

Atlantic Corporate Center  
2317 Route 34, Suite 2B  
Manasquan, NJ 08726  
732-201-4133  
CHIEF EXECUTIVE OFFICER: Thomas B. Considine



PRESIDENT: Sen. Dan "Blade" Morrish, LA  
VICE PRESIDENT: Rep. Matt Lehman, IN  
TREASURER: Asm. Ken Cooley, CA  
SECRETARY: Asm. Kevin Cahill, NY

IMMEDIATE PAST PRESIDENTS:  
Sen. Jason Rapert, AR  
Sen. Travis Holdman, IN

For Immediate Release  
July 29, 2019  
Contact: Paul Penna  
(732) 201-4133

## **NCOIL AMENDS AND RE-ADOPTS INSURANCE FRAUD MODEL ACT**

*Modernizes NCOIL Model Law First Adopted in 1995*

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Manasquan, NJ – The NCOIL Financial Services and Multi-Lines Committee amended and re-adopted the Insurance Fraud Model Act at the recently concluded 2019 NCOIL Summer Meeting in Newport Beach, CA. The amendments were sponsored by Arkansas Senator Jason Rapert, NCOIL Immediate Past President.

"Insurance Fraud is a serious problem that cheats honest consumers" said Rapert. "As legislators, we need to be vigilant to protect consumers and industry from insurance fraud. There have been tremendous technological changes since this was first adopted in 1995. Updating the NCOIL Insurance Fraud Model Act is a logical way to do that."

Senator Rapert worked closely with the Coalition Against Insurance Fraud to update and modernize the NCOIL model, which was first adopted in 1995, and readopted periodically.

"The Coalition Against Insurance Fraud values our long-standing partnership with NCOIL and appreciates the work to amend this model" said Matthew Smith, Director of Government Affairs & General Counsel for the Coalition Against Insurance Fraud. "The Coalition worked tirelessly to update this very successful model for this century."

The model, which has been adopted in whole or part in 28 states is updated to provide increased authority for prosecutors; streamline the proof of intent to defraud and how the intent to defraud is identified; and eliminate multiple-proof requirements in many areas to allow for greater prosecution.

"I sponsored the fraud model in my state in 2012 as chair of the Louisiana Senate Insurance Committee" said Louisiana Senator Dan "Blade" Morrish, NCOIL President. "It has proven to be a useful tool to combat fraud and I look forward to the Louisiana legislature enacting the updates as soon as possible."

As insurance fraud moves internationally and multi-ring fraud accelerates the model allows for evidence of multi-state operations or fraud committed in another state to be used in the prosecution of insurance fraud in another state. The model also calls for – depending on individual state laws and federal bankruptcy laws – orders of restitution against people who commit fraud to be non-dischargeable in bankruptcy so that they cannot escape the restitution order.

"NCOIL has long been a leader in combating fraud" said Commissioner Tom Considine, NCOIL CEO. "There are multiple examples of our collaboration including NCOIL serving on the Coalition's board, to



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working to update this model and routinely hearing updates from Coalition members regularly at NCOIL meetings.”

Further, the model allows in civil actions the recovery of attorney’s fees, and on the insurance carrier side, the model allows for the rise of the independent contractor’s outsourcing third party’s that insurance companies are using to both protect those individuals under provisions of the model and if they are the ones committing fraud, the model allows them to be held liable. The model now includes fraud in-the-part vs. fraud in-the-whole meaning that under the prior version of the model the entire claim or act had to be fraudulent before the model applied. Now, if only a portion of the claim or act such as medical billing is fraudulent, the model applies. Also, there have been a lot of changes in the past 20 years with regard to medical services, so now terms such as healing arts and pharmacology are included in the model.

A copy of the model is below.

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## NATIONAL COUNCIL OF INSURANCE LEGISLATORS (NCOIL)

### INSURANCE FRAUD MODEL ACT

*\*Adopted by the NCOIL Executive Committee on July 28, 1995; amended on February 26, 1998; and readopted on November 16, 2001; November 19, 2004; and November 22, 2009.*

*Proposed Amendments sponsored by Senator Jason Rapert (AR) – NCOIL Immediate Past President. Adopted at the Financial Services & Multi-Lines Issues Committee on July 12<sup>th</sup>, 2019 and the Executive Committee on July 13<sup>th</sup>, 2019.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF \_\_\_\_\_

The legislature finds that insurance fraud is pervasive and expensive, costing consumers and the business community of this state millions of dollars each year. Each family ~~spends~~ incurs in excess of several hundreds of dollars ~~each year~~ annually in direct and indirect costs attributable to insurance fraud. Insurance fraud takes innocent lives through stated accidents, arsons and unnecessary medical procedures. Insurance fraud increases premiums, leaves consumers with fewer insurance options, and places businesses at risk and is a leading cause of insurance company insolvencies. Some forms of insurance fraud can also lead to the financial collapse of smaller insurance companies, and negatively impacts all insurers regardless of size. Insurance fraud reduces consumers’ ability to raise their standard of living and decreases the economic vitality of ourthis state.

Therefore, the legislature believes that the state of \_\_\_\_\_ must aggressively confront the problem of insurance fraud by facilitating the detection, reducing the occurrence through stricter enforcement and deterrence, requiring restitution and increasing the partnership among consumers, the



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insurance industry and the state in coordinating efforts to combat insurance fraud by enacting the following Act.

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## **Section 1. Definitions**

As used in this act, unless the context requires otherwise, the following terms have the meaning ascribed to them in this section.

**Actual Malice.** “Actual Malice” means knowledge that information is false, or “reckless” disregard of whether it is false.

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

**Insurance Policy.** “Insurance 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 this state’s financial responsibility act. Insurance Policy also is any other instruments authorized or regulated by the department of insurance.

**Insurance Professional.** “Insurance Professional” means sales agents, managing general agents, brokers, producers, adjusters, investigators, examiners, consultants, and third party administrators. An “Insurance Professional” may be a direct employee, independent contractor or in any other similar status of providing service to the insurance company.

**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



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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 §\_\_\_\_\_.

**Pattern or practice.** “Pattern or practice” means repeated, routine or generalized in nature, and not merely isolated or sporadic. Evidence of pattern or practice may include acts in this state or any other jurisdiction.

**Person.** “Person” means a natural person, company, corporation, unincorporated association, partnership, limited liability company, limited liability partnership, professional corporation, agency of government ~~round~~ any other entity.

**Practitioner.** “Practitioner” means a licensee of this state authorized to practice medicine, osteopathy, and surgery, psychology, chiropractic, pharmacology, or other healing or treatment professions or arts as may be authorized or licensed by this state or the licensed practitioner of any non-medical treatment rendered in accordance with any other recognized religious method of healing; 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 ~~or~~ nations.

**Premium.** “Premium” means consideration paid or payable for coverage, or benefits, under an Insurance Policy. “Premium” includes any payments, whether due within the Insurance Policy term or otherwise, and deductible payments whether advanced by the Insurer or Insurance Professional and subject to reimbursement by the insured or otherwise, any self insured retention or payments, whether advanced by the Insurer or Insurance Professional and subject to reimbursement by the insured or otherwise, and any collateral or security to be provided to collateralize obligations to pay any of the above.

**Premium Finance Company.** “Premium Finance Company” means a Person engaged or purporting 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



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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, a producer or other party claiming to act on behalf of an insured and/or 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.

**Reckless.** “Reckless” means without reasonable belief of the truth, or, for the purposes of Section 3(c), with a high degree of awareness of probable insolvency.

**Withhold.** “Withhold” means to fail to disclose facts or information which any law, or regulation, (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 2. Fraudulent Insurance Act**

Any Person who, knowingly and with intent to defraud, ~~and~~ or for the purpose of falsely depriving another of property or for pecuniary gain, commits, or attempts to 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, has committed a Fraudulent Insurance Act:

(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) Any claim, whether in whole or in part, for payment or benefit pursuant to any Insurance Policy;
- (3) Payments made in accordance with the terms of any Insurance Policy;
- (4) ~~The~~ Any application used in any Premium Finance Transaction;

(b) Presents, causes to be presented, or prepares with 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:



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- (1) ~~The~~ Any 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 records 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 withholds ~~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) Any Insurance Transaction;
  - (2) Any claim for payment or benefit pursuant to any Insurance Policy.
  - ~~(3)~~ The conduct of business activities by an Insurer or Insurance Professional;
  - ~~(4)~~ The acquisition, formation, merger, affiliation or dissolution of any Insurer.

It shall be unlawful for any Person to commit, or to attempt to commit, or to aid assist, abet or solicit another to commit, or to conspire to commit any Fraudulent Insurance Act.

### **Section 3. Unlawful Insurance Act**

Any Person who commits, or participates in, or aids, abets, or conspires to commit, or solicits another Person to commit, or permits its employees, contractors or its agents to commit any of the following acts with an intent to induce reliance, has committed an Unlawful Insurance Act:

- (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 a Premium Finance Company in connection with an Insurance Transaction or Premium Finance Transaction, any information which the Person knows to contain false representations, or representations the falsity of which the Person has Recklessly disregarded, as to any material fact, or which Withholds or Conceals a material fact, concerning any of the following:
- (1) ~~The~~ Any application for securing, rating of, or renewal of, any Insurance Policy;
  - (2) Any claim, in whole or in part, for payment or benefit pursuant to any Insurance Policy;



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(3) Payments made in accordance with the terms of any Insurance Policy;

(4) ~~The~~ Any application for the financing of any insurance Premium;

(b) Presents, causes to be presented, or prepares with 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 the Person knows to contain false representations, or representations the falsity of which the Person has Recklessly disregarded, as to any material fact, or which Withholds or Conceals a material fact, concerning any of the following:

(1) ~~The~~ Any solicitation for sale of any Insurance Policy or purported Insurance Policy;

(2) Any 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 Insurer which the Person knows was insolvent or the insolvency of which the Person Recklessly disregards.

It shall be unlawful for any Person to commit, or to attempt to commit, or to aid assist, abet or solicit another to commit, or to conspire to commit an Unlawful Insurance Act.

#### **Section 4. Criminal Penalties**

Any Person who violates Section 2 of this Act is guilty of:

(a) A Class A misdemeanor if the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is less than \_\_\_\_\_;

(b) A Class B misdemeanor if:

(1) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is \_\_\_\_\_ or more but less than \_\_\_\_\_; or

(2) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is less than \_\_\_\_\_, and the defendant has been previously convicted of any class or degree of insurance fraud in any jurisdiction;



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(c) A Class C misdemeanor if the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is \_\_\_\_\_ or more but less than \_\_\_\_\_;

(d) A felony in the third degree if:

(1) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is \_\_\_\_\_ or more but less than \_\_\_\_\_; or

(2) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is less than \_\_\_\_\_, and the defendant has been previously convicted two or more times of any class or degree of insurance fraud in any jurisdiction;

(e) A felony in the second degree if the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is \_\_\_\_\_ or more but less than \_\_\_\_\_

(f) A felony in the first degree if:

(1) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is \_\_\_\_\_ or more but less than \_\_\_\_\_; or

(2) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is less than \_\_\_\_\_ and the defendant has been previously convicted two or more times of any degree of felony insurance fraud in any jurisdiction; or

(3) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is less than \_\_\_\_\_ and his violation of Section 2 of this Act placed any Person at risk of, or caused, death or serious bodily injury.

**Drafting Note:** *It is the intent of the coalition that the criminal penalties for fraudulent insurance acts should track the existing criminal penalties for similar crimes or fraudulent acts fraud.*

## **Section 5. Restitution**



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Any Person convicted of a violation of Section 2 of this Act shall be ordered to make monetary restitution for any financial loss or damages sustained by any other Person as a result of the any violation. Financial loss or damage shall include, but is not necessarily limited to, loss of earnings, out-of-pocket and other expenses, paid deductible amounts under an Insurance Policy, Insurer claim payments, all costs reasonably attributable to investigations, legal actions, and recovery efforts, including reasonable attorneys fees, by owners, Insurers, Insurance Professionals, law enforcement and other public authorities, and all costs of prosecution.

When restitution is ordered, the court shall determine its extent and methods. Restitution may be imposed in addition to a fine and, if ordered, any other penalty, but not in lieu thereof. The court shall determine whether restitution, if ordered, shall be paid in a single payment or installments and shall fix a period of time, not in excess of \_\_\_\_\_, within which payment of restitution is to be made in full.

To the extent permissible, it is the intention such Restitution shall not be dischargeable in any bankruptcy or similar proceeding.

### **Section 6. Administrative Penalties**

- (a) (1) Any Practitioner determined by the Court to have violated Section 2 shall be deemed to have committed an act involving moral turpitude that is inimical to the public well being. The court or prosecutor shall notify the appropriate licensing authority in this state of the judgment for appropriate disciplinary action, including revocation of any such professional license(s), and may notify appropriate licensing authorities in any other jurisdictions where the Practitioner is licensed. Any victim may notify the appropriate licensing authorities in this State and any other jurisdiction where the Practitioner is licensed, of the conviction.
- (2) Upon notification of a conviction of the any crimes enumerated in Section 2 of this Act or a substantially similar crime under the laws of another state or the United States, this State's appropriate licensing authority shall hold an administrative hearing, or take other appropriate administrative action authorized by state law, to consider the imposition of the administrative sanctions, up to and including license revocation, as provided by law against the Practitioner. Where the Practitioner has been convicted of a felony violation of Section 2 of this Act or a substantially similar crime under the laws of another state or of the United States, this state's appropriate licensing authority shall hold an administrative hearing, or take other appropriate administrative action authorized by state law, and shall summarily and permanently revoke the license. It is hereby recommended by the legislature that the ~~{name of the~~ highest court in the state, bar association or other disciplinary agency or responsible organization} shall summarily and permanently disbar any attorney found guilty of such felony.
- (3) All such referrals to the appropriate licensing or other agencies, and all dispositive actions thereof, shall be a matter of public record.
- (b) (1) A Person convicted of a felony involving dishonesty or breach of trust shall not participate in the business of insurance and may not be eligible for any state licensure relative in any capacity to the business of insurance.



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(2) A Person in the business of insurance shall not knowingly or intentionally permit a Person convicted of a felony involving dishonesty or breach of trust to participate in the business of insurance.

### **Section 7. Civil Remedies**

(a) Any Person injured in his or her person, business or property by reason of a violation of Section 3 may recover therefor from the Person[s] violating Section 3, in any appropriate ~~\_\_\_\_\_ Court~~ court of this state the following:

- (1) Return of any profit, benefit, compensation or payment received by the Person violating Section 3 directly resulting from said violation;
- (2) Reasonable attorneys fees, related legal expenses, including internal legal expenses and court costs, ~~not to exceed \$5,000;~~

An action maintained under this subparagraph may neither be certified as a class action nor be made part of a class action.

(b) Any Person injured in his or her person, business or property by reason of a violation of Section 2 may recover therefor from the Person[s] violating Section 2, in any appropriate ~~\_\_\_\_\_ Court~~ court of this state the following:

- (1) Return of any profit, benefit, compensation or payment received by the Person violating Section 2 directly resulting from said violation;
- (2) Reasonable attorneys fees, related legal expenses, including internal legal expenses and court costs;
- (3) All other economic damages directly resulting from the violation of Section 2;
- (4) Reasonable investigative fees based on a reasonable estimate of the time and expense incurred in the investigation of the violation(s) of Section 2 proved at trial;
- (5) A penalty of no less than \$\_\_\_\_\_ and no greater than \$\_\_\_\_\_.

An action maintained under this subparagraph may neither be certified as a class action nor be made part of a class action.

(c) Any Person injured in his or her person, business or property by a Person violating Section 2, upon a showing of clear and convincing evidence that such violation was part of a Pattern or Practice of such violations, shall be entitled to recover threefold the injured Person's economic damages together with all reasonable attorneys fees and costs. An action for treble damages must be brought within \_\_\_\_\_ year(s) of such violation. One third of the treble damages awarded shall be payable to the state to be used solely for the purpose of investigation and prosecution of violations of this Act or other fraudulent behavior relating to Insurance Transactions, and/or for public education relating to



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insurance fraud. An action maintained under this subparagraph may neither be certified as class action nor be made part of a class action, unless the violations of Section 2 giving rise to the action resulted in criminal conviction of the violator[s] under Section 4.

(d) The State Attorney General, District Attorney or other authorized prosecutorial agency shall have authority to maintain Civil proceedings on behalf of the State Insurance Department and any victims of violations of Section 2. In any such action, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(1) The \_\_\_\_\_ Courts of the state shall have jurisdiction to prevent and restrain violations of Section 2 of this Chapter by issuing appropriate orders.

(2) In any action commenced under this subparagraph (d), the Court, upon finding that any Person has violated Section 2, shall levy a fine of up to \$25,000 for each violation.

Any court in which a prosecution for violation of Section 2 is pending shall have authority to stay or limit proceedings in any civil action regarding the same or related conduct. Any court in which is pending a civil action brought pursuant to subparagraph (d) of this Section 7 may stay or limit proceedings in actions brought pursuant to subparagraphs (a)-(c) regarding the same or related conduct or may transfer such actions or consolidate them before itself or allow the plaintiffs in such actions to participate in the action brought pursuant to subparagraph (d), as it shall prescribe.

Any cause of action under this section for violation of Section 2 or Section 3 must be brought within \_\_\_\_\_ three (3) years of the commission of the acts constituting such violation, or within \_\_\_\_\_ three (3) years of the time the plaintiff discovered (or with reasonable diligence could have discovered) such acts, whichever is later.

An insurer shall not pay damages awarded under this Section 7, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification. A third party who ~~has asserted~~ a claim against an insured shall have no cause of action under this Section against the Insurer of the insured arising out of the Insurer's processing or settlement of the third party's claim.

An obligee

under a surety bond shall not have a cause of action under this section against the surety arising out of the surety's processing or settlement of the obligee's claim against the bond.

Any Person injured in his business or property by reason of a violation of Section 2 or Section 3 of this Chapter may recover under only one of the subparagraphs in this Section.

### **Section 8. Exclusivity of Remedies**

The remedies expressly provided in Section 7 shall be the only private remedies for violations of this Act and no additional remedies shall be implied. The remedies available under Section 7 shall not be used in conjunction with or in addition to any other remedies available at law or in equity to duplicate recovery for the same element of economic damage. Further, in any civil action pleading both



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exemplary damages and the treble damages available in Section 7(c), plaintiff shall elect one or the other remedy, but not both, at the conclusion of the evidentiary phase of the trial.

However, nothing in this Act shall limit or abrogate any right of action which ~~would have~~ may existed in the absence of this Act, but no action based on such a right shall rely on this Act to establish a standard of conduct or for any other purpose.

## **Section 9. Cooperation**

~~(ca)~~ When any law enforcement official, ~~or authority, any insurance department, state division of insurance fraud, or state or federal regulatory or licensing authority~~ requests information related to an investigation or prosecution of allegations of potential insurance fraud, from an Insurer or Insurance Professional for the purpose of detecting, prosecuting or preventing insurance fraud, the Insurer or Insurance Professional shall take all reasonable actions to provide the any such information in its possession requested, subject to any legal privilege protecting such information.

~~(ab)~~ Any Insurer or Insurance Professional that has reasonable belief that an act violating Sections 2 or 3 will be, is being, or has been committed shall furnish and disclose upon request any information in its possession concerning such act to the appropriate law enforcement official or authority, insurance department, state division of insurance fraud, or state or federal regulatory or licensing authority, subject to any legal privilege protecting such information.

~~(de)~~ Any Insurer or Insurance Professional failing or refusing to cooperate with a request for information from an appropriate local, state or federal governmental authority may, subject to the court's discretion, forfeit any eligibility for restitution from any proceeds resulting from such governmental investigation and prosecution. ~~providing information to any law enforcement, regulatory, licensing or other governmental agency under subparagraphs (a) or (b) of this section, shall have the right to request information in the possession or control of the agency relating to the suspected violation or to a pattern of related activity, except information which was privileged or confidential under the laws of this state prior to its submission to the agency. In instances where disclosure would not jeopardize an ongoing investigation or prosecution, the agency shall provide the requested information to the Insurer or Insurance Professional. The agency may request that the Insurer or Insurance Professional keep the disclosed information confidential.~~

~~(bd)~~ Any Person that has a reasonable belief that an act violating Sections 2 or 3 this Chapter 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 ~~an authorized~~ representative of an Insurer that requests the information for the purpose of detecting, investigating, prosecuting or preventing insurance fraud subject to any legal privilege protecting such information.

~~(e)~~ ~~Failure to cooperate with a request for information from an appropriate local, state or federal governmental authority shall bar a Person's eligibility for restitution from any proceeds resulting from such governmental investigation and prosecution.~~

## **Section 10. Immunity**



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(a) In the absence of Actual Malice, no Person furnishing, disclosing or requesting information pursuant to Section 9 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. No Person providing information pursuant to Section 9(a) shall be subject to civil liability for any and no civil cause of action shall ariseing for any of the following:rom the Person's provision of requested information.

(1) The disclosure of information related to Persons or conduct suspected of violating Sections 2 or 3 of this Act to federal, state or local agencies, officials, their agents, employees and/or designees.

(2) The receipt or possession of information related to Persons or conduct suspected of violating Sections 2 or 3 of this Act when the information was received pursuant to and for the purpose of complying with the provisions of this Act.

(3) The disclosure of information to any organization, whether governmental or private, established to detect and prevent fraudulent insurance acts, their agents, employees or designees; and/or a recognized comprehensive database system approved by the Insurance Department.

(4) The receipt or possession of information received from any organization established to detect and prevent fraudulent insurance acts, their agents, employees or designees; and/or a recognized comprehensive database system approved by the Insurance Department.

(b) The immunity granted in subsection (a) shall also apply to employees, contractors and agents of Insurers or insurance licensees whose responsibilities include the investigation and/or disposition of claims involving suspected violations of Sections 2 or 3 of this Act when sharing information on such acts or persons suspected of engaging in such acts with other entities or organizations employees of the same or other Insurers or insurance licensees, or other appropriate individuals or organizations, whose responsibilities include the investigation and/or disposition of claims involving suspected violations of Sections 2 or 3 of this Act.

(c) State agencies and their employees and/or designees shall not be subject to civil liability for disclosing information identified in subsection (b). No civil cause of action shall arise against any of them by virtue of the publication of a report or bulletin related to the official activities of the State agency.

(d) Any Person against whom any civil 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.

(e) Nothing in Tthis section does not is intended to abrogate or modify in any way any a common law or statutory privilege or immunity heretofore enjoyed by any Person.

## **Section 11. Regulatory Requirements**



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(a) Anti-Fraud Plans - Within six months of the effective date of this legislation, every Insurer with total annual direct written premiums in excess of five-hundred thousand dollars (\$500,000) shall prepare, implement, maintain and submit to the department of insurance an insurance anti-fraud plan.

Each Insurer's anti-fraud plan shall outline specific procedures, appropriate to the type of insurance the Insurer writes in this state, to:

- (1) prevent, detect and investigate all forms of insurance fraud for which the carrier is authorized to issue policies or bonds, including fraud involving the Insurer's employees or agents; fraud resulting from misrepresentations in the application, renewal or rating of insurance policies; claims fraud; and security of the Insurer's data processing systems.
- (2) educate appropriate employees on fraud detection and the Insurer's anti-fraud plan.
- (3) inform policyholders about insurance fraud and how to protect against and prevent fraud.
- ~~(4)~~ provide for the hiring of or contracting for fraud investigators.
- ~~(5)~~ report insurance fraud to appropriate law enforcement and regulatory authorities in the investigation and prosecution of insurance fraud.
- ~~(6)~~ pursue restitution for financial loss caused by insurance fraud, where appropriate.
- (7) designate the person responsible for oversight and implementation of the insurer's anti-fraud plan, and provide full contact information.

The Commissioner may review, and in their discretion accept or reject, each Insurer's anti-fraud plan to determine if it complies with the requirements of this subparagraph.

It shall be the responsibility of the Commissioner to assure Insurer compliance with anti-fraud plans submitted to the Commissioner. The Commissioner may require reasonable modification of the Insurer's anti-fraud plan, or may require other reasonable remedial action if the review or examination reveals substantial non-compliance with the terms of the Insurer's own anti-fraud plan.

The Commissioner may require each Insurer to file a summary of the Insurer's anti-fraud activities and results. The anti-fraud plans and the summary of the Insurer's anti-fraud activities and results are not public records and are exempt from any privacy or the \_\_\_\_\_ public records act, and shall be proprietary and not subject to public examination, and shall not be discoverable or admissible in any civil action, whether arising under this Act or any other proceeding involving civil litigation.

This section confers no private rights of action.

(b) Fraud Warnings

- (1) (A) No later than six months after the effective date of this Act, all applications for insurance, and all claim forms regardless of the form of transmission provided and required by



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an Insurer or required by law as a condition of payment of a claim, shall contain a statement, permanently affixed to the application or claim form, that clearly states in substance the following:

***“It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.”***

(B) The lack of a statement required in this subparagraph does not constitute a defense in any criminal prosecution under Section 2 nor in any civil action under Sections 2 or 3.

(2) The warning required by this subsection shall not be required on forms relating to reinsurance.

(c) Enforcement - Notwithstanding any other provision of the Insurance Code, the following are the exclusive monetary penalties for violation of this Section. Insurers that fail to prepare, implement, maintain and submit to the department of insurance an insurance anti-fraud plan are subject to a penalty of \$500 per day, not to exceed \$25,000 together with license suspension or revocation.

Proposed by the Coalition Against Insurance Fraud, 1012 14th Street NW, Suite 200, Washington, D.C. 20005, 202-393-7330. The Coalition is an independent, nonprofit organization of consumers, government agencies and insurers dedicated to combating all forms of insurance fraud through public information and advocacy.

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*NCOIL is a national legislative organization with the nation's 50 states as members, represented principally by legislators serving on their states' insurance and financial institutions committees. NCOIL writes Model Laws in insurance and financial services, works to preserve the State jurisdiction over insurance as established by the McCarran-Ferguson Act seventy four years ago, and to serve as an educational forum for public policymakers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making State policy when it comes to insurance and educate State legislators on current and longstanding insurance issues.*



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