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Summary: Insurance fraud

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/24/2017 Senate Introduced and read first time ([Senate Journal‑page 8](file:///h:\sj\20170124.docx))

1/24/2017 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 8](file:///h:\sj\20170124.docx))

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**VERSIONS OF THIS BILL**

[1/24/2017](file:///p:\pprever\2017-18\267_20170124.docx)

**A** **BILL**

TO AMEND SECTION 14‑7‑1610, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LEGISLATIVE FINDINGS CONCERNING THE STATE GRAND JURY SYSTEM, SO AS TO PROVIDE ADDITIONAL FINDINGS CONCERNING CERTAIN CRIMES INVOLVING INSURANCE FRAUD; TO AMEND SECTION 14‑7‑1630, AS AMENDED, RELATING TO THE SUBJECT MATTER JURISDICTION OF THE STATE GRAND JURY, SO AS TO INCLUDE CERTAIN CRIMES INVOLVING INSURANCE FRAUD; TO AMEND SECTION 38‑55‑170, RELATING TO CRIMES AND PENALTIES FOR PRESENTING FALSE CLAIMS FOR PAYMENT TO AN INSURER TRANSACTING IN THIS STATE, SO AS TO SUBJECT, UNDER CERTAIN CONDITIONS, ASSETS ASSOCIATED WITH THE FRAUDULENT SCHEME TO SEIZURE AND FORFEITURE, TO PROVIDE WHEN THE STATE MAY PETITION FOR THE CONVERSION OF SEIZED ASSETS, AND TO DESCRIBE WHEN THE ASSETS MAY BE DISPOSED OF AND THE DISPOSITION OF THE PROCEEDS; AND TO AMEND SECTION 38‑55‑540, RELATING TO CRIMES AND PENALTIES FOR MAKING FALSE STATEMENTS OF MISREPRESENTATION IN VIOLATION OF THE INSURANCE FRAUD AND REPORTING IMMUNITY ACT, SO AS TO REVISE CRITERIA FOR VARIOUS PENALTIES, AND SUBJECT, UNDER CERTAIN CONDITIONS, ASSETS ASSOCIATED WITH THE FRAUDULENT SCHEME TO SEIZURE AND FORFEITURE, TO PROVIDE WHEN THE STATE MAY PETITION FOR THE CONVERSION OF SEIZED ASSETS, AND TO DESCRIBE WHEN THE ASSETS MAY BE DISPOSED OF AND THE DISPOSITION OF THE PROCEEDS.

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

SECTION 1. Section 14‑7‑1610 of the 1976 Code is amended to read:

“Section 14‑7‑1610. (A) It is the intent of the General Assembly to enhance the grand jury system and to improve the ability of the State to detect and eliminate criminal activity. The General Assembly recognizes the great importance of having the federal authorities available for certain investigations. The General Assembly finds that crimes involving narcotics, dangerous drugs, or controlled substances, trafficking in persons, as well as crimes involving obscenity, often transpire or have significance in more than one county of this State. When this occurs, these crimes are most effectively detected and investigated by a grand jury system with the authority to cross county lines.

(B) The General Assembly finds that there is a critical need to enhance the grand jury system to improve the ability of the State to prevent, detect, investigate, and prosecute crimes involving criminal gang activity or a pattern of criminal gang activity pursuant to the provisions of Article 3 ~~of~~, Chapter 8, Title 16. Crimes involving criminal gang activity or a pattern of criminal gang activity transpire at times in a single county, but often transpire or have significance in more than one county of this State. The General Assembly believes criminal gang activity poses an immediate, serious, and unacceptable threat to the citizens of the State and therefore warrants the state grand jury possessing considerably broader investigative authority.

(C) The General Assembly finds that there is a need to enhance the grand jury system to improve the ability of the State to detect and eliminate public corruption. Crimes involving public corruption transpire at times in a single county, but often transpire or have significance in more than one county of this State. The General Assembly believes that a state grand jury, possessing considerably broader investigative authority than individual county grand juries, should be available to investigate public corruption offenses in South Carolina.

(D) The General Assembly finds it fundamentally necessary to improve the ability of the State to prevent, detect, investigate, and prosecute crimes that involve the depiction of children under the age of eighteen in sexual activity, and obscenity crimes that are directed toward or involve children under the age of eighteen. The serious and unacceptable threat that these crimes pose to children is self‑evident and impacts the State as a whole even if the actual criminal act occurs only in one county of the State. An effective effort to eliminate these heinous crimes requires a coordinated effort, which is accomplished more effectively through the state grand jury system. The effective prevention, detection, investigation, and prosecution of these crimes may require the use and application of state obscenity statutes or common law offenses not specifically directed toward the prevention and punishment of obscenity crimes involving children. Because many of these crimes involve computers, statewide jurisdiction over these crimes is consistent with the jurisdiction of a state grand jury over offenses defined in the Computer Crime Act. The General Assembly concludes that a state grand jury must be available to employ its broad investigative powers in the investigation of child‑related obscenity by enabling the state grand jury to investigate all obscenity offenses, regardless of their multi‑county impact, or whether they transpire or have significance in more than one county of this State.

(E) The General Assembly finds that there is a need to enhance the grand jury system to improve the ability of the State to detect and investigate crimes involving the election laws including, but not limited to, those named offenses as specified in Title 7, or common law crimes involving the election laws where not superseded, or a crime arising out of or in connection with the election laws, or attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws.

(F) The General Assembly finds that there is a need to enhance the grand jury system to improve the ability of the State to detect and investigate knowing and wilful crimes which result in actual and substantial harm to the environment. These crimes include knowing and wilful offenses specified in Titles 13, 44, and 48, or any knowing and wilful crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a knowing and wilful crime involving the environment if the anticipated actual damages including, but not limited to, the cost of remediation, are two million dollars or more, as certified by an independent environmental engineer who shall be contracted by the Department of Health and Environmental Control.

(1) The General Assembly finds that the South Carolina Department of Health and Environmental Control possesses the expertise and knowledge to determine whether there has occurred an alleged environmental offense as defined in this article.

(2) The General Assembly finds that, because of its expertise and knowledge, the Department of Health and Environmental Control must play a substantial role in the investigation of any such alleged environmental offense.

(3) The General Assembly finds that, while the Department of Health and Environmental Control must not make prosecutorial decisions regarding such alleged environmental offense as defined in this article, the department must be integrally involved in the investigation of any such alleged environmental offense before and after the impaneling of a state grand jury pursuant to Section 14‑7‑1630.

(4) The General Assembly finds that it is in the public interest to avoid duplicative and overlapping prosecutions to the extent that the Attorney General considers possible. Therefore, the Attorney General shall consult with and advise the Environmental Protection and Enforcement Coordinating Subcommittee and cooperate with other state and federal prosecutorial authorities having jurisdiction over environmental enforcement in order to carry out the provisions of Sections 14‑7‑1630(A)(8) and 14‑7‑1630(C).

(G) The General Assembly finds:

(1) there is a need to enhance the grand jury system to improve the ability of the State to prevent, detect, investigate, and prosecute crimes involving insurance fraud including, but not limited to, those named offenses as specified in the South Carolina Omnibus Insurance Fraud and Reporting Immunity Act pursuant to in Article 5, Chapter 55, Title 38;

(2) crimes involving insurance fraud schemes are often complex and often involve conspiracies of two or more people and amounts greater than two hundred thousand dollars; and

(3) a state grand jury must be available to employ its investigative powers in the investigation of insurance fraud schemes.

(~~G~~H) The General Assembly finds that related criminal activity often arises out of or in connection with crimes involving narcotics, dangerous drugs or controlled substances, criminal gang activity, obscenity, public corruption, ~~or~~ environmental offenses, or insurance fraud and that the mechanism for detecting and investigating these related crimes must be improved.

(~~H~~I) Accordingly, the General Assembly concludes that a state grand jury should be allowed to investigate certain crimes related to narcotics, dangerous drugs, or controlled substances, criminal gang activity, trafficking in persons, and obscenity and also should be allowed to investigate crimes involving public corruption, election laws, ~~and~~ environmental offenses, and insurance fraud.

(~~I~~J) This section does not limit the authority of a county grand jury, solicitor, or other appropriate law enforcement personnel to investigate, indict, or prosecute offenses within the jurisdiction of the state grand jury.”

SECTION 2. Section 14‑7‑1630(A) of the 1976 Code, as last amended by Act 266 of 2016, is further amended by adding an appropriately numbered item to read:

“( ) a crime involving insurance fraud including, but not limited to, a violation of the statutes under the South Carolina Omnibus Insurance Fraud and Reporting Immunity Act or a crime related to insurance fraud if the fraud involves more than two people, or if the undeserved economic benefit that is received or attempted to be received from a violation or combination of violations is greater than two hundred thousand dollars, or if the crime is of a multicounty nature or has transpired or is transpiring or has significance in more than one county of this State.”

SECTION 3. Section 38‑55‑170 of the 1976 Code is amended to read:

“Section 38‑55‑170. (A) A person who knowingly causes to be presented a false claim for payment to an insurer transacting business in this State, to a health maintenance organization transacting business in this State, or to any person, including the State of South Carolina, providing benefits for health care in this State, whether these benefits are administered directly or through a third person, or who knowingly assists, solicits, or conspires with another to present a false claim for payment as described above, is guilty of a:

(1) felony if the amount of the claim is ten thousand dollars or more. Upon conviction, the person must be imprisoned not more than ten years or fined not more than five thousand dollars, or both;

(2) felony if the amount of the claim is more than two thousand dollars but less than ten thousand dollars. Upon conviction, the person must be fined in the discretion of the court or imprisoned not more than five years, or both;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the amount of the claim is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

(B)(1) For any violations of this chapter, a law enforcement agency is authorized to conduct a pre‑trial seizure of assets associated with the fraudulent scheme, upon a probable cause basis that the assets were associated with or involved in the furtherance of a fraudulent insurance scheme. An interested party may petition a court of record for the return of assets seized. Statutory notice must be provided to the Insurance Fraud Division of the Office of the Attorney General. The court must hear the petition within thirty days. The court may require as a condition for return of an asset, including the posting of an adequate bond to ensure that an asset is not disposed of.

(2) Upon conviction of a person for charges related to insurance fraud provided in this chapter, the State may petition the court to convert to the State any assets used in connection with or in furtherance of the fraudulent insurance scheme.

(3) Assets seized and transferred to the State’s ownership may be disposed of or distributed by the State as it deems appropriate and proper. Proceeds from the sale of any asset disposed of pursuant to this section must be retained by the Office of the Attorney General and only may be used for the purpose of insurance fraud investigation.”

SECTION 4. Section 38‑55‑540 of the 1976 Code is amended to read:

“Section 38‑55‑540. (A) A person who knowingly makes a false statement or misrepresentation, and any other person knowingly, with an intent to injure, defraud, or deceive, or who knowingly assists, abets, solicits, or conspires with a person to make a false statement or misrepresentation, is guilty of a:

(1) misdemeanor, for a first offense violation, if the amount of the economic advantage or benefit received or attempted to be received is less than one thousand dollars. Upon conviction, the person must be fined not less than one hundred nor more than five hundred dollars or imprisoned not more than thirty days;

(2) misdemeanor, for a first offense violation, if the amount of the economic advantage or benefit received or attempted to be received is one thousand dollars or more but less than ten thousand dollars. Upon conviction, the person must be fined not less than two thousand nor more than ten thousand dollars or imprisoned not more than three years, or both;

(3) felony, for a first offense violation, if the amount of the economic advantage or benefit received or attempted to be received is ten thousand dollars or more but less than fifty thousand dollars. Upon conviction, the person must be fined not less than ten thousand nor more than fifty thousand dollars or imprisoned not more than five years, or both;

(4) felony, for a first offense violation, if the amount of the economic advantage or benefit received or attempted to be received is fifty thousand dollars or more. Upon conviction, the person must be fined not less than twenty thousand nor more than one hundred thousand dollars or imprisoned not more than ten years, or both;

(5) felony, for a second or subsequent violation, regardless of the amount of the economic advantage or benefit received or attempted to be received. Upon conviction, the person must be fined not less than twenty thousand nor more than one hundred thousand dollars or imprisoned not more than ten years, or both.

(B) In addition to the criminal penalties set forth in subsection (A), a person convicted pursuant to the provisions of this section must be ordered by the court to make full restitution to a victim for any economic advantage or benefit which has been obtained by the person as a result of that violation, and to pay the difference between any taxes owed and any taxes the person paid, if applicable.

(C)(1) For any violations of this chapter, a law enforcement agency is authorized to conduct a pre‑trial seizure of assets associated with the fraudulent scheme, upon a probable cause basis that the assets were associated with or involved in the furtherance of a fraudulent insurance scheme. An interested party may petition a court of record for the return of assets seized. Statutory notice must be provided to the Insurance Fraud Division of the Office of the Attorney General. The court must hear the petition within thirty days. The court may require as a condition for return of an asset, including the posting of an adequate bond to ensure that an asset is not disposed of.

(2) Upon conviction of a person for charges related to insurance fraud provided in this chapter, the State may petition the court to convert to the State any assets used in connection with or in furtherance of the fraudulent insurance scheme.

(3) Assets seized and transferred to the State’s ownership may be disposed of or distributed by the State as it deems appropriate and proper. Proceeds from the sale of any asset disposed of pursuant to this section must be retained by the Office of the Attorney General and only may be used for the purpose of insurance fraud investigation.”

SECTION 5. This act takes effect upon approval by the Governor.

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