87R7986 RDS-F

By:  Hancock S.B. No. 1809

A BILL TO BE ENTITLED

AN ACT

relating to the enforcement of insurance laws, including laws governing the unauthorized business of insurance; authorizing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 36.157(b), Insurance Code, is amended to read as follows:

(b)  On certification by the commissioner under official seal, testimony taken or records produced under this subchapter or acquired in response to a request for information under Section 101.104 and held by the department are admissible in evidence in a case without:

(1)  prior proof of correctness; and

(2)  proof, other than the certificate of the commissioner, that the testimony or records were received from the person testifying or producing the records.

SECTION 2.  Section 36.158(a), Insurance Code, is amended to read as follows:

(a)  A record or other evidence acquired under a subpoena under this subchapter or in response to a request for information under Section 101.104 is not a public record for the period the commissioner considers reasonably necessary to:

(1)  complete the investigation;

(2)  protect the person being investigated from unwarranted injury; or

(3)  serve the public interest.

SECTION 3.  Section 83.051, Insurance Code, is amended to read as follows:

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

(1)  the commissioner believes that:

(A)  an authorized person engaging in the business of insurance is:

(i)  committing an unfair act; or

(ii)  in a hazardous condition or a hazardous financial condition under Section 843.406 or Subchapter A, Chapter 404, as determined by the commissioner; or

(B)  an unauthorized person:

(i)  is engaging in the business of insurance in violation of Chapter 101 or in violation of a rule adopted under that chapter; and [~~or~~]

(ii)  does not meet a statutory exception or exemption [~~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),  it appears to the commissioner that the alleged conduct:

(A)  is fraudulent;

(B)  is hazardous or creates an immediate danger to the public safety; or

(C)  is causing or can be reasonably expected to cause public injury that:

(i)  is likely to occur at any moment;

(ii)  is incapable of being repaired or rectified; and

(iii)  has or is likely to have influence or effect.

(b)  An order is final on the 61st [~~31st~~] day after the date it is served [~~received~~], unless the affected person requests a hearing under Section 83.053.

SECTION 4.  Section 83.053(b), Insurance Code, is amended to read as follows:

(b)  The affected person must request the hearing not later than the 60th [~~30th~~] day after the date on which the person is served with an [~~receives the~~] order required by Section 83.052.

SECTION 5.  Sections 83.054(a), (b), and (c), Insurance Code, are amended to read as follows:

(a)  On receiving a timely request for a hearing under Section 83.053, the department [~~commissioner~~] shall docket the case at the State Office of Administrative Hearings not later than the 30th day after the date the department receives the request [~~serve notice of the time and place of the hearing~~].

(b)  The hearing is subject to the procedures for contested cases under Chapter 2001, Government Code. [~~The hearing must 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)  At the hearing, the person requesting the hearing must show [~~is entitled to show cause~~] why the order should not be affirmed.

SECTION 6.  Section 84.021, Insurance Code, is amended to read as follows:

Sec. 84.021.  IMPOSITION OF PENALTY. The commissioner may 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, who violates:

(1)  this code;

(2)  another insurance law of this state; or

(3)  a rule or order adopted under this code or another insurance law of this state.

SECTION 7.  Section 101.051(b), Insurance Code, is amended to read as follows:

(b)  The following acts in this state constitute the business of insurance in this state:

(1)  making or proposing to make, as an insurer, an insurance contract;

(2)  making or proposing to make, as guarantor or surety, a guaranty or suretyship contract as a vocation and not merely incidental to another legitimate business or activity of the guarantor or surety;

(3)  taking or receiving an insurance application;

(4)  receiving or collecting any consideration for insurance, including:

(A)  a premium;

(B)  a commission;

(C)  a membership fee;

(D)  an assessment; or

(E)  dues;

(5)  issuing or delivering an insurance contract to:

(A)  a resident of this state; or

(B)  a person authorized to do business in this state;

(6)  directly or indirectly acting as an agent for or otherwise representing or assisting an insurer or person in:

(A)  soliciting, negotiating, procuring, or effectuating insurance or a renewal of insurance;

(B)  disseminating information relating to coverage or rates;

(C)  forwarding an insurance application;

(D)  delivering an insurance policy or contract;

(E)  inspecting a risk;

(F)  setting a rate;

(G)  investigating or adjusting a claim or loss;

(H)  transacting a matter after the effectuation of the contract that arises out of the contract; or

(I)  representing or assisting an insurer or person in any other manner in the transaction of insurance with respect to a subject of insurance that is resident, located, or to be performed in this state;

(7)  contracting to provide in this state indemnification or expense reimbursement for a medical expense by direct payment, reimbursement, or otherwise to a person domiciled in this state or for a risk located in this state, whether as an insurer, agent, administrator, trust, or funding mechanism or by another method;

(8)  doing any kind of insurance business specifically recognized as constituting insurance business within the meaning of statutes relating to insurance;

(9)  doing or proposing to do any insurance business that is in substance equivalent to conduct described by Subdivisions (1)-(8) in a manner designed to evade statutes relating to insurance or a claimed exception or exemption to insurance regulation; or

(10)  any other transaction of business in this state by an insurer.

SECTION 8.  Section 101.103(a), Insurance Code, is amended to read as follows:

(a)  If the commissioner has reason to believe a person, including an insurer, has violated or is threatening to violate this chapter or Chapter 226 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, the commissioner may:

(1)  issue a cease and desist order [~~under Subchapter D~~];

(2)  impose an administrative penalty under Chapter 84 [~~seek injunctive relief under Section 101.105~~];

(3)  direct the person to make restitution;

(4) [~~(3)~~]  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 [~~under Section 101.105~~]; or

(5) [~~(4)~~]  take any combination of those actions.

SECTION 9.  Section 101.104, Insurance Code, is amended to read as follows:

Sec. 101.104.  REQUEST FOR INFORMATION. (a) If the commissioner or department has reason to believe that a person, including an insurer, is performing an act described by Section 101.051 or 101.052, the commissioner or department may send the person or insurer a written request for information [~~person shall immediately provide to the commissioner, on written request of the commissioner, information~~] relating to that act.

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

(c)  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. The commissioner may adopt as findings of fact allegations made by the department in a hearing under Chapter 83 if the department 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.  The heading to Section 101.105, Insurance Code, is amended to read as follows:

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

SECTION 11.  Sections 101.105(a) and (c), Insurance Code, are amended to read as follows:

(a)  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 [~~$10,000~~] for each act of violation and for each day of violation.

(c)  On request by the commissioner, the attorney general shall 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 [~~both injunctive relief and a civil penalty~~], as authorized under this subchapter or another law of this state.

SECTION 12.  The heading to Subchapter D, Chapter 101, Insurance Code, is amended to read as follows:

SUBCHAPTER D. CONTESTED CASES; PRIOR PROCEEDINGS; RULES [~~CEASE AND DESIST ORDERS~~]

SECTION 13.  Section 101.151, Insurance Code, is amended to read as follows:

Sec. 101.151.  POWERS OF COMMISSIONER; NOTICE OF HEARING. (a) The commissioner may set a hearing on whether to seek administrative relief under this chapter [~~issue a cease and desist order under Section 101.153~~] if the commissioner has reason to believe that:

(1)  an insurer or person has violated or is threatening to violate this chapter or a rule adopted under this chapter; or

(2)  an insurer or person acting in violation of this chapter has engaged in or is threatening to engage in an unfair act.

(b)  A proceeding under this chapter is a contested case for purposes of Chapter 2001, Government Code, and applicable rules [~~The commissioner shall serve on the insurer or person a statement of charges and a notice of hearing in the form provided by Section 2001.052, Government Code, and applicable rules of the commissioner~~].

SECTION 14.  Section 101.154, Insurance Code, is amended to read as follows:

Sec. 101.154.  ENFORCEMENT; REFERRAL TO ATTORNEY GENERAL. The commissioner may refer the matter to the attorney general for enforcement if the commissioner has reason to believe that an insurer or person has:

(1)  violated an [~~a cease and desist~~] order issued under this chapter [~~subchapter~~]; or

(2)  failed to pay an assessed penalty or restitution.

SECTION 15.  Section 101.156, Insurance Code, is amended to read as follows:

Sec. 101.156.  RULES. The commissioner may adopt reasonable rules necessary to implement this chapter [~~subchapter~~].

SECTION 16.  Section 101.201, Insurance Code, is amended to read as follows:

Sec. 101.201.  VALIDITY OF INSURANCE CONTRACTS. (a) 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. 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)  This section does not apply to insurance procured by a licensed surplus lines agent from an eligible surplus lines insurer, as defined by Chapter 981, and independently procured contracts of insurance, as described in Section 101.053(b)(4), that are reported and on which premium tax is paid in accordance with Chapter 225 or 226 or to another arrangement expressly authorized by law.

SECTION 17.  Section 101.202, Insurance Code, is amended to read as follows:

Sec. 101.202.  ATTORNEY'S FEES. (a) 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, the court may award to the plaintiff a reasonable attorney's fee if:

(1)  the insurer or person failed, for at least 30 days after a demand made before the commencement of the action, to make payment under the terms of the contract, agreement, or arrangement [~~contract's terms~~]; and

(2)  the failure to make the payment was vexatious and without reasonable cause.

(b)  An unauthorized 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.  Sections 101.203(a) and (b), Insurance Code, are amended to read as follows:

(a)  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, the commissioner shall in writing order the person to:

(1)  produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized persons or insurers; and

(2)  disclose to the commissioner:

(A)  the amount of insurance;

(B)  the name and address of each insurer;

(C)  the gross amount of premiums paid or to be paid; and

(D)  the name and address of each person assisting in the solicitation, negotiation, or effectuation of the insurance.

(b)  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 shall forfeit:

(1)  $1,000 [~~$50~~]; and

(2)  an additional $1,000 [~~$50~~] for each day the person continues to fail to comply after expiration of the 30-day period.

SECTION 19.  Sections 101.152 and 101.153, Insurance Code, are repealed.

SECTION 20.  The change in law made by this Act applies only to an order issued by the commissioner and an action docketed or filed by the commissioner, department, or office of attorney general on or after the effective date of this Act. An action docketed or filed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 21.  This Act takes effect September 1, 2021.