

- SUBJECT:** Relating to rulemaking authority of the commissioner of insurance
- COMMITTEE:** Insurance — committee substitute recommended
- VOTE:** 8 ayes — Smithee, Eiland, Averitt, Burnam, J. Moreno, Olivo, Seaman, Thompson  
0 nays  
1 absent — G. Lewis
- WITNESSES:** (*On original version:*)  
For — None  
  
Against — Will Davis, Texas Association of Life and Health Insurers, USAA; Richard Geiger, Association of Fire and Casualty Companies in Texas; Greg Hooser, Texas Association of Insurance Officials  
  
On — David Durden, Texas Department of Insurance
- BACKGROUND:** Insurance Code, sec. 36.001 grants the insurance commissioner authority to adopt rules for the conduct and execution of the powers and duties of the Texas Department of Insurance (TDI) only as authorized by statute. With respect to rules governing the approval of life, accident, and health forms under art. 3.42, the commissioner is prohibited from repealing or amending a rule until the first anniversary of the adoption of the rule.
- DIGEST:** CSHB 1945 would amend the Insurance Code to authorize the commissioner to adopt emergency rules if the commissioner determined that an emergency existed in the business of insurance or another business regulated by TDI. An emergency would exist if changes in federal laws or regulations or unexpected changes in market conditions threatened the ability of:
- ! the residents of this state to obtain or retain insurance coverage or other coverage regulated by the department; or
  - ! insurers to provide insurance coverage or other coverage regulated by the department.

The commissioner could not exercise emergency rulemaking authority under the provisions of this bill during a regular session of the Legislature.

To adopt an emergency rule, the commissioner would have to:

- ! declare an emergency in the business of insurance or another business regulated by TDI;
- ! propose an emergency rule that specified a remedy for the particular circumstances resulting in the emergency; and
- ! schedule a public hearing on the proposed emergency rule, with public notice and notice to the governor, lieutenant governor, and speaker of the House.

An emergency rule adopted under the terms of this legislation would take effect on the last day of the required hearing and would expire on the last day of the regular legislative session that occurred after the adoption of the emergency rule, unless legislative authorization for the rule were granted during that session.

This bill would renumber and rename other code sections related to the commissioner's rulemaking authority. It would take effect September 1, 2001, and would apply only to a rule adopted by the commissioner on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1945 would give the commissioner flexibility to amend or adopt needed rules in response to rapid changes occurring in technology and federal law that affect the insurance industry. Recent developments regarding the Health Insurance Portability and Accountability Act of 1996, the Children's Health Insurance Program, and the Gramm-Leach-Bliley Act, as well as requirements regarding electronic filings and electronic signatures, have made flexible rulemaking more of a necessity.

**OPPONENTS  
SAY:**

The Legislature traditionally has limited agency rulemaking authority to ensure that regulators are not given the role of legislating by rule. The state does not need an insurance czar to develop rules that could exceed current statutory authority. This bill should be limited to genuine emergencies.

OTHER  
OPPONENTS  
SAY:

This bill would not be expansive enough to address developing market practices that have resulted from changes in federal laws and rules, technology, and information requirements occurring in the financial services industry. Current federal law and technological demands would suggest that the commissioner should be given broader rulemaking authority closer to that set out in the original bill.

NOTES:

The committee substitute altered the original bill by establishing emergency rulemaking authority and striking all provisions in the original relating to rulemaking authority that would have allowed TDI to address developing market practices. The substitute would change the effective date to September 1, 2001, rather than immediate passage with the necessary vote.