

34A-2-110 Workers' compensation insurance fraud -- Elements -- Penalties -- Notice.

(1) As used in this section:

- (a) "Corporation" has the same meaning as in Section 76-2-201.
- (b) "Intentionally" has the same meaning as in Section 76-2-103.
- (c) "Knowingly" has the same meaning as in Section 76-2-103.
- (d) "Person" has the same meaning as in Section 76-1-601.
- (e) "Recklessly" has the same meaning as in Section 76-2-103.
- (f) "Thing of value" means one or more of the following obtained under this chapter or Chapter 3, Utah Occupational Disease Act:
 - (i) workers' compensation insurance coverage;
 - (ii) disability compensation;
 - (iii) a medical benefit;
 - (iv) a good;
 - (v) a professional service;
 - (vi) a fee for a professional service; or
 - (vii) anything of value.

(2)

- (a) A person is guilty of workers' compensation insurance fraud if that person intentionally, knowingly, or recklessly:
 - (i) devises a scheme or artifice to do the following by means of a false or fraudulent pretense, representation, promise, or material omission:
 - (A) obtain a thing of value under this chapter or Chapter 3, Utah Occupational Disease Act;
 - (B) avoid paying the premium that an insurer charges, for an employee on the basis of the underwriting criteria applicable to that employee, to obtain a thing of value under this chapter or Chapter 3, Utah Occupational Disease Act; or
 - (C) deprive an employee of a thing of value under this chapter or Chapter 3, Utah Occupational Disease Act; and
 - (ii) communicates or causes a communication with another in furtherance of the scheme or artifice.
- (b) A violation of this Subsection (2) includes a scheme or artifice to:
 - (i) make or cause to be made a false written or oral statement with the intent to obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act, at a rate that does not reflect the risk, industry, employer, or class code actually covered by the insurance coverage;
 - (ii) form a business, reorganize a business, or change ownership in a business with the intent to:
 - (A) obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act, at a rate that does not reflect the risk, industry, employer, or class code actually covered by the insurance coverage;
 - (B) misclassify an employee as described in Subsection (2)(b)(iii); or
 - (C) deprive an employee of workers' compensation coverage as required by Subsection 34A-2-103(8);
 - (iii) misclassify an employee as one of the following so as to avoid the obligation to obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act:
 - (A) an independent contractor;
 - (B) a sole proprietor;
 - (C) an owner;

- (D) a partner;
 - (E) an officer; or
 - (F) a member in a limited liability company;
 - (iv) use a workers' compensation coverage waiver issued under Part 10, Workers' Compensation Coverage Waivers Act, to deprive an employee of workers' compensation coverage under this chapter or Chapter 3, Utah Occupational Disease Act; or
 - (v) collect or make a claim for temporary disability compensation as provided in Section 34A-2-410 while working for gain.
- (3)
- (a) Workers' compensation insurance fraud under Subsection (2) is punishable in the manner prescribed in Subsection (3)(c).
 - (b) A corporation or association is guilty of the offense of workers' compensation insurance fraud under the same conditions as those set forth in Section 76-2-204.
 - (c)
 - (i) In accordance with Subsection (3)(c)(ii), the determination of the degree of an offense under Subsection (2) shall be measured by the following on the basis of which creates the greatest penalty:
 - (A) the total value of all property, money, or other things obtained or sought to be obtained by the scheme or artifice described in Subsection (2); or
 - (B) the number of individuals not covered under this chapter or Chapter 3, Utah Occupational Disease Act, because of the scheme or artifice described in Subsection (2).
 - (ii) A person is guilty of:
 - (A) a class A misdemeanor:
 - (I) if the value of the property, money, or other thing of value described in Subsection (3)(c)(i)(A) is less than \$1,000; or
 - (II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals described in Subsection (3)(c)(i)(B) is less than five;
 - (B) a third degree felony:
 - (I) if the value of the property, money, or other thing of value described in Subsection (3)(c)(i)(A) is equal to or greater than \$1,000, but is less than \$5,000; or
 - (II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals described in Subsection (3)(c)(i)(B) is equal to or greater than five, but is less than 50; and
 - (C) a second degree felony:
 - (I) if the value of the property, money, or other thing of value described in Subsection (3)(c)(i)(A) is equal to or greater than \$5,000; or
 - (II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals described in Subsection (3)(c)(i)(B) is equal to or greater than 50.
- (4) The following are not a necessary element of an offense described in Subsection (2):
- (a) reliance on the part of a person;
 - (b) the intent on the part of the perpetrator of an offense described in Subsection (2) to permanently deprive a person of property, money, or anything of value; or
 - (c) an insurer or self-insured employer giving written notice in accordance with Subsection (5) that workers' compensation insurance fraud is a crime.
- (5)
- (a) An insurer or self-insured employer who, in connection with this chapter or Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form described in Subsection (5)
 - (b) shall cause to be printed or displayed in comparative prominence with other content on

the form the statement: "Any person who knowingly presents false or fraudulent underwriting information, files or causes to be filed a false or fraudulent claim for disability compensation or medical benefits, or submits a false or fraudulent report or billing for health care fees or other professional services is guilty of a crime and may be subject to fines and confinement in state prison."

- (b) Subsection (5)(a) applies to a form upon which a person:
 - (i) applies for insurance coverage;
 - (ii) applies for a workers' compensation coverage waiver issued under Part 10, Workers' Compensation Coverage Waivers Act;
 - (iii) reports payroll;
 - (iv) makes a claim by reason of accident, injury, death, disease, or other claimed loss; or
 - (v) makes a report or gives notice to an insurer or self-insured employer.
- (c) An insurer or self-insured employer who issues a check, warrant, or other financial instrument in payment of compensation issued under this chapter or Chapter 3, Utah Occupational Disease Act, shall cause to be printed or displayed in comparative prominence above the area for endorsement a statement substantially similar to the following: "Workers' compensation insurance fraud is a crime punishable by Utah law."
- (d) This Subsection (5) applies only to the legal obligations of an insurer or a self-insured employer.
- (e) A person who violates Subsection (2) is guilty of workers' compensation insurance fraud, and the failure of an insurer or a self-insured employer to fully comply with this Subsection (5) is not:
 - (i) a defense to violating Subsection (2); or
 - (ii) grounds for suppressing evidence.
- (6) In the absence of malice, a person, employer, insurer, or governmental entity that reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim is not subject to civil liability for libel, slander, or another relevant cause of action.
- (7) In an action involving workers' compensation, this section supersedes Title 31A, Chapter 31, Insurance Fraud Act.

Amended by Chapter 328, 2011 General Session

Amended by Chapter 413, 2011 General Session