

By: Vaught, Kent, Miklos, Zerwas, Truitt,
et al.

H.B. No. 4385

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the prosecution and punishment of fraud upon certain
3 practitioners; creating an offense and providing criminal
4 penalties.

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

6 SECTION 1. Subchapter D, Chapter 32, Penal Code, is amended
7 by adding new section 32.53 to read as follows:

8 Section 32.53. FRAUD AGAINST PRACTITIONERS. (a) In this
9 section, "practitioner" means:

10 (1) an individual licensed to practice acupuncture by
11 the Texas State Board of Acupuncture Examiners;

12 (2) an individual licensed by the Texas Board of
13 Nursing as a registered nurse or recognized by that board as an
14 advanced practice nurse;

15 (3) an individual licensed to practice audiology by
16 the State Board of Examiners for Speech-Language Pathology and
17 Audiology;

18 (4) an individual licensed by the Texas Commission on
19 Alcohol and Drug Abuse;

20 (5) an individual licensed by the Texas Board of
21 Chiropractic Examiners;

22 (6) an individual licensed to practice dentistry by
23 the State Board of Dental Examiners;

24 (7) an individual licensed by the Texas State Board of

- 1 Examiners of Dietitians;
2 (8) an individual licensed by the State Committee of
3 Examiners in the Fitting and Dispensing of Hearing Instruments;
4 (9) an individual licensed by the Texas State Board of
5 Social Worker Examiners as a licensed clinical social worker;
6 (10) an individual licensed by the Texas State Board
7 of Examiners of Professional Counselors;
8 (11) an individual licensed by the Texas State Board
9 of Examiners of Marriage and Family Therapists;
10 (12) an individual licensed as an occupational
11 therapist by the Texas Board of Occupational Therapy Examiners;
12 (13) an individual licensed to practice optometry by
13 the Texas Optometry Board;
14 (14) an individual licensed as a physical therapist by
15 the Texas Board of Physical Therapy Examiners;
16 (15) an individual licensed to practice medicine by
17 the Texas Medical Board;
18 (16) an individual licensed by the Texas State Board
19 of Physician Assistant Examiners;
20 (17) an individual licensed to practice podiatry by
21 the Texas State Board of Podiatric Medical Examiners;
22 (18) an individual licensed as a psychological
23 associate by the Texas State Board of Examiners of Psychologists
24 who practices solely under the supervision of a licensed
25 psychologist;
26 (19) an individual licensed as a psychologist by the
27 Texas State Board of Examiners of Psychologists;

1 (20) an individual licensed to practice
2 speech-language pathology by the State Board of Examiners for
3 Speech-Language Pathology and Audiology;

4 (21) an individual licensed as a surgical assistant by
5 the Texas State Board of Medical Examiners; and

6 (22) a facility licensed as a hospital.

7 (b) A person who is a fiduciary or who is under a contractual
8 duty to settle claims for another person commits an offense if, with
9 the intent to diminish or deny payment for a service provided by a
10 practitioner, the person:

11 (1) misrepresents a material fact;

12 (2) utilizes methodologies that misstate practitioner
13 fees; or

14 (3) utilizes a database in the settlement or payment
15 for practitioner services the person knew or should have known
16 contains inaccuracies.

17 (c) When separate claims are settled or paid in violation of
18 this section pursuant to one scheme or continuing course of
19 conduct, the conduct may be considered as one offense and the value
20 of the claims aggregated in determining the classification of the
21 offense.

22 (d) The attorney general may offer to an attorney
23 representing the state in the prosecution of an offense under this
24 section the investigative, technical, and litigation assistance of
25 the attorney general's office.

26 (e) The attorney general may prosecute or assist in the
27 prosecution of an offense this section on the request of the

1 attorney representing the state.

2 (f) The attorney general may institute and conduct an action
3 or prosecution in a district court of Travis County or of a county
4 in which any part of the offense occurs.

5 (g) An offense under this section is:

6 (1) a Class C misdemeanor if the charge is less than
7 \$50;

8 (2) a Class B misdemeanor if the charge is \$50 or more
9 but less than \$500;

10 (3) a Class A misdemeanor if the charge is \$500 or more
11 but less than \$1,500;

12 (4) a state jail felony if the charge is \$1,500 or more
13 but less than \$20,000;

14 (5) a felony of the third degree if the charge is
15 \$20,000 or more but less than \$100,000;

16 (6) a felony of the second degree if the charge is
17 \$100,000 or more but less than \$200,000; or

18 (7) a felony of the first degree if:

19 (A) the charge is \$200,000 or more; or

20 (B) an act committed in connection with the
21 commission of the offense places a person at risk of death or
22 serious bodily injury.

23 SECTION 2. (a) The changes in law made by this Act apply
24 only to an offense committed on or after the effective date of this
25 Act. An offense committed before the effective date of this Act is
26 covered by the law in effect at the time the offense was committed,
27 and the former law is continued in effect for that purpose. For

1 purposes of this section, an offense was committed before the
2 effective date of this Act if any element was committed before that
3 date.

4 SECTION 3. This Act takes effect September 1, 2009.