

- SUBJECT:** Prosecution and punishment of money-laundering and insurance fraud
- COMMITTEE:** Insurance — committee substitute recommended
- VOTE:** 8 ayes — Smithee, Seaman, Eiland, Isett, B. Keffer, Taylor, Thompson, Van Arsdale
- 0 nays
- 1 absent — Oliveira
- WITNESSES:** For — Edward J. Coffey, Bexar County Criminal District Attorney's Office; Shelton Green, Texas Association of Business; Barrett Hansen; Shannon Phillips, Texas Committee on Insurance Fraud and Association of Fire and Casualty Insurers of Texas; John White, Bexar County District Attorney's Office
- Against — None
- BACKGROUND:** *Money-laundering*. Penal Code, sec. 34, prohibits money-laundering. A person commits this offense if the person knowingly:
- acquires or maintains an interest in, receives, conceals, possesses, transfers, or transports, the proceeds of criminal activity;
 - conducts, supervises, or facilitates a transaction involving the proceeds of a criminal activity; or
 - invests, expends, or receives, or offers to invest, expend, or receive, the proceeds of criminal or funds that the person believes are the proceeds of criminal activity
- A person is presumed to believe that the funds are proceeds of criminal activity if a peace officer, or someone acting for the peace officer, represents the funds as proceeds of criminal activity. Section 34.01 of the Penal Code defines a peace officer as a person elected, appointed, or employed by a governmental entity, or as someone defined as a peace officer under the Code of Criminal Procedure.
- It is a defense to prosecution if the transaction was necessary to preserve a person's right to an attorney, or that the funds were received as legal fees

from an attorney and at the time, the attorney did not have actual knowledge that the money was a product of criminal activity.

The offense is a third-degree felony, punishable by two to 10 years in prison and a maximum fine of \$10,000, if the value of the funds is between \$3,000 and \$20,000. The offense is a second-degree felony, punishable by two to 20 years in prison and a maximum fine of \$10,000, if the funds involved are \$20,000 to \$100,000. This offense is a first-degree felony, punishable by five to 99 years in prison and a fine not to exceed \$10,000 if the funds involved are \$100,000 or more.

Insurance fraud. Insurance fraud is punished under Penal Code, ch. 35. This offense is applicable only to health or property and casualty insurance policies. It is an offense if a person submits a statement for payment on a policy that the person knows to contain false or misleading information with the intent to defraud or deceive the insurer. The statement must be material to the claim and must affect a person's right to payment or the amount of payment. The code specifies what information is material to a claim for payment under a policy.

It is also an offense for a person to solicit, offer, pay, or receive a benefit, with the intent to defraud or deceive an insurer in connection with furnishing health care goods or services based on an insurance policy claim.

The punishment for insurance fraud depends on the value of the claim, and is as follows:

- a class C misdemeanor, punishable by a maximum fine of \$500, if the value of the claim is less than \$20;
- a class B misdemeanor, punishable by up to 180 days in jail and /or maximum fine of \$2,000, if the value of the claim is \$20 or more but less than \$500;
- a class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000, if the value of the claim is \$500 or more but less than \$1,500;
- a state jail felony, punishable by 180 days to two years in jail and a maximum fine of \$10,000, if the value of the claim is \$1,500 or more but less than \$20,000;
- a third-degree felony if the value of the claim is \$20,000 or more but less than \$100,000; and

- a second-degree felony if the value of the claim is \$100,000 or more but less than \$200,000; or a first-degree felony if the value of the claim is \$200,000 or more, or the value of the claim is less than \$200,000 and the commission of the offense placed a person at risk of death or serious bodily injury.

Separate claims constituting fraud may be aggregated to determine the punishment if they are communicated to an insurer as one scheme or continuing course of conduct, or, if three or more separate offenses are committed, the conduct may be considered one offense and enhanced to the next degree of punishment from the most serious single offense (however, a first-degree felony can not be enhanced to a capital offense).

Organized crime. Penal Code, ch. 71, prohibits engaging in organized crime, which is defined as three or more persons who commit or conspire to commit one or more of the crimes listed in ch. 71 of the code. Punishment is one degree higher than punishment for committing the act.

DIGEST:

Money-laundering. CSHB 3376 would expand the definition of "funds" to include money other than cash. "Funds" would include a foreign bank draft, electronic funds, personal check, bank check, traveler's check, money order, bearer negotiable instrument, bearer investment security, bearer security, or certificates of stock. The definition of "peace officer" would be eliminated from this section of the code.

The bill would broaden the offense of money-laundering to include individuals who finance or invest, or intend to finance or invest, funds intended to further the commission of criminal activity. For an offender to commit money-laundering, the offender would need only to know that the funds were proceeds of some kind of criminal activity. The offender would not need to know the specific nature of the criminal activity.

CSHB 3376 would lower the minimum value of funds necessary to constitute an offense, while increasing the value of funds necessary to constitute each level of an offense. If the value of the funds was between \$1,500 and \$20,000, the offense would be a state jail felony; for funds between \$20,000 and \$100,000, it would be a third-degree felony; and for funds between \$100,000 and \$200,000, it would be a second-degree felony. Any amount of funds over \$200,000 would be a first-degree felony. For proceeds from several sources that were related to one scheme

or continuing course of conduct, the value of the proceeds could be aggregated to classify the offense.

The bill would protect financial institutions that seized funds for a law enforcement purpose from having to pay civil damages to those claiming an ownership interest in the funds or those who conducted a transaction with funds involved in a money-laundering offense.

Insurance fraud. CSHB 3376 would amend the Penal Code, ch. 35. The bill would remove the definitions of health care goods, health care provider, and health care services from this section. It would assign the same definition of insurer as under Insurance Code, art. 1.02.

The bill would define insurance policy to cover fraud on all insurance policies, rather than only a health or property and casualty policy. "Insurance policy" would mean a written statement providing the terms of the 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 the Transportation Code, ch. 601. The term would include any instrument authorized to be regulated by the Texas Department of Insurance.

CSHB 3376 would provide a broader definition of what would be "material" to a claim. Information would be material if it could affect the eligibility for coverage under a policy, the payment on a claim made under a policy, or the decision of an insurer to issue a policy.

The bill also would broaden the definition of insurance fraud to include fraud in the application for an insurance policy. A person could be punished with a state jail felony if, with intent to defraud or deceive an insurer, the person prepared a statement for an insurer that the person knew contained false or misleading material information.

The bill would also make all fraudulent claims of \$50 or less class C misdemeanors. Any claim between \$50 and \$500 would constitute a class B misdemeanor.

If an individual proved by a preponderance of the evidence that a portion of the claim for payment was valid, the value of the claim would be the difference between the total amount and the valid portion. If the value of a claim were not readily ascertainable, it would be either the fair market

value at the time and place of the offense or the cost of replacing the goods or services subject to the claim. Otherwise, the value of the goods or services would be between \$500 and \$1,500.

If an individual submitted a bill for goods or services for payment under an insurance policy claim, this would create a rebuttable presumption that the individual prepared or presented a claim for payment.

Other changes. CSHB 3376 would add insurance fraud to the list of offenses that could be punished as organized crime and increase the statute of limitations for insurance fraud from three to five years from the commission of the offense. The bill would require the court to notify the Texas Department of Insurance of any licensed insurance agent convicted of or receiving deferred adjudication for insurance fraud, money-laundering, theft, or fraud.

The bill would take effect on September 1, 2005 and apply to offenses committed on or after this date. The change in the statute of limitations would not apply to offenses barred by the statute before the effective date of the bill.

**SUPPORTERS
SAY:**

Insurance fraud is a pervasive problem in Texas, and CSHB 3376 would help deter it. Insurance industry studies have indicated that as many as 10 percent of all insurance claims have fraudulent elements. Fraudulent insurance claims are a multi-billion dollar problem that in the end gets shifted to the policy-holders through an overall increase in policy costs. The narrow scope of the current law is inadequate to deal with the increased sophistication of fraud. This bill would revise the current law to provide the prosecutors with the tools they need to punish offenders.

Under current law, prosecutors may not prosecute offenders for money-laundering if the offender received a form of money other than cash, such as checks or money orders. This is inadequate as it prevents prosecution under this statute in an array of cases. CSHB 3376 would fix this problem by covering money received in a variety of forms other than cash.

The bill would strengthen the current statute by broadening the definition of money-laundering to cover financing or investing funds intended to further the commission of criminal activity. It would also make it easier for law enforcement to prosecute all offenders by clarifying that an offender need not know the specific nature of the criminal activity from

which the proceeds arose, as long as the offender knew that the money was from some kind of criminal activity.

The insurance fraud statute currently covers only fraud associated with health care claims. The bill would broaden the scope of coverage to include other types of insurance fraud, such as auto insurance fraud or property insurance fraud.

This bill would not significantly enhance punishments under the current law. In addition, the Legislative Budget Board (LBB) indicated that this bill would not have a significant impact upon the state's correctional resources.

**OPPONENTS
SAY:**

CSHB 3376 has the potential to increase demands upon the state correctional resources. While the LBB says the increase would not be substantial, the bill would enhance current penalties and broaden the existing offenses of money-laundering and insurance fraud. Broadening these offenses would mean that more individuals would fall within its scope, which likely would increase the number of people incarcerated. As it is, Texas correctional facilities are pressed to their limit. Enhancements would increase costs to taxpayers and exacerbate an already serious prison overcrowding problem.

NOTES:

The committee substitute changing the original bill by removing the definitions of "conducts" and "transaction" from the Penal Code, sec. 34.01, and instead would provide a more expansive definition of "funds." The substitute also restored the original language in sec. 34.02 and broadened the offense of money-laundering. It changed the punishments for money-laundering and would allow the prosecution of this offense under any other law or both. The substitute also added a section to protect financial institutions from civil liability.

In Penal Code, sec. 35, the substitute changed the definition of insurance policy and restored the definition of "statement" to its original meaning. It also restored the original culpable mental state required for the commission of insurance fraud, as well as subsection (b) of section 35.02. The substitute changed the value of a claim necessary to constitute a class C misdemeanor and removed a change in the statute of limitations for

misdemeanor offenses. It also removed making materiality a question of law. Finally, the substitute omitted changes to the Code of Criminal Procedure, art. 42.12.