

**FINAL REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**THE ESTABLISHMENT OF AN
INSURANCE FRAUD BUREAU**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 86

**COMMONWEALTH OF VIRGINIA
RICHMOND
1997**

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**Final Report of the Joint Subcommittee
Studying the Establishment of an Insurance Fraud Bureau
to
The Governor and the
General Assembly of Virginia
Richmond, Virginia
1997**

TO: The Honorable George Allen, Governor,
and
The General Assembly of Virginia

I. INTRODUCTION

Adopted by the 1996 Session of the General Assembly, HJR 55 (Appendix A) and an identical counterpart, SJR 36, created a joint subcommittee consisting of legislators and citizen representatives to study the feasibility of establishing an insurance fraud bureau.

The following General Assembly members were appointed to the joint subcommittee: Delegates Heilig from Norfolk, Armstrong from Martinsville, Scott from Fairfax, and Tate from Marion, together with Senators Colgan from Manassas, Bolling from Mechanicsville and Martin from Chesterfield. Additional members of the subcommittee included the Honorable Jerry W. Kilgore, Secretary of Public Safety, George R. Dishner and Daniel J. Peacock representing property and casualty insurers, Gail Marshall and Eddie L. Perry representing consumers of insurance, Ronald M. Johnston representing life and health insurers, Alfred Gross representing the State Corporation Commission, and John E. Kloch representing the Association of Commonwealth Attorneys. Delegate Heilig and Senator Colgan served as Chairman and Vice Chairman, respectively.

The resolution charged the joint subcommittee with studying (i) whether an insurance fraud bureau should be established in the Commonwealth, (ii) what classes or lines of insurance should be subject to investigation by such bureau, (iii) what powers should be granted fraud bureau investigators, and (iv) how such a bureau should be funded. The subcommittee considered these issues during public meetings, and concluded its work by recommending draft legislation that defines the crime of insurance fraud and creates an insurance fraud bureau. This legislation was not approved by the 1997 General Assembly.

II. INSURANCE INDUSTRY PERSPECTIVE

The subcommittee held four public meetings to discuss the issues associated with creating, funding, and maintaining an insurance fraud bureau. Representatives from the property and casualty insurance industry provided the subcommittee with statistics depicting the extent of insurance fraud nationally. To illustrate the magnitude of this problem, representatives compared the estimated 17 billion dollars in claims caused by Hurricane Andrew to the estimated 20 billion dollars lost annually from fraudulent claims. Property and casualty insurance industry representatives also presented figures projecting that 10% of all insurance claims filed are fraudulent, and estimated that each family in Virginia pays approximately \$200 annually in increased insurance premiums to offset loss caused by fraud.

The Coalition Against Insurance Fraud (The Coalition) is a national organization of consumers, government agencies, and insurers whose stated public purpose is to combat all forms of insurance fraud through public information. The Coalition's Executive Director provided information to the subcommittee throughout the study.

The Coalition reminded the subcommittee that Virginia has neither a specific insurance fraud statute nor an insurance fraud bureau. The Coalition stated that the absence of an insurance fraud statute limits the ability to statistically compare fraudulent insurance activity in Virginia to fraudulent insurance activity occurring in other states that do have specific insurance fraud statutes. The Coalition did provide comparative insurance fraud data, and these materials are included as Appendix B.

The subcommittee analyzed the insurance fraud bureaus established in neighboring states. The table below summarizes the main characteristics of the fraud units in North Carolina and Maryland.

| | <u>Maryland</u> | <u>North Carolina</u> |
|----------------------|----------------------|-----------------------|
| <i>Established</i> | 1995 | early 1940's |
| <i>Funding</i> | industry assessments | general revenues |
| <i>Police Powers</i> | state troopers | trained investigators |
| <i>Personnel</i> | 25 | 18 |
| <i>1996 Budget</i> | 1.4 million dollars | 1.1 million dollars |

All representatives of property and casualty insurers publicly supported the concept of forming an insurance fraud bureau. However, the

life insurance industry opposed the creation of a fraud bureau, and representatives of health insurers expressed a diversity of opinions on the utility of forming and funding such a unit.

III. NAII DRAFT LEGISLATION

Local counsel for the National Association of Independent Insurers (NAII) presented draft legislation (Appendix B) intended to combat insurance fraud. This draft legislation defined the crime of insurance fraud and created an insurance fraud division within the State Corporation Commission's Bureau of Insurance.

Proponents declared the purpose of the legislation was to facilitate the detection of insurance fraud and reduce the occurrence of fraud by establishing a division of insurance fraud within the Bureau of Insurance. Supporters of the draft legislation stressed the need to properly staff the division with appropriate support personnel and investigators. Provisions of this draft legislation provided investigators with police powers, immunity, and subpoena powers and would prevent involuntary disclosure to third parties of materials gathered during the course of investigation.

The draft legislation presented by the NAII required all licensed insurers conducting business in the Commonwealth to pay an assessment not to exceed one-quarter of one percent of direct gross premium income, in an amount not to exceed one million dollars.

IV. RESPONSE TO DRAFT LEGISLATION

A. STATE CORPORATION COMMISSION

The State Corporation Commission, in a memorandum to the subcommittee, opposed the placement of a fraud bureau within the Bureau of Insurance (Appendix C). Additionally, the Bureau of Insurance claimed the development of such a fraud unit would exceed the one million dollar premium assessment limit provided in the draft legislation. The Bureau predicted that a more realistic initial operating budget would be between two and two-and-a-half million dollars.

According to the Bureau of Insurance, raising two million dollars would require increasing the annual premium assessments levied against all insurance companies from the current rate of .06% to a rate of .08% of direct gross premium income. Additionally, the Bureau warned that any

hypothetical model creating a fraud bureau may overlook other costly variables.

The Supervisor of Agent Investigations for the property and casualty section of the Bureau of Insurance briefed the subcommittee on the types of operations currently conducted within the Bureau of Insurance, and emphasized that the Bureau's employees lack law-enforcement authority and only investigate alleged violations of insurance laws and regulations by insurance agents. He also added that the Bureau of Insurance enjoys no special relationship with attorney's for the Commonwealth insofar as prosecuting insurance fraud cases is concerned.

B. VIRGINIA TRIAL LAWYERS ASSOCIATION

A representative from the Virginia Trial Lawyers Association (VTLA) stated that the definition of insurance fraud needed to apply to fraudulent actions committed by insurers as well as by policyholders. The VTLA expressed concerns that the draft legislation's broad subpoena powers potentially infringe on fifth amendment rights, and that the immunity protections given to investigators were too broad.

The VTLA also objected to the overall public policy of allowing a private sector to create and fund a police force solely dedicated to combating insurance fraud, and stated that such legislation could provide a means for insurance companies to delay their statutory responsibility to promptly settle claims. Currently, the Virginia Unfair Insurance Practices Act (§ 38.2-500 et seq.) requires insurers to act reasonably promptly with respect to claims arising under insurance policies.

C. CONSUMER CONCERNS

Consumer representatives expressed frustration over the lack of figures indicating how much of the money saved by creating such a fraud bureau translates to actual premium savings for individual policyholders. Industry officials assured the subcommittee that consumers would benefit, primarily because the competitive nature of the insurance business would allow companies with lower operating expenses to increase business volume by offering lower premiums.

D. FUNDING

Representatives of the life and health insurance industry objected to paying additional premium assessments specifically designated to fund an insurance fraud bureau. Representatives for these lines of insurance stated that the bulk of fraud cases involve property and casualty insurers and

policyholders, and they disagreed with the notion of bearing a portion of the expense directed toward an activity unrelated to their companies or policyholders.

The Virginia Hospital and Healthcare Association declared that existing state and federal law governs many of the activities addressed by the draft legislation, and that creation of a fraud bureau would be duplicative and expensive. Further measures designed to combat insurance fraud are contained in the federal 1996 Health Insurance Portability and Accountability Act.

V. CONCLUSION- SUBCOMMITTEE RECOMMENDATIONS

A. CRIMINAL STATUTE

The subcommittee recommended language defining insurance fraud as a criminal offense punishable as larceny and placing these provisions among the other criminal statutes in Title 18 of the Code of Virginia. The draft legislation addressed fraud committed by insurance companies as well as by policyholders, contained elements providing for restitution by a convicted party, and mandated notification to licensing authorities upon conviction of a licensed professional.

B. FRAUD BUREAU

A majority of the subcommittee, including all legislative members, approved the motion to recommend the language of the draft legislation establishing a fraud unit. The subcommittee chose to approve the language of the provisions that fund the unit through premium assessments against only property and casualty insurance lines.

VI. 1997 GENERAL ASSEMBLY SESSION

Legislation similar to the draft approved by the subcommittee was introduced by Senator Colgan during the 1997 Session of the General Assembly (SB 758, Appendix D). Following a series of hearings before a subcommittee of the Senate committee on Commerce and Labor, a substitute bill (Appendix E) was reported and approved unanimously by the full Senate.

The amended bill differed from the introduced bill in that (i) the fraud division was placed within the Department of State Police, (ii) the crime of insurance fraud was defined so as to include only acts or omissions involving

property and casualty insurance, and (iii) the crime of insurance fraud was further defined in a way that distinguished the illegal activity and resulting penalty for the insured as well as the insurer.

Following unanimous passage by the Senate, SB 758 was not reported by the House committee on Courts of Justice, and therefore was not enacted by the 1997 session of the General Assembly.

Respectfully submitted,

Del. George H. Heilig, Jr.
Sen. Charles J. Colgan
Del. Ward L. Armstrong
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GENERAL ASSEMBLY OF VIRGINIA -- 1996 SESSION

HOUSE JOINT RESOLUTION NO. 55

Establishing a joint subcommittee to study whether an insurance fraud bureau should be established in the Commonwealth.

Agreed to by the House of Delegates, February 26, 1996

Agreed to by the Senate, February 21, 1996

WHEREAS, it is estimated that fraudulent claims result in losses to insurers of \$20,000,000 each year, and that amount is reflected in the rates established for the payment of premiums by policyholders; and

WHEREAS, the problem of fraud has become so prevalent that insurers have established special investigative units to identify fraudulent claims; and

WHEREAS, the problem of fraudulent claims is on the increase; and

WHEREAS, thousands of claims made under policies issued in the Commonwealth of Virginia are investigated as potential fraud claims each year; and

WHEREAS, local law-enforcement authorities are burdened with the investigation of a multitude of crimes and are sometimes unable to provide investigators with expertise in insurance fraud; and

WHEREAS, insurance fraud may be a result of organized activity involving multiple claims and multiple jurisdictions; and

WHEREAS, consumers also have a legitimate interest and concern about alleged fraudulent practices by insurers; and

WHEREAS, many other states have established fraud bureaus within their insurance regulatory agencies; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study whether an insurance fraud bureau should be established in the Commonwealth, what classes or lines of insurance should be subject to investigation by such bureau, what powers should be granted fraud bureau investigators, and how such bureau should be funded. The joint subcommittee shall consist of fifteen members: four members from the House of Delegates to be appointed by the Speaker of the House; three members from the Senate to be appointed by the Senate Committee on Privileges and Elections; the Secretary of Public Safety or his designee; one representative of property and casualty insurers, one representative of consumers of insurance, one representative of life and health insurers and one representative of the Association of Commonwealth Attorneys, upon its recommendation, to be appointed by the Speaker of the House of Delegates; and one representative of property and casualty insurers, one representative of consumers of insurance and one representative of the State Corporation Commission to be appointed by the Senate Committee on Privileges and Elections. The chairman of the subcommittee shall be a legislative member as selected by the subcommittee.

The direct costs of this study shall not exceed \$7,600.

The Division of Legislative Services shall provide staff support for the study. Technical assistance shall be provided by the Secretary of Public Safety or his designee and the State Corporation Commission. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1997 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

Coalition Against Insurance Fraud

- Study on State Insurance Fraud Bureaus - *Summary Findings*

■ Year started

- 18 of 27 bureaus were established in the last five years.
- Four were started in 1980s.
- Oldest is North Carolina: started in 1945.

■ Direct reporting of unit

- 10 bureau chiefs report directly to insurance commissioner or to attorney general.

■ Number of employees

- Average number of employees is 31.
- Highest is California with 237.
- 12 have few than 10 employees.
- Three (California, New Jersey and Florida) have more than 100.

■ Number of Investigators

- Average number of investigators is 21.
- Highest is California with 165.
- 12 have five or fewer investigators.
- Two (California and New Jersey) have more than 100.

■ Budget

- Average budget is \$4,400,000.
- Highest is California with \$40,000,000; 11 have budgets under \$1 million.
- Six states could not give budget figures because their budgets are co-mingled within other agency budgets.
- Average increase from 1994 was 1.5%
- Significant increases occurred in Florida, Maryland, New Jersey, Ohio, Oklahoma and Texas.

■ Source of funding

- 15 (56%) receives funding from general revenue.
- 10 (37%) receives at least part of funding through industry assessments.

■ Police Powers

- 13 of 27 bureaus have either full or limited police powers.

■ Administrative fining authority

- Four bureaus (New York, New Jersey, Delaware and North Carolina) have the ability to levy fines against offenders.

■ **Lines of insurance**

- 22 of 27 bureaus have authority to investigate all lines of insurance. Others are either restricted to workers compensation or property/casualty.

■ **Types of fraud Investigated**

- On average, fraud bureaus dedicate the following percentage of resources to:
 - claims fraud (71%)
 - insurer fraud (13%)
 - other frauds(15%)
- Eight bureaus do not investigate insurer fraud
- Louisiana is only bureau to dedicate more resources to insurer fraud than to claims fraud.

■ **Referrals received**

- Average number of referrals received during last 12 months was 2,700.
- Three states (New York, New Jersey and California) received more than 14,000 each.
- 17 states received 650 or fewer referrals.

■ **Mandatory reporting by insurers**

- 22 states have mandatory reporting laws.
- Four states without mandatory reporting received an average of 370 referrals.

■ **Cases referred for criminal prosecution**

- Average number of cases referred is 73.
- Four states (California, Florida, Minnesota and Texas referred more than 100 cases.

■ **Convictions**

- Average number of convictions is 31, excluding California.
- Florida was highest with 275.

■ **Open investigations**

- Average number of open investigations is nearly 1,300.
- New Jersey skews average with 23,000.
- 10 states have 100 or fewer current open investigations.

■ **Relationship with prosecutors/ funding**

- 14 bureaus have some special arrangements to get cases prosecuted.
- Less than a third of respondents said prosecutors have sufficient resources to handle insurance fraud cases.

Note: Survey conducted during August and September 1995. No information was received from Georgia, Pennsylvania and South Carolina.

Insurance Fraud Bureaus

| State | Where housed: | Year started: | Title of person to whom unit reports: | Bureau director: |
|-----------------------|---------------------------|----------------------|---|--------------------------|
| ALASKA | Insurance Department | 1981 | Deputy director, division of insurance | Rick Jones |
| ARIZONA | Insurance Department | 1994 | Director of Insurance | John King |
| ARKANSAS | Insurance Department | 1993 | Commissioner of Insurance | Marty Nevrla |
| CALIFORNIA | Insurance Department | 1979 | Chief of Enforcement | F. Clarke Walker |
| CONNECTICUT | Chief State's Attorney | 1992 | Chief State's Attorney | Julia Dewey |
| DELAWARE | Insurance Department | 1994 | Director of the Delaware Fraud Bureau | Greg Sacco |
| FLORIDA | Insurance Department | 1976 | Deputy Insurance Commissioner | Frank E. Doolittle |
| GEORGIA | Insurance Department | 1992 | | Susan Hutchenson |
| IDAHO | Insurance Department | 1994 | Director of Insurance | Ralph Krom |
| KENTUCKY | Insurance Department | 1995 | Insurance commissioner | Jerry Lovitt |
| LOUISIANA | Insurance Department | 1992 | Deputy Commissioner-Licensing & Market Compliance | Gail McDonald |
| MARYLAND | Insurance Department | 1992 | Insurance commissioner | Ronald A. Sallow |
| MASSACHUSETTS | Independent | 1991 | Executive Director | Daniel L. Skelly |
| MINNESOTA | Department of Labor | 1993 | Deputy Commissioner | Warren R. Bostrom |
| MISSOURI | Insurance Department | 1990 | Director of Division of Consumer Affairs | Kathryn Turner |
| MONTANA | State Comp Insurance Fund | 1993 | President | Bill Visser |
| NEVADA | Attorney General | 1984 | Deputy Attorney General | Ron Wheatley |
| NEW HAMPSHIRE | Insurance Department | 1993 | Director, Property/Casualty, Licensing and Fraud | Robert Stanton |
| NEW JERSEY | Insurance Department | 1983 | Deputy Commissioner | Roy Bloom |
| NEW YORK | Insurance Department | 1981 | First Deputy Superintendent | Laurence M. LaPointe |
| NORTH CAROLINA | Insurance Department | 1945 | Deputy Commissioner | William Creel |
| OHIO | Insurance Department | 1985 | Chief of the Fraud Division | Dan Arledge |
| OKLAHOMA | Attorney General | 1992 | Attorney General | Karen Dixon |
| PENNSYLVANIA | Attorney General | 1995 | | |
| SOUTH CAROLINA | Attorney General | | Attorney General | Catherine Christophillis |
| TEXAS | Insurance Department | 1992 | Insurance Commissioner | Kerry Key |
| UTAH | Insurance Department | 1995 | Commissioner of Insurance | David Lattin |

Total
Average

Insurance Fraud Bureaus

| State | Number of employees: | Number of investigators: | FY 94 budget: | FY 95 budget: | Source of funding: |
|-----------------------|----------------------|--------------------------|----------------------|---------------|---|
| ALASKA | 3 | 2 | Budget not split out | | General revenue |
| ARIZONA | 13 | 7 | 750,000 | 740,000 | Industry assessment |
| ARKANSAS | 8 | 4 | 641,000 | 590,000 | Through Workers Compensation Commission taxes |
| CALIFORNIA | 237 | 165 | 40,000,000 | 40,000,000 | \$1/vehicle assessment, \$1,000 insurer assessment; WC assessment on employers |
| CONNECTICUT | 12 | 6 | 700,000 | 700,000 | General revenue |
| DELAWARE | 8 | 5 | 455,000 | 455,000 | Industry assessment |
| FLORIDA | 112 | 58 | 5,400,000 | 6,000,000 | Agent licensing fees; WC Trust Fund (\$1.7 million); Insurance commissioners' regulatory trust fund |
| GEORGIA | | | | | General revenue |
| IDAHO | 4 | 4 | Budget not split out | | General revenue |
| KENTUCKY | 12 | 6 | Budget not split out | | General revenue |
| LOUISIANA | 6 | 5 | Budget not split out | | General revenue |
| MARYLAND | 14 | 9 | 300,000 | 1,500,000 | Industry assessment |
| MASSACHUSETTS | 43 | 24 | 3,800,000 | 4,200,000 | Industry assessment |
| MINNESOTA | 11 | 10 | 288,000 | 350,000 | General revenue |
| MISSOURI | 6 | 4 | 159,000 | 159,000 | General revenue |
| MONTANA | 5 | 3 | 600,000 | 500,000 | State workers compensation fund |
| NEVADA | 7 | 4 | Budget not split out | | Industry assessment |
| NEW HAMPSHIRE | 3 | 2 | Budget not split out | | General revenue |
| NEW JERSEY | 144 | 111 | 9,500,000 | 10,500,000 | Industry assessment |
| NEW YORK | 41 | 26 | 2,200,000 | 2,200,000 | General revenue |
| NORTH CAROLINA | 18 | 14 | 1,040,627 | 1,071,713 | General Revenue |
| OHIO | 6 | 5 | 350,000 | 400,000 | General revenue |
| OKLAHOMA | 14.5 | 9 | 214,000 | 598,000 | General revenue |
| PENNSYLVANIA | | | | | Industry assessment |
| SOUTH CAROLINA | | | | | General revenue/civil fines |
| TEXAS | 18 | 12 | 3,494,423 | 4,784,274 | General Revenue |
| UTAH | 7 | 4 | 0 | 450,000 | Industry assessment based on premium volume |
| Total | 753 | 499 | 69,892,050 | 75,197,987 | |
| Average | 31 | 21 | 4,111,297 | 4,177,666 | |

Insurance Fraud Bureaus

| State | Police powers: | Civil fining authority: | Civil fines collected in FY 94: | Lines of insurance covered: | Percent of resources for: | | | Referrals received last 12 months: |
|----------------------|----------------|-------------------------|---------------------------------|-----------------------------|---------------------------|----------------|---------------|------------------------------------|
| | | | | | Claims fraud: | Insurer fraud: | Other frauds: | |
| ALASKA | No | No | 0 | All lines | 50 | 40 | 10 | 53 |
| ARIZONA | No | No | 0 | All lines | 100 | 0 | 0 | 650 |
| ARKANSAS | No | No | 0 | WC | 75 | 5 | 20 | 400 |
| CALIFORNIA | Yes | No | 0 | All lines | 100 | 0 | 0 | 20,452 |
| CONNECTICUT | Yes | No | 0 | all | 50 | 5 | 45 | 600 |
| DELAWARE | No | Yes | 0 | All lines | 80 | 5 | 15 | 75 |
| FLORIDA | Yes | No | 0 | All lines | 60 | 40 | 0 | 4,500 |
| GEORGIA | Yes | No | 0 | All lines | | | | |
| IDAHO | No | No | 0 | All lines | 80 | 20 | 0 | 267 |
| KENTUCKY | Yes | Yes | 0 | All lines | | | | |
| LOUISIANA | No | No | 0 | All lines | 40 | 50 | 10 | 100 |
| MARYLAND | Yes | No | 0 | All lines | 80 | 5 | 15 | 250 |
| MASSACHUSETTS | No | No | 0 | Restricted | 95 | 0 | 5 | 2,250 |
| MINNESOTA | No | No | 0 | Workers compensation | 70 | 30 | 0 | 526 |
| MISSOURI | No | No | 0 | All lines | 70 | 25 | 5 | 270 |
| MONTANA | No | No | 0 | Workers compensation | 80 | 0 | 20 | 450 |
| NEVADA | Yes | No | 0 | All lines | 100 | 0 | 0 | 230 |
| NEW HAMPSHIRE | No | No | 0 | All lines | 80 | 5 | 15 | 200 |
| NEW JERSEY | No | Yes | 5,561,000 | All lines | 100 | 0 | 0 | 14,000 |
| NEW YORK | Yes | Yes | | All lines | 99 | 1 | 0 | 15,000 |
| NORTH CAROLINA | Yes | Yes | 0 | All lines | 40 | 10 | 50 | 428 |
| OHIO | No | No | 0 | All lines | 100 | 0 | 0 | 650 |
| OKLAHOMA | Yes | Yes | 0 | Workers compensation | 0 | 0 | 100 | 335 |
| PENNSYLVANIA | Yes | No | 0 | All lines | | | | |
| SOUTH CAROLINA | No | Yes | 0 | All lines | | | | |
| TEXAS | Yes | No | 0 | All lines | 30 | 30 | 40 | 550 |
| UTAH | Yes | No | 0 | All lines | 70 | 25 | 5 | 100 |
| Total Average | | | | 2,300 | 1,649 72% | 296 13% | 355 15% | 62,336 2710 |

Insurance Fraud Bureaus

| State | Cases presented for: | | Convictions during the 12 months: | Mandatory reporting: | Hotline: | Current open investigations: | Data collection by line: |
|----------------|--------------------------|---------------|---|-------------------------|----------|---------------------------------|-----------------------------|
| | Criminal prosecution: | Civil action: | | | | | |
| ALASKA | 19 | 11 | 5 | Yes | No | 46 | No |
| ARIZONA | 31 | 5 | 4 | Yes | No | 230 | No |
| ARKANSAS | 42 | 0 | 9 | Yes | No | 125 | No |
| CALIFORNIA | 500 | | 1,000* | Yes | Yes | 927 | Yes |
| CONNECTICUT | 60 | 0 | 40 | Yes | No | 60 | No |
| DELAWARE | 2 | 13 | 0 | Yes | Planning | 30 | No |
| FLORIDA | 368 | | 275 | Yes | Yes | 1556 | No |
| GEORGIA | | | | Yes | | | |
| IDAHO | 20 | | 15 | Yes | No | | Yes |
| KENTUCKY | | | | Yes | | | |
| LOUISIANA | 14 | 20 | 4 | Yes | Yes | 200 | Yes |
| MARYLAND | 27 | 0 | 35 | Yes | Yes | 100 | Yes |
| MASSACHUSETTS | 45 | 0 | 37 | Yes | Yes | 851 | Yes |
| MINNESOTA | 122 | 0 | 26 | Yes | No | 77 | No |
| MISSOURI | 6 | 0 | 3 | Yes | No | 25 | Yes |
| MONTANA | 23 | 2 | 10 | No | Yes | 86 | No |
| NEVADA | 38 | 0 | 10 | Yes | No | 335 | No |
| NEW HAMPSHIRE | 17 | 0 | 0 | No | No | 170 | Yes |
| NEW JERSEY | 40 | 723 | 14 | Yes | Yes | 23000 | Yes |
| NEW YORK | 43 | 197 | 76 | Yes | | 1115 | Yes |
| NORTH CAROLINA | 65 | 24 | 32 | Yes | No | 74 | No |
| OHIO | 60 | 0 | 49 | Yes | Yes | 170 | Yes |
| OKLAHOMA | 13 | 0 | 12 | No | No | 77 | No |
| PENNSYLVANIA | | | | No | | | |
| SOUTH CAROLINA | | | | Yes | | | |
| TEXAS | 106 | 6 | 14 | Yes | Yes | 360 | No |
| UTAH | 33 | 0 | 15 | No | Yes | 70 | Yes |
| Total | 1,694 | | 685 | | | 29,684 | |
| Average | 74 | | 31 | | | 1291 | |

Insurance Fraud Bureaus

| State | Relationship with prosecutors: | Prosecutors adequately resourced: | Public education programs |
|-----------------------|--|-----------------------------------|---|
| ALASKA | No | | |
| ARIZONA | Funds one fulltime criminal AG and 25% of a civil AG. | Yes | Speakers Bureau, brochures |
| ARKANSAS | No | No | Brochures, public speaking |
| CALIFORNIA | Yes | | Newsletter, DA Communique, training videos for WC |
| CONNECTICUT | yes | No | No |
| DELAWARE | No | No | |
| FLORIDA | Prosecutor reimbursement programs for WC only. | yes | Stuffer in employee paychecks; billboard and poster campaign |
| GEORGIA | | | |
| IDAHO | | | |
| KENTUCKY | | | |
| LOUISIANA | No | No | |
| MARYLAND | Yes | | Some, planning to do more |
| MASSACHUSETTS | Yes | No | |
| MINNESOTA | No | No | Speaking engagements, seminars, posters |
| MISSOURI | No | No | No |
| MONTANA | Funds prosecutors in attorney generals office | Yes | Some public speaking |
| NEVADA | yes | Yes | |
| NEW HAMPSHIRE | No | | |
| NEW JERSEY | Funds 7 attorneys, investigators in Dept of Law & Public Safety who also prosecute | | Speakers bureau, drivers ed class in high schools |
| NEW YORK | Yes | No | |
| NORTH CAROLINA | No | | |
| OHIO | In some counties | Some yes, some no. | |
| OKLAHOMA | Yes | No | |
| PENNSYLVANIA | Yes | | |
| SOUTH CAROLINA | | | |
| TEXAS | Yes | Some, but not most | |
| UTAH | Yes. Full-time asst. AG assigned to unit. Funded by unit. | Yes | Limited efforts. Plan to develop education program for police officers. |
| Total Average | | | |

FRAUD BUREAU LEGISLATION

FINAL DRAFT FRAUD BUREAU LEGISLATION

Section 1. Purpose

The purpose of this Act is to facilitate the detection of insurance fraud and reduce the occurrence of fraud in the Commonwealth of Virginia through the establishment of a Division of Insurance Fraud (hereafter "the Division") within the Bureau of Insurance.

Section 2. Definitions

"Insurer" means an insurance company licensed to conduct business in the Commonwealth by writing any type of insurance as defined in Sections 38.2 -101 through 134. For purposes of this Act, "insurer" includes the Virginia Property Insurance Association.

"Health care provider" means a licensee of the Commonwealth authorized to practice medicine and surgery, psychology, or chiropractic.

"Person" means a natural person, company, corporation, unincorporated association, partnership, professional corporation, agency of government, and any other entity.

Section 3. Insurance Fraud

A. A fraudulent insurance act shall include, but is not limited to, acts or omissions committed by any person who knowingly, or with an intent to injure, defraud or deceive:

(1)(a) presents or causes to be presented to any insurer, reinsurer, producer, broker, or any agent thereof; any oral or written statement, knowing that the statement contains any false, incomplete or misleading information concerning any fact material to an application for the issuance of an insurance policy; or

(b) prepares or assists, abets, solicits or conspires with another to prepare or make any oral or written statement that is intended to be presented to any insurer in connection with, or in support of, any application for the issuance of an insurance policy, knowing that the statement contains any false, incomplete or misleading information concerning any fact or thing material to the application.

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

(b) assists, abets, solicits or conspires with another to prepare or make any oral or written statement including computer-generated documents that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an

insurance policy, knowing that the statement contains any false, incomplete or misleading information concerning any fact or thing material to the claim.

B. A fraudulent insurance act shall include, but not be limited to, the act of a health care provider or other person who knowingly and willfully assists, conspires with, or urges any person to fraudulently violate any of the provisions of this Act, or any person or healthcare provider who due to the assistance, conspiracy or urging by said person or healthcare provider, knowingly and willfully benefits from the proceeds derived from the use of the fraud.

Section 4. Division of Insurance Fraud: Duties and Powers

A. It shall be the duty of the Division of Insurance Fraud:

(1) To initiate independent inquiries and conduct independent investigations when the Division has reason to believe that fraudulent insurance acts may have been or are currently being committed.

(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 submitted by insurers, their employees or producers, and to select the incidents of suspected fraud as, in its judgment, require further and more detailed investigation and to conduct the investigations.

(4) To conduct independent examinations of insurance fraud, and undertake independent studies to determine the extent of insurance fraud, deceit, or intentional misrepresentation.

(5) To report any alleged violations of law which are disclosed by its investigations and examinations to the appropriate licensing agencies and to assemble evidence, prepare charges, and otherwise assist the appropriate local Attorney for the Commonwealth.

B. The Division is authorized to employ investigators and the appropriate support staff as is necessary to carry out its mandate. The general laws applicable to peace officers and law enforcement officers shall be applicable to the Division of Insurance Fraud investigators. Investigators of the Division shall have the following additional powers:

(1) To make arrests for criminal violations established as a result of their investigations.

(2) To execute arrest and search warrants for criminal violations established as a result of their investigations.

(3) To administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda,

agreements, or other documents or records which the Division deems relevant or material to an inquiry or investigation concerning insurance fraud.

(4) To arrest, without warrant, any person found in the act of violating any of the provisions of applicable laws.

C. Evidence, documentation, and related materials.

If the Division seeks evidence, documentation, and related materials located within this state pertinent to an investigation or examination and in the possession or control of an admitted insurer, an employee of an admitted insurer, or a producer, the Division may request access to the matter. The person so requested shall either make the matter available to the Division, or shall make the matter available for inspection or examination by a designated representative of the Division.

D. Confidentiality and immunity from subpoena.

(1) Papers, records, documents, reports, materials or other evidence relative to the subject of an insurance fraud investigation or examination shall remain confidential and shall not be subject to public inspection for so long as the Division considers it reasonably necessary to complete its investigation or examination, or so long as the Division considers it reasonably necessary to protect the privacy of the person or matter investigated or examined and the person furnishing the matter or to be in the public interest.

(2) Papers, records, documents, reports, materials or other evidence relative to the subject of an insurance fraud investigation or examination shall not be subject to subpoena until opened for public inspection by the Division, unless the Division consents, or until after notice to the Division and a hearing by a court of competent jurisdiction determines that the Division or any of its investigations or examinations will not be unnecessarily hindered by a subpoena.

(3) Investigators employed by the Division of Insurance Fraud shall not be subject to subpoena in civil actions by any court in this state 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 Division.

E. Cooperation with law enforcement and licensing authorities and other fraud bureaus.

(1) The Division of Insurance Fraud shall cooperate fully with law enforcement authorities and related insurance and professional licensing boards of this and other states, with the appropriate local Attorney for the Commonwealth, and with duly constituted authorities of the federal government. The Division shall also cooperate fully with insurer fraud investigators and with insurance fraud bureaus and related organizations of this and other states.

(2) If the Division determines that it has sufficient evidence of the commission of an act of insurance fraud or criminal violation of any law, it shall so inform the appropriate local Commonwealth attorney and any relevant professional licensing board within 120 days. The appropriate local Attorney for the Commonwealth, if satisfied that a crime has been committed, shall proceed forthwith to undertake legal action in the name of the State against the alleged perpetrator(s) and the relevant professional licensing board shall proceed forthwith to undertake appropriate disciplinary action.

(3) Within 90 days of receipt of a report by the Division, and every 60 days thereafter, the appropriate local Attorney for the Commonwealth shall inform the Division as to the status of any prosecution of insurance fraud or criminal violation of law, and the relevant professional licensing board shall so inform the Division as to the status of any disciplinary action.

Section 5. Duties of Insurers, their Employees and Producers

A. If any insurer, any employee thereof, or any producer has knowledge of, or has reason to believe, or has a reasonable suspicion that a fraudulent insurance act will be, is being, or has been committed, that person shall furnish and disclose any information in its possession concerning the fraudulent act to the Division, subject to any legal privilege protecting such information.

B. If an insurer has reason to believe that a fraudulent insurance act or other criminal violation has been committed in connection with an insurance claim, and has notified the Division of its suspicions, the notification shall toll any applicable time period or statute of limitations in any applicable claims practice, statute or related regulation.

Section 6. Persons Not Connected With The Insurance Industry

A. Any person having knowledge of or who believes that a fraudulent insurance act is being or has been committed may send to the Division of Insurance Fraud a report or information pertinent to the knowledge and belief, and provide the additional information as the Division may request.

B. The Division, in cooperation with authorized insurers, and producers, may establish a fund to reward persons not connected with the insurance industry who provide information or furnish evidence leading to the arrest and conviction of persons responsible for insurance fraud.

Section 7. Privileges and Immunities

A. No person when acting without malice shall be subject to liability by virtue of filing reports, or furnishing orally or in writing other information concerning any suspected, anticipated or completed fraudulent insurance act, when the reports or information are provided to or received from the Division of Insurance Fraud, the National Association of Insurance Commissioners, or any other not-for-profit organization established to detect and prevent insurance fraud, and their agents, employees or designees.

B. Except in prosecution for perjury or insurance fraud, an insurer, or any officer, employee, or producer thereof, or any private person who cooperates with, furnishes evidence, or provides or receives information regarding any suspected fraudulent insurance act to or from the Division, or who complies with an order issued by a court of competent jurisdiction acting in response to a request by the Division to provide evidence or testimony shall not be subject to any penalty resulting from criminal prosecution for filing reports, providing information, or otherwise cooperating with an investigation or examination of the Division of Insurance Fraud.

C. In the absence of malice, an insurer, or any officer, employee or producer thereof, or any private person who cooperates with, furnishes evidence or provides information regarding any suspected fraudulent insurance act to the Division, or who complies with an order issued by a court of competent jurisdiction acting in response to a request by the Division to furnish evidence or provide testimony, shall not be subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature will lie against such person, for filing reports, providing information, or otherwise cooperating with an investigation or examination of the Division.

D. The Commissioner of Insurance and any employee or agent of the Bureau of Insurance or Division of Insurance Fraud, when acting without malice, shall not be subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature will lie against such person by virtue of the execution of official activities or duties of the Division by virtue of the publication of any report or bulletin related to the official activities or duties of the Division.

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.

Section 8. Other Law Enforcement Authority

This Act shall not:

A. preempt the authority or relieve the duty of any other law enforcement agencies to investigate, examine, and prosecute suspected violations of law.

B. prevent or prohibit a person from voluntarily disclosing any information concerning insurance fraud to any law enforcement agency other than the Division of Insurance Fraud.

C. limit any of the powers granted elsewhere by the laws of this State to the Commissioner of Insurance or to the Bureau of Insurance to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

Section 9. Penalties.

Any person who commits insurance fraud as that term is defined in Section 3 of this Act, is guilty of a Class 3 felony unless that person is found guilty of obtaining or seeking to obtain property of a value of less than \$200 in which case such person shall be guilty of a Class 1 misdemeanor.

Section 10. Funding

A. Each licensed insurer doing business in the Commonwealth by writing any type of insurance as defined in Sections 38.2-101-134 shall pay an assessment not to exceed one-quarter of 1% of the direct gross premium income collected during the preceding calendar year. The aggregate assessment collected under this subsection A shall not exceed one million dollars. The assessment shall be apportioned, assessed and paid as prescribed by Section 38.2-403.

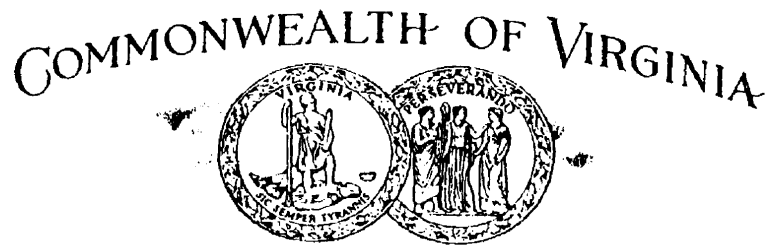
B. Assessments received by the Division under subsection A of this section shall be segregated and placed in a fund to be known as the Insurance Fraud Prevention Fund. This fund shall be controlled and administered by the Commissioner of Insurance. Money in the fund shall be used solely for administering this Act.

Section 11. Annual Report.

The Division shall report annually in writing, on or before the first day of February after this Act has been in effect for at least 12 months, to the Governor and the General Assembly on the Division's activities during the preceding year.

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THEODORE V. MORRISON, JR.
CHAIRMAN
HULLIHEN WILLIAMS MOORE
COMMISSIONER
CLINTON MILLER
COMMISSIONER



APPENDIX D
WILLIAM J. BRIDGE
CLERK OF THE COMMISSION
P. O. BOX 1197
RICHMOND, VIRGINIA 23218-119

STATE CORPORATION COMMISSION

September 25, 1996

The Honorable George H. Heilig, Jr.
Chairman
Joint Subcommittee to Consider the Establishment
of an Insurance Fraud Bureau (HJR 55/SJR 36)
General Assembly Building
Richmond, Virginia 23219

Dear Chairman Heilig:

I write to express the position of the State Corporation Commission on the proposal that an insurance fraud unit be established within this Commission, probably as a component of our Bureau of Insurance.

The State Corporation Commission must respectfully oppose such a proposal. The reasons for our position are manifold. Insurance Commissioner Gross may go into these in some detail as a member of the Subcommittee. I shall offer a few of the basic reasons for our opposition.

The Bureau of Insurance is by far the largest division of the State Corporation Commission in terms of personnel and budget. Nevertheless, its regulatory responsibilities over the insurance industry extend only to insurance companies, their employees and agents. Taking on a fundamentally different responsibility encompassing the public at large would be a drastic departure from the traditional and familiar functions of the Bureau. Instead of our examiners and investigators focusing their specialized talents on insurance companies and agents, Bureau personnel would be investigating and charging crimes against individuals. We believe that other law enforcement agencies having the wider scope of police responsibilities over individuals are more appropriate.

If such new responsibility were to be placed in our Bureau of Insurance, to accomplish the task to the effective degree the General Assembly should expect, a very substantial impact will occur on the Bureau's space and equipment requirements, budget and personnel. We would certainly be duplicating to a large extent law enforcement oriented equipment, personnel and technology resources already in place in other agencies having law enforcement responsibilities. We think it obvious that unnecessary duplication increases an otherwise avoidable cost to the public.

It has been suggested that the location of an insurance fraud unit within the State Corporation Commission is desirable because it presents a solution to the alleged problem of some sort of interjurisdictional rivalry between state police and local law enforcement. I have also heard the allegation that some Commonwealth's Attorneys are reluctant to prosecute cases brought to them by the State Police. Incredible as this may sound, I have no reason to believe that if true, such a problem would be solved by having this Commission or its Bureau of Insurance as the law enforcement agency active in a case to be prosecuted by a local Commonwealth's attorney.

Furthermore, I respectfully suggest that if it is determined that one or more agencies of state or local government are not fulfilling their responsibilities, in this case sworn responsibilities, the General Assembly has ample power and ability to enact measures to correct such nonfeasance. Creating another unit of government simply because other government agencies fall short in meeting their responsibilities is not a rational response. I stress that in discussing this area, this Commission does not acknowledge by implication that the alleged abuses exist.

Commissioner Gross will be able to discuss in more detail the funding level we project to adequately perform the new responsibilities proposed for us. Although precise financial requirements are impossible to calculate at the moment, the new functions will impact on the premium assessment the Bureau will have to make against licensed insurers in Virginia. I take some pride in the fact that the State Corporation Commission has reduced its assessment for the maintenance of the Bureau of Insurance in recent years. In 1989 (the year I became a member of this Commission) the maintenance assessment was .08% of premium; it was reduced to .07% in 1992, and reduced again in 1995 to .06%. Reductions in maintenance assessments represent a direct financial relief to our licensed insurance companies which hopefully represent some financial burden not passed on to Virginia insurance customers. We may continue to reduce such assessments in the future; at the very least we wish them to remain stable without increase. I simply wish the Subcommittee to understand that the significant expense of operating an effective fraud unit funded by further premium assessment will surely jeopardize our ability to reduce or stabilize the maintenance assessments in the future.

On any number of occasions in the past, the General Assembly has seen fit to place responsibilities upon the State Corporation Commission for new or expanded functions, some of which were never sought by the SCC. In this instance, should the recommendations of your subcommittee and subsequent legislation result in an Insurance Fraud Bureau being placed within the State Corporation Commission, naturally we will, as on past occasions, accept a new responsibility with a constructive spirit, and execute it to the best of our ability.

I trust you will call upon me if the members of this Commission and its staff may be of assistance to the important work of your Subcommittee.

Sincerely,



Theodore V. Morrison, Jr.

TVM,Jr./msl

CC: Hon. George H. Heilig, Jr.
Hon. Charles J. Colgan
Hon. Ward L. Armstrong
Hon. John H. Tate, Jr.
Hon. James M. Scott
Hon. Stephen H. Martin
Hon. William T. Bolling
Hon. John E. Kloch
Hon. Jerry W. Kilgore
Mr. George R. Dishner
Mr. Alfred W. Gross
Ms. Gail Marshall
Mr. Ronald M. Johnston
Mr. Daniel J. Peacock
Mr. Eddie L. Perry
Mr. Arlen K. Bolstad
Mr. William L. Owen, Jr.

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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;

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

2 g. The financial condition of an insurer; or

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

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

6 3. Removes the assets or records of assets, transactions or affairs or a material part thereof, from
7 the home office or other place of business of the insurer, or from the place of safekeeping of the
8 insurer, or destroys or sequesters the same from the Bureau of Insurance.

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

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

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

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

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

25 CHAPTER 57.

26 INSURANCE FRAUD.

27 § 38.2-5700. Insurance Fraud: duties and powers of the Commission.

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

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

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

34 "Insurance transaction," "insurance business," and "business of insurance" include solicitation,
35 negotiations preliminary to execution of an insurance contract, execution of an insurance contract
36 and the transaction of matters subsequent to execution of a contract and arising out of it, and matters
37 arising out of any relationship among or between an insured, an insurer and a third party for which
38 an insurance policy provides coverage.

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

40 "Insurer" means any person subject to regulation pursuant to Title 38.2, 46.2, or 65.2 of the
41 Code of Virginia engaged in the business of making, or purporting to make, annuity contracts,
42 subscription contracts, or contracts of insurance, except that this term shall not include (i) any person
43 licensed by or subject to regulation pursuant to Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2, (ii)
44 continuing care providers subject to registration pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title
45 38.2, and (iii) purchasing groups authorized by Chapter 51 (§ 38.2-5100 et seq.) of Title 38.2.

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

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

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

54 2. To respond to notification or complaints alleging insurance fraud generated by federal, state

1 and local police, other law-enforcement authorities, governmental agencies or units, and the general
2 public.

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

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

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

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

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

25 F. If any such agent, inspector or investigator shall be arrested or indicted or otherwise
26 prosecuted on any charge arising out of any act committed in the discharge of his official duties, the
27 Commission may employ special counsel approved by the Attorney General to defend such agent,
28 inspector, or investigator. The compensation for such special counsel employed pursuant to this
29 section shall, subject to the approval of the Attorney General, be paid out of the fund provided in
30 § 38.2-5705.

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

40 H. Confidentiality and immunity from service of process.

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

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

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

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

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

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

7 § 38.2-5701. Duties of insurers, their employees and insurance professionals.

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

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

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

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

21 § 38.2-5702. Reward fund.

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

27 § 38.2-5703. Privileges and immunities.

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

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

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

39 § 38.2-5704. Other law-enforcement authority.

40 This chapter shall not:

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

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

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

47 § 38.2-5705. Funding.

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

54 B. The assessments made by the Commission under subsection A and paid into the state treasury

- 1 *shall be deposited to a special fund designated "Bureau of Insurance Special Fund, Insurance*
- 2 *Fraud—State Corporation Commission," and out of such special fund and the unexpended balance*
- 3 *thereof shall be appropriated the sums necessary for accomplishing the powers and duties assigned to*
- 4 *the Commission under this chapter. Such fund shall be segregated from that fund entitled "Bureau of*
- 5 *Insurance Special Fund—State Corporation Commission," the provisions of § 38.2-400 B*
- 6 *notwithstanding.*
- 7 **2. That the provisions of this act shall become effective on January 1, 1998.**
- 8 **3. That the provisions of this act may result in a net increase in periods of imprisonment in**
- 9 **state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary**
- 10 **appropriation is \$62,500.**

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| Official Use By Clerks | | | |
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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

1 thereof, a person convicted of a violation of this section may be ordered to make monetary restitution
2 for any financial loss or damage sustained by any other person as a result of the violation.

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

8 § 18.2-246.3. Insurance fraud by an insurer, insurance professional or insurance premium finance
9 company.

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

- 15 1. The solicitation or sale of any reported insurance policy or premium finance transaction;
- 16 2. An application for certificate of authority from the Commission;
- 17 3. The solicitation, negotiation, procuring, or effecting of a new or renewal insurance risk on
18 behalf of an insolvent insurer;
- 19 4. The removal of assets or records of assets, transactions or affairs or a material part thereof,
20 from the home office or other place of business of the insurer, or from the place of safekeeping of the
21 insurer, or the destruction or sequestration of the same from the Bureau of Insurance
- 22 5. The solicitation, negotiation, procurement or effecting of a new or renewal insurance risk on
23 behalf of an unlicensed insurer where a license is required;
- 24 6. The operation of an unlicensed insurer; and
- 25 7. The financial condition of any insurer and the financial condition of an insurer.
- 26 8. Payments or claim denials made pursuant to the terms of an insurance policy.

27 Any conviction of a violation of this section by an individual shall be punishable as a Class 4
28 felony. In the case of a conviction of a legal entity other than an individual, it shall be subject to a
29 fine not to exceed \$100,000. Nothing herein shall be deemed to preclude the imposition of any
30 penalty by the State Corporation Commission as set forth in Title 38.2 or regulations issued pursuant
31 thereto.

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

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

40 § 38.2-415. Assessment to fund program to reduce losses from insurance fraud.

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

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

52 CHAPTER 9.
53 INSURANCE FRAUD.

54 § 52-36. Insurance fraud: duties and powers of the Department.

- 1 A. As used in this chapter, the following words shall have the following meanings:
- 2 "Commission" means the State Corporation Commission.
- 3 "Insurance premium finance company" has the same meaning as specified in § 38.2-4700.
- 4 "Insurance policy" means a contract or other written instrument between an insured and insurer
- 5 setting forth the obligations and responsibilities of each party.
- 6 "Insurance professional" means adjusters, agents, managing general agents, surplus lines
- 7 brokers, reinsurance intermediaries, insurance consultants, brokers, attorneys-in-fact, and third party
- 8 administrators.
- 9 "Insurance transaction," "insurance business," and "business of insurance" include solicitation,
- 10 negotiations preliminary to execution of an insurance contract, execution of an insurance contract
- 11 and the transaction of matters subsequent to execution of a contract and arising out of it, and matters
- 12 arising out of any relationship among or between an insured, an insurer and a third party for which
- 13 an insurance policy provides coverage.
- 14 "Insured" means any person covered by an insurance policy.
- 15 "Insurer" means any person subject to regulation pursuant to Title 38.2, 46.2, or 65.2 of the
- 16 Code of Virginia engaged in the business of making, or purporting to make contracts of insurance,
- 17 except that this term shall not include (i) any person licensed by or subject to regulation pursuant to
- 18 Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2, (ii) title insurers subject to regulation pursuant to
- 19 Chapter 46 (§ 38.2-4600 et seq.) of Title 38.2, (iii) continuing care providers subject to registration
- 20 pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2, and (iv) purchasing groups authorized by
- 21 Chapter 51 (§ 38.2-5100 et seq.) of Title 38.2.
- 22 "Insurance fraud" means any acts and practices defined in Article 9 (§ 18.2-246.1 et seq.) of Title
- 23 18.2 which involve any type of insurance as defined in §§ 38.2-110 through 38.2-122 and 38.2-124
- 24 through 38.2-134.
- 25 B. There shall be established within the Department of State Police, Bureau of Criminal
- 26 Investigation, an Insurance Fraud Investigation Unit. The purpose of this unit shall be:
- 27 1. To initiate independent inquiries and conduct independent investigations when the Commission
- 28 has reason to believe that insurance fraud may have been or is currently being committed, and to
- 29 undertake studies to determine the extent of such insurance fraud.
- 30 2. To respond to notification or complaints alleging insurance fraud generated by federal, state
- 31 and local police, other law-enforcement authorities, governmental agencies or units, and the general
- 32 public.
- 33 3. To review notices and reports of insurance fraud, and to select the incidents of suspected fraud
- 34 that, in its judgment, require further detailed investigation and to conduct the investigations.
- 35 C. The Superintendent may appoint such agents as he may deem necessary to assist it in carrying
- 36 out its powers and duties under this chapter.
- 37 § 52-37. Access to evidence, documentation, and related materials.
- 38 If the Department seeks evidence, documentation, and related materials located within this
- 39 Commonwealth pertinent to an investigation or examination and in the possession or control of an
- 40 insurer or an insurance professional, the Department may request access to the material. The person
- 41 so requested shall either make the material available to the Department, or shall make the material
- 42 available for inspection or examination by a designated representative of the Department.
- 43 § 52-38. Confidentiality and immunity from service of process.
- 44 A. Papers, records, documents, reports, materials or other evidence relative to the subject of an
- 45 insurance fraud investigation or examination in the possession of the Department shall remain
- 46 confidential and shall not be subject to public inspection.
- 47 B. Agents employed by the Department shall not be subject to subpoena in civil actions by any
- 48 court in this Commonwealth to testify concerning any matter of which they have knowledge pursuant
- 49 to a pending or continuing insurance fraud investigation or examination being conducted by the
- 50 Department.
- 51 § 52-39. Duties of insurers, their employees and insurance professionals.
- 52 A. If any insurer, any employee thereof, or any insurance professional has knowledge of, or has
- 53 reason to believe that a violation of §§ 18.2-246.2 or 18.2-246.3 will be, is being, or has been
- 54 committed, that person shall furnish and disclose any information in his possession concerning the

1 *fraudulent act to the Department, subject to any legal privilege protecting such information.*

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

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

9 *The lack of a statement required in this subsection does not constitute a defense in any criminal*
 10 *prosecution under Article 9 (§ 18.2-246.1 et seq.) of Title 18.2. The statement required by this*
 11 *subsection shall not be required on applications and forms relating to reinsurance.*

12 *§ 52-40. Receipt of information; immunity from liability.*

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

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

22 *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.-246.2 or 18.2-246.3 to the Department.

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

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

29 *§ 52-41. Reward fund.*

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

35 *§ 52-42. Reports*

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

39 *§ 52-43. Other law-enforcement authority.*

40 *This chapter shall not:*

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

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

45 *§ 58.1-2508. Taxes applicable to insurance companies.*

46 *A. The real estate and tangible personal property, situated or located in the Commonwealth, of*
 47 *every such company and every fraternal benefit society transacting insurance in the Commonwealth*
 48 *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.

51 *B. The license tax provided in this chapter, the tax on real estate and tangible personal property*
 52 *provided for in subsection A, the fee assessed by the Commission for the administration of the*
 53 *insurance laws pursuant to § 38.2-400 et seq., the fee assessed by the Commission for the Fire*
 54 *Programs Fund pursuant to § 38.2-401, the fee assessed by the Commission for the Flood Prevention*

- 1 and Protection Assistance Fund pursuant to § 38.2-401.1, the fee assessed by the Commission to fund
- 2 the program to reduce losses from motor vehicle thefts pursuant to § 38.2-414, *the fee assessed by the*
- 3 *Commission to fund the program to reduce losses from insurance fraud pursuant to § 38.2-415,* and
- 4 retaliatory amounts assessed by the Commission pursuant to § 38.2-1026 shall be in lieu of all fees,
- 5 licenses, taxes and levies whatsoever, state, county, city or town; however, nothing in this section
- 6 shall be construed to exempt insurance companies from the tax levied in Chapter 6 of this title. No
- 7 additional fee or license tax shall be applicable to an agent of an insurance company other than the
- 8 annual license fee on agents required pursuant to Article 3 (§ 38.2-1822 et seq.) of Chapter 18 of
- 9 Title 38.2.
- 10 **2. That the provisions of this act shall become effective on January 1, 1998.**
- 11 **3. That the provisions of this act may result in a net increase in periods of imprisonment in**
- 12 **state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary**
- 13 **appropriation is \$62,500.**

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| Date: _____ | | Date: _____ | |
| _____ Clerk of the Senate | | _____ Clerk of the House of Delegates | |



Col. M. Wayne Huggins
Superintendent

(804) 674-2000

COMMONWEALTH of VIRGINIA

DEPARTMENT OF STATE POLICE

January 7, 1997

C
The Honorable Charles J. Colgan
Senator
29th District
P. O. Box 1650
Manassas, Virginia 22110

D
Dear Senator Colgan:

A member of my staff recently had a telephone discussion with Senator William T. Bolling regarding work of the General Assembly Sub-Committee studying the formation of an Insurance Fraud Unit.

P
During that conversation, Senator Bolling indicated that the committee had completed their work and that you had been designated to introduce a bill in the upcoming session of the General Assembly to create a Division of Insurance Fraud within the State Corporation Commission's Bureau of Insurance.

Y
It is our understanding that concern has been expressed by someone within the State Corporation Commission as to whether that is the most suitable place for the Division. With that in mind, we would like to offer the Department of State Police as an alternative.

Over the years, the Department's Bureau of Criminal Investigation has conducted major investigations into insurance fraud and conspiracies to commit insurance frauds which have resulted in successful prosecutions. A recent example was a case reported to the Bureau of Criminal Investigation office at Wytheville on July 23, 1992. Mr. Darryl Sarver, Claims Representative for the Farm Bureau Insurance Company brought to our attention several suspicious automobile accident claims. The State Police initiated an investigation and was assisted by the FBI and local law

The Honorable Charles J. Colgan
December 27, 1996
Page 2

enforcement agencies. As a result of this lengthy investigation a Federal Grand Jury returned indictments against thirty-six individuals, primarily residents of the Buchanan County area of the state on May 23, 1996. The indictments cited numerous staged automobile accidents involving personal injury claims which occurred over the past several years causing the Farm Bureau Insurance Company to sustain losses in excess of \$200,000 from the fraudulent claims.

Should the General Assembly see fit to place the responsibility along with necessary funding with the Department of State Police we would consider it a challenge to enhance our ability and build an effective Insurance Fraud Unit. This additional responsibility would integrate well with the overall mission of the Bureau of Criminal Investigation.

Please do not hesitate to call me if you have questions or need additional information from the Department of State Police.

With kind regards,

Sincerely,



Superintendent

MWH/DES/rgp

cc: The Honorable Ward L. Armstrong
P.O. Box 1431
Martinsville, VA 24114-1431
The Honorable William T. Bolling
P. O. Box 112
Mechanicsville, VA 23111
The Honorable George H. Heilig, Jr.
700 Newtown Road
Norfolk, VA 23502
The Honorable Stephen H. Martin
P.O. Box 36147
Richmond, VA 23235

The Honorable Charles J. Colgan
December 27, 1996
Page 3

The Honorable Theodore V. Morrison, Jr.
P. O. Box 1197
Richmond, VA 23218-1197
The Honorable James M. Scott
P. O. Box 259
Merrifield, VA 22116-0359
The Honorable John H. Tate, Jr.
P. O. Box 26
Marion, VA 24354

COMMONWEALTH OF VIRGINIA

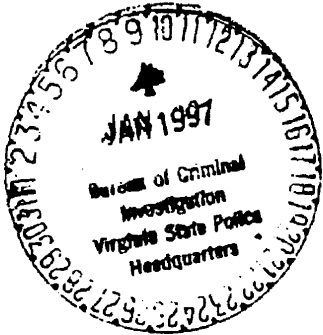


WILLIAM J. BRIDGEMAN
CLERK OF THE COMMISSION
P. O. BOX 1197
RICHMOND, VIRGINIA 23218-1197

JOHN V. MORRISON, JR.
CHAIRMAN
JILLIEN WILLIAMS MOORE
COMMISSIONER
CLINTON MILLER
COMMISSIONER

STATE CORPORATION COMMISSION

January 7, 1997



Colonel M. Wayne Huggins
Superintendent
Virginia Department of State Police
Post Office Box 27472
Richmond, Virginia 23261-7472

RE: Insurance Fraud Unit

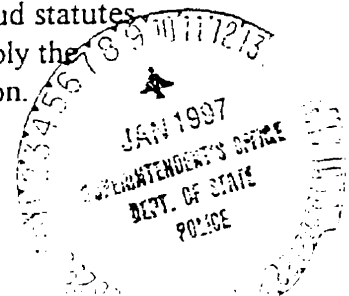
Dear Colonel Huggins:

Thank you for sending me a copy of your January 7 letter to Senator Colgan regarding the above.

In your letter you make reference to concern having been expressed "by someone within the State Corporation Commission" as to whether the Bureau of Insurance of the SCC is the most suitable place for an insurance fraud unit to be placed. Our expression of concern actually emanates from a position expressed by the State Corporation Commission itself through my letter of September 25, 1996, to the Chairman of the Joint Subcommittee Study and its membership.

I believe it would be helpful for you to have that letter, and a copy of it is provided you herewith.

As a member of the House of Delegates some years ago, I played some role in establishing the Bureau of Criminal Investigation within the Department of State Police. I think it pretty obvious that this unit within your Department should be seriously considered, if not exclusively considered, for assuming whatever responsibilities this Insurance Fraud Unit concept may entail. Personally, I am not at all certain that there really exists a need to make any legislative changes whatsoever. There are fraud statutes aplenty already on the books, and ample law enforcement agencies, most notably the Department of State Police with its specialized Bureau of Criminal Investigation.

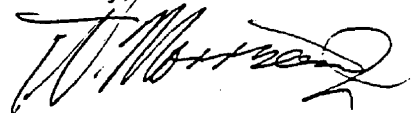


Colonel M. Wayne Huggins
January 7, 1997
Page 2

Your letter serves to confirm my belief in that you provided the example of the BCI investigation in Southwest Virginia culminating in multiparty indictments.

In meeting with representatives of the segment of the insurance industry proposing a fraud unit within our Bureau of Insurance, I have heard what I believe to be legitimate concern about some lack of importance given to insurance fraud investigations and prosecutions. In this regard, it may be that some limited legislation charging your agency with a well defined responsibility for insurance fraud investigation would at least satisfy a degree of this concern.

Sincerely,



Theodore V. Morrison, Jr.

TVM,Jr./msl

CC: The Honorable Charles J. Colgan
The Honorable Ward L. Armstrong
The Honorable William T. Bolling
The Honorable George H. Heilig, Jr.
The Honorable Stephen H. Martin
The Honorable James M. Scott
The Honorable John H. Tate, Jr.
Commissioner Hullahen Williams Moore
Commissioner Clinton Miller



COMMONWEALTH of VIRGINIA

Col. M. Wayne Huggins
Superintendent

(804) 674-2000

DEPARTMENT OF STATE POLICE

P. O. BOX 27472, RICHMOND, VA 23261-7472

January 21, 1997

Mr. Henry H. McVey, III
McGuire, Woods, Battle, & Boothe
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030

Dear Mr. McVey:

Thank you for your correspondence of January 13, 1997, concerning ongoing discussions about placement of an Insurance Fraud Unit.

We have offered the Bureau of Criminal Investigation as an alternate location for the Fraud Unit and are presently in the process of assessing the impact of implementation should it come to fruition. Our study will include an inquiry to the Maryland State Police.

We are interested in discussing this matter with you and Lt. Colonel Wayne A. Garrett, Director of the Bureau of Criminal Investigation will be available for those discussions. You may reach Lt. Colonel Garrett at telephone number 804/674-2050.

We look forward to working with you on this important issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Wayne Huggins", with a long horizontal flourish extending to the right.

Superintendent

MWH/DES/et

Mr. Henry H. McVey
January 21, 1997
Page 2

cc: Lt. Colonel Harry M. Durham
Lt. Colonel Wayne A. Garrett
Lt. Colonel W. Gerald Massengill
Captain Terry A. Bowes
Captain Larry W. Burchett
Captain Frank A. Williams, Jr.

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