

2016 Regular Session

HOUSE BILL NO. 746

BY REPRESENTATIVE THIBAUT

INSURANCE: Provides for licensing and regulation of insurance consultants by the commissioner of insurance

1 AN ACT

2 To amend and reenact R.S. 22:1573(A), (C) through (E), and (G) and R.S. 44:4.1(B)(11) and
3 to enact R.S. 22:821(B)(38) and Part XII of Chapter 5 of Title 22 of the Louisiana
4 Revised Statutes of 1950, to be comprised of R.S. 22:1808.1 through 1808.13,
5 relative to the licensing and regulation of insurance consultants by the commissioner
6 of insurance; to provide for licensing and renewals; to provide for definitions; to
7 provide for fees; to provide for qualifications; to provide for examinations; to
8 provide for continuing education requirements; to provide for reciprocity with other
9 states; to provide for confidentiality; to provide for public records exception; to
10 provide for exemptions from certain requirements; to provide for civil and criminal
11 penalties for certain violations; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 22:1573(A), (C) through (E), and (G) are hereby amended and
14 reenacted and R.S. 22:821(B)(38) and Part XII of Chapter 5 of Title 22 of the Louisiana
15 Revised Statutes of 1950, comprised of R.S. 22:1808.1 through 1808.13, are hereby enacted
16 to read as follows:

17 §821. Fees

18 * * *

19 B. The following fees and licenses shall be collected in advance by the
20 commissioner of insurance:

21 * * *

- 1 (38) For insurance consultants' licenses:
- 2 (a) Life, health, and accident consultant; variable annuity
- 3 consultant
- 4 First time applicant. \$75.00
- 5 Consultant renewal fee (every two years). . . \$50.00
- 6 (b) Property and casualty consultant
- 7 First time applicant. \$75.00
- 8 Consultant renewal fee (every two years). . . \$50.00
- 9 * * *

10 §1573. Continuing education requirements

11 A. The continuing education requirements for renewal of license under R.S.
12 22:1547(C)(3) and 1808.4(C)(3) are set forth in this Section. The continuing
13 education requirement shall be fulfilled by satisfactory completion of the required
14 hours of instruction in continuing education programs approved by the
15 commissioner.

16 * * *

17 C. Life insurance producers and consultants and health insurance producers
18 and consultants shall complete twenty-four hours of approved instruction or
19 verifiable approved self-study prior to each renewal of license, with at least three
20 hours dedicated to the subject of ethics. A person who holds a combination of life
21 or health insurance producer licenses and life or health consultant licenses shall
22 complete a total of twenty-four hours of approved instruction or verifiable approved
23 self-study, with at least three hours dedicated to the subject of ethics.

24 D. Insurance producers authorized to write property, casualty, or property
25 and casualty or personal lines insurance business and property, casualty, or property
26 and casualty insurance consultants shall complete twenty-four hours of approved
27 instruction or verifiable approved self-study before each renewal of license with at
28 least three hours of approved instruction dedicated to the subject of ethics and three
29 hours dedicated to the subject of flood insurance. A person who holds a combination

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 of property, casualty, or property and casualty insurance producer licenses and
 2 property, casualty, or property and casualty consultant licenses, shall complete a total
 3 of twenty-four hours of approved instruction or verifiable approved self-study, with
 4 at least three hours dedicated to the subject flood insurance.

5 E. For producers authorized to write life, health and accident insurance and
 6 also authorized to write property, casualty, or property and casualty or personal lines
 7 insurance business, and consultants authorized to consult on life, health and accident
 8 insurance and also authorized to consult on property, casualty, or property and
 9 casualty or personal lines insurance business, the continuing education requirement
 10 for renewal of license shall be twenty-four hours of approved instruction or verifiable
 11 approved self-study with at least three hours of approved instruction or verifiable
 12 approved self-study dedicated to the subject of ethics and three hours dedicated to
 13 the subject of flood insurance. Persons who hold a combination of life, health and
 14 accident, property, casualty, or property and casualty insurance producer licenses and
 15 life, health and accident, property, casualty, or property and casualty consultant
 16 licenses shall complete a total of twenty-four hours of approved instruction or
 17 verifiable approved self-study, with at least three hours dedicated to the subject of
 18 ethics and three hours dedicated to the subject of flood insurance.

19 * * *

20 G. ~~No more than ten excess hours of approved life and health and accident~~
 21 ~~insurance instruction accumulated during one renewal period may be carried forward~~
 22 ~~and applied to the continuing education requirement for the next renewal period~~
 23 Producers and consultants licensed for life, health and accident, property, casualty
 24 or personal lines may carry over no more than ten excess hours of approved
 25 insurance instruction accumulated during one renewal period to be applied to the
 26 continuing education requirement for the next renewal period.

27 * * *

1 PART XII. INSURANCE CONSULTANTS

2 §1808.1. License required

3 A. No person shall act as, or hold himself out to be, an insurance consultant
4 unless licensed by the Department of Insurance.

5 B.(1) "Insurance consultant" means any person or entity which offers for a
6 fee or other valuable consideration any advice, counsel, opinion, or related services
7 with respect to risk evaluation or management, the benefits, coverages, exclusions,
8 or provisions under any policy of insurance to be issued in this state, or involving the
9 advantages or disadvantages of any such policy of insurance, or any formal plan of
10 managing risk.

11 (2) "Insurance consultant" for the purposes of this Part shall not include:

12 (a) Attorneys while working in the capacity of an attorney.

13 (b) Litigation support or insurance expert witness services related to litigated
14 matters.

15 (c) Claims adjusters.

16 (d) Public adjusters, appraisers, contractors, or engineers engaged in the
17 settlement of insurance claims, who do not have a direct or indirect financial interest
18 in any aspect of the claim, other than the compensation established in the written
19 contract with the insured.

20 (e) A licensed insurance producer who offers advice or consulting with
21 respect to any of the following, regardless of whether the insurance producer is
22 compensated by commission or agency fees for such advice, consulting, or services:

23 (i) Risk evaluation or management, risk transfer, self-insurance, self-insured
24 retention programs.

25 (ii) The benefits, coverages, exclusions, or provisions under any policy of
26 insurance.

27 (iii) The advantages or disadvantages of any policy of insurance or plan of
28 managing risk.

1 (iv) Any other advice, consulting, or related policyholder services in
2 conjunction with risk and insurance programs provided as an insurance producer.

3 (f) Loss control and accident prevention consultants.

4 (g) Certified public accountants while working in their capacity as an
5 accountant.

6 (h) Actuaries who are members of the American Academy of Actuaries
7 (MAAA).

8 §1808.2. Examination

9 A. A resident individual applying for an insurance consultant license shall
10 pass an examination unless exempt pursuant to R.S. 22:1808.6. The examination
11 shall test the knowledge of the individual concerning the lines of authority for which
12 application is made, the duties and responsibilities of an insurance consultant, and
13 the insurance laws and regulations of this state. Examinations required by this Part
14 shall be developed and conducted under rules and regulations prescribed by the
15 commissioner of insurance.

16 B.(1) If the applicant is a partnership, corporation, or other business entity,
17 the examination shall be taken by each individual who is to be named in or registered
18 on the license for the partnership, corporation, or other business entity and who is
19 engaged in insurance consulting, and by all insurance consultant employees of such
20 entity.

21 (2) Each line of insurance which the applicant proposes to consult under the
22 license applied for shall require an examination to be taken.

23 (3) The applicant shall pass the examination with a score at or above seventy
24 percent to indicate a satisfactory knowledge and understanding of each line of
25 insurance for which the applicant seeks qualification.

26 C.(1) Prior to taking the examination required by this Part, any person
27 applying for a license as an insurance consultant shall file with the Department of
28 Insurance, in a manner prescribed by the commissioner of insurance, certification

1 that the applicant has completed a registered preclicensing program certified by the
2 commissioner pursuant to R.S. 22:1571.

3 (2) A person applying for a license as an insurance consultant for
4 authorization to consult on life insurance shall be exempt from any preclicensing
5 education requirements if he has one of the following designations:

6 (a) Certified Employee Benefit Specialist (CEBS).

7 (b) Chartered Financial Consultant (ChFC).

8 (c) Certified Insurance Counselor (CIC).

9 (d) Certified Financial Planner (CFP).

10 (e) Chartered Life Underwriter (CLU).

11 (f) The Fellow, Life Management Institute (FLMI).

12 (g) The Life Underwriting Training Council Fellow Designation (LUTCF).

13 (h) Chartered Healthcare Consultant (ChHC).

14 (3) A person applying for a license as an insurance consultant for
15 authorization to consult on health and accident insurance shall be exempt from any
16 preclicensing education requirements if he has one of the following designations:

17 (a) Registered Health Underwriter (RHU).

18 (b) Certified Employee Benefit Specialist (CEBS).

19 (c) Registered Employee Benefits Consultant (REBC).

20 (d) Health Insurance Associate (HIA).

21 (4) A person applying for a license as an insurance consultant for
22 authorization to consult on property or casualty insurance shall be exempt from any
23 preclicensing education requirements if he has one of the following designations:

24 (a) Accredited Advisor in Insurance Program (AAI).

25 (b) Associate in Risk Management (ARM).

26 (c) Certified Risk Manager (CRM).

27 (d) Certified Insurance Counselor (CIC).

28 (e) Chartered Property and Casualty Underwriter (CPCU).

29 (f) Certified Workers' Compensation Professional (CWCP).

1 (5) A person applying for a license as an insurance consultant to consult on
2 any line of insurance and having a bachelor's degree or higher from an accredited
3 college or university with major course work in insurance shall be exempt from any
4 prelicensing education requirements.

5 (6) A person who already holds an insurance producer license for a line of
6 business shall be exempt from any prelicensing education and examination
7 requirements for an insurance consultant license for the same line of business.

8 D. All examinations shall be conducted frequently and at a place or places
9 reasonably accessible to all applicants. The commissioner of insurance shall
10 promulgate reasonable rules and regulations providing the procedure for the
11 examinations.

12 E. The content of the examination may be outlined in the licensing
13 information handbook provided to applicants by the Department of Insurance,
14 publishers of examination study materials, any prelicensing providers, and others
15 wishing to provide this information.

16 F. The commissioner may contract, in accordance with R.S. 39:1551 et seq.,
17 with one or more private testing services for administering examinations and
18 collecting examination fees. The commissioner may require that the applicant pay
19 the cost of the examination directly to the testing firm.

20 G. A person who fails to appear for the examination as scheduled, or fails
21 to pass the examination, shall reapply for an examination and remit all required fees
22 and forms before being rescheduled for another examination.

23 H. The commissioner of insurance may provide to a testing service provider
24 under contract with the Department of Insurance any demographic information
25 received by the department on applications relating to examinations taken to qualify
26 for an insurance consultant license if the commissioner requires the provider to
27 review and analyze examination results in conjunction with the education level,
28 gender, native language, race, or ethnicity of examinees.

1 §1808.3. Application for license

2 A. A person applying for a resident insurance consultant license shall apply
3 to the commissioner of insurance on the application promulgated by the Department
4 of Insurance and declare under penalty of refusal, suspension, or revocation of the
5 license that the statements made in the application are true, correct, and complete to
6 the best of the individual's knowledge and belief. Before approving the application,
7 the commissioner shall find that the individual:

8 (1) Is at least eighteen years of age.

9 (2) Resides in the state or maintains his principal place of business in the
10 state.

11 (3) Is not disqualified for having committed any act that is a ground for
12 denial, suspension, or revocation as set forth in R.S. 22:1808.8.

13 (4) Has completed a prelicensing course of study for the lines of authority
14 for which the person has applied, if required.

15 (5) Has paid the fees set forth in R.S. 22:821.

16 (6) Has successfully passed the examinations for the lines of authority for
17 which the person has applied.

18 (7) When applicable, has the written consent of the commissioner of
19 insurance pursuant to 18 U.S.C. 1033, or any successor statute regulating crimes by
20 or affecting persons engaged in the business of insurance whose activities affect
21 interstate commerce.

22 B.(1)(a) A business entity acting as an insurance consultant is required to
23 obtain an insurance consultant license. Every member, partner, officer, director,
24 stockholder, and employee of the business entity personally engaged in this state in
25 insurance consulting shall be registered with the Department of Insurance under such
26 business entity's license, and each such member, partner, officer, director,
27 stockholder, or employee shall also qualify as an individual licensee for any line of
28 insurance consulting the business entity is licensed to transact. Licensing of any

1 limited liability company or limited liability partnership as an insurance consultant
2 is subject to prior approval of the commissioner of insurance.

3 (b) The business entity licensee shall notify the commissioner of insurance
4 within thirty days of any change of status of an individual who is registered under
5 the business entity license.

6 (c) Any business entity operating at more than one location shall notify the
7 commissioner of insurance of each permanent branch location address within thirty
8 days from the date of the opening of the new location. There shall be at least one
9 individual licensed insurance consultant registered with the Department of Insurance
10 for each branch location.

11 (d) Any business entity which fails to comply with this Subsection shall be
12 subjected to a fine of one hundred dollars for each violation. Any entity against
13 which a fine has been levied shall be given due notice of such action. Upon receipt
14 of this notice, the entity may apply for and shall be entitled to a hearing in
15 accordance with Chapter 12 of this Title, R.S. 22:2191 et seq.

16 (2) Application shall be made using the application promulgated by the
17 Department of Insurance. Before approving the application, the commissioner of
18 insurance shall find that:

19 (a) The business entity has paid the fees set forth in R.S. 22:821.

20 (b) The business entity has designated one or more licensed individual
21 consultants responsible for the business entity's compliance with the insurance laws,
22 rules, and regulations of this state.

23 (3) When completing the background information portion of the application
24 pertaining to the disclosure of certain lawsuits or arbitration proceedings,
25 corporations, banks, partnerships, and directors shall disclose those proceedings
26 occurring within the past five years which are considered to be material under
27 generally accepted accounting principles for purposes of financial statement
28 disclosure.

1 C.(1) The commissioner of insurance may require any documents deemed
2 necessary to verify the information contained in an application.

3 (2)(a) In order to make a determination of license eligibility, the
4 commissioner of insurance shall require a full set of fingerprints from each applicant
5 and shall submit the fingerprints and the fees required to perform the criminal history
6 record checks to the Louisiana Bureau of Criminal Identification and Information for
7 state and national criminal history record checks.

8 (b) The commissioner of insurance may contract for the collection,
9 transmission, and re-submission of fingerprints required pursuant to this Part. If the
10 commissioner of insurance does so, the fee for collecting and transmitting
11 fingerprints and the fee for the criminal history record check shall be payable directly
12 to the contractor by the applicant. The commissioner of insurance may agree to a
13 reasonable fingerprinting fee to be charged by the contractor.

14 (c)(i) The commissioner of insurance shall treat and maintain an applicant's
15 fingerprints and any criminal history record information obtained pursuant to this
16 Part as confidential and shall apply security measures consistent with the Criminal
17 Justice Information Services Division of the Federal Bureau of Investigation
18 standards for the electronic storage of fingerprints and necessary identifying
19 information and limit the use of records solely to the purposes authorized in this Part.

20 (ii) The fingerprints and any criminal history record information shall be
21 exempt from the Public Records Law, R.S. 44:1 et seq., shall not be subject to
22 subpoena, other than a subpoena issued in a criminal proceeding or investigation,
23 shall be confidential by law and privileged, and shall not be subject to discovery or
24 admissible in evidence in any private civil action.

25 D. Any license issued pursuant to an application claiming residency, as
26 defined in R.S. 22:46, shall constitute an election of residency in the state, and shall
27 be void if the licensee while maintaining a resident license also maintains a license
28 in, or thereafter submits an application for a license in, any other state or other

1 jurisdiction stating that the applicant is a resident of such other state or jurisdiction,
2 or if the licensee ceases to be a resident of this state.

3 §1808.4. License

4 A. Unless denied licensure pursuant to R.S. 22:1808.8, persons who have
5 met the requirements of this Part shall be issued an insurance consultant license. An
6 insurance consultant may receive qualification for a license in one or more of the
7 following lines of authority:

8 (1) Life, which provides insurance coverage on human lives including
9 benefits of endowment and annuities, and may include benefits in the event of death
10 or dismemberment by accident and benefits for disability income.

11 (2) Health and accident, which provides insurance coverage for sickness,
12 bodily injury, or accidental death, and may include benefits for disability income.

13 (3) Variable life and variable annuity products.

14 (4) Property, which provides insurance coverage for the direct or
15 consequential loss or damage to property of every kind.

16 (5) Casualty, which provides insurance coverage against legal liability,
17 including that for death, injury or disability, or damage to real or personal property.

18 B. Subject to the requirements of Subsection C of this Section, an insurance
19 consultant license shall remain in effect, unless revoked, suspended, or denied
20 renewal or reinstatement, as long as all applicable fees are paid and education
21 requirements are satisfied, until the license expires or is surrendered by the holder
22 thereof.

23 C.(1) Every licensed consultant shall file an application for renewal of his
24 license every two years, by notifying the commissioner of insurance, by methods
25 prescribed by the commissioner, of the licensee's intention to renew his license as a
26 consultant.

27 (2) Any licensee who fails to file timely for license renewal shall be charged
28 a late fee as authorized by R.S. 22:821.

1 (3)(a) Prior to the filing date for the application for renewal of a license, the
2 licensee shall comply with the continuing education requirements in R.S. 22:1573
3 for the lines of insurance being renewed.

4 (b) Such consultant shall file with the commissioner of insurance, by a
5 method prescribed by the commissioner, satisfactory certification of completion of
6 the continuing education requirements.

7 (c) Any failure to fulfill the continuing education requirements shall result
8 in the expiration of the license.

9 D. An insurance consultant who allows his license to lapse may, within two
10 years from the expiration date of the license, reinstate the same license upon proof
11 of fulfilling all continuing education requirements through the date of reinstatement
12 and upon payment of all fees due. If the license has been lapsed for more than two
13 years, the applicant shall fulfill the requirements for issuance of a new license.

14 E. A licensed insurance consultant who is unable to comply with license
15 renewal procedures due to military service or other extenuating circumstance, such
16 as a long-term medical disability, may request a waiver of those procedures. The
17 consultant may also request a waiver of any examination requirement or any other
18 fine or sanction imposed for failure to comply with renewal procedures.

19 F. The license shall state the name and mailing address of the licensee, date
20 of issuance, the renewal or expiration date, the line or lines of insurance covered by
21 the license, and such other information as the commissioner of insurance deems
22 necessary.

23 G. Every licensee shall notify the commissioner, by any means acceptable
24 to the commissioner, of any change of address, legal name, or information submitted
25 on the application within thirty days of the change. Failure to file such change
26 within the required time shall result in the imposition of a fifty-dollar penalty per
27 violation. Any person against whom a penalty has been levied shall be given due
28 notice of such action. Upon receipt of this notice, the licensee may apply for and

1 shall be entitled to a hearing in accordance with Chapter 12 of this Title, R.S.
2 22:2191 et seq.

3 H. A duplicate license may be issued for any lost, stolen, or destroyed
4 license issued pursuant to this Part upon a request by the licensee, by a method
5 prescribed by the commissioner, setting forth the facts of such loss, theft, or
6 destruction, together with a fee as authorized by R.S. 22:821.

7 I. In order to assist in the performance of the commissioner's duties, the
8 commissioner may contract with nongovernmental entities, including the National
9 Association of Insurance Commissioners (NAIC) or any affiliates or subsidiaries that
10 the NAIC oversees, to perform any ministerial functions, including the collection of
11 fees, related to consultant licensing that the commissioner and the nongovernmental
12 entity may deem appropriate.

13 §1808.5. Nonresident licensing

14 A. Unless denied licensure pursuant to R.S. 22:1808.8, a nonresident person
15 shall receive a nonresident consultant license if:

16 (1) The person is currently licensed as a resident for an equivalent license
17 and in good standing in his home state.

18 (2) The person has submitted the proper request for licensure and has paid
19 the fees required by R.S. 22:821.

20 (3) The person has submitted or transmitted to the commissioner of
21 insurance the application for licensure that the person submitted to his home state.

22 (4) The person's home state awards nonresident consultant licenses to
23 residents of this state on the same basis.

24 B.(1) The commissioner of insurance may verify the consultant's licensing
25 status through the consultant database maintained by the National Association of
26 Insurance Commissioners, its affiliates, or subsidiaries.

27 (2) Whenever, by the laws or regulations of any other state or jurisdiction,
28 any limitation of rights and privileges, conditions precedent, or any other
29 requirements are imposed upon residents of this state who are nonresident applicants

1 or licensees of such other state or jurisdiction in addition to, or in excess of, those
2 imposed on nonresidents pursuant to this Part, the same requirements shall be
3 imposed upon such residents of such other state or jurisdiction.

4 (3)(a) The commissioner of insurance shall not issue a license to any
5 nonresident applicant until such applicant has filed forms approved by the
6 commissioner which designate the commissioner as his true and lawful agent, upon
7 whom may be served all lawful process in any action, suit, or proceeding instituted
8 by or on behalf of any interested person arising out of the applicant's insurance
9 business in this state. The designation shall constitute an agreement that such service
10 of process has the same legal force and validity as personal service of process upon
11 the person in the state.

12 (b) The service of process upon any such licensee in any action or
13 proceeding in any court of competent jurisdiction may be made by a party serving
14 the commissioner of insurance with appropriate copies thereof and the payment to
15 him of the fee authorized by R.S. 22:821.

16 (c) The commissioner of insurance shall, within ten days of being served,
17 forward a copy of such process by registered or certified mail, return receipt
18 requested, to the licensee at his last known address of record or principal place of
19 business, and the commissioner shall maintain copies of all such processes so served
20 upon him.

21 (4) The service of process upon any such licensee in any action or
22 proceeding instituted by the commissioner of insurance pursuant to this Part shall be
23 made by the commissioner by mailing such process by registered or certified mail,
24 return receipt requested, to the licensee at his last known address of record or
25 principal place of business.

26 C. A nonresident consultant who moves from one state to another state or a
27 resident consultant who moves from this state to another state shall file a change of
28 address and provide certification from the new resident state within thirty days of the
29 change of legal residence. No fee or license application is required.

1 §1808.6. Exemption from examination

2 A. An individual who applies for an insurance consultant license in this state
3 who was previously licensed as a resident insurance consultant for the same lines of
4 authority in another state shall not be required to complete any prelicensing
5 education or examination. This exemption is available only if the person is currently
6 licensed in that state or if the application is received within ninety days of the
7 cancellation of the applicant's previous license and if the prior state issues a
8 certification that, at the time of cancellation, the applicant was in good standing in
9 that state or by the National Association of Insurance Commissioners, its affiliates
10 or subsidiaries, and the certification indicates that the consultant is or was licensed
11 in good standing for the line of authority requested.

12 B. A person licensed as an insurance consultant in another state who moves
13 to this state shall make application within ninety days of establishing legal residence
14 in this state to become a resident licensee pursuant to R.S. 22:1808.3. No
15 prelicensing education or examination shall be required of that person to obtain a
16 consultant license for any line of authority previously held in the prior state except
17 where the commissioner of insurance determines otherwise by regulation.

18 C. Resident applicants shall be exempt from the requirement of an
19 examination for a license covering the same line or lines of insurance for which the
20 applicant was licensed under a similar license in this state within two years from the
21 date of expiration of the previous license, unless such previous license was revoked
22 or suspended or renewal was refused by the commissioner.

23 §1808.7. Assumed names

24 A. An insurance consultant doing business under any name other than the
25 consultant's legal name is required to notify the commissioner of insurance prior to
26 using the assumed name. Prior to the use of or changes to any trade name or names,
27 an insurance consultant shall provide written notification of such use or change to
28 the commissioner, on a form prescribed by the commissioner. A certified copy of

1 registration from the secretary of state shall accompany the application for a trade
2 name.

3 B. The use by any insurance consultant of a nonapproved trade name shall
4 subject such person to a fine not exceeding two hundred fifty dollars. Additionally,
5 if the insurance consultant continues to utilize a nonapproved trade name for ten or
6 more days after being notified by the commissioner to cease using the nonapproved
7 trade name, the insurance consultant will be subject to an additional fine not to
8 exceed five thousand dollars. If applicable, an insurance consultant shall comply
9 with the provisions of R.S. 51:281 et seq.

10 §1808.8. License denial, suspension, nonrenewal, or revocation

11 A. The commissioner of insurance may place on probation, suspend, revoke,
12 or refuse to issue, renew, or reinstate an insurance consultant license, or may levy a
13 fine not to exceed five hundred dollars for each violation occurring, up to ten
14 thousand dollars aggregate for all violations in a calendar year per applicant or
15 licensee, or any combination of these actions, for any one or more of the following
16 causes:

17 (1) Failing to comply with any prerequisite of state or federal law or
18 regulations for the issuance of such license.

19 (2) Providing incorrect, misleading, incomplete, or materially false
20 information, or omission of material information, in the license or renewal
21 application.

22 (3) Failing to account for or remit any premiums, monies, or properties
23 belonging to another which come into the possession of the applicant in the course
24 of doing insurance business, or improperly withholding, misappropriating,
25 converting, or failing to timely remit any premiums, monies, or properties received
26 in the course of doing insurance business, whether such premiums, monies, or
27 properties belong to policyholders, insurers, beneficiaries, claimants, or others.

1 (4) Using fraudulent, coercive, or dishonest practices or misrepresentation,
2 or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the
3 conduct of business such as might endanger the public.

4 (5) Misrepresenting the terms of an actual or proposed insurance contract,
5 binder, rider, plan, or application for insurance, including all forms or documents
6 that are attached, or will be attached, to an actual or proposed insurance contract,
7 binder, rider, plan, or application for insurance.

8 (6) Having admitted or been found to have committed any insurance unfair
9 trade practice under R.S. 22:1961 et seq. or fraud under R.S. 22:1964 et seq.

10 (7) The conviction or nolo contendere plea to any felony, participation in a
11 pretrial diversion program pursuant to a felony charge, suspension and deferral of
12 sentence and probation pursuant to Article 893 of the Code of Criminal Procedure,
13 or conviction of any misdemeanor involving moral turpitude or public corruption.

14 (8) Obtaining or attempting to obtain a license through misrepresentation or
15 fraud, or improperly using notes or any other reference material to complete an
16 examination for an insurance license, or otherwise cheating or attempting to cheat
17 on an examination for an insurance license of any kind.

18 (9) The adjudication of bankruptcy with debts related to the receipt or
19 transmittal of insurance premiums or other funds to an insurer or insured in any
20 fiduciary capacity of the applicant, or issuance to the Department of Insurance of an
21 insufficient fund or no-fund check.

22 (10) Forging another's name to an application for insurance or to any
23 document related to an insurance transaction.

24 (11) Having an insurance consultant license, or its equivalent, denied,
25 suspended, or revoked in this or any other state, province, district, or territory.

26 (12) Violating of any insurance laws of the United States, this state or any
27 state, province, district, or territory, or violating any lawful rule, regulation,
28 subpoena, or order of the commissioner of insurance or of the insurance officials of
29 another state.

1 (13) Refusing to submit physical evidence of identity or the conviction of a
2 felony, in accordance with R.S. 22:1922(B) and (C).

3 (14) Failing to comply with an administrative or court order imposing a child
4 support obligation.

5 (15) Failing to pay state income taxes or comply with any administrative or
6 court order directing payment of state income taxes.

7 (16) Employing or allowing to associate with his business, in any manner,
8 any person engaged in the business of insurance who has been convicted of a felony
9 under the laws of this state or any other state, the United States, or any foreign
10 country. As used in this Part, "business of insurance" means the writing of insurance
11 or the reinsuring of risks by an insurance consultant or insurer, including all acts
12 necessary or incidental to such writing or reinsuring, and the activities of persons
13 who act as, or are, officers, directors, agents, or employees of consultants or insurers,
14 or who are other persons authorized to act on behalf of such persons.

15 (17) The conviction of a felony involving dishonesty or breach of trust
16 pursuant to 18 U.S.C. §1033 and §1034, without written consent from the
17 commissioner of insurance pursuant to 18 U.S.C. §1033, or any successor statute
18 regulating crimes by or affecting persons engaged in the business of insurance whose
19 activities affect interstate commerce.

20 B. If the commissioner denies any application for a license in accordance and
21 compliance with R.S. 49:961, the commissioner shall notify the applicant and advise
22 the applicant in writing of the reasons for the denial. An aggrieved party affected by
23 the commissioner's decision, act, or order may demand a hearing in accordance with
24 Chapter 12 of this Title, R.S. 22:2191 et seq.

25 C. In the event the commissioner suspends or revokes a license, or refuses
26 the renewal or reinstatement of a license, or levies a fine, with or without suspension,
27 revocation, or refusal to renew a license, the commissioner, in accordance and
28 compliance with R.S. 49:961, shall notify the licensee in writing of the
29 determination. Any such suspension or revocation of a license, or refusal to renew

1 or reinstate a license, shall include all lines of insurance for which the licensee was
2 authorized. An aggrieved party affected by the commissioner's decision, act, or
3 order may demand a hearing in accordance with Chapter 12 of this Title, R.S.
4 22:2191 et seq.

5 D. The license of a business entity may be suspended or revoked, or renewal
6 or reinstatement thereof may be refused, or a fine may be levied, with or without a
7 suspension, revocation, or refusal to renew a license, if the commissioner finds, in
8 accordance and compliance with R.S. 49:961, that an individual licensee's violation
9 was known or should have been known by one or more of the partners, officers, or
10 managers acting on behalf of the business entity and the violation was not reported
11 to the Department of Insurance and no corrective action was undertaken timely. Any
12 such suspension or revocation of a license, or refusal to renew or reinstate a license,
13 shall include all lines of insurance for which the licensee was authorized.

14 E.(1) No licensee whose license has been revoked pursuant to this Section
15 shall be entitled to file another application for a license within one year from the
16 effective date of such revocation, or, if judicial review of such revocation is sought,
17 within one year from the date of final court order or decree affirming such
18 revocation. A subsequent application, when filed, may be refused by the
19 commissioner of insurance unless the applicant shows good cause why the
20 revocation of his license should not be deemed a prohibition to the issuance of a new
21 license.

22 (2) Any license which has been reissued following revocation shall be
23 revoked for a period not to exceed five years upon a second violation by the licensee
24 of any of the provisions of this Section. No licensee whose license has been revoked
25 pursuant to this Paragraph shall be entitled to file another application for a license
26 within the revocation period. A subsequent application, when filed, may be refused
27 by the commissioner of insurance unless the applicant shows good cause why the
28 revocation of his license should not be deemed a prohibition to the issuance of a new
29 license.

1 F. Upon suspension, revocation, or termination of the license of a resident
2 of this state, the commissioner shall notify the National Association of Insurance
3 Commissioners and the proper insurance official of each state for whom the
4 commissioner has executed a certificate as provided for herein.

5 G. If the commissioner revokes or suspends any nonresident's license
6 through a proceeding pursuant to this Section, he shall promptly notify the
7 appropriate insurance official of the licensee's place of residency of such action and
8 of the particulars thereof.

9 H. The commissioner of insurance shall retain the authority to enforce the
10 provisions of, and impose any penalty or remedy authorized by, this Section against
11 any person who is under investigation for or charged with a violation of this Section,
12 even if the person's license has been surrendered or has lapsed by operation of law.

13 §1808.9. Commissions

14 A. No person or business entity licensed and acting as an insurance
15 consultant under a written agreement pursuant to R.S. 22:1808.11, shall accept any
16 commission, service fee, brokerage, or other valuable consideration for selling,
17 soliciting, or negotiating insurance in this state.

18 B.(1) No member of an insurance advisory committee of any state agency,
19 board, commission, or of any political subdivision of this state, including but not
20 limited to school boards, levee boards, deep water port commissions, deep water
21 port, harbor and terminal districts, and the Louisiana Stadium and Exposition
22 District, shall split, pass on, or share with any insurance consultant or other person
23 who is not a member of his own firm or corporation and is not a member of such an
24 insurance advisory committee, all or any portion of the commission derived by such
25 committee from the purchase of insurance by such state agency, board, commission,
26 or political subdivision of the state without express authorization by official action
27 of such state agency, board, commission, or political subdivision of the state. Any
28 insurance consultant or other person who is not a member of such firm or corporation
29 and is not a member of such an insurance advisory committee who receives without

1 authorization all or any portion of such commission shall also be in violation of this
2 Section.

3 (2) Any person who violates the provisions of this Section shall, upon
4 conviction, be fined not less than one thousand dollars, nor more than five thousand
5 dollars per violation, or imprisoned for not more than two years, or both.

6 (3) Any conviction for a violation of the provisions of this Section shall
7 constitute grounds for suspension or revocation by the commissioner of insurance
8 of the license of such insurance consultant, in addition to those grounds of R.S.
9 22:1808.8.

10 §1808.10. Reciprocity; non-reciprocal states or other jurisdictions

11 A. The commissioner of insurance shall waive any requirements for a
12 nonresident license applicant with a valid license from his home state, except the
13 requirements imposed by R.S. 22:1808.5, if the applicant's home state awards
14 nonresident licenses to residents of this state on the same basis.

15 B. A nonresident consultant's satisfaction of his home state's continuing
16 education requirements for licensed insurance consultants shall constitute
17 satisfaction of this state's continuing education requirements if the nonresident
18 consultant's home state recognizes the satisfaction of its continuing education
19 requirements imposed upon consultants from this state on the same basis.

20 C. Whenever, by the laws or regulations of any other state or jurisdiction,
21 any limitation of rights and privileges, conditions precedent, or any other
22 requirements are imposed upon residents of this state who are nonresident applicants
23 or licensees of such other state or jurisdiction in addition to, or in excess of, those
24 imposed on nonresidents pursuant to this Part, the same such requirements shall be
25 imposed upon such residents of such other state or jurisdiction. This Part shall not
26 apply to fees, which shall be as authorized by R.S. 22:821.

1 §1808.11. Disclosure agreement and compensation

2 A. Prior to providing consulting services, a person licensed as a consultant
3 pursuant to this Part shall disclose all of the following in a written contract signed
4 by the party receiving the consulting services:

5 (1) The services to be provided by the consultant to the insured and
6 prospective insureds.

7 (2) The beginning and ending date of the agreement.

8 (3) Any insurance to which the contract for consulting services applies.

9 (4) The arrangements for compensation of the consultant, whether by a flat
10 rate, hourly rate, or other valuable consideration.

11 (5) Whether the consultant is dually licensed as an insurance producer.

12 (6) Whether the consultant has any financial or business interest in or
13 affiliation with any insurance producer, broker, or insurance company involved
14 within the scope of the consulting work.

15 B. A copy of every consulting contract shall be retained by the consultant for
16 not less than five years after the expiration of the consulting contract.

17 C. No licensed insurance consultant may receive any fee for consulting
18 services, unless such compensation is based upon a prior written contract as required
19 by this Section.

20 D. If a licensed insurance consultant has received the compensation outlined
21 in the written consulting contract, it shall be conclusively presumed that the licensee
22 was acting as a consultant with respect to any transactions related to the contract.

23 E. A consulting contract shall be made available to the Louisiana
24 Department of Insurance within ten days of a written request.

25 §1808.12. Prohibited acts

26 A.(1) No person licensed and acting as an insurance consultant under a
27 written agreement pursuant to R.S. 22:1808.11, shall sell, solicit, make an
28 application for, procure, negotiate for, or place for others, any policies for any lines
29 of insurance.

1 (2) No insurer or insurance producer shall pay any money or commission or
2 brokerage, or give or allow any valuable consideration or compensation to any
3 person or business entity duly licensed and acting as an insurance consultant under
4 a written agreement pursuant to R.S. 22:1808.11.

5 (3) A consultant who is also licensed as an insurance producer shall not,
6 when representing himself as an insurance consultant under a written agreement
7 pursuant to R.S. 22:1808.11, solicit, sell, or negotiate contracts of insurance or
8 otherwise act as an insurance producer, and shall not receive directly or indirectly
9 from an insurance company, broker, or insurance producer any money or
10 commission or brokerage, or give or allow any valuable consideration or
11 compensation for the solicitation, negotiation, application, sale or placement of
12 insurance coverages which were the subject of a written consulting contract as
13 required by R.S. 22:1808.11 during the term of the written consulting contract.

14 (4) An insurance producer who has a financial or business interest or
15 affiliation with an insurance consultant acting as a consultant under a written
16 contract as required by R.S. 22: 1808.11, shall not solicit, negotiate or sell insurance,
17 either directly or indirectly, with respect to the insurance risks of the insured or
18 prospective insured which were the subject of the consulting contract during the term
19 of the written consulting contract.

20 (5) An insurance consultant shall not have a direct or indirect financial
21 interest in any aspect of their consulting work, other than the consulting fee
22 compensation established in the written contract with the insured.

23 (6) An insurance consultant shall not solicit employment or engagement,
24 directly or indirectly, for or on behalf of any insurance producer, attorney at law,
25 contractor, or other person with which the insurance producer has a business
26 relationship or financial interest. Nothing in this Part shall be interpreted to prevent
27 an insurance consultant from recommending a particular insurance producer,
28 attorney, contractor, or other person; however, the insurance consultant is prohibited

1 from collecting any fee, compensation, or other valuable consideration for such
2 referral.

3 (7) An insurance consultant shall not engage in the unauthorized practice of
4 law as defined in R.S. 37:212-213.

5 B.(1) Whoever violates this Section shall, upon conviction, be fined not less
6 than two thousand dollars, nor more than fifty thousand dollars, or imprisoned with
7 or without hard labor, for not more than three years, or both.

8 (2) Any conviction for violation of this Section shall constitute grounds for
9 the immediate suspension or revocation by the commissioner of insurance of the
10 license of such insurance consultant to sell insurance, in addition to those grounds
11 set forth in R.S. 22:1808.8.

12 C. Nothing in this Section shall prohibit an insurance producer from
13 receiving reimbursement of expenses or an agency fee for services provided as the
14 producer of record as authorized pursuant to R.S. 22:855(B).

15 §1808.13. Reporting of actions

16 A. An insurance consultant shall report to the commissioner of insurance any
17 administrative action taken against the consultant in another jurisdiction or by
18 another governmental agency in this state within thirty days of the final disposition
19 of the matter. This report shall include a copy of the order, consent to order, or other
20 relevant legal documents.

21 B. Within thirty days of a conviction in district court of an offense pursuant
22 to R.S. 22:1808.8(A)(7), a consultant shall report such conviction to the
23 commissioner and provide a copy of the bill of information or indictment.

24 C. Without in any way limiting or affecting any other civil or criminal
25 remedies or consequences, any person who intentionally withholds or intentionally
26 fails to timely report information as required by this Part shall be guilty of violating
27 R.S. 22:1808.8(A)(12).

1 Section 2. R.S. 44:4.1(B)(11) is hereby amended and reenacted to read as follows:

2 §4.1. Exceptions

3 * * *

4 B. The legislature further recognizes that there exist exceptions, exemptions,
5 and limitations to the laws pertaining to public records throughout the revised
6 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
7 limitations are hereby continued in effect by incorporation into this Chapter by
8 citation:

9 * * *

10 (11) R.S. 22:2, 14, 31, 42.1, 88, 244, 263, 265, 461, 550.7, 571, 572, 572.1,
11 574, 618, 639, 691.4, 691.5, 691.6, 691.7, 691.8, 691.9, 691.9.1, 691.10, 691.38,
12 691.56, 732, 752, 753, 771, 834, 972(D), 1008, 1019.2, 1203, 1460, 1464, 1466,
13 1488, 1546, 1559, 1566(D), 1644, 1656, 1723, 1796, 1801, 1808.3, 1927, 1929,
14 1983, 1984, 2036, 2056, 2085, 2091, 2293, 2303

15 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 746 Re-Reengrossed

2016 Regular Session

Thibaut

Abstract: Provides for licensing and regulation of insurance consultants by the commissioner of insurance.

Proposed law authorizes the licensing and regulation of insurance consultants by the commissioner of insurance, with an initial term of two years, followed by renewals at two year intervals.

Proposed law establishes fees for the initial license and for each renewal. Further provides for continuing education requirements and prelicensing education requirements.

Proposed law creates reciprocity with other states for nonresident insurance consultants.

Proposed law requires an insurance consultant's compensation to be set forth in a written agreement. Further prohibits an insurance consultant from receiving commissions.

Proposed law requires an applicant to pass a written exam for each line of insurance that he wishes to be licensed for. Further requires each applicant to submit a full set of fingerprints and pass a criminal background check. Further provides that the fingerprints and the results of the background check shall be confidential and not subject to the public records law.

Proposed law allows an insurance consultant to be licensed for the insurance lines of life, health and accident, variable life and variable annuity products, property, and casualty.

Proposed law authorizes civil and criminal penalties for certain conduct, including suspension or revocation of license, civil fines, criminal fines, and imprisonment.

(Amends R.S. 22:1573(A), (C)-(E), and G and R.S. 44:4.1(B)(11); Adds R.S. 22:821(B)(38) and 1808.1-1808.13)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Insurance to the original bill:

1. Require licensed consultants to take three hours dedicated to the subject of flood insurance as part of their yearly continuing education requirements.
2. Allow only ten hours of excess hours of continuing education requirements be carried over yearly for all lines of consulting licenses.
3. Exempt insurance providers providing consulting as part of the placement of coverage and loss control and accident prevention consultants from requirement to obtain consulting license.
4. Restore language inadvertently removed from bill prior to filing regarding necessity for written contract between the consultant and the party receiving the consulting services.
5. Make technical changes.

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the engrossed bill:

1. Change document required to accompany notification of use of a trade name from a letter of registration of the name to a certified copy of the registration.

The House Floor Amendments to the reengrossed bill:

1. Clarify that a person who holds a combination of insurance and/or consultant licenses will only have to satisfy the required twenty-four hours of continuing education in total, and not for each license held.
2. Clarify that a licensed insurance producer who offers advice or consulting on certain subjects will not be considered an insurance consultant.
3. Add certified public accountants and actuaries who are members of the American Academy of Actuaries to those who will not be considered an insurance consultant.
4. Add Chartered Healthcare Consultants (ChHC) to those exempt from the precicensing requirements for a life insurance consultant license.
5. Add Certified Workers' Compensation Professionals (CWCP) to those exempt from the precicensing requirements for a property or casualty insurance consultant license.
6. Change the term of the prohibition on a consultant from soliciting, selling, or negotiating contracts of insurance for valuable consideration from twelve months

after the expiration of the consulting contract to the expiration of the consulting contract.

7. Change the term of the prohibition on an insurance producer from soliciting, selling, or negotiating contracts of insurance for valuable consideration from twelve months after the expiration of the consulting contract to the expiration of the consulting contract.
8. Prohibit an insurance consultant from having a direct or indirect financial interest in their consulting work, other than the consulting fee specified in the written contract.
9. Prohibit an insurance consultant from soliciting employment or engagement for or on behalf of any insurance producer, attorney, contractor, or other person with whom the consultant has a business relationship or financial interest.
10. Prohibit an insurance consultant from engaging in the unauthorized practice of law.
11. Make technical changes.