

## INTENDED CONSEQUENCES OF TEXAS SENATE BILL 236

There is a section in the Texas Insurance Code known as 21.21. It permits private actions for "unfair or deceptive" practices by insurance companies. It's the only thing in Texas that stands between a policyholder and rampant bad faith.

Senators Van de Putte and Fraser, recently introduced proposed amendments to that section under S.B. 236. Their aim, so they say, was to bring equity to the liability of insurance agents but the intended (or unlikely "unintended") consequences let insurance companies off the hook. These legislators are either carrying water for the insurance company special interests or, like many of their constituents, they have been hoodwinked by

the insurers and agents who are clamoring for these special protections.

According to Mark Kincaid, a well-respected insurance lawyer from Texas, "The proposed bill would not achieve its stated purpose to help only insurance agents, and it would create tremendous loopholes for insurers to avoid responsibility for unfair insurance practices. While the bill claims its goal is to help agents, it goes much further and could bar many claims against insurers. For example, the "professional services" exception would let insurance companies escape liability."

Kincaid also noted that the bill's "professional services" exemption would cause great confusion. A defendant is exempt for statements of mere advice, opinion and judgment, but is not exempt for misrepresentations of fact. Because of the way insurance is sold, with agents and insurers encouraging consumers to trust and rely on the agent's personalized advice, juries would potentially be misled, resulting in insurers avoiding liability for misrepresentations by their agents. This would be a sweeping change in the law.

For insurance other than homeowners, the bill also would bar claims over \$100,000 if the consumer was represented by a lawyer, and all claims over \$500,000. This means that businesses and individuals who paid for more coverage would have less protection against misrepresentations and bad faith settlement practices.

Kincaid told POA, "These exemptions will also hurt businesses and individuals. If they exclude claims or coverage for \$100,000 or \$500,000, this will exclude the majority of life, health, disability, auto, and general liability policies. This would benefit insurers, not just agents."

SB 236 contains provisions that preclude non-economic damages. Kincaid explained, "Precluding non-economic damages would be grossly unfair in insurance cases. Most insurance cases do not involve non-

economic damages, other than mental anguish. But in the few that do, recovery for personal injuries is vital. For example, an insurer that wrongly denies health insurance -- e.g., for an organ transplant -- could kill the insured, but the widow and orphans could not sue under the very statute that is supposed to protect insureds, if the proposed changes were adopted."

Finally, the bill would let insurers and agents who act unfairly point the finger at their victims, under the label "comparative responsibility." Kincaid told POA, "The Insurance Code prohibits misrepresentations, nondisclosures, discrimination, unfair settlements, and other unfair practices. Historically, a defendant who misrepresented or concealed something could not say the plaintiff was negligent in believing him or in failing to investigate. The bill would give insurers and agents such a defense. Insurers already are protected if an insured acts unreasonably. They don't need another bite at the apple."

So, intended or unintended, SB236 has serious consequences and your voice must be heard so that Texas policyholders are not left flying without a net.