SUBJECT: Creating offense for insurance fraud

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Place, Talton, Pickett, Pitts, Solis

0 nays

4 absent — Farrar, Greenberg, Hudson, Nixon

WITNESSES: For — Aaron Foster, national Insurance Crime Bureau; Michael Gutierrez, Nationwide Insurance Company; Steve Brite, USAA Insurance Company; Stephen C. Dye, CNA Insurance Companies

Against — None

On — Don Clemmer, Office of the Attorney General

DIGEST: CSHB 1487 would create a Penal Code offense for insurance fraud. It would be an offense to:

• prepare or present to an insurer with intent to defraud or deceive, false or misleading information about a matter that is material to a claim and affects a person's right to payment or the amount of payment for a claim under a health or property and casualty policy; and

• solicit, offer, pay or receive a benefit with intent to defraud or deceive an insurer in connection with the furnishing of health care goods or services for which payment is sought under a policy.

Information that could be material to a claim would include whether health care goods or services were provided or necessary, the nature of the goods or services, the date they were provided, their medical record, the provider of goods or services, the condition treated or diagnosed, whether property was damaged in the manner described or whether another claim has been made.

Insurance fraud would be a state jail felony if the value of the claim solicited, offered, paid or received was $1,500 but less than $20,000; a third-degree felony if the value was $20,000 but less than $100,000; a second-degree felony it was $100,000 but less than $200,000; and a first-degree felony if it was $200,000 or more.

If benefits were received for multiple claims for one course of conduct, the benefits could be aggregated to determine the offense category. If three or more offenses are committed, the penalty for each offense would be one category higher than the penalty for the most serious offense, unless the most serious offense was a first-degree felony in which cases the penalty for each would be the first-degree felony penalty. If the prosecutor sought an enhanced penalty, the amounts could not be aggregated.

The attorney general would be authorized to offer assistance to prosecutors and could prosecute or assist in a prosecution at the prosecutor's request.

Contraband used in insurance fraud would be added to the list of property that could be seized and forfeited. The property would go to the attorney general, if the attorney general assisted in the case, the prosecutor and the insurer.

The insurance commissioner would be authorized to employ investigators and to commission them as peace officers, who would have to meet the Government Code requirements. The commissioner would have to appoint a chief investigator to oversee any commissioned peace officers. CSHB 1487 would add investigators commissioned by the insurance commissioner to the list of peace officers in the Code of Criminal Procedure.

The current limitation on the insurance commissioner's authority in the investigation of fraud by policyholders to instances in which there is evidence showing a pattern of fraudulent activity would be repealed.

CSHB 1487 would take effect September 1, 1995.

SUPPORTERS SAY:

CSHB 1487 is necessary to combat the serious problem of insurance fraud that costs the industry and consumers billions of dollars each year. The problem of insurance fraud affects consumers as well as companies and

drives up the cost of polices. By deterring insurance fraud, CSHB 1487 would reduce the cost of insurance for consumers.

Prior to the 1993 Penal Code revisions the statutes had a specific provision for insurance fraud. It is necessary to restore an offense for insurance fraud because current theft statutes and other provisions have proven inadequate to deal with this unique problem.

Insurance fraud can be difficult to prosecute because there often are no witnesses, and it is usually perpetrated through false reports and statements. CSHB 1487 would make this kind of fraud easier to prosecute and allow prosecutors to focus on statements that persons know are false and are done with intent to defraud or deceive an insurer. This bill would go after persons trying to defraud insurance companies and would not penalize persons who make an honest mistake on an insurance claim.

CSHB 1487 would cover fraud not just by consumers but by doctors, attorneys or insurance company employers. It would give prosecutors a tool to go after the numerous cases in which rings of criminals conspire to stage accidents and submit false claims. These rings can involve lawyers and doctors as well as the "victim."

Allowing contraband used in insurance fraud to be seized and forfeited with the proceeds going to law enforcement would allow law enforcement authorities to recoup some of the costs of fraud investigations.

OPPONENTS SAY:

It is unnecessary to create a specific offense for insurance fraud. The situations described in CSHB 1487 are already covered by Penal Code provisions on theft and giving false statements to obtain property or credit. This bill would be a step backward from the 1993 Penal Code revisions that established broad categories of offenses and eliminated many special provisions. CSHB 1487 could actually make fraud prosecution *more* difficult by requiring prosecutors to meet the specific standards in the bill instead of the more general standards already in the Penal Code.

CSHB 1487 could lead to insurance companies using the threat of prosecution under this statute to intimidate policyholders into accepting low claim settlements.

Some of the standards in CSHB 1487 are overly broad and could lead to prosecution when no fraud is intended. For example, it could be held against policyholders if they differ with a company over the value of a claim. Also, policyholders may not be able to judge whether health care goods or services recommended by a doctor are "medically necessary." The section dealing with soliciting and receiving benefits in connection with health care goods or services is vague and too broad. Repealing the current "pattern of fraud" requirement for the insurance commissioner to investigate fraud by policyholders could allow the commissioner to go after consumers who innocently make one mistake on an insurance claim.

This bill would do nothing to address the bulk of insurance fraud, which is fraud by insurance companies. It would increase the standard to which policyholders are held without any corresponding increase in the standards to which companies must adhere. It would not address the problem of insurance companies denying valid claims.

Insurance companies currently examine claims closely and ferret out fraudulent ones. However, this bill would make it an offense to *prepare or present* false reports but would not require that the claims actually be paid for an offense to occur. This would make the attempt to defraud the same as committing the fraud, a significant deviation from most offenses in which attempt is of a lower grade.

NOTES:

The committee substitute made numerous changes in the original bill, including: eliminating misdemeanor offenses for claims less than $1,500, prohibiting aggregating amounts if an enhanced penalty is sought, and authorizing the insurance commissioner to employ investigators and commission peace officers.

The companion bill, SB 1351 by Montford, has been referred to the Senate Economic Development Committee.