

HOUSE BILL 381

By Sargent

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 6 and Title 56, Chapter 8, relative to the "Tennessee Insurance Producer Licensing Act of 2002".

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

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 6, Part 1, is amended by adding the following as a new appropriately designated section:

Section 56-6-1__.

(a) The commissioner shall initiate an investigation upon receipt of a written complaint from a member of the public or upon a written determination by the commissioner that "good cause" exists that a violation of the provisions of this chapter may have occurred. The commissioner shall dispose of all matters involving alleged misconduct by either dismissal, the prosecution of formal administrative proceedings pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, or as otherwise authorized by § 56-6-112.

(b) Except in matters requiring dismissal because the complaint is frivolous or falls outside the jurisdiction of the commissioner, no disposition shall be recommended or undertaken by the commissioner until the insurance producer subject to the investigation shall have been afforded the opportunity to review the complaint or commissioner's determination and the entire investigatory file maintained by the commissioner and submit a written response with respect to the allegations made against the insurance producer.

(c) Any insurance producer who is subject to investigation pursuant to this chapter shall have the same investigatory and subpoena powers granted to the

commissioner in the process of submitting the written response to the commissioner's investigation.

(d) If, after receipt of the insurance producer's response, the commissioner determines that formal proceedings should be initiated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, all proceedings shall be conducted by the administrative procedures division of the Tennessee secretary of state's office.

(e)

(1) In order to protect the proprietary interests of the insurance producer under investigation, any documents or other information provided by the insurance producer (whether pursuant to subpoena or otherwise) shall be confidential and privileged, shall not be public records and shall not be disclosed without the insurance producer's consent prior to initiation of formal proceedings pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. An insurance producer or other interested party may, at any time during or after conclusion of an investigation obtain a protective order prohibiting the disclosure of any documents or information provided by the producer or an interested party. A protective order may prohibit the complainant, the insurance producer; the department, or any witness from disclosing the existence or substance of a complaint, matter, investigation, or proceeding under this chapter and from disclosing any documents or correspondence filed by, served on, or provided to that person. In addition, the protective order may prohibit the disclosure of specific information or documents, order the closure of any hearing, and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application. Prior to

initiation of formal proceedings pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, any application for a protective order shall be submitted to the chancery court of Davidson County. After the initiation of a formal administrative proceeding, any application shall be filed with and decided by the administrative law judge. The provisions of this section are intended to supplement and not abrogate any existing law or regulation.

SECTION 2. Tennessee Code Annotated, Section 56-6-120, is amended by designating the current language as subsection (a) and by adding the following language as new subsections thereto:

(b)

(1) The department shall provide a copy of any complaint against an insurance producer or company within fifteen (15) days of receipt of the complaint.

(2) If the department performs its own investigation pursuant to this section, then before seeking a statement or records from the insurance producer under investigation, the department shall provide the insurance producer with notice of the existence of the investigation and facts upon which the investigation is based at least fifteen (15) days prior to the statement or record production.

(c) Any action taken by the department shall be based on a preponderance of the evidence.

(d) If, after initiation of an investigation, the commissioner determines that the initiation of formal proceedings under this chapter are not warranted, the commissioner shall provide the insurance producer who was the subject of the investigation with a written notice stating that the investigation has been terminated. The letter shall be issued by the commissioner within fifteen (15) days of that determination.

(e) All investigations shall be completed within one (1) year of:

(1) The receipt of the initial complaint; and

(2) The initiation of an investigation, if the department conducts its own investigation, whichever shall occur first. With respect to any investigation now existing, the investigation shall be completed within one (1) year of the effective date of this act.

(f) No action may be taken against any insurance producer by the commissioner for any alleged misconduct or other wrongful action:

(1) Occurring more than five (5) years prior to the date of initiation of the investigation or receipt of the complaint, or

(2) That is not, of itself, a violation of this chapter or the regulations promulgated by the department authorized by this chapter.

SECTION 3. Tennessee Code Annotated Section 56-8-118, is amended by adding the following language at the end of the section:

The licensee, producer or company may obtain a copy of any complaint or other notice regarding any charges brought against the licensee, producer or company, and a copy of any statements made by the licensee, producer or any officer or employee of the company being investigated, whether it pertains to the claim or defense of the producer.

SECTION 4. This act shall take effect upon becoming law, the public welfare requiring it.