

AN ACT

To amend sections 3901.03, 3901.44, 3905.49, and 3999.31 and to enact sections 3905.491, 3999.41, and 3999.42 of the Revised Code to require insurers to adopt an antifraud program that includes written procedures for pursuing insurance fraud; to require insurers to report persons suspected of insurance fraud to the Department of Insurance; to require persons convicted of a felony while licensed as agents or solicitors to report the conviction to the Department; to designate the office of the Warden in the Department of Insurance as a criminal justice agency; and to make other changes related to insurance fraud investigations.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 3901.03, 3901.44, 3905.49, and 3999.31 be amended and sections 3905.491, 3999.41, and 3999.42 of the Revised Code be enacted to read as follows:

Sec. 3901.03. The superintendent of insurance shall appoint a warden who shall investigate all reported violations of law relating to insurance, and perform such other duties in the administration of laws relating to insurance as the superintendent may direct.

The office of the warden is hereby designated a criminal justice agency in investigating reported violations of law relating to insurance, and as such is authorized by this state to apply for access to the computerized databases administered by the national crime information center or the law enforcement automated data system in Ohio, and to other computerized databases administered for the purpose of making criminal justice information accessible to state criminal justice agencies.

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

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

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

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

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

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

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

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

(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;

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

(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;

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

(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.

(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;

(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;

(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;

(5) The effect of the violation upon the perception by insureds and insurance customers of the ethics and integrity of the insurance industry;

(6) The extent to which the person's conduct departed from the customary and usual ethical standards of persons engaged in the insurance business;

(7) Such other factors as the superintendent determines to be appropriate under the circumstances.

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.

Sec. 3999.31. (A) As used in this section:

(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.

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

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

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

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

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

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

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

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

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

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

Sec. 3999.41. (A) Except as provided in division (D) of this section, EVERY INSURER, AS DEFINED IN DIVISION (A) OF SECTION 3999.36 OF THE REVISED CODE, SHALL ADOPT AN ANTIFRAUD PROGRAM AND SHALL SPECIFY IN A WRITTEN PLAN THE PROCEDURES IT WILL FOLLOW WHEN INSTANCES OF INSURANCE FRAUD OR SUSPECTED INSURANCE FRAUD ARE BROUGHT TO ITS ATTENTION. THE INSURER SHALL IDENTIFY IN THE WRITTEN PLAN THE PERSON OR PERSONS RESPONSIBLE FOR THE INSURER'S ANTIFRAUD PROGRAM.

(B)(1) AN INSURER SHALL DEVELOP A WRITTEN PLAN REQUIRED BY DIVISION (A) OF THIS SECTION WITHIN NINETY DAYS AFTER OBTAINING ITS LICENSE TO TRANSACT BUSINESS WITHIN THIS STATE OR WITHIN NINETY DAYS AFTER

EGINNING TO ENGAGE IN THE BUSINESS OF INSURANCE WITHIN THIS STATE AND SHALL THEREAFTER MAINTAIN SUCH A WRITTEN PLAN.

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

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

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

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

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

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

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

SECTION 2. That existing sections 3901.03, 3901.44, 3905.49, and 3999.31 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____