

1 AN ACT concerning insurance.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the
5 Insurance Claims Fraud Prevention Act.

6 Section 5. Patient and client procurement.

7 (a) Except as permitted under the Illinois Rules of
8 Professional Conduct and the Medical Practice Act of 1987, it
9 is unlawful to knowingly offer or pay any remuneration
10 directly or indirectly, in cash or in kind, to induce any
11 person to procure clients or patients to obtain services or
12 benefits under a contract of insurance or that will be the
13 basis for a claim against an insured person or the person's
14 insurer.

15 (b) A person who violates any provision of this Act or
16 Article 46 of the Criminal Code of 1961 shall be subject, in
17 addition to any other penalties that may be prescribed by
18 law, to a civil penalty of not less than \$5,000 nor more than
19 \$10,000, plus an assessment of not more than 3 times the
20 amount of each claim for compensation under a contract of
21 insurance. The court shall have the power to grant other
22 equitable relief, including temporary injunctive relief, as
23 is necessary to prevent the transfer, concealment, or
24 dissipation of illegal proceeds, or to protect the public.
25 The penalty prescribed in this subsection shall be assessed
26 for each fraudulent claim upon a person in which the
27 defendant participated.

28 (c) The penalties set forth in subsection (b) are
29 intended to be remedial rather than punitive, and shall not
30 preclude, nor be precluded by, a criminal prosecution for the
31 same conduct. If the court finds, after considering the goals

1 of disgorging unlawful profit, restitution, compensating the
2 State for the costs of investigation and prosecution, and
3 alleviating the social costs of increased insurance rates due
4 to fraud, that such a penalty would be punitive and would
5 preclude, or be precluded by, a criminal prosecution, the
6 court shall reduce that penalty appropriately.

7 Section 10. Action by State's Attorney or Attorney
8 General. The State's Attorney of the county in which the
9 conduct occurred or Attorney General may bring a civil action
10 under this Act. Before the Attorney General may bring the
11 action, the Attorney General shall present the evidence
12 obtained to the appropriate State's Attorney for possible
13 criminal or civil filing. If the State's Attorney elects not
14 to pursue the matter, then the Attorney General may proceed
15 with the action.

16 Section 15. Action by interested person.

17 (a) An interested person, including an insurer, may
18 bring a civil action for a violation of this Act for the
19 person and for the State of Illinois. The action shall be
20 brought in the name of the State. The action may be dismissed
21 only if the court and the State's Attorney or the Attorney
22 General, whichever is participating, gives written consent to
23 the dismissal stating their reasons for consenting.

24 (b) A copy of the complaint and a written disclosure of
25 substantially all material evidence and information the
26 person possesses shall be served on the State's Attorney and
27 Attorney General. The complaint shall be filed in camera,
28 shall remain under seal for at least 60 days, and shall not
29 be served on the defendant until the court so orders. The
30 State's Attorney or Attorney General may elect to intervene
31 and proceed with the action within 60 days after he or she
32 receives both the complaint and the material evidence and

1 information. If more than one governmental entity elects to
2 intervene, the State's Attorney shall have precedence.

3 (c) The State's Attorney or Attorney General may, for
4 good cause shown, move the court for extensions of the time
5 during which the complaint shall remain under seal under
6 subsection (b). The motions may be supported by affidavits or
7 other submissions in camera. The defendant shall not be
8 required to respond to any complaint filed under this Section
9 until 20 days after the complaint is unsealed and served upon
10 the defendant.

11 (d) Before the expiration of the 60-day period or any
12 extensions obtained under subsection (c), the State's
13 Attorney or Attorney General shall either:

14 (1) proceed with the action, in which case the
15 action shall be conducted by the State's Attorney or
16 Attorney General; or

17 (2) notify the court that it declines to take over
18 the action, in which case the person bringing the action
19 shall have the right to conduct the action.

20 (e) When a person or governmental agency brings an
21 action under this Act, no person other than the State's
22 Attorney or Attorney General may intervene or bring a related
23 action based on the facts underlying the pending action
24 unless another statute or common law authorizes that action.

25 Section 20. Role of State's Attorney or Attorney
26 General.

27 (a) If the State's Attorney or Attorney General proceeds
28 with the action, he or she shall have the primary
29 responsibility for prosecuting the action, and shall not be
30 bound by an act of the person bringing the action. That
31 person shall have the right to continue as a party to the
32 action, subject to the limitations set forth in subsection
33 (b).

1 (b) The State's Attorney or Attorney General may dismiss
2 the action notwithstanding the objections of the person
3 initiating the action if the person has been notified by the
4 State's Attorney or Attorney General of the filing of the
5 motion, and the court has provided the person with an
6 opportunity for a hearing on the motion.

7 The State's Attorney or Attorney General may settle the
8 action with the defendant notwithstanding the objections of
9 the person initiating the action if the court determines,
10 after a hearing, that the proposed settlement is fair,
11 adequate, and reasonable under all the circumstances. Upon a
12 showing of good cause, the hearing may be held in camera.

13 Upon a showing by the State's Attorney or Attorney
14 General that unrestricted participation during the course of
15 the litigation by the person initiating the action would
16 interfere with or unduly delay the State's Attorney's or
17 Attorney General's prosecution of the case, or would be
18 repetitious, irrelevant, or for purposes of harassment, the
19 court may, in its discretion, impose limitations on the
20 person's participation, including, but not limited to, the
21 following:

- 22 (1) limiting the number of witnesses the person may
23 call;
- 24 (2) limiting the length of the testimony of those
25 witnesses;
- 26 (3) limiting the person's cross-examination of
27 witnesses; and
- 28 (4) otherwise limiting the participation by the
29 person in the litigation.

30 Upon a showing by the defendant that unrestricted
31 participation during the course of the litigation by the
32 person initiating the action would be for purposes of
33 harassment or would cause the defendant undue burden or
34 unnecessary expense, the court may limit the participation by

1 the person in the litigation.

2 (c) If the State's Attorney or Attorney General elects
3 not to proceed with the action, the person who initiated the
4 action shall have the right to conduct the action. If the
5 State's Attorney or Attorney General so requests, he or she
6 shall be served with copies of all pleadings filed in the
7 action and shall be supplied with copies of all deposition
8 transcripts, at the State's Attorney's or Attorney General's
9 expense. When a person proceeds with the action, the court,
10 without limiting the status and rights of the person
11 initiating the action, may nevertheless permit the State's
12 Attorney or Attorney General to intervene at a later date
13 upon a showing of good cause.

14 (d) If at any time both a civil action for penalties and
15 equitable relief pursuant to this Act and a criminal action
16 are pending against a defendant for substantially the same
17 conduct, whether brought by the government or a private
18 party, the civil action shall be stayed until the criminal
19 action has been concluded at the trial court level. The stay
20 shall not preclude the court from granting or enforcing
21 temporary equitable relief while the actions are pending.
22 Whether or not the State's Attorney or Attorney General
23 proceeds with the action, upon a showing by the State's
24 Attorney or Attorney General that certain actions of
25 discovery by the person initiating the action would interfere
26 with a law enforcement or governmental agency investigation
27 or prosecution of a criminal or civil matter arising out of
28 the same facts, the court may stay discovery for a period of
29 not more than 180 days. A hearing on a request for the stay
30 shall be conducted in camera. The court may extend the
31 180-day period upon a further showing in camera that the
32 agency has pursued the criminal or civil investigation or
33 proceedings with reasonable diligence and any proposed
34 discovery in the civil action will interfere with the ongoing

1 criminal or civil investigation or proceedings.

2 (e) Notwithstanding Section 15, the State's Attorney or
3 Attorney General may elect to pursue its claim through any
4 alternate remedy available to the State's Attorney or
5 Attorney General.

6 Section 25. Costs and proceeds of action.

7 (a) If the State's Attorney or Attorney General proceeds
8 with an action brought by a person under Section 15, that
9 person is entitled to receive an amount that the court
10 determines is reasonable based upon the extent to which the
11 person contributed to the prosecution of the action. Subject
12 to subsection (d), the amount awarded to the person who
13 brought the action shall not be less than 30% of the proceeds
14 of the action or settlement of the claim, and shall be paid
15 from the proceeds.

16 (b) If the State's Attorney or Attorney General does not
17 proceed with an action brought by a person under Section 15,
18 that person shall receive an amount that the court decides is
19 reasonable for collecting the civil penalty and damages.
20 Subject to subsection (d), the amount shall not be less than
21 40% of the proceeds of the action or settlement, and shall be
22 paid from the proceeds.

23 (c) If the person bringing the action as a result of a
24 violation of this Act has paid money to the defendant or to
25 an attorney acting on behalf of the defendant in the
26 underlying claim, then he or she shall be entitled to up to
27 double the amount paid to the defendant or the attorney if
28 that amount is greater than 50% of the proceeds.

29 (d) Where the action is one that the court finds to be
30 based primarily on disclosures of specific information, other
31 than information provided by the person bringing the action
32 under Section 15, relating to allegations or transactions in
33 a criminal, civil, or administrative hearing, in a

1 legislative or administrative report, hearing, audit, or
2 investigation, or from the news media, the court may award
3 those sums that it considers appropriate, but in no case more
4 than 10% of the proceeds, taking into account the
5 significance of the information and the role of the person
6 bringing the action in advancing the case to litigation.

7 (e) Any payment to a person under subsection (a), (b),
8 (c), or (d) shall be made from the proceeds. The person shall
9 also receive an amount for reasonable expenses that the court
10 finds to have been necessarily incurred, plus reasonable
11 attorney's fees and costs. All of those expenses, fees, and
12 costs shall be awarded against the defendant.

13 (f) If a local State's Attorney has proceeded with an
14 action under this Act, the Treasurer of the County where the
15 action was brought shall receive an amount for reasonable
16 expenses that the court finds to have been necessarily
17 incurred by the State's Attorney, including reasonable
18 attorney's fees and costs, plus 50% of the funds not awarded
19 to a private party. Those amounts shall be used to
20 investigate and prosecute insurance fraud, augmenting
21 existing budgets rather than replacing them. All remaining
22 funds shall go to the State and be deposited in the General
23 Revenue Fund and, when appropriated, shall be allocated to
24 appropriate State agencies for enhanced insurance fraud
25 investigation, prosecution, and prevention efforts.

26 (g) If the Attorney General has proceeded with an action
27 under this Act, all funds not awarded to a private party,
28 shall go to the State and be deposited in the General Revenue
29 Fund and, when appropriated, shall be allocated to
30 appropriate State agencies for enhanced insurance fraud
31 investigation, prosecution, and prevention efforts.

32 (h) If neither a local State's Attorney or the Attorney
33 General has proceeded with an action under this Act, 50% of
34 the funds not awarded to a private party shall be deposited

1 with the Treasurer of the County where the action was brought
2 and shall be disbursed to the State's Attorney of the County
3 where the action was brought. Those funds shall be used by
4 the State's Attorney solely to investigate, prosecute, and
5 prevent insurance fraud, augmenting existing budgets rather
6 than replacing them. All remaining funds shall go to the
7 State and be deposited in the General Revenue Fund and, when
8 appropriated, shall be allocated to appropriate State
9 agencies for enhanced insurance fraud investigation,
10 prosecution, and prevention efforts.

11 (i) Whether or not the State's Attorney or Attorney
12 General proceeds with the action, if the court finds that the
13 action was brought by a person who planned and initiated the
14 violation of this Act, that person shall be dismissed from
15 the civil action and shall not receive any share of the
16 proceeds of the action. The dismissal shall not prejudice the
17 right of the State's Attorney or Attorney General to continue
18 the action on behalf of the State.

19 (j) If the State's Attorney or Attorney General does not
20 proceed with the action, and the person bringing the action
21 conducts the action, the court may award to the defendant its
22 reasonable attorney's fees and expenses if the defendant
23 prevails in the action and the court finds that the claim of
24 the person bringing the action was clearly frivolous, clearly
25 vexatious, or brought primarily for purposes of harassment.

26 Section 30. Limitation on bringing actions.

27 (a) In no event may a person bring an action under
28 Section 15 that is based upon allegations or transactions
29 that are the subject of a civil suit or an administrative
30 civil money penalty proceeding in which the State's Attorney
31 or Attorney General is already a party.

32 (b) A court may not have jurisdiction over an action
33 under this Act based upon the public disclosure of

1 allegations or transactions in a criminal, civil, or
2 administrative hearing, in a legislative or administrative
3 report, hearing, audit, or investigation, or from the news
4 media, unless the action is brought by the State's Attorney,
5 the Attorney General, or a person who is an original source
6 of the information. For purposes of this subsection,
7 "original source" means an individual who has direct and
8 independent knowledge of the information on which the
9 allegations are based and has voluntarily provided the
10 information to the State's Attorney or Attorney General
11 before filing an action under this Act based on the
12 information.

13 Section 35. Expenses and sanctions.

14 (a) Except as provided in subsection (b), the State's
15 Attorney or Attorney General is not liable for expenses that
16 a person incurs in bringing an action under this Act.

17 (b) In civil actions brought under this Act in which the
18 Attorney General or a State's Attorney is a party, the court
19 shall retain discretion to impose sanctions otherwise allowed
20 by law, including the ability to order a party to pay
21 expenses as provided in the Code of Civil Procedure.

22 Section 40. Retaliatory discharge; remedy. An employee
23 who is discharged, demoted, suspended, threatened, harassed,
24 or in any other manner discriminated against in the terms and
25 conditions of employment by his or her employer because of
26 lawful acts done by the employee on behalf of the employee or
27 others in furtherance of an action under this Act, including
28 investigation for, initiation of, testimony for, or
29 assistance in an action filed or to be filed under this Act,
30 shall be entitled to all relief necessary to make the
31 employee whole. That relief shall include reinstatement with
32 the same seniority status the employee would have had but for

1 the discrimination, 2 times the amount of backpay, interest
 2 on the backpay, and compensation for any special damages
 3 sustained as a result of the discrimination, including
 4 litigation costs and reasonable attorney's fees. An employee
 5 may bring an action in the appropriate court for the relief
 6 provided in this Section. The remedies under this Section are
 7 in addition to any other remedies provided by existing law.

8 Section 45. Time limitations.

9 (a) Except as provided in subsection (b), an action
 10 pursuant to this Act may not be filed more than 3 years after
 11 the discovery of the facts constituting the grounds for
 12 commencing the action.

13 (b) Notwithstanding subsection (a), an action may be
 14 filed pursuant to this Act within not more than 8 years after
 15 the commission of an act constituting a violation of this Act
 16 or a violation of Article 46 of the Criminal Code of 1961.

17 Section 90. The Illinois Insurance Code is amended by
 18 changing Sections 155.23 and 155.24 as follows:

19 (215 ILCS 5/155.23) (from Ch. 73, par. 767.23)

20 Sec. 155.23. Fraud Claims reporting.

21 (1) The Director of ~~Insurance~~ is authorized to
 22 promulgate reasonable rules requiring insurers, as
 23 defined in Section 155.24, doing business insurance
 24 companies--licensed in the State of Illinois to report
 25 factual information in their possession that which is
 26 pertinent to suspected fraudulent ~~casualty-and-property~~
 27 insurance claims, fraudulent insurance applications, or
 28 premium fraud ~~including--claims--involving-the-theft-of~~
 29 ~~automobiles,~~ after he has made a determination that the
 30 such information is necessary to detect fraud or arson.
 31 This Claim information may include:

1 (a) Dates and description of accident or loss.

2 (b) Any insurance policy relevant to the accident
3 or loss.

4 (c) Name of the insurance company claims adjustor
5 and claims adjustor supervisor processing or reviewing
6 any claim or claims made under any insurance policy
7 relevant to the accident or loss.

8 (d) Name of claimant's or insured's attorney.

9 (e) Name of claimant's or insured's physician, or
10 any person rendering or purporting to render medical
11 treatment.

12 (f) Description of alleged injuries, damage or
13 loss.

14 (g) History of previous claims made by the claimant
15 or insured.

16 (h) Places of medical treatment.

17 (i) Policy premium payment record.

18 (j) Material relating to the investigation of the
19 accident or loss, including statements of any person,
20 proof of loss, and any other relevant evidence.

21 (k) any facts evidencing fraud or arson.

22 The Director shall establish reporting requirements for
23 application and premium fraud information reporting by rule.

24 (2) The Director of Insurance may designate one or more
25 data processing organizations or governmental agencies to
26 assist him in gathering such information and making
27 compilations thereof, and may by rule establish the form and
28 procedure for gathering and compiling such information. The
29 rules may ~~Such rule shall~~ name any organization or agency
30 designated by the Director to provide this service, and may
31 ~~shall~~ in such case provide for a fee to be paid by the
32 reporting insurers ~~companies~~ directly to the designated
33 organization or agency to cover any of the costs associated
34 with providing this service. After determination by the

1 Director of substantial evidence of false or fraudulent
 2 claims, fraudulent applications, or premium fraud, the
 3 information shall be forwarded by the Director or the
 4 Director's his designee to the proper law enforcement agency
 5 or prosecutor State's-Attorney-and-U.S.--Attorney. Insurers
 6 Insurance--companies shall have access to, and may use, the
 7 claims information compiled under the provisions of this
 8 Section. Insurers Insurance---companies shall release
 9 information concerning-claims--against--them to, and shall
 10 cooperate with, any law enforcement agency requesting such
 11 information.

12 In the absence of malice, no insurer insurance--company,
 13 or person who furnishes information on its behalf, is liable
 14 for damages in a civil action or subject to criminal
 15 prosecution for any oral or written statement made or any
 16 other action taken that is necessary to supply information
 17 required pursuant to this Section.

18 (Source: P.A. 83-851.)

19 (215 ILCS 5/155.24) (from Ch. 73, par. 767.24)
 20 Sec. 155.24. Motor Vehicle Theft and Motor Insurance
 21 Fraud Reporting and Immunity Law.

22 (a) As used in this Section:

23 (1) "authorized governmental agency" means the
 24 Illinois Department of State Police, a local governmental
 25 police department, a county sheriff's office, a State's
 26 Attorney, the Attorney General, a municipal attorney, a
 27 United States district attorney, a duly constituted
 28 criminal investigative agency of the United States
 29 government, the Illinois Department of Insurance, the
 30 Illinois Department of Professional Regulation and the
 31 office of the Illinois Secretary of State;

32 (2) "relevant" means having a tendency to make the
 33 existence of any information that is of consequence to an

1 investigation of motor vehicle theft or insurance fraud
2 investigation or a determination of such issue more
3 probable or less probable than it would be without such
4 information; and

5 (3) information will be "deemed important" if
6 within the sole discretion of the authorized governmental
7 agency such information is requested by that authorized
8 governmental agency;

9 (4) "Illinois authorized governmental agency" means
10 an authorized governmental agency as defined in item (1)
11 that is a part of the government of the State of Illinois
12 or any of the counties or municipalities of this State or
13 any other authorized entity; and

14 (5) For the purposes of this Section and Section
15 155.23, "insurer" means insurance companies, insurance
16 support organizations, self-insured entities, and other
17 providers of insurance products and services doing
18 business in the State of Illinois.

19 (b) Upon written request to an insurer by an authorized
20 governmental agency, an insurer or agent authorized by an
21 insurer to act on its behalf shall release to the requesting
22 authorized governmental agency any or all relevant
23 information deemed important to the authorized governmental
24 agency which the insurer may possess relating to any specific
25 motor vehicle theft or motor vehicle insurance fraud.
26 Relevant information may include, but is not limited to:

27 (1) Insurance policy information relevant to the
28 motor vehicle theft or motor vehicle insurance fraud
29 under investigation, including any application for such a
30 policy.

31 (2) Policy premium payment records which are
32 available.

33 (3) History of previous claims made by the insured.

34 (4) Information relating to the investigation of

1 the motor vehicle theft or motor vehicle insurance fraud,
2 including statements of any person, proofs of loss and
3 notice of loss.

4 (c) When an insurer knows or reasonably believes to know
5 the identity of a person whom it has reason to believe
6 committed a criminal or fraudulent act relating to a motor
7 vehicle theft or a motor vehicle insurance claim or has
8 knowledge of such a criminal or fraudulent act which is
9 reasonably believed not to have been reported to an
10 authorized governmental agency, then for the purpose of
11 notification and investigation, the insurer or an agent
12 authorized by an insurer to act on its behalf shall notify an
13 authorized governmental agency of such knowledge or
14 reasonable belief and provide any additional relevant
15 information in accordance with subsection paragraph (b) of
16 this Section. When the motor vehicle theft or motor vehicle
17 claim that gives rise to the suspected criminal or fraudulent
18 act has already generated an incident report to an Illinois
19 authorized governmental agency, the insurer shall report the
20 suspected criminal or fraudulent act to that agency. When no
21 prior incident report has been made, the insurer shall report
22 the suspected criminal or fraudulent act to the Attorney
23 General or State's Attorney in the county or counties where
24 the incident is claimed to have occurred. When the incident
25 that gives rise to the suspected criminal or fraudulent act
26 is claimed to have occurred outside the State of Illinois,
27 but the suspected criminal or fraudulent act occurs within
28 the State of Illinois, the insurer shall make the report to
29 the Attorney General or State's Attorney in the county or
30 counties where the suspected criminal or fraudulent act
31 occurred. When the fraud occurs in multiple counties the
32 report shall also be sent to the Attorney General.

33 (d) When an insurer provides any of the authorized
34 governmental agencies with notice pursuant to this Section it

1 shall be deemed sufficient notice to all authorized
2 governmental agencies for the purpose of this Act.

3 (e) The authorized governmental agency provided with
4 information pursuant to this Section may release or provide
5 such information to any other authorized governmental agency.

6 (f) Any insurer providing information to an authorized
7 governmental agency pursuant to this Section shall have the
8 right to request and receive relevant information from such
9 authorized governmental agency, and receive within a
10 reasonable time after the completion of the investigation,
11 not to exceed 30 days, the information requested.

12 (g) Any information furnished pursuant to this Section
13 shall be privileged and not a part of any public record.
14 Except as otherwise provided by law, any authorized
15 governmental agency, insurer, or an agent authorized by an
16 insurer to act on its behalf which receives any information
17 furnished pursuant to this Section, shall not release such
18 information to public inspection. Such evidence or
19 information shall not be subject to subpoena duces tecum in a
20 civil or criminal proceeding unless, after reasonable notice
21 to any insurer, agent authorized by an insurer to act on its
22 behalf and authorized governmental agency which has an
23 interest in such information and a hearing, the court
24 determines that the public interest and any ongoing
25 investigation by the authorized governmental agency, insurer,
26 or any agent authorized by an insurer to act on its behalf
27 will not be jeopardized by obedience to such a subpoena duces
28 tecum.

29 (h) No insurer, or agent authorized by an insurer on its
30 behalf, authorized governmental agency or their respective
31 employees shall be subject to any civil or criminal liability
32 in a cause of action of any kind for releasing or receiving
33 any information pursuant to this Section. Nothing herein is
34 intended to or does in any way or manner abrogate or lessen

1 the common and statutory law privileges and immunities of an
2 insurer, agent authorized by an insurer to act on its behalf
3 or authorized governmental agency or any of their respective
4 employees.

5 (Source: P.A. 85-1292.)