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SENATE BILL NO. 758
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Commerce and Labor
 on February 3, 1997)

(Patron Prior to Substitute—Senator Colgan)

A BILL to amend and reenact § 58.1-2508 and 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, 18.2-246.2, and 18.2-246.3, by adding in Chapter 4 of Title 38.2 a section numbered 38.2-415, and by adding in Title 52 a chapter numbered 9, consisting of sections numbered 52-36 through 52-43, relating to insurance fraud; delegation of related duties to the Department of State Police, penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-2508 of the Code of Virginia is amended and reenacted and 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, 18.2-246.2, and 18.2-246.3, in Chapter 4 of Title 38.2 a section numbered 38.2-415, and in Title 52 a chapter numbered 9, consisting of sections numbered 52-36 through 52-43 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.

"Department" means the Department of State Police.

"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) 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.

"Superintendent" means the Superintendent of the Department of State Police.

§ 18.2-246.2. Insurance fraud.

A. A person is guilty of insurance fraud if, in connection with any insurance transaction involving any type of insurance as defined in §§ 38.2-110 through 38.2-122 and 38.2-124 through 38.2-138, and for the purpose of depriving another of property or for pecuniary gain, he intentionally misrepresents or fails to disclose any material fact concerning:

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

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

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

4. The application used in any insurance premium finance transaction.

Any conviction of a violation of this section by an individual shall be punishable as larceny, as prescribed in §§ 18.2-95 and 18.2-96.

B. In addition to suffering the penalties prescribed in §§ 18.2-95 and 18.2-96, but not in lieu thereof, a person convicted of a violation of this section may be ordered to make monetary restitution for any financial loss or damage sustained by any other person as a result of the violation.

C. Any person convicted of a violation of this section who is licensed to engage in any professional occupation pursuant to the Code of Virginia shall be deemed to have committed an act involving moral turpitude. The court shall notify any appropriate licensing authority in the Commonwealth of the

60 conviction, and may notify appropriate licensing authorities in any other jurisdiction where the licensee
61 holds any similar license.

62 § 18.2-246.3. Insurance fraud by an insurer, insurance professional or insurance premium finance
63 company.

64 A. An insurer, insurance professional, or insurance premium finance company is guilty of insurance
65 fraud if, in connection with an insurance transaction involving any type of insurance as defined in
66 §§ 38.2-110 through 38.2- 122 and 38.2-124 through 38.2- 138, and for the purpose of depriving
67 another of property or for pecuniary gain, the person or company intentionally misrepresents or fails to
68 disclose any material fact concerning:

69 1. The solicitation or sale of any reported insurance policy or premium finance transaction;

70 2. An application for certificate of authority from the Commission;

71 3. The solicitation, negotiation, procuring, or effecting of a new or renewal insurance risk on behalf
72 of an insolvent insurer;

73 4. The removal of assets or records of assets, transactions or affairs or a material part thereof, from
74 the home office or other place of business of the insurer, or from the place of safekeeping of the
75 insurer, or the destruction or sequestration of the same from the Bureau of Insurance

76 5. The solicitation, negotiation, procurement or effecting of a new or renewal insurance risk on
77 behalf of an unlicensed insurer where a license is required;

78 6. The operation of an unlicensed insurer; and

79 7. The financial condition of any insurer and the financial condition of an insurer.

80 8. Payments or claim denials made pursuant to the terms of an insurance policy.

81 Any conviction of a violation of this section by an individual shall be punishable as a Class 4 felony.

82 In the case of a conviction of a legal entity other than an individual, it shall be subject to a fine not to
83 exceed \$100,000. Nothing herein shall be deemed to preclude the imposition of any penalty by the State
84 Corporation Commission as set forth in Title 38.2 or regulations issued pursuant thereto.

85 B. In addition to the penalties prescribed in subsection A, but not in lieu thereof, any person or
86 entity convicted of a violation of this section may be ordered to make monetary restitution for any
87 financial loss or damage sustained by any other person as a result of the violation.

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

93 § 38.2-415. Assessment to fund program to reduce losses from insurance fraud.

94 A. Each licensed insurer doing business in the Commonwealth by writing any type of insurance as
95 defined in §§ 38.2-110 through 38.2-122 and 38.2-124 through 38.2-134 shall pay, in addition to any
96 other assessments provided in this title, an assessment in an amount equal to 0.05 of one percent of the
97 direct gross premium income collected during the preceding calendar year. The assessment shall be
98 apportioned and assessed and paid as prescribed by § 38.2-403. The Commission shall be reimbursed
99 from the fund for all necessary expenses for the administration of this section.

100 B. The assessments made by the Commission under subsection A and paid into the state treasury
101 shall be deposited to a special fund designated "Virginia State Police, Insurance Fraud," and out of
102 such special fund and the unexpended balance thereof shall be appropriated the sums necessary for
103 accomplishing the powers and duties assigned to the Virginia State Police under chapter 9 (§ 52-36 et
104 seq.) of Title 52.

105 CHAPTER 9.

106 INSURANCE FRAUD.

107 § 52-36. Insurance fraud: duties and powers of the Department.

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

109 "Commission" means the State Corporation Commission.

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

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

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

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

121 "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 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) 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.

"Insurance fraud" means any acts and practices defined in Article 9 (§ 18.2-246.1 et seq.) of Title 18.2 which involve any type of insurance as defined in §§ 38.2-110 through 38.2-122 and 38.2-124 through 38.2-134.

B. There shall be established within the Department of State Police, Bureau of Criminal Investigation, an Insurance Fraud Investigation Unit. The purpose of this unit shall be:

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

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

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

C. The Superintendent may appoint such agents as he may deem necessary to assist it in carrying out its powers and duties under this chapter.

§ 52-37. Access to evidence, documentation, and related materials.

If the Department 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 Department may request access to the material. The person so requested shall either make the material available to the Department, or shall make the material available for inspection or examination by a designated representative of the Department.

§ 52-38. Confidentiality and immunity from service of process.

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

B. Agents employed by the Department 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 Department.

§ 52-39. 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 or 18.2-246.3 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 Department, 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 (§ 18.2-246.1 et seq.) of Title 18.2. The statement required by this subsection shall not be required on applications and forms relating to reinsurance.

§ 52-40. Receipt of information; immunity from liability.

A. Any insurer providing information to an authorized representative of the Department pursuant to § 52-37 or pursuant to subsection 6 of § 38.2-613 shall have the right to request relevant information and receive, within thirty days, the information requested.

B. No cause of action in the nature of defamation, invasion of privacy, or negligence shall arise against any person furnishing information concerning any suspected, anticipated or completed violation of §§ 18.2-246.2 or 18.2-246.3 when the information is provided to or received from the Department, the National Association of Insurance Commissioners, another insurer, any federal or state governmental entity established for the purposes of detecting and preventing insurance fraud, or the National Insurance Crime Bureau.

C. No insurer, its officers or employees, insurance professional or any other person shall be subject to such cause of action for cooperating with, or furnishing evidence or information regarding any suspected violation of §§ 18.2-246.2 or 18.2-246.3 to the Department.

183 *D. This section shall not provide immunity for those disclosing or furnishing false information with*
184 *malice or willful intent to injure any person.*

185 *E. This section does not abrogate or modify in any way common law or statutory privilege or*
186 *immunity heretofore enjoyed by any person or entity.*

187 *§ 52-41. Reward fund.*

188 *The Department, in cooperation with authorized insurers and insurance professionals, may establish*
189 *and operate a fund to offer monetary rewards for information sufficient to procure conviction in a court*
190 *of appropriate jurisdiction of a person or persons responsible for insurance fraud. No law-enforcement*
191 *officer, employee of the Commission, employee of an insurance company or any insurance professional*
192 *shall be eligible to receive such reward.*

193 *§ 52-42. Reports*

194 *The Department shall furnish to the Commission, no later than February 15 of each year, a report*
195 *detailing all expenditures of the Insurance Fraud Investigation Unit, and summarizing its activities for*
196 *the previous calendar year.*

197 *§ 52-43. Other law-enforcement authority.*

198 *This chapter shall not:*

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

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

203 *§ 58.1-2508. Taxes applicable to insurance companies.*

204 *A. The real estate and tangible personal property, situated or located in the Commonwealth, of every*
205 *such company and every fraternal benefit society transacting insurance in the Commonwealth shall be*
206 *listed and assessed on the land and property books of the commissioner of the revenue in the same*
207 *manner as other real estate and tangible personal property are assessed, and shall be taxed at the same*
208 *rates as other like property is taxed.*

209 *B. The license tax provided in this chapter, the tax on real estate and tangible personal property*
210 *provided for in subsection A, the fee assessed by the Commission for the administration of the insurance*
211 *laws pursuant to § 38.2-400 et seq., the fee assessed by the Commission for the Fire Programs Fund*
212 *pursuant to § 38.2-401, the fee assessed by the Commission for the Flood Prevention and Protection*
213 *Assistance Fund pursuant to § 38.2-401.1, the fee assessed by the Commission to fund the program to*
214 *reduce losses from motor vehicle thefts pursuant to § 38.2-414, the fee assessed by the Commission to*
215 *fund the program to reduce losses from insurance fraud pursuant to § 38.2-415, and retaliatory amounts*
216 *assessed by the Commission pursuant to § 38.2-1026 shall be in lieu of all fees, licenses, taxes and*
217 *levies whatsoever, state, county, city or town; however, nothing in this section shall be construed to*
218 *exempt insurance companies from the tax levied in Chapter 6 of this title. No additional fee or license*
219 *tax shall be applicable to an agent of an insurance company other than the annual license fee on agents*
220 *required pursuant to Article 3 (§ 38.2-1822 et seq.) of Chapter 18 of Title 38.2.*

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

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