~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 18, 2016

**H. 4339**

Introduced by Reps. Kennedy, McCoy, Quinn, Atwater, Delleney and Weeks

S. Printed 5/18/16--S.

Read the first time March 22, 2016.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4339) to amend Section 14‑7‑1610, as amended, Code of Laws of South Carolina, 1976, relating to legislative findings concerning the State Grand Jury System, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, page 8 by striking lines 19-23 and inserting:

/ (B) Upon conviction of a violation of this section, any motor /

Amend the bill further, as and if amended, page 9 by striking lines 25-29 and inserting:

/ (C) Upon conviction of a violation of this section, any motor /

Amend the bill further, as and if amended, by striking SECTION 5 beginning on page 9, line 33.

Amend the bill further, as and if amended, page 8 by striking lines 30-34 and inserting:

/ “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: /

Renumber sections to conform.

Amend title to conform.

TOM YOUNG, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill would have no expenditure impact on the general fund, federal funds, or other funds.

**Explanation of Fiscal Impact**

**State Expenditure**

This bill grants authority to the state grand jury to investigate crimes involving insurance fraud, including violations under the South Carolina Omnibus Insurance Fraud and Reporting Immunity Act and insurance fraud involving two or more people wherein the undeserved economic benefit from the violation exceeds fifty thousand dollars. This bill also amends Sections 38-55-170 and 38-55-540 to revise penalties for presenting false claims for payment. Should the offender have carelessly or recklessly operated a motor vehicle in the commission of the insurance fraud violation, his driving privileges may be suspended for one year. Offenders may also have to forfeit motor vehicles, equipment, or other real property used in the commission of an insurance fraud violation. The bill also amends the motor vehicle code to require the clerk of court to notify the Department of Motor Vehicles when a person is convicted of or pleads guilty or nolo contendere to a crime of insurance fraud as defined in Sections 38-55-170 and 38-55-540.

**Attorney General’s Office.** The agency indicates that this bill will have no expenditure impact on the general fund, federal funds, or other funds.

**Department of Insurance.** The department reports that this bill would have no expenditure impact on the general fund, federal funds, or other funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 14‑7‑1610, AS AMENDED, 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 PROVIDE FOR THE SUSPENSION OF THE DRIVING PRIVILEGES OF A PERSON FOUND ON THE RECORD BY THE COURT OF HAVING CARELESSLY OR RECKLESSLY OPERATED A MOTOR VEHICLE IN THE COMMISSION OF SUCH A VIOLATION AND TO SUBJECT THE DRIVER’S MOTOR VEHICLE AND RELATED PROPERTY USED IN THE COMMISSION OF THE VIOLATION TO FORFEITURE; 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 TO PROVIDE FOR THE SUSPENSION OF THE DRIVING PRIVILEGES OF A PERSON FOUND ON THE RECORD BY THE COURT OF HAVING CARELESSLY OR RECKLESSLY OPERATED A MOTOR VEHICLE IN THE COMMISSION OF SUCH A VIOLATION AND SUBJECT THE DRIVER’S MOTOR VEHICLE AND RELATED PROPERTY USED IN THE COMMISSION OF THE VIOLATION TO FORFEITURE; AND TO AMEND SECTION 56‑1‑146, RELATING TO SURRENDER OF DRIVERS LICENSES BY PEOPLE CONVICTED OF CERTAIN CRIMES, SO AS TO INCLUDE THE CRIME OF INSURANCE FRAUD.

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

SECTION 1. Section 14‑7‑1610 of the 1976 Code, as last amended by Act 7 of 2015, is further 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 fifty thousand dollars;

(3) this criminal activity poses a significant impact on the citizens of this State in the form of higher insurance premiums; and

(4) 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 7 of 2015, is further amended to read:

“(A) The jurisdiction of a state grand jury impaneled pursuant to this article extends throughout the State. The subject matter jurisdiction of a state grand jury in all cases is limited to the following offenses:

(1) a crime involving narcotics, dangerous drugs, or controlled substances, or a crime arising out of or in connection with a crime involving narcotics, dangerous drugs, or controlled substances, including, but not limited to, money laundering as specified in Section 44‑53‑475, obstruction of justice, perjury or subornation of perjury, or any attempt, aiding, abetting, solicitation, or conspiracy to commit one of the aforementioned crimes, if the crime is of a ~~multi‑county~~ multicounty nature or has transpired or is transpiring or has significance in more than one county of this State;

(2) a crime involving criminal gang activity or a pattern of criminal gang activity pursuant to Article 3, Chapter 8, Title 16;

(3) a crime, statutory, common law or other, involving public corruption as defined in Section 14‑7‑1615, a crime, statutory, common law or other, arising out of or in connection with a crime involving public corruption as defined in Section 14‑7‑1615, and any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime, statutory, common law or other, involving public corruption as defined in Section 14‑7‑1615;

(4) a crime involving the election laws, including, but not limited to, those named offenses specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws;

(5) a crime involving computer crimes, pursuant to Chapter 16, Title 16, or a conspiracy or solicitation to commit a crime involving computer crimes;

(6) a crime involving terrorism, or a conspiracy or solicitation to commit a crime involving terrorism. Terrorism includes an activity that:

(a) involves an act dangerous to human life that is a violation of the criminal laws of this State;

(b) appears to be intended to:

(i) intimidate or coerce a civilian population;

(ii) influence the policy of a government by intimidation or coercion; or

(iii) affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(c) occurs primarily within the territorial jurisdiction of this State;

(7) a crime involving a violation of Chapter 1, Title 35, of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws;

(8) a crime involving obscenity, including, but not limited to, a crime as provided in Article 3, Chapter 15, Title 16, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving obscenity;

(9) a crime involving the knowing and wilful making of, aiding and abetting in the making of, or soliciting or conspiring to make a false, fictitious, or fraudulent statement or representation in an affidavit regarding an alien’s lawful presence in the United States, as defined by law, if the number of violations exceeds twenty or if the public benefit received by a person from a violation or combination of violations exceeds twenty thousand dollars;

(10) a crime involving financial identity fraud or identity fraud involving the false, fictitious, or fraudulent creation or use of documents used in an immigration matter as defined in Section 16‑13‑525, if the number of violations exceeds twenty, or if the value of the ascertainable loss of money or property suffered by a person or persons from a violation or combination of violations exceeds twenty thousand dollars;

(11) a crime involving the knowing and wilful making of, aiding or abetting in the making of, or soliciting or conspiring to make a false, fictitious, or fraudulent statement or representation in a document prepared or executed as part of the provision of immigration assistance services in an immigration matter, as defined by law, if the number of violations exceeds twenty, or if a benefit received by a person from a violation or combination of violations exceeds twenty thousand dollars;

(12) a knowing and wilful crime involving actual and substantial harm to the water, ambient air, soil or land, or both soil and land. This crime includes a knowing and wilful violation of the Pollution Control Act, the Atomic Energy and Radiation Control Act, the State Underground Petroleum Environmental Response Bank Act, the State Safe Drinking Water Act, the Hazardous Waste Management Act, the Infectious Waste Management Act, the Solid Waste Policy and Management Act, the Erosion and Sediment Control Act, the South Carolina Mining Act, and the Coastal Zone Management Act, or a 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, is two million dollars or more, as certified by an independent environmental engineer who must be contracted by the Department of Health and Environmental Control. If the knowing and wilful crime is a violation of federal law, a conviction or an acquittal pursuant to federal law for the same act is a bar to the impaneling of a state grand jury pursuant to this section; ~~and~~

(13) a crime involving or relating to the offense of trafficking in persons, as defined in Section 16‑3‑2020, when a victim is trafficked in more than one county or a trafficker commits the offense of trafficking in persons in more than one county; and

(14) 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 two or more people and if the undeserved economic benefit that is received or attempted to be received from a violation or combination of violations is greater than fifty thousand dollars.”

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) Upon a finding on the record by the sentencing judge that a person has carelessly or recklessly operated a motor vehicle in the commission of a violation of this section, that person’s driving privileges may be suspended for one year.

(C) Upon conviction of a violation of this section, any motor vehicles, equipment, or other property, real or personal, used in the furtherance of a violation of this section is subject to forfeiture.”

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 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) Upon a finding on the record by the sentencing judge that a person has carelessly or recklessly operated a motor vehicle in the commission of a violation of this section, that person’s driving privileges may be suspended for one year.

(D) Upon conviction of a violation of this section, any motor vehicles, equipment, or other property, real or personal used in the furtherance of a violation of this section is subject to forfeiture.”

SECTION 5. Section 56‑1‑146 of the 1976 Code, as added by Act 277 of 2010, is amended to read:

“Section 56‑1‑146. When a person is convicted of or pleads guilty or nolo contendere to a crime of violence as defined in Section 16‑23‑10(3) on or after July 1, 2011, or insurance fraud as defined in Sections 38‑55‑170 and 38‑55‑540, in this State, the clerk of court must notify by mail, electronic mail, or facsimile the Department of Motor Vehicles within thirty days of the conviction of guilt or nolo contendere plea. The Department of Motor Vehicles must then notify the person who was convicted of the crime of violence as defined in Section 16‑23‑10(3) that he must surrender his driver’s license or special identification card to the Department of Motor Vehicles by mail or in person, and the Department of Motor Vehicles shall issue to the person by mail or in person a driver’s license or special identification card with the identifying code as referenced in Section 56‑1‑148. If the person convicted of a crime of violence as defined in Section 16‑23‑10(3) fails to surrender his driver’s license or special identification card to the Department of Motor Vehicles, the driver’s license or special identification card is considered canceled.”

SECTION 6. This act takes effect upon approval by the Governor.

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