PENAL CODE

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 35. INSURANCE FRAUD

Sec. 35.01. DEFINITIONS. In this chapter:

(1) "Insurance policy" means a written instrument in which is provided the terms of any 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 Chapter 601, Transportation Code. The term includes any instrument authorized to be regulated by the Texas Department of Insurance.

(2) "Insurer" has the meaning assigned by Article 1.02, Insurance Code.

(3) "Statement" means an oral or written communication or a record or documented representation of fact made to an insurer. The term includes computer-generated information.

(4) "Value of the claim" means the total dollar amount of a claim for payment under an insurance policy or, as applicable, the value of the claim determined under Section 35.025.

Added by Acts 1995, 74th Leg., ch. 621, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.830, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.541, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 4, eff. September 1, 2005.

Sec. 35.015. MATERIALITY. A statement is material for the purposes of this chapter, regardless of the admissibility of the statement at trial, if the statement could have affected:

(1) the eligibility for coverage or amount of the payment on a claim for payment under an insurance policy; or

(2) the decision of an insurer whether to issue an insurance policy.

Added by Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 4, eff. September 1, 2005.

Sec. 35.02. INSURANCE FRAUD. (a) A person commits an offense if, with intent to defraud or deceive an insurer, the person, in support of a claim for payment under an insurance policy:

(1) prepares or causes to be prepared a statement that:

(A) the person knows contains false or misleading material information; and

(B) is presented to an insurer; or

(2) presents or causes to be presented to an insurer a statement that the person knows contains false or misleading material information.

(a-1) A person commits an offense if the person, with intent to defraud or deceive an insurer and in support of an application for an insurance policy:

(1) prepares or causes to be prepared a statement that:

(A) the person knows contains false or misleading material information; and

(B) is presented to an insurer; or

(2) presents or causes to be presented to an insurer a statement that the person knows contains false or misleading material information.

(b) A person commits an offense if, with intent to defraud or deceive an insurer, the person solicits, offers, pays, or receives a benefit in connection with the furnishing of goods or services for which a claim for payment is submitted under an insurance policy.

(c) An offense under Subsection (a) or (b) is:

(1) a Class C misdemeanor if the value of the claim is less than $100;

(2) a Class B misdemeanor if the value of the claim is $100 or more but less than $750;

(3) a Class A misdemeanor if the value of the claim is $750 or more but less than $2,500;

(4) a state jail felony if the value of the claim is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the value of the claim is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the value of the claim is $150,000 or more but less than $300,000; or

(7) a felony of the first degree if:

(A) the value of the claim is $300,000 or more; or

(B) an act committed in connection with the commission of the offense places a person at risk of death or serious bodily injury.

(d) An offense under Subsection (a-1) is a state jail felony.

(e) The court shall order a defendant convicted of an offense under this section to pay restitution, including court costs and attorney's fees, to an affected insurer.

(f) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

(g) For purposes of this section, if the actor proves by a preponderance of the evidence that a portion of the claim for payment under an insurance policy resulted from a valid loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim.

(h) If it is shown on the trial of an offense under this section that the actor submitted a bill for goods or services in support of a claim for payment under an insurance policy to the insurer issuing the policy, a rebuttable presumption exists that the actor caused the claim for payment to be prepared or presented.

Added by Acts 1995, 74th Leg., ch. 621, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 605, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 4, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 25, eff. September 1, 2015.

Sec. 35.025. VALUE OF CLAIM. (a) Except as provided by Subsection (b) and subject to Subsection (c), for the purposes of Section 35.02(c), if the value of a claim is not readily ascertainable, the value of the claim is:

(1) the fair market value, at the time and place of the offense, of the goods or services that are the subject of the claim; or

(2) the cost of replacing the goods or services that are the subject of the claim within a reasonable time after the claim.

(b) If goods or services that are the subject of a claim cannot be reasonably ascertained under Subsection (a), the goods or services are considered to have a value of $750 or more but less than $2,500.

(c) If the actor proves by a preponderance of the evidence that a portion of the claim for payment under an insurance policy resulted from a valid loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim.

Added by Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 4, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 26, eff. September 1, 2015.

Sec. 35.03. AGGREGATION AND MULTIPLE OFFENSES. (a) When separate claims in violation of this chapter are communicated to an insurer or group of insurers pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense and the value of the claims aggregated in determining the classification of the offense. If claims are aggregated under this subsection, Subsection (b) shall not apply.

(b) When three or more separate claims in violation of this chapter are communicated to an insurer or group of insurers pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the classification of the

offense shall be one category higher than the most serious single offense proven from the separate claims, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree. This subsection shall not be applied if claims are aggregated under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 621, Sec. 1, eff. Sept. 1, 1995.

Sec. 35.04. JURISDICTION OF ATTORNEY GENERAL. (a) The attorney general may offer to an attorney representing the state in the prosecution of an offense under Section 35.02 the investigative, technical, and litigation assistance of the attorney general's office.

(b) The attorney general may prosecute or assist in the prosecution of an offense under Section 35.02 on the request of the attorney representing the state described by Subsection (a).

Added by Acts 1995, 74th Leg., ch. 621, Sec. 1, eff. Sept. 1, 1995.