

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

400A0311

SENATE COMMERCE COMMITTEE

ENGROSSED NO. **SB81** - 1/17/97

Introduced by: The Committee on Commerce at the request of the Department of Commerce
and Regulation

1 FOR AN ACT ENTITLED, An Act to establish an insurance fraud unit within the Division of
2 Insurance to investigate and prosecute insurance fraud.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

- 5 (1) "Insurer," any person or entity transacting with or without a certificate of authority
6 issued by the director of insurance. The term also means health maintenance
7 organizations, legal service insurance corporations, prepaid limited health service
8 organizations, and dental and other similar health service plans; and
- 9 (2) "Statement," includes any application for insurance, notice, statement, proof of loss,
10 bill of lading, receipt for payment, invoice, account, estimate of property damages, bill
11 for services, diagnosis, prescription, hospital or medical records, X-rays, test result,
12 or other evidence of loss, injury, or expense, whether oral, written, or computer-
13 generated.

14 Section 2. For purposes of this Act, a person commits a fraudulent insurance act if the

1 person:

2 (1) Knowingly and with intent to defraud or deceive presents, causes to be presented, or
3 prepares with knowledge or belief that it will be presented to or by an insurer, or any
4 agent of an insurer, any statement as part of, in support of, or in denial of a claim for
5 payment or other benefit pursuant to an insurance policy knowing that the statement
6 contains any false, incomplete, or misleading information concerning any fact or thing
7 material to a claim;

8 (2) Assists, abets, solicits, or conspires with another to prepare or make any statement
9 that is intended to be presented to or by an insurer or person in connection with or in
10 support of any claim for payment or other benefit pursuant to an insurance policy
11 knowing that the statement contains any false, incomplete, or misleading information
12 concerning any fact or thing material to the claim;

13 (3) Makes any false or fraudulent representations as to the death or disability of a policy
14 or certificate holder in any statement or certificate for the purpose of fraudulently
15 obtaining money or benefit from an insurer;

16 (4) Knowingly and willfully transacts any contract, agreement, or instrument which
17 violates this section;

18 (5) Receives money for the purpose of purchasing insurance and converts the money to
19 the person's own benefit;

20 (6) Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds,
21 premiums, credits, or other property of an insurer or person engaged in the business
22 of insurance;

23 (7) Issues fake or counterfeit insurance policies, certificates of insurance, insurance
24 identification cards, or insurance binders;

25 (8) Knowingly and with intent to defraud or deceive makes any false entry of a material

1 fact in or pertaining to any document or statement filed with or required by the
2 Division of Insurance; or

3 (9) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts,
4 or destroys assets or records of an insurer or person engaged in the business of
5 insurance or attempts to remove, conceal, alter, divert, or destroy assets or records
6 of an insurer or person engaged in the business of insurance.

7 Any violation of this section for an amount of two hundred dollars or less shall be a Class 1
8 misdemeanor. Any violation of this section for an amount in excess of two hundred dollars is
9 a Class 4 felony. Any other violation of this section is a Class 1 misdemeanor.

10 Section 3. Any person, including the Division of Insurance, acting without malice or
11 fraudulent intent, is immune from civil liability for filing a report with or for furnishing any
12 information relating to suspected, anticipated, or completed fraudulent insurance acts to:

- 13 (1) The director of insurance;
- 14 (2) Any governmental agency established to detect and prevent insurance fraud;
- 15 (3) Law enforcement officials;
- 16 (4) The Department of Labor;
- 17 (5) Any insurer or insurance agent;
- 18 (6) The National Association of Insurance Commissioners; or
- 19 (7) Any nonprofit organization established to detect and prevent insurance fraud.

20 If a civil action is commenced against a person for damages related to the filing of a report
21 or the furnishing of information under this section and the court determines that the person is
22 immune from civil liability for acts or omissions in filing the report or furnishing the information,
23 the person filing the report or furnishing the information may recover costs or disbursements
24 under chapter 15-17 including reasonable attorney's fees.

25 This section does not apply to the furnishing or exchanging of information between or among

1 insurers relating to suspected fraudulent insurance acts. This section does not abrogate or
2 modify in any way any common law or statutory privilege or immunity.

3 Section 4. In order to investigate activities involving insurance fraud, the director of
4 insurance shall employ a sufficient staff to be known as the insurance fraud prevention unit which
5 shall include a minimum of one clerical employee, one investigator, and one attorney to be
6 employed by the director of the Division of Insurance.

7 Section 5. The insurance fraud prevention unit investigators shall investigate violations of this
8 Act and enforce any statutes which the director is given the power to enforce. The unit
9 investigators shall be qualified pursuant to the requirements of §§ 23-3-41, 23-3-42, and 23-3-44
10 and have all the powers and authority of law enforcement officers while performing duties
11 pursuant to this Act.

12 Section 6. The insurance fraud prevention unit shall:

- 13 (1) Initiate independent inquiries and conduct independent investigations if the division
14 has cause to believe that an act of insurance fraud has been or is currently being
15 committed;
- 16 (2) Review reports or complaints of alleged insurance fraud to determine whether such
17 reports require further investigation and to conduct such investigation;
- 18 (3) Conduct independent examinations of alleged fraudulent insurance acts and undertake
19 independent studies to determine the extent of fraudulent insurance acts; and
- 20 (4) Cooperate with federal, state, and local law enforcement, prosecuting attorneys, and
21 the attorney general in the investigation and prosecution of insurance fraud violations.

22 Section 7. The insurance fraud prevention unit shall prosecute fraudulent insurance acts
23 through criminal or civil proceedings. The unit, after consultation with the director and the
24 attorney general, shall refer cases of fraudulent insurance acts for prosecution to a special
25 assistant attorney general. The unit attorney may be appointed by the attorney general as a

1 special assistant attorney general for purposes of prosecuting cases of fraudulent insurance acts.
2 Any costs directly associated with the prosecution and attorney's fees for a special assistant
3 attorney general, if prosecuted by the unit attorney, shall be paid by the insurance fraud
4 prevention unit fund.

5 Section 8. If the insurance fraud prevention unit seeks evidence, documentation, or related
6 materials located outside this state pertinent to an investigation or examination, it may designate
7 representatives or deputies, including officials of the state where the matter is located, to secure
8 and inspect the evidence, documentation, or material on its behalf.

9 Section 9. The papers, documents, reports, and evidence of the Division of Insurance
10 regarding the subject of an investigation of insurance fraud are not subject to public inspection
11 for so long as the director deems reasonably necessary to complete the investigation or to protect
12 the person investigated from unwarranted injury or so long as the director deems it to be in the
13 public interest. Such papers, documents, reports, and evidence regarding the subject of an
14 investigation of insurance fraud are not subject to subpoena until they are opened for public
15 inspection by the division, unless the director consents, or until after notice to the division and
16 a hearing, the court determines the division would not be unnecessarily hindered by such
17 subpoena. An investigator is not subject to subpoena in civil actions concerning any matter of
18 which the investigator has knowledge regarding a pending insurance fraud investigation by the
19 division.

20 Section 10. On or before August first each year, each insurer holding a certificate of authority
21 to transact the business of insurance in this state shall pay a fee not to exceed two hundred fifty
22 dollars to the director to be remitted to the Division of Insurance to be deposited in a separate
23 account, entitled the insurance fraud prevention unit fund. The fees may be appropriated only to
24 carry out the purposes of this Act. The director shall establish the fee by rules promulgated
25 pursuant to chapter 1-26.

1 Section 11. A person who is found by a court of competent jurisdiction, pursuant to an action
2 under this section initiated by the director of insurance, to have committed a fraudulent insurance
3 act set forth in section 2 of this Act is subject to a civil penalty not to exceed five thousand
4 dollars for the first violation, ten thousand dollars for the second violation, and fifteen thousand
5 dollars for each subsequent violation. Civil penalties paid under this section shall be deposited
6 in the general fund. An action under this section may be in lieu of criminal prosecution under the
7 laws of this state and may not be commenced until after consultation with and approval by the
8 attorney general.

9 Section 12. Costs and expenses incurred in any investigation or other action arising out of
10 a violation under this Act may be sought in any judgment, court decree, or other final result. Any
11 recovered costs, except civil or criminal penalties, shall be deposited by the director in the
12 insurance fraud prevention unit fund. The court may make such additional orders or judgments
13 as may be necessary to restore to any person in interest any compensation which may have been
14 acquired by means of any act prohibited in section 2 of this Act. This section may not be
15 construed to prohibit the director and the alleged violator from entering into a written agreement
16 upon commencement of a civil action in which the alleged violator does not admit or deny the
17 charges but consents to payment of the civil penalty. A consent agreement may not be used in
18 a subsequent civil or criminal proceeding relating to any violation of this Act.

19 Section 13. The provisions of this Act do not:

- 20 (1) Preempt the authority or relieve the duty of any other law enforcement agency to
21 investigate, examine, and prosecute suspected violations of law;
- 22 (2) Prevent or prohibit a person from voluntarily disclosing any information concerning
23 insurance fraud to any law enforcement agency;
- 24 (3) Limit any of the powers granted elsewhere by the laws of this state to the director of
25 insurance or the Division of Insurance to investigate and examine possible violations

1 of law and to take appropriate action; or
2 (4) Limit any of the powers granted elsewhere by the laws of this state to the Department
3 of Labor to investigate and examine possible violations of law and to take appropriate
4 action.

1 **BILL HISTORY**

2 January 14 - First read in Senate and referred to Commerce. S.J. 27

3 January 16 - Scheduled for hearing.

4 January 16 - Passed as amended. S.J. 44