

CHAPTER 253

(HB 300)

AN ACT relating to insurance fraud.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF SUBTITLE 47 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, and who knowingly engages or participates in the business of insurance in this Commonwealth, shall be guilty of a Class D felony.*
- (2) *Any insurer that knowingly permits the participation in the business of insurance in this Commonwealth by a person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, shall be guilty of a criminal violation.*
- (3) *Any person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, may engage in the business of insurance in this Commonwealth if he or she has received written consent from the commissioner, and that consent specifically refers to this subsection.*

SECTION 2. A NEW SECTION OF SUBTITLE 47 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Documents, materials, or other information in the possession or control of the commissioner that is provided according to this subtitle shall be confidential by law and privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.872 to KRS 61.884. These documents, materials, or other information shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, unless, after notice to the commissioner and a hearing, a court of competent jurisdiction determines the commissioner would not be unnecessarily hindered. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.*
- (2) *Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.*
- (3) *In order to assist in the performance of the commissioner's duties, the commissioner:*
 - (a) *May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsections (1) and (2) of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information;*

- (b) *May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential and privileged any documents, materials, or information received with notice or the understanding that it is confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, or information;*
- (c) *May enter into agreements governing the sharing and use of information including the furtherance of any regulatory or legal action brought as part of the recipient's official duties.*
- (4) *No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this subtitle or as a result of sharing as authorized in subsection (3) of this section.*

Section 3. KRS 304.47-010 is amended to read as follows:

As used in Subtitle 47 of this chapter, unless the context requires otherwise:

- (1) "Insurer" means any person, entity, organization, or reinsurer, including fraternal benefit societies as defined in Subtitle 29 of this chapter, nonprofit hospital, medical-surgical, dental, and health service corporation as defined in Subtitle 32 of this chapter, health maintenance organization as defined in Subtitle 38 of this chapter, prepaid dental plan organization as defined in Subtitle 43 of this chapter, or unauthorized insurer as defined in Subtitle 11 of this chapter, subject to regulation by or registration with the Department of Insurance under this chapter, and any "carrier," "self-insurer," or "insurance carrier" as defined by KRS Chapter 342.
- (2) "Insurance policy" or "policy" means any individual or group policy, including those defined by KRS Chapter 342, certificate, or contract of an insurer as defined in subsection (1) of this section including reinsurance affecting the rights of any Kentucky resident or bearing a reasonable relation to Kentucky regardless of whether delivered or issued for delivery in Kentucky.
- (3) "Insured" means any person who is a named insured or beneficiary under a policy as defined in subsection (2) of this section or a person who is not a named insured or beneficiary under a policy due to the fraudulent action of another, but who in good faith believes himself to be an insured or beneficiary.
- (4) "Law enforcement agency" means any federal, state, county, or consolidated police or law enforcement department and any prosecuting official of the federal, state, county, local, or consolidated government.
- (5) "Statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or physician record or report, X-ray, test result, or other evidence of loss, injury, or expense. *A statement may be in any form, including oral, written, and electronic transmissions.*
- (6) "Division" means the Division of Insurance Fraud Investigation of the Kentucky Department of Insurance, its employees, or authorized representatives.

- (7) "Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any fraudulent insurance act, as set forth in KRS 304.47-020(1), on a continuing basis.

Section 4. KRS 304.47-020 is amended to read as follows:

- (1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance act" if he *or she engages in any of the following, including, but not limited to, matters relating to workers' compensation*:
- (a) 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 an insurer, Board of Claims, Special Fund, or any agent thereof, any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or from a "self-insurer" as defined by KRS Chapter 342, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;
 - (b) 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 an insurer, Board of Claims, or any agent thereof, any ~~written or oral~~ statement as part of, or in support of, an application for an insurance policy, *for renewal, reinstatement, or replacement of insurance, or in support of an application to a lender for money to pay a premium*, knowing that ~~the~~*this* statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;
 - (c) Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;
 - (d) *Knowingly and with intent to defraud or deceive*, receives money for the purpose of purchasing insurance, and *fails to obtain insurance*~~converts the money to the person's own benefit~~;
 - (e) *Knowingly and with intent to defraud or deceive, fails to make payment or disposition of money, as required by agreement or legal obligation, that comes into his or her possession while acting as a licensee under this chapter*;
 - (f) Issues or knowingly presents fake or counterfeit insurance policies, certificates of insurance, insurance identification cards,~~or~~ insurance binders, *or any other documents that purport to evidence insurance*;
 - ~~(g)~~~~(f)~~—Makes any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;
 - ~~(h)~~~~(g)~~—Engages in unauthorized insurance, as defined in KRS 304.11-030;
 - ~~(h)~~—Knowingly and with intent to defraud or deceive, receives temporary total disability benefits while being employed in work as defined in KRS 342.0011;
 - (i) 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 to the commissioner*~~any agent thereof~~, any ~~written or oral~~ statement, knowing that the statement contains any false, incomplete, or misleading information concerning any material fact or thing, as part of, or in support of one (1) or more of the following:

1. The rating of an insurance policy;
 2. The financial condition of an insurer;
 3. The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one (1) or more lines of insurance in all or part of this Commonwealth by an insurer; or
 4. A document filed with the commissioner;
- (j) Knowingly and with intent to defraud or deceive, engages in any of the following:
1. Solicitation or acceptance of new or renewal insurance risks on behalf of an insolvent insurer; or
 2. Removal, concealment, alteration, tampering, or destruction of **money, records, or any other property or assets**~~[the assets or records]~~ of an insurer; or
- (k) Assists, abets, solicits, or conspires with another to commit a fraudulent insurance act in violation of this subtitle.
- (2) (a) Except as provided in paragraphs (b) and (c) of this subsection, a person convicted of a violation of subsection (1) of this section shall be guilty of a misdemeanor where the aggregate of the claim, benefit, or money referred to in subsection (1) of this section is less than or equal to three hundred dollars (\$300), and shall be punished by:
1. Imprisonment for not more than one (1) year;
 2. A fine, per occurrence, of not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph;
- (b) Except as provided in paragraph (c) of this subsection, where the claim, benefit, or money referred to in subsection (1) of this section exceeds an aggregate of three hundred dollars (\$300), a person convicted of a violation of subsection (1) of this section shall be guilty of a felony and shall be punished by:
1. Imprisonment for not less than one (1) nor more than five (5) years;
 2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.
- (c) Any person, with the purpose to establish or maintain a criminal syndicate, or to facilitate any of its activities, as set forth in KRS 506.120(1), shall be guilty of engaging in organized crime, a Class B felony, and shall be punished by:
1. Imprisonment for not less than ten (10) years nor more than twenty (20) years;

2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation, or twice the amount of gain received as a result of the violation; whichever is greater; or
 3. Both imprisonment and a fine, as set forth in subparagraphs 1. and 2. of this paragraph.
- (d) In addition to imprisonment, the assessment of a fine, or both, a person convicted of a violation of paragraph (a), (b), or (c) of subsection (2) of this section may be ordered to make restitution to any victim who suffered a monetary loss ***due to any actions by that person***~~[under the person's actions]~~ which resulted in the adjudication of guilt, ***and to the division for the cost of any investigation***. The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.
- (3) Any ***person***~~[insurer]~~ damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.
 - (4) The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in subsection (3) of this section. Section 5. KRS 304.47-040 is amended to read as follows:
 - (1) There is created within the Department of Insurance a Division of Insurance Fraud Investigation, which shall include a Workers' Compensation Branch.
 - (2) (a) The commissioner shall appoint qualified persons to serve as special investigators for the Division of Insurance Fraud Investigation who shall have general police powers including the power to arrest, and they shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, and their jurisdiction shall be coextensive with the state.
 - (b) The commissioner shall appoint appropriate staff for the Workers' Compensation Branch which shall include, at a minimum, three (3) special investigators, one (1) attorney, and one (1) administrative assistant. The appointments authorized by this paragraph shall be in addition to the staff employed by the division as of December 12, 1996.
 - (3) The special investigator may:
 - (a) Administer oaths and affirmations;
 - (b) Order the attendance of witnesses or proffering of information and documentation;
 - (c) Collect evidence; and
 - (d) Make arrests for criminal violations established as a result of its investigations. The general laws applicable to arrests by sheriffs of the Commonwealth shall also be applicable to special investigators, who may:
 1. Execute arrest warrants and search warrants for the criminal violations revealed as a result of their investigations;

2. Serve subpoenas issued for the examination, investigation, and trial of all offenses determined by their investigations; and
 3. Arrest upon probable cause without warrant any person found in the act of violating any of the provisions of applicable laws.
- (4) The division may implement its powers if, based upon its own inquiries or as a result of information received, it has reason to believe that a person has engaged in, is engaging in, or is about to engage in a fraudulent insurance act.
 - (5) If the information the division seeks to obtain is located outside the state, the person so requested may make it available to the division or its representative to examine at the place where it is located. The division may designate representatives, including officials of the state in which the matter is located, to inspect the information on the division's behalf, and it may respond to similar requests from officials of other states.
 - (6) It shall be unlawful for any person to resist an arrest authorized by this subtitle or in any manner to interfere, either by abetting or assisting this resistance or otherwise interfering, with special investigators employed by the commissioner under this subtitle in the duties imposed upon them by law, and shall be punishable as provided in KRS 520.090.
 - (7) ***The commissioner may obtain any evidence for use in criminal investigations according to KRS 304.2-340.***

Section 6. KRS 304.47-050 is amended to read as follows:

- (1) Any person, other than ***those specified in subsection (2) of this section***~~[an insurer, agent, or other person licensed under this chapter, or an employee thereof]~~, having knowledge or believing that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under the subtitle is being or has been committed may send to the division~~[of Insurance Fraud Investigation]~~ a report of information pertinent to this knowledge of or belief and any additional relevant information the commissioner may request.
- (2) The following individuals having knowledge or believing that a fraudulent insurance act or any other act or practice which may constitute a felony or misdemeanor under this subtitle is being or has been committed shall send to the division~~[of Insurance Fraud Investigation]~~ a report or information pertinent to the knowledge or belief and additional relevant information that the commissioner or his employees or agents may require:
 - (a) Any professional practitioner licensed or regulated by the Commonwealth, except as provided by law;
 - (b) Any utilization review of benefits committee as defined in KRS 211.462 to 211.466;
 - (c) Any private medical review committee;
 - (d) Any insurer, agent, or other person licensed under this chapter; and
 - (e) Any employee of the persons named in paragraphs (a) to (d) of this subsection.
- (3) The division~~[of Insurance Fraud Investigation]~~ or its employees or agents shall review this information or these reports and select the information or reports that, in the judgment of the division, may require further investigation. The division shall then cause an investigation of the facts surrounding the information or report to be made to determine the extent, if any, to

which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this subtitle is being committed.

- (4) The Department of Workers' Claims shall provide the division access to all relevant information the commissioner may request.
- (5) The division~~[of Insurance Fraud Investigation]~~ shall report any alleged violations of law which the investigations disclose to the appropriate licensing agency and the Commonwealth's attorney, Attorney General, or other prosecuting agency having jurisdiction with respect to a violation. If prosecution by the Commonwealth's attorney, Attorney General, or other prosecuting agency is not begun within sixty (60) days of the report, the prosecuting attorney shall inform the division of the reasons for the lack of prosecution. In addition to filing a report with the appropriate prosecuting agency, the commissioner may, through the Attorney General, prosecute violations of this subtitle in the Circuit Court of the county in which the alleged wrongdoer resides or has his principal place of business, in the Circuit Court of the county in which the fraudulent insurance act has been committed, or, with consent of the parties, in the Franklin Circuit Court.
- (6) Notwithstanding the provisions of subsections (1) to (5) of this section, **any person having knowledge or believing that a fraudulent insurance act or any other act that may be prohibited under this subtitle is being or has been committed,**~~[when an insurer or an insured knows or has reasonable grounds to believe that a person committed a fraudulent insurance act which the insurer reasonably believes not to have been reported to a law enforcement agency in this state, then, for the purpose of notification and investigation, the insurer or an agent authorized by an insurer to act on its behalf or the insured]~~ may notify **any**~~[a]~~ law enforcement agency of their knowledge or~~[reasonable]~~ belief and provide information relevant to the~~[fraudulent insurance]~~ act, **as may be requested by that agency**, including, but not limited to, insurance policy information including the application for insurance, policy premium payment records, history of previous claims made by the insured, and other information relating to the investigation of the claim, including statements of any person, proofs of loss, and notice of loss. **Reporting to any other agency does not relieve those listed in subsection (2) of this section of their mandatory duty to report to the division.**
- (7) If the information referred to in~~[subsection (6) of]~~ this section is specifically requested by **the division, any other**~~[a]~~ law enforcement agency, or **a** prosecuting attorney, the insurer shall provide certified copies of the requested information within ten (10) business days of the request or as soon thereafter as reasonable.
- (8) In the absence of malice, fraud, or gross negligence, no insurer or agent authorized by an insurer to act on its behalf, law enforcement agency, the Department of Workers' Claims, their respective employees, or an insured shall be subject to any civil liability for libel, slander, or related cause of action by virtue of filing reports or for releasing or receiving any information pursuant to this subsection.

Section 7. KRS 304.47-060 is amended to read as follows:

- (1) In the absence of malice, fraud, or gross negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information required by this chapter or requested by the division~~[of Insurance Fraud Investigation]~~ or its authorized representative. No civil cause of action of any nature shall arise against the person:

- (a) For any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials, their agents, or employees;
 - (b) For any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this subtitle, including those designated by KRS 304.47-080;
 - (c) For any information furnished to or received from the Department of Workers' Claims, its agents, or employees; or
 - (d) For any information furnished in reports to the commissioner or the National Association of Insurance Commissioners.
- (2) The commissioner or any employee or agent of the Department of Insurance shall not be subject to civil liability for libel, slander, or any other relevant tort. No civil cause of action shall exist against these persons by virtue of the execution of official activities or duties of the commissioner or the division or by virtue of the publication of any report or bulletin related to the official activities or duties of the commissioner.
- (3) This subtitle shall not abrogate or modify any common law or statutory privilege or immunity enjoyed by any person.
- ~~[(4) The papers, documents, reports, or evidence relative to the subject of an investigation under this subtitle, shall not be subject to public inspection for so long as the commissioner deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, the papers, documents, reports, or evidence relative to the investigations shall not be subject to subpoena until opened for public inspection by the commissioner, unless the commissioner consents, or until, after notice to the commissioner and a hearing, a court of competent jurisdiction determines the commissioner would not be unnecessarily hindered by a subpoena. The commissioner or his employees or agents shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to pending investigations of fraudulent insurance acts.]~~

Section 8. KRS 304.47-070 is amended to read as follows:

All costs of administration and operation of the *division*~~[Insurance Fraud Unit]~~ shall be borne by the Department of Insurance. Any money or other property that is awarded to the *division*~~[Insurance Fraud Unit]~~ as costs of investigation or as a fine shall be credited to the Department of Insurance, and the money shall be used to help finance the *division*~~[Insurance Fraud Unit]~~.

Section 9. KRS 304.47-080 is amended to read as follows:

- (1) Every insurer admitted to do business in the Commonwealth shall maintain *effective procedures and resources to deter and investigate fraudulent insurance acts prohibited by this subtitle, including* a unit *that will*~~[to]~~ investigate *suspected*~~[possible]~~ fraudulent *insurance acts*~~[claims by insureds or by persons making claims for services or repairs against policies held by insureds]~~. For the purpose of this section, "insurer" does not include reinsurers or reinsurance as defined in KRS 304.5-130.
- (2) Insurers may maintain the unit required by subsection (1) of this section, using its employees or by contracting with others for that purpose.
- (3) Insurers shall establish the unit required by this section no later than July 15, 1995.

- (4) The unit may include the assignment of fraud investigation to employees whose principal responsibilities are the investigation and disposition of claims. If an insurer creates a distinct unit, hires additional employees, or contracts with another entity to fulfill the requirements of this article, the additional cost incurred shall be included as an administrative expense.

Approved March 31, 2000