

SUBJECT: Options for prosecution of workers' compensation insurance fraud

COMMITTEE: Business and Industry — favorable without amendment

VOTE: 8 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Solomons, Zedler

0 nays

1 absent — Bailey

SENATE VOTE: On final passage, April 12 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify:* Ronald Cobb, American Insurance Association)

Against — None

On — (*Registered, but did not testify:* Dennis Pompa, Texas Department of Insurance)

BACKGROUND: Labor Code, ch. 418 states that a person commits an offense if the person, with the intent to obtain or deny payment of benefits related to workers' compensation insurance or with the intent to obtain workers' compensation insurance or to avoid payment of premiums due for such coverage, makes a false or misleading statement; misrepresents or conceals a material fact; or fabricates, alter, conceals, or destroys a document other than a governmental record. An offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the value of the benefits or the amount of premium avoided is less than \$1,500. If the value of benefits or the amount of the premium avoided is over \$1,500, the offense is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

DIGEST: SB 1627 would amend ch. 418 to add that a person who committed an offense could be prosecuted under this chapter or any other applicable law.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

SB 1627 would allow prosecution of an offense related to workers' compensation insurance fraud under ch. 418 or any other applicable state law. Under current law, the maximum penalty for workers' compensation fraud is a state jail felony. This punishment does not parallel provisions in the Penal Code, ch. 35 that make punishments for insurance fraud dependent on the value of the insurance claim with a maximum up to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the value of the claim is \$200,000 and the act places a person at risk of death or serious bodily injury. Offenses involving workers' compensation fraud clearly should be punishable by the same standards as any other type of insurance fraud.

SB 1627 would give prosecutors specific, rather than general, authority to prosecute workers' compensation insurance fraud under the Penal Code. The bill would follow a recommendation in the "Biennial Report of the Texas Department of Insurance to the 80th Texas Legislature," dated December 2006. Prosecutors should have the flexibility to bring workers compensation insurance fraud charges under the Penal Code so that such fraud could be punished with the same penalties as fraud committed in other lines of insurance.

**OPPONENTS
SAY:**

Under Penal Code, sec. 35.02, an offense involving a fraudulent insurance claim of \$20,000 or more but less than \$100,00 would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). Since our prisons are at capacity, the Legislature should examine closely whether prison beds should be occupied by lower-level, non-violent offenders.

**OTHER
OPPONENTS
SAY:**

The criminal penalties in the Labor Code apply to fraud against a workers' compensation insurer or claimant, not just against an insurer as in the Penal Code. A better approach could be to increase the penalty scale in Labor Code, ch. 418.