

House Bill 5313 (Substitute H-1)
Sponsor: Rep. Alan Sanborn
Committee: Insurance and Financial
Services

Complete to 12-6-01

A SUMMARY OF HOUSE BILL 5313 (SUBSTITUTE H-1)

The bill would amend Chapter 12 of the Insurance Code, which addresses the licensing and regulation of insurance agents, solicitors, adjusters, and counselors. It would, among other things, substantially rewrite the licensing provisions for agents and introduce the term "insurance producer", which would refer to a person required to be licensed in order to sell, solicit, or negotiate insurance. The term "insurance producer" is used in the bill in place of the term "agent" used in the code currently. The bill would take effect March 1, 2002.

The bill also would require the insurance commissioner to waive preclicensing requirements for an applicant for a nonresident license if that person's home state awarded nonresident licenses to Michigan applicants on the same basis. Similarly, a nonresident insurance producer who satisfied his or her home state's continuing education requirements would have satisfied Michigan's requirements if that home state reciprocated for Michigan-based nonresident insurance producers. (This reciprocity provision would also apply to a surplus lines insurance producer, but otherwise the bill does not address surplus lines, which are governed under Chapter 19 of the code.) Existing reciprocity provisions would be eliminated.

The following are among the provisions found in the bill:

- A person could not sell, solicit, or negotiate insurance in the state for any line of insurance without being licensed under Chapter 12. (This would replace current language requiring a license in order to solicit insurance, bind coverage, or in any other manner act as an insurance agent.) As now, an appointment from an insurance company would be required. Also as now, a pre-licensing course of study would have to be completed and a written examination passed. An individual would have to be 18 years of age, as now, and could not have committed any of a list of acts that constitutes a ground for denying, suspending, or revoking a license. An individual who allowed his or her license to lapse for any reason other than failing to meet continuing education requirements could reinstate the same license without passing a written examination if he or she did so within 12 months after the date of the lapse.

- Currently, a person must be a resident of this state to solicit applications for insurance and collect premiums on behalf of a licensed insurance producer resident in this state. The bill would remove the residency requirement and allow a nonresident to obtain a license to act as a solicitor.

- The licensing examination for insurance producers would have to test the knowledge of the individual based on the kind of license sought, and test the individual on the duties and responsibilities of a producer, and on the state's insurance laws and regulations. Examinations would be developed and conducted as prescribed by the commissioner. The commissioner could make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable test fee. A person who failed to pass the examination or who failed to appear at the examination could reapply for an examination and would have to remit all required examination fees and forms to be rescheduled.

- An individual who had been licensed in another state would not be required to meet prelicensing education or examination requirements. This would only apply if the person was currently licensed or applied within 90 days of the cancellation of the previous license, and if the other state certified that the person was in good standing at the time of the cancellation. The state could also rely on its producer database records, maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, to indicate that the applicant was or had been licensed in good standing. A person licensed in another state who moved to Michigan would have to apply within 90 days after establishing legal residence to become a resident licensee. Prelicensing education or an examination would not be required to obtain any qualification previously held in the prior state, except when the commissioner determined otherwise by rule.

- An individual insurance producer could receive a license for qualification in one or more of the following lines of insurance: life; accident and health or sickness; property; casualty; variable life and variable annuity products; personal lines; credit; and any other permitted under state law or rules.

- A business entity acting as an insurance producer would have to obtain a license. The entity would have to file the uniform business entity application with the commissioner and could not be licensed unless it had designated an individual licensed producer responsible for its compliance with state insurance laws, rules, and regulations. A business entity also could not have committed an act that would be grounds for denying, suspending, or revoking a license.

- Temporary insurance producer licenses could be issued for up to 180 days without an examination for the servicing of an insurance business in certain emergency circumstances where the commissioner considered it to be in the public interest. Such circumstances would include issuing a license to a surviving spouse or court-appointed representative when a licensee dies or becomes disabled to allow adequate time for the business to be sold, for the producer to recover and return to the business, or for the training and licensing of new personnel; to a member or employee of a business entity upon the death or disability of the entity's designated individual; and to the designee of a licensed producer entering active military service. The commissioner could limit the authority of a temporary license, and could require the temporary licensee to have a suitable sponsor who was a licensed producer or insurer and who would assume responsibility for all acts of the temporary licensee. A temporary license could also be revoked if the commissioner considered the interest of customers or the public to be endangered. (The act currently allows for temporary agent licenses of up to 90 days duration, with one 90-day extension, when an agent dies or is incapacitated.)

- The following acts would allow the commissioner to place an insurance producer on probation, to suspend, revoke, or refuse to issue a license, or to levy a civil fine (or a combination of those actions): providing incorrect, misleading, incomplete, or materially untrue information in the license application; violating insurance laws or any regulation, subpoena, or order of the commissioner or another state's commissioner; obtaining or attempting to obtain a license through misrepresentation or fraud; improperly withholding, misappropriating, or converting any money or property received in the course of doing business; intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance; having been convicted of a felony; having admitted or been found to have committed any insurance unfair trade practice or fraud; using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business; having a producer license or its equivalent denied, suspended, or revoked in another state, province, district, or territory; forging another's name to an application for insurance or to any document related to an insurance transaction; improperly using notes or any other reference material to complete an examination for an insurance license; knowingly accepting insurance business from a person who was not licensed; failing to comply with an administrative or court order imposing a child support obligation; and failing to pay single business tax or comply with any administrative or court order directing payment of single business tax.

- The civil fines in Chapter 12 would be increased. The maximum per violation would increase from \$300 to \$500. The maximum when a person knew or reasonably should have known that he or she was in violation would increase from \$1,500 to \$2,500. The maximum of total fines in a commissioner's order would increase from \$10,000 to \$25,000.

- An insurance producer could not act as an agent of an insurance company without becoming an appointed agent of the company. The appointing company would be required to file a notice of appointment within 15 days from the date the agency contract was executed or the first insurance application was submitted. An insurer could appoint an agent to all or some of the companies within the insurer's holding company system by filing a single appointment request. The commissioner would have 30 days to determine if the insurance producer was eligible for appointment and would have to notify the insurance company within five days of making the determination.

- An insurance company or authorized representative of an insurer that terminated the appointment, employment, contract, or other business relationship with an insurance producer would have to notify the commissioner using a prescribed format within 30 days of the effective date of the termination. Upon the written request of the commissioner, the insurer would have to provide additional information, documents, records, or other data pertaining to the termination. The company would also have to inform the commissioner if the reason for termination was one of the reasons listed earlier for the suspension, revocation, etc. of a license or if the insurer had knowledge that the producer had been found by a court, government body, or self-regulatory organization to have engaged in any of those activities. In such a case, the company would have to notify the commissioner if any additional information was discovered. The insurer would have to mail a copy of the notification to the producer not later than 15 days after notifying the commissioner. If the producer was terminated for cause for any of the listed reasons, the insurer would have to provide a copy of the notification to the producer by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier.

Within 30 days after receiving the original or additional notification, the producer could file written comments concerning the substance of the notification with the commissioner. A copy would have to be sent simultaneously to the reporting insurer. The comments would become a part of the commissioner's file and would have to accompany every copy of a report distributed or disclosed for any reason about the producer. [There are limitations in the Insurance Code on the ability of an auto or home insurer to terminate an agent; the bill would not change these.]

- In the absence of actual malice, an insurer or authorized representative, an insurance producer, the commissioner, or an organization to which the commissioner belonged with information compilation functions would not be subject to civil liability for making the information available, and a civil cause of action of any nature would not arise against these entities, their representatives, or employees for reporting or providing any statements made regarding a termination. Actions brought against the entities with immunity would have to plead that the immunity did not apply because a person made a statement or provided information with actual malice. The bill would specify that this provision does not abrogate or modify any existing statutory or common law privileges or immunities.

- An insurer or insurance producer that failed to report as required under the termination provisions or that was found to have reported with actual malice by a court of competent jurisdiction could, after notice and hearing, have its license or certificate of authority suspended or revoked and could be subject to civil fines.

- An insurance producer would be required to report to the commissioner any administrative action taken against it in another jurisdiction or by another governmental agency in Michigan within 30 days after the final disposition of the matter. The report would have to include a copy of the order, consent to order, or other relevant legal documents. Within 30 days after the initial pretrial hearing date, an insurance producer would have to report to the commissioner any criminal prosecution taken in any jurisdiction. The report would have to include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

- Any documents, materials, or other information in the control or possession of the Office of Financial and Insurance Services (OFIS) furnished by an insurer, an insurance producer, or an employee or representative acting on behalf of an insurer or producer, or obtained by the commissioner in an investigation would be confidential by law and privileged and not subject to the Freedom of Information Act. They would not be subject to subpoena and would not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner would be authorized to use the documents, materials, and information in the furtherance of any regulatory or legal action brought as part of the commissioner's duties. Neither the commissioner nor any person who received the information while acting under the commissioner's authority would be permitted or could be required to testify in any private civil action concerning any confidential documents, materials, or information.

- In order to assist the commissioner in performing his or her duties under Chapter 12, the commissioner could share documents, materials, and other information, including the confidential information referred to earlier, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, and with state, federal, and international law enforcement agencies, provided the recipient agreed to maintain the

confidentiality and privileged status of the information. The commissioner could also in turn receive such documents from other jurisdictions. The commissioner could enter into agreements governing the sharing and use of information.

- The commissioner would not be prohibited from releasing final, adjudicated actions, including for-cause terminations that were open to public inspection under the Freedom of Information Act, to a database or other clearinghouse service maintained by the NAIC or its affiliates or subsidiaries.

- There would be no waiver of any applicable privilege or claim of confidentiality in documents, materials, and other information as a result of disclosure to the commissioner, either as part of a termination or an investigation by the commissioner.

- The bill would specify who was not required to be licensed, including an insurance company. A license would not be required of certain officers, directors, and employees of an insurance company or an insurance producer provided they did not receive commissions and their functions were executive, administrative, managerial, or clerical and only indirectly related to the sale, solicitation, and negotiation of insurance; or were related to underwriting, loss, control, inspection, or the processing, adjusting, investigating, or settling of a claim; or were limited to providing technical advice and assistance. A license would also not be required of people receiving no commission for securing and providing information for group insurance or receiving no commission while engaging in activities related to the administration of plans; and people performing administrative services related to mass marketed property and casualty insurance. Licensing requirements would also not apply to, in general terms, those involved in employee trust plans and employee benefit programs; those involved in the inspection, rating, and classification of risks; those in advertising; those residing outside the state selling, soliciting, or negotiating a contract of insurance for commercial property and casualty risks to an insured with risks in more than one state, provided they were licensed in their home state; and those who were salaried full-time employees who counseled or advised their employers concerning their insurance interests.

- The commissioner could waive the examination requirements for licensure as an insurance producer, solicitor, adjuster, counselor, or surplus lines agent, for a person who had been licensed within the preceding 12 months.

- The bill would specify that an insurance producer for a fraternal benefit society authorized to transact insurance in Michigan before March 1, 2002 could, upon application to the commissioner before March 1, 2003, be licensed as an insurance producer to represent that fraternal benefit society without written examination.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.