

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0373	Date: February 10, 2014
Prime Sponsor(s): Sen. Rivera Rep. Williams	Bill Status: Senate Judiciary
	Fiscal Analyst: Clare Pramuk (303-866-2677)

SHORT TITLE: INSURANCE FRAUD CRIME

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue	<u>\$5,000</u>	<u>\$5,000</u>
Cash Funds	<5,000	<5,000
State Expenditures	<u>\$123,658</u>	
General Fund	123,658	
FTE Position Change		
Appropriation Required: \$123,658 - Department of Corrections (FY 2014-15 - FY 2018-19)		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill creates the crime of insurance fraud and identifies fraudulent actions for insurance claimants, agents, and brokers. A first offense for insurance fraud is a class 5 felony; a subsequent offense is a class 4 felony. Certain prior convictions in other states constitute a first violation under this bill. The Commissioner of Insurance must revoke the license of an insurance agent or broker who is convicted of fraud.

Background

The insurance fraud unit of the Department of Law and the 22 district attorneys investigate and prosecute criminal offenses related to insurance fraud. Referrals come primarily from the Division of Insurance in the Department of Regulatory Agencies and the National Insurance Crime Bureau. Most cases of insurance fraud are currently prosecuted as forgery, theft, and other like crimes. A charge of forgery or theft without the use of force is a class 5 felony. In 2012, the fraud unit filed 29 new cases in Colorado courts and supervised the restitution payments of 58 defendants on probation for insurance fraud-related crimes.

State Revenue

Beginning in FY 2014-15, this bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Branch. The fine penalty for a class 4 felony is \$2,000 to \$500,000 and \$1,000 to \$100,000 for a class 5 felony. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined.

State Expenditures

This bill is expected to increase state expenditures by \$123,658 over five years beginning in FY 2014-15 for the Department of Corrections (DOC).

Five-Year Fiscal Impact on Correctional Facilities

This bill is anticipated to increase state General Fund expenditures by an estimated \$123,658 over five years beginning in FY 2014-15 for the DOC. This increase assumes one offender will be convicted of a class 4 felony and one offender convicted of a class 5 felony every five years. These charges are for the new behaviors identified in the bill that are not otherwise covered under the current laws for forgery, theft, and other like crimes. Offenders convicted of class 4 felonies have an average length of stay of 46 months; offenders convicted of class 5 felonies have an average length of stay of 23 months.

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. Any offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.

Offenders placed in a private contract prison cost the state about \$58.86 per offender per day, including the current daily rate of \$53.74 and an estimated \$5.12 per offender per day for medical care provided by the DOC. No impact is expected in the first year because of the estimated time for criminal filing, trial, disposition, and sentencing. Table 1 shows the estimated cost of the bill over the next five fiscal years.

Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2014-15	0.0	\$0	\$0	\$0
FY 2015-16	2.0	\$0	\$42,968	\$42,968
FY 2016-17	1.9	\$0	\$41,124	\$41,124
FY 2017-18	1.0	\$0	\$21,484	\$21,484
FY 2018-19	0.8	\$0	\$18,082	\$18,082
Total				\$123,658

Judicial department. Most, but not all of the illegal conduct specified under this bill can be charged under existing law. The bill is expected to increase the number of cases charged where existing law does not specifically address the fraudulent behavior, increase the number of charges filed per case, and possibly allow for allegations of insurance fraud to be more easily proven. To the extent that criminal defendants are indigent, workload for the Office of the State Public Defender and Alternate Defense Council may increase to provide representation. The increase in cases is expected to be minimal and will not require a new appropriation.

Division of Insurance, Department of Regulatory Agencies. The division currently forwards all cases of suspected fraud to the fraud unit for investigation and will continue to do so regardless of the passage of this bill. License revocations, are part of the division's standard practice for criminal and some administrative violations so the expected minimal increase in revocations will not require a new appropriation.

Comparable Crime Section

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. This bill creates the new crime of insurance fraud that can be charged against an insurance claimant, agent or broker. Between January 1, 2012 and February 10, 2014, there have been 31,563 cases with at least one charge filed under the theft statute statewide, with 17,731 cases resulting in a guilty verdict. There have been no cases filed with a charge of forgery in that time period. The Department of Law filed 29 cases relating to insurance fraud in both 2011 and 2012. Demographic data on these cases are not available.

Local Government Impact

This bill may increase the workload of district attorneys by creating a new charge to bring when prosecuting fraudulent acts related to insurance. The charge of insurance fraud may be added to other charges or on its own in cases of fraud that are not specifically addressed under current law. This is expected to be a minimal increase and to not significantly affect the workload or costs of a judicial district.

Effective Date

The bill takes effect July 1, 2014, and applies to offenses committed on or after this date.

State Appropriations

The Department of Corrections requires the five-year appropriations shown in Table 1.

State and Local Government Contacts

Law
Judicial

Regulatory Agencies
District Attorneys

Corrections