

By: Taylor (Senate Sponsor - Lucio) H.B. No. 3376
(In the Senate - Received from the House May 11, 2005;
May 13, 2005, read first time and referred to Committee on Criminal
Justice; May 17, 2005, rereferred to Committee on Business and
Commerce; May 20, 2005, reported favorably by the following vote:
Yeas 8, Nays 0; May 20, 2005, sent to printer.)

A BILL TO BE ENTITLED
AN ACT

relating to the prosecution and punishment of certain criminal
offenses involving theft and fraud and to the provision of notice of
the commission of those offenses to certain licensing entities.

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

SECTION 1. Sections 34.01(2) and (3), Penal Code, are
amended to read as follows:

(2) "Funds" includes:

(A) coin or paper money of the United States or
any other country that is designated as legal tender and that
circulates and is customarily used and accepted as a medium of
exchange in the country of issue;

(B) United States silver certificates, United
States Treasury notes, and Federal Reserve System notes; ~~and~~

(C) an official foreign bank note ~~[notes]~~ that is
~~[are]~~ customarily used and accepted as a medium of exchange in a
foreign country and a foreign bank draft; and

(D) currency or its equivalent, including an
electronic fund, personal check, bank check, traveler's check,
money order, bearer negotiable instrument, bearer investment
security, bearer security, or certificate of stock in a form that
allows title to pass on delivery [drafts].

(3) "Financial institution" has the meaning assigned
by Section 32.01. ["Peace officer" means a person who is elected,
appointed, or employed by a governmental entity and who is a peace
officer under Article 2.12, Code of Criminal Procedure, or other
law.]

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

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

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

(2) conducts, 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; or

(4) finances or invests or intends to finance or
invest funds that the person believes are intended to further the
commission 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)(3) of] this section, a
person is presumed to believe that funds are the proceeds of or are
intended to further the commission 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 or are
intended to further the commission of criminal activity, as
applicable, 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 is \$1,500 or more but less than \$20,000;

(2) a felony of the third degree if the value of the funds is \$20,000 [~~\$3,000~~] or more but less than \$100,000 [~~\$20,000~~];

(3) ~~[(2)]~~ a felony of the second degree if the value of the funds is \$100,000 [~~\$20,000~~] or more but less than \$200,000 [~~\$100,000~~]; or

(4) ~~[(3)]~~ a felony of the first degree if the value of the funds is \$200,000 [~~\$100,000~~] or more.

(f) 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, the conduct may be considered as one offense and the value of the proceeds aggregated in determining the classification of the offense.

(g) 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) 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.

SECTION 3. Chapter 34, Penal Code, is amended by adding Section 34.021 to read as follows:

Sec. 34.021. PROTECTION FROM CIVIL LIABILITY. Notwithstanding Section 1.03(c), a financial institution or an agent of the financial institution acting in a manner described by Section 34.02(c) is not liable for civil damages to a person who:

(1) claims an ownership interest in funds involved in an offense under Section 34.02; or

(2) conducts with the financial institution or an insurer, as defined by Article 1.02, Insurance Code, a transaction concerning funds involved in an offense under Section 34.02.

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

Sec. 35.01. DEFINITIONS. In this chapter:

(1) "Insurance policy" means a written instrument in which is provided the terms of any certificate of insurance, binder of coverage, contract of insurance, benefit plan, nonprofit hospital service plan, motor club service plan, surety bond, cash bond, or any other alternative to insurance authorized by Chapter 601, Transportation Code. The term includes any instrument authorized to be regulated by the Texas Department of Insurance. [~~"Health care goods" means a tangible product, device, medicine, or other object provided in conjunction with a health care service.~~]

(2) ["Health care provider" means a person who renders health care services or an agent or employee of an organization that renders or provides a facility and means to render health care services. The term includes a physician, surgeon, person who may be selected by an insured or a beneficiary under Article 21.52, Insurance Code, and person defined as a provider of health care under Section 152.003, Occupations Code.

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

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

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

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

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

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

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

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

Sec. 35.015. MATERIALITY. 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:

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

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

Sec. 35.02. INSURANCE FRAUD. (a) 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:

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

(A) the person knows contains false or misleading material information; and

(B) is presented to an insurer; or

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

(a-1) 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:

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

(A) the person knows contains false or misleading material information; and

(B) is presented to an insurer; or

(2) presents or causes to be presented to an insurer a statement that the person knows contains false or misleading material information.

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

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

~~[(1) whether health care goods or services were provided,~~

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

~~[(3) the nature of the health care goods or services provided,~~

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

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

~~[(6) the condition treated or diagnosis made,~~

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

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

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

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

(1) a Class C misdemeanor if the value of the claim is less than \$50 ~~[\$20]~~;

(2) a Class B misdemeanor if the value of the claim is \$50 ~~[\$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 (a-1) 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 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) 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 goods or services that are the subject of the claim; or

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

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

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

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

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

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

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

(5) unlawful manufacture, delivery, dispensation, or

distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

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

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

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

(12) any offense under Chapter 20A.

SECTION 6. Article 12.01, Code of Criminal Procedure, is amended to read as follows:

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

(1) no limitation:

(A) murder and manslaughter;

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

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

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

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

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

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

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

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

(F) arson;

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

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

(B) securing execution of document by deception; or

(C) a violation under Sections 162.403(22)-(39) [~~153.403(22)-(39)~~], Tax Code;

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

(A) theft, burglary, robbery;

(B) kidnapping;

(C) injury to a child, elderly individual, or disabled individual that is not punishable as a felony of the first degree under Section 22.04, Penal Code; ~~or~~

(D) abandoning or endangering a child; or

(E) insurance fraud;

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

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

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

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

SECTION 7. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0181 to read as follows:

Art. 42.0181. NOTICE OF THEFT, FRAUD, MONEY LAUNDERING, OR INSURANCE FRAUD PROVIDED BY CLERK OF COURT. 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, 32, 34, or 35, Penal Code, the clerk of the court in which the conviction or order of deferred adjudication is entered shall 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) The changes in law made by this Act to Chapters 34, 35, and 71, Penal Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. 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) 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. The prosecution of that offense remains barred as if this Act had not taken effect.

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

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