

# Model fraud bureau act

## Summary of provisions

[Background](#)

[Purpose](#)

## Rationale of provisions

[Purpose of act](#)

[Definitions](#)

[Duties and powers](#)

[Funding](#)

[Cooperation with fraud bureau](#)

[Privileges and immunity](#)

[Refusal to cooperate](#)

[Other law enforcement authority](#)

## Model language

[Section 1. Purpose of Act](#)

[Section 2. Definitions](#)

[Section 3. Division of Insurance Fraud: duties and powers](#)

[Section 4. Referral of investigations to prosecutorial authority](#)

[Section 5. Privileges and immunities of persons cooperating with or employed by the Division of Insurance Fraud](#)

[Section 6. Refusal to cooperate with an investigation](#)

[Section 7. Other law enforcement authority](#)

## Background

The effort to combat insurance fraud must be a partnership among consumers, the insurance industry and government. The economic impact is substantial and an effective partnership will help alleviate fraud's effect on rates charged consumers and on claims paid by insurance companies.

In the past several years, 28 states have created insurance fraud bureaus by statute to investigate suspected fraudulent activity and to bring to justice violators of existing insurance fraud laws. In some cases, these bureaus have jurisdiction over all lines of

insurance; in other cases, the bureaus have jurisdiction over specific areas only, such as workers compensation or health insurance fraud.

Of the 24 states that have bureaus looking at all lines of insurance, most are placed within the state's department of insurance; however, several states decided to house the bureau elsewhere. Fraud units in South Carolina, Nevada and Pennsylvania are within the attorney general's office; Massachusetts' unit is independent of any government agency or department. Staff size usually varies with the problem in the state; in New Jersey and Florida, where insurance fraud is seen as high, bureaus have staff to meet those needs with more than 100 investigators. States where insurance fraud is not considered as much of a problem have smaller bureaus. Staff size should be commensurate to the level of insurance fraud in each state.

## **Purpose**

This model legislation establishes an insurance fraud bureau and defines its duties. It also suggests ways to fund the operations of the bureau and prosecution efforts. While the Coalition recognizes the need for fraud bureaus in those states that clearly have an insurance fraud problem, the Coalition encourages states to have a framework of insurance fraud laws in place prior to establishing a fraud bureau.

## **Rationale of the Provisions**

### **Section 1. Purpose of Act**

It is the intent of the act to aggressively confront all forms of insurance fraud within the state by establishing a Division of Insurance Fraud within the Department of Insurance.

A fraud bureau facilitates the detection of insurance fraud and reduces both the occurrence of fraud and the amount of premium dollars used to pay fraudulent claims. The Coalition recommends, given the background and the responsibility of insurance regulators, that the department of insurance is the most logical place to house a fraud bureau.. However, it should be noted that several states have placed its bureau in the attorney general's office. Placement decision should be based on where it would have the greatest impact on reducing fraud.

### **Section 2. Definitions**

The section defines relevant terms such as "insurance policy" and "insurance transaction" in a way that covers all forms of fraud. The legislation offers two definitions of insurance fraud. One recommended alternative defines insurance fraud broadly to include claims and application fraud, as well as fraud committed by persons who are, or are purported to be, in the insurance industry. This definition tracks the insurance fraud definition of the Coalition's Model Insurance Fraud Act. The second alternative is the existing definition of insurance fraud in a state's insurance code.

There is evidence to indicate that a fraud bureau may not function effectively when the definition of insurance fraud is too narrow. In addition, the Coalition's broadly defined alternative protects both consumers and insurers. Therefore, it is offered for states to consider adopting even though a definition may already exist.

### **Section 3. Division of Insurance Fraud: duties and powers**

This section defines the authority of the "division of insurance fraud." The division or bureau would initiate and conduct investigations; respond to complaints from law enforcement, governments and the public; review fraud reports from authorized insurers; and report incidents of alleged fraud to the appropriate prosecutorial office. Information supplied to the bureau remains confidential and not subject to public inspection or any state's freedom of information law.

State laws applicable to law enforcement officers are applied to the bureau's investigators. The bureau has the authority to administer oaths, subpoena witnesses and compel attendance at any hearing. Investigators also have the authority to make arrests.

Fraud bureau investigators should have powers and protection similar to police and other law enforcement officials if they are to be effective crime fighters. Having police status will give investigators greater access to vital information from other law enforcement agencies. Information about investigations must remain confidential in order to protect the privacy of both the person investigated and the person furnishing the material.

### **Section 4. Funding**

The Coalition's white paper discussing alternative funding mechanisms for fraud bureaus is attached to the model.

### **Section 5. Notice to and cooperation with the Division of Insurance Fraud**

This section requires anyone who has knowledge of fraudulent activity to notify the fraud bureau and, in cases of potential claims fraud, gives the bureau a reasonable time to investigate and respond. The bill allows the establishment of a voluntary fund to reward persons not connected with the insurance industry who provide information or evidence that leads to the arrest and conviction of any person responsible for insurance fraud.

This section prevents insurers from simply paying fraudulent claims and then passing the costs on in the form of higher premiums. Under this provision, suspected cases must be reported and insurers must cooperate with any subsequent investigation. As a further incentive, insurers are given limited protection from actions by impatient claimants because this is one established indicator of a potentially fraudulent claim. A time limit allows insurers and the fraud bureau to investigate claims adequately. Monetary incentives encourage cooperation by private citizens who suspect fraud.

### **Section 6. Privileges and immunity**

The bill grants broad immunity to any person cooperating with, or employed by, the fraud bureau in supplying information about suspected fraudulent activity if the information is provided without malice. This protection ensures individuals, especially those employed by insurers for the purpose of investigating suspected fraud, can collect, share and present information to the fraud bureau and under the proper circumstances be protected from civil liability.

The Coalition believes it is essential to have broad civil immunity to ensure that information concerning suspected insurance fraud is given to the bureau, and to ensure the fullest cooperation from the insurance industry. Civil immunity will alleviate fear of lawsuits for proper transferring of information on suspected insurance fraud, which has had a chilling effect in many cases. Also, many frauds, especially organized rings, are uncovered only when insurers discover the same claims are filed with multiple insurers, or the same names or addresses appear in many claims. This provision allows insurers to share information among themselves as long as the information is used solely for the detection, prevention and prosecution of fraud.

### **Section 7. Refusal to cooperate with an investigation**

This section would make it unlawful for anyone to resist an arrest authorized by this law or interfere with any investigation of this law.

## **Section 8. Other law enforcement authority**

The law would not pre-empt any other law enforcement authority of the state to investigate and prosecute alleged violations of the law.

The Coalition doesn't wish to discourage any other agency from investigating fraud.

## **Model language**

### **Section 1. Purpose of Act**

The purpose of this Act is to confront aggressively the problem of insurance fraud in the State of \_\_\_\_\_ by facilitating the detection of insurance fraud, reducing the occurrence of such fraud through administrative enforcement and deterrence, and reducing the amount of premium dollars used to pay for fraudulent claims. This Act establishes a Division of Insurance Fraud within the Department of Insurance.

### **Section 2. Definitions**

Actual Malice. "Actual Malice" means knowledge that information is false, or Reckless disregard of whether it is false.

Conceal. "Conceal" means to take affirmative action to prevent others from discovering information. Mere failure to disclose information does not constitute concealment. Action by the holder of a legal privilege, or one who has a reasonable belief that a privilege exists, to prevent discovery of privileged information does not constitute concealment.

Insurance fraud. "Insurance fraud" is an act committed or attempted by any Person who, knowingly and with intent to defraud, and for the purpose of depriving another of property or for pecuniary gain, commits participates in, or aids, abets, or conspires to commit or solicits another Person to commit, or permits its employees or its agents to commit any of the following acts:

(a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented by or on behalf of an insured, claimant or applicant to an Insurer, Insurance Professional or Premium Finance Company, in connection with an Insurance Transaction or Premium Finance Transaction, any information which contains false representations as to any material fact, or which Withholds or Conceals a material fact concerning any of the following:

- (1) The application for, rating of, or renewal of, any Insurance Policy;
  - (2) A claim for payment or benefit pursuant to any Insurance Policy;
  - (3) Payments made in accordance with the terms of any Insurance Policy;
  - (4) The application used in any Premium Finance Transaction;
- (b) Presents, causes to be presented, or prepares with the knowledge or belief that it will be presented, to or by an Insurer, Insurance Professional or a Premium Finance Company in connection with an Insurance Transaction or Premium Finance Transaction, any information which contains false representations as to any material fact, or which Withholds or Conceals a material fact, concerning any of the following:
- (1) The solicitation for sale of any Insurance Policy or purported Insurance Policy;
  - (2) An application for certificate of authority;
  - (3) The financial condition of any Insurer;
  - (4) The acquisition, formation, merger, affiliation or dissolution of any Insurer;
- (c) Solicits or accepts new or renewal insurance risks by or for an insolvent Insurer.
- (d) Removes the assets or record of assets, transactions and affairs or such material part thereof, from the home office or other place of business of the Insurer, or from the place of safekeeping of the Insurer, or destroys or sequesters the same from the Department of Insurance.
- (e) Diverts, misappropriates, converts or embezzles funds of an Insurer, an insured, claimant or applicant for insurance in connection with:
- (1) An Insurance Transaction;
  - (2) The conduct of business activities by an Insurer or Insurance Professional;
  - (3) The acquisition, formation, merger, affiliation or dissolution of any Insurer.

OR IN THE ALTERNATIVE:

C. Insurance Fraud shall have the meaning as defined by the Insurance Code Section ( ) and by any other applicable State Law affecting fraud.

Insurance Policy. "Insurance Policy" or "policy" means the written instrument in which are set forth the terms of any certificate of insurance, binder of coverage or contract of insurance (including a certificate, binder or contract issued by a state-assigned risk plan); benefit plan; nonprofit hospital service plan; motor club service plan; or surety bond, cash

bond or any other alternative to insurance authorized by a state's financial responsibility act.

Insurance Professional. "Insurance Professional" means sales agents, managing general agents, brokers, producers, adjusters and third party administrators.

Insurance Transaction. "Insurance Transaction" means a transaction by, between or among: (1) an Insurer or a Person who acts on behalf of an Insurer; and (2) an insured, claimant, applicant for insurance, public adjuster, Insurance Professional, Practitioner, or any Person who acts on behalf of any of the foregoing for the purpose of obtaining insurance or reinsurance, calculating insurance premiums, submitting a claim, negotiating or adjusting a claim, or otherwise obtaining insurance, self-insurance, or reinsurance or obtaining the benefits thereof or therefrom.

Insurer. "Insurer" means any Person purporting to engage in the business of insurance or authorized to do business in the state or subject to regulation by the state, who undertakes to indemnify another against loss, damage or liability arising from a contingent or unknown event. "Insurer" includes, but is not limited to, an insurance company; self-insurer; reinsurer; reciprocal exchange; interinsurer; risk retention group; Lloyd's insurer; fraternal benefit society; surety; medical service, dental, optometric or any other similar health service plan; and any other legal entity engaged or purportedly engaged in the business of insurance, including any Person or entity which falls within the definition of "Insurer" found within the \_\_\_\_\_ Insurance Code § \_\_\_\_.

Person. "Person" means a natural person, company, corporation, unincorporated association, partnership, professional corporation, and any other entity.

Practitioner. "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic or law or any other licensee of the state or Person required to be licensed in the state whose services are compensated either in whole or in part, directly or indirectly, by insurance proceeds, including but not limited to automotive repair shops, building contractors and insurance adjusters, or a licensee similarly licensed in other states and nations or the licensed practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.

Premium Finance Company. "Premium Finance Company" means a Person engaged or purported to engage in the business of advancing money, directly or indirectly, to an Insurer or producer at the request of an insured pursuant to the terms of a premium finance agreement, including but not limited to loan contracts, notes, agreements or obligations, wherein the insured has assigned the unearned premiums, accrued dividends, or loss payments as security for such advancement in payment of premiums on

Insurance Policies only, and does not include the financing of insurance premiums purchased in connection with the financing of goods and services.

Premium Finance Transaction. "Premium Finance Transaction" means a transaction by, between or among an insured, an agent or producer or other party claiming to act on behalf of an insured and a third-party Premium Finance Company, for the purposes of purportedly or actually advancing money directly or indirectly to an Insurer or producer at the request of an insured pursuant to the terms of a premium finance agreement, wherein the insured has assigned the unearned premiums, accrued dividends or loan payments as security for such advancement in payment of premiums on Insurance Policies only, and does not include the financing of insurance premiums purchased in connection with the financing of goods and services.

Withhold. "Withhold" means to fail to disclose facts or information which any law (other than this act) requires to be disclosed. Mere failure to disclose information does not constitute "withholding" if the one failing to disclose reasonably believes that there is no duty to disclose.

### **Section 3. Division of Insurance Fraud: duties and powers**

A. There is created within the Department of Insurance a Division of Insurance Fraud.

Drafting Note: Several states that have established insurance fraud units have placed them outside of the department of insurance. In Massachusetts, an independent fraud bureau was established and funded by the insurers in the state. South Carolina, Pennsylvania and Nevada have established fraud bureaus that were placed within the state offices of attorney general.

B. It shall be the duty of the Division of Insurance Fraud:

- 1) To initiate inquiries and conduct investigations when the Division has reason to believe that Insurance Fraud may have been or is being committed.
- 2) To respond to notifications or complaints of suspected Insurance Fraud generated by state and local police, other law enforcement authorities, governmental units, including the federal government, and any other Person.
- 3) To review notices and reports of Insurance Fraud submitted by authorized Insurers, their employees, and agents or producers, and to select those incidents of alleged fraud as, in its judgment, require further investigation and undertake such investigation.

4) To conduct independent examination of Insurance Fraud, conduct studies to determine the extent of Insurance Fraud, deceit, or intentional misrepresentation of any kind in the insurance process, and publish information and reports on such examinations or studies.

5) To report incidents of alleged Insurance Fraud disclosed by its investigations to appropriate prosecutorial authority, including but not limited to the Attorney General and to any other appropriate law enforcement, administrative, regulatory or licensing agency, and to assemble evidence, prepare charges, and otherwise assist any prosecutorial authority having jurisdiction.

C. The Division of Insurance Fraud is authorized to employ investigators. The general laws applicable to law enforcement officers of this state shall be applicable to such investigators. The powers of the Division shall include but shall not be limited to the following:

1) To administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the Division deems relevant or material to an inquiry concerning Insurance Fraud.

2) To make arrests for criminal violations established as a result of their investigations.

3) To execute arrest and search warrants for the same criminal violations.

D. Evidence, documentation, and related materials.

1) If the Division seeks evidence, documentation, and related materials pertinent to an investigation, and the matter is located outside of this State, the Division may designate representatives, including officials of the state where the matter is located, to secure the matter or inspect the matter on its behalf.

E. Confidentiality and immunity from subpoena.

1) Papers, records, documents, reports, materials or other evidence relative to the subject of an Insurance Fraud investigation shall remain confidential and shall not be subject to public inspection or disclosure unless and until such subject is prosecuted for Insurance Fraud pursuant to such investigation.

2) Papers, records, documents, reports, materials or other evidence containing individually identifiable information relating to an Insurance Fraud investigation collected or prepared by the Division of Insurance Fraud in anticipation of any civil or criminal proceeding shall be privileged, and shall not be subject to subpoena, discovery, or disclosure in any other civil action until such civil or criminal proceeding has been concluded.

3) Investigators employed by the Division of Insurance Fraud shall not be subject to subpoena in civil actions by any court in this state to testify concerning any matter of which they have knowledge pursuant to a pending or continuing Insurance Fraud investigation being conducted by the Division.

4) This section in no way abrogates or modifies statutory or common law privileges applicable to information gathered by the Division of Insurance Fraud under this Act nor does it authorize the Division of Insurance Fraud to make public insurance company records which are proprietary in nature.

F. The Division of Insurance Fraud shall maintain records and information in order to produce an annual report of its activities as may be prescribed by the Commissioner of Insurance.

#### **Section 4. Funding**

Drafting Note: The Coalition Against Insurance Fraud has identified several options for states to consider to fund insurance fraud bureaus. A white paper discussing those options is included at the end of this document.

#### **Section 5. Notice to and cooperation with the Division of Insurance Fraud**

A. Notice to the Division of Insurance Fraud.

1) Any Insurer or Insurance Professional that has reasonable belief that an act of Insurance Fraud will be, is being, or has been committed shall furnish and disclose the knowledge and information to the Division of Insurance Fraud, and cooperate fully with any investigation conducted by the Division of Insurance Fraud.

2) Any Person that has a reasonable belief that an act of Insurance Fraud will be, is being, or has been committed; or any Person who collects, reviews or analyzes information concerning insurance fraud may furnish and disclose any information in its possession concerning such act to the Division of Insurance Fraud or to an authorized representative of an Insurer that requests the information for the purpose of detecting, prosecuting or preventing Insurance Fraud.

3) If an Insurer has a reasonable or probable cause to believe that an Insurance Fraud has been committed in connection with an insurance claim, and has properly notified the Division of Insurance Fraud of its suspicions, such notification shall toll any applicable time period in any unfair claims practices statute or related regulation, or any action on

the claim against the Insurer to whom such claim has been presented for bad faith, until thirty days after determination by the Division of Insurance Fraud and notice to the Insurer that the Division will not recommend action on the claim.

4) The Division of Insurance Fraud, in cooperation with authorized Insurers and Insurance Professionals may establish a voluntary fund to reward persons not connected with the insurance industry who provide information or furnish evidence leading to the arrest and conviction of persons responsible for Insurance Fraud.

## **Section 6. Privileges and immunities of persons cooperating with or employed by the Division of Insurance Fraud**

A. No Person furnishing or disclosing to, or requesting information from the Division of Insurance Fraud or complying with an order issued by a court of competent jurisdiction to provide evidence or testimony regarding an act of suspected Insurance Fraud shall be subject to civil liability for libel, slander or any other cause of action arising from the furnishing, disclosing or requesting of such information unless the Person furnishing, disclosing or requesting such information acts in Actual Malice, commits perjury or commits Insurance Fraud as previously defined herein.

B. No Person employed by or authorized by an Insurer whose activities includes the investigation of or reporting of suspected Insurance Fraud who furnishes, discloses or requests information regarding an act of suspected Insurance Fraud to Persons employed by other Insurers or Insurer organizations acting in the same capacity shall be subject to civil liability for libel, slander or any other cause of action arising from the furnishing, disclosing or requesting of such information unless the Person furnishing, disclosing or requesting such information acts in Actual Malice, commits perjury or commits Insurance Fraud as previously defined herein.

C. No employee or agent of the Division of Insurance Fraud furnishing or disclosing to or requesting information from any Person regarding an act of suspected Insurance Fraud or by publication of any report or bulletin related to the official activities or duties of the Division of Insurance Fraud, subject to the Confidentiality provision of Section 3(E) of this Act, shall be subject to civil liability for libel, slander or any other cause of action arising from the furnishing, disclosing or requesting of such information unless the Person furnishing, disclosing or requesting such information acts in Actual Malice, commits perjury or commits Insurance Fraud as previously defined herein.

D. Any Person against whom any action is brought who is found to be immune from liability under this Section, shall be entitled to recover reasonable attorney's fees and

costs from the Person or party who brought the action. This section does not abrogate or modify any common law or statutory privilege or immunity heretofore enjoyed by any Person.

### **Section 7. Refusal to cooperate with an investigation**

It is unlawful under the Criminal Code Section \_\_\_\_\_ for any Person to knowingly or intentionally interfere with the enforcement of the provisions of this Act or investigations of suspected or actual violations of this Act.

### **Section 8. Other law enforcement authority**

Nothing in this Act shall:

- A. Pre-empt the authority of or relieve the duty of any other law enforcement agencies to investigate and prosecute alleged violations of law.
- B. Prevent or prohibit a person from voluntarily disclosing any information concerning insurance fraud to any law enforcement agency other than the Division of Insurance Fraud.
- C. Limit any of the powers granted elsewhere by the laws of this State to the Commissioner of Insurance or to the Department of Insurance to investigate alleged violations of law and to take appropriate action.