

- SUBJECT:** Review of termination of agreements with certain insurance agents
- COMMITTEE:** Insurance — favorable, without amendment
- VOTE:** 6 ayes — Eiland, Burnam, G. Lewis, J. Moreno, Olivo, Thompson
2 nays — Averitt, Seaman
1 present, not voting — Smithee
- WITNESSES:** For — Jerry Beauchamp and David Swift, National Association of State Farm Agents; Ray Gonzalez; Ben Macias
Against — Richard Geiger, Association of Fire and Casualty Companies in Texas; Denise Ruggiero, State Farm Insurance Cos.; Jim White, Farmers Insurance Group
- DIGEST:** HB 1384 would establish conditions under which an insurer could and could not terminate a contractual agreement with an agent or reduce or restrict an agent's authority to conduct business under a contract. The bill would specify conditions under which the termination by an insurer of a contractual agreement with an agent would not or could not be a wrongful or unjustified termination. It also would prohibit an insurer from committing certain acts in a manner designed to affect a selected agent or the business produced by that agent in order to avoid the prohibition against terminating a contractual agreement.
- An insurer who entered into a contractual agreement with an agent for the agent's services would have to establish a termination review process for an agent involuntarily terminated. The bill would establish what an insurer would have to do before terminating an agent's contract.
- The insurance commissioner would have to compile a list of 10 people, of whom three would compose the review board. One member of the review board would be selected by the affected agent, one by the insurer, and one by the commissioner.

To be on the commissioner's list, a person would have to have served as an arbitrator or mediator for the alternative dispute-resolution system of the county in which the agent conducted the majority of the agent's business. If an alternative dispute-resolution system had not been established by a particular county, there would have to be an arbitrator or mediator for the alternative dispute-resolution system from the commissioner's selected list in an adjoining county. If this appointment system was impractical for a particular county, the commissioner by rule would have to determine the manner in which people were selected for a list for that county.

An agent whose contractual agreement with an insurer was proposed to be terminated involuntarily could ask the commissioner to set a hearing before the review board. The bill would establish requirements and procedures for the hearing. The insurer and the agent would be immune from civil liability for a disclosure made at the hearing. This immunity would not apply to a disclosure made in bad faith or with knowledge of the disclosure's falseness.

On completion of a hearing, the review board would have to determine if the termination of the agent's agreement was wrongful or unjustified and report its findings in writing to the agent, the insurer, and the commissioner. If the insurer terminated the contractual agreement with the agent after a determination by the review board in which at least two members agreed that an involuntary termination of the agent was wrong or unjustified, the commissioner would have to award the greater of:

- ! three times the agent's gross compensation from the insurer for the calendar year preceding the year in which the termination was held; or
- ! three times the agent's gross compensation from the insurer for the 12 months preceding the date on which the termination hearing began.

In addition, the award would have to include any contingency compensation the agent otherwise would have received from the insurer during the three years after the date of the termination. If the agent was an exclusive agent, the agent could receive, in addition to the amount received above, any benefits that the agent would have received if the agent had terminated the contractual agreement voluntarily, including regular termination benefits, insurance, and extended termination benefits of the type provided by the insurer to an agent who retires, resigns, or otherwise voluntarily terminates a

contractual agreement. The amount awarded under these provisions could not be less than what the agent was owed by the insurer under the contractual agreement on the day before the date of termination.

If an agent was terminated by an insurer and that insurer was serving under an exclusive or captive agent agreement with the insurer, the agent could accept an appointment to act as agent for another insurer if the agent notified the commissioner and the insurer in writing that the agent chose to do so.

The bill would provide for an appeal of an order of the commissioner to a court of competent jurisdiction, in a county in which the agent conducted business for the affected insurer. If the insurer brought an appeal in which the agent was the prevailing party, the agent would be entitled to attorney's fees and court costs.

The agent would have to deliver to the insurer all equipment, records, and supplies in the agent's possession that belonged to the insurer within 30 days after the review board's favorable ruling for the insurer or the court's final order in favor of the insurer.

An insurer or agent who violated an order of the commissioner under this bill or who attempted to coerce or intimidate a member of the review board would be subject to an administrative penalty.

The commissioner would have to set a fee in an amount reasonable and necessary to cover the costs incurred by the Texas Department of Insurance (TDI) in administering the bill's provisions. The fee could not exceed \$10 and would be collected from each local recording agent and solicitor who held a local recording agent license or solicitor license. TDI would collect the imposed fee at the same time and in the same manner as license fees. The commissioner could adopt other rules as necessary to implement the bill.

The bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

HB 1384 would define the circumstances under which an insurer could not terminate a relationship with an agent. The commissioner would have to appoint a three-member review board as part of a mandatory review process

for any involuntary agent termination. People on the review board would have to have served as arbitrators or mediators for an alternative dispute-resolution system. The agent being terminated could request a hearing, and if the hearing was in favor of the agent, the agent would receive compensation.

Currently, an insurer may terminate a captive agent relationship without cause. Independent agents have had protections under state law for 30 years, yet captive agents are not protected. Insurance agents use a large portion of their own money to build their business. Any severance offered when an agent is terminated rarely compensates the agent fully.

Not all insurers provide severance upon termination. The relationship often is severed immediately, and the insurer claims all records, equipment, and office supplies. The insurers consider the agents independent contractors, but the agents are not afforded the independence of such a contractor. Agents want the ability to do right by their customers without fear of retribution by insurers.

Some may consider this bill as interfering with the contract between the agent and the insurer, but the contract is lopsided and unfair.

OPPONENTS
SAY:

The state should not intervene in the contractual hiring and firing practices between insurers and their agents. The requirement of mediation under the authority of a state agency for a contract between private parties would be a misuse of state resources, especially when the parties already have a remedy in state court.

Requiring the commissioner to maintain a list of 10 qualified arbitrators or mediators for each county to serve as potential review board members could be burdensome, if not impossible. Most counties that have an alternative dispute-resolution system under the Civil Practice and Remedies Code are limited to large metropolitan areas. Although the bill would provide the commissioner some alternatives to selecting review board members located within every county, the task of finding qualified members to serve for all 254 counties could be burdensome.

OTHER
OPPONENTS
SAY:

Even though the bill would specify that the commissioner may adopt rules as necessary for implementation, there could be confusion as to the extent of the commissioner's authority in the absence of stated requirements. For example, the bill would not specify the criteria for review board members beyond county location and experience as an arbitrator or mediator. The bill should be more specific as to the lists of potential and actual members, including stating conflict-of-interest provisions and terms of service.

NOTES:

According to the bill's fiscal note, TDI estimates that implementing its provisions would require eight additional FTEs. It is assumed that the agency would set the required fees to offset any costs associated with implementing the bill.

The companion bill, SB 1673 by Jackson, is scheduled for a public hearing today before the Senate Business and Commerce Committee.