

HOUSE BILL REPORT

HB 1676

As Reported by House Committee On:
Financial Institutions & Insurance

Title: An act relating to civil and criminal penalties for the unlawful transaction of insurance or health coverage.

Brief Description: Providing civil and criminal penalties for the unlawful transaction of insurance or health coverage.

Sponsors: Representatives Schual-Berke, Benson and Simpson; by request of Insurance Commissioner.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/18/03, 2/28/03 [DPS].

Brief Summary of Substitute Bill

- Prescribes criminal and civil penalties for the unauthorized solicitation or transaction of insurance business on the part of insurers, agents, brokers, solicitors, health care service contractors, and health maintenance organizations.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Schual-Berke, Chair; Simpson, Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cairnes, Carrell, Cooper, Hatfield, Hunter, Roach and Santos.

Staff: Thamas Osborn (786-7129).

Background:

One of the functions of the Office of the Insurance Commissioner (OIC) is to protect consumers from fraud, misrepresentation, and unscrupulous business practices perpetrated by those holding themselves out to be insurance professionals. Although the OIC can bring a variety of civil and administrative actions for the purpose of consumer protection, the insurance code prescribes very few criminal sanctions that can be brought to bear in

cases of overt fraud.

This state has recently seen an increase in fraudulent activities on the part of unlicensed persons engaging in insurance transactions and by companies that have insufficient capital to pay claims. In some cases, consumers pay premiums and later find that the company has either vanished or is unable to reimburse them for losses.

Summary of Substitute Bill:

Criminal and civil penalties. The bill prescribes criminal penalties and civil remedies for the unauthorized solicitation or transaction of insurance business on the part of insurers, agents, brokers, solicitors, health care service contractors, and health maintenance organizations. The unlawful solicitation or transaction of insurance business is punishable as a class B felony. In addition, the OIC is authorized to bring civil actions in order to obtain cease and desist orders, suspend or revoke licenses, and to levy civil penalties of up to \$25,000.

Duties of insurance professionals. Solicitors, agents, and brokers working on behalf of a company are required to make a "good faith effort" to determine whether: (1) the company issuing the coverage is authorized to provide insurance or health coverage in this state; or (2) the company is conducting business through a licensed surplus lines broker.

Technical amendments. The bill contains technical amendments that are made for the purpose of language clarification.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- Clarifies that any violation of the insurance code is a "gross misdemeanor," unless otherwise specified in the code;
- Deletes several provisions making it a class C felony to either conspire or attempt to unlawfully solicit or transact insurance business;
- Eliminates the requirement that insurance investigators and adjustors make a good faith effort to determine whether the insurance coverage entity is either authorized to engage in the insurance business or is conducting business through a licensed surplus lines broker; and
- Ranks the seriousness level of the criminal offenses listed in the insurance code for the purpose of determining the appropriate sentence.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Original bill) Increasingly, illegitimate insurance companies are fraudulently marketing health insurance to the public and then failing to pay claims. They offer discounted rates to attract vulnerable consumers and then disappear when the time comes to reimburse consumers for medical expenses. Many consumers have experienced huge financial losses as the result of such fraudulent practices. Nationwide, there are scores of such illegitimate insurance businesses. Current law only allows misdemeanor charges and civil remedies. The criminal penalties for such activities need to be greatly enhanced given the harm that they cause. The bill allows such frauds to be charged as class B felonies and fines of up to \$25,000. Four other states allow such fraudulent activity to be punished as a felony.

Testimony Against: None.

Testified: Representative Schual-Berke, prime sponsor; Bill Daley and Ruth Ammons, Office of the Insurance Commissioner; Bill Stauffacher, Independent Insurance Agents; and Marie and Lowell Miller.