

SUBJECT: Release of insurer information for certain fraud investigations

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Smithee, Eiland, Averitt, Burnam, G. Lewis, J. Moreno, Olivo, Seaman, Thompson
0 nays

WITNESSES: For — Michael Johnston; *Registered but did not testify*: Dan Lambe, Texas Watch
Against — None

BACKGROUND: Insurance Code, art. 5.46 allows the state fire marshal, any fire marshal of a political subdivision in Texas, the chief of any established Texas fire department, or any Texas peace officer to request information from any insurance company investigating a fire loss of real or personal property in which damages or losses exceed \$1,000. The company is required to cooperate and produce information to the requesting authority, including any policy relevant to a fire loss, policy premium payment records, the insured's history of previous fire claims; and material relating to the investigation of loss, including statements of any person, proof of loss, or other relevant evidence.

In the absence of a finding of fraud or malice, no insurance company or person who furnished information on its behalf is liable for civil damages or is subject to criminal prosecution for statements or actions taken that are necessary to supply the above information. Officials and departmental and agency personnel receiving information under this section shall hold it in confidence until its release is required by a criminal or civil proceeding.

Insurance Code, art. 1.10D established the Insurance Fraud Unit within the Texas Department of Insurance (TDI). Art. 1.10D, sec. 4 requires that any person who determines that a fraudulent insurance act has been, or is about to be committed, to report that information in writing to the commissioner or to an authorized governmental agency no later than 30 days after the date of

determination. A report to one authorized governmental agency or TDI constitutes notice to them all. Upon receipt of a written request from an authorized governmental agency, the insurer shall furnish any relevant information or material relating to the matter under investigation. Secs. 5 and 6 set out terms of confidentiality and establish conditions of immunity for the person providing the information.

DIGEST: CSHB 186 would amend Insurance Code, ch. 21 by adding art. 21.49C, concerning the reporting of claims information to authorized officials for insurance investigations of burglary, robbery, or death.

The bill would permit the state fire marshal, the fire marshal of a political subdivision, the chief of a fire department, a municipal police chief, or a sheriff, all within Texas, to request in writing certain information from an insurance company investigating a burglary loss, robbery loss, or death claim seeking life insurance proceeds. The bill would require insurers to release information relating to the claimed loss to an authorized official under the bill, if the company had reason to believe that the insurance claim was false or fraudulent. Information that could be requested would include:

- ! an insurance policy relevant to a claim under investigation;
- ! policy premium records;
- ! previous claims history made by the insured; and
- ! material relating to the investigation of the insurance claim, including statements of any person, proof of loss, or other relevant evidence.

The bill would not authorize a public official to require any type of periodic report by an insurance company.

In the absence of fraud or malice, neither an insurance company nor a person who provided information on behalf of the insurer would be liable for civil damages nor subject to criminal prosecution for statements made or actions taken while releasing information required under this legislation. The officials receiving information would be required to hold it in confidence until its release was required during a criminal or civil proceeding. Further, CSHB186 would prohibit an insurance company or its representative from intentionally refusing to release the required information under this act.

CSHB 186 would take effect September 1, 2001, and would apply only to a claim for a burglary or robbery loss or a death claim seeking life insurance proceeds that was filed with an insurance company on or after that date.

**SUPPORTERS
SAY:**

CSHB 186 would aid public officials in their investigations of insurance fraud. By extending the same specific authority to fire marshals, fire chiefs and peace officers granted to them while investigating arson claims, this bill would help authorities to pursue and prosecute cases involving burglary, robbery, or death claims seeking life insurance proceeds.

The bill would establish procedures for state and local law enforcement authorities to obtain information relevant to certain kinds of insurance fraud investigations without a subpoena or the request of a grand jury. The broad provision in art. 1.10D, sec. 4 regarding disclosure to an authorized governmental agency might not be interpreted to include officials such as police chiefs and sheriffs in local jurisdictions. This bill specifically would grant authority to local law enforcement officials to request information needed for their own criminal fraud investigation.

Insurance companies sometimes are reluctant to cooperate in fraud investigations out of concern that they could bear criminal or civil liability for releasing information. In the absence of fraud or malice, an insurance company or person who released information on the insurer's behalf under this bill would not be held liable for cooperating with law enforcement officials.

The committee substitute eliminated concerns with the original bill regarding cooperation with law enforcement officials. Some insurers were uneasy that the broad language contained in the filed bill might force them to participate in sting operations.

**OPPONENTS
SAY:**

The bill would add little new authority that does not already exist. Under the broad authority of Insurance Code, Art. 1.10D, insurers and others who determine that a fraudulent insurance act has been or is about to be committed must report the information to TDI or a local prosecutor or law enforcement authority. The information is confidential, and those reporting have broad immunity.

NOTES:

The committee substitute removed a provision in the original bill that would have required an insurance company that received a request for information about claims that the company had reason to believe were false, fraudulent or exaggerated to notify and cooperate with law enforcement officials. The substitute also deleted a provision that would have required an official authorized to request information relating to an insurance claim to testify in a civil action.