

BILL ANALYSIS

Senate Research Center
79R3379 PB-D

S.B. 781
By: Fraser
Business & Commerce
3/14/2005
As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

One major area of concern for the Texas Department of Insurance (TDI) regarding fraud involves the prosecution of unauthorized insurance. Section 101.102(a), Insurance Code (Unauthorized Insurance Prohibited), provides that "A person, including an insurer, may not directly or indirectly do an act that constitutes the business of insurance under this chapter except as authorized by statute." The Fraud Unit has encountered difficulty when trying to convince some district attorneys to pursue criminal prosecution in cases involving unauthorized insurance activity because those district attorneys believe this language requires them to prove that the conduct was knowing and intentional.

TDI believes it would be beneficial to clarify the statute and specify the standard of proof that a prosecutor has to meet. This will improve TDI's ability to obtain criminal prosecution in more unauthorized insurance cases.

As proposed, SB 781 amends Section 101.106 (Unauthorized Insurance, Criminal Penalty), Insurance Code, to clarify the standard of proof in the prosecution of unauthorized insurance cases.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 101.106, Insurance Code, by adding Subsection (d), to provide that the attorney representing the state is not required to prove the existence of a culpable mental state in the prosecution of an offense under this section.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2005.