

By: Vo

H.B. No. 4313

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the enforcement of insurance laws, including laws
3 governing the unauthorized business of insurance; authorizing
4 administrative penalties.

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

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

8 (b) On certification by the commissioner under official
9 seal, testimony taken or records produced under this subchapter or
10 acquired in response to a request for information under Section
11 101.104 and held by the department are admissible in evidence in a
12 case without:

- 13 (1) prior proof of correctness; and
14 (2) proof, other than the certificate of the
15 commissioner, that the testimony or records were received from the
16 person testifying or producing the records.

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

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

- 23 (1) complete the investigation;
24 (2) protect the person being investigated from

1 unwarranted injury; or

2 (3) serve the public interest.

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

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

8 (1) the commissioner believes that:

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

11 (i) committing an unfair act; or

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

15 (B) an unauthorized person:

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

19 (ii) does not meet a statutory exception or
20 exemption ~~[is engaging in the business of insurance in violation of~~
21 ~~Chapter 101 and is committing an unfair act]~~; and

22 (2) with respect to conduct described by Subdivision

23 (1)(A), it appears to the commissioner that the alleged conduct:

24 (A) is fraudulent;

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

27 (C) is causing or can be reasonably expected to

1 cause public injury that:

2 (i) is likely to occur at any moment;

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

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

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

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

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

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

17 (a) On receiving a timely request for a hearing under
18 Section 83.053, the department [~~commissioner~~] shall docket the case
19 at the State Office of Administrative Hearings not later than the
20 30th day after the date the department receives the request [~~serve~~
21 ~~notice of the time and place of the hearing~~].

22 (b) The hearing is subject to the procedures for contested
23 cases under Chapter 2001, Government Code. [~~The hearing must be~~
24 ~~held not later than the 10th day after the date the commissioner~~
25 ~~receives the request for a hearing unless the parties mutually~~
26 ~~agree to a later hearing date.~~]

27 (c) At the hearing, the person requesting the hearing must

1 show [~~is entitled to show cause~~] why the order should not be
2 affirmed.

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

5 Sec. 84.021. IMPOSITION OF PENALTY. The commissioner may
6 impose an administrative penalty on a person licensed or regulated
7 under this code or another insurance law of this state, including an
8 unauthorized person as defined by Section 83.001, who violates:

- 9 (1) this code;
10 (2) another insurance law of this state; or
11 (3) a rule or order adopted under this code or another
12 insurance law of this state.

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

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

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

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

23 (3) taking or receiving an insurance application;

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

26 (A) a premium;

27 (B) a commission;

- 1 (C) a membership fee;
- 2 (D) an assessment; or
- 3 (E) dues;
- 4 (5) issuing or delivering an insurance contract to:
- 5 (A) a resident of this state; or
- 6 (B) a person authorized to do business in this
- 7 state;
- 8 (6) directly or indirectly acting as an agent for or
- 9 otherwise representing or assisting an insurer or person in:
- 10 (A) soliciting, negotiating, procuring, or
- 11 effectuating insurance or a renewal of insurance;
- 12 (B) disseminating information relating to
- 13 coverage or rates;
- 14 (C) forwarding an insurance application;
- 15 (D) delivering an insurance policy or contract;
- 16 (E) inspecting a risk;
- 17 (F) setting a rate;
- 18 (G) investigating or adjusting a claim or loss;
- 19 (H) transacting a matter after the effectuation
- 20 of the contract that arises out of the contract; or
- 21 (I) representing or assisting an insurer or
- 22 person in any other manner in the transaction of insurance with
- 23 respect to a subject of insurance that is resident, located, or to
- 24 be performed in this state;
- 25 (7) contracting to provide in this state
- 26 indemnification or expense reimbursement for a medical expense by
- 27 direct payment, reimbursement, or otherwise to a person domiciled

1 in this state or for a risk located in this state, whether as an
2 insurer, agent, administrator, trust, or funding mechanism or by
3 another method;

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

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

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

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

16 (a) If the commissioner has reason to believe a person,
17 including an insurer, has violated or is threatening to violate
18 this chapter or Chapter 226 or a rule adopted under this chapter or
19 Chapter 226, or that a person, including an insurer, violating this
20 chapter or Chapter 226 has engaged in or is threatening to engage in
21 an unfair act, the commissioner may:

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

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

26 (3) direct the person to make restitution;

27 (4) [~~(3)~~] request the attorney general to recover a

1 civil penalty, seek restitution, or seek injunctive relief, or any
2 combination of those remedies, under this chapter or another law of
3 this state [under Section 101.105]; or

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

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

7 Sec. 101.104. REQUEST FOR INFORMATION. (a) If the
8 commissioner or department has reason to believe that a person,
9 including an insurer, is performing an act described by Section
10 101.051 or 101.052, the commissioner or department may send the
11 person or insurer a written request for information [person shall
12 immediately provide to the commissioner, on written request of the
13 commissioner, information] relating to that act.

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

21 (c) Failure of a person or insurer to provide the
22 information requested constitutes a violation under this chapter
23 and may be used as evidence to support the issuance of a cease and
24 desist order under Chapter 83. The commissioner may adopt as
25 findings of fact allegations made by the department in a hearing
26 under Chapter 83 if the department sought information on the
27 allegations from the person or insurer who is the respondent in the

1 proceeding in a request for information and the person or insurer
2 failed, wholly or partly, to respond to the request.

3 SECTION 10. The heading to Section 101.105, Insurance Code,
4 is amended to read as follows:

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

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

9 (a) A person or entity, including an insurer, that violates
10 this chapter or Chapter 226 is subject to a civil penalty of not
11 more than \$25,000 [~~\$10,000~~] for each act of violation and for each
12 day of violation.

13 (c) On request by the commissioner, the attorney general
14 shall institute and conduct a civil suit in the name of the state
15 for injunctive relief, to recover a civil penalty, for restitution,
16 or for any combination of those remedies [~~both injunctive relief~~
17 ~~and a civil penalty~~], as authorized under this subchapter or
18 another law of this state.

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

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

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

25 Sec. 101.151. POWERS OF COMMISSIONER; NOTICE OF HEARING.

26 (a) The commissioner may set a hearing on whether to seek
27 administrative relief under this chapter [~~issue a cease and desist~~

1 ~~order under Section 101.153]~~ if the commissioner has reason to
2 believe that:

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

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

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

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

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

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

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

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

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

27 SECTION 16. Section 101.201, Insurance Code, is amended to

1 read as follows:

2 Sec. 101.201. VALIDITY OF INSURANCE CONTRACTS. (a) An
3 insurance contract, agreement, or arrangement prohibited by
4 Section 101.102, purported to be effective in this state and
5 entered into by an unauthorized insurer or person, is unenforceable
6 by the unauthorized insurer or person. A person who in any manner
7 assisted directly or indirectly in the procurement, processing,
8 administration, claims handling, adjusting, or claims payment of
9 the contract, agreement, or arrangement is liable to the insured
10 for the full amount of a claim or loss under the terms of the
11 contract, agreement, or arrangement if the unauthorized insurer or
12 person fails to pay the claim or loss.

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

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

22 Sec. 101.202. ATTORNEY'S FEES. (a) In an action against an
23 unauthorized insurer or unauthorized person on a contract,
24 agreement, or arrangement of insurance issued or delivered in this
25 state to a resident of this state or to a corporation authorized to
26 do business in this state, the court may award to the plaintiff a
27 reasonable attorney's fee if:

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

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

7 (b) An unauthorized insurer's or person's failure to defend
8 an action described by Subsection (a) is prima facie evidence that
9 the failure to make payment was vexatious and without reasonable
10 cause.

11 SECTION 18. Sections 101.203(a) and (b), Insurance Code,
12 are amended to read as follows:

13 (a) If the commissioner has reason to believe that insurance
14 has been effectuated by or for a person in this state with an
15 unauthorized person or insurer, the commissioner shall in writing
16 order the person to:

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

20 (2) disclose to the commissioner:

21 (A) the amount of insurance;

22 (B) the name and address of each insurer;

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

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

27 (b) A person who fails to comply with a written order under

1 Subsection (a) before the 31st day after the date of the order or
2 who wilfully makes a disclosure that is untrue, deceptive, or
3 misleading shall forfeit:

4 (1) \$1,000 [~~\$50~~]; and

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

7 SECTION 19. Sections [101.152](#) and [101.153](#), Insurance Code,
8 are repealed.

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

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