

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

FILED SENATE
Mar 20, 2019
S.B. 322
PRINCIPAL CLERK

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SENATE BILL DRS45140-MH-67

Short Title: Insurance Fraud Prevention Amendments. (Public)

Sponsors: Senators Burgin, Brown, and Tillman (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY CRIMINAL PENALTIES ASSOCIATED WITH CERTAIN NORTH
3 CAROLINA INSURANCE FRAUD STATUTES AND TO INCORPORATE PORTIONS
4 OF THE NAIC FRAUD PREVENTION MODEL ACT LANGUAGE INTO NORTH
5 CAROLINA'S INSURANCE LAWS, AS RECOMMENDED BY THE DEPARTMENT OF
6 INSURANCE.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. INCORPORATE NAIC FRAUD PREVENTION MODEL ACT LANGUAGE**

10 **SECTION 1.(a)** G.S. 58-1-5 reads as rewritten:

11 **"§ 58-1-5. Definitions.**

12 In this Chapter, unless the context clearly requires otherwise:

- 13 (1) "Alien company" means a company incorporated or organized under the laws
14 of any jurisdiction outside of the United States.
- 15 (1a) "Commercial aircraft" means aircraft used in domestic, flag, supplemental,
16 commuter, or on-demand operations, as defined in Federal Aviation
17 Administration Regulations, 14 C.F.R. § 119.3, as amended.
- 18 (2) "Commissioner" means the Commissioner of Insurance of North Carolina or
19 an authorized designee of the Commissioner.
- 20 (3) "Company" or "insurance company" or "insurer" includes any corporation,
21 association, partnership, society, order, individual or aggregation of
22 individuals engaging or proposing or attempting to engage as principals in any
23 kind of insurance business, including the exchanging of reciprocal or
24 interinsurance contracts between individuals, partnerships and corporations.
25 "Company" or "insurance company" or "insurer" does not mean the State of
26 North Carolina or any county, city, or other political subdivision of the State
27 of North Carolina.
- 28 (4) "Department" means the Department of Insurance of North Carolina.
- 29 (5) "Domestic company" means a company incorporated or organized under the
30 laws of this State.
- 31 (6) "Foreign company" means a company incorporated or organized under the
32 laws of the United States or of any jurisdiction within the United States other
33 than this State.
- 34 (6a) "Fraudulent insurance act" means an act or omission affecting the business of
35 insurance committed by a person with the intent to injure, defraud, or deceive
36 another person in violation of this Chapter.



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1 (7) "NAIC" means the National Association of Insurance Commissioners.

2 (8) Repealed by Session Laws 1999-219, s. 5.5.

3 (9) "Person" means an individual, partnership, firm, association, corporation,
4 joint-stock company, trust, any similar entity, or any combination of the
5 foregoing acting in concert.

6 (10) The singular form includes the plural, and the masculine form includes the
7 feminine wherever appropriate."

8 **SECTION 1.(b)** G.S. 58-2-50 reads as rewritten:

9 **"§ 58-2-50. Examinations, hearings, and investigations.**

10 (a) All examinations, hearings, and investigations provided for by this Chapter may be
11 conducted by the Commissioner personally or by one or more deputies, investigators, actuaries,
12 examiners or employees designated for the purpose. ~~If the Commissioner or any investigator~~
13 ~~appointed to conduct the investigations is of the opinion that there is evidence to charge any~~
14 ~~person or persons with a criminal violation of any provision of this Chapter, the Commissioner~~
15 ~~may arrest with warrant or cause the person or persons to be arrested.~~

16 (b) All hearings shall, unless otherwise specially provided, be held in accordance with
17 this Article and Article 3A of Chapter 150B of the General Statutes and at a time and place
18 designated in a written notice given by the Commissioner to the person cited to appear. The
19 notice shall state the subject of inquiry and the specific charges, if any.

20 (c) The Commissioner may investigate and prosecute suspected fraudulent insurance acts
21 and persons engaged in the business of insurance.

22 (d) The Commissioner shall have the authority to do all of the following:

23 (1) Inspect, copy, and collect records and evidence.

24 (2) Serve subpoenas.

25 (3) Administer oaths and affirmations.

26 (4) Share records and evidence with federal, state, or local law enforcement, or
27 regulatory agencies.

28 (5) Execute search warrants and arrest warrants for criminal violations of this
29 Chapter.

30 (6) Arrest, upon probable cause, without warrant a person found in the act of
31 violating or attempting to violate a provision of this Chapter.

32 (7) Make criminal referrals to prosecuting authorities.

33 (8) Conduct investigations outside of this State. If the information the
34 Commissioner seeks to obtain is located outside this State, the person from
35 whom the information is sought may make the information available to the
36 Commissioner to examine at the place where the information is located. The
37 Commissioner may designate representatives, including officials of the state
38 in which the matter is located, to inspect the information on behalf of the
39 Commissioner, and the Commissioner may respond to similar requests from
40 officials of other states.

41 (e) A person shall not knowingly or intentionally interfere with the enforcement of the
42 provisions of this Chapter or investigations of suspected or actual violations of this Chapter."

43 **SECTION 1.(c)** G.S. 58-2-160 reads as rewritten:

44 **"§ 58-2-160. Reporting and investigation of ~~insurance and reinsurance fraud~~ fraudulent**
45 **insurance acts and the financial condition of licensees; immunity from liability.**

46 (a) As used in this section, "Commissioner" includes an employee, agent, or designee of
47 the Commissioner. A person, or an employee or agent of that person, acting without actual
48 malice, is not subject to civil liability for libel, slander, or any other cause of action by virtue of
49 furnishing to the Commissioner under the requirements of law or at the direction of the
50 Commissioner reports or other information relating to (i) any known or suspected fraudulent
51 insurance ~~or reinsurance claim, transaction, or act~~ or (ii) the financial condition of any licensee.

1 In the absence of actual malice, members of the NAIC, their duly authorized committees,
2 subcommittees, task forces, delegates, and employees, and all other persons charged with the
3 responsibility of collecting, reviewing, analyzing, or disseminating the information developed
4 from filings of financial statements or examinations of licensees are not subject to civil liability
5 for libel, slander, or any other cause of action by virtue of their collection, review, analysis, or
6 dissemination of the data and information collected from such filings or examinations.

7 (b) The Commissioner, acting without actual malice, is not subject to civil liability for
8 libel or slander by virtue of an investigation of (i) any known or suspected fraudulent insurance
9 ~~or reinsurance claim, transaction, or act~~ or (ii) the financial condition of any licensee; or by virtue
10 of the publication or dissemination of any official report related to any such investigation, which
11 report is published or disseminated in the absence of fraud, bad faith, or actual malice on the part
12 of the Commissioner. The Commissioner is not subject to civil liability in relation to the
13 collecting, reviewing, analyzing, or dissemination of information that is developed by the NAIC
14 from the filing of financial statements with the NAIC or from the examination of insurers by the
15 NAIC and that is communicated to the Commissioner, including any investigation or publication
16 or dissemination of any report or other information in relation thereto, which report is published
17 or disseminated in the absence of fraud, bad faith, negligence, or actual malice on the part of the
18 Commissioner.

19 (c) During the course of an investigation of (i) a known or suspected fraudulent insurance
20 ~~or reinsurance claim, transaction, or act~~ or (ii) the financial condition of any licensee, the
21 Commissioner may request any person to furnish copies of any information relative to the (i)
22 known or suspected claim, transaction, or act or (ii) financial condition of the licensee. The
23 person shall release the information requested and cooperate with the Commissioner pursuant to
24 this section."

25 **SECTION 1.(d)** Article 2 of Chapter 58 of the General Statutes is amended by
26 adding a new section to read:

27 **"§ 58-2-166. Fraudulent insurance act warning required on claim for payment or other**
28 **benefit or on application for insurance.**

29 (a) Claims for payment or other benefits or applications for issuance of an insurance
30 policy regardless of the form of transmission, shall contain the following statement or a
31 substantially similar statement:

32 "Any person who knowingly presents or causes to be presented a false or fraudulent claim
33 for payment of a loss or benefit or knowingly presents false information on an application for
34 insurance is guilty of a crime and may be subject to fines and confinement in prison."

35 (b) The lack of a statement as required in subsection (a) of this section does not constitute
36 a defense in any prosecution for a fraudulent insurance act as defined in G.S. 58-1-5.

37 (c) Policies issued by nonadmitted insurers shall contain a statement disclosing the status
38 of the insurer to do business in the state where the policy is delivered or issued for delivery or
39 the state where coverage is in force. The requirement of this subsection may be satisfied by a
40 disclosure specifically required by G.S. 58-21-45 or G.S. 58-22-20.

41 (d) The requirements of this section shall not apply to reinsurance claims forms or
42 reinsurance applications."

43 **SECTION 1.(e)** Article 2 of Chapter 58 of the General Statutes is amended by adding
44 a new section to read:

45 **"§ 58-2-167. Insurer antifraud initiatives.**

46 (a) Insurers shall have in place antifraud initiatives reasonably calculated to detect,
47 prosecute, and prevent fraudulent insurance acts as defined in G.S. 58-1-5. At the discretion of
48 the Commissioner, the Commissioner may order, or an insurer may request and the
49 Commissioner may grant, such modifications of the following required initiatives as necessary
50 to ensure an effective antifraud program. The modifications may be more or less restrictive than

1 the required initiatives so long as the modifications may reasonably be expected to accomplish
2 the purpose of this section.

3 (b) The antifraud initiatives shall include the following:

4 (1) Fraud investigators, who may be insurer employees or independent
5 contractors.

6 (2) An antifraud plan, which shall be submitted to the Commissioner. The
7 antifraud plan shall include the following:

8 a. A description of the procedures for detecting and investigating
9 possible fraudulent insurance acts.

10 b. A description of the procedures for reporting possible fraudulent
11 insurance acts to the Commissioner.

12 c. A description of the plan of antifraud education and training of
13 underwriters and other personnel.

14 d. Any other information required by the Commissioner.

15 (c) Antifraud plans submitted to the Commissioner under this section are proprietary,
16 privileged, confidential, are not public records under G.S. 132-1 or G.S. 58-2-100, and are not
17 subject to discovery or subpoena in a civil or criminal action."

18 **SECTION 1.(f)** Article 2 of Chapter 58 of the General Statutes is amended by adding
19 a new section to read:

20 "**§ 58-2-168. Confidentiality.**

21 (a) Information and evidence provided under G.S. 58-2-160 or G.S. 58-2-163 or
22 obtained by the Commissioner in an investigation of suspected or actual fraudulent insurance
23 acts shall be privileged and confidential, are not public records, and are not subject to discovery
24 or subpoena in a civil or criminal action.

25 (b) In order to assist in the performance of the Commissioner's duties, the
26 Commissioner may do any of the following:

27 (1) May share documents, materials, or other information, including the
28 confidential and privileged documents, materials, or information subject to
29 subsection (a) of this section, with other state, federal, and international
30 regulatory agencies, with the NAIC and its affiliates and subsidiaries;
31 provided that the recipient agrees to maintain the confidentiality and
32 privileged status of the documents, materials, or other information.

33 (2) May receive documents, materials, or other information, including otherwise
34 confidential and privileged documents, materials, or information from the
35 NAIC and its affiliates and subsidiaries, and from regulatory officials of other
36 foreign or domestic jurisdictions, and shall maintain as confidential or
37 privileged any documents, materials, or information received with notice or
38 the understanding that it is confidential or privileged under the laws of the
39 jurisdiction that is the source of the documents, materials, or information.

40 (c) Nothing in this section shall prohibit the Commissioner from providing information
41 to or receiving information from any local, state, federal, or international law enforcement
42 authorities, including any prosecuting authority; or from complying with subpoenas or other
43 lawful process in criminal actions; or as may otherwise be provided in this Article.

44 (d) No waiver of any applicable privilege or claim of confidentiality in the documents,
45 materials, or information shall occur as a result of disclosure to the Commissioner under this
46 section or as a result of sharing as authorized in subsection (b) of this section."

47 **SECTION 1.(g)** Article 2 of Chapter 58 of the General Statutes is amended by adding
48 a new section to read:

49 "**§ 58-2-169. Other law enforcement or regulatory authority.**

50 (a) This Article does none of the following:

- (1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law.
- (2) Prevent or prohibit a person from disclosing voluntarily information concerning fraudulent insurance acts to a law enforcement or regulatory agency other than the Commissioner.
- (3) Limit the powers granted elsewhere by the laws of this State to the Commissioner to investigate and examine possible violations of law and to take appropriate action against wrongdoers."

SECTION 1.(h) The catch line of G.S. 58-58-267 reads as rewritten:

"§ 58-58-267. ~~Fraud-Fraudulent viatical settlement act warning required.~~"

SECTION 1.(i) G.S. 58-58-67 reads as rewritten:

"§ 58-58-285. Other law enforcement or regulatory authority.

This Part does ~~not~~none of the following:

- (1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law.
- (2) Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the Commissioner.
- (3) Limit the powers granted elsewhere by the laws of this State to the Commissioner to investigate and examine possible violations of law and to take appropriate action against wrongdoers."

SECTION 1.(j) Subsections (d) and (e) of this section become effective January 1, 2020.

PART II. MODIFY CERTAIN CRIMINAL PENALTIES

SECTION 2.(a) G.S. 58-2-161 reads as rewritten:

"§ 58-2-161. False statement to procure or deny benefit of insurance policy or certificate.

...

(b) ~~Any person~~It shall be unlawful for any person who, with the intent to injure, defraud, or deceive an insurer or insurance ~~claimant~~claimant, ~~does any of the following:~~

- (1) Presents or causes to be presented a written or oral statement, including computer-generated documents as part of, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning any fact or matter material to the ~~claim, or claim.~~
- (2) ~~Assists, abets, solicits, or conspires with~~Assists or abets another person to prepare or make any written or oral statement that is intended to be presented to an insurer or insurance claimant in connection with, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning a fact or matter material to the ~~claim is guilty of claim.~~

(c) Any person who violates subsection (b) of this section shall be penalized as follows:

- (1) If the value of the claim for payment or other benefit sought is less than one thousand dollars (\$1,000), it shall be a Class 1 misdemeanor.
- (2) If the value of the claim for payment or other benefit sought is one thousand dollars (\$1,000) or more, it shall be a Class H felony.
- (3) If the value of the claim for payment or other benefit sought is fifty thousand dollars (\$50,000) or more, it shall be a Class E felony.

(4) If the value of the claim for payment or other benefit sought is one hundred thousand dollars (\$100,000) or more, it shall be a Class C felony.

In addition to any other penalties authorized by law, a violation of this section may be punishable by a fine of not more than ten thousand dollars (\$10,000) for each violation.

(d) Each claim ~~shall~~ may be considered a separate count. Upon conviction, if the court imposes probation, the court may order the defendant to pay restitution as a condition of probation. In determination of the amount of restitution pursuant to G.S. 15A-1343(d), the reasonable costs and attorneys' fees incurred by the victim in the investigation of, and efforts to recover damages arising from, the claim, may be considered part of the damage caused by the defendant arising out of the offense.

(e) In a civil cause of action for recovery based upon a claim for which a defendant has been convicted under this section, the conviction may be entered into evidence against the defendant. The court may award the prevailing party compensatory damages, attorneys' fees, costs, and reasonable investigative costs. If the prevailing party can demonstrate that the defendant has engaged in a pattern of violations of this section, the court may award treble damages."

SECTION 2.(b) G.S. 58-2-164 reads as rewritten:

"§ 58-2-164. Rate evasion fraud; prevention programs.

...

(b) It shall be a ~~Class 3~~ Class 1 misdemeanor for any person who, with the intent to deceive an insurer, does any of the following:

- (1) Presents or causes to be presented a written or oral statement in support of an application for issuance of or amendment to a policy of auto insurance, knowing that the application contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk.
- (2) ~~Assists, abets, solicits, or conspires with~~ Assists or abets another person to prepare or make any written or oral statement that is intended to be presented to an insurer in connection with or in support of an application for issuance of or amendment to a policy of auto insurance, if the person knows that the statement contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk.

In addition to any other penalties authorized by law, a violation of this subsection may be punishable by a fine of not more than one thousand dollars (\$1,000) for each violation.

(b1) If the violation of subsection (b) of this section is committed with respect to an application for insurance or amendment to a policy of auto insurance for more than one passenger vehicle, the person shall be guilty of a Class H felony.

~~(b1)~~(b2) It shall be a Class H felony for any applicant who, with the intent to deceive an insurer, knowingly violates G.S. 58-2-164(b) for the purpose of obtaining auto insurance covering one or more vehicles, the operation of which requires a Commercial Drivers License pursuant to G.S. 20-4.01(3c).

In addition to any other penalties authorized by law, a violation of this subsection may be punishable by a fine of not more than ten thousand dollars (\$10,000) for each violation.

...."

SECTION 2.(c) G.S. 58-3-150 is amended by adding a new subsection to read:

"(h) It shall be unlawful for any person who, with the intent to injure, defraud, or deceive, prepares, issues, or requests a certificate of insurance that meets the criteria of subdivision (2) or (3) of subsection (f) of this section. The person violating this subsection shall be punished as follows:

- (1) If the value of the certificate of insurance is less than five thousand dollars (\$5,000), it shall be a Class 1 misdemeanor.

1 (2) If the value of the certificate of insurance is five thousand dollars (\$5,000) or
2 more, it shall be a Class I felony."

3 **SECTION 2.(d)** This section becomes effective December 1, 2019, and applies to
4 offenses committed on or after that date.

5
6 **PART III. EFFECTIVE DATE**

7 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
8 law.