



Pennsylvania Insurance Fraud Prevention Authority
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Testimony on Insurance Fraud

Presented To

HOUSE INSURANCE COMMITTEE

**Public Hearing
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Presented by

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Good Afternoon. I am Ralph Burnham, Executive Director of the Pennsylvania Insurance Fraud Prevention Authority (the IFPA) and on behalf of the IFPA's board of directors we thank the esteemed Chairmen of the Committee, Representatives DeLuca and McCozzie and Representatives Godshall and Barbin as sponsors of the insurance fraud bills now before you, for this opportunity to appear here today.

The IFPA was created by Act 166 of 1994 as a public body charged with assessing the Commonwealth's insurance fraud problem and then administering Pennsylvania's Insurance Fraud Prevention Trust Fund (the "Trust Fund") to support the prosecution of insurance fraud and to pay for insurance fraud prevention programs. Our work is paid for not by taxpayer dollars but through assessments levied by the IFPA upon insurance companies. These assessments paid into the Trust Fund have increased from \$8.0 million a year in 1995 to this year's \$11.6 million. We provide \$9.9 million in grants to fifteen law enforcement agencies where the work of some 52 investigators, 22 prosecutors and 19 administrative personnel is focused upon investigating and prosecuting insurance fraud. Prosecution is a strong deterrent to those who would commit fraud. To further prevent insurance fraud we spend \$2.0 million yearly to run statewide public fraud awareness campaigns. Through our TV, radio and billboard ads and news articles we educate Pennsylvanians on the harms, risks and penalties of insurance fraud, a crime that everyone pays for through higher insurance premiums and a felony crime punishable by up to 7 years imprisonment and \$15,000 in fines.

As to the insurance fraud bills now before this Committee, the IFPA urges caution in extending fraud reporting mandates now imposed on Pennsylvania motor vehicle insurers and anti-fraud plan requirements presently imposed on motor vehicle and workers' compensation insurers to all insurers. The reporting of suspected insurance fraud in 2009 to law enforcement has increased by 61% over that seen in 2007, straining IFPA funded law enforcement agencies' resources and the ability of the Trust Fund to support law enforcement. We support the broadening of immunity for insurer-to-insurer fraud related communications as that will advance insurer fraud detection and law enforcement's prosecution of insurance fraud.

We are seeing an increased insurance fraud problem in Pennsylvania. The law enforcement agencies supported by the IFPA tell us that incoming reports of suspected insurance fraud crime have increased by 61% from 1,776 reports in 2007 to 2,866 in 2009. Pennsylvania's insurers remain the Commonwealth's front line in detecting and bringing suspected insurance fraud to law enforcement, accounting for nearly 64% (1,826) of 2009's reported fraud. Another 24% of reported fraud was seen coming from consumers. In 2009 IFPA funded law enforcement units reported making 415 arrests.

Insurance fraud involving motor vehicle and workers' compensation insurance dominate statistics reported by IFPA funded law enforcement agencies. In 2009 motor vehicle insurance was seen in 49% of reported fraud (1,426 reports) and 67% of arrests (289 arrests). Workers' compensation insurance was seen in 14% of fraud reports (406 reports) and 9% of arrests (37 arrests). Homeowners, commercial liability, healthcare and life disability insurance accounted for 34% of fraud reporting (960 reports) and 24% of arrests (104).

The IFPA's annual report for 2009 of Pennsylvania's insurance fraud problem will be provided the Governor and General Assembly in April 2010.

Why this large jump in reported fraud? Similar increases reported in other states have been attributed to financial hardship faced by people in a worsened US economy. If this is true, Pennsylvania's recent increases are but the first of coming waves of increased fraud reporting. Some acts of insurance fraud are reported to law enforcement within days, but in complex fraud schemes there is often a significant passage of time between the commission of insurance fraud, the discovery of that fraud, and law enforcement's arrest of the offender or offenders. In 2009 this time for all types of insurance fraud was on average 21.4 months from offense, through discovery, to arrest.

Fraud Reporting Mandates:

Fraud reporting mandates are effective in increasing the reporting of suspected fraud by insurers to law enforcement, but that increased reporting brings to law enforcement both allegations that do and do not result in prosecution. For 2008, IFPA funded law enforcement agencies received 2,305 reports of suspected fraud, with 1,348 reports coming from insurers, and made 481 arrests (arrests coming from 2009 and prior years' fraud reporting). In New York which requires all insurers to report fraud there were 22,235 reports submitted by insurers to the NY Insurance Frauds Bureau which made 755 arrests. In New Jersey which requires all insurers to report fraud the Office of Insurance Fraud Prosecutor had 4,559 reports of suspected insurance and showed 182 defendants charged. NJ additionally issued 337 civil consent orders disposing of alleged insurance fraud violations.

In 2008 and 2009 IFPA funded law enforcement agencies were asked to report the number of suspected insurance fraud reports received of insurers, the number of insurer reports sent to law enforcement as "information only", the number of insurer reports closed, and the number closed through prosecution. With two years' results in hand we see that on average 61% of fraud reporting came from insurers, that some 36% of insurer reports had been sent in as "information only" likely due to statutory fraud reporting obligations, and of the insurer reports not sent in as information 32% were closed through prosecution.

We anticipate that extending Pennsylvania's present motor vehicle insurance fraud reporting mandate to all insurers will overwhelm law enforcement's present resources as funded by the IFPA, resources that are now heavily burdened by the observed 61% increase in reported fraud. We find it preferable for Pennsylvania at this time to broaden immunity to increase the ability of insurers to detect and gather proofs of insurance fraud, enabling law enforcement's prosecutions of fraud.

Anti-fraud Plans:

Anti-fraud plan requirements have been seen necessary by states, concerned with the public harm of insurance fraud and having fraud reporting mandates, to ensure that insurers maintain programs to detect, to investigate and to report suspected insurance fraud. This was done in Pennsylvania for motor vehicle insurers in 1990 and workers' compensation insurers in 1993. The absence of regulatory penalties imposed on Pennsylvania motor vehicle insurers since 1990 and workers' compensation insurers since 1993, for failures to maintain anti-fraud plans or report suspected fraud to law enforcement, appear proof that insurance companies recognize the value of having anti-fraud programs in place, employing fraud investigators to protect themselves, their shareholders and their policyholders from fraud-related losses. We urge caution in extending past anti-fraud plan filing requirements to all insurers at this time.

Conclusion:

In conclusion, from our concern as to recent greatly increased insurance fraud reporting in Pennsylvania and its potential for overwhelming law enforcement the IFPA urges caution in advancing legislation to extend fraud reporting and anti-fraud plan requirements to all insurers. We support a broadening of immunity for insurer-to-insurer fraud related communications, to advance insurer fraud detection and law enforcement's prosecution of insurance fraud.

Our more detailed comment on pending bills follows. We thank Committee members for their work on the pending bills. I will now take questions.

Comment on Pending Bills:

HB 1736 - An Act amending the act of December 20, 1983 (P.L.260, No.72), referred to as the Public Adjuster Licensing Law, further providing for violations.

Comment: We defer to the Insurance Commissioner, who licenses and regulates public adjusters, for comment on this bill.

HB 1737 - An Act amending the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, further providing for powers and duties of the Insurance Fraud Prevention Authority and for the Insurance Fraud Prevention Trust Fund.

Comments: Page 3 Lines 10 through 16 - The IFPA is not a regulatory agency and has no authority to compel health care facilities or other businesses to place reward posters in their offices. Our enabling legislation provides that rewards may be paid from the Insurance Fraud Prevention Trust Fund, and rewards have been paid in the past upon recommendation of prosecuting law enforcement authorities. We defer to the insurance industry and law enforcement for further comment on this bill.

Page 6 Lines 29 and 30, and Page 7 Lines 1 and 2. We do not feel that monies from forfeitures should be deposited to the Insurance Fraud Prevention Trust Fund. Forfeitures should be used to compensate the victims of insurance fraud and to defray law enforcement's costs of prosecution.

HB 1739 - An Act amending the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, providing for antifraud plans; and making a related repeal.

Comment: We urge caution in extending anti-fraud plan requirements to all insurers.

HB 1740 - An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for insurance fraud forfeiture; and further providing for seized property.

Comment: We defer to law enforcement and the insurance industry for answer on this bill. We note that forfeiture affords the victims of insurance fraud another means of recovery of losses not returned to them via court-ordered restitution.

HB 1750 - An Act amending Titles 18 (Crimes and Offenses) and 40 (Insurance) of the Pennsylvania Consolidated Statutes, further providing for insurance fraud; consolidating Article XI of The Insurance Department Act of 1921, further providing for purpose, for definitions, for Insurance Fraud Prevention Trust Fund, for powers and duties and for duties of insurance licensees and their employees; and making a repeal.

Comment: Although we are concerned as to overwhelming law enforcement by extending anti-fraud plan and reporting requirements to all insurers, we offer the following comments on HB1750 as drafted:

Pages 1 through 4 - We defer to law enforcement for comment on proposed amendments to Title 18.

At Line 2 of Page 4 – we see appropriate language as is proposed in House Bill 2154 – additionally providing immunity to any “Person” reporting insurance fraud to law enforcement.

At page 8, line 11 - § 1121 (c) the bill as drafted should have the last sentence “No appointed member shall be eligible to serve more than two full consecutive terms.” deleted to correctly reflect the statute as amended in 2002.

At Page 12 Line 22 – at § 1123(c){1) should state “Annually on or before the first day of September,” as annual financial statement data of insurers is not made available to the IFPA for calculation of assessments until June each year and IFPA issue of assessment notices is not possible until July each year.

At Page 13 Lines 15 through 27. Insurers writing health insurance are both for-profit and non-profit businesses and may be licensed as several forms of insurers. If the original legislative intent was to cap assessments levied on health care insurers it is recommended that this provision be reworded in part to state "Assessments for health plan corporations, professional health services plan corporations, health maintenance organizations and insurers writing individual and group policies of health care insurance filing their statutory financial statements with the National Association of Insurance Commissioners and Pennsylvania Insurance Department as health insurers, when added together, shall not be more than 10% of the total assessment authorized under this subsection." If the original legislative intent was to cap assessments levied on "non-profit" health care insurers it is recommended that this provision be reworded to state "Assessments for non-profit health care insurers, including health plan corporations, professional health services plan corporations, health maintenance organizations and insurers writing individual and group policies of health care insurance filing their statutory financial statements with the National Association of Insurance Commissioners and Pennsylvania Insurance Department as health insurers, when added together, shall not be more than 10% of the total assessment authorized under this subsection."

Page 28 Lines 15 through 19 – It is recommend §1157(d) be amended to read "Continuing education requirement.—Persons employed as fraud investigators shall pursue a professional insurance fraud designation requiring annual continuing education through an organization or association offering such designation and continuing education."

Page 29 Lines 21 through 24 – It is recommended that this provision be amended to read "Copy of report.—For any report of insurance fraud or other criminal offense involving insurance made to a criminal law enforcement agency other than the Attorney General's Insurance Fraud Section, the insurer or insurance licensee shall provide the Section an informational copy noting the agency to which the report was sent." This change would ensure that reports remain in the hands of criminal law enforcement agencies where their disclosure is protected by Pennsylvania's Criminal History Records Information Act and the informational copy provided

the Section would assist the coordination of criminal investigations where multiple insurers may report the same suspect to several different law enforcement agencies. As Pennsylvania's Uniform Crime Report does not report on insurance fraud and insurers may report suspected insurance fraud to federal, state or local law enforcement agencies not funded by the IFPA, this would increase the IFPA's and thus the Commonwealth's knowledge of Pennsylvania's suspected insurance fraud problem.

House Bill 2041 - An Act providing for standards for towing and for violations.

Comment: We defer to the insurance industry, the Insurance Commissioner, law enforcement for other interested parties for comment on this bill.

House Bill 2154 - amending the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, further providing for immunity from liability; and making related repeals.

Comment: We support HB2154 as drafted, but recommend that health maintenance organizations (HMO) be included in the definition of insurers as it is our understanding that HMO are exempt from law enacted after the HMO Act unless specifically named.