

CHAPTER 71

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 96-1149

BY REPRESENTATIVES Owen, Agler, Berry, Dean, Kreutz, Leyba, Martin, Schwarz, Swenson, Taylor, and Young;
also SENATORS Rizzuto, Alexander, Bishop, Hernandez, Hopper, Martinez, Matsunaka, Norton, Pascoe, Perlmutter, L. Powers,
R. Powers, Rupert, Tebedo, Thiebaut, and Weddig.

AN ACT**CONCERNING THE PREVENTION OF INSURANCE FRAUD.**

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

SECTION 1. 10-1-127 (1), Colorado Revised Statutes, 1994 Repl. Vol., is amended, and the said 10-1-127 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

10-1-127. Fraudulent insurance acts - immunity for furnishing information relating to suspected insurance fraud. (1) For purposes of this title, articles 40 to 47 of title 8, and articles 6, 7, 29.5, 32, 33, 35, 36, 38, 40, 41, and 43 of title 12, C.R.S., a fraudulent insurance act is committed if a person 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, a purported insurer, a broker, or any agent thereof any written statement as part or in support of an application for the issuance or the rating of an insurance policy ~~for commercial insurance~~ or a claim for payment or other benefit pursuant to an insurance policy ~~for commercial or personal insurance~~ which he OR SHE knows to contain false information concerning any fact material thereto or if he OR SHE knowingly and with intent to defraud or mislead conceals information concerning any fact material thereto. For purposes of this section, "written statement" includes a patient medical record as such term is defined in section 18-4-412 (2) (a), C.R.S., and any bill for medical services.

(1.5) (a) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT INSURANCE FRAUD IS EXPENSIVE. INSURANCE FRAUD INCREASES PREMIUMS AND PLACES BUSINESSES AT RISK. INSURANCE FRAUD REDUCES CONSUMERS' ABILITY TO RAISE THEIR STANDARD OF LIVING AND DECREASES THE ECONOMIC VITALITY OF THIS STATE. THE GENERAL

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ASSEMBLY FURTHER FINDS AND DECLARES THAT THE STATE OF COLORADO MUST AGGRESSIVELY CONFRONT THE PROBLEM OF INSURANCE FRAUD BY FACILITATING THE DETECTION OF AND REDUCING THE OCCURRENCE OF FRAUD THROUGH STRICTER ENFORCEMENT AND DETERRENCE AND BY INCREASING THE PARTNERSHIP AMONG CONSUMERS, THE INSURANCE INDUSTRY, AND THE STATE IN COORDINATING EFFORTS TO COMBAT INSURANCE FRAUD.

(b) COLORADO HAS ADDRESSED INSURANCE FRAUD IN VARIOUS STATUTES, INCLUDING BUT NOT LIMITED TO THE CIVIL AND ADMINISTRATIVE PROVISIONS FOUND IN THIS SECTION, SECTION 10-4-708.6, PART 4 OF ARTICLE 2 OF THIS TITLE, PARTS 1, 2, 9, AND 11 OF ARTICLE 3 OF THIS TITLE, AND NUMEROUS OTHER PROVISIONS OF THIS TITLE. IT HAS ALSO BEEN ADDRESSED IN CRIMINAL PROVISIONS FOUND IN PARTS 1, 2, AND 3 OF ARTICLE 2 OF TITLE 18, PART 1 OF ARTICLE 4 OF TITLE 18, PART 1 OF ARTICLE 5 OF TITLE 18, AND SECTION 18-5-205, C.R.S. THESE STATUTORY PROVISIONS IMPOSE REGULATORY OVERSIGHT AND SEVERE CIVIL AND CRIMINAL PENALTIES ON AUTHORIZED AND UNAUTHORIZED INSURANCE COMPANIES AND OTHER PERSONS WHO COMMIT INSURANCE FRAUD. THE PURPOSE OF THIS SECTION IS TO FURTHER IMPROVE REGULATORY OVERSIGHT OF LICENSED PERSONS WHO COMMIT INSURANCE FRAUD AND PROVIDE ADDITIONAL REMEDIES TO AGGRIEVED PERSONS.

(5) (a) EACH INSURANCE COMPANY LICENSED TO DO BUSINESS IN THIS STATE THAT OBTAINS A JUDGMENT OR SETTLEMENT IN A LAWSUIT INVOLVING A FRAUDULENT INSURANCE ACT AGAINST A PERSON WHO IS LICENSED BY THE STATE OF COLORADO AND WHOSE SERVICES ARE COMPENSATED IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, BY INSURANCE CLAIM PROCEEDS, SHALL SEND TO THE APPROPRIATE COLORADO STATE LICENSING BOARD, IN THE FORM PRESCRIBED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES, NOTICE OF SUCH SETTLEMENT OR JUDGMENT. NO CAUSE OF ACTION SHALL ARISE AGAINST ANY INSURANCE COMPANY OR INDIVIDUAL FOR PROVIDING INFORMATION AS PROVIDED IN THIS SUBSECTION (5).

(b) EVERY PERSON WHO OBTAINS A JUDGMENT OR SETTLEMENT IN A LAWSUIT INVOLVING A FRAUDULENT INSURANCE ACT AGAINST A PERSON WHO IS LICENSED BY THE STATE OF COLORADO AND WHOSE SERVICES ARE COMPENSATED IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, BY INSURANCE CLAIM PROCEEDS, MAY SEND TO THE APPROPRIATE COLORADO STATE LICENSING BOARD NOTICE OF SUCH SETTLEMENT OR JUDGMENT. NO CAUSE OF ACTION SHALL ARISE AGAINST ANY PERSON FOR PROVIDING INFORMATION AS PROVIDED IN THIS SUBSECTION (5).

(c) EVERY PERSON WHO OBTAINS A JUDGMENT OR SETTLEMENT INVOLVING A FRAUDULENT INSURANCE ACT BY AN INSURANCE COMPANY OR AN AGENT OF AN INSURANCE COMPANY MAY SEND TO THE COLORADO DIVISION OF INSURANCE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES NOTICE OF SUCH JUDGMENT OR SETTLEMENT, INCLUDING ANY EVIDENCE OF A FRAUDULENT INSURANCE ACT. NO CAUSE OF ACTION SHALL ARISE AGAINST ANY PERSON FOR PROVIDING INFORMATION AS PROVIDED IN THIS SUBSECTION (5).

(6) (a) ON AND AFTER JANUARY 1, 1997, EVERY LICENSED INSURANCE COMPANY DOING BUSINESS IN COLORADO SHALL PREPARE, IMPLEMENT, AND MAINTAIN AN INSURANCE ANTI-FRAUD PLAN; EXCEPT THAT THIS SUBSECTION (6) SHALL NOT APPLY TO ENTITIES WHOSE PRINCIPAL BUSINESS IS THE ASSUMPTION OF REINSURANCE,

REINSURANCE AGREEMENTS, OR REINSURANCE CLAIMS TRANSACTIONS. INSURANCE COMPANIES APPROVED BY THE COMMISSIONER UNDER ARTICLE 5 OF THIS TITLE, MAY BE REQUIRED, AS A CONDITION OF SUCH APPROVAL, TO MAINTAIN AN INSURANCE ANTI-FRAUD PLAN. EACH ANTI-FRAUD PLAN SHALL OUTLINE SPECIFIC PROCEDURES, APPROPRIATE TO THE TYPE OF INSURANCE PROVIDED BY THE INSURANCE COMPANY IN COLORADO, TO:

(I) PREVENT, DETECT, AND INVESTIGATE ALL FORMS OF INSURANCE FRAUD, INCLUDING FRAUD BY THE INSURANCE COMPANY'S EMPLOYEES AND AGENTS, FRAUD RESULTING FROM FALSE REPRESENTATIONS OR OMISSIONS OF MATERIAL FACT IN THE APPLICATION FOR INSURANCE, RENEWAL DOCUMENTS, OR RATING OF INSURANCE POLICIES, CLAIMS FRAUD, AND SECURITY OF THE INSURANCE COMPANY'S DATA PROCESSING SYSTEMS;

(II) EDUCATE APPROPRIATE EMPLOYEES ABOUT FRAUD DETECTION AND THE COMPANY'S ANTI-FRAUD PLAN;

(III) PROVIDE FOR THE HIRING OF OR CONTRACTING FOR ONE OR MORE FRAUD INVESTIGATORS;

(IV) REPORT SUSPECTED OR ACTUAL INSURANCE FRAUD TO THE APPROPRIATE LAW ENFORCEMENT AND REGULATORY ENTITIES IN THE INVESTIGATION AND PROSECUTION OF INSURANCE FRAUD.

(b) THE COMMISSIONER OF INSURANCE MAY REVIEW A LICENSED INSURANCE COMPANY'S ANTI-FRAUD PLAN IN CONNECTION WITH A MARKET CONDUCT EXAMINATION, TO DETERMINE IF IT COMPLIES WITH THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (6).

(c) EVERY LICENSED INSURANCE COMPANY DOING BUSINESS IN THIS STATE SHALL INCLUDE AS PART OF ITS ANNUAL REPORT AS REQUIRED IN SECTION 10-3-109 A SUMMARY OF ITS ANTI-FRAUD EFFORTS AS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (6).

(d) THE ANTI-FRAUD PLAN OF AN INSURANCE COMPANY AND THE SUMMARY OF ANTI-FRAUD EFFORTS PREPARED AS REQUIRED IN PARAGRAPH (c) OF THIS SUBSECTION (6) IS NOT A PUBLIC RECORD AND IS EXEMPTED FROM ARTICLE 72 OF TITLE 24, C.R.S., IS PROPRIETARY AND NOT SUBJECT TO PUBLIC EXAMINATION, AND IS NOT DISCOVERABLE OR ADMISSIBLE UNDER THE COLORADO RULES OF CIVIL PROCEDURE IN ANY CIVIL LITIGATION.

(e) ANY INSURANCE COMPANY OR AGENT OF AN INSURANCE COMPANY THAT HAS COMMITTED A FRAUDULENT INSURANCE ACT SHALL BE SUBJECT TO AVAILABLE DISCIPLINARY ACTION BY THE COMMISSIONER OF INSURANCE.

(f) THE RESPONSIBILITY OF AN INSURANCE COMPANY UNDER THIS SECTION TO PREVENT, DETECT, AND INVESTIGATE INSURANCE FRAUD SHALL NOT EXCUSE ITS DUTY TO COMPLY WITH SECTION 10-3-1104 OR ANY OTHER APPLICABLE INSURANCE LAW.

(7) (a) ON AND AFTER JANUARY 1, 1997, ALL PRINTED APPLICATIONS FOR INSURANCE AND ALL CLAIM FORMS PROVIDED AND REQUIRED BY AN INSURANCE

COMPANY, OR REQUIRED BY LAW, WHETHER PRINTED OR ELECTRONICALLY TRANSMITTED, SHALL CONTAIN A STATEMENT, IN BOLD TYPE, PERMANENTLY AFFIXED TO THE APPLICATION OR CLAIM FORM SUBSTANTIALLY THE SAME AS THE FOLLOWING:

"IT IS UNLAWFUL TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES, DENIAL OF INSURANCE, AND CIVIL DAMAGES. ANY INSURANCE COMPANY OR AGENT OF AN INSURANCE COMPANY WHO KNOWINGLY PROVIDES FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO A POLICYHOLDER OR CLAIMANT FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE POLICYHOLDER OR CLAIMANT WITH REGARD TO A SETTLEMENT OR AWARD PAYABLE FROM INSURANCE PROCEEDS SHALL BE REPORTED TO THE COLORADO DIVISION OF INSURANCE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES."

(b) THIS SUBSECTION (7) SHALL NOT APPLY TO REINSURANCE CONTRACTS, REINSURANCE AGREEMENTS, OR REINSURANCE CLAIMS TRANSACTIONS.

SECTION 2. 10-4-708.6 (1), Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10-4-708.6. Obligations of persons providing services - penalties - availability and maintenance of records. (1) (c) ANY PERSON, PROVIDER, HEALTH CARE PRACTITIONER, HEALTH CARE PRACTITIONER ORGANIZATION, OR OTHER PROVIDER OF BENEFITS UNDER SECTION 10-4-706 (1) (b) TO (1) (e), (2), AND (3), THAT VIOLATES THE STANDARDS OF CARE IN PARAGRAPH (a) OR (b) OF THIS SUBSECTION (1), SHALL BE SUBJECT TO DISCIPLINARY ACTION BY THE APPROPRIATE LICENSING AUTHORITY.

SECTION 3. 10-2-416 (2), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

10-2-416. Termination of appointment - notice. (2) In the event the termination is for any causes listed under section 10-2-704 OR FOR COMMISSION OF FRAUD AS DEFINED IN THIS TITLE, the insurer shall notify the commissioner of the reason and if the commissioner so requests, the insurer shall provide any information, records, statements, or other data pertaining to the termination which may be used by the division of insurance in any action taken pursuant to section 10-2-801.

SECTION 4. 10-4-1003, Colorado Revised Statutes, 1994 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-1003. Disclosure of information. (8) ANY INSURER OR PERSON THAT HAS REASON TO BELIEVE THAT A FIRE LOSS MAY HAVE BEEN CAUSED BY OTHER THAN ACCIDENTAL MEANS OR THAT ANY INSURANCE CLAIM MAY BE FRAUDULENT MAY FURNISH AND DISCLOSE ANY RELEVANT INFORMATION IN ITS POSSESSION CONCERNING SUCH LOSS OR CLAIM TO ANY AUTHORIZED AGENCY, AS DEFINED IN SECTION 10-4-1002 (1), FOR THE PURPOSE OF DETECTING, PROSECUTING, OR PREVENTING FRAUDULENT INSURANCE CLAIMS. SUCH REPORTING SHALL BE CONFIDENTIAL, SHALL NOT BE A PUBLIC RECORD UNDER ARTICLE 72 OF TITLE 24, C.R.S., AND SHALL NOT BE DISCOVERABLE OR ADMISSIBLE UNDER THE COLORADO RULES OF CIVIL PROCEDURE

IN ANY CIVIL LITIGATION. THE IMMUNITY AS SET FORTH IN SECTION 10-4-1005 SHALL APPLY TO ANY REPORT MADE PURSUANT TO THIS SUBSECTION (8). THE COMMISSIONER OF INSURANCE MAY PROMULGATE RULES REGARDING SUCH REPORTING.

SECTION 5. Effective date. This act shall take effect July 1, 1996.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 11, 1996