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COMMITTEE REPORT

January 28, 2021

**H. 3586**

Introduced by Reps. Sandifer and Hardee

S. Printed 1/28/21--H.

Read the first time January 12, 2021.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 3586) to amend Section 38‑55‑520, Code of Laws of South Carolina, 1976, relating to the purpose of the Article, so as to establish the Fraud Division, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND SECTION 38‑55‑520, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PURPOSE OF THE ARTICLE, SO AS TO ESTABLISH THE FRAUD DIVISION WITHIN THE DEPARTMENT OF INSURANCE; TO AMEND SECTION 38‑55‑530, RELATING TO DEFINITIONS, SO AS TO REMOVE REFERENCES TO THE SECOND INJURY FUND AND ADD A SEPARATE DEFINITION FOR “UNDESERVED ECONOMIC BENEFIT OR ADVANTAGE”; TO AMEND SECTION 38‑55‑550, RELATING TO CIVIL PENALTIES PAID TO THE INSURANCE FRAUD DIVISION, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 38‑55‑560, RELATING TO THE INSURANCE FRAUD DIVISION, SO AS TO TRANSFER THE DUTIES AND OBLIGATIONS TO THE DEPARTMENT OF INSURANCE; TO AMEND SECTION 38‑55‑570, RELATING TO NOTIFICATION OF KNOWLEDGE OR BELIEF OF FALSE STATEMENTS AND MISREPRESENTATIONS AND INFORMATION TO BE RELEASED, SO AS TO TRANSFER THE DUTIES AND OBLIGATIONS TO THE DEPARTMENT OF INSURANCE; TO AMEND SECTION 38‑55‑590, RELATING TO THE REQUIRED ANNUAL REPORT TO THE GENERAL ASSEMBLY, SO AS TO TRANSFER THE DUTIES AND OBLIGATIONS TO THE DEPARTMENT OF INSURANCE; AND TO AMEND SECTION 42‑9‑440, RELATING TO THE WORKERS’ COMPENSATION COMMISSION’S REQUIREMENT TO REPORT SUSPECTED FRAUD, SO AS TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 38‑55‑520 of the 1976 Code is amended to read:

“Section 38‑55‑520. The purpose of this article is to confront aggressively the problem of insurance fraud in South Carolina by facilitating the detection of insurance fraud; to allow reporting of suspected insurance fraud; to grant immunity for reporting suspected insurance fraud; to prescribe penalties for insurance fraud; to require restitution for victims of insurance fraud; to establish a division within the ~~Office of the Attorney General~~ Department of Insurance to prosecute insurance fraud; and to require the investigation of alleged insurance fraud by State Law Enforcement Division.”

SECTION 2. Section 38‑55‑530 of the 1976 Code is amended to read:

“Section 38‑55‑530. As used in this article:

(A) ‘Authorized agency’ means any duly constituted criminal investigative department or agency of the United States or of this State; the Department of Insurance; the Department of Revenue; the Department of Public Safety; the Department of Motor Vehicles; the Workers’ Compensation Commission; the State Accident Fund; ~~the Second Injury Fund;~~ the Department of Employment and Workforce; the Department of Consumer Affairs; the Human Affairs Commission; the Department of Health and Environmental Control; the Department of Social Services; the Department of Health and Human Services; the Department of Labor, Licensing and Regulation; all other state boards, commissions, and agencies; the Office of the Attorney General of South Carolina; or the prosecuting attorney of any judicial circuit, county, municipality, or political subdivision of this State or of the United States, and their respective employees or personnel acting in their official capacity.

(B) ‘Insurer’ shall have the meaning set forth in Section 38‑1‑20(25) and includes any authorized insurer, self‑insurer, reinsurer, broker, producer, or any agent thereof.

(C) ‘Person’ means any natural person, company, corporation, unincorporated association, partnership, professional corporation, or other legal entity and includes any applicant, policyholder, claimant, medical providers, vocational rehabilitation provider, attorney, agent, insurer, fund, or advisory organization.

(D) ‘False statement or misrepresentation’ means a statement or representation made by a person that is false, material, made with the person’s knowledge of the falsity of the statement and made with the intent of obtaining or causing another to obtain or attempting to obtain or causing another to obtain an undeserved economic advantage or benefit or made with the intent to deny or cause another to deny any benefit or payment in connection with an insurance transaction, and such shall constitute fraud. "False statement or misrepresentation" specifically includes, but is not limited to, an intentional:

(1) false report of business activities;

(2) miscount or misclassification by an employer of its employees;

(3) failure to timely reduce reserves;

(4) failure to account for ~~Second Injury Fund reimbursements or~~ subrogation reimbursements; or

(5) failure to provide verifiable information to public or private rating bureaus and the Department of Insurance.

~~An undeserved economic benefit or advantage includes, but is not limited to, a favorable insurance premium, payment schedule, insurance award, or insurance settlement.~~

(E) ‘Immune’ means that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to this article unless actual malice on the part of the reporting person or gross negligence or reckless disregard for the rights of the reported person is present.

(F) ‘Undeserved economic benefit or advantage’ includes, but is not limited to, a favorable insurance premium, payment schedule, insurance award, or insurance settlement.”

SECTION 3. Section 38‑55‑550 of the 1976 Code is amended to read:

“Section 38‑55‑550. (A) In addition to any criminal liability, any person who is found by a court of competent jurisdiction to have violated any provision of this article, including Sections 38‑55‑170 and 38‑55‑540, is subject to a civil penalty for each violation as follows:

(1) for a first offense, a fine not to exceed five thousand dollars;

(2) for a second offense, a fine of not less than five thousand dollars but not to exceed ten thousand dollars;

(3) for a third and subsequent offense, a fine of not less than ten thousand dollars but not to exceed fifteen thousand dollars.

(B) The civil penalty must be paid to the director of the Insurance Fraud Division to be used in accordance with subsection (D) of this section. The court may also award court costs and reasonable attorneys’ fees to the director. When requested by the director, the Attorney General may assign one or more deputies attorneys general to assist the ~~bureau~~ division in any civil court proceedings against the person.

(C) Nothing in subsections (A) and (B) shall be construed to prohibit the director of the Insurance Fraud Division and the person alleged to be guilty of a violation of this article from entering into a written agreement in which the person does not admit or deny the charges but consents to payment of the civil penalty. A consent agreement may not be used in a subsequent civil or criminal proceeding relating to any violation of this article.

(D) All revenues from the civil penalties imposed pursuant to this section must be used to provide funds for the costs of enforcing and administering the provisions of this article.”

SECTION 4. Section 38‑55‑560 of the 1976 Code is amended to read:

“Section 38‑55‑560. (A) There is established in the ~~Office of the Attorney General~~ Department of Insurance a division to be known as the Insurance Fraud Division, which must prosecute violations of Sections 38‑55‑170 and 38‑55‑540 and related criminal insurance activity. The office of the Attorney General shall cooperate and work with the Insurance Fraud Division and designate certain attorneys in the Insurance Fraud Division as Special Assistant Attorneys General for the purpose of prosecuting criminal activity related to insurance fraud. ~~Upon receipt of any claims or allegations of violations of Section 38‑55‑170 and 38‑55‑540 and related criminal insurance activity, the Attorney General~~ The Insurance Fraud Division shall forward ~~the information~~ allegations of violations of Sections 38‑55‑170 and 38‑55‑540 and related criminal insurance activity to the State Law Enforcement Division for investigation.

(B) The ~~Attorney General~~ Insurance Fraud Division, upon receipt of any claims or allegations of violations of Sections 38‑55‑170 and 38‑55‑540 and related criminal insurance activity, is empowered to:

(1) refer the matter for investigation to the State Law Enforcement Division;

(2) present the matter to the Office of the Attorney General for review and approval of the indictment;

~~(2)~~(3) prosecute persons determined to be in violation of Sections 38‑55‑170 and 38‑55‑540 and related criminal insurance activity in a court of competent jurisdiction or refer the matter to the Attorney General for prosecution; and

~~(3)~~(4) collect fines and restitution ordered by the court. Where considered appropriate, the ~~Attorney General~~ Department of Insurance may use the Setoff Debt Collection Act to collect fines and restitution ordered as a result of actions brought pursuant to Sections 38‑55‑170, ~~and~~ 38‑55‑540~~.~~, and 38‑55‑550; and

(5) enter into agreements with the Office of the Attorney General or other state agencies related to the investigation and prosecution of insurance fraud.

(C) The State Law Enforcement Division shall investigate thoroughly all claims or allegations of violations of Sections 38‑55‑170 and 38‑55‑540 and related criminal insurance activity received from the ~~Attorney General~~ Insurance Fraud Division pursuant to this section.

(D) The Insurance Fraud Division of the ~~Office of Attorney General~~ Department of Insurance and the investigative services of the State Law Enforcement Division as provided by this section must be funded by an appropriation ~~of not less than two hundred thousand dollars annually~~ from the general revenues of the State ~~derived from the insurance premium taxes collected by the Department of Insurance and/or from fines assessed under Sections 38‑55‑170 and 38‑55‑540 which must be deposited in the general revenue fund to the credit of the Office of the Attorney General and the State Law Enforcement Division to offset the costs of this program; provided, that the funds generated from these fines, to be utilized by either the Office of the Attorney General or the State Law Enforcement Division shall not total more than five hundred thousand dollars. These monies must be shared equally on a fifty‑fifty basis by the Office of the Attorney General and the State Law Enforcement Division, and the balance must go to the general fund of the State~~. Additionally, the Department of Insurance may use existing agency retained fees and/or penalties including any fines or penalties assessed under Sections 38‑43‑80, 38‑55‑170, 38‑55‑540, and 38‑55‑550 to offset the costs of this program.

(E) The ~~Office of the Attorney General~~ Insurance Fraud Division is authorized to hire, employ, and reasonably equip one forensic accountant, and this forensic accountant must be assigned to the Insurance Fraud Division of the ~~Office of the Attorney General~~ Department of Insurance. A person is not qualified to be hired and the Insurance Fraud Division may not hire a forensic accountant unless he possesses and maintains a current license to engage in the practice of accounting pursuant to the provisions of Chapter 2, Title 40.”

SECTION 5. Section 38‑55‑570 of the 1976 Code is amended to read:

“Section 38‑55‑570. (A) Any person, insurer, or authorized agency having reason to believe that another has made a false statement or misrepresentation or has knowledge of a suspected false statement or misrepresentation shall, for purposes of reporting and investigation, notify the Insurance Fraud Division of the ~~Office of the Attorney General~~ Department of Insurance of the knowledge or belief and provide any additional information within his possession relative thereto.

(B) Upon request by the Insurance Fraud Division, any person, insurer, or authorized agency shall release to the Insurance Fraud Division any or all information relating to any suspected false statement or misrepresentation including, but not limited to:

(1) insurance policy information relevant to the investigation, including any application for such a polity;

(2) policy premium payment records, audits, or other documents which are available;

(3) history of previous claims, payments, fees, commission, service bills, or other documents which are available; and

(4) other information relating to the investigation of the suspected false statement or misrepresentation.

(C) Any authorized agency provided with or obtaining information relating to a suspected false statement or misrepresentation as provided for above may release or provide the information to any other authorized agency. The ~~Department of Insurance, the~~ Department of Revenue, the Department of Public Safety, and the Department of Motor Vehicles shall report, but not adjudicate, all cases of suspected or reported false statement or misrepresentation to the Insurance Fraud Division of the ~~Office of Attorney General of South Carolina~~ Department of Insurance for appropriate investigation or prosecution, or both. The Workers’ Compensation Commission may refer such cases as provided in Section 42‑9‑440.

(D) Except as otherwise provided by law, any information furnished pursuant to this section is privileged and shall not be part of any public record. Any information or evidence furnished to an authorized agency pursuant to this section is not subject to subpoena or subpoena duces tecum in any civil or criminal proceeding unless, after reasonable notice to any person, insurer, or authorized agency which has an interest in the information and after a subsequent hearing, a court of competent jurisdiction determines that the public interest and any ongoing investigation will not be jeopardized by obedience of the subpoena or subpoena duces tecum. The Department of Insurance may receive and must maintain as confidential any documents or information furnished to it by the National Association of Insurance Commissioners or insurance departments of other states which is classified as confidential by that association or state. The Department of Insurance may share documents or information, including confidential documents or information, with the National Association of Insurance Commissioners or insurance departments of other states, if the association or other state agrees to maintain the same level of confidentiality as is provided under South Carolina law. ~~If the documents or information received by the Department of Insurance from the National Association of Insurance Commissioners or the insurance departments of other states involve allegations of insurance fraud, the documents or information must be forwarded by the Department of Insurance to the Insurance Fraud Division of the Office of the Attorney General.~~”

SECTION 6. Section 38‑55‑590 of the 1976 Code is amended to read:

“Section 38‑55‑590. The Director of the Insurance Fraud Division ~~in~~ of the ~~Office of the Attorney General~~ Department of Insurance shall annually report to the General Assembly regarding:

(A) the status of matters reported to the division, if not privileged information by law;

(B) the number of allegations or reports received;

(C) the number of matters referred to the State Law Enforcement Division for investigation;

(D) the outcome of all investigations and prosecutions under this article, if not privileged by law;

(E) the total amount of fines levied by the court and paid to or deposited by the division; and

(F) patterns and practices of fraudulent insurance transactions identified in the course of performing its duties. The director shall also periodically report this information to insurers transacting business in this State, health maintenance organizations transacting business in this State, and other persons, including the State of South Carolina, which provide benefits for health care in this State, whether these benefits are administered directly or through a third person.”

SECTION 7. Section 42‑9‑440 of the 1976 Code is amended to read:

“Section 42‑9‑440. The commission shall report all cases of suspected false statement or misrepresentation, as defined in Section 38‑55‑530(D), to the Insurance Fraud Division of the ~~Office of the Attorney General~~ Department of Insurance for investigation and prosecution, if warranted, pursuant to the Omnibus Insurance Fraud and Reporting Immunity Act.”

SECTION 8. This act takes effect upon approval by the Governor.

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