

CHAPTER 178

(HB 323)

AN ACT relating to crimes affecting insurance.

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

➔Section 1. 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, Kentucky Claims Commission, Special Fund, or any agent thereof:
 1. 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; *or*
 - ~~[(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, Kentucky Claims Commission, or any agent thereof,]~~
 2. Any 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 statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;
 - ~~[(b) [(c)]~~ Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;
 - ~~[(c) [(d)]~~ Knowingly and with intent to defraud or deceive:
 1. Receives money for the purpose of purchasing insurance, and fails to obtain insurance;
 - ~~[(e) Knowingly and with intent to defraud or deceive,]~~
 2. Fails to make payment or disposition of money or voucher as defined in KRS 304.17A-750, as required by agreement or legal obligation, that comes into his or her possession while acting as a licensee under this chapter;
 3. *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 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:*
 - a. *The rating of an insurance policy;*
 - b. *The financial condition of an insurer;*
 - c. *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*
 - d. *A document filed with the commissioner; or*
 4. *Engages in any of the following:*
 - a. *Solicitation or acceptance of new or renewal insurance risks on behalf of an insolvent insurer; or*
 - b. *Removal, concealment, alteration, tampering, or destruction of money, records, or any other property or assets of an insurer;*
 - ~~[(d) [(f)]~~ Issues or knowingly presents fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, insurance binders, or any other documents that purport to evidence insurance;

- (e)~~(g)~~ 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;
- (f)~~(h)~~ Engages in unauthorized insurance, as *set forth*~~[defined]~~ in KRS 304.11-030;
- ~~(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 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 of an insurer;] or~~
- (g)~~(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 five hundred dollars (\$500), 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 five hundred dollars (\$500), 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 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 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.

Signed by Governor April 26, 2018.