

SUBJECT: Amending enforcement of certain insurance laws; increasing penalties

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Paul,
Romero, Sanford

0 nays

WITNESSES: For — Beaman Floyd, Texas Coalition for Affordable Insurance
Solutions; (*Registered, but did not testify:* Blake Hutson, AARP Texas;
John Marlow, Chubb; Stacey Pogue, Every Texan; Jamie Dudensing,
Texas Association of Health Plans)

Against — None

On — Kevin McBride, Impact Health Sharing Inc.; (*Registered, but did
not testify:* Leah Gillum, Texas Department of Insurance)

BACKGROUND: Insurance Code sec. 101.051 establishes certain authorized acts in the
state that constitute the business of insurance. Sec. 101.052 establishes
that the business of insurance does not apply to certain persons who
advertise Medicare supplement benefit plans in certain ways.

Sec. 101.105 subjects to a maximum civil penalty of \$10,000 per violation
a person or entity that violates ch. 101, governing unauthorized insurance,
or ch. 226, governing unauthorized and independently procured insurance
premium tax.

Sec. 101.203 establishes that a person who fails to comply with a written
order, issued by the commissioner of the Texas Department of Insurance
(TDI), must forfeit \$50 and an additional \$50 for each day the person
continues to be in compliance after expiration of the 30-day period.

Sec. 83.051 authorizes the commissioner ex parte of the department to
issue an emergency cease and desist order if the commissioner believes

that a person engaged in conduct violating certain provisions of the Insurance Code. Sec. 84.021 allows the TDI commissioner to impose an administrative penalty on certain persons who violate related insurance laws of the state or another state or adopted rules or orders under current law.

Some suggest that unauthorized persons conducting the business of insurance in Texas are able to collect millions of dollars in a short period of time. Some stakeholders indicate that a combination of a high burden of proof, short timelines for administrative hearings, and limited options for administrative sanctions make it difficult for TDI to stop unlicensed insurance sellers before consumers are harmed. Suggestions have been made to revise emergency cease and desist order procedures, giving the TDI commissioner more options to take action against a violator, and removing certain burdensome deadlines.

DIGEST: HB 4313 would amend enforcement of insurance laws, including laws governing the unauthorized business of insurance in Texas. The bill also would increase the amounts for certain penalties.

Emergency cease and desist order. The bill would change the final effective date from the 31st to the 61st day after the date an affected person received an emergency cease and desist order issued by the commissioner ex parte of TDI, unless the affected person requested a hearing to contest the order.

The bill would require the department to docket the case at the State Office of Administrative Hearings by the 30th day after the date the department received an affected person's request for a hearing to contest the order.

Information requests. If the commissioner or department had reason to believe that a person, including an insurer, was performing an act described by Insurance Code sec. 101.051 or 101.052, the commissioner or department could send the person or insurer a written request for information.

The bill would specify required deadlines by which persons responded to inquiries. A person or insurer's failure to provide the requested information would constitute a violation and could be used as evidence to support the issuance of a cease and desist order.

Penalties. The bill would increase the maximum civil penalty under Insurance Code sec. 101.105 from \$10,000 to \$25,000 per violation.

The bill would increase the penalty under Insurance Code sec. 203 from \$50 to \$1,000.

Other provisions. The bill would amend other specified enforcement mechanisms for the commissioner and department.

The bill would take effect September 1, 2021, and would apply only to an order issued by the commissioner and a filed or docketed action on or after that date.