

Illinois Insurance Claims Fraud Prevention Act

As amended by P.A. 100-358.

740 ILCS 92/1 et seq.

§ 740 ILCS 92/1 Short title

This Act may be cited as the Insurance Claims Fraud Prevention Act.

§ 740 ILCS 92/5 Patient and client procurement

- (a) Except as otherwise permitted or authorized by law, it is unlawful to knowingly offer or pay any remuneration directly or indirectly, in cash or in kind, to induce any person to procure clients or patients to obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured person or the person's insurer. Nothing in this Act shall be construed to affect any contracts or arrangements between or among insuring entities including health maintenance organizations, health care professionals, or health care facilities which are hereby excluded.
- (b) A person who violates any provision of this Act, Section 17-8.5 or Section 17-10.5 of the Criminal Code of 1961 or the Criminal Code of 2012, or Article 46 of the Criminal Code of 1961 shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not less than \$5,000 nor more than \$10,000, plus an assessment of not more than 3 times the amount of each claim for compensation under a contract of insurance. The court shall have the power to grant other equitable relief, including temporary injunctive relief, as is necessary to prevent the transfer, concealment, or dissipation of illegal proceeds, or to protect the public. The penalty prescribed in this subsection shall be assessed for each fraudulent claim upon a person in which the defendant participated.
- (c) The penalties set forth in subsection (b) are intended to be remedial rather than punitive, and shall not preclude, nor be precluded by, a criminal prosecution for the same conduct. If the court finds, after considering the goals of disgorging unlawful profit, restitution, compensating the State for the costs of investigation and prosecution, and alleviating the social costs of increased insurance rates due to fraud, that such a penalty would be punitive and would preclude, or be precluded by, a criminal prosecution, the court shall reduce that penalty appropriately.

§ 740 ILCS 92/10 Action by State's Attorney or Attorney General

The State's Attorney of the county in which the conduct occurred or Attorney General may bring a civil action under this Act. Before the Attorney General may bring the action, the Attorney General shall present the evidence obtained to the appropriate State's Attorney for possible criminal or civil filing. If the State's Attorney elects not to pursue the matter, then the Attorney General may proceed with the action.

§ 740 ILCS 92/15 Action by interested person

- (a) An interested person, including an insurer, may bring a civil action for a violation of this Act for the person and for the State of Illinois. The action shall be brought in the name of the State. The action may be dismissed only if the court and the State's Attorney or the Attorney General, whichever is participating, gives written consent to the dismissal stating their reasons for consenting.
- (b) A copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses shall be served on the State's Attorney and Attorney General. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The State's Attorney or Attorney General may elect to intervene and proceed with the action within 60 days after he or she receives both the complaint and the material evidence and information. If more than one governmental entity elects to intervene, the State's Attorney shall have precedence.
- (c) The State's Attorney or Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint shall remain under seal under subsection (b). The motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this Section until 20 days after the complaint is unsealed and served upon the defendant.
- (d) Before the expiration of the 60-day period or any extensions obtained under subsection (c), the State's Attorney or Attorney General shall either:
 - (1) proceed with the action, in which case the action shall be conducted by the State's Attorney or Attorney General; or
 - (2) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.
- (e) When a person or governmental agency brings an action under this Act, no person other than the State's Attorney or Attorney General may intervene or bring a related action based on the facts underlying the pending action unless another statute or common law authorizes that action.

§ 740 ILCS 92/20 Role of State's Attorney or Attorney General

- (a) If the State's Attorney or Attorney General proceeds with the action, he or she shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. That person shall have the right to continue as a party to the action, subject to the limitations set forth in subsection (b).
- (b) The State's Attorney or Attorney General may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the State's Attorney or Attorney General of the filing of the motion, and the court has provided the person with an opportunity for a hearing on the motion.
 - (1) limiting the number of witnesses the person may call;
 - (2) limiting the length of the testimony of those witnesses;
 - (3) limiting the person's cross-examination of witnesses; and
 - (4) otherwise limiting the participation by the person in the litigation.

The State's Attorney or Attorney General may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

Upon a showing by the State's Attorney or Attorney General that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's Attorney's or Attorney General's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including, but not limited to, the following:

Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

- (c) If the State's Attorney or Attorney General elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the State's Attorney or Attorney General so requests, he or she shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts, at the State's Attorney's or Attorney General's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the State's Attorney or Attorney General to intervene at a later date upon a showing of good cause.

- (d) If at any time both a civil action for penalties and equitable relief pursuant to this Act and a criminal action are pending against a defendant for substantially the same conduct, whether brought by the government or a private party, the civil action shall be stayed until the criminal action has been concluded at the trial court level. The stay shall not preclude the court from granting or enforcing temporary equitable relief while the actions are pending. Whether or not the State's Attorney or Attorney General proceeds with the action, upon a showing by the State's Attorney or Attorney General that certain actions of discovery by the person initiating the action would interfere with a law enforcement or governmental agency investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay discovery for a period of not more than 180 days. A hearing on a request for the stay shall be conducted in camera. The court may extend the 180-day period upon a further showing in camera that the agency has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.
- (e) Notwithstanding Section 15, the State's Attorney or Attorney General may elect to pursue its claim through any alternate remedy available to the State's Attorney or Attorney General.

§ 740 ILCS 92/25 Costs and proceeds of action

- (a) If the State's Attorney or Attorney General proceeds with an action brought by a person under Section 15, that person is entitled to receive an amount that the court determines is reasonable based upon the extent to which the person contributed to the prosecution of the action. Subject to subsection (d), the amount awarded to the person who brought the action shall not be less than 30% of the proceeds of the action or settlement of the claim, and shall be paid from the proceeds.
- (b) If the State's Attorney or Attorney General does not proceed with an action brought by a person under Section 15 that person shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. Subject to subsection (d), the amount shall not be less than 40% of the proceeds of the action or settlement, and shall be paid from the proceeds.
- (c) If the person bringing the action as a result of a violation of this Act has paid money to the defendant or to an attorney acting on behalf of the defendant in the underlying claim, then he or she shall be entitled to up to double the amount paid to the defendant or the attorney if that amount is greater than 50% of the proceeds.
- (d) Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action under Section 15, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a

legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award those sums that it considers appropriate, but in no case more than 10% of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

- (e) Any payment to a person under subsection (a), (b), (c), or (d) shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All of those expenses, fees, and costs shall be awarded against the defendant.
- (f) If a local State's Attorney has proceeded with an action under this Act, the Treasurer of the County where the action was brought shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred by the State's Attorney, including reasonable attorney's fees and costs, plus 50% of the funds not awarded to a private party. Those amounts shall be used to investigate and prosecute insurance fraud, augmenting existing budgets rather than replacing them. All remaining funds shall go to the State and be deposited in the General Revenue Fund and, when appropriated, shall be allocated to appropriate State agencies for enhanced insurance fraud investigation, prosecution, and prevention efforts.
- (g) If the Attorney General has proceeded with an action under this Act, all funds not awarded to a private party, shall go to the State and be deposited in the General Revenue Fund and, when appropriated, shall be allocated to appropriate State agencies for enhanced insurance fraud investigation, prosecution, and prevention efforts.
- (h) If neither a local State's Attorney or the Attorney General has proceeded with an action under this Act, 50% of the funds not awarded to a private party shall be deposited with the Treasurer of the County where the action was brought and shall be disbursed to the State's Attorney of the County where the action was brought. Those funds shall be used by the State's Attorney solely to investigate, prosecute, and prevent crime, augmenting existing budgets rather than replacing them. All remaining funds shall go to the State and be deposited in the General Revenue Fund and, when appropriated, shall be allocated to appropriate State agencies for enhanced crime investigation, prosecution, and prevention efforts.
- (i) Whether or not the State's Attorney or Attorney General proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of this Act, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the State's Attorney or Attorney General to continue the action on behalf of the State.
- (j) If the State's Attorney or Attorney General does not proceed with the action, and the person bringing the action conducts the action, the court may award to the defendant its reasonable

attorney's fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

§ 740 ILCS 92/30 Limitation on bringing actions

- (a) In no event may a person bring an action under Section 15 that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the State's Attorney or Attorney General is already a party.
- (b) A court may not have jurisdiction over an action under this Act based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the action is brought by the State's Attorney, the Attorney General, or a person who is an original source of the information. For purposes of this subsection, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State's Attorney or Attorney General before filing an action under this Act based on the information.

§ 740 ILCS 92/35 Expenses and sanctions

- (a) Except as provided in subsection (b), the State's Attorney or Attorney General is not liable for expenses that a person incurs in bringing an action under this Act.
- (b) In civil actions brought under this Act in which the Attorney General or a State's Attorney is a party, the court shall retain discretion to impose sanctions otherwise allowed by law, including the ability to order a party to pay expenses as provided in the Code of Civil Procedure.

§ 740 ILCS 92/40 Retaliatory discharge; remedy

An employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this Act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this Act, shall be entitled to all relief necessary to make the employee whole. That relief shall include reinstatement with the same seniority status the employee would have had but for the discrimination, 2 times the amount of backpay, interest on the backpay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable

attorney's fees. An employee may bring an action in the appropriate court for the relief provided in this Section. The remedies under this Section are in addition to any other remedies provided by existing law.

§ 740 ILCS 92/45 Time limitations

- (a) Except as provided in subsection (b), an action pursuant to this Act may not be filed more than 3 years after the discovery of the facts constituting the grounds for commencing the action.
- (b) Notwithstanding subsection (a), an action may be filed pursuant to this Act within not more than 8 years after the commission of an act constituting a violation of this Act, Section 17-8.5 or Section 17-10.5 of the Criminal Code of 1961 or the Criminal Code of 2012, or a violation of Article 46 of the Criminal Code of 1961.