

BILL ANALYSIS

C.S.S.B. 1263
By: Brimer
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas partially adopted the Producer Licensing Model Act in the 77th Legislature, Regular Session 2001 (S.B. 414), but did not provide for a “life-only” license nor did it provide for a “personal lines- only” license as contemplated by the Producer Licensing Model Act. Adoption of a “life-only” license and a “personal lines-only” license will provide a better qualified and growing insurance agent force for Texas consumers, by removing irrelevant materials from the education and testing process and by strengthening core content curriculum for the life insurance agent license test as well as for the personal lines insurance license test.

Only three states do not offer a “life-only” license and or a “personal lines-only” license. In Texas, agents are required to complete mandatory pre-licensing and continuing education for life and health insurance and must also answer health insurance questions on the license examination in order to obtain and maintain their license to sell life insurance. Similarly, agents are required to complete mandatory pre-licensing education on personal lines as well as commercial lines products and must also answer questions on commercial lines products on the license examination in order to obtain their license to sell only personal lines products. This is despite the fact that “life-only” agents will only sell life insurance products and “personal lines-only” agents will only sell personal lines products.

The Act, as proposed would increase uniformity in insurance agent licensing criteria among the various states. C.S.S.B. 1263 revises the insurance agent licensing framework to allow for a “life-only” license and a “personal lines-only” license.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Insurance in SECTION 3.01 (Texas Insurance Code) of this bill.

ANALYSIS

ARTICLE 1. LICENSING OF CERTAIN INSURANCE AGENTS

SECTION 1.01 Amends Chapter 4051, Insurance Code, by adding Subchapter I, as follows:

SUBCHAPTER I. PERSONAL LINES PROPERTY AND CASUALTY AGENT

Sec. 4051.401. PERSONAL LINES PROPERTY AND CASUALTY LICENSE; LICENSE REQUIRED. Requires certain persons to hold a personal lines property and casualty license.

Sec. 4051.402. AUTHORITY TO WRITE ADDITIONAL LINES. (a) Authorizes a person who holds a personal lines property and casualty license to write the kind of insurance contracts described by this subchapter, Subchapters C (Limited Property and Casualty Insurance) and E (County Mutual Agent License), and Chapter 4055 (Specialty Agents).

(b) Authorizes a person who holds a personal lines property and casualty license to write accident and health insurance contracts, in addition to any of the insurance contracts described by Subsection (a), for individuals and families for personal, family, or household purposes for a property and casualty insurer authorized to sell those insurance products in this state.

Sec. 4051.403. PERSONAL LINES INCLUDED IN GENERAL PROPERTY AND CASUALTY LICENSE. Authorizes a person who holds a general property and casualty license under Subchapter B to write the kinds of insurance described by this subchapter, notwithstanding Section 4051.401.

SECTION 1.02. Amends Chapter 4054, Insurance Code, by adding Subchapter G, as follows:

SUBCHAPTER G. LIFE AGENT

Sec. 4054.301. LICENSE REQUIRED. (a) Requires certain persons to hold a life agent license if the person does not hold a general life, accident, and health license under Subchapter B, except as provided by Subsection (b).

(b) Provides that a person who holds a limited license under Subchapter C and who engages in the business of insurance only within the scope of that license is not required to hold a life agent license. Authorizes a person who holds a life agent license to write the insurance described by that subchapter.

(c) Provides that a person who holds a funeral prearrangement life insurance license under Subchapter D and who engages in the business of insurance only within the scope of that license is not required to hold a life agent license. Authorizes a person who holds a life agent license to write the insurance described by that subchapter.

(d) Provides that a person who holds a license to write life insurance not exceeding \$15,000 under Subchapter E and who engages in the business of insurance only within the scope of that license is not required to hold a life agent license. Authorizes a person who holds a life agent license to write the insurance described by that subchapter.

(e) Provides that this subchapter does not apply to a person who holds a specialty license under Chapter 4055 and who engages in the business of insurance within the scope of the specialty license.

Sec. 4054.302. AUTHORITY TO WRITE SPECIFIED COVERAGES. Authorizes a person who holds a license under this subchapter to write only insurance described by Sections 4054.301(a)-(d).

Sec. 4054.303. APPLICABILITY OF CERTAIN REQUIREMENTS. Provides that the provisions of this title that apply to the holder of a general life, accident, and health license apply to the holder of a license issued under this subchapter, except as otherwise provided by this code.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Amends Section 523.152(a), Insurance Code, to require an originating agent to share commissions with an issuing agent as required by the market assistance program plan of operation if the originating agent holds a license as a personal lines property and casualty agent or a salaried representative for one or more insurers whose plan of operation does not contemplate the use of personal lines property and casualty agents.

SECTION 2.02. Amends Section 549.053(b), Insurance Code, to provide that Subsection (a) (regarding use of policy information) does not prevent a lender who is a personal lines property and casualty agent from selling insurance to a borrower.

SECTION 2.03. Amends Section 549.055, Insurance Code, as follows:

Sec. 549.055. INSURANCE BINDER AS EVIDENCE OF INSURANCE. (a) Provides that a lender that requires a borrower to secure insurance coverage before the lender will provide a residential mortgage or commercial real estate loan must accept an insurance binder as evidence of the required insurance and prohibits such a lender from requiring

the borrower to provide an original insurance policy instead of a binder if certain conditions apply, including that the binder is issued by certain personal lines property and casualty agents.

(b) Requires a property and casualty agent, rather than a general property and casualty agent, who issues an insurance binder under Subsection (a) to, on request, provide the lender with appropriate evidence for purposes of Subsection (a)(1).

SECTION 2.04. Amends Section 549.056(e), Insurance Code, to provide that this subchapter does not prevent a lender from requiring, at or before the time of delivery to the lender of an insurance policy by a general property and casualty agent or a personal lines property and casualty agent or by the insurer, a written statement from the borrower designating the agent or insurer as the borrower's agent for the delivery of the policy.

SECTION 2.05. Amends Section 559.001(2), Insurance Code, to redefine "agent."

SECTION 2.06. Amends the heading to Section 651.008, Insurance Code, to read as follows:

Sec. 651.008. **AUTHORITY OF CERTAIN PROPERTY AND CASUALTY AGENTS TO CHARGE INTEREST TO CERTAIN PERSONS.**

SECTION 2.07. Amends Section 651.008(a), Insurance Code, to authorize a personal lines property and casualty agent who holds a license under Chapter 4051 (Property and Casualty Agents) to enter into a written agreement with a purchaser of insurance from the agent that provides for the payment of interest to the agent on any amount due to the agent for the insurance purchased.

SECTION 2.08. Amends Section 885.351, Insurance Code, as follows:

Sec. 885.351. **AGENTS.** (a) Authorizes a fraternal benefit society to appoint an agent licensed by the Texas Department of Insurance (TDI) under Chapter 4054 (Life, Accident, and Health Agents), rather than Article 21.07-1, to sell benefits listed under Section 885.301(a) to society members.

(b) Prohibits a person from soliciting or procuring benefit contracts for a fraternal benefit society unless the person is licensed as a general life, accident, and health agent or a life agent under Chapter 4054, rather than a general life, accident and health agent under Article 21.07-1.

(c) Provides that the licensing and regulation of agents for fraternal benefit societies is subject to Title 13 (Regulation of Professionals), rather than Subchapter A, Chapter 21, and other laws regulating those agents.

SECTION 2.09. Amends Section 981.203(a), Insurance Code, as follows:

(a) Authorizes TDI to issue a surplus lines license to an applicant who TDI determines complies with Subsection (b) and is an individual who has passed an examination under Chapter 4002 (Examination of License Applicants), rather than Article 21.01-1, and TDI rules and holds a license as a general property and casualty agent or a personal lines property and casualty agent authorized under Chapter 4051. Authorizes TDI to issue a surplus lines license to an applicant who TDI determines complies with Subsection (b) and is a corporation, limited liability company, or partnership that holds a current license as a personal lines property and casualty agent authorized under Chapter 4051, rather than Article 21.14.

SECTION 2.10. Amends Section 981.220, Insurance Code, as follows:

Sec. 981.220. **MANAGING GENERAL AGENTS; LIMITED AUTHORITY OF CERTAIN AGENTS.** Limits a surplus lines license granted to a managing general agent who is not also licensed under Chapter 4051, rather than Article 21.14, to the acceptance

of business originating through a personal lines property and casualty agent. Deletes existing text providing that a managing general agent is not required to hold a local recording agent license to be eligible to receive a surplus lines license. Makes a conforming change.

SECTION 2.11. Amends Section 1152.151, Insurance Code, to prohibit a person from selling or offering for sale in this state a variable contract, or act to negotiate, make, or consummate a variable contract for another, unless the department has licensed the person under Chapter 4054, rather than Article 21.07-1, as a general life, accident, and health agent or a life agent. Makes conforming changes.

SECTION 2.12. Amends Section 1505.005(b), Insurance Code, to authorize a person licensed as a general life, accident, and health agent under Chapter 4054, as a general property and casualty agent under Chapter 4051 authorized to write health and accident insurance under Section 4051.053, or as a personal lines property and casualty agent authorized to write health and accident insurance under Section 4051.402, to act in the licensed capacity in connection with an insurance policy or a certificate of insurance issued by an unincorporated association, trust, or other organization formed under Subsection (a).

SECTION 2.13. Amends Section 2151.053, Insurance Code, to include two members who are general or personal lines property and casualty agents, as required by the plan of operation, as part of the 15-member governing committee of the Texas Automobile Insurance Plan Association.

SECTION 2.14. Amends Section 2210.102(a), Insurance Code, to require the two property and casualty agents that compose two positions of the nine-member board of directors of the Texas Windstorm Insurance Association (association) to both have demonstrated experience in the association, maintain the agent's principal office, as of the date of the appointment, in a catastrophe area, and hold a license under Chapter 4054 as a general property and casualty agent or a personal lines property and casualty agent.

SECTION 2.15. Amends Section 2210.202(b), Insurance Code, to require a personal lines property and casualty agent to submit an application for the Texas fire and explosion insurance and Texas windstorm and hail insurance coverage on behalf of the applicant on forms prescribed by the association.

SECTION 2.16. Amends Section 2210.204(d), Insurance Code, to make a conforming change.

SECTION 2.17. Amends Section 2211.154(b), Insurance Code, to authorize a personal lines property and casualty agent to make an application on behalf of an applicant for an inspection and evaluation for residential property.

SECTION 2.18. Amends Section 4001.205(a), Insurance Code, to require a life insurance agent or personal lines property and casualty agent appointed by an insurer authorized to engage in the business of insurance in this state to notify TDI on a form prescribed by TDI if the agent appoints a subagent.

SECTION 2.19. Amends Section 4002.003(a), Insurance Code, to prohibit TDI from requiring a person to take an examination under this chapter (Examination of License Applicants) if the person is a certain applicant for a life agent license.

SECTION 2.20. Amends Section 4004.053(a), Insurance Code, to require an individual who holds a life agent license or a personal lines property and casualty license to complete 15 hours of continuing education annually.

SECTION 2.21. Amends Section 4005.002(a), Insurance Code, to authorize a personal lines property and casualty agent, in connection with a client's application for insurance coverage or with the issuance of an insurance policy to a client, on a client's request, to obtain the motor vehicle record of a person insured under or to be insured under an insurance policy or a photograph of property insured under or to be insured under an insurance policy.

SECTION 2.22. Amends Section 4005.003, Insurance Code, as follows:

Sec. 4005.003. FEES. (a) Authorizes a personal lines property and casualty agent to charge a client a fee to reimburse the agent for costs the agent incurred in obtaining a motor vehicle record or photograph of property described under Section 4005.002.

(b)-(c) Makes conforming and nonsubstantive changes.

SECTION 2.23. Amends Section 4051.001, Insurance Code, to make conforming changes.

SECTION 2.24. Amends Section 4051.051, Insurance Code, as follows:

(a) Creates this section from existing text.

(b) Provides that a person is not required to hold a general property and casualty license to engage in an activity described by Subsection (a), notwithstanding Subsection (a), if the person holds a license under this chapter as a personal lines property and casualty agent and limits activities described by Subsection (a) to those activities authorized under the scope of the person's license.

SECTION 2.25. Amends Section 4053.002, Insurance Code, to provide that an agent licensed under Subchapter E (Surplus Line Agents), Chapter 981, and Subchapter I, Chapter 4051, is not a managing general agent unless the agent accepts 50 percent or more of the agent's total annual business or does \$500,000 or more of total annual business as measured by premium volume, whichever amount is less, from insurance policies produced and sold by other agents.

SECTION 2.26. Amends Section 4053.101, Insurance Code, to authorize a managing general agent action for an insurer to appoint or direct personal lines property and casualty agents in this state.

SECTION 2.27. Amends Section 4054.051, Insurance Code, to include the exception of Subchapter G to the provision that certain persons are required to hold a general life, accident, and health license.

SECTION 2.28. Amends Section 4054.052(b), Insurance Code, to prohibit a person acting as a combination life insurance agent for a combination company unless the person holds a general life, accident, and health license or a life agent license.

SECTION 2.29. Amends Section 4055.013, Insurance Code, to authorize a person who is licensed as a life insurance agent or personal lines property and casualty agent and who enters into a contract with an insurer to act as the insurer's agent in soliciting or writing policies or certificates of insurance that are subject to this chapter to assign and transfer to the agent's employer any commission, fee, or other compensation to be paid to the agent under the agent's contract with the insurer only if the sale of the insurance product occurs within the scope of the agent's employment.

SECTION 2.30. Amends Section 4101.001(a), Insurance Code, to redefine "adjuster."

SECTION 2.31. Amends Section 4102.051(b), Insurance Code, to provide that a public insurance adjuster license is not required for a person licensed as a personal lines property and casualty agent under Chapter 4051 while acting for an insured concerning a loss under a policy issued by that agent.

ARTICLE 3. TRANSITION; EFFECTIVE DATE

SECTION 3.01. Requires the commissioner of insurance to adopt rules, not later than December 1, 2007, as necessary to implement Subchapter I, Chapter 4051, Insurance Code, as added by this Act, and Subchapter G, Chapter 4054, Insurance Code, as added by this Act.

SECTION 3.02. Entitles, effective January 1, 2008, a person who holds a license as a general property and casualty agent issued by TDI that is in good standing, to receive from TDI, on

request, a license to act as a personal lines property and casualty agent under the new license type, without reexamination, and provides that, effective January 1, 2008, such a person is subject to the provisions of the Insurance Code as amended by this Act.

SECTION 3.03. Entitles, effective January 1, 2008, a person who holds a license as a general life, accident, and health agent issued by TDI that is in good standing, to receive from TDI, on request, a license to act as a life agent under the new license type, without reexamination, and provides that, effective January 1, 2008, such a person is subject to the provisions of the Insurance Code as amended by this Act.

SECTION 3.04. Provides that Chapter 4004, Insurance Code, as amended by this Act, applies to continuing education requirements for insurance agents for a renewal of a license that occurs on or after January 1, 2008.

SECTION 3.05. Provides that, to the extent of any conflict, this Act prevails over the Act of the 80th Legislature, Regular Session, 2007, relating to the nonsubstantive additions to and corrections in enacted codes (the general code update bill), and over the Act of the 80th Legislature, Regular Session, 2007, relating to nonsubstantive additions to and corrections in the Insurance Code (update of the Insurance Code)

SECTION 3.06. Effective date: September 1, 2007.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

In SECTION 1, the substitute adds Section 4051.404 to the original senate bill. This section clarifies that the fees for the personal lines only license are deposited into Fund 36, the general operating account of the Texas Department of Insurance. This change is necessary because otherwise, the funds will go to General Revenue.

In Section 4054.304, the substitute clarifies that the fees for the life only license are deposited into Fund 36, the general operating fund for the Texas Department of Insurance

SECTION 2.09, Section 981.220 and Section 981.203 removes the language " "or a personal lines property and casualty agent" since a personal lines license would not serve as a proper prerequisite for the surplus lines license. This is because the licensee would not have demonstrated a knowledge and expertise in commercial lines insurance by simply obtaining the personal lines license. The surplus lines business is primarily involved in commercial property and casualty insurance. The general property and casualty license is the appropriate prerequisite license.