

## Lawyer Insights

### Unauthorized Insurers Face Unwelcome Fines and Expenses

By Geoffrey Fehling and Adriana Perez

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name a few.

While many companies think of themselves first and foremost as insurance *consumers*—that is, negotiating and purchasing insurance products to protect their business and the individuals that run it from liability—there are many other roles that companies can take on that cause them to be operating directly or indirectly within the insurance industry. Retailers may offer insurance products to customers, businesses may sell or advertise health insurance or other plans to employees, or vendors may provide back office or other services to insurers, just to

Given the critical role that insurance plays, companies may find themselves subject to regulatory or other restrictions related to the solicitation, negotiation, or execution of insurance contracts. Those that run afoul of insurance regulations may find themselves in the crosshairs for engaging in the unauthorized business of insurance. Recently, for example, the Washington Insurance Commissioner fined Airbnb for its Host Damage Protection Program, which advertised \$1 million in coverage for damages caused by a guest.<sup>1</sup> There, Washington insurance regulators found that by offering this program, Airbnb engaged in the unauthorized practice of insurance. Similarly, the New York Department of Financial Services levied fines against the National Rifle Association and its administrator for its involvement in providing a “Carry Guard” program, which the DFS found insured illegal conduct.<sup>2</sup> Both the NRA and its administrator faced fines in the millions of dollars.

Further, businesses purportedly engaged in the unauthorized business of insurance can also face liability by private actors. One Florida statute provides a private cause of action if a person is damaged by an unauthorized insurer.<sup>3</sup> Just last year, Budget Avis Rental Car agreed to settle a class action lawsuit for nearly \$34 million based on allegations that Budget Avis, among other things, violated Florida’s statute regarding the unauthorized business of insurance.<sup>4</sup>

Businesses that work in the insurance industry or even in insurance-adjacent fields should be aware of the numerous laws and regulations governing the unauthorized business of insurance. A proactive approach, including by retaining competent counsel, can help navigate myriad regulations, assess whether providing a service or product may run counter to those regulations, and, if needed, defend against investigations and lawsuits arising from any alleged unauthorized business of insurance (or conversely, pursue legal for persons or businesses damaged by unauthorized insurance transactions).

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## State Regulatory Frameworks Governing Unauthorized Transaction of Insurance

### What is the Unauthorized Transaction of Insurance?

Insurance is generally a matter of state law.<sup>5</sup> As a result, each state has its own regulations that address the unauthorized transaction of insurance. Generally speaking, these regulations prohibit a person or entity from transacting insurance in a state unless previously authorized by the insurance regulator of that state.<sup>6</sup> A violation can result in a hefty civil fine, large lawsuits, and even criminal sanctions.<sup>7</sup>

Nevada Revised Statute 685B.030(2), for example, states that “[i]t is unlawful for any insurer to transact an insurance business in this State . . . without a certificate of authority from the Commissioner.” This same statute defines the transaction of insurance to include: (a) the making of or proposing to make, as an insurer, an insurance contract, (b) the taking or receiving any application for insurance, (c) receiving or collecting a premium, commission, or other dues for any insurance, (d) issuing or delivering a contract of insurance to a Nevada resident, (e) and directly or indirectly acting representing an insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals.<sup>8</sup>

Likewise, Washington Revenue Code § 48.05.030, states that “No person shall act as an insurer and no insurer shall transact insurance in this state other than as authorized by a certificate of authority issued to it by the commissioner and then in force.” The Washington Revenue Code defines “insurance transaction” as solicitation, negotiations preliminary to execution, execution of an insurance contract, transaction of matters subsequent to execution of the contract and arising out of it, and insuring.<sup>9</sup> Further, Washington Revenue Code § 48.15.020 prohibits an insurer from soliciting insurance business or transacting insurance business in Washington. If the insurance commissioner has cause to believe there

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has been a violation of § 48.15.020, the commissioner may assess a civil penalty of up to \$25,000 for each violation.<sup>10</sup> Additionally, a knowing violation of Washington's regulation is a felony, and any criminal penalty imposed is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized under state law.<sup>11</sup>

Similarly, New York Insurance Law § 1102 states that “[n]o person, firm, association, corporation or joint-stock company shall do an insurance business in this state unless authorized by a license.” New York law defines “insurance business” broadly to include “making, or proposing to make, as insurer, any insurance contract, including either issuance or delivery of a policy or contract of insurance to a resident of this state or to any firm, association, or corporation authorized to do business herein, or solicitation of applications for any such policies or contracts.”<sup>12</sup> Insurance business also means “doing any kind of business . . . specifically recognized as constituting the doing of an insurance business within the meaning of this chapter; . . . or doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this chapter.”<sup>13</sup>

Florida's regulations have much of the same. Section 624.401 states in part that “[n]o person shall act as an insurer, and no insurer or its agents, attorneys, subscribers, or representatives shall directly or indirectly transact insurance, in this state except as authorized by a subsisting certificate of authority issued to the insurer by the office.” The statute delineates that “any person who acts as an insurer, transacts insurance, or otherwise engages in insurance activities in this state without a certificate of authority in violation of this section commits a felony of the third degree.”<sup>14</sup> Further, Florida Statute § 624.155 provides a private right of action for a “party damaged by a violation of s. 624.401 by the unauthorized insurer.”<sup>15</sup>

These are just some illustrative examples.<sup>16</sup> And while there are many similarities across different states' regulations, the nature of disparate state law on insurance leads to different wording and enforcement that can materially differ depending on applicable state law.

## What Fines, Penalties or Other Violations May Result from Unauthorized Insurance Transactions?

Just as the statutes and regulations regarding the unauthorized business of insurance vary from state to state, the way these statutes are violated and the outcome of these violations also varies. Traditional examples include businesses in the crosshairs for having violated a state's unauthorized insurer statute by selling insurance products without a license. In 2022, for example, a Texas company selling health insurance to over 2,000 Michigan residents without proper licensure was found to have violated Michigan's unlicensed insurer statute.<sup>17</sup> The Michigan Department of Insurance issued a cease-and-desist order to this “health insurer” and provided it 30 days to contest the order by requesting a hearing on the allegations.<sup>18</sup> In 2021, the Texas Department of Insurance also ordered this same company to stop selling unauthorized health insurance and begin an orderly shutdown.<sup>19</sup> Thus, as expected, selling insurance without the proper licensure can result in harsh penalties in various states.

Penalties extend to activities beyond insurance sales to things like advertising or solicitation of insurance products. Most recently, the Washington Insurance Commissioner, through a consent order, fined Airbnb \$20,000 for acting as an unauthorized insurer. Airbnb faced this fine after being investigated in connection with Airbnb's Host Damage Protection Program, which advertised \$1 million in

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coverage for damages caused by a guest. According to the Commissioner's office, this program "was included with each booking as part of the company's AirCover program, provided under a general liability policy with hosts covered as insureds."<sup>20</sup>

In addition, Washington regulators required that Airbnb review all claims since January 1, 2021 that were previously denied under the Host Damage Protection Program and pay out any covered costs that were improperly denied. "Going forward, all claim coverage and amounts paid out to Airbnb hosts will be determined by an insurance adjuster licensed in Washington state."<sup>21</sup> In order to continue offering its Host Damage Protection program, Airbnb will have to obtain a surplus lines insurance policy.<sup>22</sup>

New York's Department of Financial Services has also imposed large fines on organizations that have advertised insurance without a license. In 2020, the NRA agreed to a civil fine of \$2.5 million and a five-year suspension of its insurance business in New York.<sup>23</sup> The New York DFS found that from 2000 to 2018 the NRA, in conjunction with its insurance administrator, violated New York Insurance Law by operating as an unlicensed insurance producer, soliciting insurance products, and receiving compensation.<sup>24</sup> In the Consent Order, the DFS found that the NRA program offered coverage that violated New York law because it insured intentional acts.<sup>25</sup> The Carry Guard program provided coverage "for losses and costs associated with the aftermath of the purposeful use of the firearm, including defense costs in a criminal prosecution."<sup>26</sup> The NRA solicited its Carry Guard program through various channels such as on its website, emails, and direct mail.<sup>27</sup>

Companies that offer warranties are also facing fines by insurance regulators. For example, the Washington Insurance Commission imposed a \$20,000 fine on an equipment repair and servicing company providing an "all-inclusive warranty" for certain electronics such as televisions.<sup>28</sup> Because the warranties constituted regulated insurance products and the company was not authorized to transact insurance in Washington, the Commissioner found it has violated Washington Revenue Code §48.05.020 and § 48.05.030 and imposed a \$20,000 fine.<sup>29</sup>

Similarly, in 2020 the California Department of Insurance issued a cease and desist against an unlicensed company that unlawfully sold automobile extended warranties.<sup>30</sup> The company allegedly transacted insurance without a license, collected premiums and failed to place insurance coverage for its customers resulting in more than \$100,000 uncovered losses to customers.<sup>31</sup> In California, the penalty for offering or selling insurance without a valid license is punishable by a fine not to exceed \$50,000.<sup>32</sup>

In addition to potential regulatory fines and penalties, companies engaging in the unauthorized business of insurance can also face lawsuits by private actors. Last year, for example, Avis Budget Car Rental, LLC agreed to pay, and the District Court for the Middle District of Florida approved, a \$33,956,613.00 class action settlement after a putative class action plaintiff alleged that, among other claims, Avis Budget violated Fla. Stat. § 624.401 when it engaged in the business practice of selling Supplemental Liability Insurance or Additional Liability Insurance to international customers, even though it lacked the authority and allegedly left the renters without legally valid insurance coverage.<sup>33</sup> In addition to the nearly \$34 million dollar settlement, the District Court also approved an award of \$8,925,000 in attorneys' fees and costs against Avis Budget.<sup>34</sup>

Thus, companies soliciting or offering either traditional or untraditional types of insurance may face liability from insurance regulators and private actors if found to violate laws and regulations across the country regarding the unlicensed business of insurance.

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## Navigating Potential Exposure for Unauthorized Insurance Practices

In order to avoid fines and other penalties, businesses that work in the insurance industry and in insurance-adjacent fields should be knowledgeable of the laws and regulations governing the unauthorized business of insurance from state to state. A proactive approach, including by retaining competent counsel, can help a business traverse differing statutes and regulations regarding the unauthorized business of insurance. Counsel can likewise assess whether providing a service or product may run counter to these regulations or statutes, and, if needed, defend against investigations and lawsuits arising from any alleged unauthorized business of insurance. Likewise, if a person or business believes it has been damaged by the unauthorized business of insurance, counsel can assist in assessing or even pursuing a legal claim for these damages.

### Notes

1. *Kreidler Fines Airbnb \$20,000 for Acting As An Unauthorized Insurer*, Office of the Insurance Commissioner, May 16, 2023, <https://www.insurance.wa.gov/news/kreidler-fines-airbnb-20000-acting-unauthorized-insurer> (last accessed June 29, 2023).
2. DFS Superintendent Linda A. Lacewell Announces Settlement With NRA to Resolve Case Involving Violations of New York Insurance Law, Department of Financial Services, November 18, 2020, [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr202011181](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202011181) (last accessed June 28, 2023).
3. Fla. Stat. § 624.155(2) (“Any party may bring a civil action against an unauthorized insurer if such party is damaged by a violation of s. 624.401 by the unauthorized insurer.”)
4. *Venerus v. Avis Budget Car Rental, LLC*, No. 6:13-cv-921-CEM-DAB, 2022 WL 2441903, at \*4 (M.D. Fla. June 24, 2022) (report and recommendation approved in 2022 WL 2440519, at \*1 (M.D. Fla. July 5, 2022)).
5. § 2:5. Type of state laws “saved” by McCarran-Ferguson Act, 1 Couch on Ins. § 2:5 (“The McCarran-Ferguson Act allows each state to regulate insurance companies within their boundaries.”)
6. See e.g. Wash Rev Code Ann 48.05.030 (“No person shall act as an insurer and no insurer shall transact insurance in this state other than as authorized by a certificate of authority issued to it by the commissioner and then in force; except, as to such transactions as are expressly otherwise provided for in this code.”); N.Y. Ins. Law § 1102 (“No person, firm, association, corporation or joint-stock company shall do an insurance business in this state unless authorized by a license . . .”); Fla Stat Ann § 624.401 (“No person shall act as an insurer, and no insurer or its agents, attorneys, subscribers, or representatives shall directly or indirectly transact insurance, in this state except as authorized by a subsisting certificate of authority issued to the insurer by the office, except as to such transactions as are expressly otherwise provided for in this code”).
7. See e.g. Fla Stat. § 624.104(4)(a) (“Any person who acts as an insurer, transacts insurance, or otherwise engages in insurance activities in this state without a certificate of authority in violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.”); California Ins. Code § 1633 (providing that any person who transacts insurance without a valid license is guilty of a misdemeanor punishable by a fine not exceeding \$50,000 or by imprisonment up to one year, or both fine and imprisonment);
8. NRS 685B.030(3).

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9. Wash Rev Code § 48.01.060.
10. Wash Rev Code § 48.15.023(5)(a).
11. Wash Rev Code § 48.15.023(3)-(4).
12. N.Y. Ins. Law § 1101.
13. Id.
14. Fla Stat. § 624.104(4)(a).
15. Fla. Stat. § 624.155(2) (“Any party may bring a civil action against an unauthorized insurer if such party is damaged by a violation of s. 624.401 by the unauthorized insurer.”)
16. See e.g. Ala.Code 1975 § 27-3-1 (“No person shall act as an insurer and no insurer shall transact insurance in this state unless so authorized by a subsisting certificate of authority issued to it by the commissioner.”); Connecticut General Statutes Annotated § 38a-41 (“No insurance company or health care center shall do any insurance business or health care center business within this state until and except while it is permitted to do so under the terms of a license issued by the commissioner.”); Hawaii Revised Statutes § 431:3-201 (“No person shall act as an insurer and no insurer shall transact insurance business in this State other than as authorized by a certificate of authority granted to it by the commissioner”); Maine Insurance Code § 404 (“No person shall act as an insurer and no insurer shall transact insurance in this State by mail or otherwise, unless as authorized by a certificate of authority issued by the superintendent pursuant to this Title and then in full force and effect.”).
17. Michigan orders Salvasen Health to stop selling insurance policies amid licensing concerns, Frank Witsil, Detroit Free Press, July 25, 2022, <https://www.freep.com/story/news/local/michigan/2022/07/25/salvasen-health-michigan-insurance/10144581002/> (last accessed June 29, 2023).
18. Id.
19. Id.
20. Kreidler fines Airbnb \$20,000 for Acting as an Unauthorized Insurer, Office of the Insurance Commissioner Washington State, May 16, 2023, [https://www.insurance.wa.gov/news/kreidler-fines-airbnb-20000-acting-unauthorized-insurer#:~:text=%E2%80%94Insurance%20Commissioner%20Mike%20Kreidler%20has,\(HDP\)%20program%20in%20Washington.](https://www.insurance.wa.gov/news/kreidler-fines-airbnb-20000-acting-unauthorized-insurer#:~:text=%E2%80%94Insurance%20Commissioner%20Mike%20Kreidler%20has,(HDP)%20program%20in%20Washington.) (last accessed June 27, 2023).
21. Id.
22. Id.
23. DFS Superintendent Linda A. Lacewell Announces Settlement With NRA to Resolve Case Involving Violations of New York Insurance law, Department of Financial Services, November 18, 2020, [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr202011181](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202011181) (last accessed June 28, 2023).
24. Id.
25. Id.
26. Id.
27. DFS Fines Lockton Companies \$7 million for Underwriting NRA-Branded “Carry Guard” Insurance Program in Violation of New York Insurance Law, Department of Financial Services, May 2, 2018, [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr1805021](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1805021) (last accessed June 28, 2023).
28. In the Matter of Mack Camera & Video Service, Inc., d/b/a Mack Worldwide Warranty and Guard Protection Plan. Mack Worldwide, Order No. 22-0294 (May 19, 2022), <https://fortress.wa.gov/oic/consumertoolkit/Orders/OrderProfile.aspx?OrderNumber=7k7ys76CI81ugimwjXJR0w%253D%253D> (last accessed June 29, 2023).
29. Id.

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30. Department of Insurance issues Cease and Desist order against Lake Forest unlicensed agent, California Department of Insurance, October 16, 2020, <https://www.insurance.ca.gov/0400-news/0100-press-releases/2020/release101-2020.cfm> (last accessed June 28, 2023).
31. Id.
32. Id.
33. *Venerus v. Avis Budget Car Rental, LLC*, No. 6:13-cv-921-CEM-DAB, 2022 WL 2441903, at \*4 (M.D. Fla. June 24, 2022) (report and recommendation approved in 2022 WL 2440519, at \*1 (M.D. Fla. July 5, 2022)).
34. *Venerus v. Avis Budget Car Rental, LLC*, No. 6:13-cv-921-CEM-DAB, 2022 WL 18495246 at \*7 (M.D. Fla. Dec. 14, 2022).

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