

BILL ANALYSIS

Senate Research Center

H.B. 3376
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Business & Commerce
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

H.B. 3376 amends the criminal offenses of money laundering and insurance fraud and related statutes to facilitate the investigation and prosecution of those offenses. The bill also standardizes the punishments for those offenses to make them consistent with the rest of the Penal Code, increases the statute of limitations for felony insurance fraud, and clarifies the effect of the commission of those offenses upon certain license holders and applicants.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 34.01(2) and (3), Penal Code, to redefine "funds" and to define "financial institution." Deletes existing definition of "peace officer."

SECTION 2. Amends Section 34.02, Penal Code, by amending Subsections (a), (b), and (e), and adding Subsections (a-1), (f), (g), and (h), as follows:

(a) Provides that a person commits an offense if the person knowingly commits certain actions, including financing or investing or intending to finance or invest funds that the person believes are intended to further the commission of criminal activity. Makes nonsubstantive changes.

(a-1) Provides that knowledge of the specific nature of the criminal activity giving rise to the proceeds is not required to establish a culpable mental state under this section.

(b) Makes conforming and nonsubstantive changes.

(e) Modifies the schedule of penalties and fines associated with certain offenses under this section.

(f) Authorizes certain conduct, for purposes of this section, if proceeds of criminal activity are related to one scheme or continuing course of conduct, whether from the same or several sources, to be considered as one offense and the value of the proceeds aggregated in determining the classification of the offense.

(g) Provides that, for purposes of this section, funds on deposit at a branch of a financial institution are considered the property of that branch and any other branch of the financial institution.

(h) Authorizes an actor, if conduct that constitutes an offense under this section also constitutes an offense under any other law, to be prosecuted under this section, the other law, or both.

SECTION 3. Amends Chapter 34, Penal Code, by adding Section 34.021, as follows:

Sec. 34.021. PROTECTION FROM CIVIL LIABILITY. Provides that, notwithstanding Section 1.03(c) (relating to the effect of the code), a financial institution or an agent of

the financial institution acting in a manner described by Section 34.02(c) (relating to prosecution for money laundering) is not liable for civil damages to a person who meets certain requirements.

SECTION 4. Amends Chapter 35, Penal Code, by amending Sections 35.01 and 35.02 and adding Sections 35.015 and 35.025, as follows:

Sec. 35.01. DEFINITIONS. Defines "insurance policy" and "value of the claim." Redefines "insurer" and "statement." Deletes existing definitions of "health care goods," "health care provider," and "health care service."

Sec. 35.015. MATERIALITY. Provides that a statement is material for the purposes of this chapter, regardless of the admissibility of the statement at trial, if the statement could have affected the eligibility for coverage or amount of the payment on a claim for payment under an insurance policy or the decision of an insurer whether to issue an insurance policy.

Sec. 35.02. INSURANCE FRAUD. (a) Provides that a person commits an offense if, with intent to defraud or deceive an insurer, the person, in support of a claim for payment under an insurance policy, commits certain modified actions.

(a-1) Provides that a person commits an offense if the person, with intent to defraud or deceive an insurer and in support of an application for an insurance policy, commits certain actions.

(b) Makes conforming changes.

(c) Deletes existing text of Subsection (c) relating to the materiality of a claim. Redesignates text of existing Subsection (d). Modifies the penalty and fee schedule for an offense committed under Subsection (a).

(d) Provides that an offense under Subsection (a-1) is a state jail felony.

(e) Makes no changes to this subsection.

(f) Authorizes an actor, if conduct that constitutes an offense under this section also constitutes an offense under any other law, to be prosecuted under this section, the other law, or both.

(g) Provides that, for purposes of this section, if the actor proves by a preponderance of the evidence that a portion of the claim for payment under an insurance policy resulted from a valid loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim.

(h) Provides that, if it is shown on the trial of an offense under this section that the actor submitted a bill for goods or services in support of a claim for payment under an insurance policy to the insurer issuing the policy, a rebuttable presumption exists that the actor caused the claim for payment to be prepared or presented.

Sec. 35.025. VALUE OF CLAIM. (a) Provides that, except as provided by Subsection (b) and subject to Subsection (c), for the purposes of Section 35.02(c), if the value of a claim is not readily ascertainable, the value of the claim is a certain amount.

(b) Provides that, if goods or services that are the subject of a claim cannot be reasonably ascertained under Subsection (a), the goods or services are considered to have a value of \$500 or more but less than \$1,500.

(c) Provides that, if the actor proves by a preponderance of the evidence that a portion of the claim for payment under an insurance policy resulted from a valid

loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim.

SECTION 5. Amends Section 71.02(a), Penal Code, to make a conforming change.

SECTION 6. Amends Article 12.01, Code of Criminal Procedure, to make conforming changes.

SECTION 7. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.0181, as follows:

Art. 42.0181. NOTICE OF THEFT, FRAUD, MONEY LAUNDERING, OR INSURANCE FRAUD PROVIDED BY CLERK OF COURT. Requires the clerk of the court in which the conviction or order of deferred adjudication is entered, not later than the fifth day after the date a person who holds a certificate of authority, license, or other authority issued by the Texas Department of Insurance is convicted of or granted deferred adjudication for an offense under Chapter 31 (Theft), 32 (Fraud), 34 (Money Laundering), or 35 (Insurance Fraud), Penal Code, to provide to the Texas Department of Insurance written notice of the person's conviction or deferred adjudication, including the offense on which the conviction or deferred adjudication was based.

SECTION 8. (a) Makes application of the changes in law made by this Act to Chapters 34, 35, and 71, Penal Code, prospective. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

(b) Provides that the change in law made by Article 12.01, Code of Criminal Procedure, as amended by this Act, does not apply to an offense if the prosecution of that offense became barred by limitation before the effective date of this Act. Provides that the prosecution of that offense remains barred as if this Act had not taken effect.

SECTION 9. Effective date: September 1, 2005.