AN ACT concerning insurance.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Insurance Claims Fraud Prevention Act.

Section 5. Patient and client procurement.

(a) Except as otherwise permitted or authorized by law, it is unlawful to knowingly offer or pay any remuneration directly or indirectly, in cash or in kind, to induce any person to procure clients or patients to obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured person or the person's insurer. Nothing in this Act shall be construed to affect any contracts or arrangements between or among insuring entities including health maintenance organizations, health care professionals, or health care facilities which are hereby excluded.

(b) A person who violates any provision of this Act or Article 46 of the Criminal Code of 1961 shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not less than $5,000 nor more than $10,000, plus an assessment of not more than 3 times the amount of each claim for compensation under a contract of insurance. The court shall have the power to grant other equitable relief, including temporary injunctive relief, as is necessary to prevent the transfer, concealment, or dissipation of illegal proceeds, or to protect the public. The penalty prescribed in this subsection shall be assessed for each fraudulent claim upon a person in which the defendant participated.

(c) The penalties set forth in subsection (b) are

Originated in the Senate
Secretary of the Senate
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intended to be remedial rather than punitive, and shall not preclude, nor be precluded by, a criminal prosecution for the same conduct. If the court finds, after considering the goals of disgorging unlawful profit, restitution, compensating the State for the costs of investigation and prosecution, and alleviating the social costs of increased insurance rates due to fraud, that such a penalty would be punitive and would preclude, or be precluded by, a criminal prosecution, the court shall reduce that penalty appropriately.

Section 10. Action by State's Attorney or Attorney General. The State's Attorney of the county in which the conduct occurred or Attorney General may bring a civil action under this Act. Before the Attorney General may bring the action, the Attorney General shall present the evidence obtained to the appropriate State's Attorney for possible criminal or civil filing. If the State's Attorney elects not to pursue the matter, then the Attorney General may proceed with the action.

Section 15. Action by interested person.

(a) An interested person, including an insurer, may bring a civil action for a violation of this Act for the person and for the State of Illinois. The action shall be brought in the name of the State. The action may be dismissed only if the court and the State's Attorney or the Attorney General, whichever is participating, gives written consent to the dismissal stating their reasons for consenting.

(b) A copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses shall be served on the State's Attorney and Attorney General. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The

State's Attorney or Attorney General may elect to intervene and proceed with the action within 60 days after he or she receives both the complaint and the material evidence and information. If more than one governmental entity elects to intervene, the State's Attorney shall have precedence.

(c) The State's Attorney or Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint shall remain under seal under subsection (b). The motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this Section until 20 days after the complaint is unsealed and served upon the defendant.

(d) Before the expiration of the 60-day period or any extensions obtained under subsection (c), the State's Attorney or Attorney General shall either:

(1) proceed with the action, in which case the action shall be conducted by the State's Attorney or Attorney General; or

(2) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(e) When a person or governmental agency brings an action under this Act, no person other than the State's Attorney or Attorney General may intervene or bring a related action based on the facts underlying the pending action unless another statute or common law authorizes that action.

Section 20. Role of State's Attorney or Attorney General.

(a) If the State's Attorney or Attorney General proceeds with the action, he or she shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. That

person shall have the right to continue as a party to the action, subject to the limitations set forth in subsection (b).

(b) The State's Attorney or Attorney General may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the State's Attorney or Attorney General of the filing of the motion, and the court has provided the person with an opportunity for a hearing on the motion.

The State's Attorney or Attorney General may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

Upon a showing by the State's Attorney or Attorney General that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's Attorney's or Attorney General's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including, but not limited to, the following:

(1) limiting the number of witnesses the person may call;

(2) limiting the length of the testimony of those witnesses;

(3) limiting the person's cross-examination of witnesses; and

(4) otherwise limiting the participation by the person in the litigation.

Upon a showing by the defendant that unrestricted participation during the course of the litigation by the

person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(c) If the State's Attorney or Attorney General elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the State's Attorney or Attorney General so requests, he or she shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts, at the State's Attorney's or Attorney General's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the State's Attorney or Attorney General to intervene at a later date upon a showing of good cause.

(d) If at any time both a civil action for penalties and equitable relief pursuant to this Act and a criminal action are pending against a defendant for substantially the same conduct, whether brought by the government or a private party, the civil action shall be stayed until the criminal action has been concluded at the trial court level. The stay shall not preclude the court from granting or enforcing temporary equitable relief while the actions are pending. Whether or not the State's Attorney or Attorney General proceeds with the action, upon a showing by the State's Attorney or Attorney General that certain actions of discovery by the person initiating the action would interfere with a law enforcement or governmental agency investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay discovery for a period of not more than 180 days. A hearing on a request for the stay shall be conducted in camera. The court may extend the 180-day period upon a further showing in camera that the

agency has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(e) Notwithstanding Section 15, the State's Attorney or Attorney General may elect to pursue its claim through any alternate remedy available to the State's Attorney or Attorney General.

Section 25. Costs and proceeds of action.

(a) If the State's Attorney or Attorney General proceeds with an action brought by a person under Section 15, that person is entitled to receive an amount that the court determines is reasonable based upon the extent to which the person contributed to the prosecution of the action. Subject to subsection (d), the amount awarded to the person who brought the action shall not be less than 30% of the proceeds of the action or settlement of the claim, and shall be paid from the proceeds.

(b) If the State's Attorney or Attorney General does not proceed with an action brought by a person under Section 15, that person shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. Subject to subsection (d), the amount shall not be less than 40% of the proceeds of the action or settlement, and shall be paid from the proceeds.

(c) If the person bringing the action as a result of a violation of this Act has paid money to the defendant or to an attorney acting on behalf of the defendant in the underlying claim, then he or she shall be entitled to up to double the amount paid to the defendant or the attorney if that amount is greater than 50% of the proceeds.

(d) Where the action is one that the court finds to be based primarily on disclosures of specific information, other

than information provided by the person bringing the action under Section 15, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award those sums that it considers appropriate, but in no case more than 10% of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(e) Any payment to a person under subsection (a), (b), (c), or (d) shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All of those expenses, fees, and costs shall be awarded against the defendant.

(f) If a local State's Attorney has proceeded with an action under this Act, the Treasurer of the County where the action was brought shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred by the State's Attorney, including reasonable attorney's fees and costs, plus 50% of the funds not awarded to a private party. Those amounts shall be used to investigate and prosecute insurance fraud, augmenting existing budgets rather than replacing them. All remaining funds shall go to the State and be deposited in the General Revenue Fund and, when appropriated, shall be allocated to appropriate State agencies for enhanced insurance fraud investigation, prosecution, and prevention efforts.

(g) If the Attorney General has proceeded with an action under this Act, all funds not awarded to a private party, shall go to the State and be deposited in the General Revenue Fund and, when appropriated, shall be allocated to appropriate State agencies for enhanced insurance fraud investigation, prosecution, and prevention efforts.

(h) If neither a local State's Attorney or the Attorney General has proceeded with an action under this Act, 50% of the funds not awarded to a private party shall be deposited with the Treasurer of the County where the action was brought and shall be disbursed to the State's Attorney of the County where the action was brought. Those funds shall be used by the State's Attorney solely to investigate, prosecute, and prevent insurance fraud, augmenting existing budgets rather than replacing them. All remaining funds shall go to the State and be deposited in the General Revenue Fund and, when appropriated, shall be allocated to appropriate State agencies for enhanced insurance fraud investigation, prosecution, and prevention efforts.

(i) Whether or not the State's Attorney or Attorney General proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of this Act, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the State's Attorney or Attorney General to continue the action on behalf of the State.

(j) If the State's Attorney or Attorney General does not proceed with the action, and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorney's fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

Section 30. Limitation on bringing actions.

(a) In no event may a person bring an action under Section 15 that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the State's Attorney

1 or Attorney General is already a party. 412

2 (b) A court may not have jurisdiction over an action 414
3 under this Act based upon the public disclosure of 417
4 allegations or transactions in a criminal, civil, or
5 administrative hearing, in a legislative or administrative 419
6 report, hearing, audit, or investigation, or from the news 420
7 media, unless the action is brought by the State's Attorney, 421
8 the Attorney General, or a person who is an original source 423
9 of the information. For purposes of this subsection, 424
10 "original source" means an individual who has direct and 425
11 independent knowledge of the information on which the 426
12 allegations are based and has voluntarily provided the 428
13 information to the State's Attorney or Attorney General
14 before filing an action under this Act based on the 430
15 information.

16 Section 35. Expenses and sanctions. 433

17 (a) Except as provided in subsection (b), the State's 435
18 Attorney or Attorney General is not liable for expenses that 437
19 a person incurs in bringing an action under this Act.

20 (b) In civil actions brought under this Act in which the 439
21 Attorney General or a State's Attorney is a party, the court 442
22 shall retain discretion to impose sanctions otherwise allowed 443
23 by law, including the ability to order a party to pay 444
24 expenses as provided in the Code of Civil Procedure. 446

25 Section 40. Retaliatory discharge; remedy. An employee 449
26 who is discharged, demoted, suspended, threatened, harassed, 451
27 or in any other manner discriminated against in the terms and 452
28 conditions of employment by his or her employer because of 453
29 lawful acts done by the employee on behalf of the employee or 455
30 others in furtherance of an action under this Act, including 456
31 investigation for, initiation of, testimony for, or 457
32 assistance in an action filed or to be filed under this Act, 459

shall be entitled to all relief necessary to make the employee whole. That relief shall include reinstatement with the same seniority status the employee would have had but for the discrimination, 2 times the amount of backpay, interest on the backpay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An employee may bring an action in the appropriate court for the relief provided in this Section. The remedies under this Section are in addition to any other remedies provided by existing law.

Section 45. Time limitations.

(a) Except as provided in subsection (b), an action pursuant to this Act may not be filed more than 3 years after the discovery of the facts constituting the grounds for commencing the action.

(b) Notwithstanding subsection (a), an action may be filed pursuant to this Act within not more than 8 years after the commission of an act constituting a violation of this Act or a violation of Article 46 of the Criminal Code of 1961.

Section 90. The Illinois Insurance Code is amended by changing Sections 155.23 and 155.24 as follows:

(215 ILCS 5/155.23) (from Ch. 73, par. 767.23)

Sec. 155.23. Fraud ~~Claims~~ reporting.

(1) The Director ~~of--insurance~~ is authorized to promulgate reasonable rules requiring insurers, as defined in Section 155.24, doing business ~~insurance companies--licensed~~ in the State of Illinois to report factual information in their possession that ~~which~~ is pertinent to suspected fraudulent ~~casualty--and--property~~ insurance claims, fraudulent insurance applications, or premium fraud ~~including-claims--involving--the--theft--of~~

~~automobiles,~~ after he has made a determination that the ~~such~~ information is necessary to detect fraud or arson. ~~This~~ Claim information may include:

(a) Dates and description of accident or loss.

(b) Any insurance policy relevant to the accident or loss.

(c) Name of the insurance company claims adjustor and claims adjustor supervisor processing or reviewing any claim or claims made under any insurance policy relevant to the accident or loss.

(d) Name of claimant's or insured's attorney.

(e) Name of claimant's or insured's physician, or any person rendering or purporting to render medical treatment.

(f) Description of alleged injuries, damage or loss.

(g) History of previous claims made by the claimant or insured.

(h) Places of medical treatment.

(i) Policy premium payment record.

(j) Material relating to the investigation of the accident or loss, including statements of any person, proof of loss, and any other relevant evidence.

(k) any facts evidencing fraud or arson.

The Director shall establish reporting requirements for application and premium fraud information reporting by rule.

(2) The Director of Insurance may designate one or more data processing organizations or governmental agencies to assist him in gathering such information and making compilations thereof, and may by rule establish the form and procedure for gathering and compiling such information. The rules may ~~Such--rule--shall~~ name any organization or agency designated by the Director to provide this service, and may ~~shall~~ in such case provide for a fee to be paid by the

reporting insurers ~~companies~~ directly to the designated organization or agency to cover any of the costs associated with providing this service. After determination by the Director of substantial evidence of false or fraudulent claims, fraudulent applications, or premium fraud, the information shall be forwarded by the Director or the Director's ~~his~~ designee to the proper law enforcement agency or prosecutor ~~State's Attorney and U.S. Attorney~~. Insurers ~~insurance companies~~ shall have access to, and may use, the ~~claims~~ information compiled under the provisions of this Section. Insurers ~~insurance companies~~ shall release information ~~concerning claims against them~~ to, and shall cooperate with, any law enforcement agency requesting such information.

In the absence of malice, no insurer ~~insurance company~~, or person who furnishes information on its behalf, is liable for damages in a civil action or subject to criminal prosecution for any oral or written statement made or any other action taken that is necessary to supply information required pursuant to this Section.

(Source: P.A. 83-851.)

(215 ILCS 5/155.24) (from Ch. 73, par. 767.24)

Sec. 155.24. Motor Vehicle Theft and Motor Insurance Fraud Reporting and Immunity Law.

(a) As used in this Section:

(1) "authorized governmental agency" means the Illinois Department of State Police, a local governmental police department, a county sheriff's office, a State's Attorney, the Attorney General, a municipal attorney, a United States district attorney, a duly constituted criminal investigative agency of the United States government, the Illinois Department of Insurance, the Illinois Department of Professional Regulation and the

office of the Illinois Secretary of State;

(2) "relevant" means having a tendency to make the existence of any information that is of consequence to an investigation of motor vehicle theft or insurance fraud investigation or a determination of such issue more probable or less probable than it would be without such information; ~~and~~

(3) information will be "deemed important" if within the sole discretion of the authorized governmental agency such information is requested by that authorized governmental agency;~~.~~

(4) "Illinois authorized governmental agency" means an authorized governmental agency as defined in item (1) that is a part of the government of the State of Illinois or any of the counties or municipalities of this State or any other authorized entity; and

(5) For the purposes of this Section and Section 155.23, "insurer" means insurance companies, insurance support organizations, self-insured entities, and other providers of insurance products and services doing business in the State of Illinois.

(b) Upon written request to an insurer by an authorized governmental agency, an insurer or agent authorized by an insurer to act on its behalf shall release to the requesting authorized governmental agency any or all relevant information deemed important to the authorized governmental agency which the insurer may possess relating to any specific motor vehicle theft or motor vehicle insurance fraud. Relevant information may include, but is not limited to:

(1) Insurance policy information relevant to the motor vehicle theft or motor vehicle insurance fraud under investigation, including any application for such a policy.

(2) Policy premium payment records which are

available.

(3) History of previous claims made by the insured.

(4) Information relating to the investigation of the motor vehicle theft or motor vehicle insurance fraud, including statements of any person, proofs of loss and notice of loss.

(c) When an insurer knows or reasonably believes to know the identity of a person whom it has reason to believe committed a criminal or fraudulent act relating to a motor vehicle theft or a motor vehicle insurance claim or has knowledge of such a criminal or fraudulent act which is reasonably believed not to have been reported to an authorized governmental agency, then for the purpose of notification and investigation, the insurer or an agent authorized by an insurer to act on its behalf shall notify an authorized governmental agency of such knowledge or reasonable belief and provide any additional relevant information in accordance with subsection ~~paragraph~~ (b) of this Section. When the motor vehicle theft or motor vehicle claim that gives rise to the suspected criminal or fraudulent act has already generated an incident report to an Illinois authorized governmental agency, the insurer shall report the suspected criminal or fraudulent act to that agency. When no prior incident report has been made, the insurer shall report the suspected criminal or fraudulent act to the Attorney General or State's Attorney in the county or counties where the incident is claimed to have occurred. When the incident that gives rise to the suspected criminal or fraudulent act is claimed to have occurred outside the State of Illinois, but the suspected criminal or fraudulent act occurs within the State of Illinois, the insurer shall make the report to the Attorney General or State's Attorney in the county or counties where the suspected criminal or fraudulent act occurred. When the fraud occurs in multiple counties the

report shall also be sent to the Attorney General.

(d) When an insurer provides any of the authorized governmental agencies with notice pursuant to this Section it shall be deemed sufficient notice to all authorized governmental agencies for the purpose of this Act.

(e) The authorized governmental agency provided with information pursuant to this Section may release or provide such information to any other authorized governmental agency.

(f) Any insurer providing information to an authorized governmental agency pursuant to this Section shall have the right to request and receive relevant information from such authorized governmental agency, and receive within a reasonable time after the completion of the investigation, not to exceed 30 days, the information requested.

(g) Any information furnished pursuant to this Section shall be privileged and not a part of any public record. Except as otherwise provided by law, any authorized governmental agency, insurer, or an agent authorized by an insurer to act on its behalf which receives any information furnished pursuant to this Section, shall not release such information to public inspection. Such evidence or information shall not be subject to subpoena duces tecum in a civil or criminal proceeding unless, after reasonable notice to any insurer, agent authorized by an insurer to act on its behalf and authorized governmental agency which has an interest in such information and a hearing, the court determines that the public interest and any ongoing investigation by the authorized governmental agency, insurer, or any agent authorized by an insurer to act on its behalf will not be jeopardized by obedience to such a subpoena duces tecum.

(h) No insurer, or agent authorized by an insurer on its behalf, authorized governmental agency or their respective employees shall be subject to any civil or criminal liability

in a cause of action of any kind for releasing or receiving any information pursuant to this Section. Nothing herein is intended to or does in any way or manner abrogate or lessen the common and statutory law privileges and immunities of an insurer, agent authorized by an insurer to act on its behalf or authorized governmental agency or any of their respective employees.

(Source: P.A. 85-1292.)

President of the Senate

Michael J. Madigan
Speaker, House of Representatives

APPROVED

this 2nd day of August, 20 01 A.D.,

George H Ryan
GOVERNOR