SUBJECT: Prohibiting discriminatory agent commissions by small employer carriers

COMMITTEE: Insurance — favorable, without amendment

VOTE: 8 ayes — Smithee, Seaman, Bonnen, Gallego, B. Keffer, Taylor, Thompson, Van Arsdale

0 nays

1 absent — Eiland

WITNESSES: For — Marty Budinsky; Robert Desmond; George "Bud" Kopczynsky; Stephen "Stacey" Merritt

Against — None

BACKGROUND: Insurance Code, ch. 26 concerns fair marketing of small employers' health-benefit plans. Insurance agents are compensated by commission, based on the value of the premium paid to the small employer health-benefit plan. In 2001, the 77th Legislature enacted HB 471 by Averitt, which prohibited a small employer's insurance carrier from varying the level of agent commissions based on the size of the insured group or otherwise reducing access to small employer health-benefit plans. The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) also protects health insurance coverage for small group employers.

DIGEST: HB 1243 would prohibit small employer insurance carriers from excluding any additional health status or experience premium from the commission calculation or pay a smaller commission on the additional premium. It also would prohibit these insurers from paying a per-capita compensation, rather than the percentage commission.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: HB 1243 would seek to close loopholes that insurers have found in previous legislation. While the intent of last session's HB 471 clearly was to ensure the fair marketing of small employer health-benefit plans, insurers have changed

their practices to evade the law's intent. Refusing to pay commission on the extra premiums paid by higher-risk groups makes insurance agents less likely to write the policies, as does payment on a per-capita basis.

Insurers manipulate agents' commissions as a way of deliberately withholding coverage to small employers, who have actuarially higher risks. A bulletin issued by the insurance commissioner in June 1998 characterized these practices as violating federal and state law. While small employer carriers acknowledge this, they have managed to avoid provisions of current law by altering agents' commissions to further their questionable practices. This hurts not only employers and employees of small businesses, but also underwriting agents who would like to write the coverage and insurers who follow the law's intent, because they get more than their fair share of the higher risk groups.

Insurers may say they are not avoiding writing these policies, but per-capita compensation could be designed only for that reason. An agent who sells a health insurance plan for a group of young, healthy males would earn less under a compensation schedule, because there would be no risk-adjusted premium to boost the commission. However, an insurer who offers per-capita compensation gives the agent an incentive to work with that company.

OPPONENTS SAY:

HB 1243 is unnecessary. While some insurers may have manipulated agents' commissions in the past, such practices no longer occur. If insurers do not follow the law, they should be disciplined by the Texas Department of Insurance. No specific evidence exists of attempts by small employer carriers to manipulate agents' commissions in order not to write insurance.

OTHER OPPONENTS SAY:

The bill would not address other practices that insurers have developed to skirt the law. Some insurers offer "bonuses" that are higher or lower according to the average size of plans written, with a bias toward the larger small employer plans. While this is legal, it thwarts the intention of equal treatment for all small employer plans.