

- SUBJECT:** Texas Department of Insurance authority to make inquiries
- COMMITTEE:** Insurance — committee substitute recommended
- VOTE:** 7 ayes — Smithee, Duncan, Averitt, De La Garza, Driver, Dutton, Shields  
0 nays  
2 absent — Counts, G. Lewis
- WITNESSES:** For — Will Davis, Texas Legal Reserve Officials Association; John Abnor  
Against — Rob Schneider, Consumers Union  
On — A.W. "Woody" Pogue, Texas Department of Insurance
- BACKGROUND:** Art. 1.24, Insurance Code, authorizes the Texas Department of Insurance (TDI) to make reasonable inquires to any insurance company, agent or holder regarding their business condition or transactions that TDI deems necessary for the public good or to properly do its job. Inquiries must be answered in writing within 10 days of receipt. Responses that are otherwise privileged or confidential by law remain so until introduced into evidence at an administrative hearing or in court.
- DIGEST:** CSHB 2257 would amend Art. 1.24, Insurance Code, to authorize TDI to make reasonable inquires relating to business conditions or to matters connected to *regulated* activities or transactions only. TDI could no longer make inquires deemed necessary for the public good. Respondents would have 30 days, instead of 10 days, to answer the inquiries. Responses would be for the exclusive use of TDI in performing its regulatory duties, and proprietary responses would be kept confidential.
- The bill would require that use of a response, or the information provided in the response at an administrative hearing or in a court, comply with applicable rules of evidence and procedure. The response information would be exempt from the Texas Open Records Act, the Texas Administrative Procedures Act and from discovery under the Texas Rules of Civil Procedure.

An inquiry would have to be signed by the commissioner or one of the four associate commissioners with jurisdiction over the matter of inquiry.

The bill would apply to inquiries made on or after the effective date of the bill. The bill would take effect immediately if approved by a two-thirds vote of the membership of each house.

**SUPPORTERS  
SAY:**

CSHB 2257 is needed to reign in current and potential future abuse of the broad inquiry authority granted to TDI. TDI staff has been accused of misusing the inquiry powers authorized in this law and of asking for information that should be requested under other sections of the code.

Requiring the signature of the commissioner, or one of the associate commissioners, would assure that requests are for important matters only and would reduce the number of request demands on insurers. It would not slow down the process because important inquiries would be signed promptly.

Removing TDI authority to request information when deemed for "the public good" would limit the number of unnecessary requests and rightfully limit TDI investigations to responsibilities specifically granted in statute.

CSHB 2257 would increase the response time from ten to thirty days to allow insurers an adequate amount of time to respond to requests. Closed record provisions are needed to ensure that proprietary information is not shared with competitors.

**OPPONENTS  
SAY:**

CSHB 2257 would severely restrict TDI's ability to regulate effectively and would reduce public access to TDI operations and nonproprietary information.

Inquiries under art. 1.24 are routinely made because authority or processes in other sections of the code do not provide TDI sufficient or meaningful information to investigate specific concerns. The blanket inquiry authority provided by art. 1.24 gives TDI the ability to respond to unforeseen, unusual or complicated situations that are not covered through routine department activities.

CSHB 2257 takes an extreme step in closing off all access to records except under certain lawsuit circumstances. Art. 1.24 already contains sufficient protection against the release of confidential and proprietary information. Proprietary information is also protected in the Open Records Act. Insurers want all records closed so as to prevent any public knowledge of companies engaging in illegal, questionable or potentially harmful activities. A closed records policy also hinders public oversight of TDI regulatory activities, legal interpretations and decisions made in response to information received.

Increasing the response time from 10 to 30 days would slow down and protract TDI investigations and response to consumer complaints or other problems. It often takes more than one inquiry to get at the root of an alleged problem. This provision would delay an investigation based on information gained from two inquiries from about one month to more than two months.

Requiring the signature of the commissioner or of the associate commissioners would also slow down TDI investigations and would not necessarily reduce the number of inquiries made.

NOTES:

The committee substitute limits departmental requests to regulated activities and proper discharge of duties. It also removed all records from the Open Records Act and the Administrative Procedure Act and from discovery under the Texas Rules of Civil Procedure. It authorized one of the four associate commissioners to sign requests for information in addition to the commissioner.