

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

HOUSE BILL 1413

4
5 By: Representative Newman

For An Act To Be Entitled

9 "AN ACT TO AMEND THE ARKANSAS INSURANCE CODE TO PERMIT
10 FULL UTILIZATION OF THE EXPERTISE OF THE COMMISSIONER TO
11 INVESTIGATE AND DISCOVER FRAUDULENT INSURANCE ACTS MORE
12 EFFECTIVELY, HALT FRAUDULENT INSURANCE ACTS AND ASSIST AND
13 RECEIVE ASSISTANCE FROM STATE, LOCAL AND FEDERAL LAW
14 ENFORCEMENT AND REGULATORY AGENCIES IN ENFORCING LAWS
15 PROHIBITING FRAUDULENT INSURANCE ACTS; AND FOR OTHER
16 PURPOSES."

Subtitle

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18
19 "AMENDING THE INSURANCE CODE TO MORE
20 EFFECTIVELY HALT FRAUDULENT INSURANCE
21 ACTS."

22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 SECTION 1. Chapter 66 of Title 23 of the Arkansas Code is hereby amended
26 by inserting an additional subchapter to read as follows:

27 "23-66-501. Definitions.

28 As used in this subchapter, unless the context otherwise requires:

29 (a) _Actual malice_ means knowledge that information is false, or
30 reckless disregard of whether it is false.

31 (b) _Business of insurance_ means the writing of insurance or the
32 reinsuring of risks by an insurer, including acts necessary or incidental to
33 writing insurance or reinsuring risks and the activities of persons who act
34 as, or are officers, directors, agents or employees of insurers, or who are
35 other persons authorized to act on their behalf.

36 (c) _Commissioner_ means the Insurance Commissioner of this state.

1 (d) _Fraudulent insurance act_ means an act or omission committed by a
 2 person who, knowingly and with intent to defraud, commits, or conceals any
 3 material information concerning, one or more of the following:

4 (1) Presenting, causing to be presented or preparing with
 5 knowledge or belief that it will be presented to an insurer, a reinsurer,
 6 broker or its agent, or by a broker or agent, false information as part of, in
 7 support of, or concerning a fact material to one or more of the following:

8 (A) An application for the issuance or renewal of an
 9 insurance policy or reinsurance contract;

10 (B) The rating of an insurance policy or reinsurance
 11 contract;

12 (C) A claim for payment or benefit pursuant to an insurance
 13 policy or reinsurance contract;

14 (D) Premiums paid on an insurance policy or reinsurance
 15 contract;

16 (E) Payments made in accordance with the terms of an
 17 insurance policy or reinsurance contract;

18 (F) A document filed with the commissioner or the chief
 19 insurance regulatory official of another jurisdiction;

20 (G) The financial condition of an insurer or reinsurer;

21 (H) The formation, acquisition, merger, reconsolidation,
 22 dissolution or withdrawal from one or more lines of insurance or reinsurance
 23 in all or part of this state by an insurer or reinsurer;

24 (I) The issuance of written evidence of insurance; or

25 (J) The reinstatement of an insurance policy.

26 (2) Solicitation or acceptance of new or renewal insurance risks
 27 on behalf of an insurer, reinsurer or other person engaged in the business of
 28 insurance by a person who knows or should know that the insurer or other
 29 person responsible for the risk is insolvent at the time of the transaction;

30 (3) Removal, concealment, alteration or destruction of the assets
 31 of records of an insurer, reinsurer or other person engaged in the business of
 32 insurance;

33 (4) Willful embezzlement, abstracting, purloining or conversion of
 34 monies, funds, premiums, credits or other property of an insurer, reinsurer or
 35 person engaged in the business of insurance;

36 (5) Transaction of the business of insurance in violation of laws

1 requiring a license, certificate of authority or other legal authority for the
 2 transaction of the business of insurance; or

3 (6) Attempt to commit, aiding or abetting in the commission of, or
 4 conspiracy to commit the acts or omissions specified in this subsection.

5 (e) (1) _Insurance_ means a contract or arrangement in which one
 6 undertakes to:

7 (A) Pay or indemnify another as to loss from certain
 8 contingencies called _risks_, including through reinsurance;

9 (B) Pay or grant a specified amount or determinable benefit
 10 to another in connection with ascertainable risk contingencies;

11 (C) Pay an annuity to another; or

12 (D) Act as surety.

13 (2) _Insurance_ shall, for the purposes of this subchapter, be
 14 deemed to include any definition used in the Arkansas Insurance Code.

15 (f) _Insurer_ means a person entering into arrangements or contracts of
 16 insurance or reinsurance and who agrees to perform any of the acts set forth
 17 in subsection (d) of this section. A person is an insurer regardless of
 18 whether the person is acting in violation of laws requiring a certificate of
 19 authority or regardless of whether the person denies being an insurer.

20 (g) _NAIC_ means the National Association of Insurance Commissioners.

21 (h) (1) _Person_ means an individual, a corporation, a partnership, an
 22 association, a joint stock company, a trust, an unincorporated organization,
 23 or any similar entity or any combination of the foregoing;

24 (2) _Person_ shall, for the purposes of this subchapter, be deemed
 25 to include any definition used in the Arkansas Insurance Code.

26 (i) _Policy_ means an individual or group policy, group certificate,
 27 contract or arrangement of insurance or reinsurance affecting the rights of a
 28 resident of this state or bearing a reasonable relation to this state,
 29 regardless of whether delivered or issued for delivery in this state.

30 (j) _Reinsurance_ means a contract, binder of coverage (including
 31 placement slip) or arrangement under which an insurer procures insurance for
 32 itself in another insurer as to all or part of an insurance risk of the
 33 originating insurer.

34

35 23-66-502. Fraudulent Insurance Acts, Interferences and Participation of
 36 Convicted Felons Prohibited.

1 (a) A person shall not commit a fraudulent insurance act.

2 (b) A person shall not knowingly or intentionally interfere with the
 3 enforcement of the provisions of this subchapter or investigations of
 4 suspected or actual violations of this subchapter.

5 (c) (1) A person convicted of a felony involving dishonesty or breach
 6 of trust shall not participate in the business of insurance.

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

10

11 23-66-503. Fraud Warning Required.

12 (a) Claim forms, proofs of loss, or any similar documents, however
 13 designated, seeking payment or benefit pursuant to an insurance policy, and
 14 applications for insurance, regardless of the form of transmission, shall
 15 contain the following statement or a substantially similar statement:

16 Any person who knowingly presents a false or fraudulent claim for
 17 payment of a loss or benefit or knowingly presents false information in
 18 an application for insurance is guilty of a crime and may be subject to
 19 fines and confinement in prison.

20 (b) The lack of a statement as required in subsection (a) of this
 21 section does not constitute a defense in any prosecution for a fraudulent
 22 insurance act.

23 (c) Policies issued by unauthorized insurers shall contain a statement
 24 disclosing the status of the insurer to do business in the state where the
 25 policy is delivered or issued for delivery or the state where coverage is in
 26 force. The requirement of this subsection may be satisfied by a disclosure
 27 specifically required by §23-65-307.

28 (d) All persons to whom this section applies shall have six (6) months
 29 from the effective date of this section to comply with the requirements
 30 hereof.

31 (e) The requirements of this section shall not apply to reinsurance
 32 proofs of loss or applications.

33

34 23-66-504. Investigative Authority of the Commissioner.

35 The commissioner may investigate suspected fraudulent insurance acts and
 36 persons engaged in the business of insurance.

1

2 23-66-505. Mandatory Reporting of Fraudulent Insurance Acts.

3 (a) A person engaged in the business of insurance having knowledge or a
4 reasonable belief that a fraudulent insurance act is being, will be, or has
5 been committed shall provide to the commissioner the information required by,
6 and in a manner prescribed by, the commissioner.

7 (b) Any person engaged in the business of insurance who knowingly fails
8 to report as required by subsection (a) of this section shall be guilty of a
9 misdemeanor and upon conviction shall be punished by a fine not to exceed one
10 thousand dollars (\$1,000) or by imprisonment for a period not to exceed one
11 (1) year, or by both fine and imprisonment.

12 (c) Any other person having knowledge or a reasonable belief that a
13 fraudulent insurance act is being, will be, or has been committed may provide
14 to the commissioner the information required by, and in a manner prescribed
15 by, the commissioner.

16

17 23-66-506. Immunity from Liability.

18 (a) There shall be no civil liability for libel, slander or any other
19 cause of action imposed on, and no cause of action shall arise from a person_s
20 furnishing information concerning suspected, anticipated or completed
21 fraudulent insurance acts, if the information is provided to or received from:

22 (1) The commissioner or the commissioner_s employees, agents or
23 representatives;

24 (2) Federal, state, or local law enforcement or regulatory
25 officials or their employees, agents or representatives;

26 (3) A person employed by or authorized by an insurer whose
27 activities include the investigation or reporting of suspected fraudulent
28 insurance acts when furnishing, disclosing, or requesting information on such
29 suspected fraudulent insurance acts to or from a person employed by or
30 authorized by other insurers or insurer organizations acting in the same
31 capacity; or

32 (4) The NAIC or its employees, agents or representatives.

33 (b) Subsection (a) of this section shall not apply to statements made
34 with actual malice. In an action brought against a person for filing a report
35 or furnishing other information concerning a fraudulent insurance act, the
36 party bringing the action shall plead specifically any allegation that

1 subsection (a) of this section does not apply because the person filing the
 2 report or furnishing the information did so with actual malice.

3 (c) This section does not abrogate or modify common law or statutory
 4 privileges or immunities enjoyed by a person described in subsection (a) of
 5 this section.

6
 7 23-66-507. Confidentiality.

8 (a) Notwithstanding any other provision of law, the documents and
 9 evidence provided pursuant to 23-66-505 or obtained by the commissioner in an
 10 investigation of suspected or actual fraudulent insurance acts shall be
 11 privileged and confidential and shall not be a public record and shall not be
 12 subject to discovery or subpoena in a civil or criminal action until the
 13 matter under investigation is closed by the Insurance Fraud Investigation
 14 Division with the consent of the commissioner.

15 (b) Subsection (a) of this section does not prohibit release by the
 16 commissioner of documents and evidence obtained by the Insurance Fraud
 17 Investigation Division in an investigation of suspected or actual fraudulent
 18 insurance acts:

19 (1) In administrative or judicial proceedings to enforce laws
 20 administered by the commission;

21 (2) To federal, state, or local law enforcement or regulatory
 22 agencies, to an organization established for the purpose of detecting and
 23 preventing fraudulent insurance acts or to the NAIC; or

24 (3) At the discretion of the commissioner, to a person in the
 25 business of insurance that is aggrieved by a fraudulent insurance act.

26 (c) Release of documents and evidence under subsection (b) of this
 27 section does not abrogate or modify the privilege granted in subsection (a) of
 28 this section.

29
 30 23-66-508. Creation and Purpose of the Insurance Fraud Investigation
 31 Division.

32 (a) The Insurance Fraud Investigation Division is established within the
 33 Arkansas Insurance Department. The commissioner shall appoint the full-time
 34 supervisory and investigative personnel of the Insurance Fraud Investigation
 35 Division, who shall be qualified by training and experience to perform the
 36 duties of their positions. The commissioner shall also appoint clerical and

1 other staff necessary for the Insurance Fraud Investigation Division to carry
 2 out its duties and responsibilities under this subchapter.

3 (b) It shall be the duty of the Insurance Fraud Investigation Division
 4 to:

5 (1) Initiate independent inquiries and conduct independent
 6 investigations when the Insurance Fraud Investigation Division has cause to
 7 believe that a fraudulent insurance act may be, is being, or has been
 8 committed;

9 (2) Review reports or complaints of alleged fraudulent insurance
 10 activities from federal, state and local law enforcement and regulatory
 11 agencies, persons engaged in the business of insurance, and the public to
 12 determine whether the reports require further investigation and to conduct
 13 these investigations; and

14 (3) Conduct independent examinations of alleged fraudulent
 15 insurance acts and undertake independent studies to determine the extent of
 16 fraudulent insurance acts.

17 (c) The Insurance Fraud Investigation Division shall have the authority
 18 to:

19 (1) Issue subpoenas to examine any individual under oath and to
 20 compel the production of records, books, papers, contracts, and other
 21 documents. Subpoenas shall be served in the same manner as if issued by a
 22 circuit court. If any individual fails to obey a subpoena issued and served
 23 pursuant to this subsection, upon application of the Insurance Fraud
 24 Investigation Division, the Pulaski County Circuit Court or the circuit court
 25 of the county where the subpoena was served, may issue an order requiring the
 26 individual to comply with the subpoena. Any failure to obey the order of the
 27 court may be punished by the court as contempt thereof;

28 (2) Administer oaths and affirmations;

29 (3) Share records and evidence with federal, state or local law
 30 enforcement or regulatory agencies;

31 (4) Make criminal referrals to prosecuting authorities. The
 32 prosecuting attorney of the judicial district where a criminal referral has
 33 been made shall, for the purpose of assisting in such prosecution, have the
 34 authority to appoint as special deputy prosecuting attorneys licensed
 35 attorneys in the employment of the Insurance Fraud Investigation Division. The
 36 prosecuting attorney shall have the right and discretion to proceed against

1 any person or organization on criminal referrals made hereunder, both
2 organizational and individual liability being intended; and
3 (5) Conduct investigations outside of this state. If the
4 information the Insurance Fraud Investigation Division seeks to obtain is
5 located outside this state, the person from whom the information is sought may
6 make the information available to the Insurance Fraud Investigation Division
7 to examine at the place where the information is located. The Insurance Fraud
8 Investigation Division may designate representatives, including officials of
9 the state in which the matter is located, to inspect the information of behalf
10 of the Insurance Fraud Investigation Division, and the Insurance Fraud
11 Investigation Division may respond to similar requests from officials of other
12 states.

13

14 23-66-509. Other Law Enforcement of Regulatory Authority.

15 This subchapter shall not:

16 (1) Preempt the authority or relieve the duty of other law enforcement
17 or regulatory agencies to investigate, examine and prosecute suspected
18 violations of law;

19 (2) Prevent or prohibit a person from disclosing voluntarily information
20 concerning insurance fraud to a law enforcement or regulatory agency other
21 than the Insurance Fraud Investigation Division; or

22 (3) Limit the powers granted elsewhere by the laws of this state to the
23 commissioner or the Insurance Fraud Investigation Division to investigate and
24 examine possible violations of law and to take appropriate action against
25 wrongdoers.

26

27 23-66-510. Insurer Antifraud Initiative.

28 (a) Insurers shall have antifraud initiatives reasonably calculated to
29 detect, prosecute and prevent fraudulent insurance acts. Antifraud
30 initiatives may include, but are not limited to:

31 (1) Fraud investigators, who may be insurer employees or
32 independent contractors; or

33 (2) An antifraud plan submitted to the commissioner. Antifraud
34 plans submitted to the commissioner shall be privileged and confidential and
35 shall not be a public record and shall not be subject to discovery or subpoena
36 in a civil or criminal action.

1 (b) Upon the written request of an insurer, the commissioner may grant
 2 an exemption from the requirements of this section if he determines that such
 3 an exemption would not be detrimental to the interests of the public.

4
 5 23-66-511. Regulations.

6 The commissioner may promulgate reasonable rules and regulations deemed
 7 necessary by the commissioner for the administration of this subchapter.

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 9 23-66-512. Penalties.

10 A person who violates this subchapter is subject to the following:

11 (1) Suspension or revocation of license, civil penalties of up to ten
 12 thousand dollars (\$10,000) per violation, or both. Suspension or revocation
 13 of license and imposition of civil penalties shall be pursuant to an order of
 14 the commissioner issued under §§23-61-301 et seq. The commissioner's order
 15 may require a person found to be in violation of this subchapter to make
 16 restitution to persons aggrieved by violations of this subchapter; and

17 (2) A person convicted of a violation of 23-66-502 by a court of
 18 competent jurisdiction shall be guilty of a Class D felony. A person
 19 convicted of a violation of 23-66-502 shall be ordered to pay restitution to
 20 persons aggrieved by the violation of this subchapter. Restitution shall be
 21 ordered in addition to a fine or imprisonment; and

22 (3) A person convicted of a felony violation of this subchapter pursuant
 23 to subsection (2) of this section shall be disqualified from engaging in the
 24 business of insurance."

25
 26 SECTION 2. All provisions of this act of a general and permanent nature
 27 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
 28 Revision Commission shall incorporate the same in the Code.

29
 30 SECTION 3. If any provision of this act or the application thereof to
 31 any person or circumstance is held invalid, such invalidity shall not affect
 32 other provisions or applications of the act which can be given effect without
 33 the invalid provision or application, and to this end the provisions of this
 34 act are declared to be severable.

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 36 SECTION 4. All laws and parts of laws in conflict with this act are

1 hereby repealed.

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