



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4438

Introduced 02/03/04, by Karen A. Yarbrough

SYNOPSIS AS INTRODUCED:

215 ILCS 5/500-77
215 ILCS 5/500-80

Amends the Illinois Insurance Code. Provides that written disclosure of a fee that is separate from a commission must be provided to the consumer before the service to which the fee relates is performed. Changes the name of business organizations licensed to sell insurance from registered firm to business entity to conform usage to changes made by Public Act 92-386. Makes technical changes. Effective immediately.

LRB093 19887 SAS 45630 b

1 AN ACT in relation to insurance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Sections 500-77 and 500-80 as follows:

6 (215 ILCS 5/500-77)

7 Sec. 500-77. Policyholder information and exclusive
8 ownership of expirations.

9 (a) As used in this Section, "expirations" means all
10 information relative to an insurance policy including, but not
11 limited to, the name and address of the insured, the location
12 and description of the property insured, the value of the
13 insurance policy, the inception date, the renewal date, and the
14 expiration date of the insurance policy, the premiums, the
15 limits and a description of the terms and coverage of the
16 insurance policy, and any other personal and privileged
17 information, as defined by Section 1003 of this Code, compiled
18 by a business entity ~~registered firm~~ or furnished by the
19 insured to the insurer or any agent, contractor, or
20 representative of the insurer.

21 For purposes of this Section only, a business entity
22 ~~registered firm~~ also includes a sole proprietorship that
23 transacts the business of insurance as an insurance agency.

24 (b) All "expirations" as defined in subsection (a) of this
25 Section shall be mutually and exclusively owned by the insured
26 and the business entity ~~registered firm~~. The limitations on the
27 use of expirations as provided in subsections (c) and (d) of
28 this Section shall be for mutual benefit of the insured and the
29 business entity ~~registered firm~~.

30 (c) Except as otherwise provided in this Section, for
31 purposes of soliciting, selling, or negotiating the renewal or
32 sale of insurance coverage, insurance products, or insurance

1 services or for any other marketing purpose, a business entity
2 ~~registered firm~~ shall own and have the exclusive use of
3 expirations, records, and other written or electronically
4 stored information directly related to an insurance
5 application submitted by, or an insurance policy written
6 through, the business entity ~~registered firm~~. No insurance
7 company, managing general agent, surplus lines insurance
8 broker, wholesale broker, group self-insurance fund,
9 third-party administrator, or any other entity, other than a
10 financial institution as defined in Section 1402 of this Code,
11 shall use such expirations, records, or other written or
12 electronically stored information to solicit, sell, or
13 negotiate the renewal or sale of insurance coverage, insurance
14 products, or insurance services to the insured or for any other
15 marketing purposes, either directly or by providing such
16 information to others, without, separate from the general
17 agency contract, the written consent of the business entity
18 ~~registered firm~~. However, such expirations, records, or other
19 written or electronically stored information may be used for
20 any purpose necessary for placing such business through the
21 insurance producer including reviewing an application and
22 issuing or renewing a policy and for loss control services.

23 (d) With respect to a business entity ~~registered firm~~, this
24 Section shall not apply:

25 (1) when the insured requests either orally or in
26 writing that another business entity ~~registered firm~~
27 obtain quotes for insurance from another insurance company
28 or when the insured requests in writing individually or
29 through another business entity ~~registered firm~~, that the
30 insurance company renew the policy;

31 (2) to policies in the Illinois Fair Plan, the Illinois
32 Automobile Insurance Plan, or the Illinois Assigned Risk
33 Plan for coverage under the Workers' Compensation Act and
34 the Workers' Occupational Diseases Act;

35 (3) when the insurance producer is employed by or has
36 agreed to act exclusively or primarily for one company or

1 group of affiliated insurance companies or to a producer
2 who submits to the company or group of affiliated companies
3 that are organized to transact business in this State as a
4 reciprocal company, as defined in Article IV of this Code,
5 every request or application for insurance for the classes
6 and lines underwritten by the company or group of
7 affiliated companies;

8 (4) to policies providing life and accident and health
9 insurance;

10 (5) when the business entity ~~registered firm~~ is in
11 default for nonpayment of premiums under the contract with
12 the insurer or is guilty of conversion of the insured's or
13 insurer's premiums or its license is revoked by or
14 surrendered to the Department;

15 (6) to any insurance company's obligations under
16 Sections 143.17 and 143.17a of this Code; or

17 (7) to any insurer that, separate from a producer or
18 business entity ~~registered firm~~, creates, develops,
19 compiles, and assembles its own, identifiable expirations
20 as defined in subsection (a).

21 For purposes of this Section, an insurance producer shall
22 be deemed to have agreed to act primarily for one company or a
23 group of affiliated insurance companies if the producer (i)
24 receives 75% or more of his or her insurance related
25 commissions from one company or a group of affiliated companies
26 or (ii) places 75% or more of his or her policies with one
27 company or a group of affiliated companies.

28 Nothing in this Section prohibits an insurance company,
29 with respect to any items herein, from conveying to the insured
30 or the business entity ~~registered firm~~ any additional benefits
31 or ownership rights including, but not limited to, the
32 ownership of expirations on any policy issued or the imposition
33 of further restrictions on the insurance company's use of the
34 insured's personal information.

35 (e) Nothing in this Section prevents a financial
36 institution, as defined in Section 1402 of this Code, from

1 obtaining from the insured, the insurer, or the business entity
2 ~~registered firm~~ the expiration dates of an insurance policy
3 placed on collateral or otherwise used as security in
4 connection with a loan made or serviced by the financial
5 institution when the financial institution requires the
6 expiration dates for evidence of insurance.

7 (f) For purposes of this Section, "financial institution"
8 does not include an insurance company, business entity
9 ~~registered firm~~, managing general agent, surplus lines broker,
10 wholesale broker, group self-funded insurance fund, or
11 third-party administrator.

12 (g) The Director may adopt rules in accordance with Section
13 401 of this Code for the enforcement of this Section.

14 (h) This Section applies to the expirations relative to all
15 policies of insurance bound, applied for, sold, renewed, or
16 otherwise taking effect on or after June 1, 2001 ~~the effective~~
17 ~~date of this amendatory Act of the 92nd General Assembly.~~

18 (Source: P.A. 92-5, eff. 6-1-01; 92-651, eff. 7-11-02.)

19 (215 ILCS 5/500-80)

20 Sec. 500-80. Commissions.

21 (a) An insurer or insurance producer may not pay a
22 commission, service fee, brokerage, or other valuable
23 consideration to a person for selling, soliciting, or
24 negotiating insurance in this State if that person is required
25 to be licensed under this Article and is not so licensed at the
26 time of selling, soliciting, or negotiating the insurance.

27 (b) A person may not accept a commission, service fee,
28 brokerage, or other valuable consideration for selling,
29 soliciting, or negotiating insurance in this State if that
30 person is required to be licensed under this Article and is not
31 so licensed.

32 (c) Renewal or other deferred commissions may be paid to a
33 person for selling, soliciting, or negotiating insurance in
34 this State if the person was required to be licensed under this
35 Article at the time of the sale, solicitation, or negotiation

1 and was so licensed at that time.

2 (d) An insurer or insurance producer may pay or assign
3 commissions, service fees, brokerages, or other valuable
4 consideration to an insurance agency or to persons who do not
5 sell, solicit, or negotiate insurance in this State, unless the
6 payment would violate Section 151 of this Code.

7 (e) When an insurance producer or business entity charges
8 any fee or compensation separate from commissions deductible
9 from, or directly attributable to, premiums on insurance
10 policies or contracts, it must comply with all of the
11 following:

12 (1) It must provide written disclosure to the consumer
13 or contracting party that clearly specifies the amount or
14 extent of the compensation or fee prior to the delivery of
15 the corresponding policy or the performance of the service.
16 A copy of the written disclosure must be maintained for a
17 period of 7 years by the producer or business entity that
18 collects the compensation or fee ~~for a period of 7 years~~.

19 (2) If the combined compensation or fee exceeds 10% of
20 a directly attributable premium amount of a corresponding
21 contract or policy, the disclosure must also include the
22 signature of the consumer or contracting party
23 acknowledging the compensation or fee.

24 (3) If an insurance policy or contract is cancelled for
25 any reason within 90 days following the inception date, the
26 producer or business entity shall refund to the consumer a
27 prorated portion of the fee or compensation within 30 days
28 after the producer or business entity receives proper
29 documentation that the corresponding insurance policy or
30 contract has been cancelled. At no time shall a producer or
31 business entity charge the consumer a fee or compensation
32 for cancellation of any insurance policy or contract.

33 (4) If the policy file contains documentation that the
34 producer performed a service corresponding to the
35 applicable coverage or policy and the written disclosure
36 stated that the fees were fully earned, then those fees

1 shall be fully earned at inception of the disclosure's
2 execution.

3 (Source: P.A. 92-386, eff. 1-1-02; 92-587, eff. 6-26-02.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.