

By: Taylor

H.B. No. 3376

A BILL TO BE ENTITLED

AN ACT

relating to criminal offenses involving theft and fraud, to the statutes of limitation for those offenses, and to the effect of the commission of those offenses on certain license holders and applicants.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 34.01, Penal Code, is amended by amending Subdivision (4) and adding Subdivisions (5) and (6) to read as follows:

(4) "Proceeds" means funds acquired or derived directly or indirectly from, produced through, or realized through a criminal activity ~~[an act]~~.

(5) "Conducts" includes:

(A) initiating or concluding a transaction; and

(B) participating in initiating, concluding, or otherwise conducting a transaction.

(6) "Transaction" includes:

(A) the deposit, withdrawal, transfer, bailment, loan, pledge, payment, or exchange of currency or a monetary instrument; and

(B) the electronic, wire, magnetic, or manual transfer of funds between accounts by, through, or to a financial institution.

SECTION 2. Section 34.02, Penal Code, is amended by

amending Subsections (a), (b), and (e) and adding Subsections (a-1) and (f) to read as follows:

(a) A person commits an offense if the person knowingly:

(1) conducts a transaction involving ~~[acquires or maintains an interest in, receives, conceals, possesses, transfers, or transports]~~ the proceeds of criminal activity; or

(2) conducts a transaction or offers to conduct ~~[supervises, or facilitates]~~ a transaction involving ~~[the proceeds of criminal activity; or~~

~~[(3) invests, expends, or receives, or offers to invest, expend, or receive, the proceeds of criminal activity or]~~ funds that the person believes are the proceeds of criminal activity.

(a-1) 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) For purposes of Subsection (a)(2) ~~[(a)(3) of this section]~~, a person is presumed to believe that funds are the proceeds of criminal activity if a peace officer or a person acting at the direction of a peace officer represents to the person that the funds are proceeds of criminal activity, regardless of whether the peace officer or person acting at the peace officer's direction discloses the person's status as a peace officer or that the person is acting at the direction of a peace officer.

(e) An offense under this section is:

(1) a state jail felony if the value of the funds involved in the transaction is less than \$3,000;

1 (2) a felony of the third degree if the value of the
2 funds involved in the transaction is \$3,000 or more but less than
3 \$20,000;

4 (3) [~~(2)~~] a felony of the second degree if the value of
5 the funds involved in the transaction is \$20,000 or more but less
6 than \$100,000; or

7 (4) [~~(3)~~] a felony of the first degree if the value of
8 the funds involved in the transaction is \$100,000 or more.

9 (f) If separate transactions in violation of this section
10 are conducted pursuant to one scheme or continuing course of
11 conduct, the conduct may be considered as one offense and the value
12 of the funds involved in the transactions aggregated in determining
13 the classification of the offense.

14 SECTION 3. Chapter 35, Penal Code, is amended by amending
15 Sections 35.01 and 35.02 and adding Sections 35.015 and 35.025 to
16 read as follows:

17 Sec. 35.01. DEFINITIONS. In this chapter:

18 (1) "Insurance policy" has the meanings assigned by
19 Sections 912.001(2) and 1201.001, Insurance Code [~~"Health care~~
20 ~~goods" means a tangible product, device, medicine, or other object~~
21 ~~provided in conjunction with a health care service]~~.

22 (2) [~~"Health care provider" means a person who renders~~
23 ~~health care services or an agent or employee of an organization that~~
24 ~~renders or provides a facility and means to render health care~~
25 ~~services. The term includes a physician, surgeon, person who may be~~
26 ~~selected by an insured or a beneficiary under Article 21.52,~~
27 ~~Insurance Code, and person defined as a provider of health care~~

1 ~~under Section 152.003, Occupations Code.~~

2 ~~[(3) "Health care service" means a service that is~~
3 ~~intended to improve or maintain the physical or mental condition of~~
4 ~~an individual and that is rendered, directed, or supervised by a~~
5 ~~health care provider.~~

6 ~~[(4)] "Insurer" has the meaning assigned by Article~~
7 ~~1.02, Insurance Code [means a person who engages in the business of~~
8 ~~insurance in this state, including:~~

9 ~~[(A) an insurer that is not authorized to do~~
10 ~~business in this state,~~

11 ~~[(B) a health maintenance organization,~~

12 ~~[(C) a group hospital service corporation~~
13 ~~regulated under Chapter 842, Insurance Code, and~~

14 ~~[(D) any person who self-insures and provides~~
15 ~~health care benefits to the person's employees].~~

16 (3) [(5)] "Statement" means a [an oral or written
17 ~~communication or a record or]~~ documented representation of fact to
18 an insurer [evidencing a loss, injury, or expense]. The term
19 includes computer-generated information.

20 (4) "Value of the claim" means the total dollar amount
21 of a claim for payment under an insurance policy or, as applicable,
22 the value of the claim determined under Section 35.025.

23 Sec. 35.015. MATERIALITY. (a) A statement is material for
24 the purposes of this chapter, regardless of the admissibility of
25 the statement at trial, if the statement could have affected:

26 (1) the eligibility for coverage or amount of the
27 payment on a claim for payment under an insurance policy; or

1 (2) the decision of an insurer whether to issue an
2 insurance policy.

3 (b) Whether a statement is material in a given factual
4 situation is a question of law.

5 Sec. 35.02. INSURANCE FRAUD. (a) A person commits an
6 offense if [~~, with intent to defraud or deceive an insurer,~~] the
7 person, in support of a claim for payment under an insurance policy:

8 (1) recklessly prepares or causes to be prepared [~~or~~
9 ~~presents to an insurer in support of a claim for payment under a~~
10 ~~health or property and casualty insurance policy]~~ a statement that:

11 (A) [the person knows] contains false or
12 misleading material information; and

13 (B) is presented to an insurer; or

14 (2) recklessly presents to or causes to be presented
15 to an insurer a statement that contains false or misleading
16 material information [~~concerning a matter that is material to the~~
17 ~~claim, and the matter affects a person's right to a payment or the~~
18 ~~amount of payment to which a person is entitled].~~

19 (b) A person commits an offense if the person, in support of
20 an application for an insurance policy:

21 (1) recklessly prepares or causes to be prepared a
22 statement that:

23 (A) contains false or misleading material
24 information; and

25 (B) is presented to an insurer; or

26 (2) recklessly presents or causes to be presented to
27 an insurer a statement that contains false or misleading material

1 information ~~[A person commits an offense if, with intent to defraud~~
2 ~~or deceive an insurer, the person solicits, offers, pays, or~~
3 ~~receives a benefit in connection with the furnishing of health care~~
4 ~~goods or services for which a claim for payment is submitted under a~~
5 ~~health or property and casualty insurance policy].~~

6 (c) ~~[For purposes of Subsection (a), information concerning~~
7 ~~a matter that is material to a claim for payment under an insurance~~
8 ~~policy includes information concerning:~~

9 ~~[(1) whether health care goods or services were~~
10 ~~provided;~~

11 ~~[(2) whether health care goods or services were~~
12 ~~medically necessary under professionally accepted standards;~~

13 ~~[(3) the nature of the health care goods or services~~
14 ~~provided;~~

15 ~~[(4) the date on which health care goods or services~~
16 ~~were provided;~~

17 ~~[(5) the medical record of goods or services provided;~~

18 ~~[(6) the condition treated or diagnosis made;~~

19 ~~[(7) the identity and applicable license of the~~
20 ~~provider or the recipient of health care goods or services;~~

21 ~~[(8) whether property was damaged or lost in the~~
22 ~~manner and under the circumstances described in a statement related~~
23 ~~to a claim for insurance payment; or~~

24 ~~[(9) whether any other claim for insurance payment has~~
25 ~~been communicated to any other insurer concerning property damage~~
26 ~~or loss to the same property.~~

27 ~~[(d)]~~ An offense under Subsection (a) ~~[this section]~~ is:

(1) a Class C misdemeanor if the value of the claim is less than \$20;

(2) a Class B misdemeanor if the value of the claim is \$20 or more but less than \$500;

(3) a Class A misdemeanor if the value of the claim is \$500 or more but less than \$1,500;

(4) a state jail felony if the value of the claim is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the value of the claim is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the value of the claim is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if:

(A) the value of the claim is \$200,000 or more;

or

(B) an act committed in connection with ~~[the value of the claim is less than \$200,000 and]~~ the commission of the offense places ~~[placed]~~ a person at risk of death or serious bodily injury.

(d) An offense under Subsection (b) is a state jail felony.

(e) The court shall order a defendant convicted of an offense under this section to pay restitution, including court costs and attorney's fees, to an affected insurer.

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

(g) For purposes of Subsection (a), 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) 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) 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:

(1) the fair market value, at the time and place of the offense, of the property, goods, or services that are the subject of the claim; or

(2) the cost of replacing the property, goods, or services that are the subject of the claim within a reasonable time after the claim.

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

(c) 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

1 the policy, the value of the claim is equal to the difference
2 between the total claim amount and the amount of the valid portion
3 of the claim.

4 SECTION 4. Section 71.02(a), Penal Code, is amended to read
5 as follows:

6 (a) A person commits an offense if, with the intent to
7 establish, maintain, or participate in a combination or in the
8 profits of a combination or as a member of a criminal street gang,
9 he commits or conspires to commit one or more of the following:

10 (1) murder, capital murder, arson, aggravated
11 robbery, robbery, burglary, theft, aggravated kidnapping,
12 kidnapping, aggravated assault, aggravated sexual assault, sexual
13 assault, forgery, deadly conduct, assault punishable as a Class A
14 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
15 motor vehicle;

16 (2) any gambling offense punishable as a Class A
17 misdemeanor;

18 (3) promotion of prostitution, aggravated promotion
19 of prostitution, or compelling prostitution;

20 (4) unlawful manufacture, transportation, repair, or
21 sale of firearms or prohibited weapons;

22 (5) unlawful manufacture, delivery, dispensation, or
23 distribution of a controlled substance or dangerous drug, or
24 unlawful possession of a controlled substance or dangerous drug
25 through forgery, fraud, misrepresentation, or deception;

26 (6) any unlawful wholesale promotion or possession of
27 any obscene material or obscene device with the intent to wholesale

1 promote the same;

2 (7) any offense under Subchapter B, Chapter 43,
3 depicting or involving conduct by or directed toward a child
4 younger than 18 years of age;

5 (8) any felony offense under Chapter 32;

6 (9) any offense under Chapter 36;

7 (10) any offense under Chapter 34 or 35;

8 (11) any offense under Section 37.11(a); or

9 (12) any offense under Chapter 20A.

10 SECTION 5. Articles 12.01 and 12.02, Code of Criminal
11 Procedure, are amended to read as follows:

12 Art. 12.01. FELONIES. Except as provided in Article 12.03,
13 felony indictments may be presented within these limits, and not
14 afterward:

15 (1) no limitation:

16 (A) murder and manslaughter;

17 (B) sexual assault, if during the investigation
18 of the offense biological matter is collected and subjected to
19 forensic DNA testing and the testing results show that the matter
20 does not match the victim or any other person whose identity is
21 readily ascertained; or

22 (C) an offense involving leaving the scene of an
23 accident under Section 550.021, Transportation Code, if the
24 accident resulted in the death of a person;

25 (2) ten years from the date of the commission of the
26 offense:

27 (A) theft of any estate, real, personal or mixed,

1 by an executor, administrator, guardian or trustee, with intent to
2 defraud any creditor, heir, legatee, ward, distributee,
3 beneficiary or settlor of a trust interested in such estate;

4 (B) theft by a public servant of government
5 property over which he exercises control in his official capacity;

6 (C) forgery or the uttering, using or passing of
7 forged instruments;

8 (D) injury to a child, elderly individual, or
9 disabled individual punishable as a felony of the first degree
10 under Section 22.04, Penal Code;

11 (E) sexual assault, except as provided by
12 Subdivision (1) or (5); or

13 (F) arson;

14 (3) seven years from the date of the commission of the
15 offense:

16 (A) misapplication of fiduciary property or
17 property of a financial institution;

18 (B) securing execution of document by deception;
19 or

20 (C) a violation under Sections 153.403(22)-(39),
21 Tax Code;

22 (4) five years from the date of the commission of the
23 offense:

24 (A) theft, burglary, robbery;

25 (B) kidnapping;

26 (C) injury to a child, elderly individual, or
27 disabled individual that is not punishable as a felony of the first

1 degree under Section 22.04, Penal Code; ~~[or]~~

2 (D) abandoning or endangering a child; or

3 (E) insurance fraud;

4 (5) ten years from the 18th birthday of the victim of
5 the offense:

6 (A) indecency with a child under Section
7 21.11(a)(1) or (2), Penal Code; or

8 (B) except as provided by Subdivision (1), sexual
9 assault under Section 22.011(a)(2), Penal Code, or aggravated
10 sexual assault under Section 22.021(a)(1)(B), Penal Code; or

11 (6) three years from the date of the commission of the
12 offense: all other felonies.

13 Art. 12.02. MISDEMEANORS. (a) Except as provided by
14 Subsection (b), an ~~[An]~~ indictment or information for any
15 misdemeanor may be presented within two years from the date of the
16 commission of the offense, and not afterward.

17 (b) An indictment or information for insurance fraud may be
18 presented within five years from the date of the commission of the
19 offense, and not afterward.

20 SECTION 6. Chapter 42, Code of Criminal Procedure, is
21 amended by adding Article 42.0181 to read as follows:

22 Art. 42.0181. NOTICE OF THEFT, FRAUD, MONEY LAUNDERING, OR
23 INSURANCE FRAUD PROVIDED BY CLERK OF COURT. Not later than the
24 fifth day after the date a person who holds a certificate of
25 authority, license, or other authority issued by the Texas
26 Department of Insurance is convicted of or granted deferred
27 adjudication for an offense under Chapter 31, 32, 34, or 35, Penal

1 Code, the clerk of the court in which the conviction or order of
2 deferred adjudication is entered shall provide to the Texas
3 Department of Insurance written notice of the person's conviction
4 or deferred adjudication, including the offense on which the
5 conviction or deferred adjudication was based.

6 SECTION 7. Section 5(c), Article 42.12, Code of Criminal
7 Procedure, is amended to read as follows:

8 (c) On expiration of a community supervision period imposed
9 under Subsection (a) of this section, if the judge has not proceeded
10 to adjudication of guilt, the judge shall dismiss the proceedings
11 against the defendant and discharge him. The judge may dismiss the
12 proceedings and discharge a defendant, other than a defendant
13 charged with an offense requiring the defendant to register as a sex
14 offender under Chapter 62, [~~as added by Chapter 668, Acts of the~~
15 ~~75th Legislature, Regular Session, 1997,~~] prior to the expiration
16 of the term of community supervision if in the judge's opinion the
17 best interest of society and the defendant will be served. The
18 judge may not dismiss the proceedings and discharge a defendant
19 charged with an offense requiring the defendant to register under
20 Chapter 62 [~~, as added by Chapter 668, Acts of the 75th Legislature,~~
21 ~~Regular Session, 1997]~~. Except as provided by Section 12.42(g),
22 Penal Code, a dismissal and discharge under this section may not be
23 deemed a conviction for the purposes of disqualifications or
24 disabilities imposed by law for conviction of an offense. For any
25 defendant who receives a dismissal and discharge under this
26 section:

27 (1) upon conviction of a subsequent offense, the fact

1 that the defendant had previously received community supervision
2 with a deferred adjudication of guilt shall be admissible before
3 the court or jury to be considered on the issue of penalty;

4 (2) if the defendant is an applicant for a license or
5 is a licensee under Chapter 42, Human Resources Code, the Texas
6 Department of Human Services may consider the fact that the
7 defendant previously has received community supervision with a
8 deferred adjudication of guilt under this section in issuing,
9 renewing, denying, or revoking a license under that chapter; ~~and~~

10 (3) if the defendant is a person who has applied for
11 registration to provide mental health or medical services for the
12 rehabilitation of sex offenders, the Interagency Council on Sex
13 Offender Treatment may consider the fact that the defendant has
14 received community supervision under this section in issuing,
15 renewing, denying, or revoking a license or registration issued by
16 that council; and

17 (4) if the defendant applies for or holds a
18 certificate of authority, license, or other authority issued by the
19 Texas Department of Insurance, the Texas Department of Insurance
20 may consider the fact that the defendant previously has received
21 community supervision with a deferred adjudication of guilt under
22 this section for an offense under Chapter 31, 32, 34, or 35, Penal
23 Code, in issuing, renewing, denying, or revoking a certificate of
24 authority, license, or other authority.

25 SECTION 8. (a) The changes in law made by this Act to
26 Chapters 34, 35, and 71, Penal Code, apply only to an offense
27 committed on or after the effective date of this Act. An offense

1 committed before the effective date of this Act is covered by the
2 law in effect at the time the offense was committed, and the former
3 law is continued in effect for that purpose. For purposes of this
4 section, an offense was committed before the effective date of this
5 Act if any element of the offense was committed before that date.

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

11 SECTION 9. This Act takes effect September 1, 2005.