

AMENDED IN ASSEMBLY MARCH 23, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 393**

**Introduced by Assembly Member Scott**

February 11, 1999

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~~An act to amend Sections 1631, 1634, and 1635 of the~~ *An act to amend Sections 700, 1631, 1634, and 1635 of, and to add Article 16.5 (commencing with Section 1758.7) to Chapter 5 of Part 2 of Division 1 of, the Insurance Code, relating to insurance.*

LEGISLATIVE COUNSEL'S DIGEST

AB 393, as amended, Scott. Insurance: production agencies.

(1) *Existing law prohibits an insurer from transacting insurance in the state unless the insurer has procured a certificate of authority from the Insurance Commissioner. Existing law requires an insurer that has procured a certificate of authority to continue to comply with the requirements as to its business set forth in the Insurance Code and in other laws.*

*This bill would provide that these provisions dealing with the authority of an insurer to transact insurance shall not be interpreted to exempt an insurer from compliance with existing law governing the licensure and operation of production agencies, with regard to employees or contractors who solicit, negotiate, or effect insurance.*

(2) Existing law generally prohibits a person from acting as an insurance agent, life agent, insurance broker, or insurance solicitor unless that person holds a valid license issued by the Insurance Commissioner authorizing the person to act in that capacity. Existing law makes it a crime to act in a capacity for which a license is required without a valid license.

This bill would instead prohibit a person from acting in one of those capacities, or from soliciting, selling, negotiating, or effecting contracts of insurance, unless the person holds a valid license authorizing the person to act in that capacity. By expanding the scope of activities for which a valid license is required, this bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

~~(2)~~

(3) Existing law provides that, notwithstanding the prohibition described in ~~(1)~~ (2) above, no license is required for a person to act in certain specified capacities, including as an employee of a creditor who secures and forwards information for the purpose of obtaining certain types of insurance, for enrolling individuals in certain types of insurance plans, or for issuing certificates of insurance thereunder. However, this exception to licensure applies only if no commission is paid to the employee for those services.

This bill would instead provide that this exception to licensure applies only if no commission or other valuable consideration is paid, directly or indirectly, by the insurer, creditor, retailer, or other person to the employee for those services.

~~(3)~~

(4) Existing law also provides that, notwithstanding the prohibition described in ~~(1)~~ (2) above, no license is required for a person to act in certain additional specified capacities, including as a salaried representative of a reciprocal or interinsurance exchange or of its attorney in fact, or as an officer or salaried representative of a life insurer, if, among other requirements, his or her activities do not include effecting, soliciting, or negotiating insurance, subject to certain exceptions.

A license is also not required to engage in certain specified activities, including employment which does not include the



solicitation, negotiation, or effecting of contracts of insurance and the signing of policies or other evidences of insurance, or employment by an insurer at its home or branch office which, among other things, does not include the solicitation or negotiation of insurance.

However, these and the other enumerated exceptions to licensure apply only if no commission is paid or allowed, directly or indirectly, for acting in those capacities or engaging in those activities.

This bill would instead provide for an exception to the general licensure requirement for a salaried representative of a reciprocal or interinsurance exchange or of its attorney in fact, which does not include selling, soliciting, negotiating, or effecting contracts of insurance, and for an exception for an officer or salaried representative of a life insurer, if that person's activities additionally do not include selling insurance, subject to certain exceptions.

This bill would also provide for an exception to licensure for employment which additionally does not include the sale of contracts of insurance, and for employment by an insurer at its home or branch office which, among other things, does not additionally include the sale or effecting of insurance.

This bill would provide that these and the other additional enumerated exceptions to licensure apply only if no commission is paid or allowed, directly or indirectly, by the insurer, creditor, retailer, or other person for acting in those capacities or engaging in those activities.

~~This bill would enact new definitions of "sell," "solicit," "negotiate," "effect" or "effectuate," and "commission" for these purposes.~~

*(5) This bill would establish a personal lines agent license for persons who sell automobile, residential property, and umbrella insurance, as specified.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 700 of the Insurance Code is*  
2 *amended to read:*

3 700. (a) A person shall not transact any class of  
4 insurance business in this state without first being  
5 admitted for that class. Admission is secured by procuring  
6 a certificate of authority from the commissioner. The  
7 certificate shall not be granted until the applicant  
8 conforms to the requirements of this code and of the laws  
9 of this state prerequisite to its issue.

10 (b) The unlawful transaction of insurance business in  
11 this state in willful violation of the requirement for a  
12 certificate of authority is a public offense punishable by  
13 imprisonment in the state prison, or in a county jail not  
14 exceeding one year, or by fine not exceeding one  
15 hundred thousand dollars (\$100,000), or by both, and shall  
16 be enjoined by a court of competent jurisdiction on  
17 petition of the commissioner.

18 (c) After the issuance of a certificate of authority, the  
19 holder shall continue to comply with the requirements as  
20 to its business set forth in this code and in the other laws  
21 of this state. *Nothing in this section shall be interpreted*  
22 *to exempt an insurer from compliance with Chapter 5*  
23 *(commencing with Section 1631), with regard to*  
24 *employees or contractors who solicit, negotiate, or effect*  
25 *insurance.*

26 (d) Where a hearing is held under this section the  
27 proceedings shall be conducted in accordance with  
28 Chapter 5 (commencing with Section 11500) of Part 1 of  
29 Division 3 of Title 2 of the Government Code, and the  
30 commissioner shall have all the powers granted therein.

31 (e) The commissioner shall either issue or deny an  
32 application for a certificate of authority within 180  
33 calendar days after the date of the application.

34 (f) The commissioner and his or her authorized  
35 representative shall be prohibited from seeking a waiver



1 to extend the 180 calendar day period specified in  
2 subdivision (e), nor shall the applicant be permitted to  
3 waive that period.

4 *SEC. 2.* Section 1631 of the Insurance Code is  
5 amended to read:

6 ~~1631. (a) For purposes of this article:~~

7 ~~(1) "Commission" means any money, credit discount,~~  
8 ~~compensation, reward, good, service, remuneration,~~  
9 ~~bonus, or any other tangible or intangible item of value,~~  
10 ~~the size or the quantity of which is a function of the~~  
11 ~~number or value of insurance transactions attributable to~~  
12 ~~the person receiving this payment.~~

13 ~~(2) "Effect" or "effectuate" means to offer to contract~~  
14 ~~for, or initiate insurance, or the act of making effective a~~  
15 ~~particular insurance contract, including all binders,~~  
16 ~~endorsements, or alterations thereto.~~

17 ~~(3) "Negotiate" means the act of conferring directly~~  
18 ~~with, or offering advise or counsel to, a purchaser or~~  
19 ~~prospective purchaser of insurance products concerning~~  
20 ~~any of the benefits, terms of, proposed changes to, or the~~  
21 ~~premium to be charged for, that insurance.~~

22 ~~(4) "Sell" means to assist in the completion of an~~  
23 ~~application for, offer to contract for, exchange, or deliver~~  
24 ~~an insurance contract, including all binders,~~  
25 ~~endorsements, or alterations thereto.~~

26 ~~(5) "Solicit" means attempting to sell or place an~~  
27 ~~insurance contract by asking or urging a person to apply~~  
28 ~~for or purchase a particular kind of insurance product or~~  
29 ~~an insurance product from an insurance company.~~

30 ~~(b) Unless~~

31 *1631. Notwithstanding any other provisions of this*  
32 *code to the contrary, unless exempt by the provisions of*  
33 *this article, a person shall not solicit, sell, negotiate, or*  
34 *effect contracts of insurance, or act in any of the*  
35 *capacities defined in Article 1 (commencing with Section*  
36 *1621) unless the person holds a valid license from the*  
37 *commissioner authorizing the person to act in that*  
38 *capacity.*

39 ~~SEC. 2.~~



1 SEC. 3. Section 1634 of the Insurance Code is  
2 amended to read:

3 1634. No license is required under this chapter for a  
4 person to act in any of the following capacities:

5 (a) As a full-time salaried employee of a title insurer,  
6 controlled escrow company or an underwritten title  
7 company.

8 (b) As a salaried solicitor or agent of a mortgage  
9 insurer or mortgage guaranty insurer provided no part of  
10 the compensation of ~~such~~ that person is on a commission  
11 basis.

12 (c) As the attorney in fact of a reciprocal or  
13 interinsurance exchange.

14 (d) As a life and disability insurance analyst.

15 (e) As a surplus line broker or special lines surplus line  
16 broker.

17 (f) As a bail agent, bail solicitor or bail permittee.

18 (g) As an employee, not paid on a commission basis, of  
19 a home protection company.

20 (h) As an employee of a creditor who secures and  
21 forwards information for the purpose of obtaining group  
22 credit life, credit disability, or involuntary  
23 unemployment insurance, or for enrolling individuals in  
24 a group credit life, credit disability, or involuntary  
25 unemployment insurance plan or issuing certificates of  
26 insurance thereunder where no commission or other  
27 valuable consideration is paid, directly or indirectly, by  
28 the insurer, creditor, retailer, or other person to the  
29 employee for those services.

30 ~~SEC. 3.~~

31 SEC. 4. Section 1635 of the Insurance Code is  
32 amended to read:

33 1635. No license is required under the provisions of  
34 this chapter for a person to act in the following capacities  
35 or to engage in the following activities, providing no  
36 commission is paid or allowed, directly or indirectly, by  
37 the insurer, creditor, retailer, or other person for acting  
38 in those capacities or engaging in those activities:

39 (a) The business of examining, certifying or  
40 abstracting titles to real property.



1 (b) The solicitation for membership in a fraternal  
2 benefit society and other activities to the extent and as  
3 described in Sections 11013 and 11102 of this code.

4 (c) As a salaried representative of a reciprocal or  
5 interinsurance exchange or of its attorney in fact, which  
6 does not include selling, soliciting, negotiating, or  
7 effecting contracts of insurance.

8 (d) Employment which does not include the sale,  
9 solicitation, negotiation, or effecting of contracts of  
10 insurance and the signing of policies or other evidences  
11 of insurance.

12 (e) As an officer of an insurer or a salaried traveling  
13 employee of the type commonly known as a special agent  
14 or as an agency supervisor, while performing duties and  
15 exercising functions that are commonly performed by a  
16 special agent or agency supervisor, if the person engaging  
17 in the activity does not do either of the following:

18 (1) Effect insurance.

19 (2) Solicit or negotiate insurance except as a part of  
20 and in connection with the business of a fire and casualty  
21 broker-agent or life agent licensed under this chapter.

22 (f) As an officer or salaried representative of a life  
23 insurer if his or her activities are limited to direct  
24 technical advice and assistance to a properly licensed  
25 person and his or her activities do not include effecting,  
26 selling, soliciting, or negotiating insurance except as a  
27 part of and in connection with the business of a fire and  
28 casualty broker-agent or life agent licensed under this  
29 chapter.

30 (g) Employment by an insurer at its home or branch  
31 office which does not include the sale, solicitation,  
32 negotiation, or effecting of insurance, and which may as  
33 part thereof include the signing of policies or other  
34 evidences of insurance.

35 (h) The completion or delivery of a declaration or  
36 certificate of coverage under a running inland marine  
37 insurance contract evidencing coverage thereunder and  
38 including only those negotiations as are necessary to the  
39 completion or delivery if the person performing those



1 acts or his or her employer has an insurable interest in the  
 2 risk covered by the certificate or declaration.

3 (i) As an employee of a licensed fire and casualty  
 4 broker-agent, whose employment is one or more of the  
 5 following:

6 (1) That of a regularly salaried administrative or  
 7 clerical employee who devotes substantially all of his or  
 8 her services to activities other than the solicitation of  
 9 insurance from the insuring public.

10 (2) That of a salesperson who devotes substantially all  
 11 of his or her activities to selling merchandise and whose  
 12 solicitation of insurance is limited only to the quoting of  
 13 a premium for insurance to be included in the purchase  
 14 price covering the interest retained in the merchandise  
 15 by the seller.

16 (j) The solicitation, negotiation or effectuation of  
 17 home protection contracts by a person licensed pursuant  
 18 to Part 1 (commencing with Section 10000) of Division 4  
 19 of the Business and Professions Code in connection with  
 20 his or her licensed function authorized by Section 10131  
 21 or 10131.6 of the Business and Professions Code. Neither  
 22 the receipt of a payment permitted by Section 12760 nor  
 23 the receipt of a benefit permitted by Section 12765 shall  
 24 disqualify the recipient from the licensing exemption  
 25 provided by this chapter.

26 ~~SEC. 4.~~

27 *SEC. 5. Article 16.5 (commencing with Section*  
 28 *1758.7) is added to Chapter 5 of Part 2 of Division 1 of the*  
 29 *Insurance Code, to read:*

30

31 *Article 16.5. Personal Lines Agents*

32

33 *1758.7. A limited license as a personal lines agent may*  
 34 *be issued to a natural person, authorizing that person to*  
 35 *sell automobile insurance, as defined in Section 116,*  
 36 *residential property insurance, as defined in Section*  
 37 *10087, and umbrella insurance providing coverage when*  
 38 *written over one or more underlying automobile or*  
 39 *residential property insurance policies.*



1 1758.71. A license under this article shall be applied  
2 for and renewed, following the successful completion of  
3 a qualifying examination on this code, ethics, and  
4 products sold under the license, in the same manner as is  
5 provided in this chapter for a licensee to act as a fire and  
6 casualty broker-agent, except for the following:

7 (a) A licensee under this article need only complete 20  
8 hours of continuing education during a license term, as  
9 defined in Section 1630.

10 (b) A licensee under this article who is an employee of  
11 an insurer may receive continuing education credit for  
12 training received by the licensee in personal lines  
13 products sold by the employer, if that training also  
14 includes training on ethics and on this code.

15 1758.72. An applicant for a license under this article  
16 shall be subject to a background check that complies with  
17 Section 1033 of the federal Violent Crime Control and  
18 Law Enforcement Act of 1994, which prohibits a person  
19 with a felony conviction for a crime involving dishonesty  
20 or breach of trust from working in the insurance industry.

21 1758.73. Examination and licensure fees under this  
22 article shall be the same as those applicable to fire and  
23 casualty broker-agents under this chapter.

24 1758.74. The commissioner may adopt rules necessary  
25 for the convenient administration of the provisions of this  
26 article.

27 SEC. 6. No reimbursement is required by this act  
28 pursuant to Section 6 of Article XIII B of the California  
29 Constitution because the only costs that may be incurred  
30 by a local agency or school district will be incurred  
31 because this act creates a new crime or infraction,  
32 eliminates a crime or infraction, or changes the penalty  
33 for a crime or infraction, within the meaning of Section  
34 17556 of the Government Code, or changes the definition  
35 of a crime within the meaning of Section 6 of Article  
36 XIII B of the California Constitution.

