

HOUSE BILL No. 4149

February 2, 2005, Introduced by Reps. Condino, Tobocman, Kathleen Law, Plakas, Bieda, Lipsey, Vagnozzi, Gleason, Sak, Clack, Wojno and Accavitti and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 4507 (MCL 500.4507), as added by 1995 PA 276,
and by adding section 2006a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2006A. (1) AN INSURER THAT FALSELY ACCUSES AN INSURED OF
2 ARSON OR A FRAUDULENT INSURANCE ACT ENGAGES IN AN UNFAIR OR
3 DECEPTIVE ACT OR PRACTICE IN THE BUSINESS OF INSURANCE.

4 (2) AN INSURER THAT KNOWINGLY OFFERS AN AMOUNT LESS THAN A
5 REASONABLE PERSON WOULD BELIEVE THE INSURED IS ENTITLED TO RECEIVE
6 TO RESOLVE A CLAIM ENGAGES IN AN UNFAIR OR DECEPTIVE ACT OR
7 PRACTICE IN THE BUSINESS OF INSURANCE. THIS CONDUCT MAY BE

1 DETERMINED BY A COURT TO CONSTITUTE BAD FAITH BY THE INSURER.

2 (3) IF AN INSURER ENGAGES IN CONDUCT DESCRIBED IN SUBSECTION
3 (1) OR (2), ALL OF THE FOLLOWING APPLY:

4 (A) THE INSURED MAY BRING AN ACTION AGAINST THE INSURER AND
5 MAY RECOVER ALL OF THE FOLLOWING:

6 (i) ACTUAL DAMAGES, INCLUDING ECONOMIC AND NONECONOMIC DAMAGES.

7 (ii) PUNITIVE AND EXEMPLARY DAMAGES.

8 (iii) ACTUAL ATTORNEY FEES AND COSTS.

9 (B) THE COMMISSIONER MAY SUSPEND, LIMIT, OR REVOKE THE
10 INSURER'S AUTHORITY.

11 (C) THE COMMISSIONER OR THE ATTORNEY GENERAL MAY BRING AN
12 ACTION ON BEHALF OF 1 OR MORE INSUREDS TO ENFORCE THE RIGHTS OF THE
13 INSUREDS UNDER THIS SECTION.

14 (4) AS USED IN THIS SECTION:

15 (A) "ECONOMIC DAMAGES" MEANS MEDICAL EXPENSES, THE COST OF
16 REHABILITATION SERVICES AND CUSTODIAL CARE, LOSS OF WAGES, LOSS OF
17 FUTURE EARNINGS, LOSS OF USE OF PROPERTY, COST OF REPAIR OR
18 REPLACEMENT OF PROPERTY, LOSS OF EMPLOYMENT, OR OTHER PECUNIARY
19 DAMAGES.

20 (B) "FRAUDULENT INSURANCE ACT" MEANS CONDUCT DESCRIBED IN
21 SECTION 4503.

22 (C) "NONECONOMIC DAMAGES" MEANS PAIN, SUFFERING,
23 INCONVENIENCE, PHYSICAL IMPAIRMENT, DISFIGUREMENT, MENTAL ANGUISH,
24 EMOTIONAL DISTRESS, LOSS OF SOCIETY AND COMPANIONSHIP, LOSS OF
25 CONSORTIUM, INJURY TO REPUTATION, HUMILIATION, OR OTHER
26 NONPECUNIARY DAMAGES.

27 Sec. 4507. (1) Upon written request by an authorized agency to

1 an insurer, the insurer or an agent authorized by the insurer to
2 act on its behalf may release to the authorized agency, at the
3 authorized agency's expense, ~~any or~~ all information that is
4 considered important relating to ~~any~~ suspected insurance fraud.

5 An authorized agency may release information on suspected insurance
6 fraud to an insurer or an agent authorized by an insurer to act on
7 its behalf upon a showing of good cause by the insurer or the
8 insurer's authorized agent. This information may include, but is
9 not limited to, the following:

10 (a) Insurance policy information relevant to an investigation,
11 including ~~any~~ **AN** application for a policy.

12 (b) Policy premium payment records that are available.

13 (c) History of previous claims made by the insured.

14 (d) Information relating to the investigation of the suspected
15 insurance fraud, including statements of any person, proofs of
16 loss, and notice of loss.

17 (2) If an insurer knows or reasonably believes it knows the
18 identity of a person who it has reason to believe committed a
19 fraudulent insurance act or has knowledge of a suspected fraudulent
20 insurance act that is reasonably believed not to have been reported
21 to an authorized agency, then for the purpose of notification and
22 investigation, the insurer or an agent authorized by an insurer to
23 act on its behalf may notify an authorized agency of the knowledge
24 or belief and provide any additional information in accordance with
25 subsection (1).

26 (3) An insurer providing information to an authorized agency
27 pursuant to subsection (2) has the right to request in writing

1 information in the possession or control of the authorized agency
2 relating to the same suspected fraudulent insurance act of which
3 the insurer notifies the authorized agency under subsection (2).
4 Upon a showing of good cause by the insurer, the authorized agency
5 may provide the requested information at the insurer's expense
6 within 30 days of the request.

7 (4) In addition to providing information to an insurer under
8 subsection (3), the authorized agency provided with information
9 pursuant to subsection (1) or (2) may release or provide the
10 information to any other authorized agency.

11 (5) Nothing in this chapter impairs a person's right, as of
12 ~~the effective date of this chapter~~ **MARCH 28, 1996**, to submit to
13 the insurer or the insurer's representative a statement fully
14 explaining the basis of the claim and to have that statement placed
15 in the claim file.

16 (6) An authorized agency, insurer, or an agent authorized by
17 an insurer to act on its behalf shall not request or release
18 information under subsection (1) for any purpose other than for the
19 investigation of suspected insurance fraud.

20 **(7) AN INSURER SHALL REMOVE ALL DOCUMENTS RELATING TO**
21 **ALLEGATIONS OF FRAUDULENT INSURANCE ACTS THAT HAVE BEEN DETERMINED**
22 **TO BE UNFOUNDED FROM THE CLAIM FILE OF A PERSON WHO MAKES A REQUEST**
23 **FOR REMOVAL.**

24 Enacting section 1. Section 4509 of the insurance code of
25 1956, 1956 PA 218, MCL 500.4509, is repealed.