



General Assembly

February Session, 2000

Raised Bill No. 5124

LCO No. 793

Referred to Committee on Insurance and Real Estate

Introduced by:
(INS)

An Act Concerning A Self-Audit Privilege For Insurers.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (a) As used in sections 1 to 11, inclusive, of this act:

2 (1) "Agency" means all federal and state boards, commissions,
3 departments or officers and includes the commissioner;

4 (2) "Commissioner" means the Insurance Commissioner of the State
5 of Connecticut;

6 (3) "Communication" and "communications" means all oral and
7 written communications and information relating to an insurance
8 compliance self-audit and includes an insurance compliance self-audit
9 document;

10 (4) "Hearing officer" means an individual appointed by an agency to
11 conduct a hearing in an agency proceeding, and includes a staff
12 employee of the agency;

13 (5) "Insurance compliance self-audit" means a process of voluntary
14 internal evaluation, review, assessment, or audit not otherwise

15 expressly required by law of an insurer, of an activity regulated under
16 the insurance laws or other laws of Connecticut or other state or
17 federal law applicable to an insurer, of industry or professional
18 standards related to the insurer or the regulated activity, or of
19 management systems related to the insurer or the regulated activity,
20 which process is designed to identify and prevent noncompliance and
21 to improve compliance with such statutes, regulations, bulletins, rules,
22 orders, standards or systems. An insurance compliance self-audit may
23 be conducted by the insurer, its agents or employees, or by
24 independent contractors;

25 (6) "Insurance compliance self-audit document" means any
26 document prepared as a result of, or in connection with an insurance
27 compliance self-audit. An insurance compliance self-audit document
28 includes, but is not limited to, a written response to the findings of an
29 insurance compliance self-audit, field notes and records of
30 observations, findings, opinions, suggestions, conclusions, drafts,
31 memoranda, drawings, photographs, computer generated or
32 electronically recorded information, phone records, maps, charts,
33 graphs and surveys. An insurance compliance self-audit document
34 also includes any of the following: (A) A report prepared by an
35 auditor, who may be an agent or employee of the insurer or an
36 independent contractor, which may include the scope of the audit, the
37 information gained in the audit, and conclusions and
38 recommendations, with exhibits and appendices; (B) memoranda and
39 documents analyzing portions or all of an insurance compliance self-
40 audit and discussing potential implementation issues; (C) an
41 implementation plan that addresses correction of past, current or
42 future compliance or noncompliance; and (D) analytic data generated
43 in the course of conducting the insurance compliance self-audit;

44 (7) "Insurer" means "insurer" as defined in section 38a-1 of the
45 general statutes;

46 (8) "Person" means "person" as defined in section 38a-1 of the

47 general statutes and includes an agency.

48 Sec. 2. (NEW) An insurance compliance self-audit is privileged and
49 no communication relating to an insurance compliance self-audit shall
50 be discoverable or admissible as evidence in any civil, criminal or
51 administrative action or proceeding except as otherwise expressly
52 provided in sections 1 to 11, inclusive, of this act. If any
53 communication disclosed by an insurer to an agency is disclosed to a
54 third person by the agency, the communication shall not be admissible
55 as evidence in any civil, criminal or administrative action or
56 proceeding. The privilege set forth in this section is a matter of
57 substantive law.

58 Sec. 3. (NEW) If the privilege set forth in section 2 of this act applies,
59 no insurer or person may be examined in any civil, criminal or
60 administrative action or proceeding as to any insurance compliance
61 self-audit or any communication pertaining to the insurance
62 compliance self-audit.

63 Sec. 4. (NEW) (a) The provisions of sections 2 and 3 of this act shall
64 not apply:

65 (1) To the extent the insurer that conducted or caused to be
66 conducted the insurance compliance self-audit expressly waives the
67 privilege by so stating its intent in writing;

68 (2) To the extent that, in a civil, criminal or administrative action or
69 proceeding, the court or hearing officer determines that the insurance
70 compliance self-audit privilege is inapplicable, provided the court or
71 hearing officer shall review the communication in camera before
72 making such a determination; or

73 (3) To the extent the court or hearing officer determines that the
74 insurance compliance self-audit was undertaken in furtherance of a
75 criminal offense and all of the following factors are present: (A) The
76 agency has a compelling need for the information; (B) the information

77 is not otherwise available; and (C) the agency is unable to obtain the
78 substantial equivalent of the information by any means without
79 incurring unreasonable cost and delay.

80 (b) In ordering disclosure under this section, the court or hearing
81 officer shall only compel the disclosure of communications that are
82 relevant to the issues in dispute in the underlying proceeding. A party
83 unsuccessfully opposing disclosure may apply for an appropriate
84 order protecting the communication from further disclosure. There
85 shall be an immediate right of appeal of any order under this section.

86 (c) An insurer asserting the insurance compliance self-audit
87 privilege in response to a request for disclosure under this section shall
88 provide at the time of filing of any objection to the disclosure all of the
89 following information:

90 (1) The date of the communication;

91 (2) The identity of the person conducting the audit;

92 (3) The general nature of the activities covered by the insurance
93 compliance self-audit; and

94 (4) An identification of the communications for which the privilege
95 is being asserted.

96 (d) A party seeking disclosure under subdivision (2) of subsection
97 (a) of this section shall have the burden of proving that the privilege is
98 inapplicable. A party seeking disclosure under subdivision (3) of
99 subsection (a) of this section shall have the burden of proving the
100 elements set forth in said subdivision.

101 (e) The parties may at any time stipulate to entry of an order
102 directing that specific communications pertaining to an insurance
103 compliance self-audit are or are not subject to the privilege created by
104 sections 1 to 11, inclusive, of this act.

105 (f) All communications disclosed pursuant to this section shall be
106 placed under seal and the parties to the proceeding shall treat the
107 sealed communications as confidential, as if no proceeding had
108 occurred.

109 Sec. 5. (NEW) (a) An insurer may voluntarily disclose a
110 communication pertaining to an insurance compliance self-audit to the
111 commissioner, or the commissioner's designee, as a confidential
112 communication without waiving the privilege created by sections 1 to
113 11, inclusive, of this act.

114 (b) Upon order of the commissioner, an insurer shall disclose a
115 communication pertaining to an insurance compliance self-audit to the
116 commissioner, or the commissioner's designee, as a confidential
117 communication without waiving the privilege created by sections 1 to
118 11, inclusive, of this act.

119 (c) Any provision of law or rule permitting the commissioner to
120 make information, records and reports public, as well as provisions
121 permitting the commissioner to exchange information and data with
122 the National Association of Insurance Commissioners shall not apply
123 to any communication pertaining to an insurance compliance self-
124 audit disclosed to the commissioner under this section. Any
125 communication so disclosed to the commissioner shall remain the
126 property of the insurer. To the extent the commissioner has the
127 authority to compel the disclosure of any communication pertaining to
128 an insurance compliance self-audit under other provisions of
129 applicable law, any communication so disclosed to the commissioner
130 may not be disclosed to any other person and shall be accorded the
131 same confidentiality and other protections as otherwise provided
132 under sections 1 to 11, inclusive, of this act.

133 (d) Any use of a communication pertaining to an insurance
134 compliance self-audit disclosed to the commissioner under this section,
135 whether under a claim of authority to compel disclosure or not, shall
136 be limited to determining whether any disclosed defects in an insurer's

137 policies or procedures or inappropriate treatment of customers has
138 been remedied or that an appropriate plan for their remedy is in place.
139 The commissioner may not impose any type of administrative fine or
140 penalty as to any subject addressed or matter covered in a
141 communication pertaining to an insurance compliance self-audit so
142 disclosed, except where there is clear and convincing evidence that the
143 insurer has failed to undertake reasonable corrective action.

144 Sec. 6. (NEW) Any communication pertaining to an insurance
145 compliance self-audit disclosed to any agency shall not be subject to
146 any disclosure or production under chapter 14 of the general statutes.
147 Any disclosure of such communication, whether voluntary or
148 pursuant to compulsion of law, shall not constitute a waiver of the
149 privilege with respect to any other person. To the extent a provision of
150 law permits an agency to disclose to another agency any such
151 communication, such disclosure shall not be made without first
152 verifying that the recipient agency has the legal authority to protect the
153 communication consistent with the operation of sections 1 to 11,
154 inclusive, of this act, and in the case of a law enforcement agency, shall
155 not be made in the absence of a duly issued subpoena.

156 Sec. 7. (NEW) (a) The privilege created by sections 1 to 11, inclusive,
157 of this act shall not extend to any of the following: (1) Documents,
158 data, reports or other information required to be collected, developed,
159 maintained, reported or otherwise made available to an agency
160 pursuant to state or federal law or order, except that any disclosure
161 under section 4, 5 or 6 of this act shall not in itself make this exception
162 applicable; (2) information obtained by observation or monitoring by
163 any agency; or (3) information obtained from a source independent of
164 the insurance compliance audit.

165 (b) Nothing in this section shall be construed to operate as a waiver
166 of the privilege created by sections 1 to 11, inclusive, of this act.

167 Sec. 8. (NEW) No person shall use any communication privileged
168 pursuant to sections 1 to 11, inclusive, of this act to discover any other

169 communication and any communication so discovered shall be
170 inadmissible in any civil, criminal or administrative action or
171 proceeding.

172 Sec. 9. (NEW) Nothing in sections 1 to 11, inclusive, of this act shall
173 limit, waive or abrogate the scope or nature of any privilege existing
174 under statute, rule or common law including, but not limited to, the
175 work product doctrine, the attorney-client privilege or the subsequent
176 remedial measures exclusion.

177 Sec. 10. (NEW) An agency shall maintain the confidentiality of
178 information protected under sections 1 to 11, inclusive, of this act,
179 subject to the specific exceptions set forth in section 7 of this act.

180 Sec. 11. (NEW) Any person who is found to have intentionally or
181 recklessly disclosed any communication to a third party in violation of
182 sections 1 to 11, inclusive, of this act shall be guilty of a class A
183 misdemeanor.

184 Sec. 12. This act shall take effect from its passage.

Statement of Purpose:

To create a privilege for certain communications relating to an insurer's voluntary internal evaluations, reviews, assessments or audits that were not required by law.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]