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Sens. Nein, Austria

Reps. Stapleton, Salerno, G. Smith, Olman, Calvert, Flannery, Flowers, Krupinski, Britton, Evans, Cirelli, Jolivette, Schaffer, Wolpert, Sferra, Blasdel, Setzer, Hartnett, Allen, Schmidt, D. Miller, Coates, Driehaus, Cates, Hoops, Collier, Clancy, Strahorn, Key, Woodard, Brown, DeBose

Effective date: *

ACT SUMMARY

- Responds to requirements imposed on states by the federal Financial Services Modernization Act of 1999 ("Gramm-Leach-Bliley").
- Revises the Insurance Agents Law (Chapter 3905. of the Revised Code) based on the National Association of Insurance Commissioners' "Producer Licensing Model Act," and makes other organizational changes in the Insurance Agents Law.
- Amends the insurance law to prohibit certain unfair trade practices by persons that lend money or extend credit.

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* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

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CONTENT AND OPERATION

AGENT LICENSING

Background

Currently, insurance agents must meet the licensing requirements of each state in which they do business, including separate applications, education standards, and examinations. Under the Financial Services Modernization Act of 1999¹ ("Gramm-Leach-Bliley"), states are required to establish (1) uniform laws governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the state *or* (2) a system of reciprocity governing the licensure of nonresident individuals and entities. If a majority of the states do not adopt the required uniformity or reciprocity by November 12, 2002, the Act provides for the establishment of the National Association of Registered Agents and Brokers (NARAB). NARAB would be a nonprofit corporation, subject to oversight by the National Association of Insurance Commissioners (NAIC). Its stated purpose is

to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices. (15 U.S.C.A. § 6753.)

Generally, the Act would preempt state laws governing producer licensing by prohibiting their application to any member of NARAB.

¹ *Pub. L. No. 106-102, November 12, 1999.*

In response to the NARAB provisions of Gramm-Leach-Bliley, the NAIC created the Producer Licensing Model Act. Under the NAIC model act, producers holding a resident license in a state could obtain a nonresident license in another state by (1) providing evidence of the license in good standing in the resident state, (2) completing the uniform application, (3) paying the appropriate state fee, and (4) satisfying the continuing education requirements of the resident state. As long as the resident state awards nonresident licenses on the same basis, no additional licensing requirements can be imposed. (Sections 8 and 16.)

In addition, the National Insurance Producer Registry, a nonprofit affiliate of the NAIC, created the Producer Database and the Electronic Appointments/Terminations network for state regulators and insurance companies to use to verify the good standing of producers and to report violations.

The act

Generally, the act makes changes to the Insurance Agents Law (Chapter 3905. of the Revised Code) based on the NAIC Producer Licensing Model Act. The revisions made by the act include (1) substantive changes with respect to the licensing of resident and nonresident insurance agents by the Department of Insurance, (2) a reorganization of the Insurance Agents Law, and (3) conforming changes throughout the Revised Code.

The following is a section-by-section summary of this portion of the act. The summary is divided into three parts: first, the changes made to the licensing provisions of Chapter 3905.; second, the relocation of certain provisions of Chapter 3905. outside that chapter; and third, the conforming changes made by the act.

Licensing provisions

Sec. 3905.01: Definitions

The following definitions are among those enacted for purposes of Chapter 3905.:

(1) "**Insurance agent**" means any person that, "in order to sell, solicit, or negotiate insurance," is required to be licensed under Ohio law, including limited lines agents and surplus line brokers (sec. 3905.01(D)).

(2) "**License**" means the authority issued by the Superintendent of Insurance to a person to act as an insurance agent for the lines of authority specified, but that does not create any actual, apparent, or inherent authority in the person to represent or commit an insurer (sec. 3905.01(F)).

(3) "**Limited lines insurance**" means limited line credit insurance, title insurance, surety bail bond, and any other line of authority designated by the Superintendent (sec. 3905.01(I)).

(4) "**Limited line credit insurance**" means credit life, credit disability, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, or any other form of insurance designated by the Superintendent that is offered in connection with an extension of credit and that is limited to partially or wholly extinguishing that credit obligation (sec. 3905.01(G)).

(5) "**Negotiate**" means to confer directly with, or offer advice directly to, a purchaser or prospective purchaser of a particular contract of insurance with respect to the substantive benefits, terms, or conditions of the contract, provided the person that is conferring or offering advice either sells insurance or obtains insurance from insurers for purchasers (sec. 3905.01(L)).

(6) "**Sell**" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer (sec. 3905.01(N)).

(7) "**Solicit**" means to attempt to sell insurance, or to ask or urge a person to apply for a particular kind of insurance from a particular insurer (sec. 3905.01(O)).

Sec. 3905.02: License required

The act prohibits a person from selling, soliciting, or negotiating insurance in Ohio unless the person is licensed for that line of authority in accordance with the act. This prohibition is similar in nature to that found in section 3905.01(A) of the Revised Code prior to this act.

Sec. 3905.03: Exceptions to licensing requirement

This section provides that certain persons and activities are not subject to the licensing requirement of section 3905.02, as enacted, including the following:

(1) Any insurer;

(2) Any officer, director, or employee of an insurer or of an insurance agent, provided the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in Ohio *and* (a) the activities of the officer, director, or employee are executive, administrative, managerial, or clerical and are only indirectly related to the sale, solicitation, or negotiation of insurance, (b) the function of the officer, director, or employee relates to underwriting, loss control, inspection, or the processing,

adjusting, investigation, or settling of a claim on a contract of insurance, *or* (c) the officer, director, or employee is acting in the capacity of a special agent or agency supervisor, provided the activities of the officer, director, or employee are limited to providing technical advice and assistance to licensed insurance agents and do not include the sale, solicitation, or negotiation of insurance;

(3) Any person who secures and furnishes information for purposes of group life insurance, group property and casualty insurance, group annuities, or group or blanket accident and health insurance, or for purposes of enrolling individuals under plans, issuing certificates under plans, or otherwise assisting in administering plans, or who performs administrative services related to mass marketed property and casualty insurance, provided that no commission is paid to the person for any of those services;

(4) Any employer or association, any officer, director, or employee of an employer or association, or any trustee of an employee trust plan, to the extent that any such person is engaged in the administration or operation of an employee benefits program for the employer's or association's own employees or for the employees of its subsidiaries or affiliates, if (a) the employee benefits program involves the use of insurance contracts issued by an insurer *and* (b) the employer, association, officer, director, employee, or trustee is not in any manner compensated, either directly or indirectly, by the insurer issuing the insurance contracts;

(5) Any employee of an insurer or of an organization employed by an insurer, if the employee is engaged in the inspection, rating, or classification of risks or in the supervision of the training of insurance agents, and is not individually engaged in the sale, solicitation, or negotiation of insurance;

(6) Any person whose activities in Ohio are limited to advertising through communications in printed publications or in the electronic mass media, the distribution of which is not limited to Ohio residents, if the person does not sell, solicit, or negotiate insurance covering risks residing, located, or to be performed in Ohio;

(7) Any person who is not an Ohio resident and who sells, solicits, or negotiates a contract of insurance covering commercial property and casualty risks located in more than one state, if the person is licensed as an insurance agent to sell, solicit, or negotiate that insurance contract in the state where the insured maintains its principal place of business and the contract insures risks located in that state;

(8) Any salaried full-time employee who counsels or advises the employee's employer with respect to the insurance interests of the employer or of



the employer's subsidiaries or business affiliates, if the employee does not sell or solicit insurance or receive a commission;

(9) Any employee of an insurer or of an insurance agent who, at the direction of the insurer or agent, performs any of the following activities: (a) the acceptance of premiums other than the initial premium, (b) the gathering of information, such as names, addresses, expiration dates of current insurance, and names of current insurers, (c) the setting of appointments for insurance agents, provided that the individual setting the appointment does not communicate any information about insurance, (d) the servicing of existing insurance policies issued by or through the employee's employer, provided the servicing is not part of a solicitation, or (e) the performance of clerical or ministerial duties;

(10) Any employee of a creditor with respect to limited line credit insurance products, as long as the employee of the creditor is not paid by, and does not receive a fee, commission, or any other form of compensation from, an insurance agent or insurance company.

Several of these provisions are similar to those found in the law as it existed prior to this act, in section 3905.01(B) and (C) of the Revised Code.

The act permits the Superintendent to adopt rules in accordance with the Administrative Procedure Act to set forth the specific acts the performance of which either require or do not require licensure as an insurance agent.

Sec. 3905.04: Examination and pre-licensing education requirement

Under the act, each resident individual applying for an insurance agent license for any of the specified lines of authority is required to take a written examination. Individuals are prohibited from taking the examination unless the individual (1) has earned a bachelor's or associate's degree in insurance from an accredited institution or (2) has completed, for each line of authority for which the individual has applied, 20 hours of study in a program of insurance education approved by the Superintendent in consultation with the Insurance Agent Education Advisory Council. These requirements do not apply with respect to title insurance or any other line of authority designated by the Superintendent.

Prior to this act, educational requirements for agents were found in section 3905.48 of the Revised Code. The law required 40 hours of study in an approved program of insurance education for those individuals without a degree wishing to take an agent licensing examination, rather than the 20 hours of such study required by the act. Other provisions of section 3905.04, as enacted, related to the Superintendent's authority to make arrangements for the licensing examination, are similar to those found in sections 3905.013(A) and 3905.51 of the Revised Code prior to this act.

Sec. 3905.041: Exceptions to examination and pre-licensing education requirement

The act specifies the persons who are not required to complete a program of insurance education or to pass a written examination, including any individual who, within 90 days after establishing a principal place of residence or principal place of business in Ohio, applies for a resident agent license and (1) is currently licensed in another state and is in good standing for the line or lines of authority requested or (2) was previously licensed in another state, the individual's application is received within 90 days after the cancellation of the individual's previous license, and, at the time of license cancellation, the individual was in good standing for the line or lines of authority requested. An individual who applies for a temporary insurance agent license is not required to complete any prelicensing education or to pass a written examination. Also, an individual applying for a limited lines insurance agent license may not be required to pass a written examination, if the Superintendent has exempted the line of authority from the examination requirement.

The act provides that the Superintendent may utilize the producer database maintained by the NAIC or its affiliates or subsidiaries to determine an applicant's licensure and standing status in another state. If the information is not available on the producer database, the Superintendent may require the applicant to provide a certification letter from the prior home state.

Sec. 3905.05: Application for a resident license

The act sets forth the procedures by which a natural person or business entity can apply for a resident insurance agent license.

Prior to this act, applicants were required to submit a statement under oath giving the applicant's name, age, residence, present occupation, occupation for the five years next preceding the date of the application, and such other information as the Superintendent required (secs. 3905.02 and 3905.18). The act requires an applicant to submit a declaration made under penalty of refusal, suspension, or revocation of the license, that the statements made in the application are true, correct, and complete to the best of the applicant's knowledge and belief. The Superintendent may require an applicant to submit any document reasonably necessary to verify the information contained in the application.

Continuing law requires an applicant to submit a criminal record check to the Superintendent. Under the law prior to this act, the applicant was directed to request the record check from the Ohio Bureau of Criminal Identification and Investigation. The act permits the Superintendent to designate other governmental agencies and sources to conduct the criminal records check, as alternatives to the Bureau.



Sec. 3905.06: Issuance of a resident license

Under the act, the Superintendent is required to issue a resident insurance agent license to an individual whose home state is Ohio or to a business entity that is domiciled in Ohio or maintains its principal place of business in Ohio, if the Superintendent determines the applicant meets specified criteria. An individual must be 18 years of age; must not have committed any act that is a ground for the denial, suspension, or revocation of an agent's license; must have completed all programs of insurance education and passed all examinations required for the line or lines of authority for which the applicant has applied; and the applicant must be of good reputation and character, be honest and trustworthy, and be otherwise suitable for licensing. A business entity must designate a licensed insurance agent who will be responsible for the applicant's compliance with Ohio's insurance laws and must not have committed any act that is a ground for the denial, suspension, or revocation of an agent's license.

The act lists the lines of authority for which a licensee may be qualified including: life, accident and health, property, casualty, variable life and variable annuity products, personal lines, limited line credit insurance, title, surety bail bond, and any other line of authority designated by the Superintendent. An agent's license is required to state the lines of authority for which the agent is qualified, as well as the agent's name, license number, and date of issuance.

The act provides that a resident insurance agent license is perpetual unless surrendered by the licensee or suspended or revoked by the Superintendent.

Sec. 3905.061: Notice of changes of address or home state

The act requires a person licensed as a resident insurance agent to notify the Superintendent of a change (1) in the person's Ohio address or (2) in the person's state of residence. As in the law prior to this act, found in section 3905.54 of the Revised Code, the notification must be made within 30 days after the change of address.

If an agent changes the agent's state of residence, the agent also is required to provide the Superintendent with certification from the new state of residence. If the act's notification requirements are met, the agent's license is changed to a nonresident license without application or the payment of a fee.

Sec. 3905.07: Issuance of a nonresident license

Under the act, the Superintendent must issue a nonresident insurance agent license to a nonresident person if all of the following apply:

(1) The applicant is currently licensed as a resident and is in good standing in the applicant's home state;

(2) The applicant has submitted the request for licensure prescribed by the Superintendent;

(3) The applicant has submitted or has had transmitted to the Superintendent the application for licensure that the applicant submitted to the applicant's home state or a completed uniform application or uniform business entity application, as applicable. (For purposes of the act, "**uniform application**" means the NAIC uniform application for resident and nonresident agent licensing, and "**uniform business entity application**" means the NAIC uniform business entity application for resident and nonresident business entities (sec. 3905.01(R) and (S)).

(4) The applicant has not committed any act that is a ground for the denial, suspension, or revocation of a license;

(5) The applicant is of good reputation and character, is honest and trustworthy, and is otherwise suitable to be licensed;

(6) The applicant's home state issues nonresident insurance agent licenses to Ohio residents on the same basis as set forth in (1) to (5), above.

The Superintendent may verify the agent's licensure and standing status in the applicant's home state through the producer database maintained by the NAIC or its affiliates or subsidiaries. If that information is not available on the database, the Superintendent may require a certification letter from the applicant's home state.

The act provides that a nonresident insurance agent license is perpetual unless surrendered by the licensee or suspended or revoked by the Superintendent.

The act also provides that notwithstanding any other provision of the Insurance Agents Law, the Superintendent is required to issue a nonresident surplus lines broker license to an applicant licensed as a surplus lines producer in the applicant's home state.

The Insurance Agents Law, prior to this act, authorized the Superintendent to issue a license to a nonresident under section 3905.40 of the Revised Code.

The provisions of section 3905.07, as enacted, do not otherwise affect or supersede any provision of sections 3905.30 to 3905.37 of the Insurance Agents Law.

Sec. 3905.071: Notice of change of home state

A nonresident person licensed as a nonresident insurance agent is required to notify the Superintendent of a change (1) in the person's address within the person's state of residence or (2) in the person's state of residence or in the state in which the person's principal place of business is located.

If the nonresident agent's state of residence or principal place of business changes, the agent must also provide the Superintendent with certification from the new state. The act provides that no fee or license application is required if the nonresident agent complies with these requirements.

Sec. 3905.072: Other nonresident licenses

The act requires the Superintendent to issue nonresident limited lines insurance agent licenses to nonresidents licensed as a limited line credit insurance agent, or as another type of limited lines insurance agent, in the person's home state. When licensed, the agent's line of authority is the same as in the person's home state; however, no new lines of authority are to be created pursuant to licensing under this section. For purposes of this section, "limited lines insurance" is any authority granted by the home state that is less than the total authority provided in the associated major lines of life, accident and health, property, casualty, variable life and annuity, or personal lines insurance.

Sec. 3905.08: Reciprocity

The act requires the Superintendent to waive all licensing requirements under Chapter 3905., except the requirements set forth in sections 3905.07 to 3905.072, as enacted, for every nonresident applicant with a valid license from the applicant's home state, if the applicant's home state awards nonresident agent licenses to residents of this state on the same basis.

The act provides that a nonresident insurance agent's satisfaction of the continuing education requirements for insurance agents of the agent's home state constitutes satisfaction of the continuing education requirements for Ohio insurance agents.

Sec. 3905.081: Waiver of licensing requirements

The act permits the Superintendent to waive any licensing requirement for nonresident persons that the Superintendent determines is in violation of the reciprocity requirements set forth in the Financial Services Modernization Act of 1999.

Sec. 3905.09: Temporary licenses

The Superintendent may issue a temporary insurance agent license to specified persons, if the Superintendent determines the license is necessary for the servicing of insurance business. Under the act, the following persons are eligible for these temporary licenses:

(1) The surviving spouse or court-appointed representative of a licensed insurance agent who dies or becomes mentally or physically disabled, to allow adequate time for the sale of the insurance business or the recovery or return of the agent to the business, or provide for the training and licensing of new personnel to operate the agent's business;

(2) A member or employee of a business entity licensed as an insurance agent, upon the death or disability of the sole or remaining licensed insurance agent;

(3) The designee of a licensed insurance agent entering active service in the United States armed forces;

(4) Any other person, if the Superintendent determines that the public interest will be served.

A temporary license must be sponsored by a licensed insurance agent or insurer. The sponsor is responsible for all acts of the licensee. A license may be issued for a period not to exceed 180 days. However, the license does not remain in force if the associated insurance business is sold.

The Superintendent may limit the authority of any temporary license in any way deemed necessary to protect insureds and the public, and may rescind the license if their interests are endangered. The Administrative Procedure Act does not apply to the issuance, restriction, or rescission of a temporary license.

Sec. 3905.10 (formerly sec. 3905.03): Solicitors

The act permits any property, casualty, personal, or title agent qualified and licensed under the act, and appointed to represent one or more insurers, to appoint solicitors to represent the agent. The solicitors must be qualified and licensed as a property, casualty, personal, or title agent and be familiar with the policies and contracts of insurance the solicitor proposes to solicit. Prior to this act, the law also permitted licensed agents to appoint solicitors. However, the law detailed an appointment process not retained by the act.

The act also specifically permits an agent qualified and licensed to sell accident and health insurance to appoint solicitors. The solicitors must be

qualified and licensed as an accident and health insurance agent. These solicitors may only solicit accident and health insurance products that are issued and underwritten by an insurer that is authorized to write accident and health insurance and that holds a certificate of authority granted under the Property and Casualty Insurers Law. The law previously did not distinguish solicitors for accident and health insurance from other forms of solicitors.

Sec. 3905.11: Notice of an assumed name

Under the act, an insurance agent that intends to do business in Ohio under any name other than the agent's legal name must notify the Superintendent prior to using the assumed name.

Sec. 3905.12: Rule-making and contracting authority of Superintendent

The act authorizes the Superintendent to adopt rules in accordance with the Administrative Procedure Act to establish procedures for the issuance and renewal of insurance agent licenses and for the issuance of limited authority licenses. This rule-making authority reflects authority that was granted the Superintendent by section 3905.013 of the Revised Code prior to this act.

The act also provides explicit authority to the Superintendent to contract with any nongovernmental entity, including the NAIC and its affiliates or subsidiaries, to perform any ministerial function related to insurance agent licensing.

Sec. 3905.14 (formerly sec. 3905.49): Disciplinary actions

The act amends the Insurance Agents Law with respect to the grounds for (1) suspending, revoking, or refusing to issue or renew any insurance agent license, (2) assessing a civil penalty, or (3) imposing other sanctions. Some of these amendments are technical in nature; for example, certain amendments are needed to harmonize the Agent's Law with the act's reciprocity provisions. Other amendments rephrase or relocate provisions in the Agent's Law (see, e.g., sec. 3905.14(B)(1) and (3) and (B)(4) and (15)). However, in addition to these changes, several substantive changes are made to the law as it existed prior to this act.

Under the act, sanctions may now be imposed on an agent: for knowingly accepting insurance business from an individual who is not licensed, for having been subject to a cease and desist order or permanent injunction for unlicensed activities, for failing to comply with an administrative or court order directing payment of state income tax, or for having been convicted of a misdemeanor that involves moral turpitude (sec. 3905.14(B)(7), (13), (14), and (17)). Sanctions may also be imposed on an agent demonstrating incompetence, untrustworthiness, or

financial irresponsibility, in the conduct of business in this state or elsewhere (sec. 3905.14(B)(9)).

The act continues to provide for sanctions against an agent that fails to provide a written response to the Department of Insurance after receipt of any inquiry from the Department, but the time an agent has to respond to the inquiry is reduced to 21 days from the current 30 days; however, the act also provides that the Superintendent may grant a "reasonable extension" of time upon request (sec. 3905.14(B)(19)).

The act also includes as grounds for disciplinary action, the "principal purpose" provisions previously set forth in section 3905.04 of the Revised Code (the "controlled business" statute) (sec. 3905.14(B)(31) and (32)), and the prohibition against conducting business with unauthorized companies previously set forth in section 3905.23 of the Revised Code (sec. 3905.14(B)(33)).

Sec. 3905.15 (formerly sec. 3905.491): Modification of administrative actions

The act amends the statute authorizing the Superintendent to modify administrative actions imposing the suspension, revocation, or surrender of a license to also refer to actions denying a license.

Sec. 3905.16 (formerly sec. 3905.012): Surrender of license; inactive status

The act modifies the current statute permitting the surrender of agent licenses and the granting of inactive status by repealing provisions requiring the Superintendent to be notified of the termination of appointments (similar provisions are enacted as sections 3905.21, 3905.211, 3905.212, and 3905.22). (See "**Termination of agents**," below.)

Secs. 3905.18 and 3905.181: Commissions

The act prohibits, under certain circumstances, the payment or acceptance of a commission or other type of consideration for selling, soliciting, or negotiating insurance in Ohio.

Insurers and agents are prohibited from paying a commission, service fee, brokerage fee, or other consideration to a person for selling, soliciting, or negotiating insurance in Ohio if the person does not have the license required by the Insurance Agents Law. Prior to this act, insurers were prohibited from making such payments under section 3905.011(D)(1) of the Revised Code. Conversely, an unlicensed person may not accept a commission or other consideration for selling, soliciting, or negotiating insurance. The act does permit renewal and deferred

commissions to be paid to persons who were licensed at the time of a sale, solicitation, or negotiation.

The act permits insurers and agents to pay or assign fees and commissions to an insurance agency or other person who does not sell, solicit, or negotiate insurance in this state, unless the payment or assignment is prohibited by specified statutes (secs. 3901.211(B)(7), 3911.20, 3933.01, and 3999.22) that forbid kickbacks, bribes, rebates, and special favors. The act also permits insurers and agents to pay referral fees, commissions, and other compensation to unlicensed persons for referrals, if the compensation is a fixed dollar amount for each referral and does not depend on whether the person referred purchases an insurance product.

Sec. 3905.182 (formerly sec. 3905.181): Sale of life insurance company stock

The act renumbers this section.

Sec. 3905.20: Appointments

Prior to this act, the law prohibited an agent from "represent[ing] to the public" that the agent had the authority to represent an insurer unless the agent was appointed by the insurer (sec. 3905.011(C)(2), repealed by the act). The act prohibits an agent from "acting" as an agent of an insurer, by selling, soliciting, or negotiating insurance for compensation, unless the agent is appointed by the insurer. Provisions are set forth related to an insurer's appointment of an agent, including provisions: requiring the insurer to notify the Superintendent within 30 days of the appointment; requiring the insurer to pay a fee of \$20 to the Superintendent upon the agent's appointment and at each annual continuance thereof; providing that the insurer is bound by the acts of the appointed agent within the agent's actual and apparent authority; and, granting the Superintendent rule-making authority pertaining to appointments. A separate appointment and fee are required for a variable life and variable annuity products line of authority.

Sec. 3905.201: Program of instruction for limited line credit insurance agents

The act requires each insurer that sells any form of limited line credit insurance to provide a program of instruction to agents whose duties will include selling, soliciting, or negotiating limited line credit insurance. The instruction must be provided prior to the agent's appointment by the insurer. The Superintendent is permitted to review and to require prior approval of any such program of instruction.

Secs. 3905.21, 3905.211, and 3905.212: Termination of agents

The act requires an insurer to provide notice to the Superintendent upon terminating the appointment, employment, contract, or other insurance business relationship with an agent. The notice must be provided to the Superintendent, in the manner prescribed by the Superintendent, within 30 days after the effective date of the termination. The insurer is required to provide any additional information, documents, records, or other data relating to the termination or activity of the agent that the Superintendent requests in writing. If the termination is for any of the reasons listed in the disciplinary provisions of section 3905.14(B) of the act, the insurer or its representative must provide the Superintendent with any additional information that the insurer discovers upon further review if that information falls within the scope of the Superintendent's prior written request.

Additionally, within 15 days of notifying the Superintendent of the termination of its relationship with an agent, an insurer must mail a copy of the notification to the agent at the agent's last known address. If the termination is for any of the reasons listed in the disciplinary provisions of section 3905.14(B) of the act, the notification must be sent by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier. Within 30 days of receiving notice, an agent may file written comments concerning the substance of the notification with the Superintendent; the agent must provide a copy of these comments to the insurer. The act provides that these comments become part of the Superintendent's file, and requires that the comments accompany every copy of any report distributed or disclosed for any reason about the agent.

The act provides immunity from civil liability for certain persons in relation to statements made, and any information relating to these statements provided, regarding the termination of an insurance agent, if the statements and information were made or provided "in the absence of actual malice" to other insurance commissioners or to regulatory or law enforcement agencies. The immunity applies to the insurer and its authorized representatives, an insurance agent, the Superintendent, and any organization of which the Superintendent is a member. The act provides that nothing in this section abrogates or modifies any statutory or common law privilege or immunity that otherwise applies.

The Superintendent is authorized to suspend or revoke the certificate of authority or license of any person that fails to comply with these termination provisions. Any such person remains subject to civil penalties authorized by section 3905.14 of the act.

Sec. 3905.22: Notice of administrative actions or criminal prosecutions

The act requires an agent to notify the Superintendent of any administrative action taken against the agent in another jurisdiction or by another governmental agency having professional, occupational, or financial licensing authority, within 30 days after the final disposition of the matter. The notice must include a copy of the order, consent to order, or any other relevant legal document. An agent is also required to notify the Superintendent of any criminal prosecution of the agent by any jurisdiction, other than misdemeanor traffic, within 30 days after the agent's initial appearance before a judge or magistrate. The notice must include a certified copy of the charging document. Within 30 days after the disposition of the criminal prosecution, the agent must provide the Superintendent with a certified copy of the court's entry or order that reflects the final disposition of the prosecution and any other relevant legal documents.

Sec. 3905.24 (formerly sec. 3905.492): Confidentiality

The act renumbers this section.

Sec. 3905.26: Centralized producer registry

The act authorizes the Superintendent to participate with the NAIC or any of its affiliates or subsidiaries, in a centralized agent license registry in which insurance agent licenses and appointments are centrally or simultaneously established for all states that require an insurance agent license and that participate in the registry. The Superintendent may adopt rules in accordance with the Administrative Procedure Act to adopt any uniform standard or procedure necessary for participation in the registry. The rules may provide for the central collection of all fees for licenses or appointments processed through the registry.

Sec. 3905.28: Rule-making authority

The act authorizes the Superintendent to adopt rules in accordance with the Administrative Procedure Act to carry out the purposes of sections 3905.01 to 3905.28.

Sec. 3905.29 (formerly sec. 3905.06): Mutual protective associations exempted

The act renumbers this section.

Secs. 3905.30 and 3905.31: Surplus line broker's license

Prior to this act, the Insurance Agents Law permitted the Superintendent to issue a surplus line broker's license to any natural person, a resident of Ohio or any

other state, or a province of Canada, or a business entity that is organized under the laws of Ohio or any other state, or a province of Canada, if the person had been licensed as a multiple line agent for at least two years prior to applying for the license. The act revokes the authority of the Superintendent to issue surplus line broker's licenses to residents of, and businesses organized under the laws of, Canadian provinces. Further, the act revokes the requirement that an applicant have two years' experience as a multiple lines agent and requires instead that the applicant have both a property license and a casualty license.

Sec. 3905.34: Filing of account by surplus line brokers

Under the act, surplus line brokers are required, on or before January 31, to file with the Superintendent the portion of their accounts that details business done during the preceding calendar year. Prior to this act, the law required the filing "within 30 days after the end of each quarter."

This new filing period begins January 1, 2003, and concludes December 31, 2003. Consequently, the last quarterly filing period is to conclude December 31, 2002. (Section 4.)

Sec. 3905.36: Tax on firms dealing with unauthorized foreign insurers

Prior to this act, the law required insureds procuring, continuing, or renewing contracts of insurance with insurers not authorized to do business in Ohio, covering persons and subjects within Ohio, to annually file a disclosure statement with the Superintendent on or before the first day of July. Continuing law requires the insured to pay to the Treasurer of State a tax on the consideration paid. The act changes the filing date for the disclosure statement to January 31. The act also allows the insured to take a deduction for return premium, if any, on the tax paid to the Treasurer of State.

The new filing period begins January 1, 2003, and concludes December 31, 2003. Consequently, the annual filing period that concludes July 1, 2002, is to be extended for six months and is to conclude December 31, 2002. (Section 4.)

Continuing law requires every surplus line broker to collect a tax on the gross premium for the insurance they place or procure. The act provides for a 25% penalty if the tax is not paid when due, and for the payment of interest from the date the tax is due until it is paid.

Sec. 3905.482: Failure to comply with continuing education requirements

Under continuing law, the Superintendent may suspend the license of an agent who fails to meet specified requirements for continuing education. The act amends provisions related to this authority, as follows:

(1) Specifies that a suspension is to become effective upon 60 days' written notice. The notice is to be sent by ordinary mail to the person's residential address on the licensing records of the Department of Insurance. During this 60-day period, the person may provide proof of compliance with the continuing education requirements. If the person fails to do so, the Superintendent is to suspend the person's license.

(2) Permits the Superintendent to revoke the license if the person fails to demonstrate compliance within one year. Prior to this act, the law allowed six months.

(3) Authorizes the Superintendent to adopt rules in accordance with the Administrative Procedure Act relative to the manner and form of demonstrating compliance with the continuing education requirements that are acceptable to the Superintendent for purposes of this section.

Sec. 3905.483: Members on the insurance agent education advisory council

Prior to this act, the Insurance Agent Education Advisory Council was composed of the Superintendent and 11 members appointed by the Superintendent. The act adds a member to the Council, a representative of the Ohio Land Title Association. The new member's initial term will end December 31, 2003, and thereafter the term of office will be for three years, each term ending on December 31 of the third year.

Sec. 3905.72: License to act as a managing general agent

The act amends the statute authorizing the Superintendent to issue licenses to act as a managing general agent. The act provides that the Superintendent must issue a license to act as a managing general agent to a resident of another state or a business entity organized under the laws of another state if the applicant provides proof that the applicant is licensed and in good standing as a managing general agent in the applicant's home state. A nonresident is required to follow the provisions pertaining to resident applicants if the applicant's home state does not license managing general agents under laws similar to Ohio's or if the applicant's home state does not grant licenses to Ohio residents on the same reciprocal basis.

Sec. 3905.85: License to act as surety bail bond agent

Continuing law requires an applicant for a license as a surety bail bond agent to submit a criminal record check to the Superintendent. Prior to this act, the applicant was directed to request the record check from the Ohio Bureau of Criminal Identification and Investigation. The act permits the Superintendent to designate other governmental agencies or other sources to conduct the criminal records check.

Prior to this act, the law provided that a surety bail bond agent's license could be *continued* past the last day of February of each year at the discretion of the Superintendent. The act provides that the license may be *reviewed* effective the first day of March of each year at the discretion of the Superintendent.

Sec. 3957.14: Agents and dealers in home service contracts

Prior to this act, the law required that, in order to procure, receive, or forward applications for home service contracts, the person be an Ohio resident. The act removes the residency requirement.

Under continuing law, these persons are required to be one of the following: a real estate licensee, an organization or franchisor or licensor of a real estate licensee, or a licensed insurance agent. The act amends this requirement by requiring that any insurance agent working with home service contracts be licensed for casualty, property, or personal lines.

Sec. 3960.03: Foreign risk retention groups

The act changes the date by which risk retention groups that are not chartered in Ohio must pay the required tax to the Treasurer of State. Formerly, that date was on or before July 1. Under the act, the date is on or before January 31.

The act also changes the date by which risk retention groups that are not chartered in Ohio must file a disclosure statement with the Superintendent. Formerly, that date was "within 30 days after the end of each quarter." Under the act, the date is on or before January 31.

The act specifies that these new filing periods begin January 1, 2003, and conclude December 31, 2003. Consequently, the last quarterly filing period is to conclude December 31, 2002. The annual filing period that concludes July 1, 2002, is to be extended for six months and is to conclude December 31, 2002. (Section 4.)

Relocated sections

The act relocates to Chapter 3901. of the Insurance Code certain sections that were in the Insurance Agents Law prior to this act. These sections are renumbered as follows:

- 3901.74 (formerly sec. 3905.24);
- 3901.75 (formerly sec. 3905.25);
- 3901.76 (formerly sec. 3905.28);
- 3901.77 (formerly sec. 3905.29);
- 3901.78 (formerly sec. 3905.09);
- 3901.781 (formerly sec. 3905.11);
- 3901.782 (formerly sec. 3905.12);
- 3901.783 (formerly sec. 3905.13);
- 3901.784 (formerly sec. 3905.14);
- 3901.86 (formerly sec. 3905.41).

Conforming changes

The act makes conforming changes in sections 1751.38 (extends the new licensing provisions to agents of health insuring corporations), 3901.021, 3901.51, 3901.62, 3903.81, 3905.40 (formerly sec. 3905.26), 3905.401 (formerly sec. 3905.52), 3905.41 (formerly sec. 3905.27), 3905.483, 3905.484, 3905.486, 3905.49 (formerly sec. 3905.47), 3905.50, 3905.861, 3905.89, 3905.94, 3905.99, 3907.19, 3909.06, 3911.011, 3923.121, 3929.30, 3931.101, 3931.11, 3953.21, 3953.23, and 3960.11. Conforming changes are also made in many of the sections listed in the "Licensing provisions" portion of this analysis.

UNFAIR TRADE PRACTICES

Background

In addition to addressing insurance agent licensure issues, the Financial Services Modernization Act of 1999 ("Gramm-Leach-Bliley") permitted affiliation between banks and insurance companies. The Act generally preempts state laws regarding the sale of insurance products by financial institutions and their affiliates. It does, however, provide 13 areas or "safe harbors" in which states may

regulate the insurance activity of depository institutions and affiliates. Those areas include privacy, disclosure, sales practices, records, commissions, and compensation for sales.

In 2001, the National Association of Insurance Commissioners (NAIC) amended their Unfair Trade Practices Model Act to "regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in ... the Gramm-Leach-Bliley Act...."

Overview

Generally, the act proposes changes to the insurance Unfair and Deceptive Practices Act (secs. 3901.19 to 3901.26 of the Revised Code), based upon the "safe harbors" of Gramm-Leach-Bliley and the NAIC Unfair Trade Practices Model Act.

Definitions

(sec. 3901.19(E) to (G))

For purposes of the Unfair and Deceptive Practices Act, the act defines "**depository institution**" to mean any bank, savings bank, savings and loan association, or credit union that is subject to regulation or supervision by the United States or any state. The term does *not* include an insurance company.

"**Affiliate**" is defined to mean any company that controls, is controlled by, or is under common control with, another company. "**Customer**" is defined by the act as an individual who purchases, applies to purchase, or is solicited to purchase insurance products primarily for personal, family, or household purposes.

"**Insurance agent**" or "**agent**" is defined as any person that, in order to sell, solicit, or negotiate insurance, is required to be licensed under Ohio law, including limited lines agents and surplus line brokers.

An "**insurer**" is defined as any person engaged in the business of insurance, guaranty, or membership, an inter-insurance exchange, a mutual or fraternal benefit society, or a health insuring corporation, excepting any agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

A "**policy**" or "**certificate**" is defined as a contract of insurance, indemnity, medical, health or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any insurer.

Prohibited activities

(sec. 3901.211(A) and (B))

The act prohibits any person from requiring as a condition precedent to the lending of money or the extension of credit, or any renewal thereof, that the person to whom the money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any policy or renewal thereof through a particular insurer or group of insurers or agent or group of agents. The act also prohibits persons from rejecting an insurance policy, solely because the policy was issued or underwritten by someone not associated with the person or an affiliate.

The act prohibits any person that lends money or extends credit from doing any of the following:

(1) Requiring a customer to obtain insurance from a depository institution or an affiliate of a depository institution, or from a particular insurer, agent, or other person, as a condition for extending credit or offering any product or service that is equivalent to an extension of credit. However, a person is not prohibited from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, or that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the person or an affiliate of that person.

(2) Unreasonably rejecting a policy furnished by the customer or borrower for the protection of the property securing the credit or lien. A rejection is not to be considered unreasonable if it is based on reasonable standards, uniformly applied. The standards may include, but are not limited to, standards relating to the extent of coverage required and the financial soundness and services of an insurer. The standards may not discriminate against any particular type of insurer and may not call for the rejection of a policy because it contains coverage in addition to that required in the credit transaction.

(3) Requiring any customer, borrower, mortgagor, purchaser, insurer, broker, or agent, to pay a separate charge, in connection with the handling of any policy required as security for a loan on real estate, or to pay a separate charge to substitute the policy of one insurer for that of another. This prohibition does not apply to the interest that may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document. This prohibition does not apply to required charges when the person or an affiliate of that person is the licensed agent providing the insurance.

(4) Requiring any procedures or conditions of duly licensed agents or insurers that are not customarily required of agents and insurers affiliated, or in any way connected, with the person that lends money or extends credit.

(5) Using an advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that the federal or state government (a) is responsible for the insurance sales activity of, or stands behind the credit of, the person, depository institution, or an affiliate of the person or depository institution, or (b) guarantees any return on insurance products or is a source of payment on any insurance obligation of, or sold by, the person or an affiliate of the person.

(6) Paying or receiving commissions, brokerage fees, or other compensation as an agent, unless the person holds a valid agent's license for the applicable class of insurance. However, the act permits an unlicensed person to make a referral to a licensed agent, provided that the unlicensed person does not discuss specific insurance policy terms and conditions, and the act permits the unlicensed person to be compensated for the referral. The unlicensed person may be compensated if the compensation (a) is a fixed dollar amount for each referral, and (b) does not depend on whether the customer purchases the insurance product from the licensed agent. Further, persons that accept deposits from the public in an area where such transactions are routinely conducted in a depository institution may receive for each customer referral a one-time, nominal fee of a fixed dollar amount, if the fee does not depend on whether the referral results in a transaction.

(7) Soliciting or selling insurance, other than credit insurance or flood insurance, unless the solicitation or sale is completed through documents separate from any credit transactions.

(8) Including the expense of insurance premiums, other than credit insurance premiums or flood insurance premiums, in the primary credit transaction without the express written consent of the customer.

Disclosures and acknowledgments

(sec. 3901.211(C), (D), and (E))

Loans and extensions of credit. The act requires a person that lends money or extends credit and that also solicits insurance primarily for personal, family, or household purposes in connection with that loan or extension of credit, to provide a written disclosure to a customer stating that the insurance may be purchased from an insurer or agent of the customer's choice, subject to the lender's right to reject a given insurer or agent if the rejection is not prohibited by the act as unreasonable. Further, the disclosure must inform the customer that the customer's choice of an insurer or agent will not affect the credit decision or credit terms in any way, except that the person lending money or extending credit may impose reasonable requirements, in accordance with this act.

The person lending money or extending credit must obtain, in connection with that loan or extension of credit, a written acknowledgement of the receipt of the disclosure at the time the customer receives the disclosure or at the time of the initial purchase of the insurance policy. If the solicitation is conducted by telephone, the act requires the person to (1) obtain an oral acknowledgement of receipt of the disclosure, (2) maintain sufficient documentation to show that the acknowledgement was given by the customer, and (3) make reasonable efforts to obtain a written acknowledgement from the customer. If a customer affirmatively consents to receiving the disclosures electronically and the disclosures are provided in a format that the customer may retain or obtain later, the person may provide the disclosure and obtain acknowledgement of the receipt of the disclosure from the customer using electronic media.

These disclosure and acknowledgment requirements are not applicable to the offering or sale of limited line credit insurance, as defined in the Insurance Agents Law. The act does not prevent a person that lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser fails to provide required insurance in accordance with the terms of the loan or credit document.

Insurance sales. The act imposes requirements, similar to those imposed on persons lending money or extending credit, on any depository institution that solicits, sells, advertises, or offers insurance, and any person that solicits, sells, advertises, or offers insurance on behalf of a depository institution or on the premises of a depository institution. The depository institution or person is required to provide a written disclosure to a customer prior to a sale, where practicable. The disclosure must be made in a clear and conspicuous manner, and must state that the insurance: (1) is not a deposit, (2) is not insured by the Federal Deposit Insurance Corporation or any other federal government agency, (3) is not guaranteed by the depository institution, and, when applicable, that the insurance is not guaranteed by an affiliate of the depository institution or by any person that is soliciting, selling, advertising, or offering insurance, and (4) involves investment risk including the possible loss of value, if such a disclosure is appropriate.

The depository institution or other person making this disclosure must obtain written acknowledgement of the receipt of the disclosure from the customer at the time the customer receives the disclosure or at the time of the initial purchase of the insurance policy. If the solicitation is conducted by telephone, the act requires the depository institution or person to (1) obtain an oral acknowledgement of receipt of the disclosure, (2) maintain sufficient documentation to show that the acknowledgement was given by the customer, and (3) make reasonable efforts to obtain a written acknowledgement from the customer. If a customer affirmatively consents to receiving the disclosures



electronically and the disclosures are provided in a format that the customer may retain or obtain later, the depository institution or person may provide the disclosure and obtain acknowledgement of the receipt of the disclosure from the customer using electronic media.

Under the act, an affiliate of a depository institution is subject to these disclosure and acknowledgment requirements only to the extent that the affiliate sells, solicits, advertises, or offers insurance products or annuities at an office of a depository institution or on behalf of a depository institution. Further, these requirements apply only when an individual purchases, applies to purchase, or is solicited to purchase insurance products or annuities primarily for personal, family, or household purposes, and only to the extent that a disclosure would be accurate.

For purposes of the disclosure requirements, a person is selling, soliciting, advertising, or offering insurance on behalf of a depository institution, whether at an office of the depository institution or another location, if at least one of the following applies:

(1) The person represents to the customer that the sale, solicitation, advertisement, or offer of insurance is by or on behalf of the depository institution;

(2) The depository institution refers a customer to the person that sells insurance and the depository institution has a contractual arrangement to receive commissions or fees derived from the sale of insurance resulting from the referral;

(3) Documents evidencing the sale, solicitation, advertisement, or offer of insurance identify or refer to the depository institution.

Violations

(secs. 3901.211(F) and 3901.22)

The act provides that a violation of the above-described provisions is an "**unfair and deceptive act or practice in the business of insurance**," thereby triggering the procedures required by, and the remedies and penalties available under, the Unfair and Deceptive Practices Act. Any person subject to the prohibition must, upon reasonable notice, make all books and records relating to insurance transactions available to the Superintendent.

(Relatedly, the act amends section 3933.04, an ongoing prohibition against requiring, in connection with a loan or mortgage, the purchase of insurance from a particular insurer, agent, solicitor, or broker. Because the act prohibits that activity by persons that lend money or extend credit, section 3933.04 is modified to apply only to persons engaged in selling real or personal property.)



EFFECTIVE DATE

The act, except for sections 3905.34, 3905.36, and 3960.03 of the Revised Code, takes effect on September 1, 2002. Sections 3905.34, 3905.36, and 3960.03 of the Revised Code, as amended by the act, take effect at the earliest time permitted by law. However, sections 3905.34, 3905.36, and 3960.03 of the Revised Code, as amended, first apply to the filing or reporting period that begins January 1, 2003, and concludes December 31, 2003. For those persons that, on the effective date of sections 3905.34, 3905.36, and 3960.03 of the Revised Code, as amended, are subject to a quarterly filing requirement, the last quarterly filing period concludes December 31, 2002. For those persons that, on the effective date of sections 3905.34, 3905.36, and 3960.03 of the Revised Code, as amended, are subject to an annual reporting period that concludes July 1, 2002, the reporting period is extended for six months and concludes December 31, 2002. (Sections 3 and 4.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced Reported, S. Insurance, Commerce & Labor	06-12-01 11-15-01	p. 646 p. 1130
Passed Senate (29-0) Reported, H. Insurance	11-15-01 02-20-02	pp. 1139-1140 p. 1431
Passed House (95-0) Senate concurred in House amendments (31-0)	03-19-02 03-20-02	pp. 1555-1556 p. 1605

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