

No. 1994-166

AN ACT

SB 850

Providing for insurance fraud prevention; establishing the Insurance Fraud Prevention Authority and providing for its powers and duties; establishing the Insurance Fraud Prevention Trust Fund; establishing a section for investigation and prosecution within the Office of Attorney General and providing for its powers and duties; and providing for funding of insurance fraud investigation and prosecution in county district attorneys' offices, for confidentiality and for certain immunities.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Insurance Fraud Prevention Act.

Section 102. Purpose.

The purpose of this act is to establish, coordinate and fund activities in this Commonwealth to prevent, combat and reduce insurance fraud, to improve and support insurance fraud law enforcement and administration and to improve and support insurance fraud prosecution.

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Authority.” The Insurance Fraud Prevention Authority established in section 301.

“Board.” The board of directors of the Insurance Fraud Prevention Authority.

“Fund.” The Insurance Fraud Prevention Trust Fund established in section 303.

“Insurance fraud.” Any activity defined as an offense under 18 Pa.C.S. § 4117 (relating to insurance fraud).

“Section of Insurance Fraud” or “section.” The Section of Insurance Fraud in the Office of Attorney General.

CHAPTER 3

INSURANCE FRAUD PREVENTION AUTHORITY

Section 301. Establishment of authority.

(a) Establishment.—There is hereby established a body corporate and politic to be known as the Insurance Fraud Prevention Authority. The purposes, powers and duties of the authority shall be vested in and exercised by a board of directors.

(b) Composition.—The board of the authority shall consist of seven members, composed and appointed in accordance with the following:

(1) The Attorney General or his designee.

(2) A representative of the Philadelphia Federal Insurance Fraud Task Force.

(3) Four representatives of insurers, one of whom shall be appointed by the President pro tempore of the Senate, one of whom shall be appointed by the Minority Leader of the Senate, one of whom shall be appointed by the Speaker of the House of Representatives and one of whom shall be appointed by the Minority Leader of the House of Representatives. Each of the four members shall be, respectively, a representative of an insurer writing workers' compensation, accident and health, automobile or general commercial liability insurance in this Commonwealth.

(4) One representative of purchasers of insurance in this Commonwealth who is not employed by or connected with the business of insurance and is appointed by the Governor.

(c) Terms.—With the exception of the Attorney General and the representative of the Philadelphia Federal Insurance Fraud Task Force, members of the board shall serve for terms of four years. No appointed member shall be eligible to serve more than two full consecutive terms.

(d) Compensation.—Members of the board shall serve without compensation but shall receive reimbursement for all reasonable and necessary expenses incurred in connection with their duties in accordance with the rules of the Executive Board.

(e) Quorum.—A majority of the members of the board shall constitute a quorum for the transaction of business at a meeting or the exercise of a power or function of the authority. Notwithstanding any other provision of law, action may be taken by the board at a meeting upon a vote of the majority of its members present in person or through the use of amplified telephonic equipment if authorized by the bylaws of the board. The board shall meet at the call of the chairperson or as may be provided in the bylaws of the board. The board shall meet at least quarterly. Meetings of the board may be held anywhere within this Commonwealth. The board shall elect its own chairperson.

Section 302. Powers and duties.

The authority shall have the powers necessary and convenient to carry out and effectuate the purposes and provisions of this act and the purposes of the authority and the powers delegated by other laws, including, but not limited to:

(1) Employ administrative, professional, clerical and other personnel as may be required and organize the staff as may be appropriate to effectuate the purposes of this act.

(2) Have a seal and alter the same at pleasure, have perpetual succession, make, execute and deliver contracts, conveyances and other instruments necessary or convenient to the exercise of its powers and make and amend bylaws.

(3) Procure insurance against any loss in connection with its property, assets or activities.

(4) Apply for, solicit, receive, establish priorities for, allocate, disburse, contract for, administer and spend funds in the fund and other funds that are made available to the authority from any source consistent with the purposes of this act.

(5) Make grants to and provide financial support for the Section of Insurance Fraud, the unit of insurance fraud in the Philadelphia District Attorney's Office, other county district attorneys' offices, other government agencies, community, consumer and business organizations consistent with the purposes of this act and considering the extent of the insurance fraud problem in each county of this Commonwealth.

(6) Advise the State Treasurer in relation to the investment of any money held in the fund and any funds held in reserve or sinking funds and any money not required for immediate use or disbursement and to advise the State Treasurer in relation to the use of depositories for moneys of the fund.

(7) Assess the scope of the problem of insurance fraud, including areas of this Commonwealth where the problem is greatest, and review State and local criminal justice policies, programs and plans dealing with insurance fraud.

(8) Develop and sponsor the implementation of Statewide plans, programs and strategies to combat insurance fraud, improve the administration of the insurance fraud laws and provide a forum for identification of critical problems for those persons dealing with insurance fraud.

(9) Coordinate the development, adoption and implementation of plans, programs and strategies relating to interagency and intergovernmental cooperation with respect to insurance fraud law enforcement.

(10) Promulgate rules or regulations related to the expenditure of moneys held in the fund in order to assist and support those agencies, units of government, county district attorneys' offices and other organizations charged with the responsibility of reducing insurance fraud or interested and involved in achieving this goal.

(11) Audit at its discretion the plans and programs that it has funded in whole or in part in order to evaluate the effectiveness of the plans and programs and withdraw funding should the authority determine that a plan or program is ineffective or is no longer in need of further financial support from the fund.

(12) Report annually, on or before the first day of April falling after the act has been in effect for at least 12 months and annually thereafter on the same schedule, to the Governor and the General Assembly on the authority's activities in the preceding period of operation.

(13) Meet with the Section of Insurance Fraud on at least a quarterly basis in order to advise and assist it in implementing its statutory mandate.

(14) Advise the General Assembly on matters relating to insurance fraud and recommend to the General Assembly, on an annual basis, any changes to the operation of the Section of Insurance Fraud. The report shall be available for public inspection.

(15) Establish either alone or in cooperation with authorized insurance companies and licensed agents and producers a fund to reward persons not connected with the insurance industry who provide information or furnish evidence leading to the arrest and conviction of persons responsible for insurance fraud.

(16) Require as a condition of every application and request for financial support, including every application for ongoing renewal of a multiyear grant under section 303(f), that the applicant described both the

nature of and the amount of funding for the activities, if any, devoted to the investigation and prosecution of insurance fraud at the time of the application or request.

(17) Require as a condition of every application and request for financial support that every recipient of funding report annually within four months of the close of each funding cycle to the authority on the use of the funds obtained from the authority during the previous year, including a description of programs implemented and results obtained. The authority will include this information on the use of funds by grantees in its annual report under paragraph (12) and send a copy specifically to the chairman and the minority chairman of the standing committees of the Senate and the chairman and the minority chairman of the standing committees of the House of Representatives with jurisdiction over insurance matters.

Section 303. Insurance Fraud Prevention Trust Fund.

(a) Establishment.—There is hereby established a separate account in the State Treasury to be known as the Insurance Fraud Prevention Trust Fund. This fund shall be administered by the State Treasurer with the advice of the authority. All interest earned from the investment or deposit of moneys accumulated in the fund shall be deposited in the fund for the same use.

(b) Funds.—All moneys deposited into the fund shall be held in trust and shall not be considered general revenue of the Commonwealth but shall be used only to effectuate the purposes of this act as determined by the authority and shall be subject to audit by the Auditor General.

(c) Assessment.—

(1) Prior to the first day of April following the effective date of this act and prior to the first day of April of each year thereafter so long as this act shall remain in effect, each insurer engaged in the writing of the insurance coverages listed below, as a condition of its authorization to transact business in this Commonwealth, shall pay into the fund in trust an amount equal to the product obtained by multiplying \$8,000,000 by a fraction, the numerator of which is the direct premium collected for those coverages listed below by that insurer in this Commonwealth during the preceding calendar year and the denominator of which is the direct premium written on such coverages in this Commonwealth by all insurers in the same period.

(2) The following coverages, as listed in the Annual Statistical Report of the Insurance Department, shall be considered in determining assessments: all fire and casualty direct business written and accident and health and credit accident and health written under life/annuity/accident and health direct business written. Assessments made under this section shall not be considered burdens and prohibitions under section 212 of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

(3) Assessments for health plan corporations and professional health services plan corporations when added together shall not be more than 10% of the total assessment authorized by this subsection. If the total assessment for these organizations is more than 10%, such organizations will share the assessment up to the 10% limit among themselves in the same proportion as they would otherwise have shared their calculated assessment absent this limit. Any deficiency in the total assessment caused by the application of this limit will be shared by all other entities being assessed in the same proportions as they are sharing the rest of the assessment.

(d) Base amount.—In succeeding years the authority may vary the base amount of \$8,000,000, provided, however, that any increase which on an annual basis exceeds the increase in the Consumer Price Index for this Commonwealth must be approved by three of the four insurance representatives on the board.

(e) Expenditures.—Moneys in the fund may be expended by the authority for the following purposes:

(1) Effectuate the powers, duties and responsibilities of the authority as set forth in this act.

(2) Pay the costs of administration and operation of the Section of Insurance Fraud and the unit for insurance fraud in the Philadelphia District Attorney's Office.

(3) Provide financial support to law enforcement, correctional agencies and county district attorneys' offices for programs designed to reduce insurance fraud and to improve the administration of insurance fraud laws.

(4) Provide financial support for other governmental agencies, community, consumer and business organizations for programs designed to reduce insurance fraud and to improve the administration of insurance fraud laws.

(5) Provide financial support to programs designed to inform insurance consumers about the costs of insurance fraud to individuals and to society and to suggest methods for preventing insurance fraud.

(6) Provide financial support for reward programs leading to the arrest and conviction of persons and organizations engaged in insurance fraud.

(7) Provide financial support for other plans, programs and strategies consistent with the purposes of this act.

(f) Multiyear grants.—In funding the Section of Insurance Fraud, the Unit for Insurance Fraud in the Philadelphia District Attorney's Office and in funding grant requests, the authority may consider and approve requests for multiyear grants of not more than four years in length, although extensions of such multiyear commitments may be renewed from year to year. No funding reduction under subsection (d) can be imposed by the authority in any given year which would operate to reduce funding for any multiyear approved program for which persons have been hired for full-time positions to a funding level where such positions must be terminated, unless the

organization employing such persons certifies either that other equivalent positions are available or that such positions with the antifraud program can be funded from other sources.

(g) Dissolution.—In the event that the trust fund is discontinued or the authority is dissolved by operation of law, any balance remaining in the fund, after deducting administrative costs for liquidation, shall be returned to insurers in proportion to their financial contributions to the fund in the preceding calendar year.

Section 304. Immunity.

In the absence of malice, no board member and no employee of the authority shall be subject to any civil or criminal liability for receiving or disclosing information related to insurance fraud or the activities of the authority. In the absence of malice, persons or organizations shall not be subject to civil or criminal liability for providing information relating to insurance fraud to the authority, its employees, agents or designees. This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person.

CHAPTER 5 SECTION OF INSURANCE FRAUD

Section 501. Establishment.

(a) Establishment.—There is hereby established within the Office of Attorney General, a Section of Insurance Fraud to investigate and prosecute insurance fraud in accordance with jurisdictional mandates as specified by the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and 18 Pa.C.S. § 4117 (relating to insurance fraud).

(b) Funding.—All costs of administration and operation of the section shall be borne by the fund. Any moneys or other property awarded to the section as costs of investigation or as a fine shall be credited to the fund.

Section 502. Powers and duties.

The section shall have the powers necessary and convenient to carry out and effectuate the purposes and provisions of this act and the powers delegated by other laws, including, but not limited to, the power:

- (1) To employ administrative, professional, clerical and other personnel as may be required and organize the staff as may be appropriate to effectuate the purposes of this act.
- (2) To initiate inquiries and conduct investigations when the section has reason to believe that insurance fraud may have been or is being committed.
- (3) To respond to notifications or complaints of suspected insurance fraud generated by State and local police, other law enforcement authorities, governmental units, including the Federal Government, and the general public.
- (4) To review notices and reports of insurance fraud submitted by authorized insurers, their employees and licensed insurance agents or

producers and to select those incidents of suspected fraud as, in its judgment, require further investigation and undertake such investigation.

(5) To conduct independent examination of insurance fraud, conduct studies to determine the extent of insurance fraud, deceit or intentional misrepresentation of any kind in the insurance process and publish information and reports on such examinations or studies.

(6) To prosecute both on its own and in conjunction with other sections and divisions within the Office of Attorney General any incidents of insurance fraud involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state disclosed by its investigations and to assemble evidence, prepare charges, bring charges or, upon request of any other prosecutorial authority, otherwise assist that prosecutory authority having jurisdiction over such incidents.

(7) To report incidents of insurance fraud disclosed by its investigations to any other appropriate law enforcement, administrative, regulatory or licensing agency.

(8) To pay over all civil and criminal fines and penalties collected for violations and acts subject to investigation and prosecution into the fund.

(9) To undertake programs to investigate insurance fraud and to meet, at least on a quarterly basis, with the Insurance Fraud Prevention Authority.

(10) To employ investigators trained in accordance with the act of June 18, 1974 (P.L.359, No.120), referred to as the Municipal Police Education and Training Law. The laws applicable to law enforcement officers of this Commonwealth shall be applicable to the investigators. Investigators of the section shall have the following additional powers:

(i) To make arrests in accordance with existing jurisdictional rules for criminal violations established as a result of their investigations.

(ii) To execute arrest and search warrants in accordance with existing jurisdictional rules for the same criminal violations.

(11) To designate, if evidence, documentation and related materials sought are located outside of this Commonwealth, representatives, including officials of the state where the matter is located, to secure the matter or inspect the matter on its behalf. The person so requested shall either make the matter available to the section or shall make the matter available for inspection or examination by a designated representative of the section.

Section 503. Document confidentiality and immunity from subpoena.

(a) General rule.—Papers, records, documents, reports, materials or other evidence relative to the subject of an insurance fraud investigation shall remain confidential and shall not be subject to public inspection for so long as the section deems it reasonably necessary to complete its investigation or for so long as the section deems it reasonably necessary to protect the privacy of the person investigated, to protect the person furnishing the matter or to be in public interest.

(b) Subpoena.—

(1) Papers, records, documents, reports, materials or other evidence relative to the subject of an insurance fraud investigation shall not be subject to subpoena until opened for public inspection by the section unless the Office of Attorney General consents or until, after notice to the section and a hearing, a court of record determines that the section will not be unnecessarily hindered by compliance with a subpoena.

(2) Investigators employed by the section shall not be subject to subpoena in civil actions by any court in this Commonwealth to testify concerning any matter of which they have knowledge pursuant to a pending or continuing insurance fraud investigation being conducted by the section unless the Office of Attorney General consents or until, after notice to the Office of Attorney General and a hearing, a court of record determines that the investigation will not be hindered by the appearance.

Section 504. Duties of insurers, employees, agents and brokers.

Every insurer, every employee of an insurer and every licensed agent or broker shall cooperate fully with the section. Where an insurer, agent or broker who believes that an insurance fraud has been or is being committed notifies the section, the notification shall toll any applicable time period in the act of July 22, 1974 (P.L.589, No.205), known as the Unfair Insurance Practices Act, or any other law or regulation.

Section 505. Persons not connected with insurance industry.

Any person having knowledge of or who believes that an insurance fraud is being or has been committed may send to the section a report or information pertinent to the knowledge and belief.

Section 506. Refusal to cooperate with investigation.

It is unlawful for any person to resist an arrest authorized by this act or in any manner to interfere either by abetting or assisting such resistance or otherwise interfere with section investigators in the duties imposed upon them by this act or by any other applicable law.

Section 507. Immunity.

(a) General rule.—In the absence of malice, persons or organizations providing information to or otherwise cooperating with the section, its employees, agents or designees, shall not be subject to civil or criminal liability for supplying the information.

(b) Civil and criminal liability.—

(1) In the absence of malice, persons or organizations shall not be subject to civil or criminal liability for complying with an order issued by a court of competent jurisdiction acting in response to a request by the section.

(2) In the absence of malice, the Attorney General and any employee, agent or designee of the Office of Attorney General and the section shall not be subject to civil or criminal liability for the execution of official activities or duties of the section by virtue of the publication of any report or bulletin related to the official activities or duties of the section.

(c) Construction of section.—This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person.

CHAPTER 11
MISCELLANEOUS PROVISIONS

Section 1101. Other law enforcement authority.

This act shall not:

- (1) Preempt the authority of or relieve the duty of any other law enforcement agencies to investigate and prosecute suspected violations of law.
- (2) Prevent or prohibit a person from voluntarily disclosing any information concerning insurance fraud to any law enforcement agency other than the section.
- (3) Limit any of the powers granted to the Insurance Commissioner to investigate possible violations of law and to take appropriate action against wrongdoers.

Section 1102. Severability.

If any provision of this act or its application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 1103. Repeals.

All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 1104. Effective date.

This act shall take effect in 60 days.

APPROVED—The 28th day of December, A.D. 1994.

ROBERT P. CASEY