

By: Hancock

S.B. No. 1164

A BILL TO BE ENTITLED

AN ACT

relating to insurance agents' ownership and use of certain information related to general property and casualty insurance policies; authorizing administrative penalties; adding provisions that may be subject to a criminal penalty.

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

SECTION 1. Chapter 4051, Insurance Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. AGENTS' OWNERSHIP INTERESTS

Sec. 4051.451. DEFINITIONS. In this subchapter:

(1) "Expiration" means policy information and records related to a property and casualty insurance policy or an application for a property and casualty insurance policy, including:

(A) the name and address of the applicant or insured;

(B) the location and description of any property referenced in the application or covered by the policy;

(C) the value, inception date, renewal date, and expiration date of the policy;

(D) the premium, policy limits, and description of the terms and coverage of the policy; and

(E) information or records that may be:

(i) necessary for placing insurance

1 coverage, insurance products, or insurance services; or
2 (ii) used to solicit, sell, or negotiate
3 the renewal or sale of insurance coverage, insurance products, or
4 insurance services.

5 (2) "Person" means an individual, partnership,
6 corporation, limited liability company, or depository institution.

7 (3) "Record" has the meaning assigned by Section
8 322.002, Business & Commerce Code.

9 Sec. 4051.452. APPLICABILITY OF SUBCHAPTER. (a) This
10 subchapter applies with respect to expirations concerning coverage
11 of a risk located in this state, or an application for such
12 coverage, issued by or placed with an insurer engaged in the
13 business of property and casualty insurance in this state,
14 including:

- 15 (1) a stock fire or casualty company;
- 16 (2) a mutual fire or casualty company;
- 17 (3) a Mexican casualty company;
- 18 (4) a Lloyd's plan;
- 19 (5) a reciprocal or interinsurance exchange;
- 20 (6) a county mutual insurance company;
- 21 (7) a farm mutual insurance company;
- 22 (8) a risk retention group;
- 23 (9) the Medical Liability Insurance Joint
24 Underwriting Association under Chapter 2203;
- 25 (10) the Texas Windstorm Insurance Association under
26 Chapter 2210;
- 27 (11) the Texas Automobile Insurance Plan Association

1 under Chapter 2151; and

2 (12) an eligible surplus lines insurer.

3 (b) This subchapter applies only to ownership and use of an
4 expiration by an agent who:

5 (1) holds a contract with the insurer to whom the
6 relevant application was submitted or that issued the relevant
7 insurance policy; or

8 (2) has the authority to contract with or submit an
9 application for coverage to that insurer.

10 Sec. 4051.453. EXCLUSIVE OWNERSHIP AND USE. (a) Except as
11 provided by Section 4051.454, an agent or surplus lines agent
12 exclusively owns and has exclusive use of an expiration directly
13 related to an insurance application submitted by or an insurance
14 policy written through the agent for the purpose of soliciting,
15 selling, or negotiating the renewal or sale of property and
16 casualty insurance coverage, a property and casualty insurance
17 product, or a property and casualty insurance service.

18 (b) Nothing in this subchapter may be construed to modify or
19 amend or require modification or amendment of a contract between an
20 insurer and an agent or the authority of the insurer or agent with
21 respect to each other.

22 Sec. 4051.454. EXCEPTIONS; INSURER OR MANAGING GENERAL
23 AGENT. Notwithstanding Section 4051.453, an insurer or the
24 insurer's managing general agent may use an expiration:

25 (1) to solicit, sell, or negotiate the sale or renewal
26 of property and casualty insurance coverage, a property and
27 casualty insurance product, or a property and casualty insurance

1 service with the written consent of the agent who owns the
2 expiration;

3 (2) in the normal course of business, including
4 underwriting, handling claims, and negotiating reinsurance; or

5 (3) if the insured or a property and casualty agent on
6 behalf of the insured requests that the insurer renew a policy or
7 issue other insurance coverage to the insured.

8 Sec. 4051.455. EXCEPTIONS; CERTAIN AGENTS. (a) This
9 subchapter does not apply to an expiration related to an insurance
10 policy placed or an application for an insurance policy received by
11 an agent who:

12 (1) has agreed by contract to act exclusively for one
13 insurer or group of affiliated insurance companies;

14 (2) has agreed in writing with an insurer that all
15 expirations, insurance policies, and insurance business is owned by
16 the insurer and not the agent;

17 (3) is in default for nonpayment of premium or other
18 money due under the agent's contract or other agreement with the
19 insurer or group of affiliated insurance companies unless a bona
20 fide, good faith dispute exists concerning the money due;

21 (4) has a suspended, revoked, surrendered, or
22 terminated license; or

23 (5) has misappropriated, converted to the agent's own
24 use, or illegally withheld money belonging to an insurer, an
25 insured, or an applicant for insurance.

26 (b) The rights of an agent described by Subsection (a)(1)
27 with respect to expirations are determined by the agent's contract

1 with the insurer or group of affiliated insurance companies.

2 Sec. 4051.456. PRIVACY RIGHT OF APPLICANT OR INSURED NOT
3 IMPAIRED. An applicant's or insured's right to privacy related to
4 an expiration is not impaired or affected by an agent's ownership of
5 the expiration.

6 Sec. 4051.457. COMPLAINT RESOLUTION PROGRAM. The
7 department shall establish a program to resolve complaints of
8 violations of this subchapter.

9 Sec. 4051.458. ENFORCEMENT; SANCTIONS AND PENALTIES
10 AUTHORIZED. (a) The commissioner may impose sanctions as provided
11 by Chapter 82 against a person who the commissioner finds violated
12 this subchapter.

13 (b) The commissioner may use the cease and desist procedures
14 authorized by Chapter 83 against a person who the commissioner
15 finds violated this subchapter.

16 (c) In addition to a sanction authorized by this subchapter,
17 the commissioner may impose an administrative penalty in accordance
18 with Chapter 84 against a person who the commissioner finds
19 violated this subchapter.

20 SECTION 2. This Act applies only to an expiration related to
21 an insurance policy placed or an application for an insurance
22 policy received by an agent on or after the effective date of this
23 Act. A policy placed or an application received before the
24 effective date of this Act is governed by the law as it existed
25 immediately before that date, and that law is continued in effect
26 for that purpose.

27 SECTION 3. This Act takes effect September 1, 2015.