

AN ACT

ENTITLED, An Act to establish an insurance fraud unit within the Division of Insurance to investigate and prosecute insurance fraud.

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

Section 1. Terms used in this Act mean:

- (1) "Insurer," in addition to those persons defined under subdivision 58-1-2(12), any person or entity transacting insurance with or without a certificate of authority issued by the director of insurance. The term also means health maintenance organizations, legal service insurance corporations, prepaid limited health service organizations, dental and other similar health service plans, and, notwithstanding subdivision 58-1-3(1), fraternal benefit societies;
- (2) "Statement," includes any application for insurance, notice, statement, proof of loss, denial, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or medical records, X-rays, test results, or other evidence of loss, injury, or expense, whether oral, written, or computer-generated; and
- (3) "Designee," the Department of Commerce and Regulation, the attorney general, any state's attorney, any duly constituted criminal investigative department or agency of the State of South Dakota or of the United States, any county or municipal law enforcement agency having investigative jurisdiction, and any other person whose services are contracted for by the insurance fraud prevention unit.

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

- (1) Knowingly and with intent to defraud or deceive issues or possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

- (2) Is engaged in the business of insurance, whether authorized or unauthorized, receives money for the purpose of purchasing insurance and converts the money to the person's own benefit or for a purpose not intended or authorized by an insured or prospective insured;
- (3) Willfully embezzles, abstracts, steals, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance or of an insured or prospective insured;
- (4) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Division of Insurance;
- (5) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or other person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or other person engaged in the business of insurance;
- (6) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of a claim, in support of a claim, or in denial of a claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;
- (7) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit, or denial, pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim; or

- (8) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer.

Any violation of this section for an amount of five hundred dollars or less is a Class 1 misdemeanor. Any violation of this section for an amount in excess of five hundred dollars is a Class 4 felony. Any other violation of this section is a Class 1 misdemeanor.

Section 3. The insurance fraud prevention unit through its investigator or attorney may do the following:

- (1) The investigator or attorney may initiate and conduct independent investigations if the unit has cause to believe that a fraudulent insurance act has been or may be committed;
- (2) The investigator or attorney may review reports or complaints of alleged fraudulent insurance acts to determine whether such reports require further investigation and to conduct such investigation;
- (3) The investigator or attorney may undertake independent studies to determine the extent of fraudulent insurance acts;
- (4) The investigator or attorney may promote awareness of insurance fraud through educational seminars and other education programs for the insurance industry and the general public;
- (5) The attorney, subject to applicable criminal or civil law and procedure, may prosecute fraudulent insurance acts on behalf of the state through criminal and civil proceedings; and
- (6) The investigator or attorney may cooperate with federal, state, and local law enforcement, prosecuting attorneys, and the attorney general in the investigation and prosecution of fraudulent insurance acts.

Section 4. In order to investigate and prosecute activities involving fraudulent insurance acts, the director of insurance shall employ a sufficient staff to be known as the insurance fraud prevention unit

which shall include a minimum of one clerical employee, one investigator, and one attorney.

Section 5. The insurance fraud prevention unit may prosecute fraudulent insurance acts through criminal or civil proceedings. The attorney general may appoint the insurance fraud prevention unit attorney as an assistant attorney general for purposes of prosecuting cases of fraudulent insurance acts. The unit attorney may have all the powers attributed to the insurance fraud prevention unit in section 3 of this Act. Prosecution may not proceed unless the director and the attorney general are consulted and give their written approval. The unit attorney, after consultation with and approval by the director and the attorney general, may refer or request assistance from other persons delineated in subdivision (3) of section 1 of this Act for the prosecution of fraudulent acts. All costs associated with the prosecution of fraudulent insurance acts, including those incurred by designees assisting or acting on behalf of the insurance fraud prevention unit, may be paid by the insurance fraud prevention unit fund.

Section 6. The insurance fraud prevention unit investigators may investigate violations of this Act. The unit investigators shall be qualified pursuant to the requirements of §§ 23-3-41, 23-3-42, and 23-3-44 and have all the powers and authority of law enforcement officers while performing duties pursuant to this Act. The insurance fraud prevention unit, after consultation with and written approval by the director and the attorney general, may refer or request assistance from persons delineated in subdivision (3) of section 1 of this Act for the investigation of fraudulent insurance acts. All costs associated with the investigation of fraudulent insurance acts, including those incurred by designees assisting or acting on behalf of the insurance fraud prevention unit, may be paid by the insurance fraud prevention unit fund.

Section 7. If the insurance fraud prevention unit or its designees initiate civil action against any person and that person is found by a court of competent jurisdiction to have committed a fraudulent insurance act as set forth in section 2 of this Act, that person is subject to a civil penalty not to exceed five thousand dollars for the first violation, ten thousand dollars for the second violation, and fifteen

thousand dollars for each subsequent violation. Civil penalties paid under this section shall be deposited in the insurance fraud prevention unit fund. An action under this section may be in lieu of criminal prosecution under the laws of this state and may not be commenced until after consultation with and written approval by the director and the attorney general.

Section 8. Any costs associated with the administration and operation of the insurance fraud prevention unit, including salaries and the costs set forth in sections 5 and 6 of this Act, shall be paid from the insurance fraud prevention unit fund. All disbursements from the insurance fraud prevention unit fund shall be continuously appropriated.

Section 9. Costs and expenses incurred in any investigation or other action arising out of a violation under this Act may be sought in any judgment or court decree. Any recovered costs, except civil or criminal penalties, shall be deposited by the unit or its designees in the insurance fraud prevention unit fund. The court may make such additional orders or judgments as may be necessary to restore to any person in interest any compensation which may have been acquired by means of any act prohibited in section 2 of this Act.

Section 10. Notwithstanding any other section of this Act, the unit or its designees, and a person alleged to have committed a fraudulent insurance act as set forth in section 2, are not prohibited from entering into a written agreement upon commencement of a civil action in which the person alleged to have committed a fraudulent insurance act does not admit or deny the charges but consents to payment of the civil penalty.

Section 11. For purposes of investigating and prosecuting insurance fraud, the insurance fraud prevention unit is subject to the provisions of this Act and the procedures set forth in Title 15 or Title 23A if applicable and if not in conflict with this Act.

Section 12. All investigative records and files of the insurance fraud prevention unit are confidential. The investigative records of the insurance fraud prevention unit may not be released except pursuant to a court order. An investigator is not subject to subpoena in civil actions

concerning any matter of which the investigator has knowledge regarding a pending insurance fraud investigation by the division, unless so ordered by the court.

Section 13. Any person acting in good faith is immune from civil liability for filing a report with or for furnishing any information relating to suspected, anticipated, or completed fraudulent insurance acts to:

- (1) The Department of Commerce and Regulation and the director of insurance;
- (2) Any governmental agency established to detect and prevent fraud;
- (3) Law enforcement officials;
- (4) The Department of Labor;
- (5) Any insurer or insurance agent;
- (6) The National Association of Insurance Commissioners; and
- (7) Any nonprofit organization established to detect and prevent insurance fraud, if the organization is approved by the director pursuant to rules promulgated by the director under chapter 1-26 setting forth the standards, criteria, and procedures necessary to obtain approval.

If a civil action is commenced against a person for damages related to the filing of a report or the furnishing of information under this section and the court determines that the person acted in good faith in filing the report or furnishing the information, the person filing the report or furnishing the information may recover costs or disbursements under chapter 15-17, including reasonable attorney's fees.

If the trier of fact concludes that the person filing the report or furnishing the information was not acting in good faith, the person filing a civil action may recover costs or disbursements under chapter 15-17, including reasonable attorney's fees.

This section does not abrogate or modify in any way any common law or statutory privilege or immunity.

Section 14. The Division of Insurance shall assess each insurer holding a certificate of authority to transact the business of insurance in this state a fee of two hundred fifty dollars to be remitted and payable to the Division of Insurance to be deposited in a separate account, entitled the insurance fraud prevention unit fund. The Division of Insurance may not make an assessment until the fund falls below one hundred thousand dollars. If the fund falls below one hundred thousand dollars, the Division of Insurance shall notify each insurer of its payment obligation. Upon receipt of the notice of assessment from the Division of Insurance each insurer shall immediately make a two hundred fifty dollar payment to the fund. Failure of an insurer to submit full payment of the assessment to the division within twenty days of receipt of the notice of assessment, unless good cause is shown, may be grounds for administrative action to be taken by the division against an insurer.

Section 15. The provisions of this Act do not:

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

Section 16. The Division of Insurance shall annually report to the Legislature concerning the activities of the insurance fraud prevention unit including the number and type of cases investigated, the outcome of such investigations, and costs and expenditures incurred during such investigations.

Section 17. Each authorized insurer shall, every three years after the effective date of this Act, reevaluate its rates based upon the impact that fraud prevention has had upon its rates, considering

the impact of this Act and the impact of any fraud prevention units of the insurer or other fraud prevention organization and appropriate accumulated data and, if justified by the insurer's actuary, reduce its rates.

Section 18. That § 58-33-37 be amended to read as follows:

58-33-37. Any person who knowingly makes any false or fraudulent statement or representation with reference to any application for insurance is guilty of a Class 1 misdemeanor. Any person who knowingly presents or causes to be presented a false or fraudulent claim for the purpose of obtaining any money or benefit, or who submits any proof in support of such a claim for the payment of a loss upon a contract of insurance, or who prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, is guilty of a Class 1 misdemeanor if such claim is for an amount of five hundred dollars or less, and is guilty of a Class 4 felony if such claim exceeds five hundred dollars.

An Act to establish an insurance fraud unit within the Division of Insurance to investigate and prosecute insurance fraud.

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I certify that the attached Act originated in the

SENATE as Bill No. 75

\_\_\_\_\_  
Secretary of the Senate

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\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 75  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_\_ day of \_\_\_\_\_ ,

19\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ , A.D., 19\_\_\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_ , 19\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State