

BILL ANALYSIS

Senate Research Center
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S.B. 1809
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Insurance Code requires the Texas Department of Insurance (TDI) to submit a report before each regular legislative session with recommended changes in state laws relating to regulation of the insurance industry or other areas under the agency's jurisdiction. In recommendations to the 87th Legislature, TDI recommended updating and modifying statutes related to emergency cease and desist orders, sanctions, and hearing timelines.

S.B. 1809 ensures that TDI has the tools to enforce the Insurance Code and its laws. S.B. 1809 focuses on TDI's ability to take enforcement action for unauthorized insurance.

As proposed, S.B. 1809 amends current law relating to the enforcement of insurance laws, including laws governing the unauthorized business of insurance, and authorizes administrative penalties.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 15 (Section 101.156, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.157(b), Insurance Code, as follows:

(b) Provides that, on certification by the commissioner of insurance (commissioner) under official seal, testimony taken or records produced under Subchapter C (General Subpoena Powers; Witnesses and Production of Records) or acquired in response to a request for information under Section 101.104, rather than under Subchapter C, and held by the Texas Department of Insurance (TDI) are admissible in evidence in a case without certain proof.

SECTION 2. Amends Section 36.158(a), Insurance Code, to make a conforming change.

SECTION 3. Amends Section 83.051, Insurance Code, as follows:

Sec. 83.051. AUTHORITY OF COMMISSIONER TO ISSUE ORDER. (a) Authorizes the commissioner ex parte to issue an emergency cease and desist order if:

(1) the commissioner believes that:

(A) makes no changes to this paragraph; or

(B) an unauthorized person is engaging in the business of insurance in violation of Chapter 101 (Unauthorized Insurance) or in violation of a rule adopted under that chapter, and, rather than or, does not meet a statutory exception or exemption, rather than is engaging in the business of insurance in violation of Chapter 101 and is committing an unfair act; and

(2) with respect to conduct described by Subdivision (1)(A) (relating to the authority of the commissioner ex parte to issue an emergency cease and desist order if the commissioner believes that an authorized person engaging in the business of insurance is committing an unfair act or is in a hazardous condition or a hazardous financial condition), it appears to the commissioner that the alleged conduct meets certain criteria.

(b) Provides that an order is final on the 61st, rather than 31st, day after the date it is served, rather than received, unless the affected person requests a hearing under Section 83.053 (Request for Hearing).

SECTION 4. Amends Section 83.053(b), Insurance Code, to require the affected person to request the hearing not later than the 60th, rather than 30th, day after the date on which the person is served with an order, rather than receives the order, required by Section 83.052 (Notice).

SECTION 5. Amends Sections 83.054(a), (b), and (c), Insurance Code, as follows:

(a) Requires TDI, on receiving a timely request for a hearing under Section 83.053, to docket the case at the State Office of Administrative Hearings not later than the 30th day after the date TDI receives the request. Deletes existing text requiring the commissioner, on receiving a request for a hearing under Section 83.053, to serve notice of the time and place of the hearing.

(b) Deletes existing text requiring that the hearing be held not later than the 10th day after the date the commissioner receives the request for a hearing unless the parties mutually agree to a later hearing date.

(c) Requires the person requesting the hearing to show, rather than providing that the person requesting the hearing is entitled to show cause, why the order should not be affirmed at the hearing.

SECTION 6. Amends Section 84.021, Insurance Code, as follows:

Sec. 84.021. IMPOSITION OF PENALTY. Authorizes the commissioner to impose an administrative penalty on a person licensed or regulated under this code or another insurance law of this state, including an unauthorized person as defined by Section 83.001 (Definitions), who violates certain laws.

SECTION 7. Amends Section 101.051(b), Insurance Code, as follows:

(b) Provides that certain acts in this state constitute the business of insurance in this state, including doing or proposing to do any insurance business that is in substance equivalent to conduct described by certain subdivisions in a manner designed to evade statutes relating to insurance or a claimed exception or exemption to insurance regulation.

SECTION 8. Amends Section 101.103(a), Insurance Code, as follows:

(a) Authorizes the commissioner, if the commissioner has reason to believe a person, including an insurer, has violated or is threatening to violate this chapter or Chapter 226 (Unauthorized and Independently Procured Insurance Premium Tax) or a rule adopted under this chapter or Chapter 226, or that a person, including an insurer, violating this chapter or Chapter 226 has engaged in or is threatening to engage in an unfair act, to:

(1) issue a cease and desist order, rather than issue a cease and desist order under Subchapter D;

(2) impose an administrative penalty under Chapter 84 (Administrative Penalties), rather than seek injunctive relief under Section 101.105;

(3) direct the person to make restitution;

(4) request the attorney general to recover a civil penalty, seek restitution, or seek injunctive relief, or any combination of those remedies, under this chapter or another law of this state, rather than request the attorney general to recover a civil penalty under Section 101.105; or

(5) creates this subdivision from existing text and makes a nonsubstantive change.

Makes nonsubstantive changes.

SECTION 9. Amends Section 101.104, Insurance Code, as follows:

Sec. 101.104. REQUEST FOR INFORMATION. (a) Creates this subsection from existing text. Requires the commissioner or TDI, if the commissioner or TDI has reason to believe that a person, including an insurer, is performing an act described by Section 101.051 (Conduct that Constitutes the Business of Insurance) or 101.052 (Advertising Relating to Medicare Supplement Benefit Plans), to send the person or insurer a written request for information relating to that act.

Deletes existing text requiring a person, if the commissioner has reason to believe that the person, including an insurer, is performing an act described by Section 101.051 or 101.052, to immediately provide to the commissioner, on written request of the commissioner, information relating to that act.

(b) Requires a person receiving an inquiry under Subsection (a) to respond to the inquiry in writing not later than the 15th day after the day the person receives the inquiry. Requires TDI or the commissioner, if TDI or the commissioner receives written notice from the person that additional time is required to respond to the inquiry, to grant a 10-day extension of the time to respond to the inquiry.

(c) Provides that failure of a person or insurer to provide the information requested constitutes a violation under this chapter and may be used as evidence to support the issuance of a cease and desist order under Chapter 83 (Emergency Cease and Desist Orders). Authorizes the commissioner to adopt as findings of fact allegations made by TDI in a hearing under Chapter 83 if TDI sought information on the allegations from the person or insurer who is the respondent in the proceeding in a request for information and the person or insurer failed, wholly or partly, to respond to the request.

SECTION 10. Amends the heading to Section 101.105, Insurance Code, to read as follows:

Sec. 101.105. CIVIL PENALTY; RESTITUTION AND INJUNCTIVE RELIEF.

SECTION 11. Amends Sections 101.105(a) and (c), Insurance Code, as follows:

(a) Provides that a person or entity, including an insurer, that violates this chapter or Chapter 226 is subject to a civil penalty of not more than \$25,000, rather than \$10,000, for each act of violation and for each day of violation.

(c) Requires the attorney general, on request by the commissioner, to institute and conduct a civil suit in the name of the state for injunctive relief, to recover a civil penalty, for restitution, or for any combination of those remedies as authorized under Subchapter C (Prohibition; Enforcement) or another law of this state, rather than for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized under this subchapter.

SECTION 12. Amends the heading to Subchapter D, Chapter 101, Insurance Code, to read as follows:

SUBCHAPTER D. CONTESTED CASES; PRIOR PROCEEDINGS; RULES

SECTION 13. Amends Section 101.151, Insurance Code, as follows:

Sec. 101.151. **POWERS OF COMMISSIONER; NOTICE OF HEARING.** (a) Authorizes the commissioner to set a hearing on whether to seek administrative relief under this chapter, rather than whether to issue a cease and desist order under Section 101.153 (Cease and Desist Order), if the commissioner has reason to believe that an insurer or person has violated or is threatening to violate this chapter or a rule adopted under this chapter, or that an insurer or person acting in violation of this chapter has engaged in or is threatening to engage in an unfair act.

(b) Provides that a proceeding under this chapter is a contested case for purposes of Chapter 2001 (Administrative Procedure), Government Code, and applicable rules. Deletes existing text requiring the commissioner to serve on the insurer or person a statement of charges and a notice of hearing in the form provided by Section 2001.052 (Contents of Notice), Government Code, and applicable rules of the commissioner.

SECTION 14. Amends Section 101.154, Insurance Code, as follows:

Sec. 101.154. **ENFORCEMENT; REFERRAL TO ATTORNEY GENERAL.** Authorizes the commissioner to refer the matter to the attorney general for enforcement if the commissioner has reason to believe that an insurer or person has violated an order issued under this chapter, rather than a cease and desist order issued under this subchapter, or has failed to pay an assessed penalty or restitution, rather than an assessed penalty.

SECTION 15. Amends Section 101.156, Insurance Code, to make a conforming change.

SECTION 16. Amends Section 101.201, Insurance Code, as follows:

Sec. 101.201. **VALIDITY OF INSURANCE CONTRACTS.** (a) Provides that an insurance contract, agreement, or arrangement prohibited by Section 101.102, purported to be effective in this state and entered into by an unauthorized insurer or person, is unenforceable by the unauthorized insurer or person. Provides that a person who in any manner assisted directly or indirectly in the procurement, processing, administration, claims handling, adjusting, or claims payment of the contract, agreement, or arrangement is liable to the insured for the full amount of a claim or loss under the terms of the contract, agreement, or arrangement if the unauthorized insurer or person fails to pay the claim or loss.

(b) Provides that this section does not apply to certain insurance, including to another arrangement expressly authorized by law. Makes a nonsubstantive change.

SECTION 17. Amends Section 101.202, Insurance Code, as follows:

Sec. 101.202. **ATTORNEY'S FEES.** (a) Authorizes the court, in an action against an unauthorized insurer or unauthorized person on a contract, agreement, or arrangement of insurance issued or delivered in this state to a resident of this state or to a corporation authorized to do business in this state, to award to the plaintiff a reasonable attorney's fee if certain requirements fail to be met. Makes a conforming change.

(b) Provides that an unauthorized insurer's or person's, rather than an insurer's or person's failure to defend an action described by Subsection (a) is prima facie evidence that the failure to make payment was vexatious and without reasonable cause.

SECTION 18. Amends Sections 101.203(a) and (b), Insurance Code, as follows:

(a) Requires the commissioner, if the commissioner has reason to believe that insurance has been effectuated by or for a person in this state with an unauthorized person or insurer, rather than an unauthorized insurer, to in writing order the person to perform certain actions. Makes a conforming change.

(b) Requires a person who fails to comply with a written order under Subsection (a) before the 31st day after the date of the order or who wilfully makes a disclosure that is untrue, deceptive, or misleading to forfeit \$1,000, rather than \$50, and an additional \$1,000 for each day the person continues to fail to comply after expiration of the 30-day period. Makes a conforming change.

SECTION 19. Repealers: Sections 101.152 (Hearing) and 101.153 (Cease and Desist Order), Insurance Code.

SECTION 20. Makes application of this Act prospective.

SECTION 21. Effective date: September 1, 2021.