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ภาคผนวก

MODEL INSURANCE FRAUD ACT
(Adopted March 1995; amended September 1998)



Model Language

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____

The legislature finds that insurance fraud is pervasive and expensive, costing consumers and the business community of this state millions of dollars each year. Each family spends in excess of several hundreds of dollars each year in direct and indirect costs attributable to insurance fraud. Insurance fraud increases premiums, places businesses at risk and is a leading cause of insurance company insolvencies. Insurance fraud reduces consumers ability to raise their standard of living and decreases the economic vitality of this state.

Therefore, the legislature believes that the state of _____ must aggressively confront the problem of insurance fraud by facilitating the detection, reducing the occurrence through stricter enforcement and deterrence, requiring restitution and increasing the partnership among consumers, the insurance industry and the state in coordinating efforts to combat insurance fraud by enacting the following Act.

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Section 1. Definitions

As used in this act, unless the context requires otherwise, the following terms have the meaning ascribed to them in this section.

Actual Malice. "Actual Malice" means knowledge that information is false, or Reckless disregard of whether it is false.

Conceal. "Conceal" means to take affirmative action to prevent others from discovering information. Mere failure to disclose information does not constitute concealment. Action by the holder of a legal privilege, or one who has a reasonable belief that a privilege exists, to prevent discovery of privileged information does not constitute concealment.

Insurance Policy. "Insurance Policy" means the written instrument in which are set forth the terms of any certificate of insurance, binder of coverage or contract of insurance (including a certificate, binder or contract issued by a state-assigned risk plan); benefit plan; nonprofit hospital service plan; motor club service plan; or surety bond, cash bond or any other alternative to insurance authorized by a state's financial responsibility act. Insurance Policy also is any other instruments authorized or regulated by the department of insurance.

Insurance Professional. "Insurance Professional" means sales agents, managing general agents, brokers, producers, adjusters and third party administrators.

Insurance Transaction. "Insurance Transaction" means a transaction by, between or among: (1) an Insurer or a Person who acts on behalf of an Insurer; and (2) an insured, claimant, applicant for insurance, public adjuster, Insurance Professional, Practitioner, or any Person who acts on behalf of any of the foregoing, for the purpose of obtaining insurance or reinsurance, calculating insurance Premiums, submitting a claim, negotiating or adjusting a claim, or otherwise obtaining insurance, self-insurance, or reinsurance or obtaining the benefits thereof or therefrom.

Insurer. "Insurer" means any Person purporting to engage in the business of insurance or authorized to do business in the state or subject to regulation by the state, who undertakes to indemnify another against loss, damage or liability arising from a contingent or unknown event. "Insurer" includes, but is not limited to, an insurance company; self-insurer; reinsurer; reciprocal exchange; interinsurer; risk retention group; Lloyd's insurer; fraternal benefit society; surety; medical service, dental, optometric or any other similar health service plan; and any other legal entity engaged or purportedly engaged in the business of insurance, including any Person or entity which falls within the definition of "Insurer" found within the _____ Insurance Code § _____.

Pattern or practice. "Pattern or practice" means repeated, routine or generalized in nature, and not merely isolated or sporadic.

Person. "Person" means a natural person, company, corporation, unincorporated association, partnership, professional corporation, agency of government and any other entity.

Practitioner. "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic or law or any other licensee of the state or Person required to be licensed in the state whose services are compensated either in whole or in part, directly or indirectly, by insurance proceeds, including but not limited to automotive repair shops, building contractors and insurance adjusters, or a licensee similarly licensed in other states and nations or the licensed practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.

Premium. "Premium" means consideration paid or payable for coverage under an Insurance Policy. "Premium" includes any payments, whether due within the Insurance Policy term or otherwise, and deductible payments whether advanced by the Insurer or Insurance Professional and subject to reimbursement by the insured or otherwise, any self insured retention or payments, whether advanced by the Insurer or Insurance Professional and subject to reimbursement by the insured or otherwise, and any collateral or security to be provided to collateralize obligations to pay any of the above.

Premium Finance Company. "Premium Finance Company" means a Person engaged or purporting to engage in the business of advancing money, directly or indirectly, to an Insurer or producer at the request of

an insured pursuant to the terms of a premium finance agreement, including but not limited to loan contracts, notes, agreements or obligations, wherein the insured has assigned the unearned Premiums, accrued dividends, or loss payments as security for such advancement in payment of Premiums on Insurance Policies only, and does not include the financing of insurance Premiums purchased in connection with the financing of goods and services.

Premium Finance Transaction. "Premium Finance Transaction" means a transaction by, between or among an insured, a producer or other party claiming to act on behalf of an insured and a third-party Premium Finance Company, for the purposes of purportedly or actually advancing money directly or indirectly to an Insurer or producer at the request of an insured pursuant to the terms of a premium finance agreement, wherein the insured has assigned the unearned Premiums, accrued dividends or loan payments as security for such advancement in payment of Premiums on Insurance Policies only, and does not include the financing of insurance Premiums purchased in connection with the financing of goods and services.

Reckless. "Reckless" means without reasonable belief of the truth, or, for the purposes of Section 3(c), with a high degree of awareness of probable insolvency.

Withhold. "Withhold" means to fail to disclose facts or information which any law (other than this act) requires to be disclosed. Mere failure to disclose information does not constitute "withholding" if the one failing to disclose reasonably believes that there is no duty to disclose.

Section 2. Fraudulent Insurance Act

Any Person who, knowingly and with intent to defraud, and for the purpose of depriving another of property or for pecuniary gain, commits, participates in or aids, abets, or conspires to commit or solicits another Person to commit, or permits its employees or its agents to commit any of the following acts, has committed a Fraudulent Insurance Act:

- (a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured, claimant or applicant to an Insurer, Insurance Professional or Premium Finance Company in connection with an Insurance Transaction or Premium Finance Transaction, any information which contains false representations as to any material fact, or which Withholds or Conceals a material fact concerning any of the following:
 - (1) The application for, rating of, or renewal of, any Insurance Policy;
 - (2) A claim for payment or benefit pursuant to any Insurance Policy;
 - (3) Payments made in accordance with the terms of any Insurance Policy;
 - (4) The application used in any Premium Finance Transaction;
- (b) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an Insurer, Insurance Professional or a Premium Finance Company in connection with an Insurance Transaction or Premium Finance Transaction, any information which contains false representations as to any material fact, or which Withholds or Conceals a material fact, concerning any of the following:
 - (1) The solicitation for sale of any Insurance Policy or purported Insurance Policy;
 - (2) An application for certificate of authority;
 - (3) The financial condition of any Insurer;

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- (4) The acquisition, formation, merger, affiliation or dissolution of any Insurer;
 - (c) Solicits or accepts new or renewal insurance risks by or for an insolvent Insurer.
 - (d) Removes the assets or records of assets, transactions and affairs or such material part thereof, from the home office or other place of business of the Insurer, or from the place of safekeeping of the Insurer, or destroys or sequesters the same from the Department of Insurance.
 - (e) Diverts, misappropriates, converts or embezzles funds of an Insurer, an insured, claimant or applicant for insurance in connection with:
 - (1) An Insurance Transaction;
 - (2) The conduct of business activities by an Insurer or Insurance Professional;
 - (3) The acquisition, formation, merger, affiliation or dissolution of any Insurer.

It shall be unlawful for any Person to commit, or to attempt to commit, or aid, assist, abet or solicit another to commit, or to conspire to commit a Fraudulent Insurance Act.

Section 3. Unlawful Insurance Act

Any Person who commits, participates in, or aids, abets, or conspires to commit, or solicits another Person to commit, or permits its employees or its agents to commit any of the following acts with an intent to induce reliance, has committed an Unlawful Insurance Act:

- (a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured, claimant or applicant to an Insurer, Insurance Professional or a Premium Finance Company in connection with an Insurance Transaction or Premium Finance Transaction, any information which the Person knows to contain false representations, or representations the falsity of which the Person has Recklessly disregarded, as to any material fact, or which Withholds or Conceals a material fact, concerning any of the following:
 - (1) The application for, rating of, or renewal of, any Insurance Policy;
 - (2) A claim for payment or benefit pursuant to any Insurance Policy;
 - (3) Payments made in accordance with the terms of any Insurance Policy;
 - (4) The application for the financing of any insurance Premium;
- (b) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an Insurer, Insurance Professional or a Premium Finance Company in connection with an Insurance Transaction or Premium Finance Transaction, any information which the Person knows to contain false representations, or representations the falsity of which the Person has Recklessly disregarded, as to any material fact, or which Withholds or Conceals a material fact, concerning any of the following:
 - (1) The solicitation for sale of any Insurance Policy or purported Insurance Policy;
 - (2) An application for certificate of authority;
 - (3) The financial condition of any Insurer;
 - (4) The acquisition, formation, merger, affiliation or dissolution of any Insurer;
- (c) Solicits or accepts new or renewal insurance risks by or for an Insurer which the Person knows was

insolvent or the insolvency of which the Person Recklessly disregards.

It shall be unlawful for any Person to commit, or to attempt to commit, or aid, assist, abet or solicit another to commit, or to conspire to commit an Unlawful Insurance Act.

Section 4. Criminal Penalties

A Person who violates Section 2 of this Act is guilty of:

- (a) A Class A misdemeanor if the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is less than _____;
- (b) A Class B misdemeanor if:
- (1) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is _____ or more but less than _____; or
 - (2) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is less than _____, and the defendant has been previously convicted of any class or degree of insurance fraud in any jurisdiction;
- (c) A Class C misdemeanor if the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is _____ or more but less than _____;
- (d) A felony in the third degree if:
- (1) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is _____ or more but less than _____; or
 - (2) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is less than _____, and the defendant has been previously convicted two or more times of any class or degree of insurance fraud in any jurisdiction;
- (e) A felony in the second degree if the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is _____ or more but less than _____
- (f) A felony in the first degree if:
- (1) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is _____ or more but less than _____; or
 - (2) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or

Persons as a result of his violation of Section 2, is less than _____ and the defendant has been previously convicted two or more times of any degree of felony insurance fraud in any jurisdiction; or

- (3) the greater of (i) the value of property, services or other benefit he wrongfully obtained, or attempted to obtain, or (ii) the segregate or aggregate economic loss suffered by any Person or Persons as a result of his violation of Section 2, is less than _____ and his violation of Section 2 of this Act placed any Person at risk of death or serious bodily injury.

Drafting Note: It is the intent of the coalition that the criminal penalties for fraudulent insurance acts should track the existing criminal penalties for fraud.

Section 5. Restitution

A Person convicted of a violation of Section 2 of this Act shall be ordered to make monetary restitution for any financial loss or damages sustained by any other Person as a result of the violation. Financial loss or damage shall include, but is not necessarily limited to, loss of earnings, out-of-pocket and other expenses, paid deductible amounts under an Insurance Policy, Insurer claim payments, cost reasonably attributed to investigations and recovery efforts by owners, Insurers, Insurance Professionals, law enforcement and other public authorities, and cost of prosecution.

When restitution is ordered, the court shall determine its extent and methods. Restitution may be imposed in addition to a fine and, if ordered, any other penalty, but not in lieu thereof. The court shall determine whether restitution, if ordered, shall be paid in a single payment or installments and shall fix a period of time, not in excess of _____, within which payment of restitution is to be made in full.

Section 6. Administrative Penalties

(1) (A) Any Practitioner determined by the Court to have violated Section 2 shall be deemed to have committed an act involving moral turpitude that is inimical to the public well being. The court or prosecutor shall notify the appropriate licensing authority in this state of the judgment for appropriate disciplinary action, including revocation of any such professional license(s), and may notify appropriate licensing authorities in any other jurisdictions where the Practitioner is licensed. Any victim may notify the appropriate licensing authorities in this State and any other jurisdiction where the Practitioner is licensed, of the conviction.

(B) Upon notification of a conviction of the crimes enumerated in Section 2 of this Act or a substantially similar crime under the laws of another state or the United States, this State's appropriate licensing authority shall hold an administrative hearing, or take other appropriate administrative action authorized by state law, to consider the imposition of the administrative sanctions as provided by law against the Practitioner. Where the Practitioner has been convicted of a felony violation of Section 2 of this Act or a substantially similar crime under the laws of another state or of the United States, this state's appropriate licensing authority shall hold an administrative hearing, or take other appropriate administrative action authorized by state law, and shall summarily and permanently revoke the license. It is hereby recommended by the legislature that the [name of the highest court in the state] shall summarily and permanently disbar any attorney found guilty of such felony.

(C) All such referrals to the appropriate licensing or other agencies, and all dispositive actions thereof, shall be a matter of public record.

(2) (A) A Person convicted of a felony involving dishonesty or breach of trust shall not participate in the business of insurance.

(B) A Person in the business of insurance shall not knowingly or intentionally permit a Person convicted of a felony involving dishonesty or breach of trust to participate in the business of insurance.

Section 7. Civil Remedies

(a) Any Person injured in his business or property by reason of a violation of Section 3 may recover therefor from the Person[s] violating Section 3, in any appropriate _____ Court the following:

- (1) Return of any profit, benefit, compensation or payment received by the Person violating Section 3 directly resulting from said violation;
- (2) Reasonable attorneys fees, related legal expenses, including internal legal expenses and court costs, not to exceed \$5,000;

An action maintained under this subparagraph may neither be certified as a class action nor be made part of a class action.

(b) Any Person injured in his business or property by reason of a violation of Section 2 may recover therefor from the Person[s] violating Section 2, in any appropriate _____ Court the following:

- (1) Return of any profit, benefit, compensation or payment received by the Person violating Section 2 directly resulting from said violation;
- (2) Reasonable attorneys fees, related legal expenses, including internal legal expenses and court costs;
- (3) All other economic damages directly resulting from the violation of Section 2;
- (4) Reasonable investigative fees based on a reasonable estimate of the time and expense incurred in the investigation of the violation(s) of Section 2 proved at trial;
- (5) A penalty of no less than \$ _____ and no greater than \$ _____.

An action maintained under this subparagraph may neither be certified as a class action nor be made part of a class action.

(c) Any Person injured in his or her business or property by a Person violating Section 2, upon a showing of clear and convincing evidence that such violation was part of a Pattern or Practice of such violations, shall be entitled to recover threefold the injured Person's economic damages. An action for treble damages must be brought within _____ year(s) of such violation. One third of the treble damages awarded shall be payable to the state to be used solely for the purpose of investigation and prosecution of violations of this Act or other fraudulent behavior relating to Insurance Transactions, and/or for public education relating to insurance fraud. An action maintained under this subparagraph may neither be certified as class action nor be made part of a class action, unless the violations of Section 2 giving rise to the action resulted in criminal conviction of the violator[s] under Section 4.

(d) The State Attorney General, District Attorney or prosecutorial agency shall have authority to maintain

Civil proceedings on behalf of the State Insurance Department and any victims of violations of Section 2. In any such action, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

- (1) The _____ Courts of the state shall have jurisdiction to prevent and restrain violations of Section 2 of this Chapter by issuing appropriate orders.
- (2) In any action commenced under this subparagraph (d), the Court, upon finding that any Person has violated Section 2, shall levy a fine of up to \$5,000 for each violation.

Any court in which a prosecution for violation of Section 2 is pending shall have authority to stay or limit proceedings in any civil action regarding the same or related conduct. Any court in which is pending a civil action brought pursuant to subparagraph (d) of this Section 7 may stay or limit proceedings in actions brought pursuant to subparagraphs (a)-(c) regarding the same or related conduct or may transfer such actions or consolidate them before itself or allow the plaintiffs in such actions to participate in the action brought pursuant to subparagraph (d), as it shall prescribe.

Any cause of action under this section for violation of Section 2 or Section 3 must be brought within _____ years of the commission of the acts constituting such violation, or within _____ years of the time the plaintiff discovered (or with reasonable diligence could have discovered) such acts, whichever is later.

An insurer shall not pay damages awarded under this Section 7, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification. A third party who has asserted a claim against an insured shall have no cause of action under this Section against the Insurer of the insured arising out of the Insurer's processing or settlement of the third party's claim. An obligee under a surety bond shall not have a cause of action under this section against the surety arising out of the surety's processing or settlement of the obligee's claim against the bond.

Any Person injured in his business or property by reason of a violation of Section 2 or Section 3 of this Chapter may recover under only one of the subparagraphs in this Section.

Section 8. Exclusivity of Remedies

The remedies expressly provided in Section 7 shall be the only private remedies for violations of this Act and no additional remedies shall be implied. The remedies available under Section 7 shall not be used in conjunction with or in addition to any other remedies available at law or in equity to duplicate recovery for the same element of economic damage. Further, in any civil action pleading both exemplary damages and the treble damages available in Section 7(c), plaintiff shall elect one or the other remedy, but not both, at the conclusion of the evidentiary phase of the trial.

However, nothing in this Act shall limit or abrogate any right of action which would have existed in the absence of this Act, but no action based on such a right shall rely on this Act to establish a standard of conduct or for any other purpose.

Section 9. Cooperation

- (a) When any law enforcement official or authority, any insurance department, state division of insurance fraud, or state or federal regulatory or licensing authority requests information from an Insurer or

Insurance Professional for the purpose of detecting, prosecuting or preventing insurance fraud, the Insurer or Insurance Professional shall take all reasonable actions to provide the information requested, subject to any legal privilege protecting such information.

- (b) Any Insurer or Insurance Professional that has reasonable belief that an act violating Sections 2 or 3 will be, is being, or has been committed shall furnish and disclose any information in its possession concerning such act to the appropriate law enforcement official or authority, insurance department, state division of insurance fraud, or state or federal regulatory or licensing authority, subject to any legal privilege protecting such information.
- (c) An Insurer or Insurance Professional providing information to any law enforcement, regulatory, licensing or other governmental agency under subparagraphs (a) or (b) of this section, shall have the right to request information in the possession or control of the agency relating to the suspected violation or to a pattern of related activity, except information which was privileged or confidential under the laws of this state prior to its submission to the agency. In instances where disclosure would not jeopardize an ongoing investigation or prosecution, the agency shall provide the requested information to the Insurer or Insurance Professional. The agency may request that the Insurer or Insurance Professional keep the disclosed information confidential.
- (d) Any Person that has a reasonable belief that an act violating this Chapter will be, is being, or has been committed; or any Person who collects, reviews or analyzes information concerning insurance fraud may furnish and disclose any information in its possession concerning such act to an authorized representative of an Insurer that requests the information for the purpose of detecting, prosecuting or preventing insurance fraud.
- (e) Failure to cooperate with a request for information from an appropriate local, state or federal governmental authority shall bar a Person's eligibility for restitution from any proceeds resulting from such governmental investigation and prosecution.

Section 10. Immunity

In the absence of Actual Malice, no Person furnishing, disclosing or requesting information pursuant to Section 9 shall be subject to civil liability for libel, slander, or any other cause of action arising from the furnishing, disclosing or requesting of such information. No Person providing information pursuant to Section 9(a) shall be subject to civil liability for any cause of action arising from the Person's provision of requested information. Any Person against whom any action is brought who is found to be immune from liability under this section, shall be entitled to recover reasonable attorney's fees and costs from the Person or party who brought the action. This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any Person.

Section 11. Regulatory Requirements

(a) Anti-Fraud Plans

Within six months of the effective date of this legislation, every Insurer with direct written premiums shall prepare, implement, maintain and submit to the department of insurance an insurance anti-fraud plan.

Each Insurer's anti-fraud plan shall outline specific procedures, appropriate to the type of insurance the

Insurer writes in this state, to:

- (1) prevent, detect and investigate all forms of insurance fraud, including fraud involving the Insurer's employees or agents; fraud resulting from misrepresentations in the application, renewal or rating of insurance policies; claims fraud; and security of the Insurer's data processing systems.
- (2) educate appropriate employees on fraud detection and the Insurer's anti-fraud plan.
- (3) provide for the hiring of or contracting for fraud investigators.
- (4) report insurance fraud to appropriate law enforcement and regulatory authorities in the investigation and prosecution of insurance fraud.
- (5) pursue restitution for financial loss caused by insurance fraud, where appropriate.

The Commissioner may review each Insurer's anti-fraud plan to determine if it complies with the requirements of this subparagraph.

It shall be the responsibility of the Commissioner to assure Insurer compliance with anti-fraud plans submitted to the Commissioner. The Commissioner may require reasonable modification of the Insurer's anti-fraud plan, or may require other reasonable remedial action if the review or examination reveals substantial non-compliance with the terms of the Insurer's own anti-fraud plan.

The Commissioner may require each Insurer to file a summary of the Insurer's anti-fraud activities and results. The anti-fraud plans and the summary of the Insurer's anti-fraud activities and results are not public records and are exempt from the _____ public records act, and shall be proprietary and not subject to public examination, and shall not be discoverable or admissible in civil litigation.

This section confers no private rights of action.

(b) Fraud Warnings

- (1) (A) No later than six months after the effective date of this Act, all applications for insurance, and all claim forms regardless of the form of transmission provided and required by an Insurer or required by law as a condition of payment of a claim, shall contain a statement, permanently affixed to the application or claim form, that clearly states in substance the following:

"It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits."

- (B) The lack of a statement required in this subparagraph does not constitute a defense in any criminal prosecution under Section 2 nor in any civil action under Sections 2 or 3.

- (2) The warning required by this subsection shall not be required on forms relating to reinsurance.

(c) Enforcement

Notwithstanding any other provision of the Insurance Code, the following are the exclusive monetary penalties for violation of this Section. Insurers that fail to prepare, implement, maintain and submit to the department of insurance an insurance anti-fraud plan are subject to a penalty of \$500 per day, not to exceed \$25,000.

MODEL INSURANCE FRAUD BUREAU ACT
(Adopted September 20, 1995)



Model Language

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Section 1. Purpose of Act

The purpose of this Act is to confront aggressively the problem of insurance fraud in the State of _____ by facilitating the detection of insurance fraud, reducing the occurrence of such fraud through administrative enforcement and deterrence, and reducing the amount of premium dollars used to pay for fraudulent claims. This Act establishes a Division of Insurance Fraud within the Department of Insurance.

Section 2. Definitions

Actual Malice. "Actual Malice" means knowledge that information is false, or Reckless disregard of whether it is false.

Conceal. "Conceal" means to take affirmative action to prevent others from discovering information. Mere failure to disclose information does not constitute concealment. Action by the holder of a legal privilege, or one who has a reasonable belief that a privilege exists, to prevent discovery of privileged information does not constitute concealment.

Insurance fraud. "Insurance fraud" is an act committed or attempted by any Person who, knowingly and with intent to defraud, and for the purpose of depriving another of property or for pecuniary gain, commits participates in, or aids, abets, or conspires to commit or solicits another Person to commit, or permits its employees or its agents to commit any of the following acts:

- (a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented by or on behalf of an insured, claimant or applicant to an Insurer, Insurance Professional or Premium Finance Company, in connection with an Insurance Transaction or Premium Finance Transaction, any information which contains false representations as to any material fact, or which Withholds or Conceals a material fact concerning any of the following:
 - (1) The application for, rating of, or renewal of, any Insurance Policy;
 - (2) A claim for payment or benefit pursuant to any Insurance Policy;
 - (3) Payments made in accordance with the terms of any Insurance Policy;
 - (4) The application used in any Premium Finance Transaction;

- (b) Presents, causes to be presented, or prepares with the knowledge or belief that it will be presented, to or by an Insurer, Insurance Professional or a Premium Finance Company in connection with an Insurance Transaction or Premium Finance Transaction, any information which contains false representations as to any material fact, or which Withholds or Conceals a material fact, concerning any of the following:
- (1) The solicitation for sale of any Insurance Policy or purported Insurance Policy;
 - (2) An application for certificate of authority;
 - (3) The financial condition of any Insurer;
 - (4) The acquisition, formation, merger, affiliation or dissolution of any Insurer;
- (c) Solicits or accepts new or renewal insurance risks by or for an insolvent Insurer.
- (d) Removes the assets or record of assets, transactions and affairs or such material part thereof, from the home office or other place of business of the Insurer, or from the place of safekeeping of the Insurer, or destroys or sequesters the same from the Department of Insurance.
- (e) Diverts, misappropriates, converts or embezzles funds of an Insurer, an insured, claimant or applicant for insurance in connection with:
- (1) An Insurance Transaction;
 - (2) The conduct of business activities by an Insurer or Insurance Professional;
 - (3) The acquisition, formation, merger, affiliation or dissolution of any Insurer.

OR IN THE ALTERNATIVE:

- C. Insurance Fraud shall have the meaning as defined by the Insurance Code Section () and by any other applicable State Law affecting fraud.

Insurance Policy. "Insurance Policy" or "policy" means the written instrument in which are set forth the terms of any certificate of insurance, binder of coverage or contract of insurance (including a certificate, binder or contract issued by a state-assigned risk plan); benefit plan; nonprofit hospital service plan; motor club service plan; or surety bond, cash bond or any other alternative to insurance authorized by a state's financial responsibility act.

Insurance Professional. "Insurance Professional" means sales agents, managing general agents, brokers, producers, adjusters and third party administrators.

Insurance Transaction. "Insurance Transaction" means a transaction by, between or among: (1) an Insurer or a Person who acts on behalf of an Insurer; and (2) an insured, claimant, applicant for insurance, public adjuster, Insurance Professional, Practitioner, or any Person who acts on behalf of any of the foregoing for the purpose of obtaining insurance or reinsurance, calculating insurance premiums, submitting a claim, negotiating or adjusting a claim, or otherwise obtaining insurance, self-insurance, or reinsurance or obtaining the benefits thereof or therefrom.

Insurer. "Insurer" means any Person purporting to engage in the business of insurance or authorized to do business in the state or subject to regulation by the state, who undertakes to indemnify another against loss, damage or liability arising from a contingent or unknown event. "Insurer" includes, but is not limited to, an

insurance company; self-insurer; reinsurer; reciprocal exchange; interinsurer; risk retention group; Lloyd's insurer; fraternal benefit society; surety; medical service, dental, optometric or any other similar health service plan; and any other legal entity engaged or purportedly engaged in the business of insurance, including any Person or entity which falls within the definition of "Insurer" found within the _____ Insurance Code § _____.

Person. "Person" means a natural person, company, corporation, unincorporated association, partnership, professional corporation, and any other entity.

Practitioner. "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic or law or any other licensee of the state or Person required to be licensed in the state whose services are compensated either in whole or in part, directly or indirectly, by insurance proceeds, including but not limited to automotive repair shops, building contractors and insurance adjusters, or a licensee similarly licensed in other states and nations or the licensed practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.

Premium Finance Company. "Premium Finance Company" means a Person engaged or purported to engage in the business of advancing money, directly or indirectly, to an Insurer or producer at the request of an insured pursuant to the terms of a premium finance agreement, including but not limited to loan contracts, notes, agreements or obligations, wherein the insured has assigned the unearned premiums, accrued dividends, or loss payments as security for such advancement in payment of premiums on Insurance Policies only, and does not include the financing of insurance premiums purchased in connection with the financing of goods and services.

Premium Finance Transaction. "Premium Finance Transaction" means a transaction by, between or among an insured, an agent or producer or other party claiming to act on behalf of an insured and a third-party Premium Finance Company, for the purposes of purportedly or actually advancing money directly or indirectly to an Insurer or producer at the request of an insured pursuant to the terms of a premium finance agreement, wherein the insured has assigned the unearned premiums, accrued dividends or loan payments as security for such advancement in payment of premiums on Insurance Policies only, and does not include the financing of insurance premiums purchased in connection with the financing of goods and services.

Withhold. "Withhold" means to fail to disclose facts or information which any law (other than this act) requires to be disclosed. Mere failure to disclose information does not constitute "withholding" if the one failing to disclose reasonably believes that there is no duty to disclose.

Section 3. Division of Insurance Fraud: duties and powers

A. There is created within the Department of Insurance a Division of Insurance Fraud.

Drafting Note: Several states that have established insurance fraud units have placed them outside of the department of insurance. In Massachusetts, an independent fraud bureau was established and funded by the insurers in the state. South Carolina, Pennsylvania and Nevada have established fraud bureaus that were placed within the state offices of attorney general.

B. It shall be the duty of the Division of Insurance Fraud:

- 1) To initiate inquiries and conduct investigations when the Division has reason to believe that Insurance Fraud may have been or is being committed.

- 2) To respond to notifications or complaints of suspected Insurance Fraud generated by state and local police, other law enforcement authorities, governmental units, including the federal government, and any other Person.
 - 3) To review notices and reports of Insurance Fraud submitted by authorized Insurers, their employees, and agents or producers, and to select those incidents of alleged fraud as, in its judgment, require further investigation and undertake such investigation.
 - 4) To conduct independent examination of Insurance Fraud, conduct studies to determine the extent of Insurance Fraud, deceit, or intentional misrepresentation of any kind in the insurance process, and publish information and reports on such examinations or studies.
 - 5) To report incidents of alleged Insurance Fraud disclosed by its investigations to appropriate prosecutorial authority, including but not limited to the Attorney General and to any other appropriate law enforcement, administrative, regulatory or licensing agency, and to assemble evidence, prepare charges, and otherwise assist any prosecutorial authority having jurisdiction.
- C. The Division of Insurance Fraud is authorized to employ investigators. The general laws applicable to law enforcement officers of this state shall be applicable to such investigators. The powers of the Division shall include but shall not be limited to the following:
- 1) To administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the Division deems relevant or material to an inquiry concerning Insurance Fraud.
 - 2) To make arrests for criminal violations established as a result of their investigations.
 - 3) To execute arrest and search warrants for the same criminal violations.
- D. Evidence, documentation, and related materials.
- 1) If the Division seeks evidence, documentation, and related materials pertinent to an investigation, and the matter is located outside of this State, the Division may designate representatives, including officials of the state where the matter is located, to secure the matter or inspect the matter on its behalf.
- E. Confidentiality and immunity from subpoena.
- 1) Papers, records, documents, reports, materials or other evidence relative to the subject of an Insurance Fraud investigation shall remain confidential and shall not be subject to public inspection or disclosure unless and until such subject is prosecuted for Insurance Fraud pursuant to such investigation.
 - 2) Papers, records, documents, reports, materials or other evidence containing individually identifiable information relating to an Insurance Fraud investigation collected or prepared by the Division of Insurance Fraud in anticipation of any civil or criminal proceeding shall be privileged, and shall not be subject to subpoena, discovery, or disclosure in any other civil action until such civil or criminal proceeding has been concluded.
 - 3) Investigators employed by the Division of Insurance Fraud shall not be subject to subpoena in civil actions by any court in this state to testify concerning any matter of which they have knowledge pursuant to a pending or continuing Insurance Fraud investigation being conduct-

ed by the Division.

- 4) This section in no way abrogates or modifies statutory or common law privileges applicable to information gathered by the Division of Insurance Fraud under this Act nor does it authorize the Division of Insurance Fraud to make public insurance company records which are proprietary in nature.

F. The Division of Insurance Fraud shall maintain records and information in order to produce an annual report of its activities as may be prescribed by the Commissioner of Insurance.

Section 4. Funding

Drafting Note: The Coalition Against Insurance Fraud has identified several options for states to consider to fund insurance fraud bureaus. A white paper discussing those options is attached.

Section 5. Notice to and cooperation with the Division of Insurance Fraud

A. Notice to the Division of Insurance Fraud.

- 1) Any Insurer or Insurance Professional that has reasonable belief that an act of Insurance Fraud will be, is being, or has been committed shall furnish and disclose the knowledge and information to the Division of Insurance Fraud, and cooperate fully with any investigation conducted by the Division of Insurance Fraud.
- 2) Any Person that has a reasonable belief that an act of Insurance Fraud will be, is being, or has been committed; or any Person who collects, reviews or analyzes information concerning insurance fraud may furnish and disclose any information in its possession concerning such act to the Division of Insurance Fraud or to an authorized representative of an Insurer that requests the information for the purpose of detecting, prosecuting or preventing Insurance Fraud.
- 3) If an Insurer has a reasonable or probable cause to believe that an Insurance Fraud has been committed in connection with an insurance claim, and has properly notified the Division of Insurance Fraud of its suspicions, such notification shall toll any applicable time period in any unfair claims practices statute or related regulation, or any action on the claim against the Insurer to whom such claim has been presented for bad faith, until thirty days after determination by the Division of Insurance Fraud and notice to the Insurer that the Division will not recommend action on the claim.
- 4) The Division of Insurance Fraud, in cooperation with authorized Insurers and Insurance Professionals may establish a voluntary fund to reward persons not connected with the insurance industry who provide information or furnish evidence leading to the arrest and conviction of persons responsible for Insurance Fraud.

Section 6. Privileges and immunities of persons cooperating with or employed by the Division of Insurance Fraud

A. No Person furnishing or disclosing to, or requesting information from the Division of Insurance Fraud or complying with an order issued by a court of competent jurisdiction to provide evidence or testimony regarding an act of suspected Insurance Fraud shall be subject to civil liability for libel, slander

or any other cause of action arising from the furnishing, disclosing or requesting of such information unless the Person furnishing, disclosing or requesting such information acts in Actual Malice, commits perjury or commits Insurance Fraud as previously defined herein.

- B. No Person employed by or authorized by an Insurer whose activities includes the investigation of or reporting of suspected Insurance Fraud who furnishes, discloses or requests information regarding an act of suspected Insurance Fraud to Persons employed by other Insurers or Insurer organizations acting in the same capacity shall be subject to civil liability for libel, slander or any other cause of action arising from the furnishing, disclosing or requesting of such information unless the Person furnishing, disclosing or requesting such information acts in Actual Malice, commits perjury or commits Insurance Fraud as previously defined herein.
- C. No employee or agent of the Division of Insurance Fraud furnishing or disclosing to or requesting information from any Person regarding an act of suspected Insurance Fraud or by publication of any report or bulletin related to the official activities or duties of the Division of Insurance Fraud, subject to the Confidentiality provision of Section 3(E) of this Act, shall be subject to civil liability for libel, slander or any other cause of action arising from the furnishing, disclosing or requesting of such information unless the Person furnishing, disclosing or requesting such information acts in Actual Malice, commits perjury or commits Insurance Fraud as previously defined herein.
- D. Any Person against whom any action is brought who is found to be immune from liability under this Section, shall be entitled to recover reasonable attorney's fees and costs from the Person or party who brought the action. This section does not abrogate or modify any common law or statutory privilege or immunity heretofore enjoyed by any Person.

Section 7. Refusal to cooperate with an investigation

It is unlawful under the Criminal Code Section _____ for any Person to knowingly or intentionally interfere with the enforcement of the provisions of this Act or investigations of suspected or actual violations of this Act.

Section 8. Other law enforcement authority

Nothing in this Act shall:

- A. Pre-empt the authority of or relieve the duty of any other law enforcement agencies to investigate and prosecute alleged violations of law.
- B. Prevent or prohibit a person from voluntarily disclosing any information concerning insurance fraud to any law enforcement agency other than the Division of Insurance Fraud.
- C. Limit any of the powers granted elsewhere by the laws of this State to the Commissioner of Insurance or to the Department of Insurance to investigate alleged violations of law and to take appropriate action.

ภาคผนวก ค

Criminal Law of the People's Republic of China

Adopted by the Second Session of the Fifth National People's Congress on July 1, 1979 and amended by the Fifth Session of the Eighth National People's Congress on March 14, 1997

Article 198. Fraudulent insurance activities falling under any one of the following circumstances shall, for cases involving relatively large amounts be punished with imprisonment or criminal detention of less than five years, with a fine of over 10,000 yuan but less than 100,000 yuan; for cases involving large amounts, or of a serious nature, with imprisonment of over five years but less than 10 years, with a fine of over 20,000 yuan but less than 200,000 yuan; for cases involving extraordinarily large amounts, or of a serious nature, with imprisonment of over 10 years, with a fine of over 20,000 yuan but less than 200,000 yuan, or with forfeiture of property:

(1) policy holder intentionally fabricates insurance object to deceive insurance money;

(2) policy holder, the insured, or the beneficiary fabricates false causes to insurance incident or inflate the extent of loss to deceive insurance money;

(3) policy holder, the insured, or the beneficiary fabricate non-existing insurance incident to deceive insurance money;

(4) policy holder, the insured, or the beneficiary intentionally create an insurance incident with property loss to deceive insurance money; or

(5) policy holder or the beneficiary intentionally causes the death, injury, or sickness of the insured to deceive insurance money.

Acts falling under preceding Paragraphs (4) and (5) which constitute other crimes shall be punished for all offenses committed.

Units violating Paragraph (1) shall be punished with a fine, with personnel directly in charge and other directly responsible personnel being punished with imprisonment or criminal detention of less than five years; for cases involving large amounts, or of a serious nature, with imprisonment of over five years but less than 10 years; for cases involving extraordinarily large amounts, with imprisonment of over five years but less than 10 years; or, in cases involving an extraordinary large amount, or of a serious nature, with imprisonment of over 10 years.

Appraisers, certifiers, and property valuers, who intentionally provide false evidence to abet others to commit fraud, shall be punished as insurance fraudulence accomplices.

ภาคผนวก ง

Insurance Law of the People's Republic of China

Ratified at the 14th Session of the Standing Committee of the Eighth National People's Congress on June 30, 1995, and promulgated by Presidential Decree No. 51 for implementation commencing on October 1, 1995

Chapter VII Legal Liability

Article 131. In the event the Applicant, the Insured or the Beneficiary conducts any of the following acts, committing insurance fraud and the case is serious enough to constitute a crime, he shall be criminal liability:

- (1) The Applicant intentionally fabricates the subject matter insured and obtains insurance money through fraud;
- (2) Falsely claims an insured event when no such event has occurred and obtains insurance money through fraud;
- (3) Claims an insured event that deliberately causes property losses and obtains insurance money through fraud;
- (4) Deliberately causes life insurance events such as death, injury or deformity, illness of the Insured and obtains insurance money through fraud;
- (5) Forges or alters relevant evidence of insured events, information or other evidence, or instigate and make bribes to offer false certificates, information or other evidence, and provides false causes or exaggerates the extent of losses in order to obtain insurance money through fraud;

If the Applicant, the Insured or the Beneficiary commit any of the above actions, if the case is light and not serious enough to constitute a crime shall face disciplinary actions according to relevant State regulations.

Article 132. For insurance companies and their personnel the withholding of material information related to the insurance contract, cheating the Applicant, the Insured and the Beneficiary, or refusal to make compensation or payment of insurance money as agreed in the insurance contract shall constitute a crime, and criminal liability shall be borne. For those cases where criminal liability is not prosecuted, the financial supervision and management departments in charge shall impose a fine of not less than RMB10,000 and not more than RMB50,000 on the insurance company. Personnel who violate laws and regulations shall be punished and fined not more than RMB10,000.

Insurance companies and their personnel who prevent the Applicant from performing the obligation of telling the truth, or mislead the Applicant in violation of such obligation, or promise the Applicant, the Insured and the Beneficiary illegal insurance commission or other benefits, shall be regulated by the departments in charge, and the insurance companies shall be fined not less than RMB10,000 and no more than RMB50,000, the violators shall be punished and fined no more than RMB10,000.

Article 133. If they cheat the Applicant, Insured or the Beneficiary when conducting insurance business, Insurance Agents and Insurance Brokers shall be compelled to correct their actions by the departments in charge and be fined between RMB10,000 and RMB50,000; if the case is serious, the license for conducting insurance agency business or license for brokerage shall be revoked. Criminal liability shall be prosecuted if the case constitutes a crime.

ภาคผนวก จ

CRIMES AND PUNISHMENTS
ARTICLE 6
OFFENSES INVOLVING FRAUD
Revised Statutes of Nebraska
Changes Effective July 20, 2002

§28-631

28-631. Fraudulent insurance act; penalties. (1) A person or entity commits a fraudulent insurance act if he or she:

(a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of, in support of, or in denial of a claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(b) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;

(c) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder or a covered person in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;

(d) Knowingly and willfully transacts any contract, agreement, or instrument which violates this section;

(e) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;

(f) Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance;

(g) Knowingly and with intent to defraud or deceive issues fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(h) Knowingly and with intent to defraud or deceive possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(i) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Department of Insurance; or

(j) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or person engaged in the business of insurance.

(2)(a) A violation of subdivisions (1)(a) through (f) of this section is a Class III felony when the amount involved is one thousand five hundred dollars or more.

(b) A violation of subdivision (1)(a) through (f) of this section is a Class IV felony when the amount involved is five hundred dollars or more but less than one thousand five hundred dollars.

(c) A violation of subdivisions (1)(a) through (f) of this section is a Class I misdemeanor when the amount involved is two hundred dollars or more but less than five hundred dollars.

(d) A violation of subdivisions (1)(a) through (f) of this section is a Class II misdemeanor when the amount involved is less than two hundred dollars.

(e) For any second or subsequent conviction under subdivision (2)(c) of this section, the violation is a Class IV felony.

(f) A violation of subdivision (1)(g), (i), and (j) of this section is a Class IV felony.

(g) A violation of subdivision (1)(h) of this section is a Class I misdemeanor.

(3) Amounts taken pursuant to one scheme or course of conduct from one person, entity, or insurer may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(4) In any prosecution under this section, if the amounts are aggregated pursuant to subsection (3) of this section, the amount involved in the offense shall be an essential element of the offense that must be proved beyond a reasonable doubt.

(5) A prosecution under this section shall be in lieu of an action under section 44-6607.

(6) For the purpose of this section:

(a) Insurer means any person or entity transacting insurance as defined in section 44-102 with or without a certificate of authority issued by the director of Insurance. Insurer also means health maintenance organizations, legal service insurance corporations, prepaid limited health service organizations, dental and other similar health service plans, and entities licensed pursuant to the Intergovernmental Risk Management Act and the Comprehensive Health Insurance Pool Act. Insurer also means an employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer; and

(b) Statement includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or medical records, X-rays, test result, or other evidence of loss, injury, or expense, whether oral, written, or computer-generated.

ภาคผนวก ฉ

INSURANCE
ARTICLE 66
INSURANCE FRAUD

Revised Statutes of Nebraska
Changes Effective July 20, 2002

§44-6601

Section.

44-6601. Act, how cited.

44-6602. Purpose of act.

44-6603. Terms, defined.

44-6604. Fraudulent insurance acts; enumerated.

44-6605. Immunity from civil liability.

44-6606. Insurance Fraud Prevention Division; powers and duties; public inspection, limitations; fee.

44-6607. Civil penalty; costs; section, how construed.

44-6608. Act, how construed.

44-6601. Act, how cited. Sections 44-6601 to 44-6608 shall be known and may be cited as the Insurance Fraud Act.

44-6602. Purpose of act. The purpose of the Insurance Fraud Act is to confront the problem of insurance fraud in Nebraska by facilitating the detection of insurance fraud, eliminating the occurrence of insurance fraud through the development of fraud prevention programs, authorizing imposition of civil penalties, authorizing restitution of fraudulently obtained insurance benefits, and reducing the amount of premium dollars used to pay fraudulent claims.

44-6603. Terms, defined. For purposes of the Insurance Fraud Act:

(1) Department means the Department of Insurance;

(2) Director means the Director of Insurance;

(3) Insurer means any person or entity transacting insurance as defined in section 44-102 with or without a certificate of authority issued by the director. Insurer also means health maintenance organizations, legal service insurance corporations, prepaid limited health service organizations, dental and other similar health service plans, and entities licensed pursuant to the Intergovernmental Risk Management Act and the Comprehensive Health Insurance Pool Act. Insurer also means an employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer; and

(4) Statement includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription hospital or medical records, X-rays, test result, or other evidence of loss, injury, or expense, whether oral, written, or computer-generated.

44-6604. Fraudulent insurance acts; enumerated. For purposes of the Insurance Fraud Act, a person or entity commits a fraudulent insurance act if he or she:

(1) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of, in support of, or in denial of a claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(2) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;

(3) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder or a covered person in any statement or certificate for the

purpose of fraudulently obtaining money or benefit from an insurer;

(4) Knowingly and willfully transacts any contract, agreement, or instrument which violates this section;

(5) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;

(6) Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance;

(7) Knowingly and with intent to defraud or deceive issues or possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(8) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the department; or

(9) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or person engaged in the business of insurance.

44-6605. Immunity from civil liability. (1) Any person or entity, including the department, an insurer, or a person employed by or authorized by an insurer whose activities include the investigation of or reporting of suspected insurance fraud, acting without malice, fraudulent intent, or bad faith shall be immune from civil liability for furnishing any information relating to suspected fraudulent insurance acts to:

(a) The director or his or her agents or employees;

(b) Law enforcement officials or their agents or employees;

(c) The Nebraska Workers' Compensation Court or its agents or employees;

(d) Persons or entities subject to Chapter 44 or their agents or employees; or

(e) The National Association of Insurance Commissioners or any organization established to detect and prevent fraudulent insurance acts or its agents, employees, or

designees.

(2) This section does not abrogate or modify in any way any common-law or statutory privilege or immunity.

44-6606. Insurance Fraud Prevention Division; powers and duties; public inspection; limitations; fee. (1) In order to investigate activities

involving insurance fraud, the director shall appoint a sufficient staff to be known as the Insurance Fraud Prevention Division.

(2)(a) As specified by the director, division investigators who are certified law enforcement officers of the State of Nebraska shall be vested with the authority and power of a peace officer to carry out the laws of this state administered by the director. The general laws of this state applicable to peace officers shall be applicable to such investigators. Such investigators shall be empowered, among other powers, to search and arrest with or without a warrant, file and serve any lien, seize property, serve and return a summons, warrant, or subpoena issued by a court of law or the director, and bring an offender before any court with jurisdiction in this state, except that such investigators shall not be authorized to enforce any laws other than laws administered by the director.

(b) Subdivision (a) of this subsection shall not be construed to restrict any other law enforcement officer of this state from enforcing any state law, insurance or otherwise.

(3) The division shall:

(a) Initiate independent inquiries and conduct independent investigations when the division has cause to believe that an act of insurance fraud has been or is currently being committed;

(b) Review reports or complaints of alleged insurance fraud to determine whether such reports require further investigation and to conduct such investigation;

(c) Conduct independent examinations of alleged fraudulent insurance acts and undertake independent studies to determine the extent of fraudulent insurance acts; and

(d) Cooperate with federal, state, and local law enforcement, prosecuting attorneys, and the Attorney General in the investigation and prosecution of insurance fraud

violations. At the request of the division, through the director, the Attorney General shall prosecute fraudulent insurance acts through criminal or civil proceedings as authorized by the Insurance Fraud Act if, after investigation, the Attorney General is convinced that there is sufficient legal merit to justify the proceeding. The Attorney General, after consultation with the director, may refer cases of fraudulent insurance acts to a special assistant attorney general or county attorney for prosecution. Any costs directly associated with the prosecution and attorney's fees for any special assistant attorney general shall be paid by the division.

(4)(a) The director or his or her designee may: Administer oaths and affirmations; subpoena witnesses; compel attendance of witnesses; take evidence; and require the production of any books, papers, correspondence, memoranda, agreements, documents, records, and other tangible things which constitute or contain evidence that is deemed relevant or material to an investigation or enforcement of the Insurance Fraud Act, when it shall appear that such action is necessary and proper. The attendance of witnesses and the production of records shall be required from any place within the State of Nebraska. Witnesses summoned by the director or by his or her designee shall be paid the same fees that are paid witnesses in the courts of the State of Nebraska and mileage at the rate provided in section 81-1176.

(b) A subpoena of the director or of his or her designee may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by certified mail or personal delivery of the subpoena to him or her. Service may be made upon a domestic or foreign insurer, corporation, or partnership, upon a domestic or foreign limited liability company, or upon any other unincorporated association which is subject to suit under a common name, or any other entity by delivering the subpoena to an officer, a managing or general agent, a member, or any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

(c) If any person refuses to obey a subpoena issued by the director or by his or her designee, the director or his or her designee may invoke the aid of any court of the State of Nebraska within the jurisdiction of which the investigation is carried on or of which the

subpoenaed person is an inhabitant, carries on business, or may otherwise be found, to compel compliance with such subpoena.

(d) The court may issue an order requiring the subpoenaed person to appear before the director or his or her designee to produce records, if so ordered, or to give testimony concerning the matter under investigation. Nothing in this section shall be construed to suspend or otherwise interfere with the operation of the Free Flow of Information Act.

(e) Any failure to obey the order of the court may be punished by the court as contempt. All process in any such case may be served in the judicial district in which the subpoenaed person is an inhabitant, carries on business, or may otherwise be found.

(5) If the division seeks evidence, documentation, or related materials located outside this state pertinent to an investigation or examination, it may designate representatives or deputies, including officials of the state where the matter is located, to secure and inspect the evidence, documentation, or materials on its behalf.

(6) The papers, documents, reports, and evidence of the department regarding the subject of an investigation of insurance fraud shall not be subject to public inspection for so long as the director deems reasonably necessary to complete the investigation or to protect the person investigated from unwarranted injury or so long as the director deems it to be in the public interest. Such papers, documents, reports, and evidence regarding the subject of an investigation of insurance fraud shall not be subject to subpoena until they are opened for public inspection by the department, unless the director consents, or until after notice to the department and a hearing, the court determines the department would not be unnecessarily hindered by such subpoena. Department investigators shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge regarding a pending insurance fraud investigation by the department.

(7) (a) the director may provide the papers, documents, reports, and evidence described in subsection (6) of this section to other state, federal, foreign, and international regulatory and law enforcement agencies and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees in writing to maintain the confidentiality of the information.

(b) The director may receive papers, documents, reports, and evidence described in subsection (6) of this section from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged information received pursuant to this subdivision if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subdivision, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subdivision as a result of information sharing authorized by this section.

(8)(a) On or before March 1 each year, each insurer as defined in section 44-103 holding a certificate of authority to transact the business of insurance in this state shall pay a fee as established by the director not to exceed two hundred dollars to the director to be remitted to the State Treasurer for credit to the Department of Insurance Cash Fund, which fees may be appropriated only to carry out the purposes of the Insurance Fraud Act. Assessment associations and unincorporated mutual associations shall not be subject to this subsection.

(b) On or before March 1 each year, each employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer shall pay a fee as established by the director not to exceed one thousand dollars to the Nebraska Workers' Compensation Court to be remitted to the State Treasurer for credit to the Department of Insurance Cash Fund, which fees may be appropriated only to carry out the purposes of the Insurance Fraud Act. Willful refusal by any such self-insurer to pay the fee required under this subdivision shall be grounds for the compensation court to suspend or revoke

the approval of such self-insurer to provide self-insurance coverage of workers' compensation liability pursuant to section 48-145.

44-6607. Civil penalty; costs; section, how construed. (1) A person or entity who is found by a court of competent jurisdiction, pursuant to an action initiated by the Director of Insurance, to have committed a fraudulent insurance act set forth in section 44-6604 is subject to a civil penalty not to exceed five thousand dollars for the first violation, ten thousand dollars for the second violation, and fifteen thousand dollars for each subsequent violation. An action under this section shall be in lieu of a prosecution under section 28-631.

(2) Costs and expenses incurred in any investigation or other action arising out of a violation under the Insurance Fraud Act may be sought in any judgment, court decree, or other final result. Any recovered costs, except civil or criminal penalties, shall be deposited by the director in the fund from which the costs were expended. The court may make such additional orders or judgments as may be necessary to restore to any person in interest any compensation which may have been acquired by means of any act prohibited in section 44-6604.

(3) This section shall not be construed to prohibit the direct and the alleged violator from entering into a written agreement upon commencement of a civil action in which the alleged violator does not admit or deny the charges but consents to payment of the civil penalty. A consent agreement may not be used in a subsequent civil or criminal proceeding relating to any violation of the act.

44-6608. Act, how construed. The Insurance Fraud Act does not:

- (1) Preempt the authority or relieve the duty of any other law enforcement agency to investigate, examine, and prosecute suspected violation of law;
- (2) Prevent or prohibit a person from voluntarily disclosing any information concerning insurance fraud to any law enforcement agency;
- (3) Limit any of the powers granted elsewhere by the laws of this state to the Director

of Insurance or the Department of Insurance to investigate and examine possible violations of law and to take appropriate action; or

(4) Limit any of the powers granted elsewhere by the laws of this state to the Nebraska Workers' Compensation Court to investigate and examine possible violations of law and to take appropriate action.

ประวัติผู้เขียนวิทยานิพนธ์

นายอภิชาติ โกสัยสุข เกิดเมื่อวันที่ 14 มีนาคม พ.ศ. 2525 ที่จังหวัดชัยนาท
สำเร็จการศึกษาปริญญาตรีนิติศาสตรบัณฑิต คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย เมื่อปี
การศึกษา 2547 และศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิต จุฬาลงกรณ์มหาวิทยาลัย เมื่อปี
การศึกษา 2548 ปัจจุบันทำงานเป็นเจ้าหน้าที่ฝ่ายสินไหมทดแทน บริษัท บางกอกสหประกันภัย
จำกัด (มหาชน)