

Chapter 589

(House Bill 1094)

AN ACT concerning

Insurance – Fraud Violations – Fines and Administrative Penalties

FOR the purpose of requiring the Fraud Division of the Maryland Insurance Administration to investigate certain allegations and to impose certain penalties under certain circumstances; providing that a certain fine imposed for certain insurance fraud violations is mandatory and not subject to suspension; authorizing the Maryland Insurance Commissioner to impose an administrative penalty, not exceeding a certain amount, for certain insurance fraud violations under certain circumstances; authorizing the Commissioner, for certain insurance fraud violations, to order restitution to certain insurers or self-insured employers of certain proceeds paid; requiring the Commissioner to consider certain factors in determining the amount of a certain administrative penalty; providing that the Commissioner may bring a civil action for the nonpayment of a certain administrative penalty under certain circumstances; providing for the construction of this Act; and generally relating to the authority of the Maryland Insurance Commissioner to impose fines and administrative penalties and order restitution for insurance fraud violations.

BY repealing and reenacting, with amendments,

Article – Insurance

Section 2–405 and 27–408

Annotated Code of Maryland

(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

2–405.

The Fraud Division:

(1) has the authority to investigate each person suspected of engaging in insurance fraud;

(2) if appropriate after an investigation:

(i) shall refer suspected cases of insurance fraud to the Office of the Attorney General or appropriate local State's Attorney to prosecute the person criminally for insurance fraud;

(ii) shall notify the appropriate professional licensing board or disciplinary body of evidence of insurance fraud that involves professionals;

(iii) shall notify the appropriate professional licensing board of evidence of gross overutilization of health care services;

(iv) shall notify the Workers' Compensation Commission of suspected cases of insurance fraud referred to the Office of the Attorney General or appropriate local State's Attorney under subparagraph (i) of this paragraph that involve the payment of compensation, fees, or expenses under the Workers' Compensation Law; and

(v) shall assist local and State law enforcement agencies in the prosecution of automobile theft;

(3) shall compile and abstract information that includes the number of confirmed acts of insurance fraud and the type of acts of insurance fraud;

(4) in exercising its authority under this subtitle, shall cooperate with the Department of State Police, Office of the Attorney General, local State's Attorney in the jurisdiction in which the alleged acts of insurance fraud took place, and appropriate federal and local law enforcement authorities;

(5) shall operate or provide for a toll-free insurance fraud hot line to receive and record information about alleged acts of insurance fraud; [and]

(6) in cooperation with the Office of the Attorney General and Department of State Police, shall conduct public outreach and awareness programs on the costs of insurance fraud to the public; AND

(7) SHALL INVESTIGATE ALLEGATIONS OF CIVIL FRAUD AND, IF APPROPRIATE AFTER INVESTIGATION, IMPOSE ADMINISTRATIVE PENALTIES AND ORDER RESTITUTION IN ACCORDANCE WITH § 27-408 OF THIS ARTICLE.

27-408.

(a) (1) A person that violates § 27-407 of this subtitle, or another provision of this subtitle in which the claim or act that is the subject of the fraud has a value of \$300 or more is guilty of a felony and on conviction, for each violation, is subject to:

(i) liability for restoring to the victim the property taken or the value of the property taken; and

(ii) 1. for a violation of any provision of § 27-403 of this subtitle, a fine, the maximum of which is the greater of three times the value of the claim or act that is the subject of the fraud and \$10,000 and the minimum of which is \$500, or imprisonment not exceeding 15 years or both; and

2. for a violation of any provision of § 27-404, § 27-405, § 27-406, § 27-407, or § 27-407.1 of this subtitle, a fine not exceeding \$10,000 or imprisonment not exceeding 15 years or both.

(2) A person that violates a provision of this subtitle in which the claim or act that is the subject of the fraud has a value of less than \$300 is guilty of a misdemeanor and on conviction, for each violation, is subject to:

(i) liability for restoring to the victim the property taken or the value of the property taken; and

(ii) 1. for a violation of any provision of § 27-403 of this subtitle, a fine, the maximum of which is the greater of three times the value of the claim or act that is the subject of the fraud and \$10,000 and the minimum of which is \$500, or imprisonment not exceeding 18 months or both; and

2. for a violation of any provision of § 27-404, § 27-405, § 27-406, § 27-407, or § 27-407.1 of this subtitle, a fine not exceeding \$10,000 or imprisonment not exceeding 18 months or both.

(b) (1) The penalties imposed under this section may be imposed separately from and consecutively to or concurrently with a sentence for another offense based on the act that constitutes a violation of this subtitle.

(2) Each act of solicitation under § 27-407 of this subtitle constitutes a separate violation for purposes of the penalties imposed under this section.

(3) Notwithstanding any other provision of law, a fine imposed under [this] **SUBSECTION (A) OF THIS** section is mandatory and not subject to suspension.

(C) (1) IN ADDITION TO ANY CRIMINAL PENALTIES THAT MAY BE IMPOSED UNDER THIS SECTION, ON A SHOWING BY ~~A PREPONDERANCE OF CLEAR AND CONVINCING~~ EVIDENCE THAT A VIOLATION OF THIS SUBTITLE HAS OCCURRED, THE COMMISSIONER MAY:

(I) IMPOSE AN ADMINISTRATIVE PENALTY NOT EXCEEDING \$25,000 FOR EACH ACT OF INSURANCE FRAUD; AND

(II) ORDER RESTITUTION TO AN INSURER OR SELF-INSURED EMPLOYER OF ANY INSURANCE PROCEEDS PAID RELATING TO A FRAUDULENT INSURANCE CLAIM.

(2) IN DETERMINING THE AMOUNT OF AN ADMINISTRATIVE PENALTY, THE COMMISSIONER SHALL CONSIDER:

(I) THE NATURE, CIRCUMSTANCES, EXTENT, GRAVITY, AND NUMBER OF VIOLATIONS;

(II) THE DEGREE OF CULPABILITY OF THE VIOLATOR;

(III) PRIOR OFFENSES AND REPEATED VIOLATIONS OF THE VIOLATOR; AND

(IV) ANY OTHER MATTER THAT THE COMMISSIONER CONSIDERS APPROPRIATE AND RELEVANT.

(3) IF AN ADMINISTRATIVE PENALTY IS NOT PAID AFTER ALL RIGHTS OF APPEAL HAVE BEEN WAIVED OR EXHAUSTED, THE COMMISSIONER MAY BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION TO COLLECT THE ADMINISTRATIVE PENALTY, INCLUDING EXPENSES AND LITIGATION COSTS, REASONABLE ATTORNEY'S FEES, AND INTEREST.

(D) THIS SECTION DOES NOT AFFECT AN INSURER'S RIGHT TO TAKE ANY INDEPENDENT ACTION TO SEEK RECOVERY AGAINST A PERSON THAT VIOLATES THIS SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 22, 2012.