

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 498

Short Title: Insurance Crimes.

(Public)

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Sponsors: Senator Johnson of Wake.

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Referred to: Insurance.

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March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE LAWS RELATING TO THE REPORTING AND INVESTIGATION OF INSURANCE FRAUD AND THE FINANCIAL CONDITION OF INSURANCE LICENSEES; THE LAWS RELATING TO EMBEZZLEMENT BY AGENTS AND BROKERS AND THE REPORTING THEREOF; AND THE LAWS RELATING TO FALSE STATEMENTS BY PERSONS IN THE BUSINESS OF INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-18.1 reads as rewritten:

**"§ 58-18.1. Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; ~~Immunity from liability for reporting insurance fraud.~~**

(a) For the purpose of ~~As used in this section,~~ 'Commissioner' includes an employee, agent, or designee of the Commissioner. A person, or an employee or agent of that person, acting without actual malice, is not subject to civil liability for libel, slander, or any other cause of action by virtue of furnishing to the Commissioner under the requirements of law or at the direction of the Commissioner reports or other information relating to: (i) any known or suspected fraudulent insurance or reinsurance claim, transaction, or act or (ii) the financial condition of any licensee. In the absence of actual malice, members of the NAIC, their duly authorized committees, subcommittees, task forces, delegates and employees, and all other persons charged with the responsibility for collecting, reviewing, analyzing, or disseminating the information developed from filings of financial statements or examinations of licensees are not subject to civil liability for libel, slander, or any other cause of action by virtue

1 of their collection, review, analysis, or dissemination of the data and information  
2 collected from these filings or examinations a "fraudulent insurance act" is committed by any  
3 person who, knowingly and with the intent to defraud: (1) presents, causes to be presented, or  
4 prepares with the knowledge or belief that it will be presented to or by an insurer, purported  
5 insurer, broker, or any agent or employee thereof, any written statement as part of an insurance  
6 policy, or in support of an insurance policy, an application for the issuance of an insurance  
7 policy, or the rating of an insurance policy, or a claim for payment or other benefit pursuant to  
8 an insurance policy, that he knows to contain materially false information concerning any  
9 material fact; or (2) conceals information concerning any material fact.

10 (b) ~~In the absence of fraud or bad faith, no person is subject to civil liability for~~  
11 ~~defamation for filing reports or furnishing other information, without malice, required~~  
12 ~~by this Chapter or required by t~~ The Commissioner under the authority granted in this  
13 ~~Chapter; and no cause of action for defamation arises against such person (1) for any~~  
14 ~~information relating to suspected fraudulent insurance acts furnished to or received from~~  
15 ~~the Commissioner, his designee, or law enforcement officials or their agents and~~  
16 ~~employees; (2) for any information relating to suspected fraudulent insurance acts~~  
17 ~~furnished to or received from other persons subject to the provisions of this Chapter; or~~  
18 ~~(3) for any such information furnished in reports to the Commissioner or his staff, the~~  
19 ~~Attorney General or his staff, acting without actual malice, is not subject to civil~~  
20 ~~liability for libel, slander, or any other cause of action by virtue of an investigation of:~~  
21 (i) any known or suspected fraudulent insurance or reinsurance claim, transaction, or act  
22 or (ii) the financial condition of any licensee; or by virtue of publication or  
23 dissemination of any official report related to any investigation. The Commissioner is  
24 not subject to civil liability in relation to collecting, reviewing, analyzing, or  
25 dissemination of information that is developed by the NAIC, or any organization  
26 established to detect and prevent fraudulent insurance acts, or their agents, employees or  
27 designees; nor shall the Commissioner or his staff, the Attorney General or his staff, or  
28 any representative of ~~from the filing of financial statements with the NAIC, acting~~  
29 ~~without malice, in the absence of fraud or bad faith, be subject to liability for~~  
30 ~~defamation, and no cause of action for defamation arises against such person for the~~  
31 ~~publication of any confidential report or bulletin related to the official activities of the~~  
32 ~~Commissioner, the Attorney General, or or from the examination of insurers by the~~  
33 ~~NAIC. Nothing in this section abrogates or modifies any common law or statutory~~  
34 ~~privilege or immunity enjoyed by any person and that is communicated to the~~  
35 Commissioner, including any investigation or publication or dissemination of any report  
36 or other information in relation thereto.

37 (c) ~~During the course of an investigation of a suspected fraudulent insurance act:~~ (i)  
38 a known or suspected fraudulent insurance or reinsurance claim, transaction, or act or  
39 (ii) the financial condition of any licensee, the Commissioner may ~~personally or through~~  
40 ~~his representative request any insurer person to furnish copies of any information relative~~  
41 ~~to that suspected act that is in the insurer's possession~~ the (i) known or suspect fraudulent  
42 insurance or reinsurance claim, transaction, or act or (ii) the financial condition of the  
43 licensee. The insurer person shall release the information requested and cooperate with  
44 the Commissioner or his representative pursuant to this subsection. The information shall  
45 include without limitation to:

- 1       (1) ~~Any insurance policy and application therefor relevant to a suspected~~  
2 ~~fraudulent insurance act under investigation;~~  
3       (2) ~~Policy premium payment records;~~  
4       (3) ~~History of previous loss claims made by the insured;~~  
5       (4) ~~Material relating to the investigation of the suspected act, including~~  
6 ~~statements of any person, proof of loss, and any other relevant evidence."~~

7           Sec. 2. Article 2 of Chapter 58 of the General Statutes is amended by adding  
8 the following new sections:

9 **"§ 58-18.2. Insurance fraud; claims forms.**

10       (a) Any person who, with the intent to injure, defraud, or deceive any  
11 insurance company does any of the following is guilty of a Class I felony:

12           (1) Presents or causes to be presented to any insurer, any written or oral  
13 statement, including computer-generated documents, as part of or in  
14 support of a claim for payment or other benefit pursuant to an  
15 insurance policy, knowing that the statement contains any false,  
16 incomplete, or misleading information concerning any fact or thing  
17 material to the claim;

18           (2) Assists, abets, solicits, or conspires with another to prepare or make  
19 any written or oral statement that is intended to be presented to any  
20 insurance company in connection with or in support of any claim for  
21 payment or other benefit pursuant to an insurance policy, knowing that  
22 the statement contains any false, incomplete, or misleading  
23 information concerning any fact or thing material to the claim;

24           (3) Conceals information concerning any fact or thing material to a claim  
25 for payment or other benefit pursuant to an insurance policy; or

26           (4) Prepares any statement referred to in subdivision (1) of this subsection  
27 with knowledge or belief that it will be presented to or by an insurer.

28       (b) All insurance claims forms shall contain a statement that clearly states in  
29 substance: 'Any person who knowingly and with the intent to injure, defraud, or  
30 deceive any insurance company, files a statement of claim containing any false,  
31 incomplete, or misleading information, is guilty of a Class I felony.' The lack of this  
32 statement shall not constitute a defense against prosecution under this section.

33       (c) For purposes of this section, 'statement' includes any notice, statement,  
34 proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property  
35 damages, bill for services, diagnosis, prescription, hospital or doctor records, X-rays,  
36 test result, or other evidence of loss, injury, or expense.

37 **"§ 58-18.3. Embezzlement by insurance agents and brokers.**

38       If any insurance agent or broker embezzles or fraudulently converts to his own  
39 use, or, with intent to use or embezzle, takes, secretes or otherwise disposes of, or  
40 fraudulently withholds, appropriates, lends, invests or otherwise uses or applies any  
41 money, negotiable instrument, or other consideration received by him in his  
42 performance as an agent or broker, he shall be punished as a Class F felon.

43 **"§ 58-18.4. Report to Commissioner.**

1 Whenever any insurance company or employee or representative of any  
2 insurance company knows or has reasonable cause to believe that any person has  
3 violated G.S. 58-18.3, 58-92, or 58-340.37(e), it is the duty of that company or person,  
4 within 30 days after acquiring the knowledge, to file with the Commissioner a complete  
5 statement of all of the relevant facts and circumstances. These reports shall be  
6 privileged communications, and when filed without malice, shall not subject the  
7 company or individuals making the reports to any liability. The Commissioner may  
8 suspend or revoke the license or any insurance company or person who willfully fails to  
9 comply with this section."

10 Sec. 3. G.S. 58-340.7 is amended by adding a new subsection to read:

11 "(e) Any person who willfully makes a false statement in a verified report or  
12 declaration under oath that is required by law from fraternal benefit societies, is guilty  
13 of perjury under G.S. 14-209."

14 Sec. 4. G.S. 58-92 reads as rewritten:

15 **"§ 58-92. Mutual insurance companies organized; requisites for doing business.**

16 No policy may be issued by a mutual company until the president and the secretary  
17 of the company have certified under oath that every subscription for insurance in the list  
18 presented to the Commissioner for approval is genuine, and made with an agreement  
19 with every subscriber for insurance that he will take the policies subscribed for by him  
20 within 30 days after the granting of a license to the company by the Commissioner to  
21 issue policies.

22 Any person taking a false oath in respect to the certificate required by this section is  
23 guilty of perjury under G.S. 14-209."

24 Sec. 5. G.S. 58-22 reads as rewritten:

25 **"§ 58-22. Punishment for making false statement.**

26 ~~If any insurance company in its annual or other statement required by law shall~~  
27 ~~wilfully misstate the facts, the insurance company and the person in any financial or~~  
28 ~~other statement required by law willfully misstates information, that person making oath~~  
29 ~~to or subscribing the statement shall be guilty of a misdemeanor-perjury under G.S. 14-~~  
30 ~~209 and, upon conviction, shall be severally punished by and the entity on whose behalf~~  
31 ~~the person made the oath or subscribed the statement shall be subject to a fine imposed~~  
32 ~~by the court of not less than two thousand dollars (\$2,000) nor more than five thousand~~  
33 ~~dollars (\$5,000)."~~

34 Sec. 6. G.S. 14-96, 14-96.1, 14-213, 14-214, 14-215, and 14-216 are  
35 repealed.

36 Sec. 7. This act is effective upon ratification except for Sections 3 through 6  
37 of this act which shall become effective October 1, 1989. Prosecutions for offenses  
38 occurring before the effective date of this act are not abated or affected by this act, and  
39 the statutes that would be applicable but for this act remain applicable to those  
40 prosecutions.