

Senate File 2305 - Reprinted

SENATE FILE 2305
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3165)

(As Amended and Passed by the Senate February 27, 2018)

A BILL FOR

1 An Act relating to workers' compensation and insurance fraud
2 and other prohibited health service provider practices,
3 providing penalties, and including effective date and
4 applicability provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 507F.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires, "*workers' compensation insurer*" includes any insurer
4 as defined in section 507A.3 that issues a policy of workers'
5 compensation liability insurance and any group or self-insured
6 plan as described in section 87.4.

7 Sec. 2. NEW SECTION. 507F.2 Purpose of workers'
8 compensation fraud unit.

9 A workers' compensation fraud unit is created within the
10 insurance fraud bureau within the insurance division. Upon a
11 reasonable determination by the workers' compensation fraud
12 unit, by its own inquiries or as a result of complaints filed
13 with the insurance fraud bureau or the workers' compensation
14 fraud unit, that a person has engaged in, is engaging in,
15 or may be engaging in an act or practice that violates this
16 chapter, the workers' compensation fraud unit may administer
17 oaths and affirmations, issue and serve subpoenas ordering the
18 attendance of witnesses, collect evidence related to such act
19 or practice, commence a suit, and prosecute a violation of this
20 chapter.

21 Sec. 3. NEW SECTION. 507F.3 Workers' compensation
22 fraudulent practice — penalties.

23 1. A person commits the offense of workers' compensation
24 fraudulent practice if the person, with the intent to defraud
25 a workers' compensation insurer does any act that constitutes
26 a violation of section 507E.3.

27 2. A person who commits an offense under this section that
28 results in a loss to a workers' compensation insurer of ten
29 thousand dollars or less is, upon conviction, guilty of a class
30 "D" felony.

31 3. A person who commits an offense under this section that
32 results in a loss to a workers' compensation insurer of more
33 than ten thousand dollars is, upon conviction, guilty of a
34 class "C" felony.

35 4. Fifty percent of the criminal penalty collected under

1 this section shall be deposited in the workers' compensation
2 fraud penalty fund created in section 507F.5. The remaining
3 fifty percent of the criminal penalty collected under this
4 section shall be deposited pursuant to section 602.8108.

5 **Sec. 4. NEW SECTION. 507F.4 Restitution.**

6 In addition to the criminal penalties established in this
7 chapter, the court shall order a person who commits an offense
8 under this chapter to pay restitution to persons aggrieved by
9 the violation. Restitution shall be ordered in addition to a
10 fine and the possibility of imprisonment, but not in lieu of a
11 fine and the possibility of imprisonment.

12 **Sec. 5. NEW SECTION. 507F.5 Fund created.**

13 A workers' compensation fraud penalty fund is created in
14 the state treasury as a separate fund under the control of
15 the commissioner of insurance for purposes of this chapter.
16 Notwithstanding section 8.33, any balance in the fund on June
17 30 of each fiscal year shall not revert to the general fund of
18 the state, but shall be available for purposes of this chapter
19 in subsequent fiscal years. The commissioner of insurance may
20 request additional full time equivalent positions as needed and
21 the request shall be granted so long as sufficient funds are
22 within the workers' compensation fraud penalty fund.

23 **Sec. 6. NEW SECTION. 507F.6 Examination of information
24 outside the state.**

25 As a unit within the insurance fraud bureau, the workers'
26 compensation fraud unit, pursuant to section 507E.4, may obtain
27 and examine any information that is related to enforcement of
28 this chapter in possession of a person located outside the
29 state.

30 **Sec. 7. NEW SECTION. 507F.7 Confidentiality.**

31 As a unit within the insurance fraud bureau, all of the
32 provisions of section 507E.5 shall apply to the workers'
33 compensation fraud unit.

34 **Sec. 8. NEW SECTION. 507F.8 Immunity from liability.**

35 A person is immune from civil liability for acts under this

1 chapter if the person meets the requirements set forth in
2 section 507E.7.

3 Sec. 9. NEW SECTION. **507F.9 Election of prosecution.**

4 If a person commits an offense under this chapter, the
5 prosecuting attorney may elect to proceed under this chapter
6 or any other law of this state.

7 Sec. 10. NEW SECTION. **507F.10 Prosecuting attorney status.**

8 1. The workers' compensation fraud unit shall employ at
9 least one full-time prosecuting attorney. The prosecuting
10 attorney, having specialized knowledge and training, shall
11 in all counties in this state prosecute all criminal actions
12 which may be brought under this chapter in which the workers'
13 compensation fraud unit may be interested, when, in the
14 prosecuting attorney's judgment, the interest of the unit
15 requires such action.

16 2. The prosecuting attorney may request a county attorney
17 to assist with or handle the prosecution of a criminal action
18 which may be brought under this chapter.

19 3. The prosecuting attorney shall report to the
20 commissioner of insurance.

21 Sec. 11. NEW SECTION. **507F.11 Law enforcement officer
22 status.**

23 As a unit within the insurance fraud bureau, all of the
24 provisions of section 507E.8 shall apply to the workers'
25 compensation fraud unit.

26 Sec. 12. NEW SECTION. **507F.12 Suspension of benefits.**

27 If a person is currently receiving or has a pending
28 application for workers' compensation benefits under chapter
29 85, 85A, or 85B and the workers' compensation fraud unit makes
30 a determination to file charges in district court alleging a
31 violation of this chapter by a person receiving benefits under
32 chapter 85, 85A, or 85B, the workers' compensation fraud unit
33 shall notify the workers' compensation commissioner, who shall
34 suspend benefits or suspend any pending application.

35 A person convicted of a workers' compensation fraudulent

1 practice shall be prohibited from receiving benefits under
2 chapters 85, 85A, and 85B for the particular claim or injury
3 giving rise to the criminal action. If the person is acquitted
4 or the charges are dismissed, the workers' compensation fraud
5 unit shall notify the workers' compensation commissioner of
6 such action and the commissioner shall resume the payment of
7 any benefits previously suspended or resume any suspended
8 application. A person whose benefits have been suspended and
9 the payment of benefits resumed has the option to receive
10 a back payment in a lump sum upon resumption of payment of
11 benefits.

12 Sec. 13. NEW SECTION. 507F.13 Rulemaking authority.

13 The commissioner of insurance may adopt rules pursuant to
14 chapter 17A to administer this chapter.

15 Sec. 14. Section 85.27, subsections 3 and 4, Code 2018, are
16 amended to read as follows:

17 3. A medical service provided under this chapter or chapter
18 85A or 85B shall not be billed at a rate higher than a health
19 service provider's standard retail rate for the medical
20 service. A health service provider who bills and receives
21 payment in excess of the health service provider's standard
22 rate for a medical service provided to treat a workers'
23 compensation injury shall reimburse the employer or insurance
24 carrier which paid for the medical service for the excess
25 payments received by the health service provider.

26 Notwithstanding [section 85.26, subsection 4](#), charges believed
27 to be excessive or unnecessary may be referred by the
28 employer, insurance carrier, or health service provider to the
29 workers' compensation commissioner for determination, and the
30 commissioner may utilize the procedures provided in sections
31 86.38 and [86.39](#), or set by rule, and conduct such inquiry as
32 the commissioner deems necessary. Any health service provider
33 charges not in dispute shall be paid directly to the health
34 service provider prior to utilization of procedures provided
35 in [sections 86.38](#) and [86.39](#) or set by rule. A health service

1 provider rendering treatment to an employee whose injury is
2 compensable under [this section](#) agrees to be bound by such
3 charges as allowed by the workers' compensation commissioner
4 and shall not recover in law or equity any amount in excess of
5 charges set by the commissioner. When a dispute under this
6 chapter, [chapter 85A](#), or [chapter 85B](#) regarding reasonableness
7 of a fee for medical services arises between a health service
8 provider and an employer or insurance carrier, the health
9 service provider, employer, or insurance carrier shall not seek
10 payment from the injured employee. A health service provider
11 shall not seek payment for fees in dispute from the insurance
12 carrier or employer until the commissioner finds, pursuant to
13 informal dispute resolution procedures established by rule by
14 the commissioner, that the disputed amount is reasonable. This
15 section does not affect the responsibility of an insurance
16 carrier or an employer to pay amounts not in dispute or a
17 health service provider's right to receive payment from an
18 employee's nonoccupational plan as provided in section 85.38,
19 subsection 2.

20 4. For purposes of [this section](#), the employer is obliged to
21 furnish reasonable services and supplies to treat an injured
22 employee, and has the right to choose the care. The employer
23 retains the right to choose the employee's care for all
24 services throughout the course of treatment. If the employer
25 chooses the care, the employer shall hold the employee harmless
26 for the cost of care until the employer notifies the employee
27 that the employer is no longer authorizing all or any part of
28 the care and the reason for the change in authorization. An
29 employer is not liable for the cost of care that the employer
30 arranges in response to a sudden emergency if the employee's
31 condition, for which care was arranged, is not related to
32 the employment. The treatment must be offered promptly
33 and be reasonably suited to treat the injury without undue
34 inconvenience to the employee. If the employee has reason to
35 be dissatisfied with the care offered, the employee should

1 communicate the basis of such dissatisfaction to the employer,
2 in writing if requested, following which the employer and the
3 employee may agree to alternate care reasonably suited to
4 treat the injury. If the employer and employee cannot agree
5 on such alternate care, the commissioner may, upon application
6 and reasonable proofs of the necessity therefor, allow and
7 order other care. In an emergency, the employee may choose
8 the employee's care at the employer's expense, provided the
9 employer or the employer's agent cannot be reached immediately.
10 An application made under **this subsection** shall be considered
11 an original proceeding for purposes of commencement and
12 contested case proceedings under **section 85.26**. The hearing
13 shall be conducted pursuant to **chapter 17A**. Before a hearing
14 is scheduled, the parties may choose a telephone hearing or
15 an in-person hearing. A request for an in-person hearing
16 shall be approved unless the in-person hearing would be
17 impractical because of the distance between the parties to the
18 hearing. The workers' compensation commissioner shall issue a
19 decision within ten working days of receipt of an application
20 for alternate care made pursuant to a telephone hearing or
21 within fourteen working days of receipt of an application for
22 alternate care made pursuant to an in-person hearing. The
23 employer shall notify an injured employee of the employee's
24 ability to contest the employer's choice of care pursuant to
25 this subsection.

26 **Sec. 15. NEW SECTION. 85.37A Suspension of benefits for**
27 **workers' compensation fraud.**

28 Section 507F.12 requires the workers' compensation
29 commissioner to suspend a person's benefits if the workers'
30 compensation fraud unit makes a determination to file charges
31 in district court alleging the person has violated chapter
32 507F.

33 **Sec. 16. NEW SECTION. 86.39A Criminal penalty for workers'**
34 **compensation fraud.**

35 Chapter 507F sets forth criminal penalties for committing a

1 workers' compensation fraudulent practice.

2 Sec. 17. Section 507E.6, Code 2018, is amended to read as
3 follows:

4 **507E.6 Duties of insurer and fraud bureau.**

5 1. An insurer which believes that a claim or application
6 for insurance coverage is being made which is a violation of
7 section 507E.3 or believes that a violation of section 507E.3A
8 has occurred, shall provide, within sixty days of ~~the receipt~~
9 ~~of such claim or application~~ becoming aware of a possible
10 violation, written notification to the bureau of the ~~claim or~~
11 ~~application~~ suspected violation on a form prescribed by the
12 bureau, ~~including any additional information requested by the~~
13 ~~bureau related to the claim or application or the party making~~
14 ~~the claim or application.~~

15 2. The fraud bureau shall review each notification and
16 determine whether further investigation is warranted.

17 3. If the bureau determines that further investigation
18 is warranted, the bureau shall conduct an independent
19 investigation of the facts surrounding the ~~claim or application~~
20 ~~for insurance coverage~~ notification to determine the extent,
21 if any, to which fraud occurred ~~in the submission of the claim~~
22 ~~or application.~~ If the notification pertains to workers'
23 compensation insurance fraud, the bureau shall deliver the
24 notice to the workers' compensation fraud unit, which shall
25 determine if an investigation and prosecution are warranted.
26 Upon formal request made by the bureau, the insurer shall
27 provide all additional information related to the notification
28 within ten business days or a time period specifically
29 identified by the bureau.

30 4. The bureau shall report any alleged violation of law
31 disclosed by the investigation to the appropriate licensing
32 agency or prosecuting authority having jurisdiction with
33 respect to such violation.

34 Sec. 18. Section 507E.8, Code 2018, is amended to read as
35 follows:

1 **507E.8 Law enforcement officer status.**

2 1. Bureau investigators shall have the power and status
3 of law enforcement officers who by the nature of their duties
4 may be required to perform the duties of a peace officer when
5 making arrests for criminal violations established as a result
6 of their investigations pursuant to this chapter or chapter
7 507F.

8 2. The general laws applicable to arrests by law enforcement
9 officers of the state also apply to bureau investigators.
10 Bureau investigators shall have the power to execute arrest
11 warrants and search warrants for the same criminal violations,
12 serve subpoenas issued for the examination, investigation, and
13 trial of all offenses identified through their investigations,
14 and arrest upon probable cause without warrant a person found
15 in the act of committing a violation of the provisions of this
16 chapter or chapter 507F.

17 Sec. 19. EFFECTIVE DATE. This Act, being deemed of
18 immediate importance, takes effect upon enactment.

19 Sec. 20. APPLICABILITY. This Act applies on and after the
20 effective date of this Act to acts of workers' compensation
21 fraudulent practices or prohibited health service providers'
22 practices committed on or after the effective date of this Act.