

## **BILL ANALYSIS**

Senate Research Center

H.B. 3391  
By: Smithee (Sibley)  
Economic Development  
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Engrossed

### **DIGEST**

On March 26, 1996, the U.S. Supreme Court ruled that Section 92 of the National Bank Act preempts any state law that prevents banks from exercising the insurance powers granted under that law. Section 92 permits certain national banking associations to act as agent for any insurance company authorized to do business in the state where the bank is located. Under the court's analysis, "prevents" means "significantly impairs" or "significantly interferes with" a bank's federal law authority. The Insurance Code effectively prevents banks from being licensed as agents by requiring that corporations be organized under Texas law and that each officer, director, and shareholder be individually licensed. This bill will provide new regulations regarding the licensing of banks as insurance agents; provide regulations regarding certain nonresident agents; and provide a penalty.

### **PURPOSE**

As proposed, H.B. 3391 provides new regulations regarding the licensing of banks as insurance agents; provides regulations regarding certain nonresident agents; and provides a penalty.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the commissioner of insurance in SECTIONS 5, 14, 21, 22, and 23 (Section 13, Article 21.07; Section 15, Article 21.07-1; Section 27, Article 21.14; Section 7, Article 21.21-9, and Section 5, Article 21.11, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 1(a) and (b), Article 21.07, Insurance Code, to prohibit a bank from acting as an agent for certain individuals or entities, unless that individual or entity shall have first procured a license from the Texas Department of Insurance (department), rather than the State Board of Insurance as in this article is provided. Makes conforming changes.

SECTION 2. Amends Article 21.07, Insurance Code, by adding Section 1C, as follows:

Sec. 1C. LICENSING OF BANKS. Defines "bank." Authorizes a bank operating subsidiary located and doing business in a place with a population of 5,000 or less to own a licensed corporate agent that is also located and doing business in a place with a population of 5,000 or less, and is subject to Section 18(c) of this article.

SECTION 3. Amends Sections 2 and 3, Article 21.07, Insurance Code, as follows:

Sec. 2. APPLICATION FOR LICENSE; TO WHOM LICENSE MAY BE ISSUED. Requires an application to bear a signed endorsement by an officer of properly authorized representative of the insurance company that the individual applicant or the responsible officer and employee of the bank is qualified to hold that individual or the bank out in good faith to the general public as an insurance agent, and that the insurance carrier desires that the applicant act as an insurance agent to represent it in this state. Requires the department to issue a license to a corporation if the department finds that the corporation is a Texas corporation organizes or existing under the Texas Professional Corporation Act, and an ability to meet certain financial requirements, which shall be proven by a policy issued by a company not licensed to do business in Texas on filing an affidavit with the department stating

the inability to obtain coverage and receiving the approval of the commissioner of insurance, rather than the State Board of Insurance. Requires the department to issue a license to a bank if the department finds that the bank satisfies certain requirements. Sets forth regulations regarding licensing of a bank.

Sec. 3. ISSUANCE OF LICENSE UNDER CERTAIN CIRCUMSTANCES. Makes conforming changes.

SECTION 4. Amends Section 4(a), Article 21.07, Insurance Code, to make conforming changes.

SECTION 5. Amends Sections 12, 13, and 16, Article 21.07, Insurance Code, as follows:

Sec. 12. PENALTY. Makes conforming changes.

Sec. 13. New heading: TEXAS DEPARTMENT OF INSURANCE MAY ESTABLISH RULES AND REGULATIONS. Authorizes the commissioner to establish, and from time to time to amend, reasonable rules and regulations to comply with federal law applicable to the sale of insurance.

Sec. 16. New heading: WORDING ON LICENSE. Makes conforming and nonsubstantive changes.

SECTION 6. Amends Section 18, Article 21.07, Insurance Code, by adding Subsection (c), to authorize certain banks to receive profits from the licensed bank operating subsidiary, notwithstanding any provision of this article or this code to the contrary. Requires the bank to hold an agent license in order to advertise under the bank name or participate in the insurance operation other than by receiving profits from the insurance business. Provides that nothing in this section permits a bank or affiliate to pay commissions or other valuable consideration to any nonlicensed employees, and a bank may not pay, credit, or otherwise reward particular nonlicensed units or geographic locations of the bank or any of its affiliates with a portion of the commission.

SECTION 7. Amends Section 1(b), Article 21.07-1, Insurance Code, to require the term "life insurance agent" to not include certain banks, savings and loan associations, or credit unions, or the officers and employees of those institutions, except as provided by Section 4(f) of this Act. Makes a conforming change.

SECTION 8. Amends Article 21.07-1, Insurance Code, by adding Section 1C, as follows:

Sec. 1C. DEFINITION. Defines "bank."

SECTION 9. Amends Section 2(a), Article 21.07-1, Insurance Code, to make a conforming change.

SECTION 10. Amends Sections 3(a) and (b), Article 21.07-1, Insurance Code, to make conforming changes.

SECTION 11. Amends Section 4, Article 21.07-1, Insurance Code, to make conforming changes.

SECTION 12. Amends Sections 5(a) and (d), Article 21.07-1, Insurance Code, to make conforming and nonsubstantive changes.

SECTION 13. Amends Section 7(b), Article 21.07-1, Insurance Code, to authorize the commissioner, rather than the Life Insurance Commissioner, to enter into certain reciprocal agreements.

SECTION 14. Amends Sections 14 and 15, Article 21.07, Insurance Code, to make conforming changes.

SECTION 15. Amends Sections 16(a)-(d), Article 21.07-1, Insurance Code, to redefine

"accident and health insurance agent." Makes conforming changes.

SECTION 16. Amends Section 3, Article 21.14, Insurance Code, to require the department to issue a license to a bank if the department finds that certain requirements are met. Sets forth regulations for licensed banks. Defines "firm" and "bank." Makes conforming changes.

SECTION 17. Amends Section 3a, Article 21.14, Insurance Code, by adding Subsection (5), to make a conforming change.

SECTION 18. Amends Sections 4(a)-(c), Article 21.14, Insurance Code, to require it to be unlawful for any bank, or any partner, employee of a corporation, or any officer, director, or employee of a bank to act as a local recording agent or solicitor in procuring certain business until that person or entity shall have in force the license provided for herein. Makes conforming changes.

SECTION 19. Amends Section 5, Article 21.14, Insurance Code, to make conforming changes.

SECTION 20. Amends Section 24, Article 21.14, Insurance Code, to make conforming changes.

SECTION 21. Amends Article 21.14, Insurance Code, by adding Section 27, as follows:

Sec. 27. RULES. Authorizes the commissioner, in addition to other rules required or authorized by this article, to adopt rules in accordance with federal law applicable to the regulation of the sale of insurance that are necessary and proper to carry out the provisions of this article.

SECTION 22. Amends Chapter 21B, Insurance Code, by adding Article 21.21-9, as follows:

ART. 21.21-9. UNFAIR METHODS OF COMPETITION AND UNFAIR PRACTICES BY FINANCIAL INSTITUTIONS

Sec. 1. DEFINITIONS. Defines "affiliate" and "bank."

Sec. 2. UNFAIR METHODS OF COMPETITION AND UNFAIR PRACTICES DEFINED. Sets forth acts that are unfair methods of competition and unfair practices in the sale of insurance by banks.

Sec. 3. DISCLOSURE REQUIRED BY BANKS. Sets forth disclosure requirements for banks.

Sec. 4. INDEPENDENCE OF BANK AGENTS FROM LOAN TRANSACTIONS. Sets forth regulations regarding the independence of bank agents from loan transactions.

Sec. 5. CUSTOMER PRIVACY. Defines "customer" and "nonpublic customer information." Sets forth regulations regarding customer privacy.

Sec. 6. PHYSICAL LOCATION OF INSURANCE ACTIVITIES. Sets forth regulations regarding the physical location of insurance activities.

Sec. 7. RULES. Authorizes the commissioner to adopt reasonable rules to comply with federal law applicable to the sale of insurance and for the implementation and administration of this article.

SECTION 23. Amends Article 21.11, Insurance Code, as follows:

ART. 21.11. New heading: NONRESIDENT AGENT

Sec. 1. NONRESIDENT AGENT LICENSE. Sets forth regulations regarding a

nonresident agent license.

Sec. 2. RIGHTS OF LICENSE HOLDER. Sets forth the rights of a license holder. Defines "requirement or restriction."

Sec. 3. LIMITATIONS. Sets forth actions this article does not permit. Deletes existing text regarding commissions to nonresidents, cancellation of nonresident agent's license, and nonresident agent's acting as surplus lines agent.

Sec. 4. HOME OFFICE EMPLOYEE. Provides that this article does not affect the authority established under Section 20, Article 21.14, of this code of an actual full-time home office salaried employee of an insurance carrier licensed to do business in this state.

Sec. 5. RULES. Authorizes the commissioner to adopt rules to implement this article.

SECTION 24. Repealer: Article 21.09, Insurance Code (Resident Agents, Companies Excepted).

SECTION 25. (a) Effective date: September 1, 1997, except as provided by Subsection (b).

(b) Effective date for SECTIONS 23 and 24: July 1, 1997.

SECTION 26. Emergency clause.  
Effective date: upon passage.