

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 590

An Act to amend and reenact § 58.1-2508 of the Code of Virginia and to amend the Code of Virginia 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 52-44, relating to insurance fraud; delegation of related duties to the Department of State Police.

[S 421]

Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-2508 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended 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 52-44, as follows:

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

A. Each licensed insurer doing business in the Commonwealth by writing any type of insurance as defined in §§ 38.2-110 through 38.2-122.1 and 38.2-124 through 38.2-132 shall pay, in addition to any other assessments provided in this title, an assessment in an amount equal to 0.05 of one percent of the direct gross premium income collected during the preceding calendar year. The assessment shall be apportioned and assessed and paid as prescribed by § 38.2-403. The Commission shall be reimbursed from the fund for all necessary expenses for the administration of this section.

B. The assessments made by the Commission under subsection A and paid into the state treasury shall be deposited to a special fund designated "Virginia State Police, Insurance Fraud," and out of such special fund and the unexpended balance thereof shall be appropriated the sums necessary for accomplishing the powers and duties assigned to the Virginia State Police under Chapter 9 (§ 52-36 et seq.) of Title 52. All interest earned from the deposit of moneys accumulated in the Fund shall be deposited in the Fund for the same use.

C. The moneys deposited in the Fund shall not be considered general revenue of the Commonwealth but shall be used only to (i) effectuate the purposes enumerated in Chapter 9 (§ 52-36 et seq.) of Title 52 and (ii) reimburse the Commission for its necessary expenses for the administration of this section. The Fund shall be subject to audit by the Auditor of Public Accounts.

D. In the event that the Insurance Fraud Investigation Unit is dissolved by operation of law or otherwise, any balance remaining in the Fund, after deducting administrative costs associated with the dissolution, shall be returned to insurers in proportion to their financial contributions to the Fund in the preceding calendar year.

CHAPTER 9. INSURANCE FRAUD.

§ 52-36. Definitions.

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

"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 38.2-122.1 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; 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.

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

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

1. *Initiate independent inquiries and conduct independent investigations when the Department 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. *Respond to notification or complaints alleging insurance fraud generated by federal, state and local police, other law-enforcement authorities, governmental agencies or units, and any other person.*

3. *Review notices and reports of insurance fraud; select the incidents of suspected fraud that, in its judgment, require further detailed investigation; and conduct the investigations.*

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

§ 52-38. *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.

§ 52-39. *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.*

§ 52-40. *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 § 18.2-178 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. The statement required by this subsection shall not be required on applications and forms relating to reinsurance.

§ 52-41. *Receipt of information; immunity from liability.*

A. *Any insurer providing information to an authorized representative of the Department pursuant to § 52-38 or pursuant to subdivision A 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 criminal violation 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 criminal violation to the Department.*

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

E. *This section does not abrogate or modify in any way common law or statutory privilege or immunity heretofore enjoyed by any person or entity, nor does it authorize the Department to make public insurance company records which are proprietary in nature.*

§ 52-42. *Reward fund.*

The Department, 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 insurance fraud. No law-enforcement officer, employee of the Commission, employee of an insurance company or any insurance professional shall be eligible to receive such reward.

§ 52-43. *Reports.*

The Department shall submit an annual report to the Governor and General Assembly no later than February 15 of each year on the progress made in deterring insurance fraud. Such report shall detail (i) all expenditures and receipts of the Insurance Fraud Investigation Unit, (ii) the uses to which these funds were put, including payment of salaries and expenses, purchases of equipment and supplies, and other expenditures by type, and (iii) the results achieved as a consequence of such expenditures, including the number of notifications or inquiries received, the number of inquiries and investigations undertaken, the number of inquiries to which an investigation was not initiated, the number of arrests, the number of files presented to prosecutors, the number of prosecutions, the number of convictions and the total dollar amount of restitution resulting from the operation of the Insurance Fraud Investigation Unit.

§ 52-44. Other law-enforcement authority.

This chapter shall not:

- 1. Preempt the authority or relieve the duty of any law-enforcement agencies to investigate, examine, and prosecute suspected violations of law.*
- 2. Limit any of the powers granted elsewhere by the laws of this Commonwealth to the Commission to investigate and examine possible violations of law and to take appropriate action.*

§ 58.1-2508. Taxes applicable to insurance companies.

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

B. The license tax provided in this chapter, the tax on real estate and tangible personal property provided for in subsection A, the fee assessed by the Commission for the administration of the insurance laws pursuant to Chapter 4 (§ 38.2-400 et seq.) of Title 38.2, the fee assessed by the Commission for the Fire Programs Fund pursuant to § 38.2-401, the fee assessed by the Commission for the Flood Prevention and Protection Assistance Fund pursuant to § 38.2-401.1, the fee assessed by the Commission to fund the program to reduce losses from motor vehicle thefts pursuant to § 38.2-414, the fee assessed by the Commission to fund the program to reduce losses from insurance fraud pursuant to § 38.2-415, and the retaliatory amounts assessed by the Commission pursuant to § 38.2-1026 shall be in lieu of all fees, licenses, taxes and levies whatsoever, state, county, city or town; however, nothing in this section shall be construed to exempt insurance companies from the tax levied in Chapter 6 (§ 58.1-600 et seq.) of this title. No additional fee or license tax shall be applicable to an agent of an insurance company other than the annual license fee on agents required pursuant to Article 3 (§ 38.2-1822 et seq.) of Chapter 18 of Title 38.2.

2. That the provisions of this act shall become effective on January 1, 1999.

3. That the provisions of this act shall expire on January 1, 2003.