

# CORRECTIONS IMPACT STATEMENT

SESSION: 18RS

BILL #: HB 323 SCS 1

BR #: 463

DOC ID#: HB032340.100 - 463 - XXXX

BILL SPONSOR(S): Rep. S. Riggs

AMENDMENT SPONSOR(S):

SUBJECT: AN ACT relating to crimes affecting insurance.

**SUMMARY OF LEGISLATION:** Amend KRS 304.47-020 to make technical corrections, establish range of criminal penalties resulting from conviction of insurance fraud, allow restitution to insurers that have contracted to indemnify a victim, remove conviction requirement for creating private cause of action for persons damaged by violation of statute; amend KRS 431.200, 532.032, 532.034, 532.160, 532.350, 533.030, 533.254, and 610.030 to allow restitution to insurers that have contracted to indemnify a victim, amend KRS 439.3107, 439.563, 532.162, 532.356, 532.358, and 446.010 to conform.

This  bill  amendment  committee substitute is expected to:

Have the following Corrections impact  Have no Corrections impact

Creates new crime(s)

Increases penalty for existing crime(s)

Increases incarceration

Reduces inmate/offender services

Increases staff time or positions

Changes elements of offense for existing crime(s)

Otherwise impacts incarceration (Explain) \_\_\_\_\_

Repeals existing crime(s)

Decreases penalty for existing crime(s)

Decreases incarceration

Increases inmate/offender services

Reduces staff time or positions

**STATE IMPACT:** Class A, B & C felonies are based on an average daily prison rate of \$70.12. Most Class D felons are housed in one of 76 full service jails for up to 5 years. DOC's cost to incarcerate a felony inmate in a jail is \$31.45 per day (includes jail per diem, medical & central office costs), not including substance abuse treatment. Projections are based on the daily rate x 365 x number of years.

**Projected Impact:**

NONE

MODERATE (< \$1 million)

SIGNIFICANT (> \$1 million)

The bill provides clarification through defined offense levels for offenses under KRS 304.47-020. Currently, for Fraudulent Insurance Acts, the law simply specifies either a misdemeanor or felony based on the amount. Section 1 of the bill provides a range of felony offense levels based on amounts: a Class A misdemeanor if under \$500, a Class D felony if between \$500 and \$10,000, a Class C felony if between \$10,000 and \$1 million, and a Class B felony if \$1 million or more. The bill also includes Engaging in Organized Crime under KRS 506.120, which is a Class B felony. Fine amounts are also specified.

Victim restitution is expanded to include an insurer that has contracted to indemnify a victim. The requirement of a criminal adjudication of guilt is removed for the purposes of recovering compensatory damages.

Several statutes are amended to allow restitution to insurers who have contracted to indemnify victims. The definition of restitution in KRS 532.350 is amended accordingly. Where applicable in statute, "victim restitution" is replaced simply with "restitution" or wording is revised to remove a requirement of "direct" financial loss. KRS 533.030 is amended to require the Court to include restitution to a government agency or insurer when imposing sentences. Victim restitution shall have priority over restitution to a government agency or insurer.

The expanded definition of restitution may result in more restitution orders for offenders under the supervision of Division of Probation & Parole. Restitution obligations can extend supervision timeframes until restitution is paid in full. KRS 439.563 extends parole supervision while KRS 532.033 speaks to extending probation supervision until restitution is paid in full.

The Department currently has 135 offenders incarcerated and 284 offenders on supervision for the offense of Engaging in Organized Crime. The Department also has five (5) inmates and thirty-six (36) offenders on supervision for Fraudulent Insurance Acts, one (1) of which is a misdemeanor offense.

AOC data indicates seventeen (17) misdemeanor convictions and four (4) felony convictions for Fraudulent Insurance Acts in FY2017. As currently the felony amount is only recorded as over \$500, the amount of the offense is not known. It is not known therefore, of these current Class D offenders how many may have fraud amounts which, if convicted under HB 323, would qualify for the higher Class C or Class B offense level.

Information from the Department of Insurance indicates from their records that approximately 40% of similar cases would fall in the Class D range while most offenses would fall in the Class C range, with only a few offenders meeting the Class B range.

Class C offenders not meeting community custody qualifications and Class B offenders would be incarcerated at a higher incarceration cost of \$70.12 per day in a prison facility. Class D offenders are housed at the class D jail facility at a cost of \$31.34 per day.

House Floor Amendment:

The House Floor Amendment amends the amounts contained in KRS 304.47-020 Fraudulent Insurance Acts. The proposed Class D felony range is moved from \$500 to \$10,000 and increased from \$10,000 to \$100,000; while the proposed Class C felony range is raised from \$10,000 to \$100,000 or more.

Currently, any amount over \$500 is a Class D felony and there is no designation of a higher penalty for this offense. As the Department does not track amounts, there is no way to know how many offenders would fall in the Class D range (\$10,000 to \$100,000) vs. the Class C range (\$100,000 to \$1,000,000). It would be anticipated that fewer offenders would be convicted of an amount over \$100,000, therefore more offenders would receive a Class D felony than a Class C felony under the House Floor Amendment.

Though not specific to the House Floor Amendment, overall, this bill would significantly impact the Department of Corrections through the expansion of restitution for insuring entities, resulting in increased orders for restitution, restitution orders for larger amounts, and the subsequent retention of offenders on supervision until restitution is paid in full.

Senate Committee Substitute:

Under the Senate Committee Substitute, the bill is returned to original statute language for Fraudulent Insurance Acts with a misdemeanor and felony offense outlined at the \$500 threshold, eliminating the felony range as proposed in the bill as introduced and amended in the House Floor Amendment.

Also deleted is wording in the original bill to order restitution to an insurer contracted to indemnify a victim. Additionally, the bill removes the conviction requirement for private action to recover compensatory damages for persons damaged by violation of statute under this section. Sections 2-15 of the bill are deleted.

The Senate Committee Substitute impacts the Department by reducing the higher level felony ranges which carry longer sentences and higher incarceration costs. Also removed is the proposal to modify restitution as currently applicable by statute.

A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$114,808 to \$574,040
1 Class D Felon costs KY \$11,481 to \$57,404	100 Class D Felons cost KY \$1.1M to \$5.7M
A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1.3M to \$2.6M
1 Class C Felon costs KY \$127,972 to \$255,944	100 Class C Felons cost KY \$12.8M to \$25.6M
A Class B Felony sentence is 10 to 20 years.	10 Class B Felons cost KY \$2.6M to \$5.1M
1 Class B Felon costs KY \$255,944 to \$511,889	100 Class B Felons cost KY \$25.6M to \$51.2M

**LOCAL IMPACT:** Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until disposition of the case. While the expense varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

**Projected Impact:**  NONE  MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

Under this legislation, there could be offenses of Fraudulent Insurance Acts which would no longer qualify as a Class D level offense, instead incurring a higher felony offense level. Some Class C felonies would qualify for housing at a jail facility, but Class B offenders would not. To be eligible for community custody, Class C offenders would be classified at the lowest custody level with eighteen (18) months or less to expiration or parole eligibility.

The bill does contain a misdemeanor offense, but under the legislation, there would be no change to the number of offenders incurred.

Given the limited number of offenders, it is not believed this bill would have a substantial impact to incarceration.

House Floor Amendment:

Based on the proposed increase to felony ranges under the House Floor Amendment, it would be anticipated that more offenders would receive a Class D conviction than a Class C conviction for Fraudulent Insurance Acts. Therefore more offenders would be subject to housing at a county jail facility than under the original bill, where a larger number of offenders would have fallen into the Class C range under the bill as introduced.

State inmates subject to housing at the local jail facilities provides an opportunity for revenue for jails; however, in times of limited bed capacity any number of additional offenders does impact jail populations.

The Department does not track the amounts of the offense and therefore is not able to predict how many offenders would fall into each of the proposed felony ranges. Overall, the number of offenders incarcerated for Fraudulent Insurance Acts is not expected to be significant.

Senate Committee Substitute:

Under the Senate Committee Substitute, the higher penalty range for Fraudulent Insurance Acts is removed, leaving felony offenders incarcerated for this offense to serve their sentence in the Class D jail facility. There is no change at the misdemeanor level.

A Class A misdemeanor is 90 days to 1 year in jail

10 Class A misdemeanants: \$28,206 to \$114,391

1 Class A misdemeanor: \$2,821 to \$11,439

100 Class A misdemeanants: \$282,060 to \$1,143,910

**The following offices contributed to this Corrections Impact Statement:**

Dept. of Corrections    Dept. of Kentucky State Police    Administrative Office of the Courts    Parole Board    Other

**NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population or that impose new obligations on state or local governments. The Department of Corrections and local jails continue to operate over capacity. Without steps to reduce the population, any legislation that increases population or lengthens the term of incarceration will have a significant impact on correctional operations.**

APPROVED BY:

  
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Deputy Commissioner, Kentucky Department of Corrections

3/26/2018  
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Date