



S.B. 129

124th General Assembly
(As Introduced)

Sen. Nein

BILL SUMMARY

- 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.

CONTENT AND OPERATION

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

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

producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protections 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.

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 bill

Generally, the bill proposes 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 bill 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 current Insurance Agents Law, and (3) conforming changes throughout the Revised Code. The bill states that it is to take effect six months after the bill's effective date (Section 3).

The following is a section-by-section summary of the bill. The summary is divided into three parts: first, the licensing provisions of Chapter 3905. that are proposed by the bill; second, the current provisions of Chapter 3905. that are relocated by the bill outside that chapter; and third, the conforming changes made by the bill.

I. LICENSING PROVISIONS

Sec. 3905.01: Definitions

--Provides definitions for purposes of Chapter 3905., including the following:

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

(2) "**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)).

(3) "**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)).

(4) "**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

--Prohibits any person from selling, soliciting, or negotiating insurance in Ohio unless the person is licensed for that line of authority in accordance with the bill.

Sec. 3905.03: Exceptions to licensing requirement

--Specifies the persons and activities that are not subject to the licensing requirement of section 3905.02.

Sec. 3905.04: Examination required

--Requires each resident individual applying for an insurance producer license for the specified lines of authority to take a written examination;

--Prohibits an individual from being permitted to take the examination unless the individual meets certain educational or designation requirements.

Sec. 3905.041: Exceptions to examination requirement

--Specifies the persons who are not required to complete any prelicensing education or to pass a written examination, including any individual who is currently licensed for the same line or lines of authority in another state and the producer database maintained by the NAIC or its affiliates or subsidiaries indicates that the individual is licensed and in good standing for the line or lines of authority requested.

Sec. 3905.05: Application for a resident license

--Sets forth the procedures by which a natural person or business entity can apply for a resident insurance producer license.

Sec. 3905.06: Issuance of a resident license

--Requires the Superintendent of Insurance to issue an insurance producer license to a resident individual or resident business entity, if the Superintendent determines the applicant meets specified criteria;

--Lists the lines of authority for which a licensee may be qualified.

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

--Requires a person licensed as a resident insurance producer to notify the Superintendent of a change (1) in the person's Ohio address or (2) in the person's state of residence.

Sec. 3905.07: Issuance of a nonresident license

--Requires the Superintendent to issue a nonresident insurance producer 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 bill, "**uniform application**" means the NAIC uniform application for resident and nonresident producer 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 under section 3905.14 of the Revised Code;

(5) The applicant's home state issues nonresident insurance producer licenses to Ohio residents on the same basis as set forth in (1) to (4), above.

--Permits the Superintendent to verify the producer's licensing status through the producer database maintained by the NAIC or its affiliates or subsidiaries.

Sec. 3905.071: Notice of change of home state

--Requires a nonresident person licensed as a nonresident insurance producer to notify the Superintendent of a change in the person's state of residence.

Sec. 3905.072: Other nonresident licenses

--Authorizes the Superintendent to issue nonresident surplus lines producer licenses and nonresident limited lines insurance producer licenses.

Sec. 3905.08: Reciprocity

--Requires the Superintendent to waive all licensing requirements under Chapter 3905., except the requirements set forth in sections 3905.07 to 3905.072, for every nonresident applicant that is currently licensed as a resident producer and is in good standing in the applicant's home state, if the applicant's home state awards nonresident producer licenses to residents of this state on the same basis;

--States that a nonresident insurance producer's satisfaction of the continuing education requirements for insurance producers of the producer's home state constitutes satisfaction of the continuing education requirements for Ohio insurance producers.

Sec. 3905.09: Temporary licenses

--Permits the Superintendent to issue a temporary insurance producer license to specified persons, if the Superintendent determines the license is necessary for the servicing of insurance business.

Sec. 3905.10: Notice of an assumed name

--Requires an insurance producer that intends to do business in Ohio under any name other than the producer's legal name to notify the Superintendent prior to using the assumed name.

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

--Authorizes the Superintendent to adopt rules to establish procedures for the issuance and renewal of insurance producer licenses and for the issuance of limited authority licenses;

--Authorizes the Superintendent to contract with any nongovernmental entity, including the NAIC and its affiliates or subsidiaries, to perform any ministerial function related to insurance producer licensing.

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

--Amends the current statute with respect to the grounds for (1) suspending, revoking, or refusing to issue or renew any insurance producer license, (2) assessing a civil penalty, or (3) imposing other sanctions;

--Includes as a ground for disciplinary action, the "principal purpose" provisions set forth in current section 3905.04 (the "controlled business" statute).

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

--Amends the current statute authorizing the modification of administrative actions imposing the denial, suspension, revocation, or surrender of a license.

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

--Modifies the current statute permitting the surrender of licenses and the granting of inactive status.

Secs. 3905.18 and 3905.181 : Commissions

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

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

--Renumbers this section.

Sec. 3905.20: Appointments

--Prohibits an insurance producer from acting as an agent of an insurer unless the producer is appointed by an insurer;

--Specifies the procedures for appointing an insurance producer.

Sec. 3905.21: Terminations

--Requires notice and other documentation when an insurer terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer.

Sec. 3905.211: Immunity

--Provides immunity from civil liability for certain persons in relation to statements made regarding the termination of an insurance producer, if the statements were made or provided "in the absence of actual malice."

Sec. 3905.212: Disciplinary actions

--Authorizes the Superintendent to suspend or revoke the certificate of authority or license of any person that fails to comply with section 3905.21.

Sec. 3905.22: Notice of administrative actions or criminal prosecutions

--Requires an insurance producer to notify the Superintendent of (1) any administrative action taken against the producer in another jurisdiction or by another Ohio agency or (2) any criminal prosecution of the producer by any jurisdiction.

Sec. 3905.24: Confidentiality; sharing of information

--States that all documents, materials, and other information in the control or possession of the Department of Insurance are confidential and privileged and are not public records, if the documents, materials, and other information are (1) furnished by an insurer, insurance producer, or employee or agent of an insurer or producer acting on behalf of the insurer or producer or (2) obtained by the Superintendent in an investigation conducted under section 3905.21. Such types of information are not subject to subpoena or discovery and are not admissible in evidence in any private civil action. However, the Superintendent may use the information in the furtherance of any regulatory or legal action brought as part of the Superintendent's duties.

--Permits the Superintendent to:

(1) Share documents, materials, or other information, including information considered confidential and privileged, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information;

(2) Receive documents, materials, or other information, including otherwise confidential and privileged information, from the NAIC and its affiliates or subsidiaries or from regulatory and law enforcement officials of other domestic or foreign jurisdictions, provided the Superintendent maintains as confidential and privileged any document, material, or other information that is received with notice or the understanding that the information is confidential and privileged under the laws of the jurisdiction from which the information originated.

Sec. 3905.26: Centralized producer registry

--Authorizes the Superintendent to participate with the NAIC or any of its affiliates or subsidiaries, in a centralized producer license registry in which insurance producer licenses and appointments are centrally or simultaneously established for all states that require an insurance producer license and that participate in the registry.

Sec. 3905.28: Rule-making authority

--Authorizes the Superintendent to adopt rules to carry out the purposes of sections 3905.01 to 3905.28.

Sec. 3905.30: Surplus line broker's license

--Amends the current statute to permit the Superintendent to issue a surplus line broker's license to any natural person who is a resident of Ohio or any other state, or a business entity that is organized under the laws of Ohio or any other state, if the person has both a property license and a casualty license.

Sec. 3905.482: Failure to comply with continuing education requirements

--Amends this statute, as follows:

(1) Specifies that a license suspension for failure to meet the continuing education requirements of current law is to become effective upon 60 days' written notice. 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;

(3) Authorizes the Superintendent to adopt rules relative to the manner and form of demonstrating compliance with the continuing education requirements that is acceptable to the Superintendent for purposes of this section.

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

--Provides for the issuance of 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.

Sec. 3957.14: Agents and dealers in home service contracts

--Removes the requirement that, in order to procure, receive, or forward applications for home service contracts, the person be an Ohio resident;

--Requires that an agent be licensed for "casualty, property, or personal lines."

II. RELOCATED SECTIONS

The bill relocates to Chapter 3901. of the Insurance Code certain sections that are currently contained in the Insurance Agents Law. These sections are renumbered as follows:

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

III. CONFORMING CHANGES

The bill makes conforming changes in sections 1514.02, 1751.38 (extends the new licensing provisions to agents of health insuring corporations), 2927.27, 3901.021, 3901.51, 3901.62, 3903.81, 3905.31, 3905.36, 3905.40 (currently sec. 3905.26), 3905.401 (currently sec. 3905.52), 3905.41 (currently sec. 3905.27),

3905.481, 3905.483, 3905.484, 3905.486, 3905.49 (currently sec. 3905.47), 3905.50, 3905.55, 3905.83, 3905.84, 3905.841, 3905.85 (extends the new licensing provisions to surety bail bond agents), 3905.851, 3905.86, 3905.861, 3905.862, 3905.87, 3905.88, 3905.89, 3905.90, 3905.91, 3905.92, 3905.921, 3905.93, 3905.931, 3905.932, 3905.933, 3905.934, 3905.94, 3905.941, 3905.99, 3907.19, 3909.06, 3911.011, 3923.121, 3929.30, 3931.101, 3931.11, 3953.21, 3953.23, 3960.11, and 5703.052.

HISTORY

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Introduced	06-12-01	p. 646

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