

SUBJECT: Disclosure of compensation by insurance agents

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Smithee, Seaman, Eiland, Isett, B. Keffer, Taylor, Thompson,
Van Arsdale

0 nays

1 absent — Oliveira

WITNESSES: For — David VanDelinder, Independent Insurance Agents of Texas

Against — None

On — Thomas P. Washburn, Deleon, Boggins and Icenogle P.C.

DIGEST: CSHB 2941 would add to Insurance Code, ch. 4005, provisions involving disclosure of compensation. If an agent, or any affiliate of an agent, received compensation from a customer for the placement or renewal of an insurance product – including a premium, a tax, a finance charge, a policy fee, an agent fee, a service fee, an inspection fee, or membership dues in a sponsoring organization – the agent or affiliate could not accept or receive any compensation from an insurer or other third party for that placement or renewal unless the agent had, before the customer's insurance purchase:

- obtained the customer's documented acknowledgement that the compensation would be received; and
- provided a description of the method and factors for computing the compensation to be received from the insurer or other third party for that placement.

The provision would not apply to:

- a licensed agent who acted only as an intermediary between an insurer and the customer's agent, including a managing general agent;
- a reinsurance intermediary or surplus lines agent placing reinsurance or surplus lines insurance; or

- an agent whose sole compensation for the placement or servicing of an insurance product was derived from commissions, salaries, and other remuneration paid by the insurer.

An agent could satisfy any requirements imposed by the bill through an affiliate.

The commissioner could adopt rules to implement the legislation, including rules authorizing additional methods of demonstrating documented acknowledgement.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 2941 would set out guidelines for agents and their affiliates for disclosure of compensation. Current law allows for potential conflicts of interest where an agent can be compensated by both a customer and an insurer. The bill would state that an agent could receive compensation from a customer for initial placement or renewal of insurance only if, prior to purchase, the agent had obtained a documented acknowledgement from the customer that the compensation would be received by the agent and his or her affiliate and had provided a description of the method and factors used to compute the compensation. The bill would not apply to independent insurance agents or to captive agents but would reach insurance brokers, particularly on large commercial accounts.

The bill would be patterned after the National Conference of Insurance Legislators' (NCOIL's) model disclosure act. The legislation would offer broker disclosure requirements that provide needed consumer protections while not penalizing responsible producers in their normal course of business. This issue has aroused considerable national attention in the last six months with civil fraud allegations brought against the world's three largest insurance brokers, Marsh & McLennan Cos., Aon Corp., and Willis Group Holdings Ltd., by New York Atty. Gen. Elliot Spitzer. The three companies, who agreed to settlements with the state of New York totaling over \$1 billion, all of which goes to the clients, admitted or denied no wrongdoing, but all have banned the fees (contingent commissions) in question. CSHB 2941, which would specify acceptable types of fees and the method for disclosing them, would shine the light of statutory disclosure on hidden commissions.

OPPONENTS
SAY:

The portions of CSHB 2941 that would authorize the commissioner to adopt rules related to compensation disclosure could raise concerns that rules to implement this provision could end up prohibiting the charging of specified compensation or disclosed fees in some manner.

NOTES:

The committee substitute differs from the bill as filed by including an agent acting as an intermediary between the insurer and the customer's agent, as well as surplus lines agents, to the list of exemptions. The substitute also would state that the provision would apply if a fee exceeded an amount set by the commissioner.