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AN ACT

D.C. ACT 12-595

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 29, 1998

*Codification
District of
Columbia
Code
1999 Supp.*

To amend the District of Columbia Theft and White Collar Crimes Act of 1982 to deter insurance fraud by making insurance fraud in the first degree a crime of moral turpitude for professional and trade licensing purposes, imposing stricter criminal and civil penalties, facilitating insurance fraud detection by requiring cooperation during insurance fraud investigations, requiring insurers to submit insurance fraud prevention and detection plans, and requiring insurers to post warnings about insurance fraud in transaction forms.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Insurance Fraud Prevention and Detection Amendment Act of 1998".

*New
Subchapter
IIIa,
Chapter 38,
Title 22*

Sec. 2. The District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Code § 22-3801 *et seq.*), is amended as follows:

(a) The Table of Contents is amended by adding the following after the phrase "Fraudulent Registration":

- "Subtitle 3A. Insurance Fraud.
- "Sec. 125a. Definitions.
- "Sec. 125b. Insurance fraud in the first degree.
- "Sec. 125c. Insurance fraud in the second degree.
- "Sec. 125d. Penalties.
- "Sec. 125e. Restitution.
- "Sec. 125f. Indemnity.
- "Sec. 125g. Practitioners.
- "Sec. 125h. Investigation and report of insurance fraud.
- "Sec. 125i. Insurance fraud prevention and detection.
- "Sec. 125j. Regulations."

(b) A new subtitle 3A is added to title I to read as follows:

"Subtitle 3A. Insurance Fraud.

"Sec. 125a. Definitions.

New Section
22-3825.1

"For the purposes of this act, the term:

"(1) "Business of insurance" means the writing of insurance or reinsuring the risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or are officers, directors, agents, or employees of insurers, or who are other persons authorized to act on their behalf.

"(2) "Commissioner" means the Commissioner of Insurance and Securities Regulation, the Commissioner's designee, or the Department of Insurance and Securities Regulation.

"(3) "District" means the District of Columbia.

"(4) "Insurance" means a contract or arrangement in which one undertakes to:

"(A) Pay or indemnify another as to loss from certain contingencies called "risks," including through reinsurance;

"(B) Pay or grant a specified amount or determinable benefit to another in connection with ascertainable risk contingencies;

"(C) Pay an annuity to another; or

"(D) Act as a surety.

"(5) "Insurance professional" means insurance sales agents or managing general agents, insurance brokers, insurance producers, insurance adjusters, and insurance third party administrators.

"(6) "Insurer" means any person who engages in the business of insurance for a fee or indemnifies another against loss, damage, or liability arising from a contingent or unknown event.

"(7) "Malice" means an intentional or deliberate infliction of injury, by furnishing or disclosing information with knowledge that the information is false, or furnishing or disclosing information with reckless disregard for a strong likelihood that the information is false and that injury will occur as a result.

"(8) "Person" means a natural person, company, corporation, joint stock company, unincorporated association, partnership, professional corporation, trust, or any other entity or combination of the foregoing.

"(9) "Practitioner" means a person, licensed to practice a profession or trade in the District, whose services are compensated either in whole or in part, directly or indirectly, by insurance proceeds.

"(10) "Premium" means the money paid or payable as the consideration for coverage under an insurance policy.

"Sec. 125b. Insurance fraud in the first degree.

"A person commits the offense of insurance fraud in the first degree if, knowingly and with intent to defraud, that person makes an act or omission concerning any of the following:

"(1) Presenting false information or knowingly conceals information regarding a material fact in any of the following transactions:

"(A) Application for, rating of, or renewal of an insurance policy or reinsurance contract;

"(B) Claim for payment or benefit pursuant to an insurance policy or reinsurance contract;

"(C) Premiums paid on an insurance policy or reinsurance contract;

"(D) Payment made in accordance with the terms of an insurance policy or reinsurance contract;

"(E) Application used in a premium finance transaction;

"(F) Solicitation for sale of an insurance policy;

"(G) Application for a license or certificate of authority filed with the Commissioner or the chief insurance regulatory official of another jurisdiction;

"(H) Financial statement or condition of any insurer or reinsurer;

"(I) Acquisition, formation, merger, affiliation, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in the District by an insurer or reinsurer;

"(J) Issuance of written evidence of insurance; or

"(K) Application for reinstatement of an insurance policy;

"(2) Soliciting or accepting insurance or renewal of insurance by or for an insurer which the person knows is insolvent or has a strong likelihood of insolvency;

"(3) Removal or tampering with the records of transaction, documentation, and other material assets of an insurer from the insurer or from the Department of Insurance and Securities Regulation;

"(4) Diversion, misappropriation, conversion, or embezzlement of funds of an insurer, an insured, claimant or applicant regarding any of the following:

"(A) Insurance transaction;

"(B) Other insurance business activities by an insurer or insurance professional; or

"(C) Acquisition, formation, merger, affiliation or dissolution of an insurer.

"(5) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of insurance; or

"(6) Attempt to commit, aiding and abetting in the commission of, or conspiracy to commit the acts or omissions specified in this section.

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"Sec. 125c. Insurance fraud in the second degree.

**New Section
22-3825.3**

"A person commits insurance fraud in the second degree if that person knowingly presents false information or conceals information regarding a material fact in any of the following:

- "(1) Application for, rating of, or renewal of an insurance policy or reinsurance contract;
- "(2) Claim for payment or benefit pursuant to an insurance policy or reinsurance contract;
- "(3) Premiums paid on an insurance policy or reinsurance contract;
- "(4) Payment made in accordance with the terms of an insurance policy or reinsurance contract;
- "(5) Application used in a premium finance transaction;
- "(6) Solicitation for sale of an insurance policy;
- "(7) Application for a license or certificate of authority filed with the Commissioner or the chief insurance regulatory official of another jurisdiction;
- "(8) Financial statement or condition of any insurer or reinsurer;
- "(9) Acquisition, formation, merger, affiliation, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in the District by an insurer or reinsurer;
- "(10) Issuance of written evidence of insurance; or
- "(11) Application for reinstatement of an insurance policy.

"Sec. 125d. Penalties.

**New Section
22-3825.4**

"(a) Any person convicted of insurance fraud in the first degree shall be subject to a fine of not more than \$50,000 or imprisonment for not more than 15 years, or both.

"(b) Any person convicted of insurance fraud in the second degree shall be subject to the following:

- "(1) A fine of not more than \$5,000 or imprisonment for not more than 5 years, or both; or
- "(2) A fine of not more than \$10,000 or imprisonment for not more than 10 years, or both, for a second or subsequent offense under section 4 or a conviction based on similar grounds in any other jurisdiction.

"(c) A person convicted of a felony violation of this act shall be disqualified from engaging in the business of insurance, subject to 18 U.S.C. § 1033(e)(2).

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"Sec. 125e. Restitution.

**New Section
22-3825.5**

"(a) In addition to the penalties provided under section 5, a person convicted under this act shall make monetary restitution for any loss caused by the offense. The court shall determine the form and method of payment which, if by installment, shall not exceed 5 years.

"(b) Any person, including the District, injured as the result of an insurance fraud in the first degree may bring suit in the appropriate court to recover ordinary damages including attorney's fees and other costs and punitive damages which shall not be less than \$500 nor more than \$50,000. Except where punitive damages are sought, the court shall award treble damages where the offense is proven by clear and convincing evidence to be in accordance with an established pattern or practice.

"(c) Notwithstanding any action that may be brought by the United States Attorney's office to recoup its costs in prosecuting these cases, the Corporation Counsel may bring a civil suit against any person convicted under this act in order to recover investigation and prosecution-related costs incurred by the District.

"(d) A suit under subsection (b) of this section must be filed within 3 years of the act constituting the offense or within 3 years of the time the plaintiff discovered or with reasonable diligence could have discovered the act, whichever is later. This 3 year statute of limitations shall not apply to the District.

"(e) Remedies provided in this section shall be exclusive and may not be claimed in conjunction with any other remedies available under the law.

"Sec. 125f. Indemnity.

**New Section
22-3825.6**

"An insurer shall not be liable for the following:

" (1) Damages or restitution provided by this act, either jointly, severably, or as a third party, for insurance fraud offense committed by an insured; or

"(2) The defense of an insured or other person who is charged with insurance fraud.

"Sec. 125g. Practitioners.

**New Section
22-3825.7**

"(a) Notwithstanding any other provisions of law, the offense of insurance fraud in the first degree shall be deemed a crime of moral turpitude for the purposes of professional or trade license.

"(b) The court or prosecutor shall notify the appropriate licensing authority, and the person who is injured by the offense may notify the appropriate licensing authority of any conviction. The Commissioner shall hold a disciplinary hearing to determine whether the license or certificate of authority of the convicted practitioner should be suspended or revoked.

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"Sec. 125h. Investigation and report of insurance fraud.

New Section
22-3825.8

"(a) Based upon a reasonable belief, an insurer, insurance professional, and any other pertinent person, shall report to the Metropolitan Police Department or the Department of Insurance and Securities Regulation, actions that may constitute the commission of insurance fraud, and assist in the investigation of insurance fraud by reasonably providing information when required by an investigating authority.

"(b) The Commissioner may investigate suspected fraudulent insurance acts and persons engaged in the business of insurance. Nothing in this act shall preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law.

"(c) An insurer, insurance professional, or any other pertinent person who fails to reasonably assist the investigation of an insurance fraud or fails to report an insurance fraud, and who is injured by that insurance fraud, shall be estopped from receiving restitution as provided in section 125e.

"(d) Any information, documentation, or other evidence provided under this section by an insurer, its employees, producers, or agents, or by any other person, to the Department of Insurance and Securities Regulation, the Metropolitan Police Department, or any other law enforcement agency in connection with any investigation of suspected fraud is not subject to public inspection as long as the Commissioner or law enforcement agency deems the withholding to be necessary to complete an investigation of the suspected fraud or to protect the person or entity investigated from unwarranted injury.

"(e) No person shall be subject to civil liability for any cause of action, or subject to criminal prosecution, for reporting any suspected insurance fraud if:

"(1) The report was made to the Department of Insurance and Securities Regulation, the Metropolitan Police Department, or any other law enforcement authority, or to any insurer, insurance agent, or other person who collects, reviews, or analyzes information concerning insurance fraud, by any individual or entity suspecting insurance fraud; and

"(2) The person or entity reporting the suspected fraud acted without malice when making the report.

"Sec. 125i. Insurance fraud prevention and detection.

New Section
22-3825.9

"(a) Within 6 months of the effective date of this act, every insurer licensed in the District shall submit to the Department of Insurance and Securities Regulation, an insurance fraud prevention and detection plan ("plan"). The plan shall indicate specific procedures for the accomplishment of the following:

"(1) Prevention, detection, and investigation of insurance fraud;

"(2) Orientation of employees on insurance fraud prevention and detection;

"(3) Employment of fraud investigators;

"(4) Reporting of insurance fraud to the appropriate authorities; and

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"(5) Collection of restitution for financial loss caused by insurance fraud.

"(b) The Commissioner may review the plan for compliance with this section and may order reasonable modification or request a summary of the plan. The Commissioner may establish by regulation a fine for an insurer failing to comply with the plan. The plan shall not be deemed a public record for the purposes of any public records or Title II of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Code § 1-1521 *et seq.*).

"(c) Notwithstanding any other provisions of law, an insurer who fails to submit an insurance prevention and detection plan, or the warning provision required by subsection (d) of this section shall be subject to a fine of \$500 per day, not to exceed \$25,000.

"(d) No later than 6 months after the effective date of this act, all insurance application forms and all claim forms shall contain a conspicuous warning in language the same or substantially similar to the following:

""WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.".

"(e) None of the requirements of this section shall be deemed to apply to reinsurers, reinsurance contracts, reinsurance agreements, or reinsurance claims transactions.

"Sec. 125j. Regulations.

"The Commissioner may promulgate regulations deemed necessary by the Commissioner for the administration of this act.".

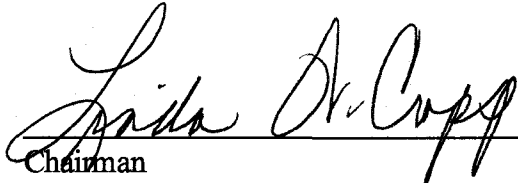
New Section
22-3825.10

Sec. 3. The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

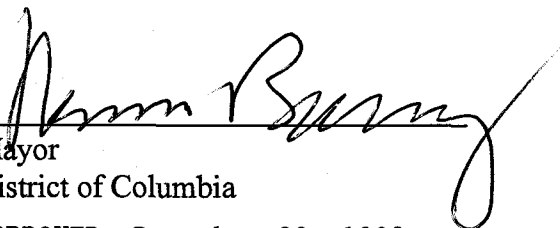
Sec. 4. This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved

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December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(2)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED: December 29, 1998



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TWELVE

RECORD OF OFFICIAL COUNCIL VOTE

Docket No. B12-235

| | ITEM ON CONSENT CALENDAR

ACTION & DATE ADOPTED FIRST READING, 12-01-98

VOICE VOTE APPROVED
RECORDED VOTE ON REQUEST

ABSENT ALL PRESENT

| | ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote AB - Absent NV - Present not Voting

[Signature] December 18, 1998
Secretary to the Council Date

ITEM ON CONSENT CALENDAR

ACTION & DATE ADOPTED FINAL READING, 12-15-98

VOICE VOTE APPROVED
RECORDED VOTE ON REQUEST

ABSENT THOMAS

| | ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote AB-Absent NV-Present not voting

[Signature] December 18, 1998
Secretary to the Council Date

| | ITEM ON CONSENT CALENDAR

| | ACTION & DATE

| | VOICE VOTE
RECORDED VOTE ON REQUEST

ABSENT

| | ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote AB - Absent NV - Present not Voting

Secretary to the Council Date