

By: Klick

H.B. No. 3235

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the investigation by the commissioner of insurance of  
3 acts of health care fraud and the prosecution of health care fraud;  
4 creating a criminal offense.

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

6 SECTION 1. Section 701.102, Insurance Code, is amended to  
7 read as follows:

8 Sec. 701.102. INVESTIGATION OF CERTAIN ACTS OF FRAUD. (a)  
9 If the commissioner has reason to believe a person has engaged in,  
10 is engaging in, has committed, or is about to commit a fraudulent  
11 insurance act, the commissioner may conduct any investigation  
12 necessary inside or outside this state to:

13 (1) determine whether the act occurred; or

14 (2) aid in enforcing laws relating to fraudulent  
15 insurance acts, including by providing technical or litigation  
16 assistance to other governmental agencies.

17 (b) In conducting investigations under Subsection (a), the  
18 commissioner shall give priority to investigating alleged conduct  
19 constituting an offense under Section 35A.02(a-1), Penal Code.

20 SECTION 2. Section 35A.01, Penal Code, is amended by adding  
21 Subdivisions (2-a) and (2-b) and amending Subdivision (9) to read  
22 as follows:

23 (2-a) "Health benefit claim" means a written or  
24 electronically submitted request or demand that:

1           (A) is submitted by a person who supplies or  
2 purports to supply a service or product to an individual covered by  
3 a health benefit plan or that person's agent and identifies a  
4 service or product provided or purported to have been provided to  
5 the covered individual as reimbursable by a health benefit plan  
6 issuer, without regard to whether the money that is requested or  
7 demanded is paid and without regard to whether the individual was  
8 eligible for benefits under the health benefit plan; or

9           (B) states the income earned or expense incurred  
10 by a person in providing a service or product to an individual  
11 covered by a health benefit plan and is used to determine a rate of  
12 payment by a health benefit plan issuer.

13           (2-b) "Health benefit plan issuer" means a person who is  
14 authorized or otherwise permitted by law to arrange for or provide  
15 health insurance or health benefits, including a health maintenance  
16 organization.

17           (9) "Service" includes care or treatment of a health  
18 care recipient or an individual covered by a health benefit plan, as  
19 applicable.

20           SECTION 3. Section 35A.02, Penal Code, is amended by adding  
21 Subsection (a-1) and amending Subsections (b) and (d) to read as  
22 follows:

23           (a-1) A person commits an offense if the person knowingly  
24 makes or causes to be made a health benefit claim to a health  
25 benefit plan issuer for:

26           (1) a service or product that has not been approved or  
27 acquiesced in by a treating physician or health care practitioner;

1           (2) a service or product that is substantially  
2 inadequate or inappropriate when compared to generally recognized  
3 standards within the particular discipline or within the health  
4 care industry; or

5           (3) a product that has been adulterated, debased,  
6 mislabeled, or that is otherwise inappropriate.

7           (b) An offense under this section is:

8           (1) a Class C misdemeanor if the amount of any payment  
9 or the value of any monetary or in-kind benefit provided or claim  
10 for payment made under a health care program or by a health benefit  
11 plan issuer, as applicable, directly or indirectly, as a result of  
12 the conduct is less than \$100;

13           (2) a Class B misdemeanor if the amount of any payment  
14 or the value of any monetary or in-kind benefit provided or claim  
15 for payment made under a health care program or by a health benefit  
16 plan issuer, as applicable, directly or indirectly, as a result of  
17 the conduct is \$100 or more but less than \$750;

18           (3) a Class A misdemeanor if the amount of any payment  
19 or the value of any monetary or in-kind benefit provided or claim  
20 for payment made under a health care program or by a health benefit  
21 plan issuer, as applicable, directly or indirectly, as a result of  
22 the conduct is \$750 or more but less than \$2,500;

23           (4) a state jail felony if:

24           (A) the amount of any payment or the value of any  
25 monetary or in-kind benefit provided or claim for payment made  
26 under a health care program or by a health benefit plan issuer, as  
27 applicable, directly or indirectly, as a result of the conduct is

1 \$2,500 or more but less than \$30,000;

2 (B) the offense is committed under Subsection  
3 (a)(11); or

4 (C) it is shown on the trial of the offense that  
5 the amount of the payment or value of the benefit described by this  
6 subsection cannot be reasonably ascertained;

7 (5) a felony of the third degree if:

8 (A) the amount of any payment or the value of any  
9 monetary or in-kind benefit provided or claim for payment made  
10 under a health care program or by a health benefit plan issuer, as  
11 applicable, directly or indirectly, as a result of the conduct is  
12 \$30,000 or more but less than \$150,000; or

13 (B) it is shown on the trial of the offense that  
14 the defendant submitted more than 25 but fewer than 50 fraudulent  
15 claims under a health care program or to a health benefit plan  
16 issuer, as applicable, and the submission of each claim constitutes  
17 conduct prohibited by Subsection (a);

18 (6) a felony of the second degree if:

19 (A) the amount of any payment or the value of any  
20 monetary or in-kind benefit provided or claim for payment made  
21 under a health care program or by a health benefit plan issuer, as  
22 applicable, directly or indirectly, as a result of the conduct is  
23 \$150,000 or more but less than \$300,000; or

24 (B) it is shown on the trial of the offense that  
25 the defendant submitted 50 or more fraudulent claims under a health  
26 care program or to a health benefit plan issuer, as applicable, and  
27 the submission of each claim constitutes conduct prohibited by

1 Subsection (a); or

2           (7) a felony of the first degree if the amount of any  
3 payment or the value of any monetary or in-kind benefit provided or  
4 claim for payment made under a health care program or by a health  
5 benefit plan issuer, as applicable, directly or indirectly, as a  
6 result of the conduct is \$300,000 or more.

7           (d) When multiple payments or monetary or in-kind benefits  
8 are provided under one or more health care programs or by one or  
9 more health benefit plan issuers as a result of one scheme or  
10 continuing course of conduct, the conduct may be considered as one  
11 offense and the amounts of the payments or monetary or in-kind  
12 benefits aggregated in determining the grade of the offense.

13           SECTION 4. The change in law made by this Act applies only  
14 to an offense committed on or after the effective date of this Act.  
15 An offense committed before the effective date of this Act is  
16 governed by the law in effect on the date the offense was committed,  
17 and the former law is continued in effect for that purpose. For  
18 purposes of this section, an offense was committed before the  
19 effective date of this Act if any element of the offense occurred  
20 before that date.

21           SECTION 5. This Act takes effect September 1, 2021.