

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 1054
SENATE BILL 498

AN ACT TO IMPROVE THE LAWS RELATING TO THE REPORTING AND INVESTIGATION OF INSURANCE FRAUD AND THE FINANCIAL CONDITION OF INSURANCE LICENSEES, THE LAWS RELATING TO FRAUDULENT INSURANCE CLAIMS, THE LAWS RELATING TO EMBEZZLEMENT AND THE REPORTING THEREOF, AND THE LAWS RELATING TO FALSE STATEMENTS BY PERSONS IN THE BUSINESS OF INSURANCE; AND TO PROVIDE FOR THE COMPLETION OF FIRE INCIDENT REPORTS BY FIRE DEPARTMENTS AND THE AVAILABILITY OF SUCH REPORTS TO INSURANCE COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-2-160 reads as rewritten:

~~"§ 58-2-160. Immunity from liability for reporting insurance fraud.~~

~~(a) For the purpose of this section, a "fraudulent insurance act" is committed by any person who, knowingly and with the intent to defraud: (1) presents, causes to be presented, or prepares with the knowledge or belief that it will be presented to or by an insurer, purported insurer, broker, or any agent or employee thereof, any written statement as part of an insurance policy, or in support of an insurance policy, an application for the issuance of an insurance policy, or the rating of an insurance policy, or a claim for payment or other benefit pursuant to an insurance policy, that he knows to contain materially false information concerning any material fact; or (2) conceals information concerning any material fact.~~

~~(b) In the absence of fraud or bad faith, no person is subject to civil liability for defamation for filing reports or furnishing other information, without malice, required by Articles 1 through 64 of this Chapter or required by the Commissioner under the authority granted in Articles 1 through 64 of this Chapter; and no cause of action for defamation arises against such person (1) for any information relating to suspected fraudulent insurance acts furnished to or received from the Commissioner, his designee, or law enforcement officials or their agents and employees; (2) for any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of Articles 1 through 64 of this Chapter; or (3) for any such information furnished in reports to the Commissioner or his staff, the Attorney General or his staff, the NAIC, or any organization established to detect and prevent fraudulent insurance acts, or their agents, employees or designees; nor shall the Commissioner or his staff, the Attorney General or his staff, or any representative of the NAIC, acting without malice, in the absence of fraud or bad faith, be subject to liability~~

for defamation, and no cause of action for defamation arises against such person for the publication of any confidential report or bulletin related to the official activities of the Commissioner, the Attorney General, or the NAIC. Nothing in this section abrogates or modifies any common law or statutory privilege or immunity enjoyed by any person.

~~(e) During the course of an investigation of a suspected fraudulent insurance act, the Commissioner may personally or through his representative request any insurer to furnish copies of any information relative to that suspected act that is in the insurer's possession. The insurer shall release the information requested and cooperate with the Commissioner or his representative pursuant to this subsection. The information shall include without limitation to:~~

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

"§ 58-2-160. Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.

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

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

which report is published or disseminated in the absence of fraud, bad faith, negligence, or actual malice on the part of the Commissioner.

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

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

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

(a) For the purposes of this section 'insurer' includes an entity under Articles 65 through 67 of this Chapter and includes the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes.

(b) Any person who willfully and knowingly presents or causes to be presented a false or fraudulent claim, or any proof in support of such claim, to an insurer for the payment of a loss or other benefits under any insurance policy, certificate, or coverage; or prepares, makes, or subscribes to a false or fraudulent account, certificate, affidavit, proof of loss, or other documents or writing, to an insurer, with the intent that the same may be presented or used in support of such claim, shall be guilty of a felony and, upon conviction, shall be punished as a Class I felon.

"§ 58-2-162. Embezzlement by insurance agents, brokers, or administrators.

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

"§ 58-2-163. Report to Commissioner.

Whenever any insurance company, or employee or representative of such company, or any other person licensed or registered under Articles 1 through 67 of this Chapter knows or has reasonable cause to believe that any other person has violated G.S. 58-2-161, 58-2-162, 58-2-180, 58-8-1, or 58-24-180(e), or whenever any insurance company, or employee or representative of such company, or any other person licensed or registered under Articles 1 through 67 of this Chapter knows or has reasonable cause to believe that any entity licensed by the Commissioner is financially impaired, it is the duty of such person, upon acquiring such knowledge, to notify the Commissioner and provide the Commissioner with a complete statement of all of the relevant facts and circumstances. Such report is a privileged communication, and when made without actual malice does not subject the person making the same to any liability whatsoever. The Commissioner may suspend, revoke, or refuse to renew the license of any licensee who willfully fails to comply with this section."

Sec. 3. G.S. 58-24-180 is amended by adding a new subsection to read:

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

Sec. 4. G.S. 58-8-1 reads as rewritten:

"§ 58-8-1. Mutual insurance companies organized; requisites for doing business.

No policy may be issued by a mutual company until the president and the secretary of the company have certified under oath that every subscription for insurance in the list presented to the Commissioner for approval is genuine, and made with an agreement with every subscriber for insurance that he will take the policies subscribed for by him within 30 days after the granting of a license to the company by the Commissioner to issue policies. Any person making a false oath in respect to the certificate is guilty of perjury under G.S. 14-209."

Sec. 5. G.S. 58-2-180 reads as rewritten:

"§ 58-2-180. Punishment for making false statement.

~~If any insurance company in its annual or other statement required by law shall wilfully misstate the facts, the insurance company and the person in any financial or other statement required by this Chapter willfully misstates information, that person making oath to or subscribing the statement shall be is guilty of a misdemeanor perjury under G.S. 14-209; and, upon conviction, shall be severally punished by and the entity on whose behalf the person made the oath or subscribed the statement is subject to a fine imposed by the court of not less than two thousand dollars (\$2,000) nor more than five ten thousand dollars (\$5,000)-(\$10,000)."~~

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

Sec. 7. Article 79 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-79-45. Fire incident reports.

(a) Whenever a fire department responds to a fire, the chief of that department shall complete or cause to be completed a fire incident report, which report shall be on a form prescribed by the Department of Insurance. When such report is made without fraud, bad faith, or actual malice, the person making the report is not subject to liability for libel or slander.

(b) The fire department shall forward a copy of the completed form to the fire marshal of the county in which the fire occurred. If there is no fire marshal in that county, the fire department shall forward a copy of the report to the county commissioners. The fire department shall retain the original of the report. The fire department and the fire marshal or county commissioners to whom reports are sent shall retain the reports for a period of five years.

(c) At the request of any person, the county fire marshal or county commissioners shall provide such person, for a reasonable copying charge, a certified copy of the report."

Sec. 8. In the event any provision of this act is held to be invalid by any court of competent jurisdiction, the court's holding as to that provision shall not affect the

validity or operation of other provisions of this act; and to that end the provisions of this act are severable.

Sec. 9. This act is effective upon ratification except for Sections 2 through 6 of this act which shall become effective October 1, 1990, and except for Section 7 of this act, which shall become effective September 1, 1990. Prosecutions for offenses occurring before October 1, 1990, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 28th day of July, 1990.