

INSURANCE ADJUSTER LICENSING

House Bill 5606 (Substitute H-3) First Analysis (9-29-98)

Sponsor: Rep. Martha Scott
Committee: Insurance

THE APPARENT PROBLEM:

Public insurance adjusters are people who contract with individuals or businesses to assist with calculating, preparing, and presenting insurance claims to their insurance companies. Figuring the costs of a property loss can often be very complicated and insurance contracts are usually difficult to decipher. Public adjusters are often hired to assist with complicated property claims, because the burden of proving of how much is owed by the insurance company for a particular loss is on the person making the insurance claim. Public insurance adjusters are licensed by the state of Michigan to provide these services to the public.

Although the majority of states, including Michigan, have reciprocity statutes which allow public adjusters who are licensed in the state where they reside to apply for and receive a license in a foreign state, Ohio does not. Because of Ohio's refusal to grant reciprocity, in 1978 Michigan enacted a revision of its reciprocity statute to provide that the state would not issue a license to anyone who resided in a state that refused to issue a license to a resident of this state based solely on residency. Almost 20 years ago questions arose regarding an alleged attempt to circumvent this restriction. An Indiana corporation owned in large part by an Ohio resident had hired three residents of Indiana as employees, and since Indiana had a reciprocity statute, these employees were able to apply for and receive Michigan licenses. As a result of complaints, the insurance commissioner revoked the licenses, asserting that granting them went against the intent of the law. An administrative law judge ruled that the statute as written did not bar these Indiana residents from obtaining a license in this state even though the company that employed them was owned by an Ohio resident. The commissioner, over the decision of the administrative law judge, upheld the revocation of the licenses. The decision was appealed and a circuit court upheld the administrative law judge's decision. The case is currently on appeal to the Michigan Court of Appeals. As a result, legislation has been introduced to prevent employees

of Ohio-based or -owned companies from receiving Michigan licenses even if the employees themselves reside in other states.

THE CONTENT OF THE BILL:

The Insurance Code contains provisions regarding the licensing of insurance adjusters. Currently the code says the insurance commissioner shall not issue a new license or accept an annual license fee continuing a current license to a person residing in a state that denies a comparable license to a resident of Michigan solely because of residency. Under the bill a new license could not be issued nor could a fee for continuation of an existing license be accepted if the applicant was employed either directly or indirectly by an adjuster who was a resident of a state, or by an adjuster's business that had a majority of shareholders, members, officers, directors, or owners that are residents of a state, that denies a comparable license to a resident of Michigan solely because of residency. The commissioner could rely on an applicant's affidavit to establish compliance with the bill's provisions.

MCL 500.1224

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

If a state does not grant reciprocity to Michigan adjusters, then Michigan should not grant reciprocity to adjusters from that state, and employers from that state should not be allowed to circumvent this by hiring adjusters from other states or creating shell corporations in other states. The original intent of the statute was to protect Michigan adjusters from unfair competition by Ohio adjusters. Before the law was

changed, public adjusters from Ohio were allowed to work in Michigan, but Michigan adjusters were not allowed to work in Ohio. Now, companies from Ohio have found a way to circumvent this law. The bill will close a loophole and make certain that unfair competition from adjusters and adjusting companies from states that prohibit competition from Michigan adjusters will be prevented. If Ohio companies wish to compete for business in Michigan, on their own or through people they employ from other states, then Michigan adjusters and companies must be allowed to compete for business in Ohio.

Against:

The bill goes too far and is a clear attempt to protect Michigan adjusters by eliminating fair competition. The lawsuit that precipitated this legislation involved three employees of an Indiana corporation who reside in the state of Indiana and are barred from working in Ohio. They are apparently the only ones who will be affected by this bill and the assertion that their employment is an attempt to circumvent the law is unfounded. In fact, the company that employs them was established in 1975, three years prior to the adoption of the current law. If the bill's provisions are enacted the people that will be barred from working in Michigan will not be Ohio employees but will be Indiana residents. It is likely that Indiana will react swiftly to this unfair restriction on its citizens.

The bill is excessive in its attempt to restrict access to Michigan's market for public adjusters from other states. While the retaliatory provisions excluding Ohio residents are not unreasonable, it is unreasonable to extend these provisions to residents of other states based upon the ownership of the company. The effects of the bill could be particularly unreasonable in cases of publicly-held corporations; an employer's ability to have its employees licensed in Michigan could conceivably change from day to day based on trading of the company's stock.

POSITIONS:

The Michigan Association of Public Insurance Adjusters supports the bill. (9-24-98)

The Insurance Bureau has not taken a position on the bill. (9-24-98)

Analyst: W. Flory

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.