

By: Perry

H.B. No. 2873

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a state court to hear cases involving insurance and Medicaid fraud.

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

SECTION 1. Subtitle A, Title 2, Government Code, is amended by adding Chapter 23A to read as follows:

CHAPTER 23A. STATE COURT ON INSURANCE AND MEDICAID FRAUD

Sec. 23A.001. DEFINITION. In this chapter, "state court" means the state court established under this chapter to hear certain cases involving insurance and Medicaid fraud.

Sec. 23A.002. APPLICABILITY OF OTHER LAW. Except to the extent of a conflict with this chapter, a law, other than Chapter 24 and Subchapter D, Chapter 51, that applies to:

(1) a district court of Travis County, including a law relating to how a case is appealed from the district court, applies to the state court; and

(2) a district judge, including any law providing for the qualifications, compensation, or retirement benefits of district court judges, applies to a state court judge.

Sec. 23A.003. APPOINTMENTS TO STATE COURT BY GOVERNOR; TERMS; VACANCIES. (a) The governor shall appoint with the advice and consent of the senate eight judges and one presiding judge to the state court.

(b) The judges serve staggered terms of two years, with four

1 judges' terms expiring January 1 of each odd-numbered year and five  
2 judges' terms, including that of the presiding judge, expiring  
3 January 1 of each even-numbered year.

4 (c) The governor shall fill any vacancy on the court for the  
5 remainder of the unexpired term.

6 Sec. 23A.004. DISQUALIFICATION. The fact that at least two  
7 members of the state court are disqualified to determine a case in  
8 the court shall be certified to the governor. The governor  
9 immediately shall commission the requisite number of persons who  
10 are learned in the law to try and determine the case.

11 Sec. 23A.005. LOCATION; TERMS OF COURT. The state court may  
12 sit at any time during the year at the seat of government or, at the  
13 court's discretion, at any other location in this state for the  
14 transaction of business, and each term of either court shall begin  
15 and end with each calendar year.

16 Sec. 23A.006. ADJOURNMENT. (a) A state court may adjourn  
17 from day to day or for the periods that the court considers proper.

18 (b) If a quorum of a state court is not present on any day of  
19 the term, a judge of the court or the bailiff attending the court  
20 may adjourn the court from time to time until a quorum is present,  
21 but the court may not be finally adjourned for the term.

22 Sec. 23A.007. CIVIL JURISDICTION. The state court has  
23 concurrent jurisdiction with the district courts in all actions,  
24 proceedings, and remedies involving an allegation of:

25 (1) Medicaid fraud under Chapter 36, Human Resources  
26 Code; or

27 (2) the commission of an unfair method of competition

1 or an unfair or deceptive act or practice in the business of  
2 insurance under Chapter 541, Insurance Code, or Section 17.46,  
3 Business & Commerce Code.

4 Sec. 23A.008. WRIT POWER. A judge of the state court may,  
5 either in termtime or vacation, grant writs of mandamus,  
6 injunction, sequestration, attachment, garnishment, certiorari,  
7 and supersedeas and all other writs necessary to the enforcement of  
8 the court's jurisdiction.

9 Sec. 23A.009. COURT SITTING IN PANELS. (a) Each state  
10 court may sit in panels of not fewer than three judges for the  
11 purpose of hearing cases.

12 (b) If more than one panel is used, the state court shall  
13 establish rules to periodically rotate the judges among the panels.  
14 Permanent civil panels without rotation may not be established.

15 (c) A majority of a panel constitutes a quorum for the  
16 transaction of business, and the concurrence of a majority of a  
17 panel is necessary for a decision.

18 Sec. 23A.010. COURT SITTING EN BANC. (a) The presiding  
19 judge of the state court, under rules established by the court,  
20 shall convene the court en banc for the transaction of all business  
21 other than the hearing of cases and may convene the court en banc  
22 for the purpose of hearing cases.

23 (b) When convened en banc, a majority of the membership of  
24 the state court constitutes a quorum and the concurrence of a  
25 majority of the court sitting en banc is necessary for a decision.

26 Sec. 23A.011. SEAL. The clerk of the state court shall  
27 obtain a seal for the court. The seal shall have a star with five

1 points and the words "The State Court of Texas on Insurance and  
2 Medicaid Fraud" engraved on it.

3 Sec. 23A.012. APPEALS. An appeal from the state court is in  
4 the same manner as an appeal from a district court of Travis County.

5 Sec. 23A.013. FUNDING; USE OF MONEY. (a) Existing  
6 appropriations to the attorney general available for the purpose  
7 shall be used to establish the state court.

8 (b) The legislature shall use money the state saves or  
9 recovers as a result of a proceeding in the state court established  
10 under this chapter to fund the court.

11 SECTION 2. Chapter 51, Government Code, is amended by  
12 adding Subchapter B-1 to read as follows:

13 SUBCHAPTER B-1. CLERK OF STATE COURT

14 Sec. 51.151. DEFINITION. In this subchapter, "state court"  
15 means the state court established under Chapter 23A.

16 Sec. 51.152. APPOINTMENT OF CLERK. The state court shall  
17 appoint a clerk of the court who:

18 (1) shall give bond in the manner provided by this  
19 subchapter; and

20 (2) may hold office for four years subject to removal  
21 by the appointing court for good cause entered of record on the  
22 minutes of the court.

23 Sec. 51.153. OATH; BOND. The clerk of the state court must  
24 sign the oath prescribed for officers of this state and must give a  
25 bond in the amount of \$5,000. The bond must be approved by the state  
26 court and is subject to the same conditions as the bond required of  
27 a district clerk.

1       Sec. 51.154. DEPUTY CLERK. (a) The state court, or the  
2 clerk of the state court with the court's approval, may appoint a  
3 stenographer employed by the court to act as a deputy clerk to  
4 perform the clerk's duties during the absence, illness, or other  
5 disability of the clerk.

6       (b) The stenographer appointed deputy clerk shall perform  
7 the duties of the clerk in the name of the clerk and shall sign the  
8 deputy clerk's own name as deputy clerk after signing the clerk's  
9 name.

10       Sec. 51.155. REMOVAL OF CLERK. The state court may remove  
11 the clerk for good cause, entered in the minutes of the court.

12       Sec. 51.156. DUTIES AND LIABILITIES. (a) The clerk of the  
13 state court shall perform the duties for the state court that a  
14 district clerk performs for a district court.

15       (b) The clerk of the state court is subject to the  
16 liabilities prescribed for a district clerk.

17       SECTION 3. Effective January 1, 2012, Section 36.008, Human  
18 Resources Code, is amended to read as follows:

19       Sec. 36.008. USE OF MONEY RECOVERED. The legislature, in  
20 appropriating money recovered under this chapter, shall:

21               (1) use a percentage of the funds recovered to fund the  
22 state court established under Chapter 23A, Government Code; and

23               (2) consider the requirements of the attorney general  
24 and other affected state agencies in investigating Medicaid fraud  
25 and enforcing this chapter.

26       SECTION 4. Effective January 1, 2012, Section 36.051(b),  
27 Human Resources Code, is amended to read as follows:

1 (b) An action under this section shall be brought in the  
2 state court established under Chapter 23A, Government Code, or in  
3 the [a] district court of [~~Travis County or of~~] a county in which  
4 any part of the unlawful act occurred, is occurring, or is about to  
5 occur.

6 SECTION 5. Effective January 1, 2012, Section 36.052(d),  
7 Human Resources Code, is amended to read as follows:

8 (d) An action under this section shall be brought in the  
9 state court established under Chapter 23A, Government Code, or  
10 [~~Travis County or~~] in a county in which any part of the unlawful act  
11 occurred.

12 SECTION 6. Effective January 1, 2012, Section 36.053(e),  
13 Human Resources Code, is amended to read as follows:

14 (e) If a person fails to file a statement as required by  
15 Subsection (b)(1) or fails to submit to an examination as required  
16 by Subsection (b)(2), the attorney general may file in the state  
17 court established under Chapter 23A, Government Code, [a district  
18 court of Travis County] a petition for an order to compel the person  
19 to file the statement or submit to the examination within a period  
20 stated by court order. Failure to comply with an order entered  
21 under this subsection is punishable as contempt.

22 SECTION 7. Effective January 1, 2012, Sections 36.054(f)  
23 and (j), Human Resources Code, are amended to read as follows:

24 (f) A person may file a petition, stating good cause, to  
25 extend the return date for the demand or to modify or set aside the  
26 demand. A petition under this section shall be filed in the state  
27 court established under Chapter 23A, Government Code, [a district

1 ~~court of Travis County]~~ and must be filed before the earlier of:

2 (1) the return date specified in the demand; or

3 (2) the 20th day after the date the demand is served.

4 (j) If a person fails to comply with an investigative  
5 demand, or if copying and reproduction of the documentary material  
6 demanded cannot be satisfactorily accomplished and the person  
7 refuses to surrender the documentary material, the attorney general  
8 may file in the state court established under Chapter 23A,  
9 Government Code, [~~a district court of Travis County]~~ a petition for  
10 an order to enforce the investigative demand.

11 SECTION 8. Effective January 1, 2012, Section 541.004,  
12 Insurance Code, is amended to read as follows:

13 Sec. 541.004. VENUE FOR ACTIONS INVOLVING DEPARTMENT OR  
14 COMMISSIONER. An action under this chapter in which the department  
15 or commissioner is a party must be brought in the state court  
16 established under Chapter 23A, Government Code [~~a district court in~~  
17 ~~Travis County]~~.

18 SECTION 9. Effective January 1, 2012, Section 541.106(a),  
19 Insurance Code, is amended to read as follows:

20 (a) If a person refuses to comply with a subpoena issued in  
21 connection with a hearing under this subchapter or refuses to  
22 testify with respect to a matter about which the person may be  
23 lawfully interrogated, on application of the department, the state  
24 court established under Chapter 23A, Government Code, or a  
25 district court in [~~Travis County or in]~~ the county in which the  
26 person resides may order the person to comply with the subpoena or  
27 testify.

1 SECTION 10. Effective January 1, 2012, Section 541.202,  
2 Insurance Code, is amended to read as follows:

3 Sec. 541.202. VENUE FOR INJUNCTIVE ACTION. An action for an  
4 injunction under this subchapter may be commenced in:

5 (1) the state court established under Chapter 23A,  
6 Government Code; or

7 (2) a district court in:

8 (A) [(1)] the county in which the person against  
9 whom the action is brought:

10 (i) [(A)] resides;

11 (ii) [(B)] has the person's principal place  
12 of business; or

13 (iii) [(C)] is engaging in business; or

14 (B) [(2)] the county in which the transaction or  
15 a substantial portion of the transaction occurred ~~[, or~~

16 ~~[(3) Travis County]~~.

17 SECTION 11. Effective January 1, 2012, Section 541.303(b),  
18 Insurance Code, is amended to read as follows:

19 (b) Venue for the action is in the state court established  
20 under Chapter 23A, Government Code ~~[a district court in Travis~~  
21 ~~County]~~.

22 SECTION 12. Effective January 1, 2012, Section 541.405(a),  
23 Insurance Code, is amended to read as follows:

24 (a) A person aggrieved by the denial of a petition under  
25 Section 541.402 or the adoption, amendment, or repeal of or failure  
26 to adopt a rule under this subchapter may file a petition in the  
27 state court established under Chapter 23A, Government Code, [~~a~~



1 ~~district court in Travis County]~~ for:

2 (1) a declaratory judgment on the validity or  
3 applicability of an adopted, amended, or repealed rule; or

4 (2) review of the denial of a petition under Section  
5 541.402.

6 SECTION 13. Not later than December 1, 2011, the Texas  
7 Supreme Court shall adopt rules the court determines necessary to  
8 establish the state court on insurance and Medicaid fraud  
9 established under Chapter 23A, Government Code, as added by this  
10 Act.

11 SECTION 14. Not later than January 1, 2012, the governor  
12 shall appoint the judges and presiding judge of the state court on  
13 insurance and Medicaid fraud established under Chapter 23A,  
14 Government Code, as added by this Act. To enable the staggering of  
15 terms as required by Section 23A.003(b), Government Code, the  
16 governor shall appoint four judges whose terms expire on January 1  
17 of the next odd-numbered year and five judges, including the  
18 presiding judge, whose terms expire on January 1 of the next  
19 even-numbered year.

20 SECTION 15. The changes in law made by this Act apply only  
21 to a case filed on or after January 1, 2012. A case filed before  
22 January 1, 2012, is governed by the law in effect on the date the  
23 case was filed, and the former law is continued in effect for that  
24 purpose.

25 SECTION 16. Except as otherwise provided by this Act, this  
26 Act takes effect September 1, 2011.