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**SENATE BILL NO. 517**

Offered January 10, 2018

Prefiled January 9, 2018

*A BILL to amend and reenact §§ 52-36, 52-37, and 52-43 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 9 of Title 52 sections numbered 52-44.1 through 52-44.10, relating to insurance fraud; false and fraudulent insurance claims prevention; civil actions brought by a person for the person and for the Commonwealth; civil penalties and remedial damages.*

Patron—Mason

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 52-36, 52-37, and 52-43 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9 of Title 52 sections numbered 52-44.1 through 52-44.10 as follows:**

**§ 52-36. Definitions.**

As used in this chapter, the following words shall have the following meanings unless the context requires otherwise:

"Attorney General" means the Attorney General of Virginia, the Chief Deputy Attorney General, and other deputies, counsels, or assistant attorneys general employed by the Office of the Attorney General and designated by the Attorney General to act pursuant to this chapter.

"Commission" means the State Corporation Commission.

"Insurance fraud" means any commission or attempted commission of the criminal acts and practices defined in § 18.2-178 which involve any type of insurance as defined in §§ 38.2-110 through 38.2-122.2 and 38.2-124 through 38.2-132.

"Insurance policy" means a contract or other written instrument between an insured and insurer setting forth the obligations and responsibilities of each party.

"Insurance premium finance company" has the same meaning as specified in § 38.2-4700.

"Insurance professional" means adjusters, agents, managing general agents, surplus lines brokers, reinsurance intermediaries, insurance consultants, brokers, and attorneys-in-fact.

"Insurance transaction," "insurance business," and "business of insurance" include solicitation, negotiations preliminary to execution of an insurance contract, execution of an insurance contract and the transaction of matters subsequent to execution of a contract and arising out of it, and matters arising out of any relationship among or between an insured, an insurer and a third party for which an insurance policy provides coverage.

"Insured" means any person covered by an insurance policy.

"Insurer" means any person subject to regulation pursuant to Title 38.2, 46.2, or 65.2 engaged in the business of making, or purporting to make, contracts of insurance and any self-insured private or public employer; however, this term shall not include (i) any person licensed by or subject to regulation pursuant to Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2, (ii) title insurers subject to regulation pursuant to Chapter 46 (§ 38.2-4600 et seq.) of Title 38.2, (iii) continuing care providers subject to registration pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2, and (iv) purchasing groups authorized by Chapter 51 (§ 38.2-5100 et seq.) of Title 38.2.

"Knowing" or "knowingly" means that a person, with respect to information, (i) has actual knowledge of the information, (ii) acts in deliberate ignorance of the truth or falsity of the information, or (iii) acts in reckless disregard of the truth or falsity of the information, and requires no proof of specific intent to defraud.

"Making a false or fraudulent insurance claim" includes:

1. Knowingly presenting or causing to be presented any false or fraudulent claim for the payment of a loss or injury, including payment of a loss or injury under an insurance policy;

2. Knowingly presenting multiple claims for payment under an insurance policy for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud;

3. Knowingly causing or participating in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim for payment under an insurance policy;

4. Knowingly presenting a false or fraudulent claim for payments under an insurance policy of a loss for theft, destruction, damage, or conversion of a motor vehicle, a motor vehicle part, or contents of a motor vehicle;

5. Knowingly preparing, making, or subscribing any writing, with the intent to present or use it, or

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59 *to allow it to be presented, in support of any false or fraudulent claim;*

60 6. *Knowingly making or causing to be made any false or fraudulent claim for payment of a health*  
61 *care benefit covered under an insurance policy;*

62 7. *Knowingly submitting a claim for a health care benefit covered under an insurance policy that*  
63 *was not used by, or on behalf of, the claimant;*

64 8. *Knowingly presenting multiple claims for payment covered under an insurance policy of the same*  
65 *health care benefit with an intent to defraud; or*

66 9. *Knowingly concealing, or knowingly failing to disclose the occurrence of, an event that affects any*  
67 *person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of*  
68 *any benefit or payment to which the person is entitled.*

69 "Material" means having a natural tendency to influence, or be capable of influencing, the payment  
70 or receipt of money or property.

71 "Person" means any association, aggregate of individuals, business, company, corporation,  
72 individual, joint-stock company, Lloyds type of organization, organization, partnership, receiver,  
73 reciprocal or interinsurance exchange, trustee, or society.

74 "Superintendent" means the Superintendent of State Police.

75 **§ 52-37. Insurance Fraud Investigation Unit established; powers and duties of Department of**  
76 **State Police.**

77 A. There shall be established within the Department of State Police, Bureau of Criminal  
78 Investigation, the Insurance Fraud Investigation Unit. The purposes of this unit shall be to:

79 1. Initiate independent inquiries and conduct independent investigations when the Department has  
80 reason to believe that insurance fraud may have been or is currently being committed *or that false or*  
81 *fraudulent insurance claims have been made*, and to undertake studies to determine the extent of such  
82 insurance fraud *or the making of false or fraudulent insurance claims.*

83 2. Respond to notification or complaints alleging insurance fraud *or alleging the making of false or*  
84 *fraudulent insurance claims when such notifications or complaints are* generated by federal, state and  
85 local police, other law-enforcement authorities, governmental agencies or units, and any other person.

86 3. Review notices and reports of insurance fraud *or the making of false or fraudulent insurance*  
87 *claims*; select the incidents of suspected fraud *or false or fraudulent insurance claims* that, in its  
88 judgment, require further detailed investigation; and conduct the investigations.

89 4. *In such cases that the Superintendent deems appropriate, bring a civil action under § 52-44.2 and*  
90 *prosecute a civil action on behalf of the Commonwealth when authorized under § 52-44.3.*

91 B. The Superintendent may appoint such agents as he may deem necessary to assist the Department  
92 in carrying out its powers and duties under this chapter.

93 **§ 52-43. Reports.**

94 The Department shall submit an annual report to the Governor and General Assembly no later than  
95 February 15 of each year on the progress made in deterring insurance fraud. Such report shall detail (i)  
96 all expenditures and receipts of the Insurance Fraud Investigation Unit; (ii) the uses to which these  
97 funds were put, including payment of salaries and expenses, purchases of equipment and supplies, and  
98 other expenditures by type; and (iii) the results achieved as a consequence of such expenditures,  
99 including the number of notifications or inquiries received, the number of inquiries and investigations  
100 undertaken, the number of inquiries to which an investigation was not initiated, the number of arrests,  
101 the number of files presented to prosecutors, the number of prosecutions, the number of convictions and  
102 the total dollar amount of restitution resulting from the operation of the Insurance Fraud Investigation  
103 Unit. *Each report submitted in 2019 and subsequent years shall also include the following information*  
104 *with respect to each civil action brought under this chapter alleging the making of a false or fraudulent*  
105 *insurance claim: (a) the number of such actions instituted; (b) the number of such actions concluded;*  
106 *and (c) with respect to each such action concluded, the amount of any civil penalties and damages*  
107 *awarded and collected and the identity of the person, governmental agency, or other entity to which any*  
108 *such sums were distributed.*

109 **§ 52-44.1. False or fraudulent claims; civil penalty.**

110 A. A person who knowingly obtains, attempts to obtain, or causes to be obtained, by deception,  
111 control over the property of any insurer by the making of a false or fraudulent insurance claim or by  
112 causing a false or fraudulent insurance claim to be made on an insurance policy, or who conspires to  
113 make a false or fraudulent insurance claim on an insurance policy, intending to deprive an insurance  
114 company permanently of the use and benefit of that property, shall be liable to the Commonwealth for  
115 (i) remedial damages equal to three times the amount of the property wrongfully obtained or, if no  
116 property was wrongfully obtained, twice the value of the property attempted to be obtained, whichever  
117 amount is greater, and (ii) a civil penalty of not less than \$5,500 and not more than \$11,000.

118 B. A person committing an act described in subsection A shall be liable to the Commonwealth for  
119 reasonable attorney fees and costs of a civil action brought to recover any civil penalties or damages  
120 for which such person is liable as provided in subsection A. Such fees and costs shall not be included in

any damages or civil penalties recovered in a civil action based on the commission of an act described in subsection A.

C. A court of proper jurisdiction shall have the power to grant other equitable relief, including temporary injunctive relief, as is necessary to recover or to prevent the transfer or conversion of the property of an insurer resulting from an act described in subsection A.

D. The civil penalties and damages prescribed in subsection A shall be assessed for each false or fraudulent insurance claim upon an insurer in which the person committing an act described in subsection A participated.

E. The civil penalties and damages set forth in subsection A are intended to be remedial rather than punitive and shall not preclude, nor be precluded by, a criminal prosecution for the same conduct. If the court finds, after considering the goals of disgorging unlawful profit, restitution, compensating the Commonwealth for the costs of investigation and prosecution, and alleviating the social costs of increased insurance rates due to false and fraudulent insurance claims, that such civil penalties or damages would be punitive and would preclude, or be precluded by, a criminal prosecution, the court shall reduce that civil penalty or damages, or both, appropriately.

F. This section shall not be construed to preclude the applicability of any other provision of criminal law or equitable remedy that applies or may apply to any act committed or alleged to have been committed by a person.

**§ 52-44.2. Investigation, civil action.**

The Department or the Attorney General may investigate any allegation of an act described in subsection A of § 52-44.1. If the Department or the Attorney General finds that a person has committed or is committing such an act, the Superintendent or Attorney General may bring a civil action to recover and collect civil penalties and damages as prescribed in § 52-44.1. Before the Superintendent may bring that action, the Superintendent shall present the evidence obtained by the Department to the Attorney General, and the Attorney General may proceed with the civil action on behalf of the Commonwealth. If the Attorney General elects not to pursue the matter due to insufficient resources, then the Superintendent may proceed with the civil action on behalf of the Commonwealth.

**§ 52-44.3. Civil actions filed by private persons; Commonwealth may intervene.**

A. A person, including an insurer, may bring a civil action for the person and for the Commonwealth to recover and collect civil penalties and damages as prescribed in § 52-44.1. The action shall be brought by filing a motion in the name of the Commonwealth. The motion shall describe the act set out in subsection A of § 52-44.1 on which such action is based and name the person alleged to have committed the act as defendant. The action may be dismissed only if the court and the Superintendent or the Attorney General, whichever is acting on behalf of the Commonwealth as provided in subsection B, gives written consent to the dismissal and their reasons for consenting.

B. The Commonwealth shall act through either the Superintendent or the Attorney General. If the Superintendent seeks to act in such capacity and the Attorney General does not, the Superintendent shall so act. If the Superintendent does not seek to act in such capacity, the Attorney General shall so act. If both the Superintendent and the Attorney General seek to act in such capacity, the Attorney General shall have precedence.

C. A copy of the motion and written disclosure of substantially all material evidence and information the person possesses shall be served on the Superintendent and the Attorney General. The motion shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The Commonwealth may elect to intervene and proceed with the action within 120 days after it receives both the motion and the material evidence and information.

D. The Commonwealth may, for good cause shown, move the court for extensions of the time during which the motion remains under seal. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any motion for judgment filed under this section until 21 days after the motion is unsealed and served upon the defendant.

E. Before the expiration of the 120-day period or any extensions obtained under subsection C, the Commonwealth shall either proceed with the action, in which case the action shall be conducted by the Commonwealth, or notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to maintain the action.

F. When a person brings an action under this section, no person other than the Commonwealth may intervene or bring a related action based on the facts underlying the pending action unless another statute or common law authorizes that action.

**§ 52-44.4. Rights of private plaintiff and Commonwealth.**

A. If the Commonwealth proceeds with an action brought by a person under § 52-44.3, the Commonwealth shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in this section.

182 *B. The Commonwealth may dismiss the action notwithstanding the objections of the person initiating*  
183 *the action if the person has been notified by the Commonwealth of the filing of the motion and the court*  
184 *has provided the person with an opportunity for a hearing on the motion.*

185 *C. The Commonwealth may settle the action with the defendant notwithstanding the objections of the*  
186 *person initiating the action if the court determines, after a hearing, that the proposed settlement is fair,*  
187 *adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing*  
188 *may be held in camera. The Commonwealth may, for good cause shown, move the court for a partial*  
189 *lifting of the seal to facilitate the investigative process or settlement.*

190 *D. Upon a showing by the Commonwealth that unrestricted participation during the course of the*  
191 *litigation by the person initiating the action would interfere with or unduly delay the Commonwealth's*  
192 *prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court*  
193 *may, in its discretion, impose limitations on the person's participation, such as (i) limiting the number of*  
194 *witnesses the person may call, (ii) limiting the length of the testimony of such witnesses, (iii) limiting the*  
195 *person's cross-examination of witnesses, and (iv) otherwise limiting the participation by the person in*  
196 *the litigation.*

197 *E. Upon a showing by the defendant that unrestricted participation during the course of the litigation*  
198 *by the person initiating the action would be for purposes of harassment or would cause the defendant*  
199 *undue burden or unnecessary expense, the court may limit the participation by the person in the*  
200 *litigation.*

201 *F. If the Commonwealth elects not to proceed with the action, the person who initiated the action*  
202 *shall have the right to conduct the action. If the Commonwealth so requests, it shall be served with*  
203 *copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts*  
204 *at the Commonwealth's expense. When a person proceeds with the action, the court, without limiting the*  
205 *status and rights of the person initiating the action, may nevertheless permit the Commonwealth to*  
206 *intervene at a later date upon a showing of good cause.*

207 *G. Whether or not the Commonwealth proceeds with the action, upon a showing by the*  
208 *Commonwealth that certain actions of discovery by the person initiating the action would interfere with*  
209 *the Commonwealth's investigation or prosecution of a criminal or civil matter arising out of the same*  
210 *facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be*  
211 *conducted in camera. The court may extend the 60-day period upon a further showing in camera that*  
212 *the Commonwealth has pursued the criminal or civil investigation or proceedings with reasonable*  
213 *diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil*  
214 *investigation or proceedings.*

215 *H. Notwithstanding the provisions of § 52-44.3, the Commonwealth may elect to pursue its claim*  
216 *through any alternate remedy available to the Commonwealth. If any such alternate remedy is pursued*  
217 *in another proceeding, the person initiating the action shall have the same rights in such proceeding as*  
218 *such person would have had if the action had continued under this section. Any finding of fact or*  
219 *conclusion of law made in such other proceeding that has become final shall be conclusive on all*  
220 *parties to an action under this chapter. For purposes of this subsection, a finding or conclusion is final*  
221 *if it has been finally determined on appeal to a court of competent jurisdiction of the Commonwealth, if*  
222 *the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or*  
223 *conclusion is not subject to judicial review.*

224 **§ 52-44.5. Proceeds of action; award to private plaintiff; costs and fees.**

225 *A. If the Commonwealth brings an action under § 52-44.2 that results in a judgment for the*  
226 *Commonwealth or a settlement that provides for the payment of moneys to the Commonwealth:*

227 *1. The Commonwealth shall receive an amount for reasonable expenses that the court finds to have*  
228 *been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs*  
229 *shall be awarded against the defendant; and*

230 *2. The balance of the civil penalties and damages or other sums collected by the Commonwealth*  
231 *shall be paid into the state treasury and deposited into the special fund designated Virginia State Police,*  
232 *Insurance Fraud established under § 38.2-415. Such moneys shall be subject to the same provisions that*  
233 *apply to other moneys deposited into the fund under § 38.2-415.*

234 *B. If the Commonwealth proceeds with an action brought by a person under § 52-44.3 and the*  
235 *action results in:*

236 *1. A settlement that provides for the payment of moneys, including an amount for the*  
237 *Commonwealth's reasonable expenses necessarily incurred, plus reasonable attorney fees and costs, the*  
238 *court may allocate the funds pursuant to the settlement agreement if the court finds it is in the interests*  
239 *of justice to follow the settlement agreement or, if the court does not find it in the interests of justice to*  
240 *follow the settlement agreement, the court shall allocate the funds as provided in subdivisions 2 a*  
241 *through e; or*

242 *2. A judgment for civil penalties and damages that provides for the payment of moneys to the*  
243 *Commonwealth, and the Commonwealth and the person bringing the claim have stipulated to an*

allocation of the proceeds, the court may allocate the funds pursuant to the stipulation if the court finds it is in the interests of justice to follow the stipulation. If there is no stipulation regarding allocation, or if the court finds that following such stipulation is not in the interests of justice, the court shall allocate the funds according to the following priority:

a. The Commonwealth shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant;

b. The person bringing the action shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant;

c. If the person bringing the suit has paid moneys to the defendants as part of the acts alleged in the motion, that person shall receive the amount paid to the defendants;

d. The person who brought the action shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 15 percent but not more than 25 percent of the proceeds of the action, depending upon the extent to which the person substantially contributed to the prosecution of the action; and

e. The balance of the civil penalties and damages or other sums collected by the Commonwealth shall be paid into the state treasury and deposited into the special fund designated Virginia State Police, Insurance Fraud established under § 38.2-415. Such moneys shall be subject to the same provisions that apply to other moneys deposited into the fund under § 38.2-415.

C. If the Commonwealth does not proceed with an action brought by a person under § 52-44.3 and the action results in:

1. A settlement that provides for the payment of moneys, the parties shall serve the Superintendent and the Attorney General with complete copies of any and all settlement agreements, and terms and conditions, at least 10 days prior to filing any motion for allocation under this section with the court. The court may allocate the funds pursuant to the settlement agreement if, after the court's ruling on objection by the Commonwealth, if any, the court finds it is in the interests of justice to follow the settlement agreement. Such allocation shall include an amount for the Commonwealth's reasonable expenses necessarily incurred, plus reasonable attorney fees and costs. If the court does not find it in the interests of justice to follow the settlement agreement, the court shall allocate the funds as provided in subdivisions 2 a through e; or

2. A judgment for civil penalties and damages that provides for the payment of moneys to the Commonwealth, and the Commonwealth and the person bringing the claim have stipulated to an allocation of the proceeds, the court may allocate the funds pursuant to the stipulation if the court finds it is in the interests of justice to follow the stipulation. If there is no stipulation regarding allocation, or if the court finds that following such stipulation is not in the interests of justice, the court shall allocate the funds according to the following priority:

a. The person bringing the action shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant;

b. The Commonwealth shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant;

c. If the person bringing the suit has paid moneys to the defendants as part of the acts alleged in the motion, that person shall receive the amount paid to the defendants;

d. The person who brought the action shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent but not more than 30 percent of the proceeds of the action, depending upon the extent to which the person substantially contributed to the prosecution of the action; and

e. The balance of the civil penalties and damages or other sums collected by the Commonwealth shall be paid into the state treasury and deposited into the special fund designated Virginia State Police, Insurance Fraud established under § 38.2-415. Such moneys shall be subject to the same provisions that apply to other moneys deposited into the fund under § 38.2-415.

D. Notwithstanding anything in subdivision B 2 d or C 2 d to the contrary, where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a Virginia legislative or administrative report, in a hearing, audit, or investigation, or from the news media, the court may award to such person such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

E. Whether or not the Commonwealth proceeds with an action brought by a person under § 52-44.3,

if the court finds that the action was brought by a person who planned and initiated the commission of an act described in subsection A of § 52-44.1 upon which the action was brought, or if the person bringing the action is convicted of criminal conduct constituting insurance fraud, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the Commonwealth to continue the action.

F. If the Commonwealth does not proceed with an action brought by a person under § 52-44.3 and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorney fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

**§ 52-44.6. Certain actions barred.**

A. In no event may a person bring an action under § 52-44.3 that is based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the Commonwealth is already a party.

B. The court shall dismiss an action or claim under § 52-44.3 unless opposed by the Commonwealth if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil, or administrative hearing, in a Virginia legislative or administrative report, in a hearing, audit, or investigation, or from the news media, unless the action is brought by the Commonwealth or the person bringing the action is an original source of the information. For purposes of this section, "original source" means an individual (i) who either prior to a public disclosure has voluntarily disclosed to the Commonwealth the information on which the allegations or transactions in a claim are based or (ii) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions and who has voluntarily provided the information to the Commonwealth before filing an action under § 52-44.3 that is based on the information.

**§ 52-44.7. Retaliatory discharge; remedy.**

Any employee shall be entitled to all relief necessary to make that employee whole, if that employee is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against (collectively, an act of discrimination) in the terms and conditions of employment because of lawful acts done by the employee or associated others in furtherance of an action under § 52-44.3 or other efforts to prevent or remedy one or more of the acts described in subsection A of § 52-44.1. Relief shall include reinstatement with the same seniority status that employee would have had but for the act of discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the act of discrimination, including litigation costs and reasonable attorney fees. An action under this section may be brought in a court of competent jurisdiction for the relief provided in this section, but may not be brought more than three years after the date the act of discrimination occurred. The remedies under this section are in addition to any other remedies provided by existing law.

**§ 52-44.8. Liability for expenses.**

Except as specifically provided otherwise in this chapter, the Commonwealth shall not be liable for expenses a person incurs in bringing, prosecuting, or intervening in an action under § 52-44.3.

**§ 52-44.9. Procedure; limitations.**

A. A civil action under § 52-44.2 or 52-44.3 may not be brought (i) more than six years after the date on which the act described in subsection A of § 52-44.1 is committed or (ii) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the Superintendent or Attorney General, but in that event no more than 10 years after the date on which the violation is committed, whichever occurs last.

B. If the Commonwealth elects to intervene and proceed with an action brought under § 52-44.3, the Commonwealth may file its own motion or amend the motion of a person who has brought an action under § 52-44.3 to clarify or add detail to any claim in which the Commonwealth is intervening and to add any additional claim for which the Commonwealth contends it is entitled to relief. Any motion filed by the Commonwealth pursuant to this subsection shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the Commonwealth arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in such person's motion.

C. In any action brought under § 52-44.2 or 52-44.3, the Commonwealth shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

D. Notwithstanding any other provision of law, a final judgment rendered in favor of the Commonwealth in any criminal proceeding charging insurance fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and which is brought under § 52-44.2 or 52-44.3.

**§ 52-44.10. Civil investigative demands.**

367       Whenever the Attorney General has reasonable cause to believe that any person has engaged in, or  
368 is engaging in, or is about to engage in, any act described in subsection A of § 52-44.1, the Attorney  
369 General is empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply,  
370 *mutatis mutandis*, to civil investigative demands issued pursuant to this section.

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