

SUBJECT: Prohibiting communications to claimants that discourage hiring attorneys

COMMITTEE: Insurance — committee substitute recommended

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

WITNESSES: None

BACKGROUND: Currently, no law prohibits insurance companies and their representatives from making written or oral communications that might discourage claimants from seeking legal representation. The Insurance Code provides several remedies for victims of unfair and deceptive acts, including class action suits, injunctions, and other penalties.

DIGEST: CSHB 1533 would amend the Insurance Code to prohibit an insurance company or its representatives from making a written or oral communication that would discourage a claimant from obtaining legal representation. The bill would declare this an unfair and deceptive act or practice subject to penalties and other sanctions provided by the code. The commissioner of insurance could adopt rules to enforce these provisions.

The bill would take effect September 1, 1999, and would apply only to a communication made on or after January 1, 2000.

SUPPORTERS SAY: CSHB 1533 would prevent insurance companies from using unfair tactics against consumers. For example, some automobile insurance companies send claimants misleading brochures saying that the insurance company will treat the claimant like their own insured and that hiring an attorney might cause unnecessary delay and cost. Some of these brochures are entitled “Do I need an attorney?” These communications may lead unwary claimants to accept lower settlements than those to which they are entitled.

CSHB 1533 would not affect reputable insurance companies because it would not prohibit normal communications involved in the claims process. The bill’s language specifies that it would prohibit only communications that

“discourage” hiring an attorney. An insurance company has no valid reason to discourage a claimant from hiring an attorney.

The suggestion that this bill would stifle ordinary communications or keep important information from the consumer does not reflect the reality of the claims process. Claimants who might have no prior legal or insurance experience are pitted against trained adjusters who have the advantage at every stage of the claims process. CSHB 1533 would protect claimants from unfair practices.

OPPONENTS
SAY:

CSHB 1533 would be an unconstitutional restriction on speech that is not untrue or misleading. Insurance companies do not make false or misleading communications when they say that hiring an attorney might cause added delay or cost, nor when they say that they will treat a claimant fairly. The Insurance Code already prohibits companies from making untrue statements.

Most companies view claimants as potential customers and treat the claims process as an opportunity to advertise their customer service. Companies have nothing to gain by using unfair or deceptive tactics against claimants, since those tactics would hurt the company’s reputation.

Consumers already know the reasons why they might hire an attorney to pursue their claims. It would be overly paternalistic for the state to limit the information that a claimant can receive.

OTHER
OPPONENTS
SAY:

CSHB 1533 would restrict communication between the claimant and the insurance company. Many claimants handle negotiations for their own claims. The bill should remove the prohibition against communication discouraging a claimant from seeking an attorney once the insurance company or the claimant has made first contact and initiated the claims process.

NOTES:

The original bill would have prohibited communications that might discourage “another person, including an attorney” from representing the claimant.