

RECENT LEGISLATIVE EFFORTS AND CHANGES TO TEXAS PROPERTY AND CASUALTY AGENT LICENSING LAWS

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Following a 1997 mandate from the Texas Legislature, the Texas Department of Insurance created a working group to study state law regarding insurance agent licensing. The group, comprised of agents, insurance company representatives, and consumers, made recommendations before the start of the 76th legislative session in 1999.

The Agents' Licensing Advisory Committee Report and the Report of the Commissioner of Insurance on Agents' Licensing Statutes included recommendations to repeal the restrictions on ownership and licensure of corporate and partnership insurance agencies; remove restrictions against non-resident agents soliciting in Texas; and consolidate the forty-five agents' licenses to fewer than ten.

The Texas Legislature passed two bills sponsored by Senator Frank Madla and Representative Craig Eiland that made major modifications to Texas' regulation of insurance agents and agencies, Senate Bills 956 and 957. Senate Bill 956, which was later vetoed by the Governor, would have removed restrictions regarding the ownership of corporate and partnership insurance agents. The bill also would have opened up the state's insurance market to non-resident agents, allowing reciprocity with other states so that non-resident agents would be allowed to solicit in Texas. Senate Bill 957, which will become law on September 1, 1999, creates specialty insurance licenses for rental car companies, self-service storage facilities, and sellers of credit and travel insurance.

Senate Bill 956

Senate Bill 956 was intended to simplify and reform the regulation of insurance agents in the state by consolidating license types and to promote uniformity in the licensing, examination, continuing education, and disciplinary requirements for agents.¹

One significant provision of Senate Bill 956 addressed corporate insurance agencies. Senate Bill 956 would have eliminated the requirement that all officers, directors, and shareholders of a corporation be individually licensed as agents and residents of Texas in order for the corporation to become licensed as a local recording agent (Texas general property and casualty agent) or a managing general agent. The bill also would have eliminated the corresponding requirements for agents that are partnerships. The bill would have allowed a corporation or partnership to be licensed if at least one officer of the corporation or one active partner in the partnership and all others performing any acts of an agent on behalf of the corporation or partnership in Texas were individually licensed. The bill would have allowed licensure of a corporation or partnership as a surplus lines agent if the entity was licensed as either a local recording agent or managing general agent and at least one officer or one active partner was individually licensed and a resident of Texas. Additionally, Senate Bill 956 included a repeal of the long-standing residency requirement imposed on all partners, officers, directors, and shareholders.

Senate Bill 956 also would have allowed federal and state banks to be licensed in the same manner as corporations, repealing the current provision allowing banks to become licensed as local recording agents only if located and doing business in Texas in a place with a population of 5,000 or less.²

Senate Bill 956 also included provisions allowing licensure of non-resident agents. It provided that for a non-resident individual to be licensed in Texas, the Department of Insurance must find that the state in which the person resides accords the same privilege to a Texas resident and the person has passed an examination or is licensed in his or her home state. For out-of-state corporations or partnerships to be licensed in Texas, the corporation or partnership would be

required to provide the Department with evidence of authority or ability to act as an agent in its home state, satisfaction of the requirements for licensure under article 21.07 of the Texas Insurance Code, and domicile in a state that has entered into a reciprocal agreement with Texas.

Due to the more restrictive licensing requirements in Texas, many states that have retaliatory agent licensing laws prohibit Texas agents from doing business in their state. The provisions in Senate Bill 956 would have expanded the requirements for licensing of insurance agents in Texas. One important effect of the more relaxed licensing statutes, had Senate Bill 956 been enacted, is that many states would have granted reciprocity to Texas agents, rather than retaliating and prohibiting them from conducting business in their state.

On June 20, 1999, Governor George W. Bush vetoed Senate Bill 956. An amendment unrelated to agent licensing that relieved bail bondsmen from any liability on bond forfeitures for one year was added late in the session. Governor Bush believed the provision “jeopardize[d] public safety by weakening the obligation of bondsmen to ensure criminal defendants appear in court.”³ Unless a special legislative session is called by the Governor, which is not expected, the legislation will not be reconsidered until the convening of the next legislative session in January of 2001, and the majority of the State’s current licensing system will remain in place.

Commissioner’s Bulletin

Shortly after the veto of Senate Bill 956, on July 1, 1999, the Texas Department of Insurance issued Commissioner’s Bulletin No. B-0037-99.⁴ The bulletin, which allows some non-resident individuals to become licensed and solicit insurance in Texas, was issued in an effort to reduce retaliation against Texas agents by other states. Article 21.11 of the Insurance Code⁵ authorizes the Texas Department of Insurance to waive the residency requirement for issuance of a local recording agent license⁶ for applicants with valid licenses from other states or jurisdictions that have license requirements substantially equivalent to those of Texas. Under the authority of article 21.11, the bulletin provides a waiver of the residency requirements for a local recording agent license if the non-resident applicant’s resident state has signed the National Association of Insurance Commissioners’ (“NAIC”) Uniform Treatment Declaration for Insurance Non-Resident Producer Licensing or has waived license requirements applicable to non-resident agents which impede substantial compliance with the provisions of the Uniform Treatment Declaration. The state must also grant full reciprocity to a Texas resident agent. An applicant whose home state does not comply with these requirements may receive a Texas non-resident agent license but may not have an office or solicit in Texas under article 21.11.

The residency waiver contained in Commissioner’s Bulletin B-0037-99 applies only to applicants for a local recording agent license. The waiver is only for individual agents and does not affect the requirement that all officers, directors, and shareholders of corporate local recording agents be individually licensed and that such corporations be incorporated in Texas. A Texas corporation may have non-resident officers, directors, and/or shareholders that are non-resident individuals licensed as local recording agents so long as a licensed local recording agent manages the office. The bulletin does not affect the current restrictions on licensing of banks as insurance agents.

Commissioner’s Bulletin B-0037-99 does not affect licensing requirements for a managing general agent. The Managing General Agent Act expressly states that an applicant for a managing general agent license must be a Texas resident.⁷ Partnerships must be Texas partnerships, and Texas must be the state of incorporation and principal place of business for corporations. Each partner and each officer, director, and shareholder must be individually licensed as a managing general agent.⁸ (These requirements do not apply to “grandfathered” managing general agents, licensed before September 1, 1967.)

Commissioner’s Bulletin B-0037-99 also does not apply to surplus lines agents. An applicant for a surplus lines agent license must hold an underlying license as either a managing general agent or a local recording agent.⁹ As discussed above, the licensing requirements for a managing general agent are not affected by the Commissioner’s Bulletin, and thus, the bulletin does not apply to surplus lines agents with underlying managing general agent licenses. The Department of Insurance has confirmed that the waiver of the residency requirement for individual local recording agents

does not carry through and provide a basis for licensure of non-resident local recording agents as surplus lines agents. The surplus lines statute provides that in order to be authorized, surplus lines insurance must be placed “through a licensed Texas surplus lines agent resident in this state.”¹⁰

In summary, the effort to reform the current restrictive insurance agent licensing system in Texas has been delayed by the veto of Senate Bill 956. Commissioner’s Bulletin No. B-0037-99 eliminates some of those restrictions by allowing non-residents of certain states to receive a local recording agent license. Due to the change of law implemented through the bulletin, it is expected that other states will no longer retaliate against Texas agents, at least individuals. Because Texas will not license non-resident business entities, most states will retaliate and not allow Texas corporations and partnerships to do business in their states.

Senate Bill 957

Senate Bill 957 creates several specialty insurance agent licenses under a new article 21.09 of the Insurance Code, including licenses for rental car companies, entities selling credit insurance, travel agents, and self-storage facilities.¹¹ The entity is licensed by the Texas Department of Insurance and is responsible for the training and actions of its employees who solicit insurance products. It allows a specialty licensee’s supervised employees who are not compensated “based primarily on the amount of insurance sold by the employee” to act as agents for the types of insurance specified in the bill without being individually licensed.

Each individual who is acting on behalf of the license holder must have completed an approved training program regarding the specific type of insurance to be sold, i.e., rental car insurance, credit insurance, travel insurance, and insurance covering property in self-storage facilities. An insurer that writes the specific type of insurance for which a specialty license is issued must provide the training materials to the license holder. The training program must be submitted to the Commissioner of Insurance for approval before it is used. Each insurance company appointing an agent must submit a certification of the appointment affirming that the insurer has satisfied itself that the license holder is trustworthy and competent to act as an insurance agent on behalf of the insurer.

Evidence of coverage must be provided to each consumer who elects to purchase the coverage. At each location at which sales of insurance policies covered by article 21.09 occur, brochures or other written materials must be prominently displayed and readily available to the prospective consumer that:

- summarize, clearly and correctly, the material terms of the insurance offered, including the identity of the insurer;
- disclose that the policies offered by the license holder may provide a duplication of coverage already provided by a consumer’s personal auto insurance policy, homeowner’s insurance policy, personal liability insurance policy, or other source of coverage;
- state that, except as specifically provided by another law of this state or the United States, the purchase by the consumer of insurance is not required to complete the associated consumer transaction;
- describe the process for filing a claim in the event the consumer elects to purchase coverage and in the event of a claim; and
- contain any additional information on the price, benefits, exclusions, conditions, or other limitations of the policies required by the Commissioner by rule.

A person who holds a general life insurance agent or local recording agent license under article 21.07-1 or article 21.14 is not required to obtain a specialty license, but is subject to the other requirements of article 21.09 in the solicitation of an insurance product subject to the article. No examination or continuing education is required for specialty license holders.

Current law regulating the sale of credit insurance will be repealed as of January 1, 2000, and replaced with the new provisions found in Senate Bill 957. One of the major differences between Senate Bill 957 and current law is that under

the new system, those employees who sell credit life insurance under a specialty license may not be compensated based on the amount of insurance the employee sells. "Credit insurance" is defined to include: (1) credit life insurance; (2) credit accident and health insurance; (3) credit property insurance; and (4) credit involuntary unemployment insurance. The definition also includes the sale of insurance that covers the difference between the actual cash value of a motor vehicle used as security for a loan or lease and the outstanding balance of that loan or lease in the event of loss or damage in which the vehicle is rendered an actual or constructive total loss while the debt for which the vehicle serves as security exceeds the actual cash value of the vehicle.

The credit insurance section of the legislation provides an exception from the rest of the bill in regard to notices that must be provided to consumers. Senate Bill 957 states that a license holder and the license holder's representative are not required to make the disclosures required by article 21.09 if the license holder or the license holder's representative complies with all disclosure requirements prescribed by other Texas or federal law relating to the sale or delivery of a credit insurance product.

Senate Bill 957 also repeals the requirement that a licensed insurance adjuster maintain an office in this state. Governor George W. Bush signed Senate Bill 957 on June 19, 1999, and the legislation becomes effective September 1, 1999. Not later than January 1, 2000, the Texas Department of Insurance shall issue an appropriate license under article 21.09 to a person who, immediately before the effective date of the bill, holds an agent license issued by the Texas Department of Insurance under section 21, article 21.07, Insurance Code. On issuance of the new license, the license holder is subject to article 21.09. A travel agent or self-service storage facility is not required to be licensed under this bill until January 1, 2000. During the coming months, the Texas Department of Insurance will promulgate rules to implement the bill.

Endnotes

1. Tex. S.B. 956, 76th Leg., R.S. (1999).
2. Tex. Ins. Code Ann. art. 21.14-2 § 3(d) (Vernon 1998).
3. Veto Message of Gov. Bush, Tex. S.B. 956, 76th Leg., R.S. (1999).
4. Jose Montemayor, Licensure of Non-Resident Property and Casualty Insurance Agents in Texas (July 1, 1999) (Tex. Dept. of Ins.).
5. Tex. Ins. Code Ann. art. 21.11, § 1(b).
6. Article 21.14 governs the licensing of local recording agents. *Id.* at art. 21.14.
7. *Id.* at art. 21.07-3.
8. *Id.*
9. *Id.* art. 1.14-2 § 2(a)(1).
10. *Id.* at art. 1.14-2, § 3(a).
11. Tex. S.B. 957, 76th Leg., R.S. (1999).