

## **BILL ANALYSIS**

H.B. 4358  
By: Smithee  
Insurance  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Insurance Code and related administrative rules impose a number of technical requirements on persons licensed by the Texas Department of Insurance (TDI). For example, title agents are required to file an escrow audit report with TDI on an annual basis. These requirements serve the important function of providing TDI with information about licensees and the marketplace necessary to fulfill TDI's regulatory responsibilities. In general, isolated violations of these types of requirements are considered relatively minor in nature and typically do not result in consumer harm. However, a pattern of such violations usually indicates more serious problems such as mismanagement, incompetence, or fraud.

Currently, if a TDI program area wants to initiate an action for a violation, the program area must refer each violation to the enforcement division. Attorneys in the enforcement division typically negotiate and draft a consent order, which must then be reviewed and signed by the commissioner of insurance. Consent orders resolving these violations generally include an administrative penalty in an amount between \$500 and \$10,000. Violations that cannot be resolved by consent order must be adjudicated at the State Office of Administrative Hearings.

TDI would benefit from minimizing the use of attorney and litigation support resources to address issues that could be resolved at the program area level through the use of automatic fines. The attorney resources could then be reallocated to projects involving consumer harm or serious misconduct.

Currently, TDI is authorized to resolve certain violations through a fine, including the failure of insurance agents to complete continuing education to file address changes and to report disciplinary actions by other states.

H.B. 4358 authorizes the commissioner of insurance to adopt and enforce reasonable rules necessary to accomplish the purposes of provisions relating to administrative penalties, allowing the resolution of more types of violations through fines and the use of staff resources more efficiently. The bill also provides that it does not limit the commissioner's authority to take any action authorized by law.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 of this bill.

### **ANALYSIS**

H.B. 4358 amends the Insurance Code to authorize the commissioner of insurance to adopt and enforce reasonable rules that the commissioner determines necessary to accomplish the purposes of provisions relating to administrative penalties for violations of the code. The bill authorizes the commissioner to establish by rule the amount of an administrative penalty to be imposed for a specific violation. The bill provides that the existence or absence of a rule does not limit the commissioner's authority to take any action authorized by law.

**EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.