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**The "Unauthorized Insurance" Provisions of the Texas Insurance Code;  
The Good, The Bad, and the Really Ugly;  
or  
"The Consequences of not quite getting it right"**

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## **1. INTRODUCTION**

In the State of Texas, if an act or action is deemed to be the "business of insurance", one MUST find specific statutory authority or one is simply prohibited from doing it.

That makes Texas a "prohibitive" and not a "permissive" state.

The source for this statutory prohibition, is found at section 101.102 of the Texas Insurance Code ("TIC"), which provides, in clear and unambiguous terms, as follows:

*"A person, including an insurer, may not directly or indirectly do an act that constitutes the business of insurance under this chapter except as authorized by statute."*

## **2. WHAT CONSTITUTES THE "BUSINESS OF INSURANCE"?**

Perhaps not surprisingly, the definition is as broad as the prohibition is absolute.

Section 101.051 of the TIC, provides the following ten (10) point list:

- (1) *making or proposing to make, as an insurer, an insurance contract;*
- (2) *making or proposing to make, as guarantor or surety, a guaranty or suretyship contract as a vocation and not merely incidental to another legitimate business or activity of the guarantor or surety;*
- (3) *taking or receiving an insurance application;*
- (4) *receiving or collecting any consideration for insurance, including:*
  - (A) *a premium;*
  - (B) *a commission;*
  - (C) *a membership fee;*
  - (D) *an assessment; or*
  - (E) *dues;*
- (5) *issuing or delivering an insurance contract to:*

- (A) *a resident of this state; or*
  - (B) *a person authorized to do business in this state;*
- (6) *directly or indirectly acting as an agent for or otherwise representing or assisting an insurer or person in:*
- (A) *soliciting, negotiating, procuring, or effectuating insurance or a renewal of insurance;*
  - (B) *disseminating information relating to coverage or rates;*
  - (C) *forwarding an insurance application;*
  - (D) *delivering an insurance policy or contract;*
  - (E) *inspecting a risk;*
  - (F) *setting a rate;*
  - (G) *investigating or adjusting a claim or loss;*
  - (H) *transacting a matter after the effectuation of the contract that arises out of the contract; or*
  - (I) *representing or assisting an insurer or person in any other manner in the transaction of insurance with respect to a subject of insurance that is resident, located, or to be performed in this state;*
- (7) *contracting to provide in this state indemnification or expense reimbursement for a medical expense by direct payment, reimbursement, or otherwise to a person domiciled in this state or for a risk located in this state, whether as an insurer, agent, administrator, trust, or funding mechanism or by another method;*
- (8) *doing any kind of insurance business specifically recognized as constituting insurance business within the meaning of statutes relating to insurance;*
- (9) *doing or proposing to do any insurance business that is in substance equivalent to conduct described by Subdivisions (1)(8) in a manner designed to evade statutes relating to insurance; or*
- (10) *any other transaction of business in this state by an insurer.*

**3. ARE THERE ANY EXEMPTIONS TO WHAT CONSTITUTES THE "BUSINESS OF INSURANCE"?**

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