

As Introduced

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Representatives Reid, O'Brien, Garcia, Mottley, Fox, Vesper, Netzley, Haines

A B I L L

To amend sections 3905.49 and 3999.31 and to enact 1
sections 3905.491, 3999.41, and 3999.42 of the 2
Revised Code to require insurers to adopt an 3
antifraud program that includes written procedures 4
for pursuing insurance fraud; to require insurers 5
to report persons suspected of insurance fraud to 6
the Department of Insurance; to require insurers 7
to provide the Department with a list of those 8
employees who will investigate insurance fraud, 9
while limiting the immunity relating to the 10
exchange of information on fraud to these 11
employees; and to require persons convicted of a 12
felony while licensed as agents or solicitors to 13
report the conviction to the Department. 14

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3905.49 and 3999.31 be amended and 15
sections 3905.491, 3999.41, and 3999.42 of the Revised Code be 16
enacted to read as follows: 17

Sec. 3905.49. (A) The superintendent of insurance may 18
suspend, revoke, refuse to continue or renew, or refuse to issue 19
any license as an agent or solicitor under this chapter, if the 20

superintendent finds any one or more of the following;	21
(1) The person has made a false statement with respect to a material matter in the license application;	22 23
(2) Any cause for which issuance of the license could have been refused had it existed and been known to the superintendent at the time of issuance;	24 25 26
(3) The person has violated or failed to comply with any insurance law or any lawful rule or order of the superintendent or the commissioner of insurance of another state;	27 28 29
(4) The person has obtained or attempted to obtain any such license through misrepresentation MISREPRESENTATION or fraud;	30 31
(5) The person has improperly withheld, misappropriated, or converted to the person's own use any moneys belonging to policyholders, insurers, beneficiaries, or others received in the course of the person's insurance business;	32 33 34 35
(6) The person has knowingly misrepresented the terms of any actual or proposed insurance policy or contract;	36 37
(7) The person has been convicted of a felony. If a person has been convicted of a felony based on evidence of acts or omissions related to the insurance business, the superintendent shall revoke any license issued to such person for a period of not less than two years. If the person did not hold a license at the time of the conviction, no license shall be issued to the person for a period of two years after the date of the conviction.	38 39 40 41 42 43 44
(8) The person is guilty of an unfair or deceptive trade act <u>or</u> practice or fraud under any section of Title XXXIX of the Revised Code;	45 46 47
(9) In the conduct of the person's affairs under a license, the person has used fraudulent, coercive, or dishonest practices, or is incompetent, untrustworthy, or financially irresponsible;	48 49 50

(10) The person's license has been suspended or revoked in any other state, province, district, or territory;

(11) The person has forged another's name to an application for insurance;

(12) The person has cheated on an examination for an insurance license;

(13) THE PERSON HAS FAILED TO REPORT A FELONY CONVICTION AS REQUIRED UNDER SECTION 3905.491 OF THE REVISED CODE.

(B) The license of a partnership or corporation may be suspended, revoked, or refused if the superintendent finds, after notice and hearing under Chapter 119. of the Revised Code, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, directors, or managers acting on behalf of the partnership or corporation and such violation was not reported to the department of insurance or corrective action taken in relation to the violation.

(C) Before denying, revoking, suspending, or refusing to continue or renew any license or imposing any penalty under this section, the superintendent shall provide notice and an opportunity for hearing, under Chapter 119. of the Revised Code, to the licensee or applicant and any insurer represented by the licensee or applicant.

(D) The superintendent may modify any order under this section and restore a license of or issue a license to a person if the superintendent finds, after notice and opportunity for hearing provided to affected parties, that the person can demonstrate all of the following:

(1) The person has made restitution for all pecuniary losses caused by ~~his~~ the person's violation;

(2) The person's character and reputation have been

rehabilitated so that the person possesses the personal	81
qualifications required for the initial issuance of a license;	82
(3) If the order was an order of revocation based on a	83
conviction for felony based on evidence of acts or omissions	84
related to the insurance business, that two years have elapsed	85
since the effective date of the order, or if the order was an	86
order denying a license because of such a conviction, that two	87
years have elapsed since the date of the conviction;	88
(4) If required by the superintendent, the person passes the	89
examination required for an initial issuance of the license.	90
(E) The superintendent shall consider the following standards	91
in denying a license, imposing suspensions, revocations, or	92
refusals of continuations or renewals of licenses:	93
(1) Whether the person acted in good faith and without	94
knowledge of his <u>the</u> violation and makes restitution for any	95
pecuniary losses suffered by other persons as a result of his <u>the</u>	96
<u>person's</u> actions. In such cases, the maximum suspension shall be	97
ninety days.	98
(2) Whether, within the meanings defined in section 2901.22	99
of the Revised Code, the person acted purposely, knowingly,	100
recklessly, or negligently;	101
(3) Whether the amount of money or the nature of the property	102
involved in the violation would, if it were the subject of a	103
criminal offense, make a theft offense a misdemeanor or a felony;	104
	105
(4) The degree of trust placed in the person by, and the	106
incompetency, inexperience, or susceptibility to undue influence	107
or duress of, any other person involved;	108
(5) The effect of the violation upon the perception by	109
insureds and insurance customers of the ethics and integrity of	110

the insurance industry;	111
(6) The extent to which the person's conduct departed from the customary and usual ethical standards of persons engaged in the insurance business;	112 113 114
(7) Such other factors as the superintendent determines to be appropriate under the circumstances.	115 116
Sec. 3905.491. ANY PERSON WHO IS CONVICTED OF A FELONY WHILE LICENSED AS AN AGENT OR SOLICITOR UNDER THIS CHAPTER SHALL REPORT THE CONVICTION TO THE SUPERINTENDENT OF INSURANCE WITHIN THIRTY DAYS OF THE ENTRY DATE OF THE JUDGMENT OF CONVICTION. WITHIN THAT THIRTY-DAY PERIOD, THE PERSON SHALL ALSO PROVIDE THE SUPERINTENDENT WITH A COPY OF THE JUDGMENT, THE PROBATION OR COMMITMENT ORDER, AND ANY OTHER RELEVANT DOCUMENTS.	117 118 119 120 121 122 123
Sec. 3999.31. (A) As used in this section:	124
(1) "Fraudulent insurance act" means an act committed by a person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of a policy or contract for property insurance, casualty insurance, life insurance, sickness and accident insurance, or an annuity, or a claim for payment or other benefit pursuant to such a policy or contract, that the person knows to contain materially false information concerning any fact material thereto, or conceals, for the purpose of misleading, information concerning any fact material thereto. "Fraudulent insurance act" also includes any such written statement, claim, or concealment in relation to such an insurance policy or contract that constitutes a criminal offense under Title XXIX or XXXIX of the Revised Code.	125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140

(2) "Person" includes, but is not limited to, the 141
superintendent of insurance, the national association of insurance 142
commissioners, any insurer, any organization established to detect 143
or prevent fraudulent insurance acts, and any officer, director, 144
trustee, representative, agent, broker, or employee of the 145
superintendent, association, insurer, organization, or person. 146

(B) ~~In~~ Except as provided in division (F) of this section, in 147
the absence of fraud or bad faith, no person is subject to 148
liability for damages or any other civil liability for libel, 149
slander, or other relevant tort cause of action by virtue of 150
filing reports, without malice, or furnishing other information, 151
without malice, required under Title XXXIX of the Revised Code or 152
required by the superintendent under authority granted by that 153
title, and no liability for damages or any other civil cause of 154
action of any nature arises against a person for providing or 155
receiving information relating to suspected fraudulent insurance 156
acts that is furnished to or received from any of the following: 157

(1) Any law enforcement official, or any agent or employee of 158
such official; 159

(2) Other persons subject to the provisions of Title ~~xxxix~~ 160
XXXIX of the Revised Code; 161

(3) The division of insurance fraud of the department of 162
insurance, any insurance frauds bureau, the national association 163
of insurance commissioners, or any organization established to 164
detect and prevent fraudulent insurance acts; ~~or~~ 165

(4) Any other person involved in the detection or prevention 166
of fraudulent insurance acts. 167

(C) The superintendent ~~of insurance~~ and any agent, employee, 168
or designee of the superintendent or any personnel of the division 169
of insurance fraud of the department of insurance, or any 170
insurance frauds bureau, in the absence of malice, fraud, or bad 171

faith, is not subject to civil liability for libel, slander, or 172
other relevant tort and no civil cause of action of any nature 173
arises against such a person by virtue of the publication of any 174
report or bulletin related to the official activities of the 175
superintendent or of the division of insurance fraud of the 176
department of insurance, or of any insurance frauds bureau in 177
relation to fraudulent insurance acts. 178

(D) Nothing in this section is intended to abrogate or modify 179
in any way any common law or statutory privilege or immunity 180
enjoyed by any person. 181

(E) Nothing in this section shall be construed to negate, 182
supersede, or otherwise affect section 3911.06, 3911.07, 3915.05, 183
or 3923.04 of the Revised Code. 184

(F) EVERY INSURER SHALL FILE A WRITTEN NOTICE WITH THE 185
DEPARTMENT OF INSURANCE, IDENTIFYING EVERY OFFICER, DIRECTOR, 186
TRUSTEE, REPRESENTATIVE, AGENT, BROKER, OR OTHER EMPLOYEE OF THE 187
INSURER WHO HAS BEEN DESIGNATED BY THE INSURER TO INVESTIGATE 188
SUSPECTED FRAUDULENT INSURANCE ACTS. THE INSURER SHALL FILE 189
AMENDMENTS TO THE NOTICE AS NECESSARY. DIVISION (B) OF THIS 190
SECTION DOES NOT APPLY TO ANY OFFICER, DIRECTOR, TRUSTEE, 191
REPRESENTATIVE, AGENT, BROKER, OR OTHER EMPLOYEE OF THE INSURER 192
WHO HAS NOT BEEN IDENTIFIED IN THE REQUIRED NOTICE TO THE 193
DEPARTMENT OF INSURANCE OR IN AN AMENDMENT TO THAT NOTICE. 194

(G) This section may be cited as the conference of insurance 195
legislators/national association of insurance commissioners model 196
immunity act. 197

Sec. 3999.41. (A) EVERY INSURER, AS DEFINED IN DIVISION (A) 198
OF SECTION 3999.36 OF THE REVISED CODE, SHALL ADOPT AN ANTIFRAUD 199
PROGRAM AND SHALL SPECIFY IN A WRITTEN PLAN THE PROCEDURES IT WILL 200
FOLLOW WHEN INSTANCES OF INSURANCE FRAUD OR SUSPECTED INSURANCE 201
FRAUD ARE BROUGHT TO ITS ATTENTION. THE INSURER SHALL IDENTIFY IN 202

THE WRITTEN PLAN THE PERSON OR PERSONS RESPONSIBLE FOR THE 203
INSURER'S ANTIFRAUD PROGRAM. 204

(B)(1) AN INSURER SHALL PRODUCE A WRITTEN PLAN AS REQUIRED BY 205
DIVISION (A) OF THIS SECTION WITHIN NINETY DAYS AFTER OBTAINING 206
ITS LICENSE TO TRANSACT BUSINESS WITHIN THIS STATE OR WITHIN 207
NINETY DAYS AFTER BEGINNING TO ENGAGE IN THE BUSINESS OF INSURANCE 208
WITHIN THIS STATE. THE INSURER SHALL FILE A COPY OF ITS PLAN WITH 209
THE DEPARTMENT OF INSURANCE. 210

(2) AN INSURER ENGAGED IN THE BUSINESS OF INSURANCE WITHIN 211
THIS STATE ON THE EFFECTIVE DATE OF THIS SECTION SHALL PRODUCE A 212
WRITTEN PLAN AS REQUIRED BY DIVISION (A) OF THIS SECTION WITHIN 213
NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. THE INSURER 214
SHALL FILE A COPY OF ITS PLAN WITH THE DEPARTMENT OF INSURANCE. 215

(C) IF AN INSURER MODIFIES THE PROCEDURES IT FOLLOWS FOR 216
INSTANCES OF INSURANCE FRAUD OR SUSPECTED INSURANCE FRAUD, OR IF 217
THERE IS A CHANGE IN THE PERSON OR PERSONS RESPONSIBLE FOR THE 218
INSURER'S ANTIFRAUD PROGRAM, THE INSURER SHALL FILE AN AMENDED 219
PLAN WITH THE DEPARTMENT OF INSURANCE. 220

Sec. 3999.42. (A) IF AN INSURER, AS DEFINED IN DIVISION (A) 221
OF SECTION 3999.36 OF THE REVISED CODE, HAS A REASONABLE BELIEF 222
THAT A PERSON IS PERPETRATING OR FACILITATING AN INSURANCE FRAUD, 223
AS ESTABLISHED BY SECTION 2913.47 OF THE REVISED CODE, OR HAS DONE 224
SO, THE INSURER SHALL NOTIFY THE DEPARTMENT OF INSURANCE. 225

(B) THE NOTIFICATION REQUIRED BY DIVISION (A) OF THIS SECTION 226
SHALL BE MADE IN ACCORDANCE WITH RULES ADOPTED BY THE DEPARTMENT 227
OF INSURANCE. 228

(C) DIVISION (A) OF THIS SECTION DOES NOT REQUIRE 229
NOTIFICATION OF THE DEPARTMENT OF INSURANCE IF THE INSURANCE FRAUD 230
INVOLVES A CLAIM OF AN AMOUNT LESS THAN ONE THOUSAND DOLLARS. 231

(D) THIS SECTION APPLIES TO INSURANCE FRAUD PERPETRATED OR 232
FACILITATED BY ANY PERSON, INCLUDING, BUT NOT LIMITED TO, ANY 233

APPLICANT, POLICYHOLDER, SUBSCRIBER, OR ENROLLEE, OR ANY OFFICER, 234
DIRECTOR, MANAGER, EMPLOYEE, REPRESENTATIVE, OR AGENT OF THE 235
INSURER. 236

Section 2. That existing sections 3905.49 and 3999.31 of the 237
Revised Code are hereby repealed. 238