

BILL ANALYSIS

Senate Research Center
77R5954 PB-F

S.B. 1673
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Business & Commerce
5/2/2001
As Filed

DIGEST AND PURPOSE

Under current law, agents working under an insurer are not protected from insurers terminating relationships without cause, nor is there any responsibility on the part of the insurer to compensate an agent for losses. S.B. 1384 establishes circumstances under which an insurer may and may not terminate a relationship with a captive agent, and requires the commissioner of insurance to appoint a review board to review involuntary agent terminations.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Sections 4, 13, 14, Article 21.14A, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 21A, Insurance Code, by adding Article 21.14A, as follows:

Art. 21.14A. PROCEDURES AND REVIEW ON TERMINATION OF LOCAL RECORDING
AGENT OR SOLICITOR

Sec.1. DEFINITIONS. Defines “agent” and “review board.”

Sec. 2. TERMINATION FOR CAUSE. Authorizes an insurer to terminate a contractual agreement with an agent under certain circumstances. Provides that the termination by an insurer of a contractual agreement with an agent for a cause described by this section is not a wrongful or unjustified termination for purposes of this article.

Sec. 3. PROHIBITED GROUNDS FOR TERMINATION. Prohibits an insurer from canceling or terminating a contractual agreement with an agent or reducing or restricting an agent's authority to conduct business under the contract under certain circumstances. Prohibits an insurer from, in order to avoid the prohibition provided by this section, committing certain acts in a manner designed to impact a selected agent or the business produced by that agent. Authorizes the termination by an insurer of a contractual agreement with an agent in violation of this section to be a wrongful or unjustified termination for purposes of this article.

Sec. 4. MANDATORY REVIEW BY INSURER. Requires each insurer who enters into a contractual agreement with an agent to use the services of the agent to establish a termination review process in accordance with this section for an agent involuntarily terminated by the insurer. Requires the insurer, before terminating an agent's contractual agreement, to conduct certain tasks. Requires the insurer to notify the agent in writing of the reasons for the proposed termination, not later than the 15th day after the date on which the notice required under this section is mailed. Authorizes the agent in writing to decline a review under this section. Requires the insurer to provide a copy of the declination to the commissioner. Authorizes the insurer and the agent by mutual agreement to terminate a review conducted under this section at any time. Requires the insurer to notify the commissioner in writing of the termination of a

review under this section. Requires a review by an insurer to be conducted not later than the 15th day after the date on which the agent receives notice of the reasons for the proposed termination and before the date on which the termination takes effect.

Sec. 5. REVIEW BOARD. Requires a review board to conduct a review of a proposed termination of an agent to be established as provided by this section. Provides that the review board is composed of three members selected from a list of 10 individuals compiled by the commissioner of insurance (commissioner). Requires one member of the review board to be selected by the affected agent, one by the insurer, and one by the commissioner. Requires an individual to meet certain requirements in order to be included on the list. Requires the commissioner by rule to determine the manner in which individuals are selected for a list for that county, if the appointment system established under this section is impractical for a particular county. Requires the commissioner, in compiling the list of prospective review board members, to ensure that the individuals are impartial. Requires the commissioner to strike an individual from the list and substitute another if, after the list is compiled, it is determined that an individual on the list has a conflict of interest with respect to the matter subject to review. Requires the expenses of the review board to be shared equally by the agent and the insurer.

Sec. 6. NOTICE; HEARING. Authorizes an agent whose contractual agreement with an insurer is proposed to be involuntarily terminated to request that the commissioner set a hearing before a review board. Requires the commissioner to set a hearing date on receipt of a request for a hearing by an agent. Requires the hearing to be conducted not later than the 30th day after the date on which the request is received by the commissioner, or at a later date approved by both the agent and the insurer. Requires the commissioner to notify the agent and the insurer of the date, time, and place of the hearing. Requires the members of the review board to select one member to serve as moderator. Requires the moderator to convene and adjourn the proceeding of the review board. Requires the review board to provide the parties to the hearing with an opportunity to present evidence and arguments in support of their respective positions. Provides that the insurer and the agent are immune from civil liability for a disclosure made at the hearing. Provides that this immunity does not apply to a disclosure made in bad faith or with knowledge of the disclosure's falseness.

Sec. 7. REVIEW BOARD DETERMINATION. Requires the review board, on completion of the hearing, to determine if the termination of the agent's agreement is wrongful or unjustified and requires the review board to report its findings in writing to the agent, the insurer, and the commissioner.

Sec. 8. AWARD TO AGENT. Requires the commissioner to, by order, award the agent a certain amount of compensation if, after a determination by the review board in which at least two members of the review board agree that an involuntary termination of the affected agent is wrongful or unjustified, the insurer terminates the contractual agreement with the agent. Provides that if the agent is an exclusive agent, the agent is entitled to receive, in addition to the amount received under Subsection (a) of this section, any benefits that the agent would have received if the agent had voluntarily terminated the contractual agreement, 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. Prohibits the amount awarded under this section from being less than the amount the agent was owed by the insurer under the contractual agreement on the day before the date of the termination.

Sec. 9. EMPLOYMENT BY OTHER INSURER. Authorizes the agent to accept an appointment to act as agent for another insurer if the agent notifies the commissioner and the insurer in writing that the agent desires to do so, if an agent is terminated by an insurer and that insurer was serving under an exclusive or captive agent agreement with the insurer. Provides that acceptance of an appointment under this section does not affect an order of the

commissioner issued under this article.

Sec. 10. APPEAL. Authorizes an order of the commissioner under this article to be appealed to a court of competent jurisdiction by either party for a trial de novo. Requires an appeal under this section to be brought in a county in which the agent conducted business as an agent for the affected insurer. Provides that if the insurer brings an appeal in which the agent is the prevailing party, the agent is entitled to attorney's fees and court costs.

Sec. 11. DETERMINATION FOR INSURER. Requires the agent to deliver to the insurer all equipment, records, and supplies in the possession of the agent that belong to the insurer not later than the 30th day after the date the review board determination or the court order becomes final under certain circumstances.

Sec. 12. ADMINISTRATIVE PENALTY. Provides that an insurer or agent that violates an order of the commissioner of insurance (commissioner) under this article or that attempts to coerce or intimidate a member of the review board violates this article and is subject to an administrative penalty under Chapter 84. Authorizes the review board to recommend that the commissioner impose an administrative penalty under this article.

Sec. 13. DEPARTMENT ADMINISTRATIVE COSTS. Requires the commissioner by rule to set a fee in an amount reasonable and necessary to cover the costs incurred by the department in administering this article. Prohibits the fee from exceeding \$10 and requires the fee to be collected from each local recording agent and solicitor who holds a local recording agent license or solicitor license under Article 21.14 of this code. Requires the fee imposed under this section to be collected at the same time and in the same manner as the license fees imposed under Article 21.14 of this code.

Sec. 14. RULES. Authorizes the commissioner to adopt rules as necessary to implement this article.

SECTION 2. Effective date: September 1, 2001.