

LAWS OF DELAWARE
VOLUME 81
CHAPTER 78
149th GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 4

AN ACT TO AMEND TITLE 4, TITLE 16, TITLE 18, TITLE 19, TITLE, 24, TITLE 29, AND TITLE 31 OF THE DELAWARE CODE RELATING TO TECHNICAL CORRECTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fourths of all members elected to each house thereof concurring therein):

Section 1. Amend § 512A, Title 4 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 512A. Farm wineries.

(a) Upon proper application and subject to the provisions, restrictions and prohibitions of this title, the Commissioner may grant a license to any person who is the owner or lessee of a farm winery to manufacture, ferment, blend, age, store and bottle wine, mead, and cider on the premises designated in the license. For purposes of this title, a "farm winery" is defined as an establishment at which the basic ingredients, including but not limited to the harvesting of grapes, to make wine are grown and where wine, mead, or cider are fermented or manufactured. Notwithstanding any provisions of this title to the contrary, a farm winery licensee shall be authorized to sell, deliver and ship such wine, mead, and cider in barrels, bottles or other closed containers to persons licensed under the provisions of this title to import wine, mead, and cider; and to sell and ship wine, mead, and cider to persons outside of the State in accordance with this title.

Section 2. Amend § 4798, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4798. The Delaware Prescription Monitoring Program.

(r) A person authorized to have prescription monitoring information pursuant to this section who knowingly discloses this information in violation of this section is guilty of a class G felony and, upon conviction, shall be fined not more than \$5,000 nor imprisoned more than 2 years, or both.

Section 3. Amend § 4798, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4798. The Delaware Prescription Monitoring Program.

(t) A person not authorized to have prescription monitoring information pursuant to this section who obtains such information fraudulently is guilty of a class E felony and, upon conviction, shall be fined not more than \$10,000 nor imprisoned more than 5 years, or both.

Section 4. Amend § 2304, Title 18 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2304. Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(24) Discriminatory practices against victims of abuse regarding life and health insurance. — A person or entity engaged in the business of life and/or health insurance in this State may not:

a. Deny, refuse to issue, refuse to renew, refuse to reissue, cancel or otherwise terminate an insurance policy or restrict coverage on any individual because that individual is, has been or may be the subject of abuse or seeks, has sought or should have sought, medical or psychological treatment for abuse, protection from abuse or shelter from abuse;

b. Add any surcharge or rating factor to a premium of an insurance policy because of an individual's history of, status as, or potential to be subject to abuse;

c. Exclude or limit coverage for losses or deny a claim incurred by an insured as a result of abuse or the potential for abuse; or

d. Ask an insured or an applicant for insurance whether that individual is, has been or may be the subject of abuse, or seeks, has sought or should have sought medical or psychological treatment specifically for abuse, protection from abuse or shelter from abuse.

(25) Discriminatory practices against victims of abuse regarding homeowner's and private passenger motor vehicle insurance. — A person or entity engaged in the business of homeowner's and/or private passenger motor vehicle insurance in this State may not:

a. Deny, refuse to issue, refuse to renew, refuse to reissue, cancel or otherwise terminate a homeowner's and/or private passenger motor vehicle insurance policy or restrict coverage on any individual solely because that individual or a member of that individual's family or household is, has been or may be the subject of abuse or seeks, has sought or should have sought, medical or psychological treatment for abuse, protection from abuse or shelter from abuse. Nothing in this section shall be construed to prohibit a person from denying, refusing to issue, renew or reissue, cancelling or otherwise terminating an insurance policy based on any existing insurance statute, provided that the insurer routinely underwrites individuals in the same manner without regard to the individual's abuse status, abuse history or abuse-related claim history and that any such action does not have the purpose or effect of treating abuse status as an underwriting criterion, is not based on any actual or perceived correlation between a type of claim or other underwriting information and abuse and is otherwise permissible by law.

b. Add any surcharge or rating factor to a premium of a homeowner's insurance policy solely because of a history of, status as or potential to be a subject of abuse of the applicant or insured or of a member of the family or household of the insured. Nothing in this section shall be construed to prohibit a person from rating or surcharging a policy in accordance with any existing insurance statute provided that the insurer routinely rates or surcharges individuals in the same manner without regard to the individual's abuse status, abuse history or abuse-related claims history, and any such action does not have the purpose or effect of treating abuse status as an underwriting criterion, is not based on any actual or perceived correlation between a type of claim or other underwriting information and abuse and is otherwise permissible by law.

c. Deny coverage for property damage claims or medical payment coverage for an insured, if such coverage is available and purchased under the policy, as a result of abuse, even if such losses are caused by the intentional act, the fraudulent or criminal act or the failure to act of a co-insured and would otherwise have come under a policy's intentional act, criminal act, family, household or similar exclusion, unless:

1. The claim or coverage is ordinarily denied in the same manner to an insured or claimant who is not a victim of abuse;
2. There is collusion or fraudulent acts by the party seeking the insurance coverage or benefits; or
3. The innocent co-insured refuses to cooperate with any law enforcement investigation, the results of which would be made available to the insurer to verify that the claim for loss resulted from a co-insured's wrongful act or omission.

The innocent co-insured shall, at a minimum, be entitled to recover a pro-rata share of the loss of real or personal property and the entire amount of additional living expenses, as the policy may so provide.

Nothing in this subsection shall be construed to prohibit a person from refusing to defend or indemnify the perpetrator of the wrongful act or omission against any claim for liability arising from such individual's wrongful act or omission. The insurer shall retain the right to subrogate against the wrongdoer for any losses incurred by the injured party, including a wrongdoer who was a co-insured with the victim.

d. Ask an insured or an applicant for homeowner's and/or private passenger motor vehicle insurance whether that individual is, has been or may be the subject of abuse or seeks, has sought or should have sought medical or psychological treatment specifically for abuse, protection from abuse or shelter from abuse.

e. A person shall not be held civilly or criminally liable for any cause of action which may be brought because of compliance with this section. Nothing herein shall preclude any action or investigation against an insurer to enforce this paragraph. Nothing in this section shall preclude a person's obligations to report suspected fraudulent activities to the Insurance Department Fraud Prevention Bureau pursuant to Chapter 24 of this title.

Nothing in paragraphs (24) and (25) of this section shall be construed to prohibit a person from declining to issue an insurance policy insuring the life of an individual who is or has been the subject of abuse if the perpetrator of the abuse is the applicant or would be the owner of the insurance policy. Nothing in paragraphs (24) and (25) of this section shall be construed to prohibit a

person from underwriting or rating a risk on the basis of a preexisting physical or mental condition, even if such condition had been caused by abuse, provided that:

The person routinely underwrites or rates such condition in the same manner with respect to an insured or an applicant who is not a victim of abuse;

No person shall refuse to insure, refuse to continue to insure, limit the amount, extent or kind of coverage available to an individual, or charge a different rate for the same coverage solely because of a physical or mental condition, except where the refusal, limitation or rate differential is based on sound actuarial principles;

The fact that an individual is, has been or may be the subject of abuse may not be considered a physical or mental condition; and

Such underwriting or rating is not used to evade the intent of this law or any other provision of law. A person shall not be held civilly or criminally liable for any cause of action which may be brought because of compliance with paragraphs (24) and (25) of this section.

(26) Failure to respond to regulatory inquiries. — No person shall, with such frequency as to indicate a general business practice, fail to provide preliminary substantive responses to inquiries from the Department of Insurance regarding the denial of claims, cancellation, nonrenewal, or refusal of benefits, refusal to pre-authorize benefits, or violations of this title, within 21 calendar days of such inquiry. A response in compliance with this paragraph shall not preclude the provision of additional information responsive to the inquiry.

(27) Use of credit scoring. — No person may use consumer reports or credit scores in any manner prohibited by Chapter 83 of this title.

(28) Volunteer firefighters and ambulance personnel. — No insurance carrier shall take any negative underwriting action against a policyholder, including, but not limited, to adjustment of rates or termination of a policy, based solely on the membership of a person covered by the policy in a volunteer fire company certified by the Delaware State Fire Prevention Commission or its successor or in a nonprofit organization that provides ambulance and/or rescue services within this State, including, but not limited to, organizations such as volunteer fire companies, the Veterans of Foreign Wars and the American Legion. This paragraph shall not prevent a carrier from taking underwriting action that is permitted by contract and applicable law, provided that the stated basis for such underwriting action is not a pretense for violating this paragraph.

~~Nothing in this section shall be construed to prohibit a person from declining to issue an insurance policy insuring the life of an individual who is or has been the subject of abuse if the perpetrator of the abuse is the applicant or would be the owner of the insurance policy. Nothing in this section shall be construed to prohibit a person from underwriting or rating a risk on the basis of a preexisting physical or mental condition, even if such condition had been caused by abuse, provided that:~~

~~The person routinely underwrites or rates such condition in the same manner with respect to an insured or an applicant who is not a victim of abuse;~~

~~No person shall refuse to insure, refuse to continue to insure, limit the amount, extent or kind of coverage available to an individual, or charge a different rate for the same coverage solely because of a physical or mental condition, except where the refusal, limitation or rate differential is based on sound actuarial principles;~~

~~The fact that an individual is, has been or may be the subject of abuse may not be considered a physical or mental condition; and~~

~~Such underwriting or rating is not used to evade the intent of this law or any other provision of law. A person shall not be held civilly or criminally liable for any cause of action which may be brought because of compliance with this section.~~

Section 5. Amend § 3302, Title 18 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 3302. Short title.

This subchapter may be cited as the "Uniform Health Policy Provisions Law."

Section 6. Amend § 3342, Title 18 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 3342. Obstetrical and gynecological coverage.

(h) Each such policy or contract shall provide notice to female enrolled participants, policyholders, subscribers and beneficiaries regarding the coverage required by this section. The notice shall be in writing, printed in type not less than 8-point,

and prominently positioned in any literature or correspondence, including benefit handbooks and enrollment materials. Policies or contracts shall include an explanation of any voluntary process of preauthorization of services available to female enrollees and obstetrician-gynecologists. The enrollee handbook explanation shall include information regarding any limitation to direct access, including, but not limited to, a closed network of providers, or any limitation on access to an obstetrician-gynecologist based on a female's choice of primary care provider.

Section 7. Amend § 3325, Title 19 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 3325. Recoupment of overpayments of benefits.

Any person who has received any sum as benefits under this chapter to which it is finally determined that the person was not entitled shall be liable to repay in cash said overpayment, to the Department for the Unemployment Compensation Fund, or to have such sum deducted from future benefits payable to the person under this chapter. The person shall be so liable regardless of whether such sum was received through fraud or mistake, or whether that person was legally awarded the payment of benefits at the time but on appeal was subsequently found not to be entitled thereto. If the person becomes eligible for benefits before such sum is completely repaid, the Department shall deduct the remaining balance of such sum from such benefits. Except where the person obtained the overpayment by fraud, the Department may, in its discretion, elect not to require repayment of such sum in cash, and elect to only deduct such sum from subsequently awarded benefits. For nonfraud overpayments, the deduction from subsequently awarded benefits shall be only 50% of the payable weekly benefit amount until the overpayment is completely repaid, while 100% of the payable weekly benefit amount shall be deducted from subsequently awarded benefits until the overpayment is completely repaid when the overpayment was the result of fraud. Discretionary decisions by the Department of how or by what means it elects to collect nonfraud overpayments, that is, either by cash or deduction from subsequently awarded benefits, or by any other means, are administrative collections decisions made by the executive branch of government and are not subject to review by quasi-judicial or judicial tribunals of this State. In addition to the methods of collection authorized by this chapter, the Department may collect overpayments, interest, penalties, and other liabilities due under this chapter as provided in § 545 of Title 30, § 6402 of the Federal Internal Revenue Code (26 U.S.C. § 6402), § 303(m) of the Social Security Act (42 U.S.C. § 503(m)), and any other means available under federal or state law.

The Department shall issue a notice of overpayment and an order for recoupment, stating its grounds therefor, before initiating action to collect the overpayment. Unless the person files an appeal to an Unemployment Insurance appeals referee within 10 days after such order was mailed to the person at the person's last known address, the order shall be final and recoupment shall be made in accordance with such order. Appeal from an Unemployment Insurance appeals referee decision to the Unemployment Insurance Appeal Board must be filed within 10 days after such decision was mailed to the person. Appeal from the Unemployment Insurance Appeal Board decision to Superior Court may be made in the same fashion as an appeal of the Appeal Board's benefit decisions.

In the absence of fraud, in any case under this section in which a claimant is liable to repay to the Department any sum for the Unemployment Compensation Fund, such sum shall be collectible without interest in the name of the Department. Where, however, the Department determines that a claimant who is liable to repay any sum committed fraud in order to obtain benefits, the claimant shall be required to repay the sum due to the Department as well as interest thereon. Benefit overpayments paid to a claimant as the result of fraud shall be repaid with interest at the same rate as provided for past due assessments and reimbursement payments in lieu of assessments in § 3357 of this title and Department of Labor Regulation No. 45. Interest collected pursuant to this section shall be paid into the Special Administration Fund. In addition, a monetary penalty of 15.0% of the amount received by a claimant as the result of fraud shall be assessed. The monetary penalty collected pursuant to this section shall be paid into the Unemployment Compensation Fund as referenced in § 3161 of this title.

Any employer who makes a deduction from a back wage award to a claimant because of the claimant's receipt of unemployment benefits, for which the claimant has become ineligible by reason of such award, shall be liable to pay into the Unemployment Compensation Fund an amount equal to the amount of such deduction. When the employer has made such payment into the Unemployment Compensation Fund, the amount of such payments shall be considered when determining, if applicable, said employer's entitlement to rehire credit.

The Department may write off in whole or in part an overpayment debt after a period of 3 years, when it has ascertained after investigation and after reasonable attempts at collection that the overpayment debt is wholly or partly uncollectible. The Department may prescribe the appropriate accounting methods by which the uncollected portion of the debt shall be written off its

accounts instead of being carried indefinitely as an uncollected debt. No action shall be taken by the Department to collect an overpayment of benefits to any person after a period of 5 years from the end of the benefit year, as defined in § 3302(3) of this title, with respect to which such benefits were paid, unless during this 5 year period, the Department has brought a civil action in a court of competent jurisdiction against the claimant. Any payment on account by a claimant on an overpayment, by any means, except the offset of subsequently awarded benefits, by the Department shall be credited against the outstanding indebtedness of the claimant in the following manner; first, principal on fraud overpayments in oldest to newest outstanding indebtedness order; second, interest on fraud overpayments; third, monetary penalty on fraud overpayments; fourth, principal on nonfraud overpayments in oldest to newest outstanding indebtedness order; and, fifth, court costs. Any collection of an overpayment by the offset of subsequently awarded benefits by the Department shall be credited only against the principal of the outstanding indebtedness of the claimant in accordance with § 303(m) of the Social Security Act (42 U.S.C. § 503(m)) and § 3304(a)(4) of the Federal Unemployment Tax Act (26 U.S.C. § 3304). Such offsets shall be credited first to fraud overpayment principal and second to non-fraud overpayment principal in oldest to newest outstanding indebtedness order.

Section 8. Amend § 3360, Title 19 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 3360. Assessments, penalties and interest as debt to Fund; reduction to judgment; other means of collection.

(b) In addition to the methods of collection authorized by this chapter, the Department may collect overpayments, interest, penalties, and other liabilities due from any employer under this chapter as provided in § 545 of Title 30, § 6402 of the Federal Internal Revenue Code (26 U.S.C. § 6402), § 303(m) of the Social Security Act (42 U.S.C. § 503(m)), and any other means available under federal or state law.

Section 9. Amend § 3384, Title 19 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 3384. Receipt of benefits by misrepresentation.

Whoever, by reason of the nondisclosure or misrepresentation by that person or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent), has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in that person's case or while that person was disqualified from receiving benefits shall, in the discretion of the Department, either be liable to have such sum deducted from any future benefits payable to that person under this chapter or shall be liable to repay to the Department for the Unemployment Compensation Fund a sum equal to the amount so received by that person, and such sum shall be collectible in the manner provided in § 3358 of this title for the collection of past-due assessments, or shall be liable to have such sum collected by the Department as provided in § 545 of Title 30, § 6402 of the Federal Internal Revenue Code (26 U.S.C. § 6402), and § 303(m) of the Social Security Act (42 U.S.C. § 503(m)).

Section 10. Amend § 1799F, Title 24 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1799F. Acupuncture detoxification specialist (ADS); license required.

(b) Waiver of requirements. — The Acupuncture Advisory Council, by the affirmative vote of 3 of its members and with the approval of the Board, may waive the requirements of subsection (a) of this section if it finds all of the following by clear and convincing evidence:

Section 11. Amend § 2101, Title 24 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2101. Definition of practice of optometry.

(a) "Practice of optometry" means the examination or measurement by any subjective or objective means including automated or testing devices for the diagnosis, treatment, and prevention of conditions of the human eye, lid, adnexa, and visual system as outlined below.

(3) "Practice of optometry," as it relates to pharmaceutical agents, means as follows:

a. Includes the use of pharmaceutical agents for the diagnosis and treatment of diseases, disorders, and conditions of the eye and adnexa based on the licensing requirement that satisfies the requirement for graduate level coursework that includes general and ocular pharmacology as follows:

1. Prescription for controlled substances.

A. Schedule II controlled substances containing Hydrocodone, with a limitation on maximum 72-hour supply.

B. Schedules III, IV, and V controlled substances, with a limitation on maximum 72-hour supply.

2. Prescription for the use of an oral steroid with a limitation not to exceed a single 6-day methylprednisolone dose pack.

b. Includes the use of an epinephrine auto-injector to counteract anaphylaxis.

c. Excludes prescription for oral immuno-suppressives except for the use of oral steroids under § 2101(a)(3)a.2 of this title.

d. Excludes the prescription of oral antifungals.

e. Excludes the prescription of oral antimetabolites.

f. Excludes the prescription of any substance delivered intravenously or by injection.

g. Excludes any medication used solely for the treatment of systemic conditions outside the scope of an optometrist.

Section 12. Amend § 6102, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 6102. Composition of General Fund; Delaware Higher Education Loan Program Fund.

(g) All revenue collected by the Division of Child Support Services, as established under the Social Services Amendments of 1974 (P.L. 93-647, 42 U.S.C. § 651 et seq.) pursuant to its functions under the Division of Child Support Services and Paternity Program, except for an amount to be specified annually in the budget act as an appropriated special fund which shall be considered an incentive payment to enable the Division to increase child support collections, shall be deposited into a special fund account known as the Division of Child Support Services Account. The revenue deposited into the Division of Child Support Services Account shall not be a part of the General Fund of the State and shall only be handled in accordance with § 457 of the Social Services Amendments of 1974 (42 U.S.C. § 657). Further, such portions of these funds deposited to the credit of the Division of Child Support Services Account, as shall be periodically determined to belong to the State, shall be deposited to the credit of the General Fund of the State.

Section 13. Amend § 8017A, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 8017A. Delaware Council on Greenways and Trails.

(e) The Secretary shall determine which applications eligible for funding under § 5423 of Title 30 shall be subject to review by this Council. Greenways projects shall qualify as projects under the provisions of § 5423 of Title 30.

Section 14. Amend § 504, Title 31 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 504. Assignment and collection of support payments; powers and duties of Family Court.

(a) Any law of the State to the contrary notwithstanding, the application and/or receipt of public assistance under § 503(d) of this title shall act as an automatic and immediate assignment of all rights of support for the applicant and/or recipient and any dependent child. Such assignment shall have the full force and effect of law to the State and shall be collectible by the Division of Child Support Services. All money collected pursuant to such assignment shall be deposited directly to the credit of the Division of Child Support Services Account for distribution in accordance with § 457 of the Social Services Amendments of 1974 (42 U.S.C. § 657).

Approved July 17, 2017