

Regular Session, 2012

SENATE BILL NO. 765 (Substitute of Senate Bill No.251 by Senator Morrish)

BY SENATOR MORRISH

INSURANCE CLAIMS. Creates the Louisiana Fraud Prevention Act. (8/1/12)

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AN ACT

To enact R.S. 22:1923(3) and Part II-A of Chapter 7 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.22:1931 through 1931.13, relative to insurance fraud; to provide definitions; to prohibit insurance fraud; to provide for civil actions and monetary penalties; to provide with respect to civil investigative demand and deposition; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1923(3) and Part II-A of Chapter 7 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:1931 through 1931.13 are hereby enacted to read as follows:

§1923. Definitions

* * *

(3) "Claim" shall mean any request or demand for payment or benefit, whether paid or not, made by a person either in writing or filed electronically, and shall include requests for payment, benefits, or both on pre-service and post-service basis.

* * *

PART II-A. LOUISIANA INSURANCE FRAUD PREVENTION ACT**§1931. Legislative findings**

The legislature finds that to protect the health, safety, and welfare of the citizens of this state, the attorney general of Louisiana and his assistants shall be agents of this state with the ability, authority, and resources to pursue civil monetary penalties, liquidated damages, or other remedies to protect the integrity of the insurance industry from persons who engage in fraud, misrepresentation, abuse, or other illegal practices, as further provided in this Part, in order to obtain payments to which these insurance providers or persons are not entitled.

§1931.1. Definitions

As used in this Part the following terms shall have the following meanings unless a different meaning is clearly required by context:

(1) "Agent" means a person who is employed by or has a contractual relationship with another person or who acts on behalf of that person.

(2) "Attorney general" means the attorney general for the state of Louisiana.

(3) "Department" means the Department of Insurance.

(4) "Insurer" means any person or other entity authorized to transact and transacting insurance business in this state. Notwithstanding any contrary provisions of R.S. 22:242(7) or any other law, regulation, or definition contained in this Code, a health maintenance organization shall be deemed an insurer for purposes of this Part.

(5) "Knowing" or "knowingly" means that the person has actual knowledge of the falsity of the information or that the person acts in deliberate ignorance or reckless disregard of the truth or falsity of the information.

(6) "Order" means a final order imposed pursuant to a civil or criminal adjudication.

(7) "Person" means any natural or juridical entity or agent thereof as

1 defined in federal or state law furnishing or claiming to furnish a good, service,
2 or supply who is compensated with insurance proceeds.

3 (8) "P.O.S.T.-certified" means peace officer standards and training
4 certified as established by the Louisiana Peace Officer Standards and Training
5 Council.

6 (9) "Property" means any and all property, movable and immovable,
7 corporeal and incorporeal.

8 (10) "Recovery" means the recovery of attempted benefits pursued,
9 overpayments, damages, fines, penalties, costs, expenses, restitution, attorney
10 fees, interest, or settlement amounts.

11 §1931.2. Prescription

12 A. No action brought pursuant to this Part shall be instituted later than
13 ten years after the date upon which the alleged violation occurred. For
14 violations involving a scheme or course of conduct, no action pursuant to this
15 Part shall be instituted more than ten years after the latest component of the
16 scheme or course of conduct occurred.

17 B. To the extent that the conduct giving rise to the cause of action
18 involves the provision of services, supplies, merchandise, or benefits of a
19 medical assistance program administered by the Department of Health and
20 Hospitals, including any medical assistance programs administered by the state
21 pursuant to 42 U.S.C. 1396 et. seq., the provisions of this Part shall not apply.

22 C. An action by a prevailing defendant to recover costs, expenses, fees,
23 and attorney fees pursuant to R.S. 22:1931.3 may be brought no later than sixty
24 days after the rendering of a final nonappealable judgment. In the instance of
25 a state criminal action, the action for recovery of the civil monetary penalty
26 shall be brought within one year of the date of the criminal conviction, final
27 plea, or pre-trial diversion agreement.

28 D.(1) In the case of a civil judgment rendered in federal court, the action
29 for recovery of the civil monetary penalty pursuant to R.S. 22:1931.6 may be

1 brought after the judgment becomes enforceable and no later than one year
2 after written notification to the attorney general of the enforceable judgment.

3 (2) In the case of a criminal conviction, final plea, or pre-trial diversion
4 agreement in federal court, the action for recovery pursuant to this Part may
5 be brought after the conviction or plea is final and no later than one year after
6 written notification to the attorney general of the rendering of the conviction or
7 final plea.

8 (3) Any action for recovery brought pursuant to the provisions of this
9 Part shall be filed in the Nineteenth Judicial District Court for the Parish of
10 East Baton Rouge.

11 §1931.3. Civil actions authorized

12 A. No person shall knowingly commit any fraudulent insurance act as
13 defined in R.S. 22:1923 or violate any provision of R.S. 22:1924.

14 B. The attorney general may institute a civil action in the Nineteenth
15 Judicial District Court for the parish of East Baton Rouge to seek recovery from
16 any person or persons who violate any provision of R.S. 22:1924. Each violation
17 may be treated as a separate violation or may be combined into one violation at
18 the option of the attorney general.

19 C. An action by a prevailing defendant to recover costs, expenses, fees,
20 and attorney fees shall be ancillary to and shall be brought and heard in the
21 same court as the civil action brought pursuant to the provisions of Subsection
22 B of this Section.

23 D. A prevailing defendant may seek recovery only for costs, expenses,
24 fees, and attorney fees if the court finds, following a contradictory hearing, that
25 either of the following applies:

26 (1) The action was instituted by the attorney general pursuant to
27 Subsection A of this Section after it should have been determined by the
28 attorney general to be frivolous, vexatious, or brought primarily for the purpose
29 of harassment.

1 (2) The attorney general proceeded with an action properly instituted
2 pursuant to Subsection A of this Section after it should have been determined
3 by the attorney general that proceeding would be frivolous, vexatious, or for the
4 purpose of harassment.

5 E. Any action brought pursuant to the provisions of this Part shall be
6 filed in the Nineteenth Judicial District Court for the Parish of East Baton
7 Rouge.

8 §1931.4. Burden of proof; prima facie evidence; standard of review

9 A. The burden of proof in an action instituted pursuant to this Part shall
10 be a preponderance of the evidence.

11 B. Proof by a preponderance of the evidence of a violation of R.S.
12 22:1924 shall be deemed to exist if the defendant has pleaded guilty to, been
13 convicted of, or entered a plea of nolo contendere to, or participated in a pre-
14 trial diversion program for a criminal charge in any federal or state court when
15 such charge arises out of circumstances which would be a violation of R.S.
16 22:1924.

17 C. The submission of a certified or true copy of an order, a civil
18 judgment in a state or federal court, or a criminal conviction, final plea, or pre-
19 trial diversion agreement shall be prima facie evidence of the same. The
20 submission of the bill of information or of the indictment and the minutes of the
21 court shall be prima facie evidence as to the circumstances underlying a
22 criminal conviction, final plea, or pre-trial diversion agreement.

23 §1931.5. Civil monetary penalty

24 A. In a civil action instituted in the Nineteenth Judicial District Court for
25 the parish of East Baton Rouge pursuant to the provisions of this Part, the
26 attorney general may seek a civil monetary penalty provided in R.S. 22:1931.6
27 from any of the following:

28 (1) Any person determined by a court of competent jurisdiction to have
29 violated any provision of R.S. 22:1924.

1 (2) Any person who has violated a settlement agreement entered into
2 pursuant to this Part.

3 (3) A person who has been found liable in a civil action filed in federal
4 court pursuant to 18 U.S.C. 1347 et seq., or 42 U.S.C. 1320a-7(a) or (b), et seq.,
5 or 31 U.S.C. 3729.

6 (4) A person who has entered a plea of guilty or nolo contendere to or has
7 participated in a pre-trial diversion program for, or has been convicted in
8 federal or state courts of criminal conduct arising out of circumstances which
9 would constitute a violation of R.S. 22:1924.

10 §1931.6. Recovery

11 A.(1) Actual damages incurred as a result of a violation of the provisions
12 of this Part shall be recovered only once by the insurer and shall not be waived
13 by the court.

14 (2) Except as provided in Paragraph (3) of this Subsection, actual
15 damages shall equal the difference between the amount the insurer paid or
16 would have paid and the amount that would have been due had not a violation
17 of this Part occurred, plus interest at the maximum rate of judicial interest
18 provided by R.S. 13:4202, from the date the damage occurred to the date of
19 repayment. Actual damages shall include investigative expenses incurred by the
20 insurer.

21 (3) If the violator is a managed care healthcare provider contracted with
22 a health insurer, actual damages shall be determined in accordance with the
23 violator's provider agreement.

24 B. Any person who is found to have violated R.S. 22:1924 shall be subject
25 to a civil fine in an amount not to exceed ten thousand dollars per violation.

26 C. In addition to the actual damages provided in Subsection A of this
27 Section and any civil fine imposed pursuant to Subsection B of this Section, a
28 civil monetary penalty shall be imposed on the violator in an amount which
29 equals three times the benefit pursued, including actual damages as a result of

1 the violation.

2 D.(1) Any person who is found to have violated this Part shall be liable
3 for all costs, expenses, and fees related to investigations and proceedings
4 associated with the violation, including attorney fees.

5 (2) All awards of costs, expenses, fees, and attorney fees are subject to
6 review by the appellate court for abuse of discretion.

7 (3) The attorney general shall promptly remit awards recovered for
8 those costs, expenses, and fees incurred by the parties involved in the
9 investigations or proceedings to the appropriate party.

10 E.(1) Payment of interest on the amount of the civil fine imposed
11 pursuant to Subsection B of this Section shall be at the maximum rate of legal
12 interest provided by R.S. 13:4202 from the date the damage occurred to the date
13 of repayment.

14 (2) Prior to the imposition of a civil monetary penalty, the court may
15 consider whether extenuating circumstances exist as provided in R.S. 22:1931.7.
16 §1931.7. Waiver; extenuating circumstances

17 If a waiver is requested by the attorney general, the court may waive any
18 recovery, except for actual damages, required to be imposed pursuant to the
19 provisions of this Part provided all of the following extenuating circumstances
20 are found to be applicable:

21 (1) The violator furnished all the information known to him about the
22 specific allegation to the department or attorney general no later than thirty
23 days after the violator first obtained the information.

24 (2) The violator cooperated fully with all federal or state investigations
25 concerning the specific allegation.

26 (3) At the time the violator furnished the information concerning the
27 specific allegation to the department or the attorney general, no criminal, civil,
28 or departmental investigation or proceeding had been commenced as to the
29 alleged violation.

1 **§1931.8. Deposit of monies collected**

2 All monies collected pursuant to this Part shall be dedicated to and
3 deposited into the Insurance Fraud Investigation Fund pursuant to R.S.
4 40:1428(C). Forty percent of the monies deposited into the fund pursuant to
5 this Part shall be allocated from the fund to the attorney general's office for
6 purposes as provided by law.

7 **§1931.9. Assessment reduction or recalculation**

8 Except as provided in this Part, there shall be no reduction or
9 recalculation in the Insurance Fraud Investigation Fund assessment as provided
10 in R.S. 40:1428.

11 **§1931.10. Civil investigative demand**

12 A. If the attorney general has information, evidence, or reason to believe
13 that any person or entity may be in possession, custody, or control of any
14 documentary material or information relevant to an investigation for a possible
15 violation of this Part, he or any of his assistants may issue to the person or entity
16 a civil investigative demand before the commencement of a civil proceeding to
17 require the production of the documentary material for inspection or copying
18 or reproduction, or the answering under oath and in writing of interrogatories.
19 Any civil investigative demand issued pursuant to this Part shall state a general
20 description of the subject matter being investigated and the applicable
21 provisions of law constituting the alleged violation of this Part. A civil
22 investigative demand for the production of documentary material shall describe
23 each class of documentary material to be produced with such definiteness and
24 certainty as to permit such material to be fairly identified. A civil investigative
25 demand for answers to written interrogatories shall set forth with specificity the
26 written interrogatories to be answered. Each investigative demand shall set a
27 return date of no earlier than twenty days after service of the demand upon the
28 person or his representative or agent.

29 B. A civil investigative demand issued pursuant to this Part may be

1 served by the sheriff or a P.O.S.T.-certified investigator employed by the
2 attorney general or by the office of state police when the demand is issued to a
3 resident or a domestic business entity found in this state. A civil investigative
4 demand issued to a non-resident or a foreign business entity may be served
5 using long-arm jurisdiction as provided for in the Code of Civil Procedure.

6 C. Upon failure to comply with the civil investigative demand, the
7 attorney general may apply to the district court having jurisdiction over the
8 person to compel compliance with the civil investigative demand.

9 D. Except as otherwise provided in this Section, no documentary
10 material, answers to interrogatories, or copies thereof, while in the possession
11 of the attorney general or any other agency assisting the attorney general with
12 the matter under investigation, shall be available for examination by any person
13 or entity except as determined by the attorney general and subject to any
14 conditions imposed by him for effective enforcement of the laws of this state.
15 Nothing in this Section shall be construed to prohibit or limit the attorney
16 general from sharing any documentary material, answers to interrogatories, or
17 copies thereof with the United States government, any other state government,
18 any federal or state agency, or any person or entity that may be assisting in the
19 investigation or prosecution of the subject matter of the civil investigative
20 demand.

21 E. The attorney general may use documentary material derived from
22 information obtained pursuant to this Section, or copies of that material, as the
23 attorney general determines necessary for the enforcement of the laws of this
24 state, including presentation before a court.

25 F. If any documentary material has been produced by any person or
26 entity in the course of any investigation pursuant to a civil investigative demand
27 and any case or proceeding before the court or grand jury arising out of such
28 investigation, or any proceeding before any state agency involving such material
29 has been completed, or if no case or proceeding in which such material may be

1 used has been commenced within a reasonable time after analysis of all
2 documentary material and other information assembled in the course of the
3 investigation, the attorney general, upon written request of the person or entity
4 who produced the material, shall return to such person or entity any such
5 material that has not passed into the control of any court, grand jury, or agency
6 through introduction into the record of such case or proceeding.

7 G. "Documentary material" as used in this Section shall include but is
8 not limited to all electronically-stored information including writings, drawings,
9 graphs, charts, photographs, sound recordings, images, and other data or data
10 compilations that would be subject to a request for production under Federal
11 Rule of Civil Procedure 34 as it exists now or is hereafter amended.

12 §1931.11. Investigative deposition

13 A. When the attorney general has information, evidence, or reason to
14 believe that a violation of this Part has occurred, the attorney general may issue
15 an investigative subpoena for deposition testimony to any person or entity that
16 may have information or knowledge relevant to the matter under investigation,
17 or for the purpose of revealing, identifying, or explaining documentary material
18 or other physical evidence sought under R.S. 22:1940. Such investigative
19 subpoena shall contain a general description of the matter under investigation
20 and a notice informing the prospective deponent of his right to counsel at the
21 deposition with opportunity for cross-examination. Such deposition shall be
22 conducted at the principal place of business of the deponent, at his place of
23 residence, at his domicile, or, if agreeable to the deponent, at some other place
24 convenient to the attorney general and the lawful and designated attorney
25 representative of the deponent. Such deposition shall be held at a date no earlier
26 than seven days after the date on which demand is received, unless the attorney
27 general or an assistant attorney general designated by the attorney general
28 determines that exceptional circumstances are present which warrant the
29 commencement of such testimony within a lesser period of time.

1 **B. An investigative subpoena issued pursuant to this Part may be served**
2 **by the sheriff or a P.O.S.T.-certified investigator employed by the attorney**
3 **general or by the office of state police when the demand is issued to a resident**
4 **or a domestic business entity of this state. An investigative subpoena issued to**
5 **a non-resident or a foreign business entity may be served using long-arm**
6 **jurisdiction as provided for in the Code of Civil Procedure.**

7 **C. When the investigative subpoena is issued to a business entity, the**
8 **entity shall designate one or more officers, directors, or managing agents, who**
9 **are responsible for complying with the subpoena on the entity's behalf, and may**
10 **set forth, for each person designated, the matters on which he will testify. The**
11 **persons so designated shall testify as to matters known or reasonably available**
12 **to the organization.**

13 **D. Upon failure of a person or entity to comply with the investigative**
14 **subpoena, the attorney general may apply to the district court having**
15 **jurisdiction over the person to compel compliance with the investigative**
16 **subpoena. Failure to comply with a court order is punishable by contempt.**
17 **§1931.12. Asset forfeiture**

18 **A. In accordance with the provisions of Subsection B of this Section, the**
19 **court may order the forfeiture of property to satisfy recovery pursuant to this**
20 **Part under either of the following circumstances:**

21 **(1) The court may order a person from whom recovery is due to forfeit**
22 **property which constitutes or was derived directly or indirectly from gross**
23 **proceeds traceable to the violation which forms the basis for the recovery.**

24 **(2) If the attorney general shows that property was transferred to a third**
25 **party to avoid paying recovery, or in an attempt to protect the property from**
26 **forfeiture, the court may order the third party to forfeit the transferred**
27 **property.**

28 **B. Prior to the forfeiture of property, a contradictory hearing shall be**
29 **held during which the attorney general shall prove by clear and convincing**

1 evidence that the property in question is subject to forfeiture pursuant to
 2 Subsection A of this Section. No such contradictory hearing shall be required
 3 if the owner of the property in question agrees to the forfeiture.

4 C. If property is transferred to another person within six months prior
 5 to the occurrence or after the occurrence of the violation for which recovery is
 6 due or within six months prior to or after the institution of a criminal, civil, or
 7 departmental investigation or proceeding, it shall be prima facie evidence that
 8 the transfer was intended to avoid paying recovery or was an attempt to protect
 9 the property from forfeiture.

10 D. The healthcare provider or other person from whom recovery is due
 11 shall have an affirmative duty to fully disclose all property and liabilities and
 12 all transfers of property which meet the criteria of Subsection C of this Section
 13 to the court and the attorney general.

14 §1931.13. Termination of Part

15 This Part shall terminate on August 1, 2014.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Cheryl Horne.

DIGEST

Present law defines "fraudulent insurance act" and "statement" relative to insurance fraud.

Proposed law retains present law and adds a definition for "claim".

Proposed law provides legislative findings that specify that giving the La. attorney general and his assistants the ability, authority, and resources to pursue civil monetary penalties, including liquidated damages, or other remedies to protect the integrity of the insurance industry from persons who engage in fraud, misrepresentation, abuse or other illegal practices.

Proposed law provides that no action brought pursuant to proposed law shall be instituted later than ten years after the date upon which the alleged violation occurred. Further provides that no action for violations involving a scheme or course of conduct shall be instituted more than ten years after the latest component of the scheme or course of conduct occurred.

Proposed law provides when the conduct giving rise to the cause of action involves the provision of services, supplies, merchandise, or benefits of a medical assistance program administered by the Dept. of Health and Hospitals, proposed law shall not apply. Further provides that an action by a prevailing defendant to recover costs, expenses, fees and attorney fees may be brought no later than 60 days after the rendering of a final nonappealable judgment. In the instance of a state criminal action, the action for recovery

of the civil monetary penalty shall be brought within one year of the date of the criminal conviction, final plea, or pre-trial diversion agreement.

Proposed law provides that in the case of a civil judgment rendered in federal court, the action for recovery of the civil monetary penalty may be brought once the judgment becomes enforceable and no later than one year after written notification to the attorney general of the enforceable judgment. Further provides that in the case of a criminal conviction or plea in federal court, the action may be brought once the conviction or plea is final and no later than one year after written notification to the attorney general of the rendering of the conviction or final plea. Requires any action brought pursuant to proposed law be filed in the 19th JDC.

Present law prohibits presenting or causing to be presented any written or oral statement including computer-generated documents as part of or in support of or denial of a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or fraudulent information concerning any fact or thing material to such claim or insurance policy. Further prohibits assisting, abetting, soliciting, or conspiring with another to prepare or make any written or oral statement that is intended to be presented to an insurance company, insured, the Dept. of Insurance, or other party in interest or third party claimant in connection with or in support of or denial, or any claim for payment of other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or fraudulent information concerning any fact or thing material to such a claim or insurance policy.

Proposed law retains present law and permits the attorney general to institute a civil action in the courts of this state to seek recovery from any person or persons who violate present law. Further provides that each violation may be treated as a separate violation or may be combined into one violation at the option of the attorney general.

Proposed law provides that an action by a prevailing defendant to recover costs, expenses, fees and attorney fees shall be ancillary to and shall be brought and heard in the same court as the civil action. Further provides that a prevailing defendant may seek recovery when either of the following applies:

1. The action was instituted by the attorney general after it should have been determined by the attorney general to be frivolous, vexatious, or brought primarily for the purpose of harassment.
2. The attorney general proceeded with a property instituted action after it should have been determined that proceeding would be frivolous, vexatious, or for the purpose of harassment.

Proposed law provides that the burden of proof in an action instituted pursuant to proposed law shall be a preponderance of the evidence. Further provides that proof by a preponderance of the evidence of a violation of present law shall be deemed to exist if the defendant has pled guilty to, been convicted of, or entered a plea of nolo contendere to, or participated in a pre-trial diversion program for a criminal charge in any federal or state court when such charge arises out of circumstances which would be a violation of present law.

Proposed law provides for the submission of a certified or true copy of an order, civil judgment, or criminal conviction or plea shall be prima facie evidence of the same. The submission of the bill of information or of the indictment and the minutes of the court shall be prima facie evidence as to the circumstances underlying a criminal conviction or plea.

Proposed law provides that in a civil action instituted in the courts of this state the attorney general may seek the civil monetary penalty provided in proposed law from any of the following:

1. Any person determined by a court of competent jurisdiction to have violated any provisions of present law.
2. Any person who has violated a settlement agreement entered into pursuant to proposed law.
3. A person who has been found liable in a civil action filed in federal court.
4. A person who has entered a plea of guilty or nolo contendere to or has participated in a pre-trial diversion program for, or has been convicted in federal or state court of criminal conduct arising out of circumstances which would constitute a violation of present law.

Proposed law requires actual damages incurred as a result of a violation of the provisions of proposed law shall be recovered only once by the insurer and shall not be waived by the court. Further provides that actual damages shall equal the difference between the amount the insurer paid or would have paid and the amount that would have been due had not a violation occurred, plus interest at the maximum rate of legal interest from the date the damage occurred to the date of repayment. Specifies that actual damages shall include investigative expenses incurred by the insurer. Provides that if the violator is a managed care health provider contracted with a health insurer, actual damages shall be determined in accordance with the violator's provider agreement.

Proposed law provides for a civil fine for a violation of present law in an amount not to exceed \$10,000 per violation. Additionally, a civil monetary penalty shall be imposed on the violator in an amount which equals three times the benefit pursued, including actual damages as a result of the violation.

Proposed law requires any person who is found to have violated proposed law shall be liable for all costs, expenses, and fees related to investigations and proceedings associated with the violation, including attorney fees. Further provides that all awards of costs, expenses, fees, and attorney fees are subject to review by the court for abuse of discretion. Requires the attorney general to promptly remit awards for those costs, expenses, and fees incurred by the parties involved in the investigations or proceedings to the appropriate party. Further provides for payment of interest on the amount of the civil fine imposed at the maximum rate of legal interest from the date the damage occurred to the date of repayment.

Proposed law promotes that if a waiver is requested by the attorney general, the court may waive any recovery, except for actual damages, required to be imposed pursuant to the provisions of proposed law provided all of the following are found to be applicable:

1. The violator furnished all the information known to him about the allegation to the department or the attorney general no later than thirty days after the violator first obtained the information.
2. The violator cooperated fully with all federal or state investigations concerning the specific allegation.
3. At the time the violator furnished the information concerning the specific allegation to the department or the attorney general, no criminal, civil, or departmental investigation or proceeding had been commenced as to the alleged violation.

Proposed law requires all monies collected pursuant to proposed law, to be dedicated to and deposited into the Insurance Fraud Investigation Fund. Provides that 40% recovered shall be allocated from the fund to the attorney general's office. Further provides that there shall be no reduction or recalculation of the Insurance Fraud Investigation Fund as provided in present law.

Proposed law provides that if the attorney general has information, evidence, or reason to believe that any person or entity may be in possession, custody, or control of any documentary material or information relevant to an investigation for a possible violation of proposed law, he or any of his assistants may issue to the person or entity a civil investigative demand before the commencement of a civil proceeding to require the production of the documentary material for inspection or copying or reproduction, or the answering under oath and in writing of interrogatories.

Proposed law requires any civil investigative demand issued shall state a general description of the subject matter being investigated and the applicable provisions of law constituting the alleged violation of proposed law. Further provides that a civil investigative demand for the production of documentary material shall describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified.

Proposed law allows a civil investigative demand to be served by the sheriff or a P.O.S.T.-certified investigator employed by the attorney general or by the office or state police when the demand is issued to a resident or domestic business entity found in this state. Provides that a civil investigative demand issued to a non-resident or foreign business entity may be served using the long-arm jurisdiction as provided in present law.

Proposed law allows the attorney general to apply to the district court having jurisdiction over the person to compel compliance with the civil investigative demand. Further provides that no documentary material, answers to interrogatories, or copies thereof, shall be available for examination by any person except as determined by the attorney general. Prohibits any part of proposed law to be construed to prohibit or limit the attorney general from sharing any documentary material, answers to interrogatories, or copies thereof with the U.S. government or with any other state government, federal or state agency, or any person or entity that may be assisting in the investigation or prosecution of the subject matter of the civil investigative demand.

Proposed law allows the attorney general to use documentary material derived from information obtained, or copies of that material, as the attorney general determines necessary for the enforcement of the laws of this state, including presentation before a court. Further provides if any documentary material has been produced by any person or entity in an investigative demand, the attorney general shall, upon written request of the person or entity who produced the material, return to such person or entity, any material which has not passed into the control of the court, grand jury, or agency through introduction into the record of such case or proceeding.

Proposed law defines documentary material to include all electronically-stored information including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations that would be subject to a request for productions under Federal Rule of Civil Procedure 34.

Proposed law allows the attorney general to issue an investigative subpoena for deposition testimony to any person or entity that may have information or knowledge relevant to the matter under investigation, or for the purpose of revealing, identifying, or explaining documentary material or other physical evidence. Such investigative subpoenas shall contain a general description of the matter under investigation and a notice informing the deponent of his right to counsel at the deposition with the opportunity for cross-examination. Provides that the deposition shall be conducted at the principle place of business of the deponent or at some other place convenient to the attorney general and the lawful and designated attorney representative of the deponent. Such deposition shall be held at a date no earlier than seven days after the date on which demand is received, unless the attorney general or assistant attorney general designated by the attorney general determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

Proposed law allows an investigative subpoena to be served by the sheriff or a P.O.S.T.-certified investigator employed by the attorney general or by the office of state police when the demand is issued to a resident or domestic business entity found in this state. Provides that an investigative subpoena issued to a non-resident or foreign business entity may be served using long-arm jurisdiction.

Proposed law allows the court to order the forfeiture of property to satisfy recovery of a judgment under the following circumstances:

1. The court may order a person from whom recovery is due to forfeit property which constitutes or was derived directly or indirectly from gross proceeds traceable to the violation which forms the basis for the recovery.
2. If the attorney general shows that the property was transferred to a third party to avoid paying of recovery, or in an attempt to protect the property from forfeiture, the court may order the third party to forfeit the transferred property.

Proposed law requires that, prior to a forfeiture of property, a contradictory hearing shall be held during which the attorney general shall prove by clear and convincing evidence that the property in question is subject to forfeiture. Further provides that if the property is transferred to another person within six months prior to the occurrence or after the occurrence of the violation for which recovery is due or within six months prior to or after the institution of a criminal, civil, or departmental investigation or proceeding, it shall be prima facie evidence that the transfer was intended to avoid paying recovery or was an attempt to protect the property from forfeiture.

Proposed law provides a health care provider or other person from whom recovery is due shall have an affirmative duty to fully disclose all property and liabilities and all transfers of property which meet the criteria of proposed law.

Proposed law terminates on August 1, 2014.

Effective August 1, 2012.

(Adds R.S.22:1923(3) and 1931 through 1931.13)