misleading information material to the claim.

-- assists, abets, solicits, or conspires with another to prepare or make any oral or written statement, including computer-generated documents, intended to be presented in connection with, or in support of, a claim for payment or other benefit under an insurance policy, knowing that the statement contains any false, incomplete, or misleading information material to the claim.

-- knowingly and wilfully assists, conspires with, or urges anyone to fraudulently violate the act or who knowingly and willfully benefits from the proceeds derived from the fraud due to that assistance, conspiracy, or urging.

Penalties. A person who committed a fraudulent act as described above would be:

- subject to a civil fine of \$25,000; and
- guilty of a felony punishable by imprisonment for not more than two years or a fine of not more than \$2,000, or both, and would be ordered to pay restitution.

If a court found a "practitioner" responsible for or guilty of a fraudulent insurance act, the court would have to notify the appropriate licensing authority in the state. The term "practitioner" would refer to a person licensed in the state to practice medicine and surgery, psychology, chiropractic, or law, or any other licensee of the state whose services are compensated, directly or indirectly, by insurance proceeds. The term would also apply to someone similarly licensed in other states and nations, and to the practitioner of any non-medical treatment rendered in accordance with a recognized religious method of healing.

The civil fine would be deposited in an Insurance Antifraud Fund that the bill would establish for the restricted purpose of Insurance Bureau expenditures. This would be a revolving fund and money remaining in the fund at the end of the fiscal year would remain in the fund and not revert to the general fund.

Exchange of Information. Certain information considered important relating to any suspected insurance fraud could be released to an "authorized agency" by an insurance company or to an insurance company by an authorized agent upon written request. (The term would refer, generally, to national, state, or local law enforcement and prosecuting agencies, and the Insurance Bureau and Department of State.) This information would include, but not be limited to, the following.

- insurance policy information relevant to an investigation, including any application for a policy;
- policy premium payment records that were available;
- history of previous claims by the insured;
- information relating to the investigation of suspected insurance fraud, including statements of any person, proofs of loss, and notice of loss.

An insurance company or its agents could notify an authorized agency when the company knew or reasonably believed it knew the identity of a person who it had reason to believe had committed a fraudulent insurance act or had knowledge of such an act that it reasonably believed had not been reported to an authorized agency. An insurer providing information in this way would have the right to request in writing information in the possession or control of the authorized agency relating to the same suspected fraudulent act. The authorized agency would be required to provide the requested information at the insurer's expense within 30 days of the request. (Also, an authorized agency provided with information by an insurance company could release or provide it to any other authorized agency.)

Except as otherwise provided by law, any information furnished under the bill would be privileged and would not be a public record. The evidence or information would not be subject to *subpoena duces tecum* (requiring the information to be produced) in a civil or criminal proceeding unless a court determined that the public interest and any ongoing investigation would not be jeopardized by issuing the subpoena. (The court would first have to notify an insurer, agent, and authorized agency that had an interest in the information and subsequent hearing.)

Immunities. A person acting without malice would not be subject to liability for filing a report or requesting or furnishing orally or in writing other information concerning suspected, anticipated, or completed insurance fraud if the reports or information were provided to or received from the Insurance Bureau; the National Association of Insurance Commissioners (NAIC); any federal, state, or governmental agency established to detect and prevent insurance fraud; as well as any other organization; and their agents, employees, or designees.

Except in a prosecution for perjury or insurance fraud, and in the absence of malice, an insurer (or an officer, employee, or agent of an insurer) or any private person who cooperates with, furnishes evidence, or provides or receives information regarding suspected insurance fraud to or from an authorized agency, the NAIC, or any organization, or who complies with an order issued by a court acting in response to a request by any of those entities to provide evidence or testimony, would not be subject to a criminal proceeding or a civil penalty with respect to any act that the person testified about or produced relevant matter about.

In the absence of malice, an insurer (or an officer, employee, or agent of an insurer) or any private person who cooperates with, furnishes evidence, or provides information regarding suspected insurance fraud to an authorized agency, the NAIC, or any organization, or who complies with an order issued by a court acting in response to a request by any of those entities to provide evidence or testimony, would not be subject to civil liability for libel, slander, or any other tort, and a civil cause of action of any nature would not exist against the person for filing a report, providing information, or otherwise cooperating with an investigation or examination of any of these entities.

An authorized agency, the NAIC, or any organization, and employees and officers of such entities, when acting without malice, would not be subject to civil liability for libel, slander, or any other tort, and a civil cause of action of any nature would not exist against the person for official activities or duties of the entity because of the publication of any report or bulletin related to the entity's official activities or duties.

The bill specifies that these provisions would not abrogate or modify in any way any common law or statutory privilege or immunity otherwise available to any person or entity.

MCL 500.4501 et al.