

SUBJECT: Revising licensing of insurance agents

COMMITTEE: Insurance — favorable, without amendment

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

0 nays

SENATE VOTE: On final passage, March 1 — voice vote

WITNESSES: For — Bo Gilbert, Independent Insurance Agents of Texas; Kenneth Tooley, Texas Association of Insurance and Financial Advisors

Against — None

On — Don Hanson, Texas Department of Insurance; Clyde Sloan, Concerned Texas Insurance Agents

BACKGROUND: Congress enacted the Gramm-Leach-Bliley Act, also known as the Financial Services Modernization Act, in November 1999. The act requires at least a majority (29) of the states and territories to adopt agent licensing laws that are uniform, or to allow reciprocity, before November 12, 2002. Failure to do so will result in the creation of the National Association of Registered Agents and Brokers, a new self-regulating organization that would institute uniform licensing of agents to supersede state control.

The 76th Legislature enacted SB 956 by Madla, which anticipated the federal legislation and contained the major provisions of SB 414. However, Gov. George W. Bush vetoed the bill on the grounds that an unrelated amendment had been added to the bill that would have relieved bail bondsmen from any liability on bond forfeitures for one year. That provision, the governor said, would jeopardize public safety by weakening the obligation of bondsmen to ensure that criminal defendants appeared in court.

The 75th Legislature in 1997 enacted SB 206 by Madla, requiring the insurance commissioner to review and evaluate the current licensing statutes

for insurance agents and to determine any changes needed for new marketing methods; to reduce the number and types of licenses; to decide which statutory provisions should apply uniformly to all insurance licenses; and to address any other related problems that might exist. The Texas Department of Insurance (TDI) currently issues 15 types of licenses, subdivided into 46 different categories.

DIGEST: SB 414 would reorganize the license structure for insurance agents into four basic license types:

- ! general life, accident, and health;
- ! limited life, accident, and health;
- ! general property and casualty; and
- ! limited property and casualty.

General license holders could write the same types of insurance as limited or specialty license holders could write, without obtaining an additional license. Temporary licenses valid for 90 days would be issued to people being considered for appointment as agents.

General life, accident, and health. The general life, accident, and health insurance license would be required for the following agents:

- ! agents writing life, accident, and health insurance for a life insurance company;
- ! agents writing only accident and health insurance;
- ! agents representing a health maintenance organization;
- ! agents writing fixed or variable annuity contracts or variable life contracts;
- ! industrial life insurance agents for industrial companies who wrote only weekly premium life insurance on a debit basis under the Insurance Code;
- ! agents writing life, accident, or health insurance for a stipulated premium insurance company, except for agents writing only life insurance worth less than \$15,000 for a stipulated premium insurance company;
- ! certain agents writing insurance outside of the United States on U.S. military installations or with military personnel;
- ! agents for fraternal benefit societies who spent more than 50 percent of

- their time soliciting and procuring insurance contracts; and
- ! all other agents required by the commissioner to have the license.

Limited life, accident, and health. The limited life, accident, and health insurance license would be required for the following agents:

- ! agents for local mutual aid associations, local mutual burial associations, or statewide mutual aid associations;
- ! agents writing only policies providing ambulance expense coverage or lump-sum accidental death or dismemberment coverage;
- ! agents writing prepaid legal services contracts;
- ! agents writing credit insurance, except for agents required to have speciality licenses;
- ! anyone marketing, offering for sale, or delivering credit insurance products for a retailer, bank, or other savings institution, finance company, or production credit association; and
- ! all other agents required by the commissioner to have the license.

Different versions of the limited life, accident, and health insurance license would be required for funeral prearrangement life insurance agents and for agents selling policies that did not exceed \$15,000 on any one life.

General property and casualty. The general property and casualty insurance license would be required for the following agents:

- ! agents writing property and casualty insurance for authorized property and casualty insurance companies;
- ! subagents of licensed agents who solicited and bound insurance risks on behalf of the agent; and
- ! all other agents required by the commissioner to have the license.

An applicant for a property and casualty license could be issued an emergency license for up to 180 days to preserve the agency's assets in the event of an agent's death, disability, or insolvency in order to preserve the agency's assets.

A separate insurance service representative license would be required for salaried employees assigned to perform duties within a property and casualty

agent's office. General property and casualty insurance license provisions would apply to the insurance service representative license, except for proof of financial responsibility.

Limited property and casualty. The limited property and casualty insurance license would be required for the following agents:

- ! agents writing insurance only on growing crops;
- ! agents writing insurance for a farm mutual insurance company whose policies generated more than \$50,000 in direct premiums annually;
- ! agents writing insurance related only to motor vehicles;
- ! agents writing prepaid legal services contracts;
- ! agents writing insurance for companies who exclusively offered industrial fire insurance policies and whose policies generated more than \$20,000 in direct premiums annually;
- ! agents writing credit insurance, except for agents required to have specialty licenses;
- ! agents writing job protection insurance; and
- ! all other agents required by the commissioner to have the license.

A modified version of the limited property and casualty license would be required for county mutual insurance company agents.

Licenses for corporations and partnerships. SB 414 would allow partnerships as well as corporations to hold insurance agent licenses. Instead of the current requirement that every officer, director, and shareholder be licensed as an insurance agent, SB 414 would require only one corporate officer or active partner to hold an agent's license. Nevertheless, everyone acting as an agent for a corporation or partnership would have to hold an agent's license.

The errors and omissions insurance coverage required for licensed business entities as proof of financial responsibility would be increased from \$10,000 with a maximum \$10,000 deductible to \$250,000 with a maximum deductible of 10 percent of the policy's face value. Business entities could satisfy this financial responsibility requirement with a \$25,000 surety bond as well, but they no longer could satisfy the requirement by paying a \$25,000 deposit to the comptroller.

Nonresident agent license. SB 414 would allow TDI to license a nonresident as an insurance agent if the nonresident was licensed in another state or complied with Texas license requirements.

A corporation or partnership domiciled in another state could be licensed as an agent if the entity was licensed in another state that had a reciprocal agreement with Texas or complied with Texas license requirements and did not include people who were disqualified from holding a license in Texas.

Examinations. The insurance commissioner would have to prescribe written examinations for insurance agent licenses, depending on the type of license. A written examination would not be required for:

- ! applicants renewing unexpired licenses;
- ! applicants whose licenses expired less than one year before the date of the application, if the previous license was not denied, revoked, or suspended by the commissioner;
- ! partnerships, corporations, or banks;
- ! applicants for life, accident, and health licenses designated as chartered life underwriters (CLUs);
- ! applicants for life and health licenses designated as CLUs, chartered financial consultants, or certified financial planners;
- ! applicants for property and casualty licenses designated as chartered property and casualty underwriters;
- ! applicants for specialty licenses;
- ! exempt nonresidents; and
- ! certain applicants authorized to solicit insurance on behalf of a fraternal benefit society.

Proof of financial responsibility for individual agents. Current law requires corporations licensed as insurance agents to provide proof of financial responsibility through errors and omissions insurance or a bond. SB 414 would require an individual agent who was not covered by a corporation or general agency to have an errors and omissions policy of at least \$250,000 with a maximum deductible of 10 percent of the policy's face value or a \$25,000 bond payable to TDI.

Other provisions. SB 414 contains the following additional provisions:

- ! continuing education requirements for most licensed insurance agents;
- ! a list of prohibited activities for licensed insurance agents;
- ! additional disciplinary procedures for TDI to use against agents who had committed certain prohibited acts;
- ! notification to TDI from insurance carriers who terminated their contracts with agents;
- ! provisions for registration, continuing education, and disciplinary actions for home-office employees;
- ! authority to outsource the administrative function concerning continuing education programs for agents; and
- ! conforming provisions to update references in the code to the new law.

Grandfather clause and transition. An agent who was licensed after taking a written examination administered by an insurer or by the state would be entitled to the appropriate license under the bill without further examination.

An agent who was issued a license before January 1, 2001, without taking a written examination would be entitled to the appropriate license under the bill, but the agent would have to pass the appropriate written examination by the second anniversary of the date of issuance of the license.

An agent who was issued a license on or after January 1, 2001, without taking a written examination would be entitled to the appropriate license under the bill, but the agent would have to pass the appropriate written examination by May 31, 2002.

A person who had solicited insurance on behalf of a stipulated premium company, farm mutual company, or county mutual insurance company for at least 24 months before the bill's effective date would be entitled to the appropriate license without further examination.

SB 414 would take effect September 1, 2001. The bill's continuing education requirements would apply only to licenses renewed on or after January 1, 2003.

SUPPORTERS
SAY:

SB 414 would stimulate Texas' insurance market by modernizing licensing procedures for insurance agents and by removing resident restrictions for licenses to comply with federal mandates, reduce TDI's administrative burdens, and stimulate competition in a worldwide market.

With Congress' enactment of the Financial Services Modernization Act, the federal government has attempted to streamline financial procedures and make markets more competitive, not just regionally, but nationally and globally. Through this law, the U.S. government has urged all states to initiate uniformity or to expect federally imposed uniformity. If a majority of states and territories do not adopt laws conforming with the act's provisions, the federal government will establish uniform licensing of insurance agents without separate state controls.

The state no longer can allow uniform residency protections in light of the new federal law. To do so would jeopardize much of the state's licensing authority if federal control resulted. The business value of managing general agents in Texas has been inflated artificially by overly protective laws. It is time for policyholders to benefit from additional competition.

The current system of multiple license types is cumbersome and costly for the state to maintain. SB 414 would simplify insurance agent licensing as much as possible and would allow TDI to spend more time on other regulatory and enforcement issues.

Laws once enacted to protect agents in the Texas market no longer are appropriate in America's open-market economy. Such provisions no longer are protective, but inhibitive. Texas is the third largest insurance market in the nation. Texas insurance consumers would benefit from the technological advances and increased competition that this bill would bring.

OPPONENTS
SAY:

By removing resident protections for managing general agents, SB 414 would cause these agents to face broad competition and could threaten their existing business significantly. Managing general agents who oversee fields of property and casualty insurance agents have built up sizeable businesses in Texas. A state law enacted in the mid-1980s grandfathered roughly 300

nonresident managing general agents. With that exception, managing general agents in Texas have benefitted from the resident protections for decades.