

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4620 (as reported without amendment)
Sponsor: Representative Martha Scott
House Committee: Insurance and Financial Affairs
Senate Committee: Financial Services

Date Completed: 2-28-00

RATIONALE

A public insurance adjustor is an authority on loss adjustments who can assist in preparing, filing, and adjusting insurance claims due to fire, water, wind, explosion, vandalism, and any other insured losses that are sustained. Public insurance adjusters represent commercial businesses, financial institutions, professional firms, homeowners, and the general insuring public. According to the National Association of Public Insurance Adjusters, the typical fire policy contains hundreds of updated, detailed, and complex provisions and stipulations about requirements in case of loss. Public insurance adjusters are exclusively employed by the policyholder, who must bear the burden of proving damages.

Public insurance adjusters are licensed by the Insurance Commissioner. Currently, the Insurance Commissioner may 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 Michigan resident solely because of residency. Ohio is the only state that still continues to have a residency requirement in its licensure statute. Apparently, a problem occurred when adjustors residing in Indiana but representing an adjusting firm wholly owned and controlled by an Ohio resident, sought Michigan public adjustor licenses. (For more detail, please see **BACKGROUND.**) Some people believe that reciprocity also should be based on the state of the owner, incorporator, shareholder, or director of the adjusting firm.

CONTENT

The bill would amend the Insurance Code to prohibit the Insurance Commissioner from issuing a new adjuster's license or accepting an annual license fee continuing a current license to a person who was employed either directly or indirectly by an adjuster that was a resident of a state, or by an adjuster's business that had a majority of shareholders, members, officers, directors, or owners who were

residents of a state, that denied a comparable license to a resident of this State solely because of residency. An affidavit from an applicant establishing compliance with this provision could be relied on by the Commissioner to show compliance.

MCL 500.1224

BACKGROUND

The State of Ohio has a residency requirement stating that no license will be issued or renewed to an applicant who is not a resident of Ohio. After Michigan residents incorporated in Ohio but were unable to obtain Ohio licensure either individually or as a corporation, Michigan amended its licensure statute in 1978 to deny licenses to applicants who reside in a state that would deny a license solely because of residency. Sill-Indiana is an adjusting firm that operates and employs adjustors residing in Indiana, which has reciprocity with Michigan. Sill-Indiana, however, is an affiliate of Sill-Ohio, an adjusting firm in Ohio, and is entirely owned, incorporated, directed, and controlled by Robert Sill, an Ohio resident. In 1992, Sill-Indiana adjustors were granted licenses to practice in Michigan but the licenses were revoked by the Insurance Commissioner in 1996 after a hearing in which the National Association of Public Insurance Adjustors argued that Sill-Ohio was avoiding the legislative intent of the Michigan licensure law simply by incorporating a Sill corporation in a neighboring state without a residency requirement. A stay of revocation was filed while the decision was on appeal, and in 1997 the circuit court reversed the Insurance Commissioner's decision. In August 1999, the Michigan Court of Appeals reversed the circuit court and found that the Insurance Commissioner's interpretation of the Michigan licensure statute was "sufficiently reasonable" (*O'Connor, et. al. v Consumer and Industry Services, et. al.*, 236 Mich App 665). The Insurance Commissioner had found that Robert Sill, the Ohio resident and owner of Sill-Indiana, was not entitled to achieve "the authority of

a license through the Indiana corporation that he owns". The Insurance Commissioner reasoned that if the Sill-Indiana adjustors were permitted to have licenses to work in Michigan, Sill-Ohio would be able to adjust claims in Michigan through its employees, even though Sill-Ohio itself was prohibited from doing so.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would close a loophole that allowed an Ohio company to overcome the barrier set up to prevent its adjustors from being licensed in Michigan by using an Indiana affiliate and employing Indiana residents. By codifying the Court of Appeals holding in *O'Connor*, the bill would expand the reciprocity law to require fair competition among all public adjustors.

Legislative Analyst: N. Nagata

FISCAL IMPACT

According to the Insurance Bureau, there is no fiscal information available.

Fiscal Analyst: M. Tyszkiewicz

H9900\4620a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.