

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

BY SENATORS MORRISH AND THOMPSON

1 AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

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

11 §1923. Definitions

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

14 * * *

15 **(3) "Claim" shall mean any request or demand for payment or benefit,**
16 **whether paid or not, made by a person either in writing or filed electronically.**

17 * * *

18 **PART II-A. SLEDGE JEANSONNE LOUISIANA INSURANCE**

19 **FRAUD PREVENTION ACT**

20 **§1931. Legislative findings; short title**

21 **A. The legislature finds that to protect the health, safety, and welfare of**
22 **the citizens of this state, the attorney general of Louisiana and his assistants**
23 **shall be agents of this state with the ability, authority, and resources to pursue**

1 civil monetary penalties, liquidated damages, or other remedies to protect the
2 integrity of the insurance industry from persons who engage in fraud,
3 misrepresentation, abuse, or other illegal practices, as further provided in this
4 Part, in order to obtain payments to which these insurance providers or persons
5 are not entitled.

6 B. On June 7, 2011, Kim Sledge and Rhett Jeansonne were murdered
7 while performing their duties as insurance fraud investigators for the Louisiana
8 Department of Insurance. The tragedy of their loss is profound to their
9 families, coworkers, and the citizens of this state they honorably served.

10 C. This Part shall be known and may be cited as the "Sledge Jeansonne
11 Louisiana Insurance Fraud Prevention Act".

12 §1931.1. Definitions

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

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

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

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

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

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

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

30 (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
30 brought after the judgment becomes enforceable and no later than one year

1 after written notification to the attorney general of the enforceable judgment.

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

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

10 §1931.3. Civil actions authorized

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

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

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

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

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

29 (2) The attorney general proceeded with an action properly instituted
30 pursuant to Subsection A of this Section after it should have been determined

1 by the attorney general that proceeding would be frivolous, vexatious, or for the
2 purpose of harassment.

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

6 §1931.4. Burden of proof; prima facie evidence; standard of review

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

9 B. Proof by a preponderance of the evidence of a violation of R.S.
10 22:1924 shall be deemed to exist if the defendant has pled guilty or been
11 convicted in any federal or state court when such charge arises out of
12 circumstances which would be a violation of R.S. 22:1924.

13 C. The submission of a certified or true copy of a conviction shall be
14 prima facie evidence of the same. The submission of the bill of information or
15 of the indictment and the minutes of the court shall be prima facie evidence as
16 to the circumstances underlying a criminal conviction or final plea.

17 §1931.5. Civil monetary penalty

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

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

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

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

29 (4) A person who has entered a plea of guilty or nolo contendere to or
30 has participated in a pre-trial diversion program for, or has been convicted in

1 federal or state courts of criminal conduct arising out of circumstances which
2 would constitute a violation of R.S. 22:1924.

3 §1931.6. Recovery

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

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

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

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

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

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

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

29 (3) The attorney general shall promptly remit awards recovered for
30 those costs, expenses, and fees incurred by the parties involved in the

1 investigations or proceedings to the appropriate party.

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

6 (2) Prior to the imposition of a civil monetary penalty, the court may
7 consider whether extenuating circumstances exist as provided in R.S. 22:1931.7.
8 §1931.7. Waiver; extenuating circumstances

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

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

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

18 (3) At the time the violator furnished the information concerning the
19 specific allegation to the department or the attorney general, no criminal, civil,
20 or departmental investigation or proceeding had been commenced as to the
21 alleged violation.

22 §1931.8. Deposit of monies collected

23 All monies collected pursuant to this Part shall be dedicated to and
24 deposited into the Insurance Fraud Investigation Fund pursuant to R.S.
25 40:1428(C). Forty percent of the monies deposited into the fund pursuant to
26 this Part shall be allocated from the fund to the attorney general's office for
27 purposes as provided by law.

28 §1931.9. Assessment reduction or recalculation

29 Except as provided in this Part, there shall be no reduction or
30 recalculation in the Insurance Fraud Investigation Fund assessment allocation

1 to the attorney general's office as provided in R.S. 40:1428.

2 §1931.10. Civil investigative demand

3 A. If the attorney general has information, evidence, or reason to believe
4 that any person or entity may be in possession, custody, or control of any
5 documentary material or information relevant to an investigation for a possible
6 violation of this Part, he or any of his assistants may issue to the person or entity
7 a civil investigative demand before the commencement of a civil proceeding to
8 require the production of the documentary material for inspection or copying
9 or reproduction, or the answering under oath and in writing of interrogatories.

10 Any civil investigative demand issued pursuant to this Part shall state a general
11 description of the subject matter being investigated and the applicable
12 provisions of law constituting the alleged violation of this Part. A civil
13 investigative demand for the production of documentary material shall describe
14 each class of documentary material to be produced with such definiteness and
15 certainty as to permit such material to be fairly identified. A civil investigative
16 demand for answers to written interrogatories shall set forth with specificity the
17 written interrogatories to be answered. Each investigative demand shall set a
18 return date of no earlier than twenty days after service of the demand upon the
19 person or his representative or agent.

20 B. A civil investigative demand issued pursuant to this Part may be
21 served by the sheriff or a P.O.S.T.-certified investigator employed by the
22 attorney general or by the office of state police when the demand is issued to a
23 resident or a domestic business entity found in this state. A civil investigative
24 demand issued to a non-resident or a foreign business entity may be served
25 using long-arm jurisdiction as provided for in the Code of Civil Procedure.

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

29 D. Except as otherwise provided in this Section, no documentary
30 material, answers to interrogatories, or copies thereof, while in the possession

1 of the attorney general or any other agency assisting the attorney general with
2 the matter under investigation, shall be available for examination by any person
3 or entity except as determined by the attorney general and subject to any
4 conditions imposed by him for effective enforcement of the laws of this state.
5 Nothing in this Section shall be construed to prohibit or limit the attorney
6 general from sharing any documentary material, answers to interrogatories, or
7 copies thereof with the United States government, any other state government,
8 any federal or state agency, or any person or entity that may be assisting in the
9 investigation or prosecution of the subject matter of the civil investigative
10 demand.

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

15 F. If any documentary material has been produced by any person or
16 entity in the course of any investigation pursuant to a civil investigative demand
17 and any case or proceeding before the court or grand jury arising out of such
18 investigation, or any proceeding before any state agency involving such material
19 has been completed, or if no case or proceeding in which such material may be
20 used has been commenced within a reasonable time after analysis of all
21 documentary material and other information assembled in the course of the
22 investigation, the attorney general, upon written request of the person or entity
23 who produced the material, shall return to such person or entity any such
24 material that has not passed into the control of any court, grand jury, or agency
25 through introduction into the record of such case or proceeding.

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

1 **§1931.11. Investigative deposition**

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

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

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

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

5 §1931.12. Asset forfeiture

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

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

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

16 B. Prior to the forfeiture of property, a contradictory hearing shall be
17 held during which the attorney general shall prove by clear and convincing
18 evidence that the property in question is subject to forfeiture pursuant to
19 Subsection A of this Section. No such contradictory hearing shall be required
20 if the owner of the property in question agrees to the forfeiture.

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

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

1 **§1931.13. Termination of Part**

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____