

INSURANCE FRAUD AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas C. Aagard

Senate Sponsor: Michael G. Waddoups

LONG TITLE

General Description:

This bill modifies the Insurance Code to address reporting of fraudulent insurance acts.

Highlighted Provisions:

This bill:

H→ ► addresses immunity; ←H

- ▶ expands required reporting of fraudulent insurance acts;
- ▶ modifies the requirements of that report;
- ▶ modifies penalties;
- ▶ provides for rulemaking; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-31-105, as enacted by Laws of Utah 1994, Chapter 243

31A-31-110, as enacted by Laws of Utah 2004, Chapter 104

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-31-105** is amended to read:



28 **31A-31-105. Immunity.**

29 (1) (a) A person, insurer, or authorized agency is immune from civil action, civil
30 penalty, or damages when in good faith that person, insurer, or authorized agency:

31 (i) cooperates with~~[-]~~ an agency described in Subsection (1)(b);

32 (ii) furnishes evidence~~[-]~~ to an agency described in Subsection (1)(b);

33 (iii) provides ~~[or receives]~~ information regarding a suspected fraudulent insurance
34 ~~[fraud] act to [or received from:]~~ an agency described in Subsection (1)(b);

35 (iv) receives information regarding a suspected fraudulent insurance act from an
36 agency described in Subsection (1)(b); or

37 (v) submits a required report to the department under Section 31A-31-110.

38 (b) An agency referred to in Subsection (1)(a) is one or more of the following:

39 ~~[(a)]~~ (i) the department or ~~[any]~~ a division of the department;

40 ~~[(b) any]~~ (ii) a federal, state, or government agency established to detect and prevent
41 insurance fraud; ~~H→~~ **[or]**

41a **(iii) a non-profit organization established to detect and prevent insurance fraud; or ←H**

42 ~~[(c) any]~~ ~~H→~~ **[(iii)] (iv) ←H** an agent, employee, or designee of an [entity] agency

42a listed in this

43 Subsection ~~[(1)(a) or]~~ (1)(b).

44 (2) A person, insurer, or authorized agency is immune from civil action, civil penalty,
45 or damages if that person, insurer, or authorized agency complies in good faith with a court
46 order to provide evidence or testimony requested by ~~[the entities]~~ an agency described in
47 ~~[Subsections (1)(a) through (1)(c)]~~ Subsection (1)(b).

48 (3) This section does not abrogate or modify a common law or statutory ~~[rights,~~
49 ~~privileges, or immunities]~~ right, privilege, or immunity enjoyed by ~~[any]~~ a person ~~[or entity]~~.

50 (4) Notwithstanding any other provision in this section, a person, insurer, or service
51 provider is not immune from civil action, civil penalty or damages under this section if that
52 person commits the fraudulent insurance act that is the subject of the information.

53 Section 2. Section **31A-31-110** is amended to read:

54 **31A-31-110. Mandatory reporting of fraudulent insurance acts.**

55 ~~[(1) An auditor that is employed by a title insurer and that has knowledge that a~~
56 ~~fraudulent insurance act]~~

57 (1) (a) A person shall report a fraudulent insurance act to the department if:

58 (i) the person has a good faith belief on the basis of a preponderance of the evidence

59 ~~that a fraudulent insurance act is being, will be, or has been committed [related to title~~
 60 ~~insurance shall report the fraudulent act to the commissioner in a writing that provides]~~ **§→ by a**
 60a **person other than the person making the report** **←§** ; and

61 (ii) the person is:

62 (A) an insurer; or

63 (B) in relation to the business of title insurance, an auditor that is employed by a title
 64 insurer.

65 (b) The report required by this Subsection (1) shall:

66 (i) be in writing;

67 (ii) provide information in detail relating to:

68 ~~[(a)]~~ (A) the fraudulent insurance act; and

69 ~~[(b)]~~ (B) the perpetrator of the fraudulent insurance act[.]; and

70 (iii) (A) state whether the person required to report under Subsection (1)(a) also
 71 reported the fraudulent insurance act in writing to:

72 (I) the attorney general;

73 (II) a state law enforcement agency;

74 (III) a criminal investigative department or agency of the United States;

75 (IV) a district attorney; or

76 (V) the prosecuting attorney of a municipality or county; and

77 (B) if the person reported the fraudulent insurance act as provided in Subsection
 78 (1)(b)(iii)(A), state the agency to which the person reported the fraudulent insurance act.

79 (c) A person required to submit a written report under this Subsection (1) shall submit
 80 the written report to the department by no later than 90 days from the day on which the person
 81 required to report the fraudulent insurance act has a good faith belief on the basis of a
 82 preponderance of the evidence that the fraudulent insurance act is being, will be, or has been
 83 committed.

84 ~~[(2) (a) Any auditor required to report a fraudulent insurance act under Subsection (1)~~
 85 ~~who willfully fails to comply with Subsection (1) is guilty of a class B misdemeanor.]~~

86 ~~[(b)]~~ **(2) An action **§→ brought under Section 31A-2-201, 31A-2-308,****

86a **or 31A-31-109, ←§** for failure to comply with Subsection (1) shall be commenced

87 within four years from the date on which ~~[the auditor employed by the title insurer:]~~ a person
 88 described in Subsection (1):

89 ~~[(i) had knowledge of the]~~

90 (a) has a good faith belief on the basis of a preponderance of the evidence that a
91 fraudulent insurance act is being, will be, or has been committed; and

92 ~~[(ii)]~~ (b) willfully ~~failed~~ fails to report the fraudulent insurance act.

93 (3) The department may by rule made in accordance with Title 63, Chapter 46a, Utah
94 Administrative Rulemaking Act, provide a process by which a person described in Subsection
95 (1)(a)(ii)(B) may comply with the requirements of Subsection (1) by reporting a fraudulent
96 insurance act to the insurer with whom the person is employed, except that the rule shall
97 provide that if the person reports the fraudulent insurance act to the insurer, the insurer is
98 required to report the fraudulent insurance act to the department.

99 (4) A person described in Subsection (1)(a)(ii) who in good faith makes a report under
100 this section, in accordance with Section 31A-31-105, immune from civil action, civil penalty,
101 or damages for making that report.

Legislative Review Note
as of 12-5-07 2:26 PM

Office of Legislative Research and General Counsel

H.B. 93 - Insurance Fraud Amendments

Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill will require additional appropriations to the Department of Insurance of \$76,000 ongoing from the General Fund for a Market Conduct Examiner, \$1,186,000 in ongoing Dedicated Credits for nine Fraud Investigators, and \$160,000 in one-time Dedicated Credits for capital outlay costs in Fiscal Year 2009. Offsetting Dedicated Credits revenue would be generated by increased assessments on insurance companies.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$76,000	\$76,000	\$0	\$0	\$0
Dedicated Credits	\$0	\$1,346,000	\$1,186,000	\$0	(\$1,346,000)	(\$1,186,000)
Total	\$0	\$1,422,000	\$1,262,000	\$0	(\$1,346,000)	(\$1,186,000)

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.