
ASSEMBLY BILL NO. 476—COMMITTEE ON COMMERCE AND LABOR

MARCH 11, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Provides privilege of confidentiality for certain information obtained during audits of insurers to determine compliance with state and federal law. (BDR 57-1292)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to insurers; providing in skeleton form for a privilege of confidentiality for certain information obtained during an audit of an insurer to determine its compliance with state and federal law; providing a procedure for the waiver of the privilege of confidentiality; providing in skeleton form for a judicial procedure to determine whether information obtained during an audit by an insurer is subject to the privilege of confidentiality; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 679B of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 9, inclusive, of this act.
3 **Sec. 2.** *As used in sections 2 to 9, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3 and*
5 *4 of this act have the meanings ascribed to them in those sections.*
6 **Sec. 3.** *“Insurance compliance audit” means a voluntary, internal*
7 *evaluation, review, assessment, audit or investigation conducted by an*
8 *insurer or at the request of an insurer to identify or prevent the*
9 *noncompliance by the insurer with applicable federal and state laws,*
10 *regulations, orders and other professional standards relating to the*
11 *transacting of insurance, and to promote compliance by the insurer with*
12 *those laws, regulations, orders and other standards.*
13 **Sec. 4.** *“Insurance compliance audit document” means any*
14 *document that is prepared as a result of or in connection with an*
15 *insurance compliance audit. The term includes, without limitation:*

1 1. *Field notes and records of observation, findings, opinions,*
2 *suggestions, conclusions, drafts, memoranda, drawings, photographs,*
3 *exhibits, information that is generated by a computer or electronically*
4 *recorded, telephone records, maps, charts, graphs and surveys which are*
5 *collected or developed during the course of an insurance compliance*
6 *audit.*

7 2. *Reports on the insurance compliance audit that were prepared by*
8 *an auditor, regardless of whether the auditor is an employee of the*
9 *insurer or an independent contractor, which include, without limitation,*
10 *the scope of the audit, the information obtained during the audit, any*
11 *conclusions and recommendations of the auditor based on the audit, and*
12 *any appendices and exhibits attached to the audit or the report on the*
13 *audit.*

14 3. *Memoranda and other documents in which any portion of a report*
15 *on an insurance compliance audit is analyzed or any potential correction*
16 *needed as a result of the insurance compliance audit is discussed.*

17 4. *Implementation plans that set forth proposed actions intended to*
18 *correct past noncompliance, improve current compliance or prevent*
19 *future noncompliance with federal and state laws, regulations, orders*
20 *and other professional standards relating to the transacting of insurance.*

21 5. *Analytic data that is generated in the course of conducting the*
22 *insurance compliance audit.*

23 **Sec. 5. 1.** *An insurance compliance audit document and the*
24 *information contained therein shall be deemed to be an absolutely*
25 *privileged communication. Except as otherwise provided in sections 2 to*
26 *9, inclusive, of this act, an insurance compliance audit document and the*
27 *information contained therein that is subject to the privilege of*
28 *confidentiality provided by this section is not admissible as evidence in*
29 *any action or proceeding.*

30 2. *An insurer that is the subject of an insurance compliance audit*
31 *document may expressly waive in writing the privilege of confidentiality*
32 *relating to the document and the information contained therein.*

33 3. *The privilege of confidentiality for insurance compliance audit*
34 *documents, and the information contained therein, provided by this*
35 *section is in addition to and supplements any other statutory or common*
36 *law privilege that otherwise applies to the documents or information.*

37 4. *Absent the express written waiver of the privilege of confidentiality*
38 *by the insurer for which the insurance compliance audit was conducted,*
39 *disclosure of any insurance compliance audit document and any*
40 *information contained therein, regardless of whether the disclosure is*
41 *voluntary or involuntary, does not constitute a waiver of the privilege.*

1 **Sec. 6. 1.** *An insurer may, in connection with an investigation or*
2 *examination conducted pursuant to this Code, voluntarily submit an*
3 *insurance compliance audit document to the commissioner, attorney*
4 *general or any other person designated to conduct the investigation or*
5 *examination. Notwithstanding any specific statute to the contrary, the*
6 *privilege of confidentiality of the documents and information contained*
7 *therein is not waived or otherwise lost because the insurer voluntarily*
8 *submitted the information or documents pursuant to this subsection to*
9 *the commissioner, attorney general or other person conducting the*
10 *investigation or examination. The provisions of this subsection do not*
11 *authorize the commissioner, attorney general or other person conducting*
12 *an investigation or examination pursuant to this Code to compel the*
13 *insurer to disclose or otherwise provide an insurance compliance audit*
14 *document or any information contained therein.*

15 **2.** *An insurance compliance audit document that is voluntarily*
16 *submitted pursuant to this section to the commissioner, attorney general*
17 *or other person conducting an investigation or examination remains the*
18 *property of the insurer that submitted the document.*

19 **Sec. 7. 1.** *In an administrative, a civil or a criminal proceeding,*
20 *examination or investigation involving an insurer relating to the*
21 *transacting of insurance in this state, the commissioner or attorney*
22 *general may request, in writing, that an insurer disclose an insurance*
23 *compliance audit document pertaining to the insurer. The request for*
24 *disclosure must be sent by certified mail to the insurer.*

25 **2.** *If the insurer refuses to disclose the insurance compliance audit*
26 *document on the basis that the document or information contained*
27 *therein is a privileged communication, the insurer shall, not later than 30*
28 *days after the date on which it receives the request for disclosure, file a*
29 *petition with a court of competent jurisdiction requesting an in camera*
30 *hearing for a determination as to whether the document or information*
31 *contained therein is a privileged communication. The petition must*
32 *include:*

33 **(a)** *The date on which the insurance compliance audit document was*
34 *made;*

35 **(b)** *The identity of the person that conducted the insurance*
36 *compliance audit;*

37 **(c)** *The general nature of the activities covered by the insurance*
38 *compliance audit; and*

39 **(d)** *An identification of the portions of the insurance compliance audit*
40 *document for which the privilege is being asserted.*

41 **3.** *The submission of an insurance compliance audit document by an*
42 *insurer to the commissioner or attorney general pursuant to a request for*
43 *disclosure shall be deemed to be a waiver of the privilege of*

1 *confidentiality for the insurance compliance audit document and the*
2 *information contained therein only for the purpose of the specific request*
3 *pursuant to which the document was submitted, unless the insurer*
4 *expressly waives in writing the privilege of confidentiality for the*
5 *insurance compliance audit document and the information contained*
6 *therein.*

7 **Sec. 8.** 1. *Upon the filing of a petition with a court of competent*
8 *jurisdiction pursuant to section 7 of this act, the court shall schedule an*
9 *in camera hearing not later than 45 days after the date on which the*
10 *petition was filed.*

11 2. *If the insurance compliance audit document was requested for a*
12 *civil or administrative proceeding, examination or investigation, the*
13 *court may require the disclosure of the document, subject to the*
14 *provisions of subsection 4, only if the court finds that:*

15 (a) *The purpose for which the privilege is being asserted is fraudulent;*
16 *or*

17 (b) *The document or information contained therein is not subject to*
18 *the privilege.*

19 3. *If the insurance compliance audit document was requested for a*
20 *criminal proceeding or investigation, the court may require the*
21 *disclosure of the document, subject to the provisions of subsection 4, only*
22 *if the court finds that:*

23 (a) *The purpose for which the privilege is being asserted is fraudulent;*

24 (b) *The document or information contained therein is not subject to*
25 *the privilege; or*

26 (c) *The document contains evidence that is relevant to the commission*
27 *of a criminal offense, and:*

28 (1) *The commissioner or attorney general, as appropriate, has a*
29 *compelling need for the evidence;*

30 (2) *The evidence is not otherwise available; and*

31 (3) *The commissioner or attorney general, as appropriate, is unable*
32 *to obtain the substantial equivalent of the evidence by any other means*
33 *without incurring unreasonable delay or cost.*

34 4. *The court may only compel the disclosure of those portions of an*
35 *insurance compliance audit document that are relevant to the issues of*
36 *the underlying proceeding, examination or investigation for which the*
37 *disclosure of the document is sought.*

38 5. *The insurer and the commissioner or attorney general, as*
39 *appropriate, may stipulate whether the privilege of confidentiality may be*
40 *asserted for a specific insurance compliance audit document or the*
41 *information contained therein, or whether the document or information*

1 *may be disclosed. Such a stipulation is limited in scope to the instant*
2 *proceeding, examination or investigation and is not applicable to any*
3 *other proceeding, examination or investigation, absent specific language*
4 *in the stipulation to the contrary.*

5 *6. Disclosure of an insurance compliance audit document, or any*
6 *information contained therein, pursuant to this section constitutes a*
7 *waiver of the privilege of confidentiality only for the specific purpose for*
8 *which the document was sought.*

9 *7. If the court orders the disclosure of an insurance compliance*
10 *audit document or any information contained therein, the insurer may*
11 *apply to the court for an order protecting the document or information*
12 *from further disclosure.*

13 **Sec. 9.** *The privilege of confidentiality set forth in section 5 of this*
14 *act does not apply to:*

15 *1. Documents, communications, data, reports or other information*
16 *expressly required to be collected, developed, maintained or reported to*
17 *the commissioner, the division or any other regulatory agency pursuant*
18 *to state or federal law;*

19 *2. Information obtained by the commissioner or his designee, the*
20 *division or any other regulatory agency through observation or*
21 *monitoring of the insurer; or*

22 *3. Information obtained from a source that is independent from the*
23 *insurance compliance audit.*

24 **Sec. 10.** NRS 679B.250 is hereby amended to read as follows:

25 679B.250 1. When the commissioner determines to examine the
26 affairs of any person, he shall designate one or more examiners and
27 instruct them as to the scope of the examination. The examiner shall, upon
28 demand, exhibit his official credentials to the person under examination.

29 2. The commissioner shall conduct each examination in an
30 expeditious, fair and impartial manner.

31 3. Upon any such examination the commissioner, or the examiner if
32 specifically so authorized in writing by the commissioner, may administer
33 oaths, and examine under oath any person as to any matter relevant to the
34 affairs under examination or relevant to the examination.

35 4. ~~{Every}~~ *Except as otherwise provided in sections 2 to 9, inclusive,*
36 *of this act, each* person being examined, its officers, attorneys, employees,
37 agents and representatives shall make freely available to the commissioner
38 or his examiners the accounts, records, documents, files, information,
39 assets and matters of the person examined in his possession or control
40 relating to the subject of the examination and shall facilitate the
41 examination.

42 5. If the commissioner or examiner finds any accounts or records to be
43 inadequate, or inadequately kept or posted, he may employ experts to

1 reconstruct, rewrite, post or balance them at the expense of the person
2 being examined if that person has failed to maintain, complete or correct
3 the records or accounting after the commissioner or examiner has given
4 him written notice and a reasonable opportunity to do so.

5 6. Neither the commissioner nor any examiner may remove any
6 record, account, document, file or other property of the person being
7 examined from the offices or place of the person examined except with his
8 written consent before removal or pursuant to an order of court duly
9 obtained. This provision does not affect the making and removal of copies
10 or abstracts of any such record, account, document or file.

11 7. ~~Any~~ *Except as otherwise provided in sections 2 to 9, inclusive, of*
12 *this act, any* person who refuses without just cause to be examined under
13 oath or who willfully obstructs or interferes with the examiners in the
14 exercise of their authority pursuant to this section is guilty of a
15 misdemeanor.

16 8. This chapter does not limit the commissioner's authority:

17 (a) To terminate or suspend an examination in order to pursue other
18 legal or regulatory action.

19 (b) During any hearing or any legal action, to use and, if so ordered by
20 a court, to make public a final or preliminary report of an examination,
21 working papers or other documents of an examiner or insurer, or any other
22 information discovered or developed during the course of an examination.
23 Such documents must be given their appropriate evidentiary weight and
24 must not be accepted as prima facie evidence of the facts contained therein.

25 **Sec. 11.** This act becomes effective on July 1, 1999.