

**A-Engrossed**  
**Senate Bill 401**

Ordered by the Senate May 3  
Including Senate Amendments dated May 3

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

*[Modifies definition of "previous conviction" and "prior conviction" for certain criminal statutes.]*  
*[Requires Oregon Criminal Justice Commission to modify method of calculating offender's criminal history for purposes of sentencing guidelines grid of commission.]*  
*[Declares emergency, effective on passage.]*

**Creates crime of insurance fraud. Punishes by, if amount concerned is \$10,000 or more, maximum of 10 years' imprisonment, \$250,000 fine, or both. Punishes by, if amount concerned is \$1,000 or more and less than \$10,000, maximum of five years' imprisonment, \$125,000 fine, or both. Punishes by, if amount concerned is less than \$1,000, maximum of one year's imprisonment, \$6,250 fine, or both.**

**Creates statutory right of insurer who is victim of insurance fraud to civil cause of action for recovery of amount concerned unless restitution has been ordered by court in criminal proceeding.**

**A BILL FOR AN ACT**

1  
2 Relating to crime; creating new provisions; and amending ORS 165.692 and 743.028.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) A person commits the crime of insurance fraud if the person, with intent**  
5 **to deceive or to defraud:**

6 (a) **Provides false material information or makes or causes to be made a material mis-**  
7 **representation in connection with a claim for an insurance benefit, a payment for a loss or**  
8 **a recovery;**

9 (b) **Fails to decline, refuse or return an insurance benefit, a payment for a loss or a re-**  
10 **covery to which the person is not entitled by reason of an insurer's mistake or other facts**  
11 **or circumstances connected with the person's claim or the coverage provided by an applica-**  
12 **ble insurance policy;**

13 (c) **Conceals from or fails to disclose to an insurer the occurrence of an event or the**  
14 **existence of any information that would cause the insurer not to provide an insurance ben-**  
15 **efit, a payment for a loss or a recovery to which the person is not entitled;**

16 (d) **Obtains or retains an insurance benefit, a payment for a loss or a recovery in an**  
17 **amount greater than that to which the person is entitled under the insurance policy; or**

18 (e) **Makes or causes to be made during an official proceeding, as defined in ORS 162.105,**  
19 **a false material statement in connection with an insurance claim.**

20 **(2) Violation of subsection (1) of this section is:**

21 **(a) A Class B felony if the value of the benefit or the amount paid or to be paid for a loss**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 or recovery is \$10,000 or more.

2 (b) A Class C felony if the value of the benefit or the amount paid or to be paid for a loss  
3 or recovery is \$1,000 or more and less than \$10,000.

4 (c) A Class A misdemeanor if the value of the benefit or the amount paid or to be paid  
5 for a loss or recovery is less than \$1,000.

6 (3) A court may order a person convicted of the crime of insurance fraud, in addition to  
7 and not in lieu of the penalties set forth in subsection (2) of this section, to make restitution  
8 to the insurer for the value of any benefit that the person obtained or for the amount paid  
9 to the person for a loss or recovery.

10 **SECTION 2.** A district attorney or the Attorney General may commence a prosecution  
11 for violation of section 1 of this 2011 Act.

12 **SECTION 3.** A prosecuting attorney shall notify the Director of the Department of Con-  
13 sumer and Business Services and any appropriate regulatory body or professional licensing  
14 board of the conviction of a person for violation of section 1 of this 2011 Act.

15 **SECTION 4.** (1) An insurer shall have a civil cause of action to recover the value of  
16 benefits provided to, or payments or recoveries obtained by, a person convicted of insurance  
17 fraud under section 1 of this 2011 Act unless the person convicted has made or has been  
18 ordered to make restitution under section 1 (3) of this 2011 Act.

19 (2) An insurer, after obtaining a judgment under subsection (1) of this section, shall no-  
20 tify the Department of Consumer and Business Services, the National Association of Insur-  
21 ance Commissioners or the National Insurance Crime Bureau and any appropriate regulatory  
22 body or professional licensing board of the judgment obtained.

23 **SECTION 5.** (1) A person may provide information, including a report or oral or written  
24 evidence of testimony, concerning insurance fraud that the person reasonably suspects or  
25 anticipates or that the person knows has occurred to the Department of Consumer and  
26 Business Services, to the National Insurance Crime Bureau, to the National Association of  
27 Insurance Commissioners, to a law enforcement agency or to an insurer.

28 (2) If a person in good faith provides information in accordance with subsection (1) of this  
29 section for the purpose of preventing, investigating or prosecuting insurance fraud, the per-  
30 son is not liable for civil damages as a result of providing the information.

31 (3) An insurer that reasonably believes that a person has committed, is committing or  
32 is about to commit an act that may constitute the crime of insurance fraud under section 1  
33 of this 2011 Act shall disclose all material information concerning the crime to the National  
34 Insurance Crime Bureau or the National Association of Insurance Commissioners and to the  
35 Department of Consumer and Business Services. The insurer shall cooperate with the de-  
36 partment in any investigation the department or a prosecuting attorney conducts or any  
37 prosecution that a prosecuting attorney commences under section 2 of this 2011 Act.

38 **SECTION 6.** Section 7 of this 2011 Act is added to and made a part of the Insurance Code.

39 **SECTION 7.** (1) An insurer, on all insurance policy applications and on all insurance  
40 claim forms the insurer issues or provides to an insured, shall attach or incorporate the  
41 following notice prominently displayed in boldfaced type:

42 \_\_\_\_\_

43  
44 **NOTICE**  
45 **FOR YOUR PROTECTION, OREGON LAW REQUIRES THAT YOU BE INFORMED THAT**

1 **PRESENTING A FRAUDULENT CLAIM FOR AN INSURANCE BENEFIT OR A PAYMENT**  
2 **FOR A LOSS OR A RECOVERY IS A CRIME PUNISHABLE BY FINES OR IMPRISONMENT,**  
3 **OR BOTH.**

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6 **(2) The absence of the notice described in subsection (1) of this section is not a defense**  
7 **to a charge of insurance fraud under section 1 of this 2011 Act.**

8 **SECTION 8.** ORS 165.692 is amended to read:

9 165.692. A person commits the crime of making a false claim for health care payment when the  
10 person, **with intent to deceive or to defraud:**

11 (1) [*Knowingly*] Makes or causes to be made a claim for health care payment that contains any  
12 false **material** statement or [*false representation of a material fact*] **material misrepresentation** in  
13 order to receive a health care payment; [*or*]

14 (2) [*Knowingly*] Conceals from or fails to disclose to a health care payor the occurrence of any  
15 event or the existence of any information with the intent to obtain a health care payment to which  
16 the person is not entitled, or to obtain or retain a health care payment in an amount greater than  
17 that to which the person is or was entitled[.]; **or**

18 **(3) Submits or causes to be submitted a claim for a health care payment for health care**  
19 **services that the person did not use or that were not provided to the person.**

20 **SECTION 9.** ORS 743.028 is amended to read:

21 743.028. (1) The Director of the Department of Consumer and Business Services shall prescribe  
22 uniform health insurance claim forms [*which shall*] **that must** be used by all insurers transacting  
23 health insurance in this state and by all state agencies that require health insurance claim forms  
24 for their records.

25 **(2) All health insurance claim forms prescribed under subsection (1) of this section must**  
26 **contain or have attached to them the following notice prominently displayed in boldfaced**  
27 **type:**

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29  
30 **NOTICE**

31 **FOR YOUR PROTECTION, OREGON LAW REQUIRES THAT YOU BE INFORMED THAT**  
32 **PRESENTING A FRAUDULENT CLAIM FOR A HEALTH CARE PAYMENT FOR HEALTH**  
33 **CARE SERVICES THAT YOU DID NOT USE OR THAT WERE NOT PROVIDED TO YOU IS**  
34 **A CRIME PUNISHABLE BY FINES OR IMPRISONMENT, OR BOTH.**

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37 **(3) The absence of the warning described in subsection (2) of this section is not a defense**  
38 **to a charge of making a false claim for a health care payment under ORS 165.692.**

39 **SECTION 10.** Sections 1 to 5 and 7 of this 2011 Act and the amendments to ORS 165.692  
40 and 743.028 by sections 8 and 9 of this 2011 Act apply to all insurers in operation on or after  
41 the effective date of this 2011 Act and to all applications and claims for insurance, insurance  
42 benefits, payments for losses or recoveries and health care payments obtained, provided or  
43 delivered, as appropriate, on or after the effective date of this 2011 Act.

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