

AN ACT

RELATING TO INSURANCE; ENACTING THE INSURANCE FRAUD ACT;  
PROVIDING FOR THE INVESTIGATION AND PROSECUTION OF INSURANCE  
FRAUD; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978;  
MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the New Mexico Insurance Code is enacted to read:

"SHORT TITLE. -- This act may be cited as the "Insurance Fraud Act". "

Section 2. A new section of the New Mexico Insurance Code is enacted to read:

"FINDINGS- - PURPOSE. --

A. The legislature finds that insurance fraud is pervasive and expensive, and has the potential for increasing premium rates, placing businesses at risk, reducing the ability of consumers to raise their standard of living and decreasing the economic vitality of the state. Therefore, the legislature believes that the state must aggressively confront the problem of insurance fraud.

B. The purpose of the Insurance Fraud Act is to permit the full utilization of the expertise of the superintendent of insurance to investigate and detect insurance fraud more effectively, to halt insurance fraud and

to work with state, local and federal law enforcement and regulatory agencies against the commission of insurance fraud. "

Section 3. A new section of the New Mexico Insurance Code is enacted to read:

"DEFINITIONS. --As used in the Insurance Fraud Act:

- A. "fund" means the insurance fraud fund;
- B. "insurance fraud" means any act or practice in connection with an insurance transaction that constitutes a crime under the Criminal Code or the Insurance Code;
- C. "insurance transaction" means any act or practice relating to insurance and includes complying with the Insurance Code or any rule adopted under its authority; and
- D. "superintendent" means the superintendent of insurance. "

Section 4. A new section of the New Mexico Insurance Code is enacted to read:

"SUPERINTENDENT'S DUTIES. --The superintendent shall:

- A. initiate inquiries and conduct investigations when the superintendent has reason to believe that insurance fraud may have been or is being committed;
- B. respond to notifications or complaints of suspected insurance fraud generated by state and local police or other law enforcement authorities and governmental units,

including the federal government and any other person;

C. review notices and reports of insurance fraud submitted by authorized insurers, their employees, agents or producers and select those incidents of alleged fraud that, in his judgment, require further investigation and conduct the investigations;

D. conduct independent investigations and examinations of insurance transactions and alleged 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 its examinations and studies;

E. report incidents of alleged insurance fraud supported by investigations and examinations to the appropriate district attorney and any other appropriate law enforcement, administrative, regulatory or licensing agency and assemble evidence, prepare charges and otherwise assist any prosecutorial authority having jurisdiction over insurance fraud enforcement;

F. assist any official or agency of this state, any other state or the federal government that requests assistance in investigating insurance fraud;

G. maintain records and information in order to produce an annual report of his activities undertaken in connection with carrying out the provisions of the Insurance

Fraud Act; and

H. conduct, in cooperation with the attorney general and the department of public safety, public outreach and awareness programs on the costs of insurance fraud to the public and how members of the public can assist themselves, the superintendent and law enforcement officials in preventing and prosecuting insurance fraud. "

Section 5. A new section of the New Mexico Insurance Code is enacted to read:

"SUPERINTENDENT' S AUTHORITY. --The superintendent is authorized to select and contract with investigative personnel and prosecutors to discharge his duties pursuant to the provisions of the Insurance Fraud Act. "

Section 6. A new section of the New Mexico Insurance Code is enacted to read:

"NOTICE AND COOPERATION REQUIRED--TOLLING PERIOD. --

A. Every insurer or licensed insurance professional that has a reasonable belief that an act of insurance fraud will be, is being or has been committed shall furnish and disclose knowledge and information about it to the superintendent and shall cooperate fully with any investigation conducted by the superintendent. Failure to comply with this subsection shall constitute grounds for the superintendent to impose an administrative penalty pursuant to Section 59A-1-18 NMSA 1978 in addition to any applicable

suspension, revocation or denial of a license or certificate of authority.

B. A person who has a reasonable belief that an act of insurance fraud will be, is being or has been committed, or any person who collects, reviews or analyzes information concerning insurance fraud, may furnish and disclose any information in his possession concerning the insurance fraud to the superintendent or to an authorized representative of an insurer that requests the information for the purpose of detecting, prosecuting or preventing insurance fraud.

C. If an insurer has a reasonable belief or probable cause to believe that an insurance fraud has been committed and has properly notified the superintendent of its suspicion, that notification shall toll any applicable time period in any unfair claims proceeding based on the alleged fraud until thirty days after determination by the superintendent and notice to the insurer that the superintendent will not recommend action on the claim. The determination by the superintendent shall not be admissible in any subsequent civil proceeding.

D. The superintendent, in cooperation with insurers or others, may establish a voluntary 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."

Section 7. A new section of the New Mexico Insurance Code is enacted to read:

"IMMUNITY FROM CIVIL LIABILITY--PRIVATE INSURANCE FRAUD REPORTS AND ENFORCEMENT ACTIONS. --

A. The provisions of Section 59A-4-21 NMSA 1978 regarding immunity from civil liability for enforcement actions performed in good faith by the superintendent, his authorized representatives and examiners shall apply to the Insurance Fraud Act.

B. Except when a person intentionally communicates false information he actually believes to be false, a person shall not be subject to liability by virtue of reporting or furnishing, orally or in writing, information concerning suspected, anticipated or completed insurance fraud acts when the report or information is provided to:

(1) the department of insurance, the superintendent or law enforcement agencies, their officials, agents or employees;

(2) the national association of insurance commissioners, a federal or state governmental agency or office established to detect and prevent insurance fraud, any other organization established for the same purpose and their agents, employees or designees; or

(3) the anti-fraud unit of an insurer.

C. A person identified in Subsection B of this section or any of the person's officers, employees or agents when performing authorized activities, including the publication or dissemination of any related bulletin or reports, shall not be subject to civil liability for libel, slander or any other relevant tort or a civil cause of action of any nature, except if the person, officer, employee or agent intentionally communicates false information he actually believes to be false.

D. This section shall not abrogate or modify in any way any privilege or immunity recognized by common law or statute.

E. The court shall award attorney fees and costs to any person identified in Subsection B of this section or any of that person's officers, employees or agents who is a prevailing party in a civil cause of action against him for libel, slander or any other relevant tort arising out of conduct pursuant to the Insurance Fraud Act if the party bringing the action was not substantially justified in bringing such action. For the purposes of this subsection, "substantially justified" means having a reasonable basis in law or fact at the time a proceeding was initiated.

F. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other laws of this state. "

Section 8. A new section of the New Mexico Insurance Code is enacted to read:

"WARNING REQUIRED. -- Within six months of the effective date of the Insurance Fraud Act all claim forms and applications for insurance shall contain a statement permanently affixed to the application or claim form which states substantially as follows:

"ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES. "

The failure to include that statement shall not constitute a defense against prosecution for commission of insurance fraud. "

Section 9. A new section of the New Mexico Insurance Code is enacted to read:

"REPORT OF CONVICTION. -- If any person licensed by any agency of any state or the federal government or holding credentials from any professional organization is convicted of insurance fraud in this state, the superintendent shall notify the appropriate licensing or credentialing authority of the judgment for appropriate disciplinary action. "

Section 10. A new section of the New Mexico Insurance Code is enacted to read:



"INSURER ANTI-FRAUD INITIATIVES--SPECIAL INVESTIGATIVE  
UNITS.--

A. Within six months of the effective date of the Insurance Fraud Act and by July 1 of each succeeding year every insurer who in the previous calendar year reported ten million dollars (\$10,000,000) or more in direct written premiums in New Mexico shall establish, prepare, implement and submit to the superintendent an anti-fraud plan that is reasonably calculated to detect, prosecute and prevent insurance fraud. Any subsequent amendments to the plan shall be submitted to the superintendent at the time they are adopted.

B. Each insurer's anti-fraud plan shall outline, at a minimum, guidelines appropriate to the type of insurance the insurer writes, to:

- (1) prevent, detect and investigate all forms of insurance fraud;
- (2) educate appropriate employees on fraud detection and the insurer's anti-fraud plan;
- (3) provide for the hiring or contracting of fraud investigators;
- (4) report insurance fraud to appropriate law enforcement and regulatory authorities; and
- (5) pursue restitution, where appropriate, for financial loss caused by insurance fraud.

C. The superintendent may review each insurer's anti-fraud plan to determine if it adequately complies with the requirements of this section. The superintendent may examine the insurer to assure its compliance with anti-fraud plans submitted to the superintendent. The superintendent may require reasonable modifications to the insurer's anti-fraud plan or may require other reasonable remedial action if the review or examination reveals substantial noncompliance with the plan.

D. The superintendent may require each insurer to file a summary of the insurer's anti-fraud activities and results. Anti-fraud plans and summaries submitted to the superintendent shall be privileged and confidential, shall not be a public record and shall not be subject to discovery or subpoena in any civil or criminal action; provided, however, that the superintendent may make summaries of aggregate data available to the public.

E. This section confers no private right of action. "

Section 11. A new section of the New Mexico Insurance Code is enacted to read:

"INVESTIGATORS' POWERS. --The superintendent's investigators shall be peace officers pursuant to the provisions of Chapter 29, Article 1 NMSA 1978, except that they shall not be authorized to carry firearms. "

Section 12. A new section of the New Mexico Insurance Code is enacted to read:

"ATTORNEY GENERAL' S DUTIES. --When so requested by the superintendent, the attorney general shall commission as a special assistant attorney general any attorney employed by the superintendent or contracted with by the superintendent and approved by the attorney general to assist the superintendent in carrying out his duties, including providing legal advice and prosecuting offenders. The actual costs associated with the assignment of assistant attorneys general to the superintendent shall be paid out of the fund."

Section 13. A new section of the New Mexico Insurance Code is enacted to read:

"INSURANCE FRAUD POLICY ADVISORY GROUP. --The superintendent may create an insurance fraud policy advisory group consisting of representatives of authorized insurers, consumers of insurance products not otherwise connected with the insurance industry and other appropriate persons. The superintendent shall appoint the members of the advisory group and shall provide by rule for the creation, governance, duties and termination of the advisory group. Any advisory group so created shall advise the superintendent with respect to the implementation of and other matters related to the Insurance Fraud Act when so requested by the superintendent."

Section 14. A new section of the New Mexico Insurance

Code is enacted to read:

"INSURANCE FRAUD FUND CREATED-- APPROPRIATION. --

A. There is hereby created an "insurance fraud fund" in the state treasury. All fees collected under the provisions of the Insurance Fraud Act shall be deposited in the fund and are subject to appropriation for use in paying the expenses incurred by the superintendent in carrying out the provisions of the Insurance Fraud Act. Interest on the fund shall be credited to the fund. The fund is a continuing, nonreverting fund.

B. To implement the provisions of the Insurance Fraud Act, upon the effective date of the Insurance Fraud Act, the superintendent shall determine a rate of assessment and collect a fee from authorized insurers in an amount not less than two hundred dollars (\$200) and not exceeding one-tenth of one percent of the correctly reported gross direct written premiums on policies written in New Mexico by the authorized insurers. The superintendent, after taking into account unexpended money produced by collection of the fee, shall adjust the rate of assessment each year to produce the amount of money that he estimates will be necessary to pay expenses incurred by the superintendent in carrying out the provisions of the Insurance Fraud Act.

C. In calculating the gross direct written

premiums for an insurer pursuant to the provisions of this section, all gross direct written premiums for workers' compensation insurance shall be excluded from the calculation.

D. The fees required by this section are in addition to all other taxes and fees now imposed or that may be subsequently imposed. "

Section 15. A new section of the New Mexico Insurance Code is enacted to read:

"APPLICATION OF ACT TO OTHER ACTS. --

A. No authority granted the superintendent under the Insurance Fraud Act shall be construed to abrogate or interfere with the authority of the safety and fraud division of the workers' compensation administration under the Workers' Compensation Act or of the medicaid fraud control unit under the Medicaid Fraud Act.

B. Nothing in the Insurance Fraud Act shall:

(1) preempt the authority of or relieve the duty of any other law enforcement agencies to investigate and prosecute alleged violations of law;

(2) prevent or prohibit a person from voluntarily disclosing any information concerning insurance fraud to any law enforcement agency;

(3) limit any of the powers granted elsewhere by law to the superintendent to investigate alleged

violations of law and take appropriate action; or

(4) interfere with the duties and authority of the workers' compensation administration. "

Section 16. A new section of the New Mexico Insurance Code is enacted to read:

"RULES. --The superintendent may promulgate rules deemed necessary or appropriate by the superintendent for the administration of the Insurance Fraud Act. "

Section 17. APPROPRIATION. --

A. Five hundred thousand dollars (\$500,000) is appropriated from the insurance fraud fund to the superintendent of insurance for expenditure in fiscal year 1999 for the purpose of carrying out the provisions of the Insurance Fraud Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall not revert to the general fund.

B. The superintendent of insurance is authorized to employ three additional full-time employees to carry out the provisions of the Insurance Fraud Act.

Section 18. REPEAL. --Sections 59A-16A-1 through 59A-16A-4 NMSA 1978 (being Laws 1991, Chapter 86, Sections 1 through 4) are repealed.

Section 19. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1998. \_\_\_\_\_

