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SENATE BILL NO. 758

Offered January 8, 1997

A BILL to amend the Code of Virginia by adding in Chapter 6 of Title 18.2 an article numbered 9, consisting of sections numbered 18.2-246.1 and 18.2-246.2, and in Title 38.2 a chapter numbered 57, consisting of sections numbered 38.2-5700 through 38.2-5705, relating to Insurance fraud; delegation of related duties to the State Corporation Commission.

Patrons—Colgan, Barry, Bolling, Chichester, Holland, Martin, Quayle, Reasor and Stosch; Delegates: Hargrove, Heilig and Morgan

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 6 of Title 18.2 an article numbered 9, consisting of sections numbered 18.2-246.1 and 18.2-246.2, and in Title 38.2 a chapter numbered 57, consisting of sections numbered 38.2-5700 through 38.2-5705 as follows:

Article 9.

Insurance Fraud.

§ 18.2-246.1. Definitions.

As used in this article, the following words shall have the following meanings:

"Commission" means the State Corporation Commission.

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

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

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

"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 of the Code of Virginia engaged in the business of making, or purporting to make, annuity contracts, subscription contracts, or contracts of insurance, except that 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) continuing care providers subject to registration pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2, and (iii) purchasing groups authorized by Chapter 51 (§ 38.2-5100 et seq.) of Title 38.2.

§ 18.2-246.2. Insurance fraud.

A. Any person who knowingly and with the intent to injure, defraud, or deceive and for the purpose of depriving another of property or for pecuniary gain, commits any of the following acts, is guilty of insurance fraud, which shall be punishable as larceny in accordance with §§ 18.2-95 and 18.2-96:

1. Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, insurance professional or an insurance premium finance company in connection with an insurance transaction or insurance premium finance transaction, any information which contains misrepresentations as to any material fact, or which fails to disclose a material fact, concerning any of the following:

a. The application for, rating of, or renewal of any insurance policy;

b. A claim for payment or benefit pursuant to any insurance policy;

c. Payments made in accordance with the terms of any insurance policy;

d. The application used in any insurance premium finance transaction;

e. The solicitation, negotiation, procurement or the effecting of any insurance policy;

f. An application for licensure, approval or certificate of authority from the Commission;

g. The financial condition of an insurer; or

h. The acquisition, formation, merger, affiliation or dissolution of any insurer.

2. Solicits, negotiates, procures, or effects new or renewal insurance risks on behalf of an insolvent insurer.

3. Removes the assets or records of assets, transactions or affairs or a material part thereof, from

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60 the home office or other place of business of the insurer, or from the place of safekeeping of the
61 insurer, or destroys or sequesters the same from the Bureau of Insurance.

62 4. Solicits, negotiates, procures, or effects new or renewal insurance risks on behalf of an unlicensed
63 insurer where such license is required.

64 5. Operates as an unlicensed insurer where such license is required.

65 6. Solicits, negotiates, procures, or effects new or renewal insurance risks without being licensed
66 where such license is required.

67 B. In addition to suffering the penalties prescribed in §§ 18.2-95 and 18.2-96, but not in lieu thereof,
68 a person convicted of a violation of this section may be ordered to make monetary restitution for any
69 financial loss or damage sustained by any other person as a result of the violation. When restitution is
70 ordered, the court shall determine its extent and methods. The court shall determine whether restitution,
71 if ordered, shall be paid in a single payment or in installments and shall fix a period of time within
72 which payment of restitution is to be made in full.

73 C. Any person convicted of a violation of this section who is licensed to engage in any professional
74 occupation pursuant to the Code of Virginia shall be deemed to have committed an act involving moral
75 turpitude. The court shall notify any appropriate licensing authority in the Commonwealth of the
76 conviction, and may notify appropriate licensing authorities in any other jurisdiction where the licensee
77 holds any similar license.

78 CHAPTER 57.

79 INSURANCE FRAUD.

80 § 38.2-5700. Insurance Fraud: duties and powers of the Commission.

81 A. As used in this chapter, the following words shall have the following meanings:

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

84 "Insurance professional" means adjusters, agents, managing general agents, surplus lines brokers,
85 reinsurance intermediaries, insurance consultants, brokers, attorneys-in-fact, and third party
86 administrators.

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

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

93 "Insurer" means any person subject to regulation pursuant to Title 38.2, 46.2, or 65.2 of the Code of
94 Virginia engaged in the business of making, or purporting to make, annuity contracts, subscription
95 contracts, or contracts of insurance, except that this term shall not include (i) any person licensed by or
96 subject to regulation pursuant to Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2, (ii) continuing care
97 providers subject to registration pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2, and (iii)
98 purchasing groups authorized by Chapter 51 (§ 38.2-5100 et seq.) of Title 38.2.

99 "Insurance fraud" means any acts and practices defined in Article 9 of Title 18.2, and declared
100 therein to be punishable as larceny by § 18.2-246.2, which involve any type of insurance as defined in
101 §§ 38.2-110 through 38.2-134.

102 B. In addition to the powers and duties assigned to the Commission elsewhere in this title, the
103 Commission shall have the following powers and duties:

104 1. To initiate independent inquiries and conduct independent investigations when the Commission has
105 reason to believe that insurance fraud may have been or is currently being committed, and to undertake
106 studies to determine the extent of such insurance fraud.

107 2. To respond to notification or complaints alleging insurance fraud generated by federal, state and
108 local police, other law-enforcement authorities, governmental agencies or units, and the general public.

109 3. To review notices and reports of insurance fraud, and to select the incidents of suspected fraud
110 that, in its judgment, require further detailed investigation and to conduct the investigations.

111 4. To report any violations of § 18.2-246.2 which are disclosed by its investigations and
112 examinations to the appropriate licensing agencies and to assist the appropriate local attorney for the
113 Commonwealth to the extent requested.

114 C. The Commission may appoint such agents, inspectors or investigators as it may deem necessary,
115 to assist it in carrying out its powers and duties under this chapter, and such agents, inspectors or
116 investigators shall have the authority and powers of a sheriff to enforce the provisions of this chapter..
117 Such agents, inspectors or investigators shall have jurisdiction throughout the Commonwealth and are
118 given authority upon displaying a badge or other credential of office to arrest any person found in the
119 act of violating any provisions of § 18.2-246.2.

120 D. No agent, inspector or investigator appointed by the Commission shall receive any compensation
121 from any source other than through the Commission unless approved by the Commission.

E. Every agent, inspector or investigator shall, before entering upon or continuing in his duties, enter into bond with some solvent guaranty company authorized to do business in this Commonwealth as surety, in the penalty of at least \$10,000 and with the condition for the faithful and lawful performance of his duties. Such bond shall be filed with the Commission and the premiums thereon shall be paid out of the fund provided in § 38.2-5705. All persons injured or damaged in any manner by the unlawful, negligent or improper conduct of any such officer while on duty may maintain an action upon such bond; however, the aggregate liability of his surety to all such persons shall in no event exceed the penalty of such bond.

F. If any such agent, inspector or investigator shall be arrested or indicted or otherwise prosecuted on any charge arising out of any act committed in the discharge of his official duties, the Commission may employ special counsel approved by the Attorney General to defend such agent, inspector, or investigator. The compensation for such special counsel employed pursuant to this section shall, subject to the approval of the Attorney General, be paid out of the fund provided in § 38.2-5705.

G. If the Commission seeks evidence, documentation, and related materials located within this Commonwealth pertinent to an investigation or examination and in the possession or control of an insurer or an insurance professional, the Commission may request access to the material. The person so requested shall either make the material available to the Commission, or shall make the material available for inspection or examination by a designated representative of the Commission. If the Commission seeks evidence, documentation, or related materials located outside this Commonwealth pertinent to an investigation or examination, it may designate representatives or deputies, including officials of the state where the material is located, to secure and inspect the evidence, documentation, or materials on its behalf.

H. Confidentiality and immunity from service of process.

1. Papers, records, documents, reports, materials or other evidence relative to the subject of an insurance fraud investigation or examination in the possession of the Commission shall remain confidential and shall not be subject to public inspection.

2. Papers, records, documents, reports, materials or other evidence relative to the subject of an insurance fraud investigation or examination in the possession of the Commission shall not be subject to subpoena or other service of process.

3. Investigators employed by the Commission shall not be subject to subpoena in civil actions by any court in this Commonwealth to testify concerning any matter of which they have knowledge pursuant to a pending or continuing insurance fraud investigation or examination being conducted by the Commission.

I. Cooperation with law-enforcement and licensed authorities and other fraud units.

1. In carrying out its duties under this chapter, the Commission shall cooperate fully with law-enforcement and governmental authorities and with the appropriate local attorney for the Commonwealth.

B. If the Commission determines upon completion of its investigation that it has sufficient evidence of a violation or violations of § 18.2-246.2, it shall so inform the appropriate local attorney for the Commonwealth, who shall prosecute the alleged perpetrators. Within ninety days of receipt of such report by the Commission, and thereafter, whenever requested by the Commission, but not more frequently than every ninety days, the appropriate attorney for the Commonwealth shall inform the Commission as to the status of any prosecution of insurance fraud.

§ 38.2-5701. Duties of insurers, their employees and insurance professionals.

A. If any insurer, any employee thereof, or any insurance professional has knowledge of, or has reason to believe that a violation of 18.2-246.2 will be, is being, or has been committed, that person shall furnish and disclose any information in his possession concerning the fraudulent act to the Commission, subject to any legal privilege protecting such information.

B. All applications for insurance and all claim forms provided and required by an insurer or required by law as a condition of payment of a claim shall contain a statement, permanently affixed to, or included as a part of the application or claim form, that clearly states in substance the following:

"It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits."

The lack of a statement required in this subsection does not constitute a defense in any criminal prosecution under Article 9 of Title 18.2.

§ 38.2-5702. Reward fund.

The Commission, in cooperation with authorized insurers and insurance professionals, may establish and operate a fund to offer monetary rewards for information sufficient to procure conviction in a court of appropriate jurisdiction of a person or persons responsible for acts of insurance fraud. No law-enforcement officer, employee of the Commission, employee of an insurance company or any

183 insurance professional shall be eligible to receive such reward.

184 § 38.2-5703. Privileges and immunities.

185 A. No person when acting without malice shall be subject to liability by virtue of filing reports, or
186 furnishing orally or in writing other information concerning any suspected, anticipated or completed
187 violation of § 18.2-246.2, when the reports or information is provided to or received from the
188 Commission, the National Association of Insurance Commissioners, another insurer, or any federal, state
189 or governmental agency established for the purpose of detecting and preventing insurance fraud.

190 B. No insurer, insurer's officer or employee, insurance professional, or any other person who,
191 without malice, cooperates with, or furnishes evidence or information regarding any suspected violation
192 of § 18.2-246.2 to the Commission shall be subject to civil liability as a result of such cooperation or
193 compliance.

194 C. This section does not abrogate or modify in any way common law or statutory privilege or
195 immunity heretofore enjoyed by any person or entity.

196 § 38.2-5704. Other law-enforcement authority.

197 This chapter shall not:

198 1. Preempt the authority or relieve the duty of any law-enforcement agencies to investigate, examine,
199 and prosecute suspected violations of law.

200 2. Prevent or prohibit a person from voluntarily disclosing any information concerning insurance
201 fraud to any law-enforcement agency rather than the Commission.

202 3., Limit any of the powers granted elsewhere by the laws of this Commonwealth to the Commission
203 to investigate and examine possible violations of law and to take appropriate action.

204 § 38.2-5705. Funding.

205 A. Each licensed insurer doing business in the Commonwealth by writing any type of insurance as
206 defined in §§ 38.2-110 through 38.2-134 shall pay, in addition to any other assessments provided in this
207 title, an assessment not to exceed one quarter of one percent of the direct gross premium income
208 collected during the preceding calendar year. The aggregate assessment collected under this subsection
209 shall not exceed three million dollars per year. The assessment shall be apportioned, assessed and paid
210 as prescribed by § 38.2-403.

211 B. The assessments made by the Commission under subsection A and paid into the state treasury
212 shall be deposited to a special fund designated "Bureau of Insurance Special Fund, Insurance
213 Fraud—State Corporation Commission," and out of such special fund and the unexpended balance
214 thereof shall be appropriated the sums necessary for accomplishing the powers and duties assigned to
215 the Commission under this chapter. Such fund shall be segregated from that fund entitled "Bureau of
216 Insurance Special Fund—State Corporation Commission," the provisions of § 38.2-400 B
217 notwithstanding.

218 2. That the provisions of this act shall become effective on January 1, 1998.

219 3. That the provisions of this act may result in a net increase in periods of imprisonment in state
220 correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation
221 is \$62,500.