

BILL ANALYSIS

C.S.H.B. 972
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Dozens of complaints from senior citizens involving the sale of Medicare Advantage Plans involve solicitations in the home for plans made by individuals who were not licensed by the State of Texas. The salesperson did not state that he or she was licensed and the senior citizen did not ask. Generally, senior citizens trust that the salesperson is authorized to make a presentation for the product. This process was made possible by the very loose marketing rules set forth by the Centers for Medicare and Medicaid Services (CMS). The State of Texas was recognized in 2008 by CMS as having the authority to define who could sell Medicare Advantage Plans; however, even with the authority acceded to the state by CMS, it may still be easy for unlicensed agents to continue the same pattern because some senior citizens are vulnerable to misrepresentation and unlikely to file complaints.

Likewise, individuals who solicit electrical or plumbing improvement projects in a consumer's home would be included in the bill's provisions. Having the license number for an electrician or plumber on a business card or flyer instills more confidence in a consumer that the work is done in compliance with industry standards. By requiring an individual to have the state license number included on business cards, sales flyers, or letters, consumers are given a small, but significant measure of confidence that the salesperson in their home has been properly vetted by the state.

C.S.H.B. 972 amends the Occupations Code to require an individual who must have a state license or certificate of registration in order to do business and who solicits business in a consumer's home to display a state-issued license or certificate number on business documents.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to certain state regulatory agencies in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 972 amends the Occupations Code to require a state regulatory agency that determines that individuals licensed or registered by the agency solicit business in consumers' homes as a regular business practice to adopt rules requiring each individual licensed or registered by the agency to prominently display the individual's license or certificate of registration number on any document, advertisement, business card, or logo provided by the individual to a consumer as a part of an effort to solicit business. The bill requires an individual who holds such a license or certificate to display the individual's license or certificate of registration number on certain documents presented to the public. The bill defines "solicit business" to mean to advertise an individual's business practice, for which the individual is required to hold a license or certificate of registration issued by a state regulatory agency, to a consumer at the consumer's home in person, over a telephone, through a salesperson, or through a written communication mailed, e-mailed, or otherwise delivered, for the purpose of closing a sale or entering into a service agreement or service contract with the consumer in the home. The bill makes its provisions

inapplicable to an individual employed by or acting on behalf of an entity that holds a license or certificate of registration issued by the Public Utility Commission of Texas (PUC) and to an entity controlling, controlled by, or under the same common control as an entity that holds a license or certificate of registration issued by the PUC.

C.S.H.B. 972 provides that an individual is liable to Texas for a civil penalty of not more than \$1,000 for each violation if the individual violates the rules adopted by a state regulatory agency as required by the bill, represents that an expired license or certificate of registration is valid, or displays a counterfeit license or certificate of registration or uses a counterfeit license in any document provided to the public. The bill requires the amount of the civil penalty to be based on the seriousness of the violation, the history of prior violations, the amount necessary to deter a future violation, and any other matter that justice may require. The bill allows the attorney general to sue to collect a civil penalty, and in the suit the attorney general may recover, on behalf of the state, the reasonable expenses incurred in obtaining the penalty, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

C.S.H.B. 972 requires, not later than December 1, 2009, a state regulatory agency or the governing body of a state regulatory agency, as appropriate, to which the bill's provisions apply to adopt rules necessary to implement the provisions and provides that an individual subject to the provisions is not required to include the individual's license or certificate number on documents provided to the public before January 1, 2010.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 972 adds provisions not in the original exempting certain individuals and entities from the bill's provisions. The substitute amends the original's definition of "solicit business" to specify that the advertising of an individual's business practice is for the purpose of closing a sale or entering into a service agreement or service contract with a consumer in the consumer's home.