

1-1 By: Hancock S.B. No. 1809  
1-2 (In the Senate - Filed March 12, 2021; March 26, 2021, read  
1-3 first time and referred to Committee on Business & Commerce;  
1-4 April 14, 2021, reported favorably by the following vote: Yeas 9,  
1-5 Nays 0; April 14, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to the enforcement of insurance laws, including laws  
1-20 governing the unauthorized business of insurance; authorizing  
1-21 administrative penalties.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 36.157(b), Insurance Code, is amended to  
1-24 read as follows:

1-25 (b) On certification by the commissioner under official  
1-26 seal, testimony taken or records produced under this subchapter or  
1-27 acquired in response to a request for information under Section  
1-28 101.104 and held by the department are admissible in evidence in a  
1-29 case without:

1-30 (1) prior proof of correctness; and

1-31 (2) proof, other than the certificate of the  
1-32 commissioner, that the testimony or records were received from the  
1-33 person testifying or producing the records.

1-34 SECTION 2. Section 36.158(a), Insurance Code, is amended to  
1-35 read as follows:

1-36 (a) A record or other evidence acquired under a subpoena  
1-37 under this subchapter or in response to a request for information  
1-38 under Section 101.104 is not a public record for the period the  
1-39 commissioner considers reasonably necessary to:

1-40 (1) complete the investigation;

1-41 (2) protect the person being investigated from  
1-42 unwarranted injury; or

1-43 (3) serve the public interest.

1-44 SECTION 3. Section 83.051, Insurance Code, is amended to  
1-45 read as follows:

1-46 Sec. 83.051. AUTHORITY OF COMMISSIONER TO ISSUE ORDER. (a)  
1-47 The commissioner ex parte may issue an emergency cease and desist  
1-48 order if:

1-49 (1) the commissioner believes that:

1-50 (A) an authorized person engaging in the business  
1-51 of insurance is:

1-52 (i) committing an unfair act; or

1-53 (ii) in a hazardous condition or a  
1-54 hazardous financial condition under Section 843.406 or Subchapter  
1-55 A, Chapter 404, as determined by the commissioner; or

1-56 (B) an unauthorized person:

1-57 (i) is engaging in the business of  
1-58 insurance in violation of Chapter 101 or in violation of a rule  
1-59 adopted under that chapter; and ~~or~~

1-60 (ii) does not meet a statutory exception or  
1-61 exemption ~~[is engaging in the business of insurance in violation of~~

2-1 ~~Chapter 101 and is committing an unfair act~~]; and  
 2-2 (2) with respect to conduct described by Subdivision  
 2-3 (1)(A), it appears to the commissioner that the alleged conduct:  
 2-4 (A) is fraudulent;  
 2-5 (B) is hazardous or creates an immediate danger  
 2-6 to the public safety; or  
 2-7 (C) is causing or can be reasonably expected to  
 2-8 cause public injury that:  
 2-9 (i) is likely to occur at any moment;  
 2-10 (ii) is incapable of being repaired or  
 2-11 rectified; and  
 2-12 (iii) has or is likely to have influence or  
 2-13 effect.  
 2-14 (b) An order is final on the 61st [~~31st~~] day after the date  
 2-15 it is served [~~received~~], unless the affected person requests a  
 2-16 hearing under Section 83.053.  
 2-17 SECTION 4. Section 83.053(b), Insurance Code, is amended to  
 2-18 read as follows:  
 2-19 (b) The affected person must request the hearing not later  
 2-20 than the 60th [~~30th~~] day after the date on which the person is  
 2-21 served with an [~~receives the~~] order required by Section 83.052.  
 2-22 SECTION 5. Sections 83.054(a), (b), and (c), Insurance  
 2-23 Code, are amended to read as follows:  
 2-24 (a) On receiving a timely request for a hearing under  
 2-25 Section 83.053, the department [~~commissioner~~] shall docket the case  
 2-26 at the State Office of Administrative Hearings not later than the  
 2-27 30th day after the date the department receives the request [~~serve~~  
 2-28 ~~notice of the time and place of the hearing~~].  
 2-29 (b) The hearing is subject to the procedures for contested  
 2-30 cases under Chapter 2001, Government Code. [~~The hearing must be~~  
 2-31 ~~held not later than the 10th day after the date the commissioner~~  
 2-32 ~~receives the request for a hearing unless the parties mutually~~  
 2-33 ~~agree to a later hearing date.~~]  
 2-34 (c) At the hearing, the person requesting the hearing must  
 2-35 show [~~is entitled to show cause~~] why the order should not be  
 2-36 affirmed.  
 2-37 SECTION 6. Section 84.021, Insurance Code, is amended to  
 2-38 read as follows:  
 2-39 Sec. 84.021. IMPOSITION OF PENALTY. The commissioner may  
 2-40 impose an administrative penalty on a person licensed or regulated  
 2-41 under this code or another insurance law of this state, including an  
 2-42 unauthorized person as defined by Section 83.001, who violates:  
 2-43 (1) this code;  
 2-44 (2) another insurance law of this state; or  
 2-45 (3) a rule or order adopted under this code or another  
 2-46 insurance law of this state.  
 2-47 SECTION 7. Section 101.051(b), Insurance Code, is amended  
 2-48 to read as follows:  
 2-49 (b) The following acts in this state constitute the business  
 2-50 of insurance in this state:  
 2-51 (1) making or proposing to make, as an insurer, an  
 2-52 insurance contract;  
 2-53 (2) making or proposing to make, as guarantor or  
 2-54 surety, a guaranty or suretyship contract as a vocation and not  
 2-55 merely incidental to another legitimate business or activity of the  
 2-56 guarantor or surety;  
 2-57 (3) taking or receiving an insurance application;  
 2-58 (4) receiving or collecting any consideration for  
 2-59 insurance, including:  
 2-60 (A) a premium;  
 2-61 (B) a commission;  
 2-62 (C) a membership fee;  
 2-63 (D) an assessment; or  
 2-64 (E) dues;  
 2-65 (5) issuing or delivering an insurance contract to:  
 2-66 (A) a resident of this state; or  
 2-67 (B) a person authorized to do business in this  
 2-68 state;  
 2-69 (6) directly or indirectly acting as an agent for or

3-1 otherwise representing or assisting an insurer or person in:  
 3-2 (A) soliciting, negotiating, procuring, or  
 3-3 effectuating insurance or a renewal of insurance;  
 3-4 (B) disseminating information relating to  
 3-5 coverage or rates;  
 3-6 (C) forwarding an insurance application;  
 3-7 (D) delivering an insurance policy or contract;  
 3-8 (E) inspecting a risk;  
 3-9 (F) setting a rate;  
 3-10 (G) investigating or adjusting a claim or loss;  
 3-11 (H) transacting a matter after the effectuation  
 3-12 of the contract that arises out of the contract; or  
 3-13 (I) representing or assisting an insurer or  
 3-14 person in any other manner in the transaction of insurance with  
 3-15 respect to a subject of insurance that is resident, located, or to  
 3-16 be performed in this state;

3-17 (7) contracting to provide in this state  
 3-18 indemnification or expense reimbursement for a medical expense by  
 3-19 direct payment, reimbursement, or otherwise to a person domiciled  
 3-20 in this state or for a risk located in this state, whether as an  
 3-21 insurer, agent, administrator, trust, or funding mechanism or by  
 3-22 another method;

3-23 (8) doing any kind of insurance business specifically  
 3-24 recognized as constituting insurance business within the meaning of  
 3-25 statutes relating to insurance;

3-26 (9) doing or proposing to do any insurance business  
 3-27 that is in substance equivalent to conduct described by  
 3-28 Subdivisions (1)-(8) in a manner designed to evade statutes  
 3-29 relating to insurance or a claimed exception or exemption to  
 3-30 insurance regulation; or

3-31 (10) any other transaction of business in this state  
 3-32 by an insurer.

3-33 SECTION 8. Section 101.103(a), Insurance Code, is amended  
 3-34 to read as follows:

3-35 (a) If the commissioner has reason to believe a person,  
 3-36 including an insurer, has violated or is threatening to violate  
 3-37 this chapter or Chapter 226 or a rule adopted under this chapter or  
 3-38 Chapter 226, or that a person, including an insurer, violating this  
 3-39 chapter or Chapter 226 has engaged in or is threatening to engage in  
 3-40 an unfair act, the commissioner may:

3-41 (1) issue a cease and desist order [~~under Subchapter~~  
 3-42 ~~D~~];

3-43 (2) impose an administrative penalty under Chapter 84  
 3-44 [~~seek injunctive relief under Section 101.105~~];

3-45 (3) direct the person to make restitution;

3-46 (4) [~~(3)~~] request the attorney general to recover a  
 3-47 civil penalty, seek restitution, or seek injunctive relief, or any  
 3-48 combination of those remedies, under this chapter or another law of  
 3-49 this state [~~under Section 101.105~~]; or

3-50 (5) [~~(4)~~] take any combination of those actions.

3-51 SECTION 9. Section 101.104, Insurance Code, is amended to  
 3-52 read as follows:

3-53 Sec. 101.104. REQUEST FOR INFORMATION. (a) If the  
 3-54 commissioner or department has reason to believe that a person,  
 3-55 including an insurer, is performing an act described by Section  
 3-56 101.051 or 101.052, the commissioner or department may send the  
 3-57 person or insurer a written request for information [~~person shall~~  
 3-58 ~~immediately provide to the commissioner, on written request of the~~  
 3-59 ~~commissioner, information]~~ relating to that act.

3-60 (b) A person receiving an inquiry under Subsection (a) must  
 3-61 respond to the inquiry in writing not later than the 15th day after  
 3-62 the day the person receives the inquiry. If the department or  
 3-63 commissioner receives written notice from the person that  
 3-64 additional time is required to respond to the inquiry, the  
 3-65 department or commissioner shall grant a 10-day extension of the  
 3-66 time to respond to the inquiry.

3-67 (c) Failure of a person or insurer to provide the  
 3-68 information requested constitutes a violation under this chapter  
 3-69 and may be used as evidence to support the issuance of a cease and

4-1 desist order under Chapter 83. The commissioner may adopt as  
 4-2 findings of fact allegations made by the department in a hearing  
 4-3 under Chapter 83 if the department sought information on the  
 4-4 allegations from the person or insurer who is the respondent in the  
 4-5 proceeding in a request for information and the person or insurer  
 4-6 failed, wholly or partly, to respond to the request.

4-7 SECTION 10. The heading to Section 101.105, Insurance Code,  
 4-8 is amended to read as follows:

4-9 Sec. 101.105. CIVIL PENALTY; RESTITUTION AND INJUNCTIVE  
 4-10 RELIEF.

4-11 SECTION 11. Sections 101.105(a) and (c), Insurance Code,  
 4-12 are amended to read as follows:

4-13 (a) A person or entity, including an insurer, that violates  
 4-14 this chapter or Chapter 226 is subject to a civil penalty of not  
 4-15 more than \$25,000 [~~\$10,000~~] for each act of violation and for each  
 4-16 day of violation.

4-17 (c) On request by the commissioner, the attorney general  
 4-18 shall institute and conduct a civil suit in the name of the state  
 4-19 for injunctive relief, to recover a civil penalty, for restitution,  
 4-20 or for any combination of those remedies [~~both injunctive relief~~  
 4-21 ~~and a civil penalty~~], as authorized under this subchapter or  
 4-22 another law of this state.

4-23 SECTION 12. The heading to Subchapter D, Chapter 101,  
 4-24 Insurance Code, is amended to read as follows:

4-25 SUBCHAPTER D. CONTESTED CASES; PRIOR PROCEEDINGS; RULES [~~CEASE AND~~  
 4-26 ~~DESIST ORDERS~~]

4-27 SECTION 13. Section 101.151, Insurance Code, is amended to  
 4-28 read as follows:

4-29 Sec. 101.151. POWERS OF COMMISSIONER; NOTICE OF HEARING.

4-30 (a) The commissioner may set a hearing on whether to seek  
 4-31 administrative relief under this chapter [~~issue a cease and desist~~  
 4-32 ~~order under Section 101.153~~] if the commissioner has reason to  
 4-33 believe that:

4-34 (1) an insurer or person has violated or is  
 4-35 threatening to violate this chapter or a rule adopted under this  
 4-36 chapter; or

4-37 (2) an insurer or person acting in violation of this  
 4-38 chapter has engaged in or is threatening to engage in an unfair act.

4-39 (b) A proceeding under this chapter is a contested case for  
 4-40 purposes of Chapter 2001, Government Code, and applicable  
 4-41 rules [~~The commissioner shall serve on the insurer or person a~~  
 4-42 ~~statement of charges and a notice of hearing in the form provided by~~  
 4-43 ~~Section 2001.052, Government Code, and applicable rules of the~~  
 4-44 ~~commissioner~~].

4-45 SECTION 14. Section 101.154, Insurance Code, is amended to  
 4-46 read as follows:

4-47 Sec. 101.154. ENFORCEMENT; REFERRAL TO ATTORNEY GENERAL.  
 4-48 The commissioner may refer the matter to the attorney general for  
 4-49 enforcement if the commissioner has reason to believe that an  
 4-50 insurer or person has:

4-51 (1) violated an [~~a cease and desist~~] order issued  
 4-52 under this chapter [~~subchapter~~]; or

4-53 (2) failed to pay an assessed penalty or restitution.

4-54 SECTION 15. Section 101.156, Insurance Code, is amended to  
 4-55 read as follows:

4-56 Sec. 101.156. RULES. The commissioner may adopt reasonable  
 4-57 rules necessary to implement this chapter [~~subchapter~~].

4-58 SECTION 16. Section 101.201, Insurance Code, is amended to  
 4-59 read as follows:

4-60 Sec. 101.201. VALIDITY OF INSURANCE CONTRACTS. (a) An  
 4-61 insurance contract, agreement, or arrangement prohibited by  
 4-62 Section 101.102, purported to be effective in this state and  
 4-63 entered into by an unauthorized insurer or person, is unenforceable  
 4-64 by the unauthorized insurer or person. A person who in any manner  
 4-65 assisted directly or indirectly in the procurement, processing,  
 4-66 administration, claims handling, adjusting, or claims payment of  
 4-67 the contract, agreement, or arrangement is liable to the insured  
 4-68 for the full amount of a claim or loss under the terms of the  
 4-69 contract, agreement, or arrangement if the unauthorized insurer or

5-1 person fails to pay the claim or loss.

5-2 (b) This section does not apply to insurance procured by a  
5-3 licensed surplus lines agent from an eligible surplus lines  
5-4 insurer, as defined by Chapter 981, and independently procured  
5-5 contracts of insurance, as described in Section 101.053(b)(4), that  
5-6 are reported and on which premium tax is paid in accordance with  
5-7 Chapter 225 or 226 or to another arrangement expressly authorized  
5-8 by law.

5-9 SECTION 17. Section 101.202, Insurance Code, is amended to  
5-10 read as follows:

5-11 Sec. 101.202. ATTORNEY'S FEES. (a) In an action against an  
5-12 unauthorized insurer or unauthorized person on a contract,  
5-13 agreement, or arrangement of insurance issued or delivered in this  
5-14 state to a resident of this state or to a corporation authorized to  
5-15 do business in this state, the court may award to the plaintiff a  
5-16 reasonable attorney's fee if:

5-17 (1) the insurer or person failed, for at least 30 days  
5-18 after a demand made before the commencement of the action, to make  
5-19 payment under the terms of the contract, agreement, or arrangement  
5-20 [~~contract's terms~~]; and

5-21 (2) the failure to make the payment was vexatious and  
5-22 without reasonable cause.

5-23 (b) An unauthorized insurer's or person's failure to defend  
5-24 an action described by Subsection (a) is prima facie evidence that  
5-25 the failure to make payment was vexatious and without reasonable  
5-26 cause.

5-27 SECTION 18. Sections 101.203(a) and (b), Insurance Code,  
5-28 are amended to read as follows:

5-29 (a) If the commissioner has reason to believe that insurance  
5-30 has been effectuated by or for a person in this state with an  
5-31 unauthorized person or insurer, the commissioner shall in writing  
5-32 order the person to:

5-33 (1) produce for examination all insurance contracts  
5-34 and other documents evidencing insurance with both authorized and  
5-35 unauthorized persons or insurers; and

5-36 (2) disclose to the commissioner:

5-37 (A) the amount of insurance;

5-38 (B) the name and address of each insurer;

5-39 (C) the gross amount of premiums paid or to be  
5-40 paid; and

5-41 (D) the name and address of each person assisting  
5-42 in the solicitation, negotiation, or effectuation of the insurance.

5-43 (b) A person who fails to comply with a written order under  
5-44 Subsection (a) before the 31st day after the date of the order or  
5-45 who wilfully makes a disclosure that is untrue, deceptive, or  
5-46 misleading shall forfeit:

5-47 (1) \$1,000 [~~\$50~~]; and

5-48 (2) an additional \$1,000 [~~\$50~~] for each day the person  
5-49 continues to fail to comply after expiration of the 30-day period.

5-50 SECTION 19. Sections 101.152 and 101.153, Insurance Code,  
5-51 are repealed.

5-52 SECTION 20. The change in law made by this Act applies only  
5-53 to an order issued by the commissioner and an action docketed or  
5-54 filed by the commissioner, department, or office of attorney  
5-55 general on or after the effective date of this Act. An action  
5-56 docketed or filed before the effective date of this Act is governed  
5-57 by the law as it existed immediately before the effective date of  
5-58 this Act, and that law is continued in effect for that purpose.

5-59 SECTION 21. This Act takes effect September 1, 2021.

5-60

\* \* \* \* \*