

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0535

SENATE ENGROSSED NO. **SB75** - 2/11/99

Introduced by: Senators Daugaard, Halverson, Olson, and Shoener and Representatives Roe, Fischer-Clemens, Michels, and Peterson

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," in addition to those persons defined under subdivision 58-1-2(12), any
6 person or entity transacting insurance with or without a certificate of authority issued
7 by the director of insurance. The term also means health maintenance organizations,
8 legal service insurance corporations, prepaid limited health service organizations,
9 dental and other similar health service plans, and, notwithstanding subdivision 58-1-
10 3(1), fraternal benefit societies;

11 (2) "Statement," includes any application for insurance, notice, statement, proof of loss,
12 denial, bill of lading, receipt for payment, invoice, account, estimate of property
13 damages, bill for services, diagnosis, prescription, hospital or medical records, X-rays,
14 test results, or other evidence of loss, injury, or expense, whether oral, written, or
15 computer-generated; and

16 (3) "Designee," the Department of Commerce and Regulation, the attorney general, any

1 state's attorney, any duly constituted criminal investigative department or agency of
2 the State of South Dakota or of the United States, any county or municipal law
3 enforcement agency having investigative jurisdiction, and any other person whose
4 services are contracted for by the insurance fraud prevention unit.

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

- 7 (1) Knowingly and with intent to defraud or deceive issues or possesses fake or
8 counterfeit insurance policies, certificates of insurance, insurance identification cards,
9 or insurance binders;
- 10 (2) Is engaged in the business of insurance, whether authorized or unauthorized, receives
11 money for the purpose of purchasing insurance and converts the money to the
12 person's own benefit or for a purpose not intended or authorized by an insured or
13 prospective insured;
- 14 (3) Willfully embezzles, abstracts, steals, misappropriates, or converts money, funds,
15 premiums, credits, or other property of an insurer or person engaged in the business
16 of insurance or of an insured or prospective insured;
- 17 (4) Knowingly and with intent to defraud or deceive makes any false entry of a material
18 fact in or pertaining to any document or statement filed with or required by the
19 Division of Insurance;
- 20 (5) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts,
21 or destroys assets or records of an insurer or other person engaged in the business of
22 insurance or attempts to remove, conceal, alter, divert, or destroy assets or records
23 of an insurer or other person engaged in the business of insurance;
- 24 (6) Knowingly and with intent to defraud or deceive presents, causes to be presented, or
25 prepares with knowledge or belief that it will be presented to or by an insurer, or any

1 agent of an insurer, any statement as part of a claim, in support of a claim, or in denial
2 of a claim for payment or other benefit pursuant to an insurance policy knowing that
3 the statement contains any false, incomplete, or misleading information concerning
4 any fact or thing material to a claim;

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

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

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

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

18 (1) The investigator or attorney may initiate and conduct independent investigations if the
19 unit has cause to believe that a fraudulent insurance act has been or may be
20 committed;

21 (2) The investigator or attorney may review reports or complaints of alleged fraudulent
22 insurance acts to determine whether such reports require further investigation and to
23 conduct such investigation;

24 (3) The investigator or attorney may undertake independent studies to determine the
25 extent of fraudulent insurance acts;

1 (4) The investigator or attorney may promote awareness of insurance fraud through
2 educational seminars and other education programs for the insurance industry and the
3 general public;

4 (5) The attorney, subject to applicable criminal or civil law and procedure, may prosecute
5 fraudulent insurance acts on behalf of the state through criminal and civil proceedings;
6 and

7 (6) The investigator or attorney may cooperate with federal, state, and local law
8 enforcement, prosecuting attorneys, and the attorney general in the investigation and
9 prosecution of fraudulent insurance acts.

10 Section 4. In order to investigate and prosecute activities involving fraudulent insurance acts,
11 the director of insurance shall employ a sufficient staff to be known as the insurance fraud
12 prevention unit which shall include a minimum of one clerical employee, one investigator, and
13 one attorney.

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

25 Section 6. The insurance fraud prevention unit investigators may investigate violations of this

1 Act. The unit investigators shall be qualified pursuant to the requirements of §§ 23-3-41, 23-3-
2 42, and 23-3-44 and have all the powers and authority of law enforcement officers while
3 performing duties pursuant to this Act. The insurance fraud prevention unit, after consultation
4 with and written approval by the director and the attorney general, may refer or request
5 assistance from persons delineated in subdivision (3) of section 1 of this Act for the investigation
6 of fraudulent insurance acts. All costs associated with the investigation of fraudulent insurance
7 acts, including those incurred by designees assisting or acting on behalf of the insurance fraud
8 prevention unit, may be paid by the insurance fraud prevention unit fund.

9 Section 7. If the insurance fraud prevention unit or its designees initiate civil action against
10 any person and that person is found by a court of competent jurisdiction to have committed a
11 fraudulent insurance act as set forth in section 2 of this Act, that person is subject to a civil
12 penalty not to exceed five thousand dollars for the first violation, ten thousand dollars for the
13 second violation, and fifteen thousand dollars for each subsequent violation. Civil penalties paid
14 under this section shall be deposited in the insurance fraud prevention unit fund. An action under
15 this section may be in lieu of criminal prosecution under the laws of this state and may not be
16 commenced until after consultation with and written approval by the director and the attorney
17 general.

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

22 Section 9. Costs and expenses incurred in any investigation or other action arising out of a
23 violation under this Act may be sought in any judgment or court decree. Any recovered costs,
24 except civil or criminal penalties, shall be deposited by the unit or its designees in the insurance
25 fraud prevention unit fund. The court may make such additional orders or judgments as may be

1 necessary to restore to any person in interest any compensation which may have been acquired
2 by means of any act prohibited in section 2 of this Act.

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

8 Section 11. For purposes of investigating and prosecuting insurance fraud, the insurance
9 fraud prevention unit is subject to the provisions of this Act and the procedures set forth in Title
10 15 or Title 23A if applicable and if not in conflict with this Act.

11 Section 12. All investigative records and files of the insurance fraud prevention unit are
12 confidential. The investigative records of the insurance fraud prevention unit may not be released
13 except pursuant to a court order. An investigator is not subject to subpoena in civil actions
14 concerning any matter of which the investigator has knowledge regarding a pending insurance
15 fraud investigation by the division, unless so ordered by the court.

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

- 19 (1) The Department of Commerce and Regulation and the director of insurance;
- 20 (2) Any governmental agency established to detect and prevent fraud;
- 21 (3) Law enforcement officials;
- 22 (4) The Department of Labor;
- 23 (5) Any insurer or insurance agent;
- 24 (6) The National Association of Insurance Commissioners; and
- 25 (7) Any nonprofit organization established to detect and prevent insurance fraud, if the

1 organization is approved by the director pursuant to rules promulgated by the director
2 under chapter 1-26 setting forth the standards, criteria, and procedures necessary to
3 obtain approval.

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

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

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

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

25 Section 15. The provisions of this Act do not:

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

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

15 Section 17. Each authorized insurer shall, every three years after the effective date of this
16 Act, reevaluate its rates based upon the impact that fraud prevention has had upon its rates,
17 considering the impact of this Act and the impact of any fraud prevention units of the insurer or
18 other fraud prevention organization and appropriate accumulated data and, if justified by the
19 insurer's actuary, reduce its rates.

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

21 58-33-37. Any person who knowingly makes any false or fraudulent statement or
22 representation with reference to any application for insurance ~~shall be~~ is guilty of a Class 1
23 misdemeanor. Any person who knowingly presents or causes to be presented a false or
24 fraudulent claim for the purpose of obtaining any money or benefit, or who submits any proof
25 in support of such a claim for the payment of a loss upon a contract of insurance, or who

1 prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss,
2 or other document or writing, with intent that the same may be presented or used in support of
3 such a claim, ~~shall be~~ is guilty of a Class 1 misdemeanor if such claim is for an amount of ~~two~~
4 five hundred dollars or less, and ~~shall be~~ is guilty of a Class 4 felony if such claim exceeds ~~two~~
5 five hundred dollars.

1 **BILL HISTORY**

2 1/20/99 First read in Senate and referred to Commerce. S.J. 130

3 1/26/99 Scheduled for Committee hearing on this date.

4 1/28/99 Scheduled for Committee hearing on this date.

5 1/28/99 Commerce Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 249

6 2/2/99 Motion to Amend, Passed. S.J. 303

7 2/2/99 Senate Do Pass Amended, Failed, AYES 21, NAYS 12. S.J. 303

8 2/2/99 Intent to reconsider. S.J. 303

9 2/3/99 Senate Reconsidered, AYES 30, NAYS 5. S.J. 318

10 2/3/99 Senate Placed on Calendar. S.J. 318

11 2/4/99 Senate Deferred to another day. S.J. 337

12 2/8/99 Senate Deferred to another day. S.J. 370

13 2/10/99 Senate Do Pass Amended, Passed, AYES 29, NAYS 6. S.J. 428