



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 1025 (as introduced 5-14-96)
Sponsor: Senator Michael J. Bouchard
Committee: Financial Services

Date Completed: 5-14-96

CONTENT

The bill would amend the Insurance Code to authorize the Insurance Commissioner to issue a cease and desist order for various actions, permit a person who received a cease and desist order to contest the order, and specify civil penalties for violation of a cease and desist order.

In the reasonable exercise of discretion, the Insurance Commissioner could issue a cease and desist order if he or she found any of the following:

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

A cease and desist order would have to contain a description of the conduct to which it applied and require the person immediately to cease and desist from that conduct. The Commissioner would have to 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 was the subject of a cease and desist order could contest the order by requesting a hearing before the Commissioner, not later than 30 days after the order was delivered or mailed to the person. Within 10 days after receiving the request, the Commissioner would have to commence a hearing pursuant to the Administrative Procedures Act. Pending the hearing, the cease and desist order would continue in full force and effect, unless stayed by the Commissioner. Within five business days after the hearing, the Commissioner would have to affirm, modify, or set aside, in whole or in part, the cease and desist order.

A person who violated or otherwise failed to comply with a cease and desist order would 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 would 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 could recover reasonable attorney fees, if judicial action were necessary for enforcement of a cease and desist order.

Proposed MCL 500.251

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

Fiscal Analyst: M. Barsch

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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.