

BILL ANALYSIS

Senate Research Center

S.B. 1129
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Economic Development
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As Filed

DIGEST

Currently, the Insurance Code does not contain provisions regarding the termination of an insurance agent by an insurer without cause. The termination of the agent may be based on the geographic location of the agent or the result of loss experience by customers, even though the agent complied with the insurer's underwriting guidelines. This bill would prohibit the termination of a contract of an agent except for certain cases; would require insurers to establish a termination review process; and would require the commissioner of insurance to appoint a review board to review proposed terminations.

PURPOSE

As proposed, S.B. 1129 prohibits the termination of an insurance agent by an insurer except for certain causes; requires insurers to establish a termination review process; and requires the commissioner of insurance to appoint a review board to review proposed terminations.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioner of insurance in SECTION 1 (Sections 5(c), 8(a), 13, and 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 CONTRACT WITH LOCAL RECORDING AGENT OR SOLICITOR

Sec. 1. DEFINITIONS. Defines "agent," "geographic management territory," and "review board."

Sec. 2. TERMINATION FOR CAUSE. Authorizes an insurer to terminate a contractual agreement with an agent for certain conditions. Provides that the termination by an insurer of a contractual agreement with an agent for a cause described by Subsection (a) of 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 for certain conditions. Prohibits an insurer from committing certain acts in a manner designed to impact a selected agent or the business produced by that agent in order to avoid the prohibition provided by Subsection (a). Authorizes the termination by an insurer of a contractual agreement with an agent in violation of Subsection (a) 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 to do certain acts before terminating an agent's contractual agreement. Requires the insurer to notify the agent in writing of the reasons for the proposed

termination by a certain date. 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 of insurance (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 subsection. Requires a review by an insurer to be conducted by a certain date.

Sec. 5. REVIEW BOARD. Requires a review board to conduct a review of a proposed termination of a contractual agreement with an agent to be established as provided by this section. Sets forth the composition of the review board. Require the commissioner, by rule, if the appointment system is impractical for a particular county, to determine the manner in which the individuals are selected for a list for that county. Requires the commissioner, in compiling the list of prospective review board members, to ensure that the individuals are impartial. Requires the commissioner, if it is determined that an individual on the list has a conflict of interest with respect to the matter subject to review, to strike that individual from the list and substitute another. 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 date on receipt of a request for a hearing by an agent. Requires the hearing to be conducted by a certain date. 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 as a moderator. Requires the moderator to convene and adjourn the proceedings 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 to report its findings in writing to the agent, the insurer, and the commissioner.

Sec. 8. AWARD TO AGENT. Requires the commissioner, by order, under certain conditions, to award the agent certain monetary awards. Entitles an exclusive agent to receive, in addition to the amount received under Subsection (a), any benefits that the agent would have received if the agent had voluntarily terminated the contractual agreement. Prohibits the amount awarded under Subsections (a) and (b) from being less than the amount the agent was owed by the insurer under the contractual agreement of the day before the date of the termination.

Sec. 9. EMPLOYMENT BY OTHER INSURER. Authorizes the agent, if an agent's contractual agreement was terminated by an insurer and that agent was serving under an exclusive or captive agent agreement with the insurer, 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. 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 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. Entitles the agent, if the insurer brings an appeal in which the agent is the prevailing party, to attorney's fees and court costs.

Sec. 11. DETERMINATION FOR INSURER. Requires the agent to deliver to the insurer certain items in the possession of the agent that belong to the insurer by a certain date and under certain conditions.

Sec. 12. ADMINISTRATIVE PENALTY. Provides that an insurer or agent that violates an order of the 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 Article 1.10E of this code. 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 of Insurance 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, 1997.

SECTION 3. Emergency clause.