



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 1025 (as enrolled)
 Sponsor: Senator Michael J. Bouchard
 Senate Committee: Financial Services
 House Committee: Insurance

PUBLIC ACT 314 of 1996

Date Completed: 8-27-96

RATIONALE

The Insurance Code requires a person to be authorized or licensed in order to engage in insurance transactions, and specifies various penalties for Code violations. Although the Insurance Commissioner is required to have a cease and desist order served upon a person who violates the law, that provision applies only to violations for which a specific penalty is not otherwise provided under the Code or other applicable laws (MCL 500.150). This means that the Commissioner does not generally have the authority to stop someone from operating an insurance business without a license. While the Commissioner may refer the matter to a prosecuting attorney, that approach could lead to prolonged litigation. Thus, it was suggested that the Commissioner be empowered to issue cease and desist orders for unauthorized insurance transactions.

CONTENT

The bill amends the Insurance Code to authorize the Insurance Commissioner to issue a cease and desist order for various actions, permit a person who receives a cease and desist order to contest the order, and specify civil penalties for violation of a cease and desist order. (The bill will take effect upon the 31st day following the Legislature's sine die adjournment.)

Under the bill, in the reasonable exercise of discretion, the Insurance Commissioner may issue a cease and desist order if he or she finds any of the following:

- A person is conducting insurance transactions for which a certificate of

authority is required under the Code without having obtained a certificate.

- A person is acting as an insurance agent, solicitor, adjuster, or counselor without a license, as required by the Code.
- A person is engaged in an act or practice in the business of insurance for which authority from or notification to the Commissioner is required, and the person has not received authority or given notification.
- A person authorized to engage in the business of insurance under the Code is engaged in conduct that presents an immediate danger to public health, safety, or welfare.

A cease and desist order must contain a description of the conduct to which it applies and require the person immediately to cease and desist from that conduct. The Commissioner must serve the order directly on the person affected by it, or serve the person by registered or certified mail, return receipt requested, to the address last known to the Commissioner.

A person who is the subject of a cease and desist order may contest the order by requesting a hearing before the Commissioner, not later than 30 days after the order is delivered or mailed to the person. Within 10 days after receiving the request, the Commissioner must commence a hearing pursuant to the Administrative Procedures Act. Pending the hearing, the cease and desist order will continue in full force and effect, unless stayed by the Commissioner. Within five business days after the hearing, the Commissioner must affirm, modify, or set aside, in whole or in part, the cease and desist order.

A person who violates or otherwise fails to comply with a cease and desist order will be subject to one or more of the following:

- Payment of a civil fine of up to \$1,000 for each violation, not to exceed an aggregate fine of \$30,000. If the person knew or reasonably should have known that he or she was in violation of the order, however, the penalty will be payment of a civil fine of up to \$25,000 for each violation, not to exceed an aggregate fine of \$250,000.
- Suspension or revocation of the person's license or certificate of authority.
- Complete restitution, in the form and amount, and within the period determined by the Commissioner, to all persons in Michigan damaged by the violation or failure to comply.

The Commissioner also may recover reasonable attorney fees, if judicial action is necessary for enforcement of a cease and desist order.

MCL 500.251

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By closing a gap in the law concerning the Commissioner's ability to prevent unauthorized insurance activities, the bill will enhance the ability of insurance regulators to protect the public from fraud or misrepresentation or from unsafe practices. Instead of having to wait for the outcome of a prosecution, or relying on a court to issue a restraining order or an injunction, the Commissioner will be able to take immediate steps to halt illegal practices.

Legislative Analyst: S. Margules

FISCAL IMPACT

This bill will allow the Bureau to impose punitive measures on individuals acting as a representative of the insurance industry without the appropriate license. The bill will have no fiscal impact on the Insurance Bureau as similar punitive measures are already in place. It might, however, increase the revenue for the State as the civil fines that will be collected will revert to the General Fund. It is difficult to determine the exact amount of revenue these fines will generate as there is no way to

predict the number of individuals who will be found in noncompliance.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.