

SENATE BILL 2281

By Pody

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 8; Title 10; Title 38 and Title 71, relative to the
prevention of fraud.

WHEREAS, disability fraud can involve malingering, filing multiple applications, concealing work or other activities, and exaggerating or lying about disabilities costing the State of Tennessee millions of dollars every year; and

WHEREAS, the United States Social Security Administration (SSA) - Office of Inspector General (OIG), Cooperative Disability Investigations (CDI) program's primary mission is to obtain evidence that can resolve questions of fraud before benefits are ever paid; and

WHEREAS, SSA and OIG jointly established the CDI program in fiscal year 1998, in conjunction with state Disability and Determination Services (DDS) and state or local law enforcement agencies, to effectively pool resources and expertise and prevent fraud in SSA's disability programs; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding the following language as a new chapter:

4-42-101.

(a) There is created a Tennessee office of cooperative disability investigation, referred to in this chapter as the "division". The division shall be attached to the office of the governor. The division shall be headed by an agency director, who will also serve as a special agent for investigative purposes. The division shall be separate and distinct from any other bureau or agency in the state, and will work primarily with the United States social security administration - cooperative disability investigation unit.

(b) The division will be a permanent agency of state law enforcement officers, to be known as special agents, who will work solely with the United States social security administration - cooperative disability investigation unit, for the purpose of saving taxpayer funds by investigating disability claims under the United States social security administration's Title II and Title XVI programs that state disability examiners believe are suspicious. The United States social security administration - cooperative disability investigation unit program's primary mission is to obtain evidence that can resolve questions of fraud before benefits are ever paid. The United States social security administration - cooperative disability investigation unit also provides reports to disability and determination services examiners during continuing disability reviews that can be used to cease benefits of in-payment beneficiaries.

(c) All fiscal responsibilities needed to fund and operate the division, including, but not limited to, salaries, overtime, insurance benefits, retirement benefits, paid leave, and operating costs, will be provided by the United States social security administration. This will be detailed in a memorandum of understanding between the United States social security administration and the division.

(d) State special agents that will work with the United States social security administration - cooperative disability investigation unit team will investigate allegations of disability fraud. Upon completion of an investigation, a report detailing the investigation will be sent to the disability determination services, where disability determination services staff serves as the ultimate decision-making entity in determining whether a person is eligible to receive a monthly disability benefit payment. If the claimant is already receiving benefits, disability determination services, the United States social security administration, or both, will determine whether the person's benefits should be continued or terminated. There will be the possibility of criminal prosecution, the imposition of civil monetary penalties, or administrative sanctions.

4-42-102.

The division shall have the authority to:

(1) Investigate the allegation of disability fraud by interviewing the applicant and third parties, conducting surveillance of the applicant, or both interviews and surveillance;

(2) Investigate civil and criminal fraud and abuse, and have the authority to investigate any other violations of state criminal law;

(3) Cooperate with any other law enforcement agency, and where a preliminary investigation of fraud and abuse by a provider establishes a sufficient basis to warrant a full investigation refer matters to the appropriate enforcement authority for criminal prosecution;

(4) Refer matters to the appropriate enforcement authorities for civil proceedings of funds which have been inappropriately paid by the disability program, including, but not limited to, referral to the attorney general for civil recovery; and

(5) Cooperate with other state agencies to investigate disability fraud and abuse.

4-42-103.

(a)

(1) The division, when conducting any investigation, shall have the power to issue subpoenas, and compel the attendance of witnesses, the examination of such witnesses under oath, and the production of books, accounts, papers, records, and documents relating to such investigation.

(2) In the case of a failure of any person, firm, or corporation so subpoenaed to attend or to produce the specified records, and after reasonable notice to such person, firm, or corporation, the division may seek judicial

enforcement of the subpoena by filing, through the attorney general, a petition with the circuit or chancery court of Davidson County or of the judicial district in which such person, firm, or corporation resides. Such petition shall incorporate, or be accompanied by, a certification regarding the notice given and the failure of such person, firm, or corporation to attend or produce the records.

(3) Upon the filing of such a petition in proper form, the court shall order the person, firm, or corporation named in the petition to appear and show cause why they should not comply with the subpoena or be held in contempt for failure to comply. The court shall have authority to employ all judicial power as provided by law to compel compliance with the subpoena, including those powers granted in §§ 29-9-103 - 29-9-106. The court shall be authorized to impose costs and sanctions against any such person, firm, or corporation, in the same manner and on the same basis as may be imposed for failure to comply with judicially issued subpoenas under the Tennessee Rules of Civil Procedure.

(4) The court may order the person, firm, or corporation to comply, and shall have the authority to punish each day of failure to comply with such order as a separate contempt of court.

(5) The subpoena enforcement remedies set forth in this subsection (a) shall be cumulative, and not exclusive, of any other remedies provided by law for the enforcement of such subpoenas.

(b) The division shall have the power to compel the production of current and former employment records during an investigation. Employment records include, but are not limited to, employment details, wages, and insurance information of disability applicants and enrollees. Employment records shall be open to inspection and be subject to being copied by a special agent at any reasonable time and as often as may

be necessary. The division shall also have the right to compare information reported to United States social security administration and the bureau of TennCare by applicants or enrollees with data maintained by the credit bureaus.

(c) The complete patient record of any applicant for disability benefits shall be made available to the division upon request. This includes any and all services, goods, and pharmaceuticals dispensed regardless of payment source. Records accessed during an investigation shall be protected in accordance with state and federal privacy laws.

4-42-104.

(a) The staff of the division shall include law enforcement officers, as defined in § 39-11-106, to be known as special agents and shall be qualified in accordance with § 38-8-106, who have successfully completed a training course approved by the Tennessee peace officer standards and training commission. All special agents shall undergo a federal background investigation conducted by the United States social security administration - office of inspector general, who must also approve any appointment of personnel to the division.

(b) Any duly authorized special agent who has been specifically designated by the division to enforce this chapter is authorized and empowered to go armed while on active duty engaged in enforcing this chapter. Any special agent is also considered a commissioned qualified criminal investigator for the purposes of the Law Enforcement Officers Safety Act of 2004, P.L. 108-277, and is also directed, pursuant to § 39-17-1315(a)(1), to carry firearms at all times, regardless of regular duty hours or assignments. Special agents will also be empowered to execute search warrants and do all acts incident thereto in the same manner as search warrants may be executed by sheriffs and other peace officers.

(c) Special agents of the division, shall have the authority and power to make arrests for any state felony or misdemeanor violations, and will also have the authority to make traffic stops in an emergency situation where the safety of the public is in jeopardy.

4-42-105.

(a) All records obtained pursuant to this chapter shall be treated as confidential investigative records of the division and shall not be open to public inspection.

(b) Notwithstanding any other law to the contrary, no person shall be subject to any civil or criminal liability for providing the division with access to data as required by this chapter.

(c) Nothing in this chapter shall be construed to require any person or entity to create new records or data that did not exist at the time of the request; provided, that no person or entity may destroy existing data after having been put on notice that access to the data is required pursuant to this section.

4-42-106. The division is a professional and dedicated law enforcement agency capable of complex and difficult investigations. Recognizing that the image and perception of the agency rests on each employee, the division will emphasize professionalism and continual training of all its special agents.

SECTION 2. The agency director of the Tennessee office of cooperative disability investigation shall have authority to promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The rules may be promulgated as emergency rules. The director is designated as the agency person to review initial orders and issue final agency orders pursuant to the Uniform Administrative Procedures Act.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.