

Regular Session, 2012

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

BY SENATORS MORRISH AND THOMPSON

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

As used in this Part, the following terms shall have the meanings indicated in this Section:

* * *

(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

1 post-service basis.

2 * * *

3 PART II-A. LOUISIANA INSURANCE FRAUD PREVENTION ACT

4 §1931. Legislative findings

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

13 §1931.1. Definitions

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

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

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

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

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

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

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

1 **adjudication.**

2 **(7) "Person" means any natural or juridical entity or agent thereof as**
3 **defined in federal or state law furnishing or claiming to furnish a good, service,**
4 **or supply who is compensated with insurance proceeds.**

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

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

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

13 **§1931.2. Prescription**

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

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

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

1 **D.(1) In the case of a civil judgment rendered in federal court, the action**
2 **for recovery of the civil monetary penalty pursuant to R.S. 22:1931.6 may be**
3 **brought after the judgment becomes enforceable and no later than one year**
4 **after written notification to the attorney general of the enforceable judgment.**

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

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

13 **§1931.3. Civil actions authorized**

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

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

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

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

28 **(1) The action was instituted by the attorney general pursuant to**
29 **Subsection A of this Section after it should have been determined by the**

1 attorney general to be frivolous, vexatious, or brought primarily for the purpose
2 of harassment.

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

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

10 §1931.4. Burden of proof; prima facie evidence; standard of review

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

13 B. Proof by a preponderance of the evidence of a violation of R.S.
14 22:1924 shall be deemed to exist if the defendant has pled guilty or been
15 convicted in any federal or state court when such charge arises out of
16 circumstances which would be a violation of R.S. 22:1924.

17 C. The submission of a certified or true copy of a conviction shall be
18 prima facie evidence of the same. The submission of the bill of information or
19 of the indictment and the minutes of the court shall be prima facie evidence as
20 to the circumstances underlying a criminal conviction or final plea.

21 §1931.5. Civil monetary penalty

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

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

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

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

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

8 **§1931.6. Recovery**

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

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

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

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

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

29 **D.(1) Any person who is found to have violated this Part shall be liable**

1 for all costs, expenses, and fees related to investigations and proceedings
2 associated with the violation, including attorney fees.

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

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

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

12 (2) Prior to the imposition of a civil monetary penalty, the court may
13 consider whether extenuating circumstances exist as provided in R.S. 22:1931.7.

14 §1931.7. Waiver; extenuating circumstances

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

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

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

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

28 §1931.8. Deposit of monies collected

29 All monies collected pursuant to this Part shall be dedicated to and

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

5 §1931.9. Assessment reduction or recalculation

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

9 §1931.10. Civil investigative demand

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

27 B. A civil investigative demand issued pursuant to this Part may be
28 served by the sheriff or a P.O.S.T.-certified investigator employed by the
29 attorney general or by the office of state police when the demand is issued to a

1 resident or a domestic business entity found in this state. A civil investigative
2 demand issued to a non-resident or a foreign business entity may be served
3 using long-arm jurisdiction as provided for in the Code of Civil Procedure.

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

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

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

23 F. If any documentary material has been produced by any person or
24 entity in the course of any investigation pursuant to a civil investigative demand
25 and any case or proceeding before the court or grand jury arising out of such
26 investigation, or any proceeding before any state agency involving such material
27 has been completed, or if no case or proceeding in which such material may be
28 used has been commenced within a reasonable time after analysis of all
29 documentary material and other information assembled in the course of the

1 investigation, the attorney general, upon written request of the person or entity
2 who produced the material, shall return to such person or entity any such
3 material that has not passed into the control of any court, grand jury, or agency
4 through introduction into the record of such case or proceeding.

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

10 §1931.11. Investigative deposition

11 A. When the attorney general has information, evidence, or reason to
12 believe that a violation of this Part has occurred, the attorney general may issue
13 an investigative subpoena for deposition testimony to any person or entity that
14 may have information or knowledge relevant to the matter under investigation,
15 or for the purpose of revealing, identifying, or explaining documentary material
16 or other physical evidence sought under R.S. 22:1931.10. The investigative
17 subpoena shall contain a general description of the matter under investigation
18 and a notice informing the prospective deponent of his right to counsel at the
19 deposition with opportunity for cross-examination. The deposition shall be
20 conducted at the principal place of business of the deponent, at his place of
21 residence, at his domicile, or, if agreeable to the deponent, at some other place
22 convenient to the attorney general and the lawful and designated attorney
23 representative of the deponent. The deposition shall be held at a date no earlier
24 than seven days after the date on which demand is received, unless the attorney
25 general or an assistant attorney general designated by the attorney general
26 determines that exceptional circumstances are present which warrant the
27 commencement of such testimony within a lesser period of time.

28 B. An investigative subpoena issued pursuant to this Part may be served
29 by the sheriff or a P.O.S.T.-certified investigator employed by the attorney

1 general or by the office of state police when the demand is issued to a resident
2 or a domestic business entity of this state. An investigative subpoena issued to
3 a non-resident or a foreign business entity may be served using long-arm
4 jurisdiction as provided for in the Code of Civil Procedure.

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

11 D. Upon failure of a person or entity to comply with the investigative
12 subpoena, the attorney general may apply to the district court having
13 jurisdiction over the person to compel compliance with the investigative
14 subpoena. Failure to comply with a court order is punishable by contempt.

15 §1931.12. Asset forfeiture

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

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

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

26 B. Prior to the forfeiture of property, a contradictory hearing shall be
27 held during which the attorney general shall prove by clear and convincing
28 evidence that the property in question is subject to forfeiture pursuant to
29 Subsection A of this Section. No such contradictory hearing shall be required

1 **if the owner of the property in question agrees to the forfeiture.**

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

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

12 **§1931.13. Termination of Part**

13 **This Part shall terminate on August 1, 2014.**

The original instrument was prepared by Cheryl Horne. The following digest, which does not constitute a part of the legislative instrument, was prepared by McHenry Lee.

DIGEST

Morrish (SB 765)

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 or been convicted in any federal or state court when such charge arises out of circumstances which would be a violation of present law.

Proposed law provides that the submission of a certified or true copy of a 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 healthcare 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 healthcare 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)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to reengrossed bill

1. Changes provision relating to preponderance of evidence and prima facie evidence for purposes of actions brought under proposed law.