

By: Eiland

H.B. No. 2941

A BILL TO BE ENTITLED

AN ACT

relating to compensation of insurance agents.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 4005, Insurance Code, is amended by adding Section 4005.004 to read as follows:

Sec. 4005.004. DISCLOSURE OF COMPENSATION. (a) In this section:

(1) "Affiliate" has the meaning described by Section 823.003(a).

(2) "Agent" means a person licensed under Chapter 4051, 4053, 4054, or 4056.

(3) "Compensation from an insurer or other third party" includes payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration, whether or not payable under a written contract or agreement.

(4) "Compensation from a customer" does not include a fee described by Section 4005.003, or any fee or amount collected by or paid to the agent that has been established by the commissioner and does not exceed the amount established by the commissioner.

(5) "Customer" means the person signing the application for insurance or the authorized representative of the insured actually negotiating the placement of an insurance product with the agent. A person is not to be considered a "customer" of an

1 agent for purposes of this section solely because the person is a
2 participant or beneficiary:

3 (A) of an employee benefit plan; or

4 (B) of, or otherwise covered by, a group or
5 blanket insurance policy or group annuity contract sold, solicited,
6 or negotiated by an agent or the agent's affiliate.

7 (6) "Documented acknowledgement" means a customer's
8 dated acknowledgement, obtained before the customer's purchase of
9 an insurance product, as demonstrated by the customer's written or
10 electronic signature or recorded voice, or by other additional
11 methods that the commissioner may authorize by rule.

12 (b) If an agent, or any affiliate of an agent, receives
13 compensation from a customer for the placement or renewal of an
14 insurance product, including a fee described by Section 550.001, if
15 the fee exceeds an amount set by the commissioner, other than a
16 service fee described under Section 4005.003, the agent or the
17 affiliate may not accept or receive any compensation from an
18 insurer or other third party for that placement or renewal unless
19 the agent has, before the customer's purchase of insurance:

20 (1) obtained the customer's documented
21 acknowledgement that the compensation will be received by the agent
22 or affiliate; and

23 (2) provided a description of the method and factors
24 used to compute the compensation to be received from the insurer or
25 other third party for that placement.

26 (c) This section does not apply to:

27 (1) a licensed agent who acts only as an intermediary

1 between an insurer and the customer's agent, including a managing
2 general agent;

3 (2) a reinsurance intermediary or surplus lines agent
4 placing reinsurance or surplus lines insurance; or

5 (3) an agent whose sole compensation for the placement
6 or servicing of an insurance product is derived from commissions,
7 salaries, and other remuneration paid by the insurer.

8 (d) An agent may satisfy any requirements imposed by this
9 section through an affiliate.

10 (e) The commissioner may adopt rules as necessary to
11 implement this section, including rules authorizing additional
12 methods of demonstrating documented acknowledgement.

13 SECTION 2. Section 4005.054, Insurance Code, is amended to
14 read as follows:

15 Sec. 4005.054. RECEIVING ADDITIONAL FEE PROHIBITED. A
16 person who holds a license under this code and receives a commission
17 or other consideration for services as an agent may not receive an
18 additional fee for those services provided to the same client
19 except for a fee:

20 (1) described by Section 550.001 or 4005.003; and

21 (2) for which disclosure is made as required under
22 Section 4005.003 or Section 4005.004.

23 SECTION 3. (a) The Texas Department of Insurance shall
24 conduct a study regarding whether the commissions paid to insurance
25 agents for sales of insurance policies for coverage under the Texas
26 Health Insurance Risk Pool established under Chapter 1506,
27 Insurance Code, are sufficient to ensure that consumers who are

1 eligible for coverage under that pool are made aware of the
2 existence of the pool and the benefits of purchasing insurance
3 policies issued by the pool.

4 (b) The Texas Department of Insurance shall report the
5 results of the study to the Legislature not later than December 1,
6 2006.

7 SECTION 4. This Act takes effect September 1, 2005.