

RESOLUTION 03-04-2018

DIGEST

Insurance Fraud: Make Non-Health Care Insurance Fraud a “Wobbler”

Amends Penal Code section 550 to make non-health care insurance and other fraudulent claims chargeable as either a felony or a misdemeanor.

STATEMENT OF REASONS

The Problem: The law criminalizing insurance fraud is divided into sections listing various prohibited acts. Some acts are straight felonies, others can either be filed by the prosecutor as a felony or a misdemeanor (known as wobblers). There is no real reason to have some acts punishable only as a felony while others, equally serious, may be punished either as a felony or as a misdemeanor.

The Solution: The solution is to change the straight felony to a “wobbler,” which gives the prosecutor the option to file the charge either as a felony or a misdemeanor. In this way, the prosecutor can be sure that the punishment fits the actual crime.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 550 to read as follows:

1 § 550

2 (a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any
3 person to do any of the following:

4 (1) Knowingly present or cause to be presented any false or fraudulent claim for the
5 payment of a loss or injury, including payment of a loss or injury under a contract of insurance.

6 (2) Knowingly present multiple claims for the same loss or injury, including presentation
7 of multiple claims to more than one insurer, with an intent to defraud.

8 (3) Knowingly cause or participate in a vehicular collision, or any other vehicular
9 accident, for the purpose of presenting any false or fraudulent claim.

10 (4) Knowingly present a false or fraudulent claim for the payments of a loss for theft,
11 destruction, damage, or conversion of a motor vehicle, a motor vehicle part, or contents of a
12 motor vehicle.

13 (5) Knowingly prepare, make, or subscribe any writing, with the intent to present or use
14 it, or to allow it to be presented, in support of any false or fraudulent claim.

15 (6) Knowingly make or cause to be made any false or fraudulent claim for payment of a
16 health care benefit.

17 (7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf
18 of, the claimant.

19 (8) Knowingly present multiple claims for payment of the same health care benefit with
20 an intent to defraud.

21 (9) Knowingly present for payment any undercharges for health care benefits on behalf
22 of a specific claimant unless any known overcharges for health care benefits for that claimant are
23 presented for reconciliation at that same time.

24 (10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for payment of a
25 health care benefit also means a claim or claim for payment submitted by or on the behalf of a
26 provider of any workers' compensation health benefits under the Labor Code.

27 (b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of
28 the following:

29 (1) Present or cause to be presented any written or oral statement as part of, or in support
30 of or opposition to, a claim for payment or other benefit pursuant to an insurance policy,
31 knowing that the statement contains any false or misleading information concerning any material
32 fact.

33 (2) Prepare or make any written or oral statement that is intended to be presented to any
34 insurer or any insurance claimant in connection with, or in support of or opposition to, any claim
35 or payment or other benefit pursuant to an insurance policy, knowing that the statement contains
36 any false or misleading information concerning any material fact.

37 (3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any
38 person's initial or continued right or entitlement to any insurance benefit or payment, or the
39 amount of any benefit or payment to which the person is entitled.

40 (4) Prepare or make any written or oral statement, intended to be presented to any insurer
41 or producer for the purpose of obtaining a motor vehicle insurance policy, that the person to be
42 the insured resides or is domiciled in this state when, in fact, that person resides or is domiciled
43 in a state other than this state.

44 (c)(1) Every person who violates paragraph (1), (2), (3), (4), or (5) of subdivision (a) is
45 guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 for
46 two, three, or five years, and by a fine not exceeding fifty thousand dollars (\$50,000), or double
47 the amount of the fraud, whichever is greater; or by imprisonment in a county jail not to exceed
48 one year, by a fine of not more than fifty thousand dollars (\$50,000), or double the amount of the
49 fraud, whichever is greater, or by both that imprisonment and fine.

50 (2) Every person who violates paragraph (6), (7), (8), or (9) of subdivision (a) is guilty of
51 a public offense.

52 (A) When the claim or amount at issue exceeds nine hundred fifty dollars (\$950), the
53 offense is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three,
54 or five years, or by a fine not exceeding fifty thousand dollars (\$50,000) or double the amount of
55 the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a
56 county jail not to exceed one year, by a fine of not more than ten thousand dollars (\$10,000), or
57 by both that imprisonment and fine.

58 (B) When the claim or amount at issue is nine hundred fifty dollars (\$950) or less, the
59 offense is punishable by imprisonment in a county jail not to exceed six months, or by a fine of
60 not more than one thousand dollars (\$1,000), or by both that imprisonment and fine, unless the
61 aggregate amount of the claims or amount at issue exceeds nine hundred fifty dollars (\$950) in
62 any 12-consecutive-month period, in which case the claims or amounts may be charged as in
63 subparagraph (A).

64 (3) Every person who violates paragraph (1), (2), (3), or (4) of subdivision (b) shall be
65 punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five
66 years, or by a fine not exceeding fifty thousand dollars (\$50,000) or double the amount of the
67 fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a
68 county jail not to exceed one year, or by a fine of not more than ten thousand dollars (\$10,000),
69 or by both that imprisonment and fine.

70 (4) Restitution shall be ordered for a person convicted of violating this section, including
71 restitution for any medical evaluation or treatment services obtained or provided. The court shall
72 determine the amount of restitution and the person or persons to whom the restitution shall be
73 paid.

74 (d) Notwithstanding any other provision of law, probation shall not be granted to, nor
75 shall the execution or imposition of a sentence be suspended for, any adult person convicted of
76 felony violations of this section who previously has been convicted of felony violations of this
77 section or Section 548, or of Section 1871.4 of the Insurance Code, or former Section 556 of the
78 Insurance Code, or former Section 1871.1 of the Insurance Code as an adult under charges
79 separately brought and tried two or more times. The existence of any fact that would make a
80 person ineligible for probation under this subdivision shall be alleged in the information or
81 indictment, and either admitted by the defendant in an open court, or found to be true by the jury
82 trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo
83 contendere or by trial by the court sitting without a jury.

84 Except when the existence of the fact was not admitted or found to be true or the court
85 finds that a prior felony conviction was invalid, the court shall not strike or dismiss any prior
86 felony convictions alleged in the information or indictment.

87 This subdivision does not prohibit the adjournment of criminal proceedings pursuant to
88 Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of
89 the Welfare and Institutions Code.

90 (e) Except as otherwise provided in subdivision (f), any person who violates subdivision
91 (a) or (b) and who has a prior felony conviction of an offense set forth in either subdivision (a) or
92 (b), in Section 548, in Section 1871.4 of the Insurance Code, in former Section 556 of the
93 Insurance Code, or in former Section 1871.1 of the Insurance Code shall receive a two-year
94 enhancement for each prior felony conviction in addition to the sentence provided in subdivision
95 (c). The existence of any fact that would subject a person to a penalty enhancement shall be
96 alleged in the information or indictment and either admitted by the defendant in open court, or
97 found to be true by the jury trying the issue of guilt or by the court where guilt is established by
98 plea of guilty or nolo contendere or by trial by the court sitting without a jury. Any person who
99 violates this section shall be subject to appropriate orders of restitution pursuant to Section 13967
100 of the Government Code.

101 (f) Any person who violates paragraph (3) of subdivision (a) and who has two prior
102 felony convictions for a violation of paragraph (3) of subdivision (a) shall receive a five-year
103 enhancement in addition to the sentence provided in subdivision (c). The existence of any fact
104 that would subject a person to a penalty enhancement shall be alleged in the information or
105 indictment and either admitted by the defendant in open court, or found to be true by the jury
106 trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo
107 contendere or by trial by the court sitting without a jury.

108 (g) Except as otherwise provided in Section 12022.7, any person who violates paragraph
109 (3) of subdivision (a) shall receive a two-year enhancement for each person other than an
110 accomplice who suffers serious bodily injury resulting from the vehicular collision or accident in
111 a violation of paragraph (3) of subdivision (a).

112 (h) This section shall not be construed to preclude the applicability of any other
113 provision of criminal law or equitable remedy that applies or may apply to any act committed or
114 alleged to have been committed by a person.

115 (i) Any fine imposed pursuant to this section shall be doubled if the offense was

116 committed in connection with any claim pursuant to any automobile insurance policy in an auto
117 insurance fraud crisis area designated by the Insurance Commissioner pursuant to Article 4.6
118 (commencing with Section 1874.90) of Chapter 12 of Part 2 of Division 1 of the Insurance Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 550 to make non-health care insurance and other fraudulent claims chargeable as either a felony or a misdemeanor. This resolution should be approved in principle because the prosecutor should have the discretion to prosecute a fraudulent non-health insurance claim as a felony or misdemeanor.

Since the law's enactment in 1992, what is now subdivision (c)(2) of section 550 has allowed discretionary felony or misdemeanor prosecution of fraudulent health care insurance claims and related activity, regardless of the amount involved in the false claim. (Ins. Code, § 550, subds. (a)(6)-(9) & (b)(1)-(4).) No similar discretion is authorized for false or fraudulent conduct concerning a non-health care insurance policy, which must be treated as a felony. (Ins. Code, § 550, subds. (a)(1)-(5).) As is the case when dealing with false and fraudulent claims regarding health care insurance, the prosecutor and court should have similar discretion to make a good faith determination, based on the individual circumstances of the case, whether to treat a fraudulent claim not associated with health care insurance as a felony or a misdemeanor. There does not appear to be any universally discernable distinction between health care insurance fraud and fraud related to a non-health care insurance claim to justify the restriction on prosecutorial authority that currently exists.