



# House of Representatives

**File No. 596**

General Assembly

January Session, 2005

**(Reprint of File No. 261)**

Substitute House Bill No. 6806  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
April 29, 2005

## **AN ACT CONCERNING INSURANCE PRODUCER COMPENSATION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2005*) (a) As used in this  
2 section:

3 (1) "Affiliate" means a person who (A) controls, is controlled by, or  
4 is under common control with a producer, and (B) is permitted to  
5 receive compensation pursuant to chapter 701a of the general statutes;

6 (2) "Compensation from an insurer or other third party" means  
7 payments, commissions, fees, awards, overrides, bonuses, contingent  
8 commissions, loans, stock options, gifts, prizes or other forms of  
9 valuable consideration, whether or not payable pursuant to a written  
10 agreement;

11 (3) "Compensation directly from the customer" does not include any  
12 fee or amount allowed under section 38a-707 of the general statutes  
13 and regulations adopted pursuant to said section or any fee or amount  
14 collected by or paid to the producer that does not exceed an amount

15 established by the commissioner pursuant to section 38a-707 of the  
16 general statutes;

17 (4) "Customer" does not include a person whose only relationship to  
18 the producer or affiliate with respect to the placement of insurance is  
19 as (A) a participant or beneficiary of an employee benefit plan, or (B) a  
20 person covered under a group or blanket insurance policy or group  
21 annuity contract;

22 (5) "Documented acknowledgement" means the customer's written  
23 consent, except that in the case of a purchase over the telephone or by  
24 electronic means for which written consent cannot reasonably be  
25 obtained, "documented acknowledgement" includes consent  
26 documented by the producer; and

27 (6) "Insurance producer" or "producer" means an insurance  
28 producer, as defined in section 38a-702a of the general statutes, except  
29 that "insurance producer" or "producer" does not include (A) a person  
30 such as a managing general agent, sales manager or wholesale broker  
31 who is licensed as an insurance producer and who acts only as an  
32 intermediary between an insurer and the customer's producer, or (B) a  
33 reinsurance intermediary.

34 (b) If an insurance producer or affiliate of such producer receives  
35 any compensation directly from a customer for the initial placement of  
36 insurance, neither the producer nor the affiliate shall accept or receive  
37 any compensation from an insurer or other third party for that  
38 placement of insurance unless the producer has, prior to the time the  
39 policy is delivered to the customer:

40 (1) Obtained the customer's documented acknowledgment that such  
41 compensation will be received by the producer or affiliate; and

42 (2) Disclosed the amount of compensation that the producer or  
43 affiliate will receive from the insurer or other third party for the  
44 placement, except that if the amount of compensation is not known at  
45 the time of disclosure, the producer shall disclose the specific method

46 for calculating such compensation and, if possible, a reasonable  
47 estimate of the amount.

48 (c) Subsection (b) of this section shall not apply to:

49 (1) An insurance producer who (A) does not receive compensation  
50 directly from the customer for the placement of insurance, and (B)  
51 discloses to the customer prior to the time the policy is delivered to the  
52 customer:

53 (i) That the producer will receive compensation from an insurer in  
54 connection with that placement; or

55 (ii) That, in connection with that placement of insurance, the  
56 insurance producer represents the insurer and that the producer may  
57 provide services to the customer for the insurer;

58 (2) The placement of insurance in surplus lines or residual markets;  
59 or

60 (3) A producer whose sole compensation is derived from  
61 commissions or other remuneration from the insurer.

62 Sec. 2. Subdivision (1) of section 38a-816 of the general statutes is  
63 repealed and the following is substituted in lieu thereof (*Effective*  
64 *October 1, 2005*):

65 (1) Misrepresentations and false advertising of insurance policies.  
66 Making, issuing or circulating, or causing to be made, issued or  
67 circulated, any estimate, illustration, circular or statement, sales  
68 presentation, omission or comparison which: (a) Misrepresents the  
69 benefits, advantages, conditions or terms of any insurance policy; (b)  
70 misrepresents the dividends or share of the surplus to be received, on  
71 any insurance policy; (c) makes any false or misleading statements as  
72 to the dividends or share of surplus previously paid on any insurance  
73 policy; (d) is misleading or is a misrepresentation as to the financial  
74 condition of any person, or as to the legal reserve system upon which  
75 any life insurer operates; (e) uses any name or title of any insurance

76 policy or class of insurance policies misrepresenting the true nature  
77 thereof; (f) is a misrepresentation, including, but not limited to, an  
78 intentional misquote of a premium rate, for the purpose of inducing or  
79 tending to induce to the purchase, lapse, forfeiture, exchange,  
80 conversion or surrender of any insurance policy; (g) is a  
81 misrepresentation for the purpose of effecting a pledge or assignment  
82 of or effecting a loan against any insurance policy; or (h) misrepresents  
83 any insurance policy as being shares of stock.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	New section
Sec. 2	<i>October 1, 2005</i>	38a-816(1)

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Insurance Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill as amended prohibits an insurance producer or his affiliate from receiving compensation from an insurer in certain situations. The bill also adds the act of an intentional misquote of a premium rate to the list of acts which constitute an unfair insurance practice. Under the Connecticut Unfair Insurance Practices Act (CUIPA), a person in violation of one of its provisions is subject to various monetary penalties. Therefore, the bill could result in a minimal revenue gain to the state.

House "A" makes the act of an intentional misquote of a premium rate to the list of acts which constitute an unfair insurance practice, which could result in a minimal revenue gain.

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**OLR Bill Analysis**

sHB 6806 (as amended by House "A")\*

**AN ACT CONCERNING INSURANCE PRODUCER  
COMPENSATION****SUMMARY:**

This bill expands what constitutes a misrepresentation of an insurance policy. Existing law makes a misrepresentation to induce the lapse, forfeiture, exchange, conversion, or surrender of an insurance policy an unfair and deceptive insurance practice. This bill makes a misrepresentation to induce the purchase of insurance an unfair and deceptive insurance practice. It also includes an intentional premium rate misquote as a misrepresentation.

This bill prohibits an insurance producer or his affiliate from receiving compensation from an insurer in certain situations. A producer or affiliate who receives compensation directly from a customer for an insurance sale is prohibited from also accepting compensation from an insurer or other third party for the sale unless, before he delivers the insurance policy to the customer, the producer (1) obtains the customer's acknowledgement that he or his affiliate will receive compensation from the insurer and (2) discloses the compensation amount. If the amount is unknown, he must give a reasonable estimate, if possible, and how the compensation is calculated.

The customer's acknowledgement must be in writing, but if the transaction occurs over the telephone or electronically, the producer can document the acknowledgement himself.

The bill does not apply to a producer (1) whose only compensation is from an insurer (e.g., he is the insurer's employee) and (2) who does not receive compensation from the customer and informs the customer before policy delivery that (a) he will receive compensation from the insurer or (b) he represents the insurer and can service the customer on the insurer's behalf. It also does not apply to (1) the placement of insurance in surplus lines or residual markets, (2) a person who is a licensed producer but only acts as an intermediary between the insurer

and the customer's producer, and (3) a reinsurance intermediary.

Compensation from a customer refers to commissions that are deductible from the customer's premium payment. Compensation from the insurer means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or other valuable consideration, whether agreed to in writing or not.

\*House Amendment "A" expands what constitutes a misrepresentation of an insurance policy, which is an unfair and deceptive insurance practice.

EFFECTIVE DATE: October 1, 2005

## **BACKGROUND**

### ***Unfair and Deceptive Insurance Practice***

When the insurance commissioner determines, after a hearing, that a person has committed an unfair and deceptive insurance practice, she may order fines, license suspension or revocation, restitution, or any combination of these. Fines are up to \$1,000 per violation, not to exceed \$10,000 maximum. If the person knowingly commits the violation, fines are up to \$5,000 per violation, not to exceed \$50,000 maximum in any six-month period.

### ***Related Bill***

SB 998 (File 517), which was reported favorably by the Insurance and Real Estate and Finance, Revenue and Bonding committees, increases the fines for an unfair and deceptive insurance practice. Under SB 998, fines are up to \$5,000 per violation, not to exceed \$50,000 maximum. If the person knowingly commits the violation, fines are up to \$10,000 per violation, not to exceed \$100,000 maximum in any six-month period.

## **COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 16    Nay 0