

# HOUSE BILL REPORT

## HB 1533

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### As Reported by House Committee On:

Insurance, Financial Services & Consumer Protection

**Title:** An act relating to persons selling, soliciting, or negotiating insurance.

**Brief Description:** Concerning persons selling, soliciting, or negotiating insurance.

**Sponsors:** Representatives Kirby, Simpson and Kenney; by request of Insurance Commissioner.

### Brief History:

#### Committee Activity:

Insurance, Financial Services & Consumer Protection: 2/15/07, 2/20/07 [DPS].

#### Brief Summary of Substitute Bill

- Creates one insurance producer license and licensing process instead of a separate license for agents and brokers.
- Modifies licensing provisions for persons selling, soliciting, or negotiating insurance, including establishing a non-resident insurance producer license, changing bonding requirements, changing compensation disclosure requirements, changing temporary license provisions, creating procedures for placing licenses on probation, and increasing licensing fees.

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## HOUSE COMMITTEE ON INSURANCE, FINANCIAL SERVICES & CONSUMER PROTECTION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Kirby, Chair; Kelley, Vice Chair; Roach, Ranking Minority Member; Strow, Assistant Ranking Minority Member; Hurst, Rodne, and Simpson.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Santos.

**Staff:** Sarah Beznoska (786-7109).

### Background:

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Office of the Insurance Commissioner (OIC) licenses and regulates insurance agents and brokers. An insurance agent is appointed by an insurer to solicit applications for insurance on behalf of the insurer. If authorized to do so, an agent may enter into insurance contracts and collect premiums on insurance. An insurance broker is a person who, on behalf of an insured, for a fee, solicits, negotiates, or procures for insureds.

### **Agent and Broker Licensing Issues**

The license application process includes a requirement that both agents and brokers submit fingerprints.

With some exemptions, an examination is also required. Applicants for limited licenses are exempt from the examination requirements, at the discretion of the OIC, as are applicants who, within the two years before application, were licensed as a resident in the state under a license requiring similar qualifications or who have successfully completed a course recognized as a mark of distinction in the insurance industry and applicants for an adjuster's license who have been a full-time employee of an insurer or a managing general agent. Applicants for a non-resident license who are licensed in their home state are also exempt from examination requirements.

The OIC may issue a temporary 90-day license in a 12-month period to surviving next of kin of a deceased licensee, if the survivor is otherwise qualified except for experience or the taking of the examination. The OIC may also issue a temporary license to a surviving member of a firm upon death of a licensee.

Reciprocity between licensees of Washington and those of other states applies subject to the same obligations, limitations and supervision as though the foreign licensee were a resident of this state.

The license application fee and the fee required every two years to renew a license is \$50.

### **Other Agent and Broker Issues**

Laws applying to insurance agents and to insurance brokers are different in some respects. The differences include the requirement for agents to be appointed by insurance companies. The agent's license is valid until suspended or revoked or until the appointment ceases. If the appointment is revoked, notice must be given to the OIC.

Brokers differ from agents in that brokers must have at least two years of experience as an agent, or other position in the insurance industry. A broker's scope of licensing is either all lines, casualty-property, or life and disability. A broker must maintain a bond in favor of the people of Washington in the amount of \$20,000.

An agent licensed as a broker for property and casualty insurance may receive a commission payment from the insurer or a fee payment from the insured, or both. If both are received, the full amount of compensation must be disclosed in writing to the insured by the agent-broker.

The National Association of Insurance Commissioners (NAIC) has developed a model called producer licensing. The model replaces the name of licensees as agents and brokers with the term "producers," and has other provisions that vary from Washington law.

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### **Summary of Substitute Bill:**

Statutes related to the licensing of agents and brokers are changed to refer to the licensing of insurance producers. Insurance producer is defined as a person required to be licensed under the laws of the state to sell, solicit, or negotiate insurance. Insurance producer does not include title insurance agents.

### **Insurance Producer Licensing**

An insurance producer may obtain a license in one or more of the following lines of authority: life, disability, property, casualty, variable life and variable annuity, personal lines, limited lines, specialty lines, or any other line permitted under state law.

To obtain a resident insurance producer license, an application must be made to the OIC on a uniform application.

General licensing requirements are similar to current law. To obtain a producer license, a person must meet the following requirements:

- be at least 18 years old;
- not commit any act that is grounds for denial, suspension, or revocation of license;
- complete pre-licensing study for the lines of authority applied for;
- pay applicable fees; and
- pass examinations for the lines of authority applied for.

Exemptions to the examination requirement are included. Exemptions apply to:

- individuals applying in the state who were previously licensed in another state when application occurs within 90 days of cancellation of the applicant's previous license;
- applicants for speciality or limited lines;
- applicants who, within the two years before application, were licensed as a resident in the state under a license requiring similar qualifications or who have successfully completed a course recognized as a mark of distinction in the insurance industry;
- applicants for an adjuster's license who have been a full-time employee of an insurer or a managing general agent; and
- applicants deemed by the OIC to be qualified by past experience to deal in ocean marine and related coverages.

The OIC may require documents to verify information in the application and may, from time to time, require production of information called for in a license application.

As under current law, an applicant must provide fingerprints for background check purposes and, if the OIC incurs fees or charges from another governmental agency with respect to this process, the applicant must pay the fees or charges to the OIC.

A business entity acting as an insurance producer must obtain an insurance producer license by using the uniform business entity application. The business entity must pay fees and must have a designated licensed insurance producer responsible for the business entity's compliance with insurance laws.

All licenses are valid for the time period specified by the OIC. Renewal provisions are similar to current law. In addition, a licensed producer who is unable to comply with renewal procedures due to military service or some other extenuating circumstance such as long-term medical disability may request a waiver of renewal procedures.

As under current law, if doing business in a name other than the producer's or the title insurance agent's legal name, the name must be registered with the Department of Licensing and the OIC must be given notice.

Licensing fees are raised from \$50 to \$55.

### **Insurance Producers Appointed as an Agent**

An insurance producer or title insurance agent must be appointed as an agent before acting as an agent. The insurer must file a notice of appointment within 15 days from the date the agency contract is executed or when the first insurance application is submitted, whichever is later. The OIC must verify within 30 days that the insurance producer or title insurance agent is eligible for appointment. If ineligible, the OIC must notify the insurer within 10 days of the determination.

New provisions are also created related to the termination of an appointment. In these situations, the insurer must notify the OIC within 30 days, including information related to whether the termination was based on a violation of the law. The insurer also has a continuing obligation to notify the OIC if the insurer discovers additional information related to a violation of the law. The insurance producer or title insurance agent must receive a copy of the notice and has 30 days to file comments with the OIC.

Immunity and confidentiality provisions are included related to reporting termination information to the OIC. An insurer, authorized representatives of the insurer, an insurance producer, a title insurance agent, the OIC, or an organization of which the OIC is a member are all immune from civil liability as a result of statements or information they are required to provide. Information provided pursuant to the reporting requirements is confidential and not subject to public disclosure. However, the OIC may share and receive documents from other regulatory agencies and the NAIC if the other entities agree to maintain the confidentiality. In addition, the OIC may use the information in regulatory or legal action.

### **Non-resident Producer License**

New provisions are created related to non-resident producer licenses. A non-resident may obtain a non-resident producer license if the following requirements are met:

- the person is currently licensed as a resident and in good standing in the person's home state;

- the person has submitted a proper request for licensure and paid applicable fees;
- the person has submitted to the OIC the application that the person submitted to the person's home state or a completed uniform application;
- the person's home state has reciprocity for non-resident producer licenses with residents of Washington; and
- the person has submitted fingerprints for background check purposes (this requirement may be waived by the OIC if the home state requires submission of fingerprints for resident licensure).

The OIC must waive other license application requirements for a non-resident of a state that has reciprocity with Washington and awards non-resident licenses to Washington residents on the same basis.

Continuing education requirements for a licensed non-resident producer may be met by meeting continuing education requirements in the producer's home state if the home state has similar provisions for producers from Washington.

The OIC is authorized to verify a producer's licensing status through the NAIC producer database.

### **Temporary Licenses**

Temporary licenses may be issued for 180 days without requiring an examination in certain situations and the OIC may limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. A new provision allowing for a temporary license to be issued when a licensee enters active service in the military is created.

A temporary license may be issued:

- to the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the insurance producer or for the recovery or return of the insurance producer to the business, or to provide for the training and licensing of new personnel to operate the insurance producer's business;
- to a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;
- to the designee of a licensed insurance producer entering active service in the armed forces of the United States; or
- in any other circumstance where the OIC deems that the public interest will best be served by the issuance of this license.

The OIC may require a suitable sponsor to assume responsibility for the temporary licensee.

### **Revocations and Suspensions**

Provisions related to suspending, revoking, or refusing to issue a license are changed to include some additional reasons for suspending, revoking or refusing to issue. Those reasons are:

- providing incorrect, misleading, incomplete, or materially untrue information in the license application (current law requires willful misrepresentation);
- having an insurance producer license, or its equivalent, denied, suspended, or revoked in another state;
- 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 a license examination;
- knowingly accepting insurance business from a person who is required to be licensed and is not licensed, other than orders for issuance of title insurance on property located in this state placed by a nonresident title insurance agent authorized to act as a title insurance agent in the title insurance agent's home state; or
- obtaining a loan from an insurance client that is not a financial institution and who is not related to the insurance producer by birth, marriage, or adoption, except the OIC may, by rule, define and permit reasonable arrangements.

A probation option is also created. The OIC may place a license in probation under reasonable terms. The OIC may require a licensee placed on probation to:

- report regularly on matters that are the basis of the probation;
- limit practice to a particular area; or
- continue or renew continuing education until the licensee attains a degree of skill satisfactory to the OIC in the area that is the basis of the probation.

### **Bond Requirements**

Bond requirements are changed. An insurance producer that is not appointed as an agent is subject to a \$2,500 bond requirement, or 5 percent of the premiums brokered in the previous calendar year, whichever is greater. This bond requirement is capped at \$100,000 total aggregate liability.

Authorized insurance producers of a business entity may meet the bond requirement with a bond in the name of the business entity. Insurance producers may meet the requirement with a bond in the name of an association in existence for five years, with common members, and formed for a reason other than obtaining a bond.

### **Compensation Disclosure Requirements**

An insurance producer may receive a commission from the insurer, a fee from the insured, or both. If the compensation received by an insurance producer who is dealing directly with the insured includes a fee, for each policy, the insurance producer must disclose, in writing, the following:

- the full amount of the fee paid by the insured;

- the full amount of any commission paid to the insurance producer by the insurer, if one is received;
- an explanation of any offset or reimbursement of fees or commissions; and
- the full name of the insurer that may pay any commission.

When the insurance producer may receive additional compensation in the form of future incentive compensation from the insurer, the insurance producer must provide notice that:

- the insurance producer may receive additional commission in the form of incentive compensation from the insurer, including contingent commissions and other awards and bonuses, and incentive compensation is only paid if the performance criteria established in the agency-insurer agreement is met by the insurance producer; and
- provide the insured or prospective insured specific information related to the additional commission upon request.

Written disclosure must be provided prior to the sale of a policy. Written disclosure must be signed by the insurance producer and the insured and must be retained for five years.

**Substitute Bill Compared to Original Bill:**

The substitute bill includes language authorizing the OIC to collect fees from an applicant related to the process of verifying fingerprints, business records, or other information.

The substitute bill modifies the compensation disclosure provision to include requirements specific to contingent commissions.

The substitute bill raises license fees from \$50 to \$55 instead of \$60.

The substitute bill modifies the prohibition on knowingly accepting insurance business from a person who is required to be licensed and is not to allow the acceptance of insurance business on orders for issuance of title insurance on property located in this state placed by a nonresident title insurance agent authorized to act as a title insurance agent in the title insurance agent's home state.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect on July 1, 2009.

**Staff Summary of Public Testimony:**

(In support) Licensing issues affect a lot of people with Washington state agent and broker licenses, so work on this bill started last June. This is based on a NAIC model that has been adopted by 38 other states. The bill creates a single license for agents and brokers and allows for licensing, removal, continuing education, and identifying people with complaints filed against them in a much more streamlined way. This follows the national model except for a couple of areas related to consumer protection.

This bill enables the OIC to take advantage of information technology. The OIC is completing an upgrade of the information technology system and has a brand new computer system that allows for enhancement. This bill allows for uniformity among states and is part of the movement at the federal level to have states move towards uniformity or to step aside and allow for federal regulation.

The bill does change bonding requirements. Currently, a broker's bond is a \$20,000 bond in favor of the people of Washington. A firm may also join in and increase that amount. The new requirement is taken from Illinois and requires that when a producer is placing business with a company with which that producer is not appointed, the producer must maintain a bond, up to a maximum of \$100,000. This is an important consumer protection requirement because an appointed insurance producer is backed up by the company who has appointed the insurance producer. An insurance producer who is not appointed and is acting as a broker is acting on behalf of the insured. The bill permits multi-state bonds as long as the people of Washington are beneficiaries. Business entities may also provide bonds for all of the insurance producers in the business entity.

This bill is consistent with the stated purpose to modernize and streamline licensing statutes in Washington and is a priority for some producer associations. There is an amendment being circulated on compensation disclosure issues. The issue has been worked carefully and the expectation is that there will not be difficulties with the amendment.

This bill is a significant change to the current licensing scheme. There are other states that have done this and it does streamline things. It will create an easier process. The compensation disclosure issue is on page 23 of the bill. There is a proposed amendment trying to find a balance between existing statutes requiring full disclosure of all compensation and easing the regulatory burden of trying to follow Technical Assistance Advisory issued by the OIC.

(Opposed) None.

**Persons Testifying:** (In support) Mike Kreidler and John Hamje, Office of the Insurance Commissioner; Mel Sorensen, Professional Insurance Agents; and Bill Stauffacher, Independent Insurance Agents and Brokers Northwest.

**Persons Signed In To Testify But Not Testifying:** None.