

CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # HB 151 SCS 1 BR # 830 DOC ID #: HB015140.100 - 830 - XXXX

BILL SPONSOR(S): Rep. J. Fischer AMENDMENT SPONSOR(S): . .

SUBJECT: AN ACT relating to insurance fraud.

SUMMARY OF LEGISLATION: Amend KRS 304.47-020 to establish a range of criminal penalties resulting from conviction of insurance fraud; amend KRS 304.47-050 to require certain Kentucky health professional boards to report suspected insurance fraud to the Department of Insurance's Division of Insurance Fraud Investigation and to require the boards to provide information requested by the insurance commissioner; amend KRS 189.635 to require the Department of Kentucky State Police to redact vehicle accident reports provided to news-gathering organizations; provide an exception to redaction for up to three reports per day; make technical revisions; create a new section of Subtitle 39 of KRS Chapter 304 to prohibit physician self-referrals of health care services for which payment may be made from basic reparations benefits provided under the Motor Vehicle Reparations Act; incorporate exceptions provided in federal law; require refund of amounts collected in violation of section; amend KRS 304.99-060 to establish civil penalties for violation of Section 4 of the Act; amend KRS 311.597 to deem violation of Section 4 or 5 of the Act by a physician "dishonorable, unethical, or unprofessional conduct."

AMENDMENT: Retain original provisions, except amend KRS 189.635 to provide certain reports to news-gathering organizations; revise definitions of news-gathering organization and personal information; revise requirements for redaction of reports.

AMENDMENT: Retain original provisions, except amend KRS 189.635 to add vehicle identification numbers to definition of "personal information;" amend new section of Subtitle 39 of KRS Chapter 304 to add definition of "health care provider" and to modify requirements of that section; apply self-referral prohibition to health care providers; amend to include added reparations benefits and referrals made to entities; amend to include exemption for conduct or activity which is permitted or protected under 42 U.S.C. sec. 1320A-7B(b)(3); amend KRS 304.99-060, 309.362, 311.597, 311A.060, 311B.160, 312.150, 313.080, 314.091, 314A.225, 315.121, 319.082, 319A.190, 319B.140, 320.310, 327.070, and 333.190 to conform.

This bill amendment committee substitute is expected to:

Have the following Corrections impact **Have no Corrections impact**

- | | |
|---|--|
| <input type="checkbox"/> Creates new crime(s) | <input type="checkbox"/> Repeals existing crime(s) |
| <input checked="" type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input checked="" type="checkbox"/> Increases incarceration | <input type="checkbox"/> Decreases incarceration |
| <input type="checkbox"/> Reduces inmate/offender services | <input type="checkbox"/> Increases inmate/offender services |
| <input type="checkbox"/> Increases staff time or positions | <input type="checkbox"/> Reduces staff time or positions |
| <input type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) . | |

STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$71.10. 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 \$32.78 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 MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

HB 151 establishes a range of criminal penalties for insurance fraud under KRS 304.47-020. Currently, based on the amount, the law specifies either a misdemeanor or felony offense for Fraudulent Insurance Acts. Section 1 of the bill adds a larger range of 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 specified.

Under the legislation, several Kentucky Boards would be required to report insurance fraud under KRS 304.47-050. KRS 189.635 discusses open records requirements and redaction exceptions for vehicle accident reports. The legislation also prohibits the referral of health care services to a person or entity with whom a financial relationship of ownership or investment interest or compensation arrangement exists, with civil penalties outlined. The prohibition is added to the licensing authority of several professions.

The Department currently has 142 offenders incarcerated and 324 offenders on supervision for the offense of Engaging in Organized Crime.

The Department has four (4) inmates and sixty-five (65) offenders on supervision for felony Fraudulent Insurance Acts Over \$500, plus an additional two (2) offenders on supervision for the misdemeanor offense of Fraudulent Insurance Acts \$500 or Less.

AOC data indicates nineteen (19) misdemeanor convictions and twenty-two (22) felony convictions for Fraudulent Insurance Acts in FY2018. Additionally, there were fifty-two (52) convictions for Engaging in Organized Crime. (Note: numbers include inchoate offenses.)

As currently the felony amount is only recorded as being over \$500, the exact amount of the offense is not known. It is not known how many of the current Class D offenders may have fraud amounts which, if convicted under HB 151, would qualify for the higher Class C or Class B offense level.

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.

Previous estimates from the Department of Insurance reflect that under the proposed legislation most offenses would fall in the Class C range, with several in the Class D range and only a few offenders in 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 \$71.10 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.

Overall, the number of offenders incarcerated for Fraudulent Insurance Acts is not expected to be significant.

A Class B Felony sentence is 10 to 20 years.	10 Class B Felons cost KY \$2,595,061.12 to \$5,190,122.23
1 Class B Felon costs KY \$259,506.11 to \$519,012.22	100 Class B Felons cost KY \$25,950,611.17 to \$51,901,222.33
A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1,297,530.56 to \$2,595,061.12
1 Class C Felon costs KY \$129,753.06 to \$259,506.11	100 Class C Felons cost KY \$12,975,305.58 to \$25,950,611.17
A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$119,648.71 to \$598,243.56
1 Class D Felon costs KY \$11,965.87 to \$59,824.36	100 Class D Felons cost KY \$1,196,487.11 to \$5,982,435.57

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 MINIMAL to 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 under community custody, but Class B offenders would not.

State inmates who would no longer be eligible to be housed at a local jail facility based on a higher felony level would reduce revenue for jails. However, in times of limited bed capacity this could provide a limited measure of relief in jail overcrowding. Overall, however, the number of offenders serving on Fraudulent Insurance Acts is small.

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.

A Class A misdemeanor is 90 days to 1 year in jail.
1 Class A misdemeanor: \$2,820.60 to \$11,439.10

10 Class A misdemeanants: \$28,206.00 to \$114,391.00
100 Class A misdemeanants: \$282,060.00 to \$1,143,910.00

Projected Corrections Impact from Amendments:

The House Committee Substitute incorporates revisions related to public access to accident reports. There is no impact to incarceration under the House Committee Substitute.

The Senate Committee Substitute contains modifications and additions surrounding self-referral prohibitions for health care providers and civil penalties. There is no impact to incarceration under the Senate Committee Substitute.

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:  3/7/2019
Deputy Commissioner, Kentucky Department of Corrections Date