

BILL ANALYSIS

H.B. 4313
By: Vo
Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Modern technology makes it possible for people who are not authorized to conduct the business of insurance in Texas to expand their reach and collect millions of dollars in a short period of time. It has been suggested that a combination of the high burden of proof, short time lines for administrative hearings, and limited administrative sanction options make it difficult for the Texas Department of Insurance (TDI) to stop these sellers before consumers are harmed.

For example, the current standard for emergency cease and desist orders requires TDI, in addition to proving that a person is engaging in unauthorized insurance business, to prove that the conduct is fraudulent, hazardous, or causing irreparable public injury. The required burden of proof requires TDI to gather extensive evidence before taking steps to stop operators selling insurance without a license, which defeats the purpose of an emergency cease and desist statute where time is of the essence.

H.B. 4313 seeks to improve TDI's ability to prevent unauthorized insurance business in Texas and protect consumers by revising the emergency cease and desist order procedures, giving the commissioner of insurance more options to take action against a violator, and removing certain burdensome deadlines, among other changes.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 15 of this bill.

ANALYSIS

H.B. 4313 amends the Insurance Code to revise provisions governing the enforcement of insurance laws with respect to unauthorized persons who engage in the business of insurance in violation of the law. The bill, with respect to the issuance of emergency cease and desist orders, does the following:

- revises the authorization for the commissioner of insurance to issue an emergency cease and desist order if the commissioner believes that an unauthorized person is engaging in the business of insurance in violation of applicable statutes or rules as follows:
 - removes as a requirement for the order's issuance that it appears to the commissioner that the alleged conduct is fraudulent, is hazardous or creates an immediate danger to the public safety, or is causing or can be reasonably expected to cause certain irreparable public injury; and

- provides as a condition instead that the unauthorized person does not meet a statutory exception or exemption;
- changes the date on which an emergency cease and desist order is final from the 31st day after the date it is received to the 61st day after the date it is served;
- changes the deadline for requesting a hearing to contest an order from not later than the 30th day after the date on which the affected person receives the order to not later than the 60th day after the date the person is served with the order;
- with respect to the timing of the hearing:
 - removes a requirement for the commissioner to serve notice of the time and place of a hearing on receiving a hearing request and a requirement for the hearing to be held not later than the 10th day after the date the commissioner receives a hearing request unless the parties mutually agree to a later hearing date; and
 - requires the Texas Department of Insurance (TDI) instead to docket the case at the State Office of Administrative Hearings not later than the 30th day after the date TDI receives a timely hearing request; and
- requires the person requesting the hearing to show cause why the order should not be affirmed.

H.B. 4313 authorizes the commissioner to impose an administrative penalty on an unauthorized person who violates a state insurance law or a rule or order adopted under such law. The bill includes among the acts constituting the business of insurance doing or proposing to do any insurance business that is in substance equivalent to the other acts constituting the business of insurance in a manner designed to evade a claimed exception or exemption to insurance regulation.

H.B. 4313 makes the following changes with respect to the actions the commissioner may take if the commissioner has reason to believe a person has violated or is threatening to violate statutory provisions relating to unauthorized insurance, statutory provisions relating to unauthorized and independently procured insurance premium tax, or a rule adopted under those provisions or that a person violating those provisions has engaged in or is threatening to engage in an unfair act:

- authorizes the commissioner to impose an administrative penalty;
- authorizes the commissioner to direct the person to make restitution; and
- expands the commissioner's authority to seek injunctive relief or recovery of a civil penalty by the attorney general under a specific statute section by authorizing the commissioner to request the attorney general to recover a civil penalty, seek restitution, seek injunctive relief, or a combination of those remedies under any state law.

The bill makes related changes to provisions establishing the attorney general's duty to institute certain civil suits on request by the commissioner and the commissioner's authority to refer matters to the attorney general for enforcement.

H.B. 4313 removes the requirement for a person who the commissioner has reason to believe is performing an act that constitutes the business of insurance or advertising relating to Medicare supplement benefit plans to provide to the commissioner, on written request, information relating to that act. The bill replaces that requirement with provisions that do the following:

- authorize the commissioner or TDI to send the person a written request for information;
- require a person receiving such a request to respond in writing not later than the 15th day after the day the person receives the inquiry;
- require TDI or the commissioner to grant a 10-day extension on receipt of written notice from the person that additional time is required to respond;
- establish that failure to provide the requested information constitutes a violation of the law relating to unauthorized insurance and may be used as evidence to support the issuance of an emergency cease and desist order; and
- authorize the commissioner to adopt as findings of fact allegations made by TDI in a hearing to contest an emergency cease and desist order if TDI sought information on the

allegations from the person in a request for information and the person failed, wholly or partly, to respond to the request.

The bill provides for the use of records acquired in response to the request as evidence in a case and provides for certain restrictions on access to those records.

H.B. 4313 increases the maximum civil penalty for a person or entity, including an insurer, that violates statutory provisions relating to unauthorized insurance or statutory provisions relating to unauthorized and independently procured insurance premium tax from not more than \$10,000 for each act of violation and for each day of violation to not more than \$25,000 for each act of violation and for each day of violation.

H.B. 4313 extends the commissioner's authority to set a hearing on whether to issue a cease and desist order to apply to any form of administrative relief the commissioner may seek relating to unauthorized insurance. The bill repeals the requirement for a hearing on a cease and desist order to be held not earlier than the fifth day or later than the 30th day after the date the statement of charges and notice of hearing is served, except as agreed by the parties with prior written approval of the commissioner.

H.B. 4313 expands the rulemaking authority granted to the commissioner with respect to cease and desist orders to authorize the commissioner to adopt reasonable rules necessary to implement provisions relating to unauthorized insurance generally.

H.B. 4313 makes the following provisions relating to the validity of an insurance contract purported to be effective in Texas and entered into by an unauthorized insurer or person applicable also to prohibited agreements or arrangements:

- a provision specifying that the contract is unenforceable by the insurer or person; and
- a provision making a person who in any manner assisted directly with the procurement of the contract liable to the insured for the full amount of a claim or loss under the terms of the contract if the unauthorized insurer or person fails to pay the claim or loss.

The bill additionally imposes such liability on a person who in any manner assisted directly or indirectly in the processing, administration, claims handling, adjusting, or claims payment of a prohibited contract, agreement, or arrangement. The bill specifies that these provisions do not apply to any arrangement expressly authorized by law.

H.B. 4313 authorizes a court to award a reasonable attorney's fee in an action against an unauthorized insurer or person on an agreement or arrangement of insurance issued or delivered in Texas to a Texas resident or to a corporation authorized to do business in Texas under the same circumstances in which a reasonable attorney's fee may be awarded in an action on a contract.

H.B. 4313 increases from \$50 to \$1,000 the amount an unauthorized person or insurer is required to forfeit if they fail to comply with a written order to produce certain information before the 31st day after the date of the order or who wilfully makes a disclosure that is untrue, deceptive, or misleading. The bill also increases from \$50 to \$1,000 the additional amount forfeited for each day the person continues to fail to comply after expiration of the 30-day period.

H.B. 4313 repeals the following provisions of the Insurance Code:

- Section 101.152; and
- Section 101.153.

EFFECTIVE DATE

September 1, 2021.