

**CHAPTER 918**

**H.B. No. 1811**

**An Act relating to the prohibition of unauthorized insurance activities.**

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Subsection (a), Section 2, Article 1.14-1, Insurance Code, is amended to read as follows:

(a) Any of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term insurer as used in this Article includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

1. The making of or proposing to make, as an insurer, an insurance contract.
2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
3. The taking or receiving of any application for insurance.
4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.
5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.
6. Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subdivision shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.

7. *Contracting to provide indemnification or expense reimbursement in this state to persons domiciled in this state or for risks located in this state, whether as an insurer, agent, administrator, trust, funding mechanism, or by any other method, for any type of medical expenses including, but not limited to surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether this coverage is by direct payment, reimbursement, or otherwise. This provision shall not apply to:*

(a) *any program otherwise authorized by law that is established by any political subdivision of this state or under the provisions of The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes) or by a state agency; or*

(b) *a multiple employer welfare arrangement which is fully insured as defined in 29 U.S.C.A. Section 1144(b)(6) except that the Commissioner may apply any laws that regulate the business of insurance in this state to the extent that such laws provide (1) standards requiring the maintenance of specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and (2) provisions to enforce such standards.*

8. [7-] The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.

9. [8-] The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

10. [9-] Any other transactions of business in this state by an insurer.

**SECTION 2.** Section 3, Article 1.14-1, Insurance Code, is amended to read as follows:

**Sec. 3. UNAUTHORIZED INSURANCE PROHIBITED.** (a) *For purposes of this section, "person" shall mean that which is defined in Section 2(a), Article 21.21, of this code.*

(b) *No person or insurer shall directly or indirectly do any of the acts of an insurance business set forth in this Article except as provided by and in accordance with the specific authorization of statute. In respect to the insurance of subjects resident, located or to be performed within this state this section shall not prohibit the collection of premium or other acts performed outside of this state by persons or insurers authorized to do business in this state provided such transactions and insurance contracts otherwise comply with statute.*

(c) *Any person which the Commissioner has reason to believe is doing any of the acts specified in Section 2(a) of this Article, upon written request by the Commissioner, shall immediately provide to the Commissioner such information as requested in relation to such acts.*

(d) *A person or entity who violates any provision of this Article is subject to a civil penalty of not more than \$10,000 for each act of violation and for each day of violation to be recovered as provided in this section.*

(e) *Whenever the Commissioner has reason to believe or it appears that any person or insurer has violated or is threatening to violate any provision of this Article, the Commissioner may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of the penalties provided in Subsection (d) of this section, or for both injunctive relief and civil penalties.*

(f) *On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Article, the district court shall grant the injunctive relief and the injunction shall be issued without bond.*

(g) *At the request of the Commissioner, the Attorney General shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover civil penalties or for both injunctive relief and penalties as authorized in Subsection (e) of this section.*

(h) *This section shall not be construed to limit the State Board of Insurance to the remedies specified herein. It is the sense of the Legislature that persons engaging in the business of insurance without statutory authorization constitute an imminent peril to the public welfare and should immediately be stopped and enjoined from doing so, but that the State Board of Insurance and the State of Texas should be able to choose at any time any available remedy or action to bring about such a result without regard to prior proceedings under this section.*

**SECTION 3.** Section 14, Article 1.14-1, Insurance Code, is amended to read as follows:

**Sec. 14. UNCONSTITUTIONAL APPLICATION PROHIBITED.** This Article and law does not apply to any insurer or other person to whom, under the Constitution or statutes of the United States or the Constitution of the State of Texas, it cannot validly apply; *provided, such insurer or other person claiming such exemption files notice with the Commissioner of the claim and documents supporting it before commencing operations.*

**SECTION 4.** Section 13, Article 1.14-1, Insurance Code, is repealed.

**SECTION 5.** Article 3.51-6B, Insurance Code, as added by Chapter 872, Acts of the 68th Legislature, Regular Session, 1983, is repealed.

**SECTION 6.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 18, 1985, by the following vote: Yeas 131, Nays 0, 1 present, not voting; House refused to concur in Senate amendments to H.B. No. 1811 on May 26, 1985, and requested the appointment of a conference committee to consider the differences between the two houses; House adopted the conference committee report on H.B. No. 1811 on May 27, 1985, by the following vote: Yeas 135, Nays 0, 2 present, not voting; passed by the Senate, with amendments, on May 24, 1985, by the following vote: Yeas 28, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; Senate adopted the conference committee report on H.B. No. 1811 on May 27, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 15, 1985

Effective: Immediately