

Chapter 533

(House Bill 1499)

AN ACT concerning

Workers' Compensation – Self-Insured Employers – Suspected Fraud Reporting

FOR the purpose of providing that certain provisions of law governing the reporting and investigation of workers' compensation insurance fraud claims apply to certain employers who participate in a governmental self-insurance group for workers' compensation and to certain employers who self-insure for workers' compensation; providing that certain provisions of law governing fraudulent insurance acts that apply to insurers also apply to certain governmental self-insurance groups and certain employers who self-insure or participate in certain self-insurance groups; altering the definition of "insurance fraud" for purposes of certain provisions of law governing reporting and preventing insurance fraud to include a violation of false claims under the workers' compensation law; requiring certain governmental self-insurance groups and employers who self-insure or participate in a self-insurance group in accordance with certain provisions of law governing workers' compensation to report suspected insurance fraud in writing to the Fraud Division of the Maryland Insurance Administration; providing that certain information, documentation, or other evidence provided by certain self-insured groups or employers to certain persons is not subject to public inspection under certain circumstances; and generally relating to suspected insurance fraud reporting.

BY repealing and reenacting, with amendments,
 Article – Insurance
 Section 1-204, 27-402, 27-801, and 27-802
 Annotated Code of Maryland
 (2017 Replacement Volume)

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

Article – Insurance1-204.

[For] EXCEPT FOR PROVISIONS GOVERNING THE REPORTING AND INVESTIGATION OF WORKERS' COMPENSATION INSURANCE FRAUD CLAIMS UNDER § 2-201, TITLE 2, SUBTITLE 4, AND TITLE 27, SUBTITLES 4 AND 8 OF THIS ARTICLE, FOR the purpose of workers' compensation insurance, this article does not apply to an employer who:

(1) participates in a governmental self-insurance group under § 9-404 of the Labor and Employment Article; or

(2) self-insures under § 9-405 of the Labor and Employment Article.

27-402.

The provisions of this subtitle that apply to insurers also apply to:

(1) a corporation that operates a nonprofit health service plan under Title 14, Subtitle 2 of this article;

(2) a dental plan organization as defined in § 14-401 of this article;

(3) a health maintenance organization as defined in Title 19, Subtitle 7 of the Health – General Article;

(4) a surplus lines insurer;

(5) the Maryland Automobile Insurance Fund;

(6) the State when a claim has been filed against the State under Title 12 of the State Government Article;

(7) the State when a claim has been filed against the State under Title 2, Subtitle 5 of the State Personnel and Pensions Article;

(8) the State, including the Uninsured Employers' Fund, when a claim has been filed against the State under Title 9 of the Labor and Employment Article;

(9) the Maryland Transit Administration when acting as a self-insurer under § 7-703 of the Transportation Article;

(10) a third party administrator under Title 8, Subtitle 3 of this article;

(11) a self-insurer under § 17-103(a)(2) of the Transportation Article;

(12) the Maryland Health Insurance Plan; [and]

(13) A GOVERNMENTAL SELF-INSURER GROUP FORMED IN ACCORDANCE WITH § 9-404 OF THE LABOR AND EMPLOYMENT ARTICLE;

(14) AN EMPLOYER WHO SELF-INSURES OR PARTICIPATES IN A SELF-INSURANCE GROUP IN ACCORDANCE WITH § 9-405 OF THE LABOR AND EMPLOYMENT ARTICLE; AND

[(13)] (15) an agent, employee, or representative of an entity described in items (1) through [(12)](14) of this section.

27-801.

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Fraud Division” means the Insurance Fraud Division in the Administration.
- (c) “Insurance fraud” means:

- (1) a violation of Subtitle 4 of this title;
- (2) theft, as set out in §§ 7-101 through 7-104 of the Criminal Law Article:
 - (i) from a person regulated under this article; or
 - (ii) by a person regulated under this article or an officer, director, agent, or employee of a person regulated under this article; [or]

(3) A VIOLATION OF § 9-1106 OF THE LABOR AND EMPLOYMENT ARTICLE; OR

[(3)] (4) any other fraudulent activity that is committed by or against a person regulated under this article and is a violation of:

- (i) Title 1, Subtitle 3 of the Agriculture Article;
- (ii) Title 19, Subtitle 2 or Subtitle 3 of the Business Regulation Article;
- (iii) Title 14, Subtitle 29, § 11-810 or § 14-1317 of the Commercial Law Article;
- (iv) the Criminal Law Article other than Title 8, Subtitle 2, Part II or § 10-614;
- (v) Title 12, Subtitle 9 of the Financial Institutions Article;
- (vi) § 14-127 of the Real Property Article;
- (vii) § 6-301 of the Alcoholic Beverages Article;
- (viii) § 109 of the Code of Public Local Laws of Caroline County;
- (ix) § 4-103 of the Code of Public Local Laws of Carroll County; or

(x) § 8A-1 of the Code of Public Local Laws of Talbot County.

27-802.

(a) (1) An authorized insurer, its employees, fund producers, insurance producers, a viatical settlement provider, or a viatical settlement broker who in good faith has cause to believe that insurance fraud has been or is being committed shall report the suspected insurance fraud in writing to the Commissioner, the Fraud Division, or the appropriate federal, State, or local law enforcement authorities.

(2) An independent insurance producer shall meet the reporting requirement of this subsection by reporting the suspected insurance fraud in writing to the Fraud Division.

(3) A registered premium finance company shall meet the requirement of this subsection by reporting suspected insurance fraud in writing to the Fraud Division.

(4) A GOVERNMENTAL SELF-INSURANCE GROUP FORMED IN ACCORDANCE WITH § 9-404 OF THE LABOR AND EMPLOYMENT ARTICLE OR AN EMPLOYER WHO SELF-INSURES OR PARTICIPATES IN A SELF-INSURANCE GROUP IN ACCORDANCE WITH § 9-405 OF THE LABOR AND EMPLOYMENT ARTICLE SHALL MEET THE REPORTING REQUIREMENT OF THIS SUBSECTION BY REPORTING SUSPECTED INSURANCE FRAUD IN WRITING TO THE FRAUD DIVISION.

(b) In addition to any protection provided under Title 4, Subtitle 4, Part IV of the General Provisions Article, any information, documentation, or other evidence provided under this section by an insurer, its employees, fund producers, or insurance producers, a viatical settlement provider, a viatical settlement broker, an independent insurance producer, [or] a registered premium finance company, **A GOVERNMENTAL SELF-INSURANCE GROUP, OR AN EMPLOYER WHO SELF-INSURES OR PARTICIPATES IN A SELF-INSURANCE GROUP** to the Commissioner, the Fraud Division, or a federal, State, or local law enforcement authority in connection with an investigation of suspected insurance fraud is not subject to public inspection for as long as the Commissioner, Fraud Division, or law enforcement authority considers the withholding to be necessary to complete an investigation of the suspected fraud or to protect the person investigated from unwarranted injury.

(c) A person is not subject to civil liability for a cause of action by virtue of reporting suspected insurance fraud, or furnishing or receiving information relating to suspected, anticipated, or completed fraudulent insurance acts, if:

(1) the report was made, or the information was furnished to or received from:

(i) the Commissioner, Fraud Division, or an appropriate federal, State, or local law enforcement authority;

(ii) the National Association of Insurance Commissioners or its agent, employee, or designee;

(iii) a nonprofit organization established to detect and prevent fraudulent insurance acts or its agent, employee, or designee;

(iv) a person that contracts to provide special investigative unit services to an insurer; or

(v) a provider of a recognized comprehensive database system that the Commissioner approves to monitor activities involving insurance fraud or an employee of the provider; and

(2) the person that reported the suspected insurance fraud, or furnished or received the information, acted in good faith when making the report or furnishing or receiving the information.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018.

Approved by the Governor, May 8, 2018.