

1-1 By: Eiland (Senate Sponsor - Brimer) H.B. No. 2941
1-2 (In the Senate - Received from the House May 13, 2005;
1-3 May 16, 2005, read first time and referred to Committee on Business
1-4 and Commerce; May 20, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 20, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2941 By: Estes

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to compensation of insurance agents.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subchapter A, Chapter 4005, Insurance Code, is
1-13 amended by adding Section 4005.004 to read as follows:

1-14 Sec. 4005.004. DISCLOSURE OF COMPENSATION. (a) In this
1-15 section:

1-16 (1) "Affiliate" has the meaning described by Section
1-17 823.003(a).

1-18 (2) "Agent" means a person licensed under Chapter
1-19 4051, 4053, 4054, or 4056.

1-20 (3) "Compensation from an insurer or other third
1-21 party" includes payments, commissions, fees, awards, overrides,
1-22 bonuses, contingent commissions, loans, stock options, gifts,
1-23 prizes, or any other form of valuable consideration, whether or not
1-24 payable under a written contract or agreement.

1-25 (4) "Compensation from a customer" does not include a
1-26 fee described by Section 4005.003, an application fee, or an
1-27 inspection fee.

1-28 (5) "Customer" means the person signing the
1-29 application for insurance or the authorized representative of the
1-30 insured actually negotiating the placement of an insurance product
1-31 with the agent. A person is not to be considered a "customer" of an
1-32 agent for purposes of this section solely because the person is a
1-33 participant or beneficiary:

1-34 (A) of an employee benefit plan; or

1-35 (B) of, or otherwise covered by, a group or
1-36 blanket insurance policy or group annuity contract sold, solicited,
1-37 or negotiated by an agent or the agent's affiliate.

1-38 (6) "Documented acknowledgement" means a customer's
1-39 dated acknowledgement, obtained before the customer's purchase of
1-40 an insurance product, as demonstrated by the customer's written or
1-41 electronic signature or recorded voice, or by other additional
1-42 methods that the commissioner may authorize by rule.

1-43 (b) If an agent, or any affiliate of an agent, receives
1-44 compensation from a customer for the placement or renewal of an
1-45 insurance product, other than a service fee described under Section
1-46 4005.003, an application fee, or an inspection fee, the agent or the
1-47 affiliate may not accept or receive any compensation from an
1-48 insurer or other third party for that placement or renewal unless
1-49 the agent has, before the customer's purchase of insurance:

1-50 (1) obtained the customer's documented
1-51 acknowledgement that the compensation will be received by the agent
1-52 or affiliate; and

1-53 (2) provided a description of the method and factors
1-54 used to compute the compensation to be received from the insurer or
1-55 other third party for that placement.

1-56 (c) This section does not apply to:

1-57 (1) a licensed agent who acts only as an intermediary
1-58 between an insurer and the customer's agent, including a managing
1-59 general agent;

1-60 (2) a reinsurance intermediary or surplus lines agent
1-61 placing reinsurance or surplus lines insurance; or

1-62 (3) an agent whose sole compensation for the placement
1-63 or servicing of an insurance product is derived from commissions,

2-1 salaries, and other remuneration paid by the insurer.

2-2 (d) An agent may satisfy any requirements imposed by this
2-3 section through an affiliate.

2-4 (e) The commissioner may adopt rules as necessary to
2-5 implement the disclosure and acknowledgment of disclosure
2-6 requirements under this section.

2-7 SECTION 2. Section 4005.054, Insurance Code, is amended to
2-8 read as follows:

2-9 Sec. 4005.054. RECEIVING ADDITIONAL FEE PROHIBITED. A
2-10 person who holds a license under this code and receives a commission
2-11 or other consideration for services as an agent may not receive an
2-12 additional fee for those services provided to the same client
2-13 except for a fee:

2-14 (1) described by Section 550.001 or 4005.003; and
2-15 (2) for which disclosure is made as required under
2-16 Section 4005.003 or Section 4005.004.

2-17 SECTION 3. (a) The Texas Department of Insurance shall
2-18 conduct a study regarding whether the commissions paid to insurance
2-19 agents for sales of insurance policies for coverage under the Texas
2-20 Health Insurance Risk Pool established under Chapter 1506,
2-21 Insurance Code, are sufficient to ensure that consumers who are
2-22 eligible for coverage under that pool are made aware of the
2-23 existence of the pool and the benefits of purchasing insurance
2-24 policies issued by the pool.

2-25 (b) The Texas Department of Insurance shall report the
2-26 results of the study to the legislature not later than December 1,
2-27 2006.

2-28 SECTION 4. This Act takes effect September 1, 2005.

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