

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE BILL 1745

Short Title: Insurance Fraud Prevention Act.

(Public)

Sponsors: Representatives Griffin; Berry, J. Brown, Flaherty, Gardner, Luebke, Morgan, and J. Preston.

Referred to: Judiciary II.

May 26, 1994

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE INSURANCE FRAUD PREVENTION ACT.
3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 58 of the General Statutes is amended by adding a new
5 Article to read:

6 **"ARTICLE 89.**

7 **"INSURANCE FRAUD PREVENTION.**

8 **"§ 58-89-1. Purpose of Article.**

9 The purpose of this Article is to confront the problem of insurance fraud in North
10 Carolina by improving the detection of insurance fraud, eliminating the occurrence of
11 fraud through the development of fraud prevention programs, requiring the return of
12 fraudulently obtained insurance benefits, and reducing the amount of premium dollars
13 used to pay fraudulent claims.

14 **"§ 58-89-5. Definitions.**

15 As used in this Article:

- 16 (1) 'Adjuster' has the same meaning as in G.S. 58-33-10(b), but also
17 includes a motor vehicle damage appraiser as defined in G.S. 58-33-
18 10(c).
19 (2) 'Attorney General' means the Attorney General of North Carolina or a
20 designee of the Attorney General.
21 (3) 'Commissioner' means the Commissioner of Insurance of North
22 Carolina or a designee of the Commissioner of Insurance.

- 1 (4) 'Director' means the Director of the Division of Insurance Fraud
2 Prevention of the Department of Insurance or a designee of the
3 Director.
- 4 (5) 'Division' means the Division of Insurance Fraud Prevention.
- 5 (6) 'Hospital' means a general hospital, mental hospital, convalescent
6 home, nursing home, or any other institution, whether operated for
7 profit or not, that maintains or operates facilities for health care.
- 8 (7) 'Insurance policy' includes any evidence of coverage provided by an
9 insurer.
- 10 (8) 'Insurer' has the same meaning as in G.S. 58-1-5 and also includes:
- 11 a. A hull insurance, and protection and indemnity club operating
12 under Article 20 of this Chapter.
- 13 b. A surplus lines insurer operating under Article 21 of this
14 Chapter.
- 15 c. A risk retention group or purchasing group operating under
16 Article 22 of this Chapter.
- 17 d. A local government risk pool operating under Article 23 of this
18 Chapter.
- 19 e. A risk sharing plan operating under Article 42 of this Chapter.
- 20 f. The North Carolina Insurance Underwriting Association
21 operating under Article 45 of this Chapter.
- 22 g. The North Carolina Joint Insurance Underwriting Association
23 operating under Article 46 of this Chapter.
- 24 h. The North Carolina Insurance Guaranty Association operating
25 under Article 48 of this Chapter.
- 26 i. Multiple Employer Welfare Arrangements operating under
27 Article 49 of this Chapter.
- 28 j. The North Carolina Life and Health Insurance Guaranty
29 Association operating under Article 62 of this Chapter.
- 30 k. A service corporation operating under Article 65 of this
31 Chapter.
- 32 l. A health maintenance organization operating under Article 67
33 of this Chapter.
- 34 m. The Teachers' and State Employees' Comprehensive Major
35 Medical Plan operating under Chapter 135 of the General
36 Statutes.
- 37 n. A reinsurer licensed or accredited under this Chapter.
- 38 (9) 'Person' has the same meaning as in G.S. 58-1-5.
- 39 (10) 'Practitioner' means a licensee of North Carolina authorized to practice
40 medicine and surgery, psychology, chiropractic, or law; or a licensee
41 of this State whose services are compensated, directly or indirectly, by
42 insurance proceeds; or a licensee similarly licensed in other states or
43 nations; or the practitioner of nonmedical treatment rendered in
44 accordance with a recognized religious method of healing.

1 (11) 'Producer' means an agent, broker, limited representative, third-party
2 administrator, managing general agent, or reinsurance intermediary
3 licensed under this Chapter.

4 (12) 'Statement' includes an application, writing, notice, expression,
5 statement, proof of loss, bill of lading, receipt, invoice, account,
6 estimate of property damages, bill for services, diagnosis, prescription,
7 hospital or physician records, X ray, test result, or other evidence of
8 loss, injury, or expense.

9 **"§ 58-89-10. Actions that violate Article.**

10 (a) A person or practitioner violates this Article if the person or practitioner,
11 knowingly and with the intent to defraud, does any of the following:

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

17 (2) Prepares or makes any written or oral statement that is intended to be
18 presented to an insurer or insurance claimant in connection with, or in
19 support of or opposition to, a claim, payment, or other benefit under an
20 insurance policy, knowing that the statement contains false or
21 misleading information concerning a fact or thing material to the
22 claim.

23 (3) Conceals or knowingly fails to disclose the occurrence of an event that
24 affects a person's initial or continued right or entitlement to (i) an
25 insurance benefit or payment, or (ii) the amount of a benefit or
26 payment to which the person is entitled.

27 (b) A person or practitioner violates this Article if the person or practitioner
28 knowingly and with the intent to defraud, assists, conspires with, or urges a person or
29 practitioner to violate the provisions of this Article.

30 (c) A person or practitioner violates this Article when the person or practitioner,
31 due to the assistance, conspiracy, or urging of any person or practitioner, knowingly and
32 with the intent to defraud, benefits, directly or indirectly, from the proceeds derived
33 from a violation of this Article.

34 (d) A person or practitioner who is the owner, administrator, or employee of a
35 hospital violates this Article by knowingly and with the intent to defraud, allowing the
36 use of the facilities of the hospital by any person or practitioner in furtherance of a
37 scheme or conspiracy to violate any of the provisions of this Article.

38 (e) A person or practitioner violates this Article when the person or practitioner,
39 knowingly and with the intent to defraud, directly or indirectly, for pecuniary gain:

40 (1) Solicits a person or practitioner to engage, employ, or retain either
41 himself or another person to manage, adjust, or prosecute a false claim
42 or cause of action for damages for negligence;

43 (2) Solicits other persons to bring false causes of action to recover
44 damages for personal injuries or death;

- 1 (3) Solicits other persons to make a false claim for personal injury
2 benefits; or
3 (4) Falsely represents to an insurer or producer, for the purpose of
4 obtaining a motor vehicle insurance policy, that the person resides or is
5 domiciled in this State.

6 This subsection does not apply to conduct otherwise permitted by law.

7 **"§ 58-89-15. Violations; penalties; costs and attorneys' fees; consent agreements;**
8 **disposition of penalties.**

9 If a person or practitioner is found by a court of competent jurisdiction, pursuant to a
10 claim initiated by the Commissioner, to have violated a provision of this Article, the
11 person or practitioner is subject to a civil penalty not to exceed five thousand dollars
12 (\$5,000) for the first violation, ten thousand dollars (\$10,000) for the second violation,
13 and fifteen thousand dollars (\$15,000) for each subsequent violation. Penalties
14 collected shall be credited to the General Fund as nontax revenue. The court may also
15 award court costs and reasonable attorneys' fees to the Commissioner.

16 Nothing in this section prohibits the Commissioner and the person or practitioner
17 alleged to be guilty of a violation of this Article from entering into a written agreement
18 in which the person or practitioner does not admit or deny the charges but consents to
19 payment of the civil penalty. A consent agreement may not be used in a subsequent
20 civil or criminal proceeding relating to a violation of this Article, but notification of the
21 agreement shall be made to a licensing authority as required in G.S. 58-89-40.

22 **"§ 58-89-20. Statement to be contained in insurance claim forms; verification of**
23 **services and materials as necessary.**

24 (a) Insurance claim forms shall contain a statement in a form approved by the
25 Commissioner that any person who, knowingly and with the intent to defraud, files a
26 statement of claim containing false or misleading information is subject to criminal and
27 civil penalties.

28 (b) Application forms for motor vehicle insurance shall contain a statement in a
29 form approved by the Commissioner that any person who knowingly and falsely
30 represents that the applicant resides or is domiciled in this State in an application for
31 motor vehicle insurance coverage is subject to civil and criminal penalties.

32 **"§ 58-89-25. Action by insurers against violators; damages; copies of legal**
33 **documents sent to Commissioner; report; joinder in action by**
34 **Commissioner.**

35 (a) An insurer damaged by a violation of this Article has a cause of action in a
36 court of competent jurisdiction to recover compensatory damages, costs, expenses, and
37 attorneys' fees.

38 (b) A prevailing insurer may recover treble damages if the court determines that
39 the defendant has engaged in unfair or deceptive trade practices as provided in G.S. 75-
40 1.1.

41 (c) An insurer claimant under this section shall mail a copy of the initial claim,
42 amended claim, counterclaims, briefs, and legal memoranda to the Commissioner at the
43 time of filing of the documents with the court. A prevailing claimant shall report to the

1 Commissioner, on a form approved by the Commissioner, the amount recovered and
2 other information required by the Commissioner.

3 (d) Upon receipt of notification of the filing of a claim by an insurer, the
4 Commissioner may join in the action for the purpose of seeking judgment for the
5 payment of a civil penalty authorized under G.S. 58-89-15. If the Commissioner
6 prevails, the court may award court costs, expenses, and reasonable attorneys' fees
7 incurred by the Commissioner.

8 **"§ 58-89-30. Division of Insurance Fraud Prevention; duties; personnel; advisory**
9 **board; ascertaining and certification of expenses; apportionment of**
10 **expenses among insurance companies.**

11 (a) There is established in the Department the Division of Insurance Fraud
12 Prevention. The Division shall assist the Commissioner in administratively
13 investigating allegations of insurance fraud and in developing and implementing
14 programs to prevent insurance fraud and abuse. The Division shall promptly notify the
15 Attorney General of any insurance application or claim that involves activity allegedly
16 violating this Article. When required by the Commissioner and Attorney General, the
17 Division shall cooperate with the Attorney General in the investigation and prosecution
18 of violations of this Article.

19 (b) The Commissioner shall appoint the full-time supervisory and investigative
20 personnel of the Division, including the Director, who shall be qualified by training and
21 experience to perform the duties of their positions.

22 (c) When requested by the Commissioner, the Attorney General may assign one
23 or more deputies, associates, or assistant attorneys general or other Department of
24 Justice staff to assist the Division in the performance of its duties.

25 (d) The Commissioner shall also appoint the clerical and other staff necessary for
26 the Division to fulfill its responsibilities under this Article.

27 (e) The Commissioner shall appoint an insurance fraud advisory board consisting
28 of 13 members, one member from each congressional district of the State. Nine
29 members shall be appointed from insurers doing business in the State and four members
30 from consumers from the general public. The members shall serve two-year terms and
31 until their successors are appointed and qualified. The members of the board shall
32 receive no compensation but shall receive per diem and allowances in accordance with
33 the provisions of G.S. 138-5. When requested by the Commissioner, the board shall
34 advise the Commissioner with respect to the administration of this Article.

35 (f) The Office of State Budget and Management shall, on or before September 1
36 of each year, ascertain and certify to the Commissioner the total amount of expenses
37 incurred by the State for the administration of this Article during the preceding fiscal
38 year. The expenses shall include, in addition to the direct cost of personal services, the
39 cost of maintenance and operation, the cost of retirement contributions made, and other
40 benefits for and on account of personnel, rentals for space occupied in State-owned or
41 State-leased buildings, and all other direct and indirect costs of the administration of the
42 Division.

43 (g) The Commissioner shall, on or before October 15 of each year, apportion the
44 amount certified the Commissioner among all of the insurers within this State in the

1 proportion that the net premiums received by each of them for coverage written or
2 renewed in this State during the calendar year immediately preceding, as reported to the
3 Commissioner, bears to the sum total of all net premiums received by all insurers in the
4 State during the year, as reported. No one insurer shall be assessed for more than five
5 percent (5%) of the amount apportioned. The Commissioner shall certify to the
6 Department of Revenue and the Joint Legislative Commission on Governmental
7 Operations the sum apportioned to each company on or before November 15 next
8 ensuing. Each insurer shall pay the amount so certified as apportioned to that insurer to
9 the Department on or before December 31 next ensuing, and the sum paid shall be paid
10 into the General Fund in reimbursement to the State for the expenses paid. As used in
11 this section, 'net premiums received' means gross premiums written, less return
12 premiums and dividends credited or paid to policyholders.

13 **"§ 58-89-35. Report of alleged violations; investigation; civil liability; records.**

14 (a) A person who believes that a violation of this Article has been or is being
15 made shall notify the Division of the violation and, upon request of the Commissioner,
16 provide the Commissioner with information relevant to the alleged violation. The
17 Division shall review the reports, select the alleged violations that may require further
18 investigation, and initiate an independent examination or evaluation of the alleged
19 violations to determine the existence of fraud as defined in G.S. 58-89-10.

20 (b) The provisions of G.S. 58-2-160 apply to reports filed under this section.

21 **"§ 58-89-40. Compelling attendance of witnesses or production of documents;**
22 **subpoenas; fees and mileage; contempt; matters located outside of State;**
23 **violations by persons licensed by State.**

24 (a) If the Division has reason to believe that a person has engaged in, or is
25 engaging in, an act or practice that violates this Article, or any other relevant statute or
26 rule, the Commissioner may administer oaths and affirmations or compel the attendance
27 of witnesses or the production of documents. The Commissioner may issue subpoenas
28 to compel the attendance of witnesses and the production of documents. Fees for
29 attendance as a witness shall be paid as provided in G.S. 7A-314.

30 If a person subpoenaed under this section neglects or refuses to obey the command
31 of the subpoena, a court may, on proof by affidavit of service of the subpoena and of
32 payment or tender of the fees required, issue a warrant for the arrest of the person and
33 proceed against the person for contempt of court.

34 (b) The Commissioner may designate officials of other states in which alleged
35 violations occur, to inspect alleged violations of this Article on its behalf, and may
36 respond to similar requests from officials of other states.

37 (c) If (i) a practitioner, (ii) an owner, administrator, or employee of a hospital,
38 (iii) an insurer, producer, or adjuster, or (iv) a person licensed by a licensing authority of
39 this State, or an agent, representative, or employee of those persons, is found to have
40 violated any provision of this Article, the Commissioner or the Attorney General shall
41 notify the appropriate licensing authority of the violation so that the licensing authority
42 may take appropriate administrative action.

43 **"§ 58-89-45. Public inspection, disposition and subpoena of evidence; subpoena of**
44 **investigators.**

1 Papers, documents, reports, or evidence related to an investigation under this Article
2 are not subject to public inspection except as specifically provided in this Article. The
3 Commissioner shall not detain subpoenaed records after an investigation is closed or, if
4 a claim for a civil penalty is filed by the Commissioner under G.S. 58-89-15 or G.S. 58-
5 89-25, upon final disposition of the claim, whichever occurs later. Subpoenaed records
6 shall be returned to the persons from whom they were obtained. The Commissioner
7 may make relevant papers, documents, reports, or evidence available to the Attorney
8 General, an appropriate licensing authority, an insurer, or an insurance claimant injured
9 by a violation of this Article, consistent with the purposes of this Article and under
10 conditions the Commissioner considers appropriate. The papers, documents, reports, or
11 evidence are not subject to subpoena, unless the Commissioner consents, or until, after
12 notice to the Commissioner and hearing, a court of competent jurisdiction determines
13 that the Commissioner would not be unnecessarily hindered by the subpoena. Division
14 investigators are not subject to subpoena in civil actions by a court of this State to testify
15 about a matter of which they have knowledge because of a pending insurance fraud
16 investigation by the Division, or a pending claim for civil penalties initiated by the
17 Commissioner.

18 **"§ 58-89-50. Administrative Rules.**

19 In addition to the authority in G.S. 58-2-40, the Commissioner may adopt rules for
20 the effective implementation of this Article.

21 **"§ 58-89-55. Annual report on activities and cost-effectiveness.**

22 The Commissioner shall report on the activities of the Division and the cost-
23 effectiveness of the programs established by the Division to the Joint Legislative
24 Commission on Governmental Operations on a date set by the Commission.

25 **"§ 58-89-60. Criminal prosecution.**

26 The imposition of a fine or other remedy under this Article does not preclude
27 prosecution for a violation of the criminal law of this State."

28 Sec. 2. There is appropriated from the General Fund to the Department of
29 Insurance for the 1994-95 fiscal year the sum of five hundred thousand dollars
30 (\$500,000) to implement the provisions of this act.

31 Sec. 3. G.S. 58-89-10, 58-89-15, 58-89-20, 58-89-25, 58-89-35, 58-89-40,
32 58-89-45, 58-89-55, and 58-89-60 as enacted by this act become effective October 1,
33 1994. Section 2 of this act becomes effective July 1, 1994. The remainder of this act is
34 effective upon ratification.