

Regular Session, 2012

SENATE BILL NO. 167

BY SENATOR GARY SMITH

INSURANCE POLICIES. Provides for portable electronics insurance policies. (8/1/12)

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AN ACT

To enact R.S. 22:821(B)(34) and 1431, and Part VIII-A of Chapter 5 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:1781.1 through 1781.6, relative to portable electronics insurance; to provide definitions; to provide with respect to the vendors of portable electronic devices; to provide for the requirements for the sale of portable electronics insurance; to provide with respect to termination of portable electronics insurance; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:821(B)(34) and 1431, and Part VIII-A of Chapter 5 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:1781.1 through 1781.6 are hereby enacted to read as follows:

§821. Fees

\* \* \*

B. The following fees and licenses shall be collected in advance by the commissioner of insurance:

\* \* \*

**(34) Portable Electronics Insurance Limited Lines License**

1                   (a) Initial license application.....\$200

2                   (b) Renewal.....\$100

3   \*       \*       \*

4                   §1431. Portable Electronics Insurance Policies

5                   A. Portable electronics insurance as defined in R.S. 22:1781.1(7) may be  
6                   offered on a month-to-month or other periodic basis as a group or master  
7                   commercial insurance policy issued to a vendor, as defined in R.S. 22:1781.1(9)  
8                   of portable electronics for its enrolled customers.

9                   B. Notwithstanding any other provision of law to the contrary, an insurer  
10                   may terminate or otherwise change the terms and conditions of a policy of  
11                   portable electronics insurance only upon providing the policyholder and  
12                   enrolled customers with at least thirty days' written notice.

13                   C. If the insurer changes the terms and conditions of a policy, then the  
14                   insurer shall provide the vendor policyholder with a revised policy or  
15                   endorsement and each enrolled customer with a revised certificate,  
16                   endorsement, updated brochure, or other evidence indicating a change in the  
17                   terms and conditions has occurred and a summary of any material change.

18                   D. Notwithstanding Subsection B of this Section, an insurer may  
19                   terminate an enrolled customer's enrollment under a portable electronics  
20                   insurance policy upon fifteen days' written notice for discovery of fraud or  
21                   material misrepresentation in obtaining coverage or in the presentation of a  
22                   claim thereunder.

23                   E. Notwithstanding Subsection B of this Section, an insurer may  
24                   immediately terminate an enrolled customer's enrollment under a portable  
25                   electronics insurance policy:

26                                   (1) For nonpayment of premium.

27                                   (2) If the enrolled customer ceases to have an active service with the  
28                   vendor of portable electronics.

29                                   (3) If the enrolled customer exceeds the aggregate limit of liability under

1           the terms of the portable electronics insurance policy.

2           F. If an enrolled customer exhausts the aggregate limit of liability under  
3           the terms of the portable electronics insurance policy, the insurer shall send  
4           notice of termination to the enrolled customer within thirty calendar days after  
5           exhaustion of the limit and shall terminate the enrollment of that customer. If  
6           notice is not timely sent, coverage shall continue notwithstanding the exhaustion  
7           of the aggregate limit of liability, until the insurer sends notice of termination  
8           to the enrolled customer.

9           G. Where a portable electronics insurance policy is terminated by a  
10          vendor, the vendor shall mail or deliver written notice to each enrolled  
11          customer advising the enrolled customer of the termination of the policy and the  
12          effective date of termination. The written notice shall be mailed or delivered to  
13          the enrolled customer at least thirty days prior to the termination.

14          H. All notices or correspondence required by this Section or otherwise  
15          required by law shall be in writing. Notices and correspondence may be sent  
16          either by mail or by electronic means as set forth in this Section. If the notice or  
17          correspondence is mailed, it shall be sent to the vendor or the enrolled customer  
18          at the mailing address on file with the insurer or vendor. The insurer or vendor  
19          of portable electronics shall maintain proof of mailing in a form authorized or  
20          accepted by the United States Postal Service or other commercial mail delivery  
21          service. If the notice or correspondence is sent electronically, it shall be sent to  
22          the vendor of portable electronics at the vendor's electronic mail address  
23          specified for such purpose and to its affected enrolled customers' last known  
24          electronic mail addresses as provided by each enrolled customer to the insurer  
25          or vendor of portable electronics. For purposes of this Section, an enrolled  
26          customer's provision of an electronic mail address to the insurer or vendor of  
27          portable electronics shall be deemed consent to receive notices and  
28          correspondence by electronic means. The insurer or vendor of portable  
29          electronics, shall maintain proof that the notice or correspondence was sent.

1           I. Notice or correspondence required by this Section or otherwise  
2           required by law may be sent on behalf of an insurer or vendor by a person  
3           licensed as an insurance producer in this state or any other person with whom  
4           the insurer or vendor contracts to perform such services on their behalf.

5                           \*       \*       \*

6                           PART VIII-A Portable Electronics Insurance

7           §1781.1. Definitions

8           As used in this Part, the following terms shall have the following  
9           meanings:

10           (1) "Commissioner" means the commissioner of insurance.

11           (2) "Customer" means a person who purchases portable electronics or  
12           services.

13           (3) "Department" means the department of insurance.

14           (4) "Enrolled customer" means a customer who elects coverage under  
15           a portable electronics insurance policy issued to a vendor of portable  
16           electronics.

17           (5) "Location" means any physical location in the state of Louisiana or  
18           any website, call center site, or similar location directed to residents of the state  
19           of Louisiana.

20           (6) "Portable electronics" means electronic devices that are portable in  
21           nature, their accessories, and services related to the use of the device.

22           (7)(a) "Portable electronics insurance" means insurance providing  
23           coverage for the repairs or replacement of portable electronics which may  
24           provide coverage for portable electronics against any one or more of the  
25           following causes of loss: loss, theft, inoperability due to mechanical failure,  
26           malfunction, damage, or other similar causes of loss.

27           (b) "Portable electronics insurance" does not include any of the  
28           following:

29           (i) A service contract or extended warranty providing coverage limited

1 to the repair, replacement, or maintenance of property for the operational or  
2 structural failure of such property due to a defect in materials, workmanship,  
3 accidental damage from handling, power surges, or normal wear and tear.

4 (ii) A policy of insurance covering a seller's or a manufacturer's  
5 obligations under a warranty.

6 (iii) A homeowner's, renter's, private passenger automobile, commercial  
7 multi-peril, or similar policy.

8 (8) "Portable electronics transaction" means any of the following:

9 (a) The sale or lease of portable electronics by a vendor to a customer.

10 (b) The sale of a service related to the use of portable electronics by a  
11 vendor to a customer.

12 (9) "Vendor" means a person in the business of engaging in portable  
13 electronics transactions directly or indirectly.

14 §1781.2. Licensure of vendors

15 Notwithstanding any other provision of law to the contrary, the following  
16 requirements apply to the licensure of vendors of portable electronic devices:

17 (1) A vendor is required to hold a limited lines license to sell or offer  
18 coverage under a policy of portable electronics insurance.

19 (2) A limited lines license issued pursuant to this Section shall authorize  
20 any employee or authorized representative of the vendor to sell or offer  
21 coverage under a policy of portable electronics insurance to a customer at each  
22 location at which the vendor engages in portable electronics transactions. The  
23 vendor shall be responsible for the conduct and actions related to the sale or  
24 offering of portable electronics insurance of all employees and authorized  
25 representatives and any payment of the premium for portable electronics  
26 insurance to an employee or authorized representative shall be deemed payment  
27 to the vendor.

28 (3) In connection with a vendor's application for licensure and upon  
29 license renewal, the vendor shall provide a list to the commissioner of all

1 locations in the state at which it offers coverage.

2 §1781.3. Requirements for sale of portable electronics insurance

3 A. In conjunction with and at the time of the sale of every portable  
4 electronics insurance policy, the vendor shall present brochures or other written  
5 materials to a prospective customer which:

6 (1) Disclose that portable electronics insurance may provide a  
7 duplication of coverage already provided by a customer's homeowner's  
8 insurance policy, renter's insurance policy, or other source of coverage.

9 (2) State that the enrollment by the customer in a portable electronics  
10 insurance program is not required in order to purchase or lease portable  
11 electronics or services.

12 (3) Summarize the material terms of the insurance coverage, including:

13 (a) The identity of the insurer.

14 (b) The amount of any applicable deductible and how it is to be paid.

15 (c) The benefits of the coverage.

16 (d) The key terms and conditions of coverage such as whether portable  
17 electronics may be repaired or replaced with similar make and model  
18 reconditioned or non-original manufacturer parts or equipment.

19 (4) Contain a summary of the process for filing a claim, including a  
20 description of how to return portable electronics and the maximum fee  
21 applicable in the event the customer fails to comply with any equipment return  
22 requirement.

23 (5) Contain a statement that an enrolled customer may cancel  
24 enrollment for coverage under a portable electronics insurance policy at any  
25 time and the person paying the premium shall receive a refund or credit for any  
26 applicable unearned premium.

27 B. Eligibility and underwriting standards for customers electing to  
28 enroll in coverage shall be established for each portable electronics insurance  
29 program.

1           §1781.4. Authority of vendors of portable electronics

2           A. An employee or authorized representative of a vendor may sell or  
3           offer portable electronics insurance to customers and shall not be subject to  
4           licensure as an insurance producer under this Part provided that:

5                   (1) The vendor obtains a limited lines license to authorize its employees  
6                   or authorized representatives to sell or offer portable electronics insurance  
7                   pursuant to this Part.

8                   (2) The vendor shall develop a training program for employees and  
9                   authorized representatives of the vendor. The training required by this Section  
10                  shall comply with all of the following:

11                          (a) The training shall be delivered to employees and authorized  
12                          representatives of vendors who are directly engaged in the activity of selling or  
13                          offering portable electronics insurance prior to the engagement in any sale or  
14                          offer of portable electronics insurance to any customer by the employee or  
15                          authorized representative.

16                          (b) The training may be provided in electronic form.

17                          (c) The training shall include instruction about the portable electronics  
18                          insurance offered to customers and the disclosures required under this Part.

19           B. Notwithstanding any other provision of law to the contrary,  
20           employees or authorized representatives of a vendor of portable electronics  
21           shall not be compensated based primarily on the number of customers enrolled  
22           for portable electronics insurance coverage but may receive compensation for  
23           activities under the limited lines license which is incidental to their overall  
24           compensation.

25           C. The charges for portable electronics insurance coverage may be  
26           billed and collected by the vendor of portable electronics. Any charge to the  
27           enrolled customer for coverage that is not included in the cost associated with  
28           the purchase or lease of portable electronics or related services shall be  
29           separately itemized on the enrolled customer's bill. If the portable electronics

1 insurance coverage is included with the purchase or lease of portable electronics  
2 or related services, the vendor shall clearly and conspicuously disclose to the  
3 enrolled customer that the portable electronics insurance coverage is included  
4 with the portable electronics or related services. Vendors billing and collecting  
5 such charges shall not be required to maintain such funds in a segregated  
6 account provided that the vendor is authorized by the insurer to hold such  
7 funds in an alternative manner and remits such amounts to the supervising  
8 entity within sixty days of receipt. All funds received by a vendor from an  
9 enrolled customer for the sale of portable electronics insurance shall be  
10 considered funds held in trust by the vendor in a fiduciary capacity for the  
11 benefit of the insurer. Vendors may receive compensation for billing and  
12 collection services.

13 §1781.5. Suspension or revocation of license

14 If a vendor of portable electronics or its employee or authorized  
15 representative violates any provision of this Part or any other applicable  
16 provision of this Title, the commissioner may, after notice and opportunity for  
17 a hearing, take any one or more of the following actions:

18 (1) Impose fines not to exceed five hundred dollars per violation or five  
19 thousand dollars in the aggregate for such conduct.

20 (2) Suspend or revoke the limited lines license of the vendor.

21 (3) Suspend the privilege of transacting portable electronics insurance  
22 at specific business locations where violations have occurred.

23 (4) Suspend or revoke the ability of individual employees or authorized  
24 representatives to act under the license of the vendor.

25 §1781.6. Application for license and fees

26 A. An application for a license pursuant to this Part shall be made to and  
27 filed with the commissioner on forms prescribed and furnished by the  
28 commissioner and shall include the legal name of the applicant, the address of  
29 the home office of the applicant, the name and identifying information for all



1       officers, all directors and all persons who own directly or indirectly ten percent  
2       or more of the applicant and such other information as the commissioner may  
3       reasonably require. However, any applicant whose stock is publicly traded and  
4       registered under the federal securities laws or that is licensed pursuant to the  
5       Federal Communications Act of 1934, or any affiliate or subsidiary thereof,  
6       may, in lieu of providing the information for all officers, all directors and all  
7       persons who own directly or indirectly ten percent or more of the applicant,  
8       designate a single officer as the designated responsible person for the activities  
9       of the vendor pursuant to the limited lines portable electronics insurance  
10       license.

11               B. The application shall be accompanied by the fee pursuant to R.S.  
12               22:821(B)(34).

13               C. Any vendor engaging in portable electronics insurance transactions  
14               on or before the effective date of this Part shall apply for licensure within ninety  
15               days of the application being made available by the commissioner.

16               D. Every license issued pursuant to this Part shall expire on December  
17               thirty-first of the renewal year assigned by the commissioner and may be  
18               renewed by the filing of a renewal application as required by the commissioner  
19               and payment of the fee required by R.S. 22:821(B)(34).

20               E. Any vendor licensed pursuant to the provisions of this Part may  
21               authorize a third party to make any filing or notice other than the initial or  
22               renewal application required by this Part with the department on behalf of the  
23               vendor.

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

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## DIGEST

Gary Smith (SB 167)

Present law requires the commissioner of insurance to collect certain fees in advance.

Proposed law retains present law but adds the initial license application fee of \$200 and the license renewal fee of \$100 for portable electronics insurance limited lines licenses to the list of fees to be collected in advance by the commissioner of insurance.

Proposed law authorizes portable electronics insurance to be offered on a month-to-month or other periodic basis as a group or master commercial insurance policy issued to a vendor of portable electronics for its enrolled customers.

Proposed law authorizes an insurer to terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least 30 days written notice.

Proposed law provides that if an insurer changes the terms and conditions of a policy, then requires the insurer to provide the vendor policyholder with a revised policy or endorsement and also provides each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating that a change in the terms and conditions has occurred. Requires the insurer to provide a summary of any material change.

As an exception to the 30-day notice of termination, proposed law authorizes an insurer to terminate an enrolled customer's enrollment under a portable electronics insurance policy upon 15 days written notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim associated with such fraud or misrepresentation.

Proposed law authorizes the immediate termination of a customer's enrollment under a portable electronics insurance policy due to the following:

1. For nonpayment of premium.
2. If the enrolled customer ceases to have an active service with the vendor of portable electronics.
3. If the enrolled customer exceeds the aggregate limit of liability under the terms of the portable electronics insurance policy.

Proposed law provides that if an enrolled customer exhausts the aggregate limit of liability under the terms of the insurance policy, the insurer is required to send a notice of termination to the customer within 30 calendar days after exhaustion of the limit and is required to terminate the enrollment of that customer. Provides that if the notice of termination is not timely sent, coverage shall continue notwithstanding the exhaustion of the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

Proposed law provides that if the policy is terminated by a vendor, the vendor is required to mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. Requires the written notice to be mailed or delivered to the enrolled customer at least 30 days prior to termination.

Proposed law requires all notices or correspondence required by proposed law or otherwise

to be in writing. Authorizes that notices and correspondence be sent either by mail or by electronic means. Requires that if notice or correspondence is mailed, it be sent to the vendor or the enrolled customer at the mailing address on file with the insurer or vendor, and requires the insurer or vendor to maintain proof of the mailing. Requires that if notice or correspondence is sent electronically, it be sent to the vendor of portable electronics at the vendor's electronic mail address and to its affected enrolled customers' last known electronic mail addresses as provided by each enrolled customer to the insurer or vendor.

Proposed law provides that an enrolled customer who provides an electronic mail address to an insurer or vendor of portable electronics shall be deemed to consent to receiving notices and correspondence by electronic means. Requires the insurer or vendor to maintain proof that the notice or correspondence was sent.

Proposed law authorizes the required notices or correspondence to be sent on behalf of an insurer or vendor by a person licensed as an insurance producer in La. or any other person with whom the insurer or vendor contracts to perform such services on its behalf.

Proposed law creates insurance policies for portable electronics.

Proposed law provides the following definitions:

1. "Customer" means a person who purchases portable electronics or services.
2. "Enrolled customer" means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.
3. "Location" means any physical location in the state of Louisiana or any website, call center site, or similar location directed to residents of the state of Louisiana.
4. "Portable electronics" means electronic devices that are portable in nature, their accessories, and services related to the use of the device.
5. (a) "Portable electronics insurance" means insurance providing coverage for the repairs or replacement of portable electronics which may provide coverage for portable electronics against any one or more of the following causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage, or other similar causes of loss.
- (b) "Portable electronics insurance" does not include any of the following:
  - (i) A service contract or extended warranty providing coverage limited to the repair, replacement, or maintenance of property for the operational or structural failure of such property due to a defect in materials, workmanship, accidental damage from handling, power surges, or normal wear and tear.
  - (ii) A policy of insurance covering a seller's or a manufacturer's obligations under a warranty.
  - (iii) A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar policy.
6. "Portable electronics transaction" means any of the following:
  - (a) The sale or lease of portable electronics by a vendor to a customer.
  - (b) The sale of a service related to the use of portable electronics by a vendor to

a customer.

- 7.. "Vendor" means a person in the business of engaging in portable electronics transactions directly or indirectly.

Proposed law provides that the following requirements apply to the licensure of vendors of portable electronic devices:

1. A vendor is required to hold a limited lines license to sell or offer coverage under a policy of portable electronics insurance.
2. A limited lines license issued shall authorize any employee or authorized representative of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions. The vendor is responsible for the conduct and actions related to the sale or offering of portable electronics insurance of all employees and authorized representatives and any payment of the premium for portable electronic insurance to an employee or authorized representative is deemed payment to the vendor.
3. In connection with a vendor's application for licensure and upon license renewal, the vendor shall provide a list to the insurance commissioner of all locations in the state at which it offers coverage.

Proposed law requires that in conjunction with and at the time of the sale of every portable electronics insurance policy, the vendor present brochures or other written materials to a prospective customer which provide the following items:

1. Disclosure that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage.
2. Statement that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services.
3. Summarize the material terms of the insurance coverage, including the issuer's identity, the amount of any deductible, an explanation of benefits and terms, and the conditions of coverage such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or non-original manufacturer parts or equipment.
4. A summary of the process for filing a claim.
5. A statement that an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund or credit of any applicable unearned premium.

Proposed law requires establishment of eligibility and underwriting standards for customers electing to enroll in coverage shall be established for each portable electronics insurance program.

Proposed law provides that an employee or authorized representative of a vendor may sell or offer portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under proposed law provided that:

1. The vendor obtains a limited lines license to authorize its employees or authorized representatives to sell or offer portable electronics insurance pursuant to proposed law.

2. The vendor shall develop a training program for employees and authorized representatives of the vendor. The training required by proposed law shall comply with all of the following:
  - (a) The training shall be delivered to employees and authorized representatives of vendors who are directly engaged in the activity of selling or offering portable electronics insurance prior to the engagement in any sale or offer of portable electronics insurance to any customer by the employee or authorized representative.
  - (b) The training may be provided in electronic form.
  - (c) The training shall include instruction about the portable electronics insurance offered to customers and the disclosures required under proposed law.

Proposed law provides that employees or authorized representatives of a vendor of portable electronics shall not be compensated based primarily on the number of customers enrolled but may receive compensation for activities under the limited lines license which is incidental to their overall compensation.

Proposed law provides that charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics, and requires that any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services be separately itemized on the enrolled customer's bill. Provides that if the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance coverage is included with the portable electronics or related services. Further provides that vendors billing and collecting charges are not required to maintain these funds in a segregated account provided that the vendor is authorized by the insurer to hold the funds in an alternative manner and remits these amounts to the supervising entity within 60 days of receipt. Requires that all funds received by a vendor from an enrolled customer for the sale of portable electronics insurance be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Authorizes vendors to receive compensation for billing and collection services.

Proposed law provides that if a vendor of portable electronics or its employee or authorized representative violates any provision of proposed law or any other applicable provision of present law, the insurance commissioner may, after notice and opportunity for a hearing, take any one or more of the following actions:

1. Impose fines not to exceed \$500 per violation or \$5,000 in the aggregate for such conduct.
2. Suspend or revoke the limited lines license of the vendor.
3. Suspend the privilege of transacting portable electronics insurance at specific business locations where violations have occurred.
4. Suspend or revoke the ability of individual employees or authorized representatives to act under the license of the vendor.

Proposed law provides that an application for a license shall be made to and filed on forms prescribed and furnished by the commissioner and include the legal name of the applicant, the address of the home office of the applicant, the name and identifying information for all officers, all directors and all persons who own directly or indirectly 10% or more of the applicant and such other information as the commissioner may reasonably require. Further provides that any applicant whose stock is publicly traded and registered under the federal

securities laws or that is licensed pursuant to the Federal Communications Act of 1934, or any affiliate or subsidiary thereof, may, in lieu of providing the information for all officers, all directors and all persons who own directly or indirectly ten percent or more of the applicant, designate a single officer as the designated responsible person for the activities of the vendor pursuant to the limited lines portable electronics insurance license.

Proposed law requires that any vendor engaging in portable electronics insurance transactions on or before the effective date of proposed law apply for licensure within 90 days of the application being made available by the commissioner of insurance.

Proposed law provides that every license issued pursuant to proposed law shall expire on December 31 of the renewal year and may be renewed by the filing of a renewal application and payment of the fee required in proposed law.

Proposed law provides that any vendor licensed pursuant to the provisions of proposed law may authorize a third party to make any filing or notice other than the initial or renewal application required by proposed law with the department on behalf of the vendor.

Effective August 1, 2012.

(Adds R.S. 22:821(B)(34), 1431, and 1781.1-1781.6)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments proposed by Senate Committee on Insurance to the original bill.

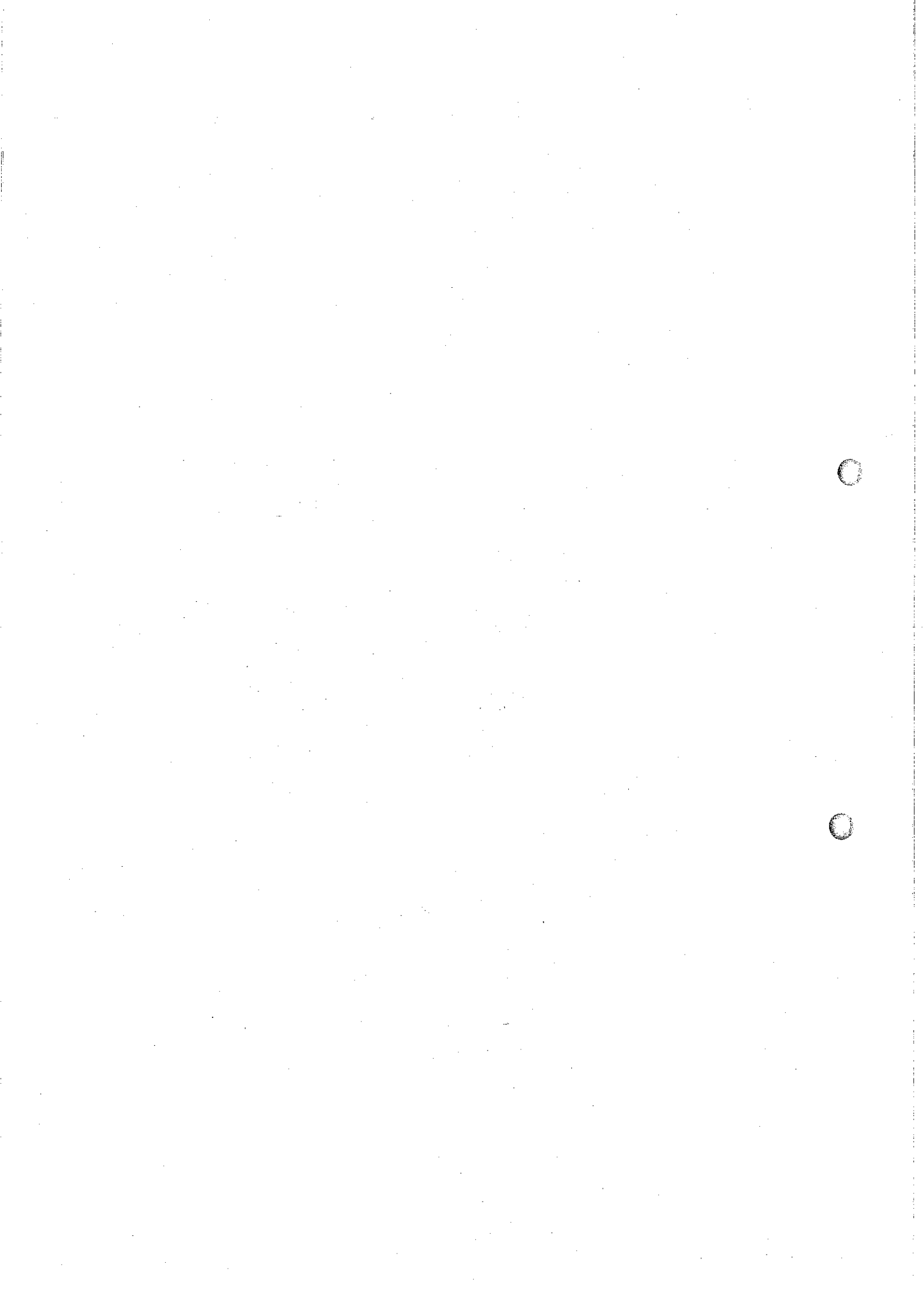
1. Require the commissioner of insurance to collect, in advance, an initial application license fee of \$200 and an application license renewal fee of \$100 for portable electronics insurance limited lines licenses.
2. Authorize an insurer to terminate or change the terms and conditions of a portable electronics insurance policy only upon 30 days' written notice to the vendor policyholder and enrolled customers.
3. Require an insurer to provide to the vendor policyholder a revised policy or endorsement and provide each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions occurred and provide a summary of any material change.
4. Authorize an insurer to terminate an enrolled customer's enrollment in a portable electronics insurance policy upon 15 days' written notice for fraud or material misrepresentation in obtaining coverage or for presenting a claim in connection with such fraud or misrepresentation.
5. Authorize the immediate termination of an enrolled customer's enrollment under a portable electronics insurance policy for nonpayment of premium, the cessation of active service with the vendor, and if the enrolled customer exceeds the aggregate limit of liability under the terms of the policy.
6. Require an insurer to terminate an enrolled customer's enrollment in a portable electronics insurance policy and to send a notice of termination to such enrolled customer within 30 days of the exhaustion of the aggregate limit of liability.
7. Require a vendor (if such vendor terminates a portable electronics insurance policy) to notify each enrolled customer of the termination of the policy and

the effective date of such termination in writing by mail or delivery at least 30 days prior to such termination.

8. Require all notices or correspondence to be in writing either by mail or electronic means to the mailing address or electronic mail address on file with the insurer or vendor, and requires the insurer or vendor to maintain proof that such notices or correspondence was sent.
9. Authorize notices or correspondence to be sent on behalf of an insurer or vendor by a person licensed as an insurance producer in La. or by any other person with whom the insurer or vendor contracts to perform such services on its behalf.
10. Remove the requirement for the supervising entity to maintain a registry of vendor locations authorized to sell or solicit portable electronics insurance coverage in La. and the inspection and examination requirement upon request by the commissioner.
11. Require the vendor to be responsible for the conduct and actions of its employees or authorized representatives, and specify that payment of any insurance premium to any employee or authorized representative is deemed to be payment to the vendor.
12. Require vendors to provide a list to the commissioner of all locations in La. at which it offers coverage.
13. Require vendors to develop a training program for employees and authorized representatives which includes instruction about the insurance offered to customers and the disclosures required by proposed law.
14. Require training to employees and authorized representatives prior to any sale or offer of insurance.
15. Authorizes the commissioner to impose fines and suspend and revoke licenses, business privileges, and individuals for violating the provisions of proposed law.
16. Specify requirements regarding a vendor licensing application.
17. Specify an expiration date of December 31 and authorizes the filing of a renewal application with the appropriate renewal fee.
18. Allow any licensed vendor to authorize a third party to make any filing or notice other than the initial or renewal application with the department on behalf of the vendor.

Senate Floor Amendments to engrossed bill.

1. Make technical changes.





Regular Session, 2012

SENATE BILL NO. 251

BY SENATOR MORRISH

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

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AN ACT

To enact 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 1942, 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. Part II-A of Chapter 7 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:1931 through 1942 is hereby enacted to read as follows:

**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**

1 Part, in order to obtain payments to which these insurance providers or persons  
2 are not entitled.

3 §1932. Definitions

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

6 (1) "Administrative adjudication" means adjudication and the  
7 adjudication process contained in the Administrative Procedure Act, R.S.  
8 49:950 et seq.

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

11 (3) "Attorney general" means the party authorized to institute a  
12 proceeding or take other authorized action as provided in this Part.

13 (4) "Billing" or "bill" means submitting, or attempting to submit, a  
14 claim for goods, services, or supplies.

15 (5) "Billing agent" means an agent of a person who performs any or all  
16 of the person's billing functions.

17 (6) "Claim" includes any request or demand, including any and all  
18 documents or information required by federal or state law or rule submitted to  
19 an insurer for payment. "Claim" may also include any entry or omission in a  
20 cost report or similar document, book of account, or any other document which  
21 supports, or attempts to support, the claim. A claim may be made through  
22 paper or electronic means. Each provided service may be treated as a separate  
23 claim or several services may be combined to form one claim.

24 (7) "Department" means the department of insurance.

25 (8) "False or fraudulent claim" means a claim submitted by a person or  
26 his billing agent knowing the claim to be false, fictitious, untrue, or misleading  
27 in regard to any material information. "False or fraudulent claim" shall also  
28 include a claim which is part of a pattern of incorrect submissions in regard to  
29 material information or which is otherwise part of a pattern in violation of

1 applicable federal or state law or rule.

2 (9) "Good, service, or supply" means any good, item, device, supply, or  
3 service for which a claim is made, or is attempted to be made, in whole or in  
4 part.

5 (10) "Illegal remuneration" means the solicitation, receipt, offer, or  
6 payment of any remuneration, including but not limited to kickbacks, bribes,  
7 and rebates, whether in cash or in kind, for the following:

8 (a) In return for referring an individual to a health care provider, or for  
9 referring an individual to another person for the purpose of referring an  
10 individual to a health care provider, or for the furnishing or arranging to  
11 furnish any good, supply, or service for which payment may be made, in whole  
12 or in part, under an insurance plan.

13 (b) In return for purchasing, leasing, or ordering, or for arranging for  
14 or recommending purchasing, leasing, or ordering, any good, supply, or service,  
15 or facility for which payment may be made, in whole or in part, under an  
16 insurance plan.

17 (c) To a recipient of goods, services, or supplies, or his representative, for  
18 which payment may be made, in whole or in part, under an insurance plan.

19 (11) "Ineligible member" means an individual who is not eligible to  
20 receive insurance benefits under an insurance contract.

21 (12) "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 Title, a health maintenance organization shall be deemed an insurer for  
25 purposes of this Part.

26 (13) "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 (14) "Managing employee" means a person who exercises operational

1 or managerial control over, or who directly or indirectly conducts, the  
2 day-to-day operations of a person. "Managing employee" shall include but is  
3 not limited to a chief executive officer, president, general manager, business  
4 manager, administrator, or director.

5 (15) "Member" means an individual who is eligible to receive insurance  
6 benefits through an insurance contract.

7 (16) "Misrepresentation" means the knowing failure to truthfully or  
8 fully disclose any and all information required, or the concealment of any and  
9 all information required, on a claim or a provider agreement, or the making of  
10 a false or misleading statement to the department relative to an insurance  
11 program.

12 (17) "Order" means a final order imposed pursuant to an  
13 administrative, civil, or criminal adjudication.

14 (18) "Ownership interest" means the possession, directly or indirectly,  
15 of equity in the capital or the stock, or the right to share in the profits, of an  
16 entity.

17 (19) "Payment" means the payment to a person from an insurer  
18 pursuant to a claim, or the attempt to seek payment for a claim.

19 (20) "Person" means any person furnishing or claiming to furnish a  
20 good, service, or supply who is compensated by insurance proceeds as well as  
21 any other entity defined as a person by federal or state law or rule and a person-  
22 in-fact.

23 (21) "Person-in-fact" means an agent who directly or indirectly  
24 participates in management decisions, has an ownership interest in the person,  
25 or other persons defined as a person-in-fact by federal or state law or rule.

26 (22) "P.O.S.T.-certified" means peace officer standards and training  
27 certified as established by the Louisiana Peace Officer Standards and Training  
28 Council.

29 (23) "Property" means any and all property, movable and immovable.

1           corporeal and incorporeal.

2           (24) "Provider agreement" means a document required as a condition  
3           of enrollment or participation as a person in an insurance program.

4           (25) "Recoupment" means recovery through the reduction, in whole or  
5           in part, of payment to a person.

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

9           (27) "Rule" means any rule or regulation promulgated by the  
10           department in accordance with the Administrative Procedure Act and any  
11           federal rule or regulation promulgated by the federal government in accordance  
12           with federal law.

13           (28) "Sanction" shall include but is not limited to any or all of the  
14           following:

15                   (1) Recoupment.

16                   (2) Posting of bond, other security, or a combination thereof.

17                   (3) Exclusion as a person.

18                   (4) A monetary penalty.

19           §1933. False or fraudulent claim; misrepresentation; prescription

20                   A. No person shall knowingly present or cause to be presented a false or  
21           fraudulent claim in violation of R.S. 22:1924.

22                   B. No person shall knowingly engage in misrepresentation or make, use,  
23           or cause to be made or used, a false record or statement to obtain payment for  
24           a false or fraudulent claim from an insurer.

25                   C. No person shall knowingly make, use, or cause to be made or used,  
26           a false record or statement to conceal, avoid, or decrease an obligation to pay  
27           or transmit money or property to an insurer.

28                   D. No person shall conspire to defraud, or attempt to defraud, an  
29           insurer through misrepresentation or by obtaining, or attempting to obtain,

1 payment for a false or fraudulent claim.

2 E. Each violation of this Part may be treated as a separate violation or  
3 may be combined into one violation at the option of the attorney general.

4 F. Where the person is providing medical services, no person shall  
5 knowingly submit a claim for goods, services, or supplies which are medically  
6 unnecessary or which were of substandard quality or quantity.

7 G. No action brought pursuant to this Part shall be instituted later than  
8 ten years after the date upon which the alleged violation occurred. For  
9 violations involving a scheme or course of conduct, no action pursuant to this  
10 Part shall be instituted more than ten years after the latest event formula  
11 component of the scheme or course of conduct.

12 §1934. Civil actions authorized

13 A. The attorney general may institute a civil action in the courts of this  
14 state to seek recovery from any person or persons who violate the provisions of  
15 this Part.

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

20 C. (1) A prevailing defendant may seek recovery only for costs, expenses,  
21 fees, and attorney fees if the court finds, following a contradictory hearing, that  
22 either of the following applies:

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

27 (b) The attorney general proceeded with an action properly instituted  
28 pursuant to Subsection A of this Section after it should have been determined  
29 by the attorney general that proceeding would be frivolous, vexatious, or for the

1           purpose of harassment.

2                   (2) Recovery awarded to a prevailing defendant shall be awarded only  
3           for those reasonable, necessary, and proper costs, expenses, fees, and attorney  
4           fees actually incurred by the prevailing defendant.

5                   D. An action by a prevailing defendant to recover costs, expenses, fees,  
6           and attorney fees may be brought no later than sixty days after the rendering  
7           of a final nonappealable judgment.

8           §1935. 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, except that the defendant shall carry the  
11          burden of proving that goods, services, or supplies were actually provided to an  
12          eligible recipient in the quantity and quality submitted on a claim. In all other  
13          aspects, the burden of proof shall be as set forth in the Code of Civil Procedure  
14          and other applicable laws.

15                  B. Proof by a preponderance of the evidence of a false or fraudulent  
16          claim or illegal remuneration shall be deemed to exist under the following  
17          circumstances:

18                   (1) If the defendant has pled guilty to, been convicted of, or entered a  
19          plea of nolo contendere to, or participated in a pre-trial diversion program for  
20          a criminal charge in any federal or state court when such charge arises out of  
21          circumstances which would be a violation of this Part.

22                   (2) If an order has been rendered against a defendant finding the  
23          defendant to have violated this Part.

24                  C.(1) The submission of a certified or true copy of an order, civil  
25          judgment, or criminal conviction or plea shall be prima facie evidence of the  
26          same.

27                  (2) The submission of the bill of information or of the indictment and the  
28          minutes of the court shall be prima facie evidence as to the circumstances  
29          underlying a criminal conviction or plea.

1           D.(1) In determining whether a pattern of incorrect submissions exists  
2           in regard to an alleged false or fraudulent claim, the court shall give  
3           consideration to the materiality of the total amount of the incorrect submissions  
4           by a person in relation to the total claims submitted by the person.

5           (2) "Material" or "materiality" as used in this Subsection shall have the  
6           same meaning as defined by rules and regulations promulgated by the attorney  
7           general in accordance with the Administrative Procedure Act which incorporate  
8           the definition of "material" or "materiality" recognized by the American  
9           Institute of Certified Public Accountants.

10          §1936. Civil monetary penalty

11           A. In a civil action instituted in the courts of this state pursuant to the  
12           provisions of this Part, the attorney general may seek a civil monetary penalty  
13           provided in R.S. 22:1934 from any of the following:

14           (1) Any person sanctioned by order pursuant to an administrative  
15           adjudication.

16           (2) Any person determined by a court of competent jurisdiction to have  
17           violated any provision of this Part.

18           (3) Any person who has violated a settlement agreement entered into  
19           pursuant to this Part.

20           (4) A person who has been charged with a violation of R.S. 22:1924.

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

23           (6) A person who has entered a plea of guilty or nolo contendere to or  
24           has participated in a pre-trial diversion program for, or has been convicted in  
25           federal or state court of criminal conduct arising out of circumstances which  
26           would constitute a violation of this Part.

27           B.(1) If a person is sanctioned by order pursuant to an administrative  
28           adjudication and if judicial review of the order is sought, a civil suit may be  
29           filed for imposition and recovery of the civil monetary penalty during the



1 pendency of such judicial review. The reviewing court may consolidate both  
2 actions and hear them concurrently.

3 (2) If judicial review of an order is sought, the attorney general shall file  
4 the action for recovery of the civil monetary penalty within one year of service  
5 of the petition seeking judicial review of the order.

6 (3) If no judicial review of an order is sought, the attorney general may  
7 file the action for recovery of the civil monetary penalty within one year of the  
8 date of the order.

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

12 C. In the instance of a state criminal action, the action for recovery of  
13 the civil monetary penalty may be brought as part of the criminal action either  
14 through a bill of information or through a motion filed by the attorney general's  
15 office; otherwise such action shall be brought within one year of the date of the  
16 criminal conviction or final plea.

17 D.(1) In the case of a civil judgment rendered in federal court, the action  
18 for recovery of the civil monetary penalty may be brought once the judgment  
19 becomes enforceable and no later than one year after written notification to the  
20 attorney general of the enforceable judgment.

21 (2) In the case of a criminal conviction or plea in federal court, the  
22 action pursuant to this Section may be brought once the conviction or plea is  
23 final and no later than one year after written notification to the attorney general  
24 of the rendering of the conviction or final plea.

25 (3) Any action brought under the provisions of this Subsection shall be  
26 filed in the Nineteenth Judicial District Court for the parish of East Baton  
27 Rouge.

28 E. If an action is brought pursuant to this Part, the request for the  
29 imposition of a civil monetary penalty shall only be considered if made part of

1 the original or amended petition either through a bill of information or through  
2 a motion filed by the attorney general's office.

3 §1937. 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 should have been paid had not a violation  
10 of this Part occurred, plus interest at the maximum rate of legal 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 health care provider contracted  
15 with a health insurer, actual damages shall be determined in accordance with  
16 the violator's provider agreement.

17 B. Civil fine. (1) Any person who is found to have violated R.S. 22:1924  
18 or 1933 shall be subject to a civil fine in an amount not to exceed ten thousand  
19 dollars per violation, or an amount equal to three times the value of the illegal  
20 remuneration, whichever is greater.

21 (2) Except as limited by this Section, any person who is found to have  
22 violated R.S. 22:1924 or 1933 shall be subject to a civil fine in an amount not to  
23 exceed three times the amount of actual damages sustained by the insurer as a  
24 result of the violation.

25 C. Civil monetary penalty. (1) In addition to the actual damages  
26 provided in Subsection A of this Section and any civil fine imposed pursuant to  
27 Subsection B of this Section, one or more of the following civil monetary  
28 penalties shall be imposed on the violator:

29 (a) Not less than five thousand dollars but not more than ten thousand

1 dollars for each false or fraudulent claim, misrepresentation, illegal  
2 remuneration, or other prohibited act provided in R.S. 22:1924 or 1933.

3 (b) Payment of interest on the amount of the civil fine imposed pursuant  
4 to Subsection B of this Section at the maximum rate of legal interest provided  
5 by R.S. 13:4202 from the date the damage occurred to the date 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. 22:1938.

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

12 (2) All awards of costs, expenses, fees, and attorney fees are subject to  
13 review by the court using a reasonable, necessary, and proper standard of  
14 review.

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

18 §1938. Waiver; extenuating circumstances

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

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

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

28 (3) At the time the violator furnished the information concerning the  
29 specific allegation to the department or the attorney general, no criminal, civil,

1 or departmental investigation or proceeding had been commenced as to the  
2 alleged violation.

3 §1939. Deposit of monies collected

4 All monies collected pursuant to this Part, minus actual damages  
5 incurred in pursuing a judgment or conviction, shall be dedicated to and  
6 deposited into the Insurance Fraud Investigation Fund pursuant to R.S.  
7 40:1428(C).

8 §1940. Civil investigative demand

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

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

1       demand issued to non-resident or a foreign business entity may be served using  
2       long-arm jurisdiction as provided for in the Louisiana Code of Civil Procedure.

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

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

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

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

1 who produced the material, shall return to such person or entity any such  
2 material which has not passed into the control of any court, grand jury, or  
3 agency through introduction into the record of such case or proceeding.

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

9 §1941. Investigative deposition

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

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

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

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

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

13 §1942. Asset forfeiture

14 A. In accordance with the provisions of Subsection B of this Section, the  
15 court may order the forfeiture of property to satisfy recovery under the  
16 following circumstances:

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

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

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

29 C. If property is transferred to another person within six months prior

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

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

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

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DIGEST

Creates the Louisiana Insurance Fraud Prevention Act.

Effective August 1, 2012.

(Adds R.S. 22:1931–1942)