

HOUSE BILL 4203

By Odom

AN ACT to amend Tennessee Code Annotated, Title 56,
Chapter 6, Part 1, relative to agents, solicitors and
administrators.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-6-106 is hereby amended by adding the following as a new subsection (c) and redesignating the existing subsection (c) appropriately:

(c) In order to make a determination of license eligibility, the commissioner is authorized to require fingerprints of applicants and submit the fingerprints and the fee required to perform the criminal history record checks to the Tennessee bureau of investigation (TBI) and the federal bureau of investigation (FBI) for state and national criminal history checks. The commissioner shall require each applicant to submit a full set of fingerprints in order for the commissioner to obtain and receive national criminal history records from the FBI criminal justice information services division.

(1) The commissioner may contract for the collection, transmission and resubmission of fingerprints required under this section. If the commissioner does so, the fee for collecting, transmitting and retaining fingerprints shall be payable directly to the contractor by the applicant. The commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor.

(2) The commissioner may waive submission of fingerprints by any person that has previously furnished fingerprints.

SECTION 2. Tennessee Code Annotated, Section 56-6-107(b) is hereby amended by deleting the existing language in its entirety and substituting instead the following language:

(b) (1) For licenses issued or renewed on or after January 1, 2007, such licenses shall remain in effect for twenty-four (24) months from the last day of the licensee's birth month.

(2) Business entity licenses will expire biennially on March 1.

SECTION 3. Tennessee Code Annotated, Section 56-6-107(c) is hereby amended by deleting the existing language in its entirety and substituting instead the following language:

(c) At the end of the twenty-four (24) months, the insurance producer license may be renewed, subject to the limitations set forth in § 56-6-112, by paying the applicable fee set forth in § 56-6-121, and submitting the renewal form prescribed by the commissioner. In addition to the foregoing, and subject to the exception found in § 56-6-118, an insurance producer license will not be renewed unless the insurance producer has completed all continuing education requirements, as established by rule. However, the continuing education requirements shall not apply to the following:

(1) An insurance producer who is over the age of sixty-five (65) on July 1, 2008; and

(2) An insurance producer that is a business entity.

SECTION 4. Tennessee Code Annotated, Section 56-6-108(e) is hereby amended by deleting the last sentence in its entirety.

SECTION 5. Tennessee Code Annotated, Section 56-6-112(a) is hereby amended by deleting the language "subsection (e)" and substituting instead the language "§ 56-2-305"; by deleting the word "or" in subsection (12); replacing the period (".") in subsection (13) with a semicolon (";"); and by adding the following as new subsections (14) and (15):

(14) Selling, soliciting or negotiating insurance for a company that is not authorized to transact the business of insurance in this State; and

(15) Violating the unfair trade practices as enumerated in 56-6-125.

SECTION 6. Tennessee Code Annotated, Section 56-6-112 is hereby amended by deleting the existing language in subsection (e) in its entirety and renumbering the remaining subsections accordingly.

SECTION 7. Tennessee Code Annotated, Section 56-6-113 is hereby amended by deleting subsection (d) in its entirety and by adding the following language as new subsections (d) and (e):

(d) An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate Section 56-8-104(4) or (7).

(e) An unlicensed person may make a referral to a licensed producer provided that the person does not discuss specific insurance policy terms and conditions. The unlicensed person may be compensated for the referral; however, the unlicensed person may be compensated only if the compensation is a fixed dollar amount for each referral that does not depend on whether the customer purchases the insurance product from the licensed producer.

SECTION 8. Tennessee Code Annotated, Section 56-6-114 is hereby amended by deleting the existing language in its entirety and substituting instead the following language:
Section 56-6-114. Sale of Unauthorized Insurance.

(a) A person shall be personally liable for any premiums paid for or valid claims made on all contracts of insurance unlawfully sold within this state by or through such person directly or indirectly, for or on behalf of an insurance company not authorized to do business in this state.

(b) A person who sells insurance in this state for an insurance company not

authorized to do business in this state shall be punished and subject to the penalties under Section 39-14-133.

SECTION 9. Tennessee Code Annotated, Section 56-6-125 is amended by deleting the existing language in its entirety and substituting instead the following language:

Section 56-6-125. Unfair Trade Practices.

(a) It is an unfair trade practice for an insurance producer to:

(1) Hold himself or herself out, directly or indirectly, to the public as a "financial planner," "investment adviser," "consultant," "financial counselor," "risk manager" or any other specialist engaged in the business of giving financial planning, risk management or advice relating to investments, insurance, real estate, tax matters or trust and estate matters when such person is in fact engaged only in the sale of insurance policies. This provision does not preclude persons who hold some form of formal recognized financial planning, risk management or consultant certification or designation from using this certification or designation when they are only selling insurance.

(2) Engage in the business of financial planning without disclosing to the client prior to the execution of the agreement provided for in subsection (3), or solicitation of the sale of a product or service that:

(A) He or she is also an insurance salesperson, and

(B) That a commission for the sale of an insurance product will be received in addition to a fee for financial planning, if such is the case. The disclosure requirement under this subsection may be met by including it in any disclosure required by federal or state securities law.

(3) Charge fees for the sale, solicitation or negotiation of insurance not authorized by a written agreement with an insurer, and, where applicable, incorporated

in the insurer's rate filing. An insurance producer may charge fees for services not connected with the sale, solicitation and negotiation of insurance by the insurance producer if such fees are based upon a qualified written agreement, signed by the party to be charged in advance of the performance of the services under the agreement. A copy of the qualifying agreement must be provided to the party to be charged at the time the agreement is signed by the party. The agreement shall be considered as qualifying if it includes:

(A) The services for which the fee is to be charged;

(B) The amount of the fee to be charged or how it will be determined or calculated; and

(C) A disclosure stating that the client is under no obligation to purchase any insurance product through the insurance producer or consultant. The insurance producer shall retain a copy of the agreement for not less than three (3) years after completion of services, and a copy shall be available to the commissioner upon request.

(b) Notwithstanding the foregoing, nothing in this Section shall be construed as permitting persons to charge an additional fee for services that are customarily associated with the sale, solicitation, negotiation or servicing of insurance policies.

SECTION 10. For the purpose of promulgating rules and regulations, this Act shall take effect upon becoming a law, the public welfare requiring it. Section 2 will become effective on January 1, 2009 and for all other purposes, this Act shall take effect July 1, 2008, the public welfare requiring it.