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~~SENATE~~ BILL NO. 253

INTRODUCED BY Holden / Tom Nelson

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN INSURANCE FRAUD PROTECTION ACT;  
AMENDING SECTION 45-6-301, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Short title -- purpose.** (1) [Sections 1 through 8] may be cited as the  
"Insurance Fraud Protection Act".

(2) The purpose of [sections 1 through 8] is to facilitate the detection of insurance fraud and  
reduce the occurrence of insurance fraud through the development of fraud prevention programs, improved  
investigative and prosecutorial services, and increased consumer awareness.

**NEW SECTION. Section 2. Insurance fraud.** A person commits the act of insurance fraud when  
the person:

(1) for the purpose of obtaining any money or benefit, presents or causes to be presented to any  
insurer, purported insurer, broker, or agent any written or oral statement, including computer-generated  
documents, containing false, incomplete, or misleading information concerning any fact or thing material  
to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy;

(2) assists, abets, solicits, or conspires with another to prepare or make any written or oral  
statement containing false, incomplete, or misleading information concerning any fact that is intended to  
be presented to any insurer, purported insurer, broker, or agent in connection with, material to, or in  
support of any claim for payment or other benefit pursuant to an insurance policy or contract;

(3) presents or causes to be presented to or by an insurer, purported insurer, broker, or agent a  
materially false or altered application of insurance;

(4) accepts premium money knowing that coverage will not be provided;

(5) as a health care provider, submits a false or altered bill or report of physical condition to an  
insurer; or

(6) offers or accepts a direct or indirect inducement to file a false statement of claim with the intent

1 of deceiving an insurer.

2

3 **NEW SECTION. Section 3. Powers and duties of commissioner -- confidentiality of documents.**

4 (1) The commissioner may:

5 (a) initiate independent inquiries and conduct independent investigations when the commissioner  
6 has reason to believe that insurance fraud may have been or is currently being committed;

7 (b) respond to notice or complaints generated by federal, state, county, and local law enforcement  
8 officers, other entities with law enforcement responsibilities, or governmental agencies or units;

9 (c) review and respond to notices or reports of insurance fraud submitted by any person, select  
10 the incidents of suspected fraud that in the commissioner's judgment require further and more detailed  
11 investigation, and conduct the investigations;

12 (d) conduct independent examinations of insurance fraud to determine the extent of insurance  
13 fraud, deceit, or intentional misrepresentation;

14 (e) after investigation, report any meritorious alleged violation of the law to the appropriate  
15 prosecuting authority or licensing agencies; and

16 (f) assemble evidence, prepare charges, and prosecute, if requested, or otherwise assist any  
17 prosecuting authority that has jurisdiction, including the attorney general.

18 (2) Papers, records, documents, reports, materials, or other evidence relative to the subject of an  
19 insurance fraud investigation must remain confidential and must be treated as confidential criminal justice  
20 information as defined in 44-5-103. Evidence procured pursuant to this section may not be disseminated,  
21 except as provided in 44-5-303.

22

23 **NEW SECTION. Section 4. Cooperation with law enforcement, licensing authorities, and other  
24 fraud agencies.** (1) The commissioner shall cooperate with law enforcement authorities and all other

25 authorized agencies and related insurance and professional licensing boards of this and other states. As  
26 used in this section, the term "authorized agencies" means:

27 (a) the attorney general of the state of Montana;

28 (b) the prosecuting attorney responsible for prosecution;

29 (c) the department of insurance of other jurisdictions;

30 (d) the United States attorney's office when that office is charged with investigation of the fraud;

1 or

2 (e) the federal bureau of investigation or any other federal agency charged with investigation of  
3 the fraud.

4 (2) The commissioner shall cooperate to the extent allowed by law with insurance fraud  
5 investigators and with insurance commissioners and related organizations of this and other states.

6 (3) If the commissioner determines that sufficient evidence of the commission of an act of  
7 insurance fraud exists, the commissioner shall inform the appropriate prosecuting authority and professional  
8 licensing boards.

9

10 **NEW SECTION. Section 5. Duties of authorized insurers, adjusters, administrators, consultants,**  
11 **and producers.** (1) Each insurer, independent adjuster, independent administrator, independent consultant,  
12 and independent producer shall cooperate fully with the commissioner with respect to the provisions of  
13 [sections 1 through 8].

14 (2) An insurer, independent adjuster, independent administrator, independent consultant, or  
15 independent producer who has reason to believe that an insurance fraud has been or is being committed  
16 shall provide notice of the alleged insurance fraud to the commissioner within 60 days on reporting forms  
17 approved by the commissioner.

18 (3) Notice to the commissioner by an insurer who has reason to believe that an insurance fraud  
19 has been committed in connection with an insurance claim, application, or policy tolls any applicable time  
20 period, for the commissioner, in any applicable insurance statute, related insurance regulation, or applicable  
21 sections of the criminal code and tolls any time period arising under 33-18-232 or 33-18-242 regarding  
22 unfair claims settlement practices.

23

24 **NEW SECTION. Section 6. Persons not connected with insurance industry -- reward fund.** (1) Any  
25 person who has knowledge of or who believes that an act of insurance fraud is being or has been  
26 committed may provide the commissioner with a report or information pertinent to the knowledge and belief  
27 and may provide additional information that the commissioner requests.

28 (2) The commissioner, in cooperation with authorized insurers, producers, and other interested  
29 parties, may establish a fund to reward persons who are not connected with the insurance industry and  
30 who provide information or furnish evidence leading to the arrest and conviction of persons responsible for

1 insurance fraud. Participation in the fund must be purely voluntary. The books and records of the fund  
2 must be open and subject to review by the legislative auditor.

3

4 **NEW SECTION. Section 7. Immunity from liability.** (1) In the absence of malice, an insurer, an  
5 officer, employee, or producer of the insurer, or any private person is not subject to civil liability for filing  
6 reports, providing information, or otherwise cooperating with an investigation or examination conducted  
7 by the commissioner.

8 (2) A person listed in subsection (1) receives immunity if the person:

9 (a) cooperates with, furnishes evidence to, or provides information regarding any suspected  
10 insurance fraud to the commissioner, the national association of insurance commissioners, or any nonprofit  
11 organization established to detect and prevent insurance fraud; or

12 (b) complies with an order issued by a court of competent jurisdiction acting in response to a  
13 request by the commissioner to furnish evidence or provide testimony.

14

15 **NEW SECTION. Section 8. Penalties.** (1) If, after a hearing conducted under 33-1-701, the  
16 commissioner determines that a person has committed insurance fraud, the commissioner may:

17 (a) impose any penalty provided for in 33-1-317; or

18 (b) require the person to pay the costs of the proceeding.

19 (2) Any person who purposely or knowingly commits insurance fraud commits the offense of theft  
20 under 45-6-301.

21 (3) In addition to any other penalties, the commissioner shall require a person who commits  
22 insurance fraud to make restitution to the insurer or to any other person for all financial loss sustained as  
23 a result of the insurance fraud.

24

25 **Section 9.** Section 45-6-301, MCA, is amended to read:

26 **"45-6-301. Theft.** (1) A person commits the offense of theft when the person purposely or  
27 knowingly obtains or exerts unauthorized control over property of the owner and:

28 (a) has the purpose of depriving the owner of the property;

29 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the  
30 owner of the property; or

1 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment  
2 probably will deprive the owner of the property.

3 (2) A person commits the offense of theft when the person purposely or knowingly obtains by  
4 threat or deception control over property of the owner and:

5 (a) has the purpose of depriving the owner of the property;

6 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the  
7 owner of the property; or

8 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment  
9 probably will deprive the owner of the property.

10 (3) A person commits the offense of theft when the person purposely or knowingly obtains control  
11 over stolen property knowing the property to have been stolen by another and:

12 (a) has the purpose of depriving the owner of the property;

13 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the  
14 owner of the property; or

15 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment  
16 probably will deprive the owner of the property.

17 (4) A person commits the offense of theft when the person purposely or knowingly obtains or  
18 exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state  
19 or county agency, regardless of the original source of assistance, by means of:

20 (a) a knowingly false statement, representation, or impersonation; or

21 (b) a fraudulent scheme or device.

22 (5) A person commits the offense of theft when the person purposely or knowingly obtains or  
23 exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under  
24 Title 39, chapter 71 or 72, by means of:

25 (a) a knowingly false statement, representation, or impersonation; or

26 (b) deception or other fraudulent action.

27 (6) A person commits the offense of theft when the person purposely or knowingly commits  
28 insurance fraud as provided in [section 2].

29 ~~(6)(7)~~(a) A person convicted of the offense of theft of property not exceeding \$500 in value shall  
30 be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or

1 both. A person convicted of a second offense shall be fined \$500 or be imprisoned in the county jail for  
2 a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined  
3 \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

4 (b) A person convicted of the offense of theft of property exceeding \$500 in value or theft of any  
5 commonly domesticated hoofed animal shall be fined not to exceed \$50,000 or be imprisoned in the state  
6 prison for any term not to exceed 10 years, or both.

7 ~~(7)(8)~~ Amounts involved in thefts committed pursuant to a common scheme or the same  
8 transaction, whether from the same person or several persons, may be aggregated in determining the value  
9 of the property."

10

11 **NEW SECTION. Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are  
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
13 applications, the part remains in effect in all valid applications that are severable from the invalid  
14 applications.

15

16 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 8] are intended to be  
17 codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 8].

18

19 **NEW SECTION. Section 12. Effective date.** [This act] is effective July 1, 1995.

20

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0253, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating an insurance fraud protection act.

ASSUMPTIONS:

1. The existing staff will continue to investigate complaints related to insurance companies and insurance producers.
2. Approximately \$400 million in property and casualty insurance claims are paid in Montana annually. Nationally, it is estimated that 10% of insurance claims are fraudulent.
3. A new fraud investigator (grade 15) would be needed as a result of this bill to investigate fraud perpetrated against insurance companies. The cost of the new FTE would be \$33,900 in FY96 and \$34,000 in FY97. It is anticipated that the new position would perform twenty investigations per year.
4. Operating expenses for the position would be \$12,700 per year which includes the costs of 3 hearings per year, plus costs for extensive travel.
5. As a result of the investigations, about five will lead to penalties averaging \$5,000 each. The penalties will be deposited in the general fund.

FISCAL IMPACT:

State Auditor:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	1.00	1.00
Personal services	33,900	34,000
Operating	12,700	12,700
Equipment	<u>3,400</u>	<u>0</u>
Total	50,000	46,700

Funding:

General Fund	50,000	46,700
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Revenues:

Penalties (01)	25,000	25,000
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Net Impact:

General Fund (Cost) (01)	(25,000)	(21,700)
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*David Lewis 2-1-95*  
 DAVID LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

\_\_\_\_\_  
 RIC HOLDEN, PRIMARY SPONSOR      DATE

Fiscal Note for SB0253, as introduced

**SB 253**

1 SENATE BILL NO. 253

2 INTRODUCED BY HOLDEN, T. NELSON

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN INSURANCE FRAUD PROTECTION ACT;  
5 AMENDING SECTION 45-6-301, MCA; AND PROVIDING AN EFFECTIVE DATE."

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7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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9 NEW SECTION. **Section 1. Short title -- purpose.** (1) [Sections 1 through 8] may be cited as the  
10 "Insurance Fraud Protection Act".

11 (2) The purpose of [sections 1 through 8] is to facilitate the detection of insurance fraud and  
12 reduce the occurrence of insurance fraud through the development of fraud prevention programs, improved  
13 investigative and prosecutorial services, and increased consumer awareness.

14  
15 NEW SECTION. **Section 2. Insurance fraud.** A person commits the act of insurance fraud when  
16 the person:

17 (1) for the purpose of obtaining any money or benefit, presents or causes to be presented to any  
18 insurer, purported insurer, broker, or agent any written or oral statement, including computer-generated  
19 documents, containing false, incomplete, or misleading information concerning any fact or thing material  
20 to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy;

21 (2) assists, abets, solicits, or conspires with another to prepare or make any written or oral  
22 statement containing false, incomplete, or misleading information concerning any fact that is intended to  
23 be presented to any insurer, OR purported insurer, ~~broker,~~ or ~~agent~~ in connection with, material to, or in  
24 support of any claim for payment or other benefit pursuant to an insurance policy or contract;

25 (3) presents or causes to be presented to or by an insurer, purported insurer, broker, or agent a  
26 materially false or altered application of insurance;

27 (4) accepts premium money knowing that coverage will not be provided;

28 (5) as a health care provider, submits a false or altered bill or report of physical condition to an  
29 insurer; or

30 (6) offers or accepts a direct or indirect inducement to file a false statement of claim with the intent



1 of deceiving an insurer.

2

3 **NEW SECTION. Section 3. Powers and duties of commissioner -- confidentiality of documents.**

4 (1) The commissioner may:

5 (a) initiate independent inquiries and conduct independent investigations when the commissioner  
6 has reason to believe that insurance fraud may ~~have~~ **BE, HAS** been, or is currently being committed;

7 (b) respond to notice or complaints generated by federal, state, county, and local law enforcement  
8 officers, other entities with law enforcement responsibilities, or governmental agencies or units;

9 (c) review and respond to notices or reports of insurance fraud submitted by any person, select  
10 the incidents of suspected fraud that in the commissioner's judgment require further and more detailed  
11 investigation, and conduct the investigations;

12 (d) conduct independent examinations of insurance fraud to determine the extent of insurance  
13 fraud, deceit, or intentional misrepresentation;

14 (e) after investigation, report any meritorious alleged violation of the law to the appropriate  
15 prosecuting authority or licensing agencies; and

16 (f) assemble evidence, prepare charges, and prosecute, if requested, or otherwise assist any  
17 prosecuting authority that has jurisdiction, including the attorney general.

18 (2) Papers, records, documents, reports, materials, or other evidence relative to the subject of an  
19 insurance fraud investigation must remain confidential and must be treated as confidential criminal justice  
20 information as defined in 44-5-103. Evidence procured pursuant to this section may not be disseminated,  
21 except as provided in 44-5-303.

22 **(3) THE COMMISSIONER SHALL NOTIFY THE PERSON WHO OR THE ENTITY THAT HAS GIVEN**  
23 **NOTICE OF AN ALLEGED INSURANCE FRAUD PURSUANT TO [SECTION 5(2)] OF RECEIPT OF THE**  
24 **NOTICE BY THE COMMISSIONER AND OF THE DISPOSITION OF THE NOTICE AND ANY RESULTING**  
25 **INVESTIGATION.**

26

27 **NEW SECTION. Section 4. Cooperation with law enforcement, licensing authorities, and other**

28 **fraud agencies.** (1) The commissioner shall cooperate with law enforcement authorities and all other  
29 authorized agencies and related insurance and professional licensing boards of this and other states. As  
30 used in this section, the term "authorized agencies" means:

- 1 (a) the attorney general of the state of Montana;
- 2 (b) the prosecuting attorney responsible for prosecution;
- 3 (c) the department of insurance of other jurisdictions;
- 4 (d) the United States attorney's office when that office is charged with investigation of the fraud;
- 5 or
- 6 (e) the federal bureau of investigation or any other federal agency charged with investigation of
- 7 the fraud.

8 (2) The commissioner shall cooperate to the extent allowed by law with insurance fraud

9 investigators, ~~and with insurance commissioners and~~ related organizations of this and other states, AND

10 INSURANCE COMMISSIONERS OF OTHER STATES.

11 (3) If the commissioner determines that sufficient evidence of the commission of an act of

12 insurance fraud exists, the commissioner shall inform the appropriate prosecuting authority and professional

13 licensing boards.

14

15 NEW SECTION. Section 5. Duties of authorized insurers, adjusters, administrators, consultants,

16 and producers. (1) Each insurer, independent adjuster, independent administrator, independent consultant,

17 and independent producer shall cooperate fully with the commissioner with respect to the provisions of

18 [sections 1 through 8].

19 (2) An insurer, AN OFFICER, EMPLOYEE, OR PRODUCER OF THE INSURER, AN independent

20 adjuster, AN independent administrator, AN independent consultant, or AN independent producer who has

21 reason to believe that an insurance fraud has been or is being committed shall provide notice of the alleged

22 insurance fraud to the commissioner within 60 days ~~on reporting forms approved by the commissioner.~~

23 (3) Notice to the commissioner by an insurer who has reason to believe that an insurance fraud

24 has been committed in connection with an insurance claim, application, or policy tolls any applicable time

25 period, for the commissioner, in any applicable insurance statute, related insurance regulation, or applicable

26 sections of the criminal code and tolls any time period arising under 33-18-232 or 33-18-242 regarding

27 unfair claims settlement practices.

28

29 NEW SECTION. Section 6. Persons not connected with insurance industry -- reward fund. (1)

30 Any person who has knowledge of or who believes that an act of insurance fraud is being or has been

1 committed may provide the commissioner with a report or information pertinent to the knowledge and belief  
2 and may provide additional information that the commissioner requests.

3 (2) The commissioner, in cooperation with authorized insurers, producers, and other interested  
4 parties, may establish a fund to reward persons who are not connected with the insurance industry and  
5 who provide information or furnish evidence leading to the arrest and conviction of persons responsible for  
6 insurance fraud. Participation in the fund must be purely voluntary. The books and records of the fund  
7 must be open and subject to review by the legislative auditor.

8

9 **NEW SECTION. Section 7. Immunity from liability.** (1) In the absence of malice, an insurer, an  
10 officer, employee, or producer of the insurer, AN INDEPENDENT ADJUSTER, AN ADMINISTRATOR, A  
11 CONSULTANT, or any private person is not subject to civil liability for filing reports, providing information,  
12 or otherwise cooperating with an investigation or examination OF INSURANCE FRAUD conducted by the  
13 commissioner.

14 (2) A person listed in subsection (1) receives immunity if the person:

15 (a) cooperates with, furnishes evidence to, or provides information regarding any suspected  
16 insurance fraud to the commissioner, the national association of insurance commissioners, ~~or~~ any nonprofit  
17 organization established to detect and prevent insurance fraud, OR OTHER INSURER OR PRODUCER; or

18 (b) complies with an order issued by a court of competent jurisdiction acting in response to a  
19 request by the commissioner to furnish evidence or provide testimony.

20

21 **NEW SECTION. Section 8. Penalties.** (1) If, after a hearing conducted under 33-1-701, the  
22 commissioner determines that a person has committed insurance fraud, the commissioner may:

23 (a) impose any penalty provided for in 33-1-317; or

24 (b) require the person to pay the costs of the proceeding.

25 (2) Any person who purposely or knowingly commits insurance fraud commits the offense of theft  
26 under 45-6-301.

27 (3) In addition to any other penalties, the commissioner shall require a person who commits  
28 insurance fraud to make restitution to the insurer or to any other person for all financial loss sustained as  
29 a result of the insurance fraud.

30

1           **Section 9.** Section 45-6-301, MCA, is amended to read:

2           "**45-6-301. Theft.** (1) A person commits the offense of theft when the person purposely or  
3 knowingly obtains or exerts unauthorized control over property of the owner and:

4           (a) has the purpose of depriving the owner of the property;

5           (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the  
6 owner of the property; or

7           (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment  
8 probably will deprive the owner of the property.

9           (2) A person commits the offense of theft when the person purposely or knowingly obtains by  
10 threat or deception control over property of the owner and:

11           (a) has the purpose of depriving the owner of the property;

12           (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the  
13 owner of the property; or

14           (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment  
15 probably will deprive the owner of the property.

16           (3) A person commits the offense of theft when the person purposely or knowingly obtains control  
17 over stolen property knowing the property to have been stolen by another and:

18           (a) has the purpose of depriving the owner of the property;

19           (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the  
20 owner of the property; or

21           (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment  
22 probably will deprive the owner of the property.

23           (4) A person commits the offense of theft when the person purposely or knowingly obtains or  
24 exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state  
25 or county agency, regardless of the original source of assistance, by means of:

26           (a) a knowingly false statement, representation, or impersonation; or

27           (b) a fraudulent scheme or device.

28           (5) A person commits the offense of theft when the person purposely or knowingly obtains or  
29 exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under  
30 Title 39, chapter 71 or 72, by means of:

1 (a) a knowingly false statement, representation, or impersonation; or

2 (b) deception or other fraudulent action.

3 ~~(6)~~ A person commits the offense of theft when the person purposely or knowingly commits  
4 insurance fraud as provided in [section 2].

5 ~~(6)(7)~~ (a) A person convicted of the offense of theft of property not exceeding \$500 in value shall  
6 be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or  
7 both. A person convicted of a second offense shall be fined \$500 or be imprisoned in the county jail for  
8 a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined  
9 \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

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11 commonly domesticated hooved animal shall be fined not to exceed \$50,000 or be imprisoned in the state  
12 prison for any term not to exceed 10 years, or both.

13 ~~(7)(8)~~ Amounts involved in thefts committed pursuant to a common scheme or the same  
14 transaction, whether from the same person or several persons, may be aggregated in determining the value  
15 of the property."  
16

17 NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are  
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
19 applications, the part remains in effect in all valid applications that are severable from the invalid  
20 applications.

21  
22 NEW SECTION. Section 11. Codification instruction. [Sections 1 through 8] are intended to be  
23 codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 8].  
24

25 NEW SECTION. Section 12. Effective date. [This act] is effective July 1, 1995.  
26

-END-

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SENATE BILL NO. 253

INTRODUCED BY HOLDEN, T. NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN INSURANCE FRAUD PROTECTION ACT;  
AMENDING SECTION 45-6-301, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

## 1 SENATE BILL NO. 253

2 INTRODUCED BY HOLDEN, T. NELSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN INSURANCE FRAUD PROTECTION ACT;  
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7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:8  
9 **NEW SECTION. Section 1. Short title -- purpose.** (1) [Sections 1 through 8] may be cited as the  
10 "Insurance Fraud Protection Act".11 (2) The purpose of [sections 1 through 8] is to facilitate the detection of insurance fraud and  
12 reduce the occurrence of insurance fraud through the development of fraud prevention programs, improved  
13 investigative and prosecutorial services, and increased consumer awareness.14  
15 **NEW SECTION. Section 2. Insurance fraud.** A person commits the act of insurance fraud when  
16 the person:17 (1) for the purpose of obtaining any money or benefit, presents or causes to be presented to any  
18 insurer, purported insurer, broker, or agent any written or oral statement, including computer-generated  
19 documents, containing false, incomplete, or misleading information concerning any fact or thing material  
20 to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy;21 (2) assists, abets, solicits, or conspires with another to prepare or make any written or oral  
22 statement containing false, incomplete, or misleading information concerning any fact that is intended to  
23 be presented to any insurer, OR purported insurer, ~~broker,~~ or ~~agent~~ in connection with, material to, or in  
24 support of any claim for payment or other benefit pursuant to an insurance policy or contract;25 (3) presents or causes to be presented to or by an insurer, purported insurer, broker, or agent a  
26 materially false or altered application of insurance;

27 (4) accepts premium money knowing that coverage will not be provided;

28 (5) as a health care provider, submits a false or altered bill or report of physical condition to an  
29 insurer; or

30 (6) offers or accepts a direct or indirect inducement to file a false statement of claim with the intent

1 of deceiving an insurer.

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3 **NEW SECTION. Section 3. Powers and duties of commissioner -- confidentiality of documents.**

4 (1) The commissioner may:

5 (a) initiate independent inquiries and conduct independent investigations when the commissioner  
6 has reason to believe that insurance fraud may ~~have~~ **BE, HAS** been, or is currently being committed;

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8 officers, other entities with law enforcement responsibilities, or governmental agencies or units;

9 (c) review and respond to notices or reports of insurance fraud submitted by any person, select  
10 the incidents of suspected fraud that in the commissioner's judgment require further and more detailed  
11 investigation, and conduct the investigations;

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13 fraud, deceit, or intentional misrepresentation;

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15 prosecuting authority or licensing agencies; and

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17 prosecuting authority that has jurisdiction, including the attorney general.

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19 insurance fraud investigation must remain confidential and must be treated as confidential criminal justice  
20 information as defined in 44-5-103. Evidence procured pursuant to this section may not be disseminated,  
21 except as provided in 44-5-303.

22 **(3) THE COMMISSIONER SHALL NOTIFY THE PERSON WHO OR THE ENTITY THAT HAS GIVEN**  
23 **NOTICE OF AN ALLEGED INSURANCE FRAUD PURSUANT TO [SECTION 5(2)] OF RECEIPT OF THE**  
24 **NOTICE BY THE COMMISSIONER AND OF THE DISPOSITION OF THE NOTICE AND ANY RESULTING**  
25 **INVESTIGATION.**

26

27 **NEW SECTION. Section 4. Cooperation with law enforcement, licensing authorities, and other**  
28 **fraud agencies.** (1) The commissioner shall cooperate with law enforcement authorities and all other  
29 authorized agencies and related insurance and professional licensing boards of this and other states. As  
30 used in this section, the term "authorized agencies" means:



- 1 (a) the attorney general of the state of Montana;
- 2 (b) the prosecuting attorney responsible for prosecution;
- 3 (c) the department of insurance of other jurisdictions;
- 4 (d) the United States attorney's office when that office is charged with investigation of the fraud;
- 5 or
- 6 (e) the federal bureau of investigation or any other federal agency charged with investigation of
- 7 the fraud.

8 (2) The commissioner shall cooperate to the extent allowed by law with insurance fraud  
 9 investigators, ~~and with insurance commissioners and~~ related organizations of this and other states, AND  
 10 INSURANCE COMMISSIONERS OF OTHER STATES.

11 (3) If the commissioner determines that sufficient evidence of the commission of an act of  
 12 insurance fraud exists, the commissioner shall inform the appropriate prosecuting authority and professional  
 13 licensing boards.

14  
 15 **NEW SECTION. Section 5. Duties of authorized insurers, adjusters, administrators, consultants,**  
 16 **and producers.** (1) Each insurer, independent adjuster, independent administrator, independent consultant,  
 17 and independent producer shall cooperate fully with the commissioner with respect to the provisions of  
 18 [sections 1 through 8].

19 (2) An insurer, AN OFFICER, EMPLOYEE, OR PRODUCER OF THE INSURER, AN independent  
 20 adjuster, AN independent administrator, AN independent consultant, or AN independent producer who has  
 21 reason to believe that an insurance fraud has been or is being committed shall provide notice of the alleged  
 22 insurance fraud to the commissioner within 60 days ~~on reporting forms approved by the commissioner.~~

23 (3) Notice to the commissioner by an insurer who has reason to believe that an insurance fraud  
 24 has been committed in connection with an insurance claim, application, or policy tolls any applicable time  
 25 period, for the commissioner, in any applicable insurance statute, related insurance regulation, or applicable  
 26 sections of the criminal code and tolls any time period arising under 33-18-232 or 33-18-242 regarding  
 27 unfair claims settlement practices.

28  
 29 **NEW SECTION. Section 6. Persons not connected with insurance industry -- reward fund.** (1)  
 30 Any person who has knowledge of or who believes that an act of insurance fraud is being or has been

1 committed may provide the commissioner with a report or information pertinent to the knowledge and belief  
2 and may provide additional information that the commissioner requests.

3 (2) The commissioner, in cooperation with authorized insurers, producers, and other interested  
4 parties, may establish a fund to reward persons who are not connected with the insurance industry and  
5 who provide information or furnish evidence leading to the arrest and conviction of persons responsible for  
6 insurance fraud. Participation in the fund must be purely voluntary. The books and records of the fund  
7 must be open and subject to review by the legislative auditor.

8  
9 **NEW SECTION. Section 7. Immunity from liability.** (1) In the absence of malice, an insurer, an  
10 officer, employee, or producer of the insurer, AN INDEPENDENT ADJUSTER, AN ADMINISTRATOR, A  
11 CONSULTANT, or any private person is not subject to civil liability for filing reports, providing information,  
12 or otherwise cooperating with an investigation or examination OF INSURANCE FRAUD conducted by the  
13 commissioner.

14 (2) A person listed in subsection (1) receives immunity if the person:

15 (a) cooperates with, furnishes evidence to, or provides information regarding any suspected  
16 insurance fraud to the commissioner, the national association of insurance commissioners, ~~or~~ any nonprofit  
17 organization established to detect and prevent insurance fraud, OR OTHER INSURER OR PRODUCER; or

18 (b) complies with an order issued by a court of competent jurisdiction acting in response to a  
19 request by the commissioner to furnish evidence or provide testimony.

20

21 **NEW SECTION. Section 8. Penalties.** (1) If, after a hearing conducted under 33-1-701, the  
22 commissioner determines that a person has committed insurance fraud, the commissioner may:

23 (a) impose any penalty provided for in 33-1-317; or

24 (b) require the person to pay the costs of the proceeding.

25 (2) Any person who purposely or knowingly commits insurance fraud commits the offense of theft  
26 under 45-6-301.

27 (3) In addition to any other penalties, the commissioner shall require a person who commits  
28 insurance fraud to make restitution to the insurer or to any other person for all financial loss sustained as  
29 a result of the insurance fraud.

30

1           **Section 9.** Section 45-6-301, MCA, is amended to read:

2           **"45-6-301. Theft.** (1) A person commits the offense of theft when the person purposely or  
3 knowingly obtains or exerts unauthorized control over property of the owner and:

4           (a) has the purpose of depriving the owner of the property;

5           (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the  
6 owner of the property; or

7           (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment  
8 probably will deprive the owner of the property.

9           (2) A person commits the offense of theft when the person purposely or knowingly obtains by  
10 threat or deception control over property of the owner and:

11           (a) has the purpose of depriving the owner of the property;

12           (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the  
13 owner of the property; or

14           (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment  
15 probably will deprive the owner of the property.

16           (3) A person commits the offense of theft when the person purposely or knowingly obtains control  
17 over stolen property knowing the property to have been stolen by another and:

18           (a) has the purpose of depriving the owner of the property;

19           (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the  
20 owner of the property; or

21           (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment  
22 probably will deprive the owner of the property.

23           (4) A person commits the offense of theft when the person purposely or knowingly obtains or  
24 exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state  
25 or county agency, regardless of the original source of assistance, by means of:

26           (a) a knowingly false statement, representation, or impersonation; or

27           (b) a fraudulent scheme or device.

28           (5) A person commits the offense of theft when the person purposely or knowingly obtains or  
29 exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under  
30 Title 39, chapter 71 or 72, by means of:

1 (a) a knowingly false statement, representation, or impersonation; or

2 (b) deception or other fraudulent action.

3 (6) A person commits the offense of theft when the person purposely or knowingly commits  
4 insurance fraud as provided in [section 2].

5 ~~(6)(7)~~ (a) A person convicted of the offense of theft of property not exceeding \$500 in value shall  
6 be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or  
7 both. A person convicted of a second offense shall be fined \$500 or be imprisoned in the county jail for  
8 a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined  
9 \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

10 (b) A person convicted of the offense of theft of property exceeding \$500 in value or theft of any  
11 commonly domesticated hoofed animal shall be fined not to exceed \$50,000 or be imprisoned in the state  
12 prison for any term not to exceed 10 years, or both.

13 ~~(7)(8)~~ Amounts involved in thefts committed pursuant to a common scheme or the same  
14 transaction, whether from the same person or several persons, may be aggregated in determining the value  
15 of the property."

16

17 NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are  
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
19 applications, the part remains in effect in all valid applications that are severable from the invalid  
20 applications.

21

22 NEW SECTION. Section 11. Codification instruction. [Sections 1 through 8] are intended to be  
23 codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 8].

24

25 NEW SECTION. Section 12. Effective date. [This act] is effective July 1, 1995.

26

-END-