

**INSURANCE FRAUD IN THE FIFTH DEGREE**  
**(A Misdemeanor)**  
**PENAL LAW §176.10**  
**(Committed on or after Nov. 1, 1998)**

The \_\_\_\_\_ count is Insurance Fraud in the Fifth Degree.

Under our law, a person is guilty of Insurance Fraud in the Fifth Degree when that person commits a fraudulent insurance act.

The term “fraudulent insurance act” has its own special meaning in our law.<sup>1</sup> I will now give you the meaning of that term.

A FRAUDULENT INSURANCE ACT is committed by any person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by:

*Select appropriate alternative(s):*

an insurer,  
self insurer, [or]  
purported insurer, [or]  
purported self insurer, [or]  
any agent thereof,

any written statement as part of, or in support of,

*Select appropriate alternative(s):*

an application for the issuance of, or the rating of, a commercial insurance policy, [or]

a certificate or evidence of self insurance for commercial insurance or commercial self insurance,

---

<sup>1</sup> If applicable, substitute definition of “fraudulent health care insurance act.” Penal Law § 176.05(2).

[or]

a claim for payment or other benefit pursuant to an insurance policy or self insurance program for commercial or personal insurance

which that person knows to: (i) contain materially false information concerning any fact material thereto; or (ii) conceal, for the purpose of misleading, information concerning any fact material thereto.<sup>2</sup>

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “knowingly” and “intent.”<sup>3</sup>

---

<sup>2</sup> Penal Law §176.05(1).

<sup>3</sup> If appropriate, define one or more of the following terms.

PERSON includes any individual, firm, association or corporation.  
Penal Law §176.00(3)

STATEMENT includes, but is not limited to, any notice, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test result, and other evidence of loss, injury or expense. Penal Law §176.00(2).

INSURANCE POLICY means any agreement or other transaction whereby one party, the “insurer,” is obligated to confer benefit of pecuniary value upon another party, the “insured” or “beneficiary,” dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such event. A fortuitous event means any occurrence or failure to occur which is, or is assumed by the parties to be, to a substantial extent beyond the control of either party. Penal Law § 176.00(1); Insurance Law §1101(a).

[The definition includes reinsurance [contracts, purported insurance policies and purported reinsurance contracts.]

A person KNOWINGLY acts with respect to conduct or to a circumstance when that person is aware that his or her conduct is of such nature or that such circumstance exists.<sup>4</sup>

INTENT means conscious objective or purpose. Thus, a person acts with intent to defraud when that person's conscious

---

["Contract of warranty, guarantee, or suretyship" means an insurance contract only if made by a warrantor, guarantor or surety who or which , as such is doing an insurance business.]

COMMERCIAL INSURANCE means insurance other than personal insurance, and shall also include insurance providing disability benefits [pursuant to article nine of the workers' compensation law], insurance providing worker's compensation benefits [pursuant to the provisions of the worker's compensation law] and any program of self insurance providing similar benefits. Penal Law §176.00(5).

PERSONAL INSURANCE means a policy of insurance insuring a natural person against any of the following contingencies:

- (a) loss of or damage to real property used predominantly for residential purposes and which consists of not more than four dwelling units, other than hotels, motels and rooming houses;
- (b) loss of or damage to personal property which is not used in the conduct of a business;
- (c) losses or liabilities arising out of the ownership, operation or use of a motor vehicle, predominantly used for non-business purposes;
- (d) other liabilities for loss of, damage to, or injury to persons or property, not arising from the conduct of a business;
- (e) death, including death by personal injury, or the continuation of life, or personal injury by accident, or sickness, disease or ailment [excluding insurance providing disability benefits pursuant to article nine of the workers' compensation law].

A policy of insurance which insures any of these contingencies as well as other contingencies shall be personal insurance if that portion of the annual premium attributable to these contingencies exceeds that portion attributable to other contingencies. Penal Law §176.00(4).

<sup>4</sup>Penal Law §15.05(2).

objective or purpose is to do so.<sup>5</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove from all of the evidence in the case beyond a reasonable doubt both of the following two elements:

1. That on or about (*date*) in the county of (*county*), the defendant (*defendant's name*) committed a fraudulent insurance act; and
2. The defendant did so knowingly and with intent to defraud.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Insurance Fraud in the Fifth Degree as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Insurance Fraud in the Fifth Degree as charged in the \_\_\_\_\_ count.

---

<sup>5</sup>Penal Law §15.05(1).