

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 866

93RD GENERAL ASSEMBLY

Reported from the Committee on Insurance Policy April 8, 2005 with recommendation that House Committee Substitute for House Bill No. 866 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules April 12, 2005 with recommendation that House Committee Substitute for House Bill No. 866 Do Pass with no time limit for debate.

Taken up for Perfection April 20, 2005. House Committee Substitute for House Bill No. 866 ordered Perfected and printed as amended.

STEPHEN S. DAVIS, Chief Clerk

2125L.02P

AN ACT

To repeal sections 375.146 and 375.991, RSMo, and to enact in lieu thereof three new sections relating to insurance fraud, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 375.146 and 375.991, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 375.144, 375.146, and 375.991, to read as
3 follows:

**375.144. It is unlawful for any person, in connection with the offer, sale, solicitation
2 or negotiation of insurance, directly or indirectly, to:**

3 **(1) Employ any deception, device, scheme, or artifice to defraud;**

4 **(2) As to any material fact, make or use any misrepresentation, concealment, or
5 suppression;**

6 **(3) Engage in any pattern or practice of making any false statement of material
7 fact; or**

8 **(4) Engage in any act, practice, or course of business which operates as a fraud or
9 deceit upon any person.**

375.146. 1. Any person who knowingly employs, uses or engages in any act,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

2 **scheme, device or practice in violation of section 375.144 with the purpose to defraud shall**
3 **upon conviction be fined not more than one hundred thousand dollars and imprisoned not**
4 **more than ten years, or both. In addition to any fine, imprisonment, or fine and**
5 **imprisonment imposed, the court may order restitution to the victim in an amount equal**
6 **to twice the losses due to such offense. If the offender holds a license under these sections,**
7 **the court imposing sentence shall order the department of insurance to revoke such license.**

8 **2.** Any person willfully violating any of the provisions of sections 375.012 to 375.141
9 is guilty of a class A misdemeanor and on conviction thereof, if the offender holds a license
10 under these sections, the court imposing sentence shall order the department of insurance to
11 revoke the license.

12 **3.** The director may refer such evidence as is available concerning violations of this
13 chapter to the proper prosecuting attorney or circuit attorney who may, with or without
14 reference, initiate the appropriate criminal proceedings.

15 **4.** Nothing in this section shall limit the power of the state to punish any person for
16 any conduct that constitutes a crime in any other state statute.

375.991. 1. As used in sections 375.991 to 375.994, the term "statement" means any
2 communication, notice statement, proof of loss, bill of lading, receipt for payment, invoice,
3 account, estimate of damages, bills for services, diagnosis, prescription, hospital or doctor
4 records, x-rays, test results or other evidence of loss, injury or expense.

5 2. For the purposes of sections 375.991 to 375.994, a person commits a "fraudulent
6 insurance act" if [he] **such person** knowingly presents, causes to be presented, or prepares with
7 knowledge or belief that it will be presented, to or by an insurer, purported insurer, broker, or any
8 agent thereof, any oral or written statement including computer generated documents as part of,
9 or in support of, an application for the issuance of, or the rating of, an insurance policy for
10 commercial or personal insurance, or a claim for payment or other benefit pursuant to an
11 insurance policy for commercial or personal insurance, which [he] **such person** knows to contain
12 materially false information concerning any fact material thereto or if [he] **such person** conceals,
13 for the purpose of misleading another, information concerning any fact material thereto.

14 3. A "fraudulent insurance act" shall also include but not be limited to knowingly filing
15 false insurance claims with an insurer, health services corporation, or health maintenance
16 organization by engaging in any one or more of the following false billing practices:

17 (1) "Unbundling", an insurance claim by claiming a number of medical procedures were
18 performed instead of a single comprehensive procedure;

19 (2) "Upcoding", an insurance claim by claiming that a more serious or extensive
20 procedure was performed than was actually performed;

21 (3) "Exploding", an insurance claim by claiming a series of tests was performed on a

22 single sample of blood, urine, or other bodily fluid, when actually the series of tests was part of
23 one battery of tests; or

24 (4) "Duplicating", a medical, hospital or rehabilitative insurance claim made by a health
25 care provider by resubmitting the claim through another health care provider in which the
26 original health care provider has an ownership interest.

27

28 Nothing in sections 375.991 to 375.994 shall prohibit providers from making good faith efforts
29 to ensure that claims for reimbursement are coded to reflect the proper diagnosis and treatment.

30 4. If, by its own inquiries or as a result of complaints, the department of insurance has
31 reason to believe that a person has engaged in, or is engaging in, any fraudulent insurance act or
32 has violated any provision of chapters 375 to 385, RSMo, it may administer oaths and
33 affirmations, serve subpoenas ordering the attendance of witnesses or proffering of matter, and
34 collect evidence. **The director may refer such evidence as is available concerning violations**
35 **of this chapter to the proper prosecuting attorney or circuit attorney who may, with or**
36 **without such reference, initiate the appropriate criminal proceedings.**

37 5. If the matter that the department of insurance seeks to obtain by request is located
38 outside the state, the person so requested may make it available to the department or its
39 representative to examine the matter at the place where it is located. The department may
40 designate representatives, including officials of the state in which the matter is located, to inspect
41 the matter on its behalf, and it may respond to similar requests from officials of other states.

42 6. A fraudulent insurance act for a first offense is a class D felony. Any person who
43 pleads guilty to or is found guilty of a fraudulent insurance act who has previously pled guilty
44 to or has been found guilty of a fraudulent insurance act shall be guilty of a class C felony.

45 7. Any person who pleads guilty or is found guilty of a fraudulent insurance act shall be
46 ordered by the court to make restitution to any person or insurer for any financial loss sustained
47 as a result of such violation. The court shall determine the extent and method of restitution.

48 **8. Nothing in this section shall limit the power of the state to punish any person for**
49 **any conduct that constitutes a crime by any other state statute.**