SFA BILL ANALYSIS
Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

Senate Bill 972 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Norman D. Shinkle
Committee: Commerce and Technology

Date Completed: 7-23-90

RATIONALE

Reportedly, one of the ways that members of an association and organization can save on insurance costs is to form a corporate subsidiary of the association to provide insurance services to the members. For example, members of an association who buy group insurance plans for their employees may realize an even greater savings by pooling all the groups and purchasing one overall group insurance plan. Further, if the subsidiary were allowed to share its commission for selling insurance with the association by issuing dividends, the association would receive an additional monetary benefit from establishing a subsidiary that it would not receive if it placed its business with other agents. In addition, forming an insurance subsidiary may make it easier for an association to obtain certain types of coverage than if the association (or its members) attempted to obtain the insurance on its own. While there apparently is no particular prohibition against certain associations forming such insurance subsidiaries, however, there reportedly is no specific authorization, either. Moreover, the Insurance Code does not prohibit agents from paying persons for procuring business or providing leads or prospects, or rebating premiums or their sales commissions. These prohibitions would be problematic if the sole purpose of a trade association subsidiary were to save the members of the association insurance costs and it wished to pass those savings on to the members by issuing dividends or making other disbursements that possibly could be construed as rebates or remuneration for referrals. It has been suggested, therefore, that trade associations specifically be authorized by statute to form corporate insurance subsidiaries and that the operations of such subsidiaries be regulated.

CONTENT

The bill would amend the Insurance Code to allow a trade association agent to effect insurance upon the life or other risk of members or shareholders of the trade association that owned the capital stock of the trade association agent, and during any 12-month period to effect such insurance in excess of 15% of the total premium that the trade association agent effected during that period. A trade association agent could not effect insurance on private passenger nonfleet automobiles and homeowners' risks. Further, the trade association agent could pay dividends or make other distributions to the trade association or its members or shareholders. These provisions would not imply, however, that a shareholder or member of a corporation was a business associate of the corporation, or that the payment of dividends or the making of other distributions by an agent was or was not a reward or remuneration. (The Code limits the amount of insurance an agent may effect on his or her business associates, and prohibits agents from rewarding or remunerating persons for procuring or inducing business in Michigan, furnishing leads or prospects, or acting in any other manner as an agent.)

The bill also specifies that the Act's provisions concerning unfair and deceptive acts and practices would not prohibit a trade association agent from issuing shares of capital stock of the trade association agent to the trade association. This provision would not imply that

S.B. 972 (7-23-90)

issuing shares of capital stock of an agent to its shareholders was or was not an inducement to insurance.

"Trade association" would mean an organization exempt from Federal income tax under Section 501(c)(6) of the Internal Revenue Code. (Section 501(c)(6) applies to nonprofit business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues.) "Trade association agent" would mean an agent that is a corporation, whose the capital stock is owned by a trade association, and that effects insurance solely upon the life, or other risk of the trade association, its directors, officers, or employees, the members or shareholders of the trade association, or the directors, officers, or employees of the members or shareholders of the trade association.

MCL 500.1207 et al.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

Allowing trade associations to form corporate subsidiaries to sell insurance to association members would enable the members to save on the cost of obtaining insurance. Further, such subsidiaries would be more accountable to the associations than independent agents. Finally, there reportedly are trade associations that have established some type of subsidiary to sell insurance to their members even in the absence of specific authorization to do so.

Opposing Argument

The bill would give trade association agents an unfair competitive advantage over other insurance agents. By allowing the agencies to pay dividends or make other distributions to members of the association, the bill essentially would enable trade association agents to rebate their insurance sales commissions to association members and pay the association for insurance leads or referrals to all the members of the association--two activities in which other insurance agents are prohibited from engaging. The bill, therefore, would make it difficult, if not impossible, for other agents to compete successfully for a trade association's business.

Response: The purpose of the trade association agent would be to save insurance costs solely for the members of the association with which the agent was affiliated. To the extent that the agent did save on costs, those savings should be passed on to the members through dividends or other distributions. Independent insurance agents, on the other hand, service a number of clients, and offer various lines of coverage from a variety of different agencies. Moreover, they are in the business of making money by selling insurance, so to ensure that there is no coercion or collusion, it is only proper to prohibit them from rebating commissions and offering remuneration for leads and referrals.

Legislative Analyst: L. Burghardt
Fiscal Analyst: J. Schultz

A8990\S972A