

As Passed by the House

122nd General Assembly

Regular Session

1997-1998

Am. Sub. H. B. No. 248

**Representatives Reid, O'Brien, Garcia, Mottley, Fox, Vesper, Netzley, Haines,
Hottinger, Batchelder, Grendell, Myers, Mottl, Lewis, Buchy, Brading, Olman,
Salerno**

A B I L L

To amend sections 3901.44, 3905.49, and 3999.31 and 1
to enact sections 3905.491, 3999.41, and 3999.42 2
of the Revised Code to require insurers to adopt 3
an antifraud program that includes written 4
procedures for pursuing insurance fraud; to 5
require insurers to report persons suspected of 6
insurance fraud to the Department of Insurance; to 7
require persons convicted of a felony while 8
licensed as agents or solicitors to report the 9
conviction to the Department; and to make other 10
changes related to insurance fraud investigations. 11
12

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

Section 1. That sections 3901.44, 3905.49, and 3999.31 be 13
amended and sections 3905.491, 3999.41, and 3999.42 of the Revised 14
Code be enacted to read as follows: 15

Sec. 3901.44. (A) AS USED IN THIS SECTION, "INSURANCE FRAUD 16
INVESTIGATION" MEANS ANY INVESTIGATION CONDUCTED BY THE 17
SUPERINTENDENT OF INSURANCE OR A DESIGNEE OF THE SUPERINTENDENT 18

THAT RELATES TO A FRAUDULENT INSURANCE ACT AS DEFINED IN SECTION 19
3999.31 OF THE REVISED CODE. 20

(B) All papers, documents, reports, and evidence in the 21
possession of the ~~division of insurance fraud of the department of~~ 22
~~insurance superintendent or the superintendent's designee~~ that 23
pertain to an insurance fraud investigation ~~conducted or~~ 24
~~authorized by the division~~ are confidential law enforcement 25
investigatory records under section 149.43 of the Revised Code. 26
Notwithstanding such section, the ~~division~~ superintendent shall 27
not prohibit public inspection of such records that pertain to an 28
insurance fraud investigation after the expiration of all federal 29
and state statutes of limitations applicable to the particular 30
offense to which the papers, documents, reports, and evidence 31
relate. 32

~~(B)~~(C) All papers, documents, reports, and evidence in the 33
possession of the ~~division of insurance fraud superintendent~~ that 34
do not pertain to such an insurance fraud investigation are public 35
records under section 149.43 of the Revised Code, and are not by 36
such possession alone confidential law enforcement investigatory 37
records. 38

~~(C)~~(D) All papers, documents, reports, and evidence in the 39
possession of the ~~division of insurance fraud superintendent or~~ 40
~~the superintendent's designee~~ that pertain to such an insurance 41
fraud investigation are not subject to subpoena in civil actions 42
by any court of this state until opened for public inspection by 43
the ~~division~~ superintendent in accordance with division ~~(A)~~(B) of 44
this section or with section 149.43 of the Revised Code, unless 45
the superintendent ~~of insurance~~ or ~~his~~ the superintendent's 46
designee consents, or until after reasonable notice to the 47
~~division~~ superintendent and opportunity for hearing, the court 48
determines the ~~division~~ superintendent would not be hindered 49

unnecessarily by such subpoena. 50

~~(D) Investigators who are employees of the division~~ (E) The 51
superintendent and the superintendent's designee are not subject 52
to subpoena in civil actions by any court of this state to testify 53
concerning any matter of which they have knowledge pursuant to a 54
pending insurance fraud investigation by the ~~division~~ 55
superintendent. 56

Sec. 3905.49. (A) The superintendent of insurance may 57
suspend, revoke, refuse to continue or renew, or refuse to issue 58
any license as an agent or solicitor under this chapter, if the 59
superintendent finds any one or more of the following: 60

(1) The person has made a false statement with respect to a 61
material matter in the license application; 62

(2) Any cause for which issuance of the license could have 63
been refused had it existed and been known to the superintendent 64
at the time of issuance; 65

(3) The person has violated or failed to comply with any 66
insurance law or any lawful rule or order of the superintendent or 67
the commissioner of insurance of another state; 68

(4) The person has obtained or attempted to obtain any such 69
license through ~~misrepresentation~~ MISREPRESENTATION or fraud; 70

(5) The person has improperly withheld, misappropriated, or 71
converted to the person's own use any moneys belonging to 72
policyholders, insurers, beneficiaries, or others received in the 73
course of the person's insurance business; 74

(6) The person has knowingly misrepresented the terms of any 75
actual or proposed insurance policy or contract; 76

(7) The person has been convicted of a felony. If a person 77
has been convicted of a felony based on evidence of acts or 78
omissions related to the insurance business, the superintendent 79

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.

(8) The person is guilty of an unfair or deceptive trade act
or practice or fraud under any section of Title XXXIX of the
Revised Code;

(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;

(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 qualifications required for the initial issuance of a license;

(3) If the order was an order of revocation based on a conviction for felony based on evidence of acts or omissions related to the insurance business, that two years have elapsed since the effective date of the order, or if the order was an order denying a license because of such a conviction, that two years have elapsed since the date of the conviction;

(4) If required by the superintendent, the person passes the examination required for an initial issuance of the license.

(E) The superintendent shall consider the following standards in denying a license, imposing suspensions, revocations, or refusals of continuations or renewals of licenses:

(1) Whether the person acted in good faith and without knowledge of ~~his~~ the violation and makes restitution for any pecuniary losses suffered by other persons as a result of ~~his~~ the person's actions. In such cases, the maximum suspension shall be ninety days.

(2) Whether, within the meanings defined in section 2901.22 of the Revised Code, the person acted purposely, knowingly,

recklessly, or negligently;	140
(3) Whether the amount of money or the nature of the property involved in the violation would, if it were the subject of a criminal offense, make a theft offense a misdemeanor or a felony;	141 142 143 144
(4) The degree of trust placed in the person by, and the incompetency, inexperience, or susceptibility to undue influence or duress of, any other person involved;	145 146 147
(5) The effect of the violation upon the perception by insureds and insurance customers of the ethics and integrity of the insurance industry;	148 149 150
(6) The extent to which the person's conduct departed from the customary and usual ethical standards of persons engaged in the insurance business;	151 152 153
(7) Such other factors as the superintendent determines to be appropriate under the circumstances.	154 155
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.	156 157 158 159 160 161 162
Sec. 3999.31. (A) As used in this section:	163
(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	164 165 166 167 168 169

or contract for property insurance, casualty insurance, life 170
insurance, sickness and accident insurance, or an annuity, or a 171
claim for payment or other benefit pursuant to such a policy or 172
contract, that the person knows to contain materially false 173
information concerning any fact material thereto, or conceals, for 174
the purpose of misleading, information concerning any fact 175
material thereto. "Fraudulent insurance act" also includes any 176
such written statement, claim, or concealment in relation to such 177
an insurance policy or contract that constitutes a criminal 178
offense under Title XXIX or XXXIX of the Revised Code. 179

(2) "Person" includes, but is not limited to, the 180
superintendent of insurance, the national association of insurance 181
commissioners, any insurer, any organization established to detect 182
or prevent fraudulent insurance acts, and any officer, director, 183
trustee, representative, agent, broker, or employee of the 184
superintendent, association, insurer, organization, or person. 185

(B) In the absence of fraud or bad faith, no person is 186
subject to liability for damages or any other civil liability for 187
libel, slander, or other relevant tort cause of action by virtue 188
of filing reports, without malice, or furnishing other 189
information, without malice, required under Title XXXIX of the 190
Revised Code or required by the superintendent under authority 191
granted by that title, and no liability for damages or any other 192
civil cause of action of any nature arises against a person for 193
providing or receiving information relating to suspected 194
fraudulent insurance acts that is furnished to or received from 195
any of the following: 196

(1) Any law enforcement official, or any agent or employee of 197
such official; 198

(2) Other persons subject to the provisions of Title ~~xxxix~~ 199
XXXIX of the Revised Code; 200

(3) ~~The division of insurance fraud of the department of insurance superintendent and any designee of the superintendent,~~ 201
any insurance frauds bureau, the national association of insurance 202
commissioners, or any organization established to detect and 203
prevent fraudulent insurance acts; ~~or~~ 204
205

(4) Any other person involved in the detection or prevention 206
of fraudulent insurance acts. 207

(C) ~~The superintendent of insurance and any agent, employee,~~ 208
~~or designee of the superintendent or any personnel of the division~~ 209
~~of insurance fraud of the department of insurance,~~ or any 210
insurance frauds bureau, in the absence of malice, fraud, or bad 211
faith, is not subject to civil liability for libel, slander, or 212
other relevant tort and no civil cause of action of any nature 213
arises against such a person by virtue of the publication of any 214
report or bulletin related to the official activities of the 215
superintendent ~~or of the division of insurance fraud of the~~ 216
~~department of insurance,~~ or of any insurance frauds bureau in 217
relation to fraudulent insurance acts. 218

(D) Nothing in this section is intended to abrogate or modify 219
in any way any common law or statutory privilege or immunity 220
enjoyed by any person. 221

(E) Nothing in this section shall be construed to negate, 222
supersede, or otherwise affect section 3911.06, 3911.07, 3915.05, 223
or 3923.04 of the Revised Code. 224

(F) This section may be cited as the conference of insurance 225
legislators/national association of insurance commissioners model 226
immunity act. 227

Sec. 3999.41. (A) Except as provided in division (D) of this 228
section, EVERY INSURER, AS DEFINED IN DIVISION (A) OF SECTION 229
3999.36 OF THE REVISED CODE, SHALL ADOPT AN ANTIFRAUD PROGRAM AND 230
SHALL SPECIFY IN A WRITTEN PLAN THE PROCEDURES IT WILL FOLLOW WHEN 231

INSTANCES OF INSURANCE FRAUD OR SUSPECTED INSURANCE FRAUD ARE 232
BROUGHT TO ITS ATTENTION. THE INSURER SHALL IDENTIFY IN THE 233
WRITTEN PLAN THE PERSON OR PERSONS RESPONSIBLE FOR THE INSURER'S 234
ANTIFRAUD PROGRAM. 235

(B)(1) AN INSURER SHALL DEVELOP A WRITTEN PLAN REQUIRED BY 236
DIVISION (A) OF THIS SECTION WITHIN NINETY DAYS AFTER OBTAINING 237
ITS LICENSE TO TRANSACT BUSINESS WITHIN THIS STATE OR WITHIN 238
NINETY DAYS AFTER BEGINNING TO ENGAGE IN THE BUSINESS OF INSURANCE 239
WITHIN THIS STATE AND SHALL THEREAFTER MAINTAIN SUCH A WRITTEN 240
PLAN. 241

(2) AN INSURER ENGAGED IN THE BUSINESS OF INSURANCE WITHIN 242
THIS STATE ON THE EFFECTIVE DATE OF THIS SECTION SHALL DEVELOP A 243
WRITTEN PLAN REQUIRED BY DIVISION (A) OF THIS SECTION WITHIN 244
NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION AND SHALL 245
THEREAFTER MAINTAIN SUCH A WRITTEN PLAN. 246

(C) IF AN INSURER MODIFIES THE PROCEDURES IT FOLLOWS FOR 247
INSTANCES OF INSURANCE FRAUD OR SUSPECTED INSURANCE FRAUD, OR IF 248
THERE IS A CHANGE IN THE PERSON OR PERSONS RESPONSIBLE FOR THE 249
INSURER'S ANTIFRAUD PROGRAM, THE INSURER SHALL MODIFY THE WRITTEN 250
PLAN IT MAINTAINS PURSUANT TO THIS SECTION. 251

(D) The requirements of this section are not applicable to 252
any insurer identified in division (A) of this section that is not 253
engaged in writing direct insurance in this state. 254

Sec. 3999.42. (A) IF AN INSURER, AS DEFINED IN DIVISION (A) 255
OF SECTION 3999.36 OF THE REVISED CODE, HAS A REASONABLE BELIEF 256
THAT A PERSON IS PERPETRATING OR FACILITATING AN INSURANCE FRAUD, 257
AS ESTABLISHED BY SECTION 2913.47 OF THE REVISED CODE, OR HAS DONE 258
SO, THE INSURER SHALL NOTIFY THE DEPARTMENT OF INSURANCE. 259

(B) THE NOTIFICATION REQUIRED BY DIVISION (A) OF THIS SECTION 260
SHALL BE MADE IN ACCORDANCE WITH RULES ADOPTED BY THE DEPARTMENT 261
OF INSURANCE. 262

(C) DIVISION (A) OF THIS SECTION DOES NOT REQUIRE 263
NOTIFICATION OF THE DEPARTMENT OF INSURANCE IF THE INSURANCE FRAUD 264
INVOLVES A CLAIM OF AN AMOUNT LESS THAN ONE THOUSAND DOLLARS. 265

(D) THIS SECTION APPLIES TO INSURANCE FRAUD PERPETRATED OR 266
FACILITATED BY ANY PERSON, INCLUDING, BUT NOT LIMITED TO, ANY 267
APPLICANT, POLICYHOLDER, SUBSCRIBER, OR ENROLLEE, OR ANY OFFICER, 268
DIRECTOR, MANAGER, EMPLOYEE, REPRESENTATIVE, OR AGENT OF THE 269
INSURER. 270

Section 2. That existing sections 3901.44, 3905.49, and 271
3999.31 of the Revised Code are hereby repealed. 272