

CHAPTER 731

H.B. No. 841

AN ACT

relating to the licensing and regulation of certain insurance agents.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 21.07, Insurance Code, is amended by adding Section 1A to read as follows:

Sec. 1A. *DEFINITION. In this article, "person" means an individual or a general partnership composed of two or more individuals.*

SECTION 2. Section 2, Article 21.07, Insurance Code, is amended to read as follows:

Sec. 2. APPLICATION FOR LICENSE; TO WHOM LICENSE MAY BE ISSUED. (a) *Any person or corporation that desires to become an agent for a local mutual aid association, a local mutual burial association, a statewide mutual assessment corporation, a stipulated premium company, a county mutual insurance company, a casualty company writing accident and health insurance, or any other type of*

insurance carrier licensed to do business in the State of Texas, the agents of which are required to be licensed under this Article, shall submit to the State Board of Insurance an application for a license in the form required by the Board.

(b) The application must bear a signed endorsement by an officer or properly authorized representative of the insurance carrier that the individual applicant or each member of the partnership or each officer, director, and shareholder of the corporation is trustworthy, of good character and good reputation, and qualified to hold himself or the partnership or the corporation out in good faith to the general public as an insurance agent, and that the insurance carrier desires that the applicant act as an insurance agent to represent it in this State.

(c) The Board shall issue a license to an individual or to individuals as partners of a general partnership engaging in the insurance business. Each partner in the partnership must be named in the license, and each partner named in the license must be licensed individually as an agent under this Article [~~Hereafter, when a person or corporation shall desire to become an agent for a (i) local mutual aid association (ii) a local mutual burial association, (iii) a statewide mutual assessment corporation, (iv) a stipulated premium company, (v) a county mutual insurance company, (vi) a casualty company writing accident and health insurance, or (vii) any other type of insurance carrier licensed to do business in the State of Texas and which insurance carrier's agents are required to be licensed under the provisions of Article 21.07, Texas Insurance Code, 1951 as amended, such person or corporation shall, in such form and giving such information as may be reasonably required, make application to the State Board of Insurance for a license to act as an agent. The application shall be accompanied by a certificate on form to be prescribed and furnished by the State Board of Insurance and signed by an officer or properly authorized representative of the insurance carrier the applicant proposes to represent, stating that the insurance carrier has investigated the character and background of the applicant and is satisfied that he or its officers, directors, and shareholders are trustworthy and qualified to hold himself or the corporation out in good faith to the general public as an insurance agent, and that the insurance carrier desires that the applicant act as an insurance agent to represent it in this state.~~]

(d) [(b)] The Board shall issue a license to a corporation if the Board finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as an agent covered by this Article

(2) That every officer, director, and shareholder of the corporation is individually licensed under the provisions of this Article, ~~or that every officer and director of the corporation is individually licensed under this Article, that the corporation is a wholly owned subsidiary of a parent corporation that is licensed under this Article and that every shareholder of the parent corporation is individually licensed under this Article; and~~

(3) That such corporation will have the ability to pay any sums up to \$25,000 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error, or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business under this Article. The term "customer" means any person, firm, or corporation to whom such corporation sells or attempts to sell a policy of insurance, or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(A) an errors and omissions policy insuring such corporation against errors and omissions in at least the sum of \$100,000 [~~\$50,000~~] with no more than a \$10,000 [~~\$2,500~~] deductible feature issued by an insurance company licensed to do business in the State of Texas or, if a policy cannot be obtained from a company licensed to do business in Texas, a policy issued by a company not licensed to do business in Texas on filing an affidavit with the State Board of Insurance stating the inability to obtain coverage and receiving the Board's approval;

(B) a bond executed by such corporation as principal and a surety company authorized to do business in this State, as surety, in the principal sum of \$25,000, payable to the

State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(C) a deposit of cash or securities of the class authorized by Articles 2.08 and 2.10, Insurance Code, as amended, having a fair market value of \$25,000 with the State Treasurer. The State Treasurer is directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Board evidence satisfactory to it that the corporation has withdrawn from business and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of an agent under this Article without obtaining a license.

If at any time, any corporation holding an agent's license does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as an agent shall be cancelled or denied in accordance with the provisions of Sections 10 and 11 of this Article; provided, however, that should any person who is not a licensed agent under this Article acquire shares in such a corporation by devise or descent, he shall have a period of 90 days from date of acquisition within which to obtain a license or to dispose of the shares to ~~of~~ a person licensed under this Article.

Should such an unlicensed person acquire shares in a corporation and not dispose of them within a period of 90 days to a licensed agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation, as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the board of directors and such shareholder or his personal representative, or at a price and upon such terms as may be provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as an agent under this Article shall file, under oath, a list of the names and addresses of all of its officers, directors, and shareholders with its application for renewal license.

Each corporation shall notify the State Board of Insurance upon any change in its officers, directors, or shareholders not later than the 30th day after the date on which the change becomes effective.

No other corporation may own any interest in a corporation licensed under this Article, and each owner of an interest in a corporation licensed under this Article shall be a natural person who holds a valid license issued under this Article.

SECTION 3. Article 21.07, Insurance Code, is amended by adding Section 2A to read as follows:

Sec. 2A. PERSONS OTHER THAN LICENSED AGENTS WHO MAY SHARE IN PROFITS OF AN AGENT. (a) On the death of a licensed agent who is a member of an agency partnership, the surviving spouse and children, if any, of the deceased partner, or a trust for the surviving spouse and children may share in the profits of such agency partnership during the lifetime of the surviving spouse or children, as the case may be, as provided by a written partnership agreement, or in the absence of any written agreement, as agreed by the surviving partner or partners and the surviving spouse, the trustee, and the legal representative of the surviving child or children.

(b) *On the death of a licensed agent, who is a sole proprietorship, unless otherwise provided by the will admitted to probate of that deceased agent, the surviving spouse and children, if any, of the deceased agent, or a trust for the surviving spouse or children, may share in the profits of the continuance of the agency business of the deceased agent, if the agency business is continued by a licensed agent. The surviving spouse, trusts, or children may participate in the profits during the lifetime of the surviving spouse and children. The surviving spouse, trusts, or children are not required to qualify as agents in order to participate in the profits of the agency, but may not do or perform any act of an agent in connection with the continuance of the agency business without first having been licensed as an agent. A licensed agent who is a sole proprietorship may transfer an interest in his agency to his children, or a trust for his children, and may operate that interest for their use and benefit. The children may share in the profits of the agency during their lifetime, and during that time may not be required to qualify as an agent in order to participate in those profits, but may not perform any act of an agent in connection with the agency business without first having been licensed as an agent.*

(c) *On the death of a shareholder in a corporate licensed agency, the surviving spouse and children, if any, of the deceased shareholder, or a trust for the surviving spouse and children may share in the profits of the corporate agency during the lifetime of the surviving spouse or children as provided by a contract entered into by and between all of the shareholders and the corporation. A surviving spouse, surviving children, or trusts are not required to individually qualify as an agent in order to participate in the profits, but may not perform any act of an agent on behalf of the corporation without having qualified as an agent. A shareholder in a corporate licensed agency may, if provided by a contract entered into by and between all of the shareholders and the corporation, transfer an interest in the agency to his children or a trust for his children. The children or trusts may share in the profits of the agency to the extent of that interest during their lifetime. The children or trusts may not be required to qualify as an agent to participate in those profits, but may not perform any act of an agent on behalf of the corporation without having qualified as an agent.*

SECTION 4. Section 3, Article 21.07, Insurance Code, is amended to read as follows:

Sec. 3. ISSUANCE OF LICENSE UNDER CERTAIN CIRCUMSTANCES. After the State Board of Insurance has determined that such applicant is of good character and trustworthy, the State Board of Insurance shall issue a license to such person, *partnership*, or corporation in such form as it may prepare authorizing such applicant to write the types of insurance authorized by law to be issued by applicant's appointing insurance carrier, except that:

(a) Such applicant shall not be authorized to write health and accident insurance unless: (i) applicant, if not a *partnership* or corporation, shall have first passed a written examination as provided for in this Article 21.07, as amended, or (ii) applicant will act only as a ticket-selling agent of a public carrier with respect to accident life insurance covering risks of travel or as an agent selling credit life, health and accident insurance issued exclusively in connection with credit transactions, or (iii) applicant will write policies or riders to policies providing only lump sum cash benefits in the event of the accidental death, or death by accidental means, or dismemberment, or providing only ambulance expense benefits in the event of accident or sickness; and

(b) Such applicant, if not a *partnership* or corporation, shall not be authorized to write life insurance in excess of \$5,000 [~~Five Thousand Dollars (\$5,000.00)] upon any one life unless: (i) applicant, if not a *partnership* or corporation, shall have first passed a written examination as provided for in this Article 21.07, as amended, or (ii) applicant will act only as a ticket-selling agent of a public carrier with respect to accident life insurance covering risks of travel or as an agent selling credit life, health and accident insurance issued exclusively in connection with credit transactions, or (iii) applicant will write policies or riders to policies providing only lump sum cash benefits in the event of the accidental death, or death by accidental means, or dismemberment, or providing only ambulance expense benefits in the event of accident or sickness.~~

SECTION 5. Subsection (a), Section 4, Article 21.07, Insurance Code, is amended to read as follows:

(a) Each applicant for a license under the provisions of this Article 21.07, Texas Insurance Code, 1951, as amended, who desires to write health and accident insurance, other than as excepted in Section 3 of this Article 21.07, within this State shall submit to a personal written examination prescribed by the State Board of Insurance and administered in the English or Spanish language to determine his competency with respect to health and accident insurance and his familiarity with the pertinent provisions of the laws of the State of Texas relating to health and accident insurance, and shall pass the same to the satisfaction of the State Board of Insurance; except that no written examination shall be required of:

(i) An applicant for the renewal of a license issued by the State Board of Insurance pursuant to Article 21.07, Texas Insurance Code, 1951, as amended, which is currently in force at the effective date of this Act;

(ii) An applicant whose license expired less than one year prior to the date of application may, in the discretion of the State Board of Insurance, be issued a license without written examination, provided such prior license granted such applicant the right to sell health and accident insurance; or

(iii) An applicant that is a *partnership or* corporation.

SECTION 6. Subsection (a), Section 4A, Article 21.07, Insurance Code, is amended to read as follows:

(a) Each applicant for a license under the provisions of this Article 21.07, Insurance Code, as amended, who desires to write life insurance in excess of \$5,000 [~~Five Thousand Dollars (\$5,000.00)~~] upon any one life, other than as excepted in Section 3 of this Article 21.07, within this state shall submit to a personal written examination prescribed by the State Board of Insurance and administered in the English or Spanish language to determine his competency with respect to life insurance and his familiarity with the pertinent provisions of the laws of the State of Texas relating to life insurance and shall pass the same to the satisfaction of the State Board of Insurance; except that no written examination shall be required of an applicant that is a *partnership or* corporation.

SECTION 7. Section 11, Article 21.07, Insurance Code, is amended to read as follows:

Sec. 11. JUDICIAL REVIEW OF ACTS OF STATE BOARD OF INSURANCE. *If the commissioner refuses an application for license as provided by this Article, or suspends, revokes, or refuses to renew a license at a hearing as provided by this Article, and this action is upheld on review to the Board as provided by this code, and if the applicant or accused is dissatisfied with the action of the commissioner and the Board, the applicant or accused may appeal from the action as provided by Section (f), Article 1.04, of this code [If the said Board shall refuse an application for any license provided for in this Article, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit against the State Board of Insurance as defendant in any of the District Courts of Travis County, Texas, or in any District Court in the county of the applicant's residence or principal place of business, and not elsewhere, within twenty (20) days from the date of the order of said State Board of Insurance.*

~~[The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The State Board of Insurance shall not be required to give any appeal bond in any cause arising hereunder].~~

SECTION 8. Section 1, Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended by adding Section 1A to read as follows:

Sec. 1A. In this Act, "person" means an individual or a general partnership composed of two or more individuals.

SECTION 9. Section 4, Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 4. APPLICATION FOR LICENSE, TO WHOM LICENSE MAY BE ISSUED. (a) Each applicant for a license to act as a life insurance agent within this State shall file with the Insurance Commissioner his or its written application on forms furnished by the Commissioner. The application shall be signed and duly sworn by the applicant. The prescribed form shall require the applicant to state his full name; residence; age; occupation and place of business for five years preceding date of the application; whether applicant has ever held a license to solicit life, or any other insurance in any State; whether he has been refused, or has had suspended or revoked a license to solicit life, or any other insurance in any State; what insurance experience, if any, he has had; what instruction in life insurance and in the insurance laws of this State he has had or expects to have; whether any insurer or general agent claims applicant is indebted under any agency contract, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto; whether applicant has had an agency contract cancelled and, if so, when, by what company or general agent and the reasons therefor; whether applicant will devote all or part of his efforts to acting as a life insurance agent, and, if part only, how much time he will devote to such work, and in what other business or businesses he is engaged or employed; whether, if the applicant is married, the applicant's spouse has ever applied for or held a license to solicit life, or any other insurance in any State and whether such license has been refused, suspended, or revoked; and such other information pertinent to the licensing of such agent as the Insurance Commissioner in his discretion may prescribe. It is not intended that the Insurance Commissioner shall be authorized to deny a license to an applicant on the sole ground that he will act only part time as a life insurance agent.

(b) The application shall be accompanied by a certificate on forms furnished by the Insurance Commissioner and signed by an officer or properly authorized representative of the legal reserve life insurance company he or it proposes to represent, stating that the insurer has investigated the character and background of the applicant and is satisfied that he or the partners of the partnership or the officers, directors, and shareholders of the corporation are trustworthy and qualified to hold himself or itself out in good faith to the general public as a life insurance agent, that the applicant has completed the educational requirements as provided in sub-section (e), Section 4 of this Act, and that the insurer desires that the applicant be licensed as a life insurance agent to represent it in this State.

(c) The application, when filed, shall be accompanied by a nonrefundable filing fee in an amount not to exceed \$50 as determined by the State Board of Insurance and, in the case of applicants required to take an examination administered by the Commissioner of Insurance as hereafter prescribed, unless the State Board of Insurance accepts a qualifying examination administered by a testing service, as provided under Article 21.01-1, Insurance Code, as amended, by an examination fee in an amount not to exceed \$20 as determined by the State Board of Insurance. The examination fee shall not be returned for any reason other than for failure to appear and take the examination after the applicant has given at least 24 hours' notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval. A new examination fee shall be paid for each and every examination.

(d) *The Board shall issue a license to individuals as partners in a general partnership engaging in the insurance business. Each partner in the partnership must be named in the license, and each partner named in the license must qualify as an agent under this Act.*

(e) The Insurance Commissioner shall issue a license to a corporation if he finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act or the Texas Professional Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as agent under this Act;

(2) That every officer, director, and shareholder of the corporation is individually licensed as an agent under the provisions of this Act, *or that every officer and director of the corporation is individually licensed under this Act, that the corporation is a wholly owned subsidiary of a parent corporation that is licensed under this Act, and that every shareholder of the parent corporation is individually licensed under this Act;* and

(3) That such corporation will have the ability to pay any sums up to ~~\$25,000~~ *\$25,000* [~~\$25,000.00~~] which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error, or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business as under this Act. The term "customer" as used herein shall mean any person, firm, or corporation to whom such corporation sells or attempts to sell a policy of insurance or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(A) An errors and omissions policy insuring such corporation against errors and omissions in at least the sum of ~~\$100,000~~ *\$100,000* [~~\$50,000.00~~] with no more than a ~~\$10,000~~ *\$10,000* [~~\$2,500.00~~] deductible feature issued by an insurance company licensed to do business in the State of Texas or, if a policy cannot be obtained from a company licensed to do business in Texas, a policy issued by a company not licensed to do business in Texas on filing an affidavit with the State Board of Insurance stating the inability to obtain coverage and receiving the Board's approval; or

(B) A bond executed by such corporation as principal and a surety company authorized to do business in this State, as surety, in the principal sum of ~~\$25,000~~ *\$25,000* [~~\$25,000.00~~], payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(C) A deposit of cash or securities of the class authorized by Articles 2.08 and 2.10 of the Insurance Code, having a fair market value of ~~\$25,000~~ *\$25,000* [~~\$25,000.00~~] with the State Treasurer. The State Treasurer is hereby authorized and directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Insurance Commissioner evidence satisfactory to it that the corporation has withdrawn from business and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as hereinbefore provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of an agent under this Act without obtaining a license.

If at any time, any corporation holding a license under this Act does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as an agent shall be cancelled or denied in accordance with the provisions of Sections 12 and 13 of this Act; provided, however, that should any person who is not an agent licensed under this Act acquire shares in such a corporation by devise or descent, they shall have a period of 90 days from date of acquisition within which to obtain a license as an agent or to dispose of the shares to an agent licensed under this Act.

Should such an unlicensed person acquire shares in such a corporation and not dispose of them within said period of 90 days to a licensed agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the

board of directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as an agent under this Act shall file, under oath, a list of the names and addresses of all of its officers, directors, and shareholders with its application for renewal license.

Each corporation licensed as an agent under this Act shall notify the State Board of Insurance upon any change in its officers, directors, or shareholders not later than the 30th day after the date on which the change became effective.

No other corporation may own any interest in a corporation licensed under this Act, and each owner of an interest in a corporation licensed under this Act shall be a natural person who holds a valid license issued under this Act.

No association[~~partnership~~] or any legal entity of any nature, other than an individual person or corporation, may be licensed as a life insurance agent.

(f) ~~(e)~~ Each applicant, prior to sitting for the written examination as provided for in Section 5 of this Act, shall complete, under the supervision of such sponsoring insurer, an educational program that shall include:

(1) such texts as may be prescribed by the Commissioner of Insurance on the recommendation of the Advisory Board as provided in Subsection (c) of Section 5 of this Act; and

(2) materials that will provide the applicant with the basic knowledge of:

(A) the broad principles of insurance, licensing, and regulatory laws of this State; and

(B) the obligations and duties of a life insurance agent.

SECTION 10. Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended by adding Section 4A to read as follows:

Sec. 4A. PERSONS OTHER THAN LICENSED LIFE AGENTS WHO MAY SHARE IN PROFITS OF A LIFE AGENT. (a) On the death of a licensed life agent who is a member of an agency partnership, the surviving spouse and children, if any, of the deceased partner, or a trust for the surviving spouse and children, may share in the profits of the agency partnership during the lifetime of the surviving spouse or children, as provided by a written partnership agreement, or in the absence of any written agreement, as agreed by the surviving partner or partners and the surviving spouse, the trustee, and the legal representative of the surviving children. The surviving spouse and any surviving children or trusts are not required to qualify as life agents to participate in the profits but may not perform any act of a life agent on behalf of the partnership without having qualified as a life agent. A licensed life agent who is a member of an agency partnership may, with the approval of the other members of the partnership, transfer an interest in the agency partnership to his children or a trust for the children and may operate that interest for their use and benefit. The children or trusts may share in the profits of the agency partnership. The children or trusts are not required to qualify as a life agent to participate in the profits but may not perform any act of a life agent on behalf of the partnership without having qualified as a life agent.

(b) On the death of a licensed life agent, who is a sole proprietorship, unless otherwise provided by the will admitted to probate of the deceased agent, the surviving spouse and children, if any, of the deceased agent, or a trust for the surviving spouse and children, may share in the profits of the continuance of the agency business of the deceased agent, if the agency business is continued by a licensed life agent. The surviving spouse, trusts, or children may participate in the profits during the lifetime of the surviving spouse and children. The surviving spouse, trusts, or children are not required to qualify as life agents in order to participate in the profits of the agency but may not perform any act of a life agent in connection with the continuance of the agency business without first having been licensed as a life agent. A licensed life agent who is a sole proprietorship may transfer an interest in his agency

to his children, or a trust for his children, and may operate that interest for their use and benefit. The children may share in the profits of the life agency during their lifetime, and during that time are not required to qualify as a life agent in order to participate in those profits but may not perform any act of a life agent in connection with the agency business without first being licensed as a life agent.

(c) On the death of a shareholder in a corporate licensed life agency, the surviving spouse and children, if any, of the deceased shareholder, or a trust for the surviving spouse and children may share in the profits of the corporate agency during the lifetime of the surviving spouse or children, if and as provided by a contract entered into by and between all of the shareholders and the corporation. The surviving spouse, surviving children, or trusts are not required to individually qualify as a life agent in order to participate in those profits but may not perform any act of a life agent on behalf of the corporation without having qualified as a life agent. A shareholder in a corporate licensed life agency may, if provided by a contract entered into by and between all of the shareholders and the corporation, transfer an interest in the agency to his children or a trust for his children, and the children or trusts may share in the profits of the agency to the extent of the interest during their lifetime. The children or trusts are not required to qualify as a life agent to participate in the profits but may not perform any act of a life agent on behalf of the corporation without having qualified as a life agent.

SECTION 11. Subsections (a) and (d), Section 5, Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), are amended to read as follows:

(a) Each applicant for a license to act as a life insurance agent within this State shall submit to a personal written examination administered in the English or Spanish language, and as shall be prescribed by the State Board of Insurance, to determine his competence with respect to insurance and annuity contracts and his familiarity with the pertinent provisions of the laws of this State, and shall pass the same to the satisfaction of the State Board of Insurance; except that no such written examination shall be required of:

(1) An applicant for the renewal of a license issued by the State Board of Insurance pursuant to Article 21.07, Texas Insurance Code, 1951, which is currently in force at the time of the effective date of this Act;

(2) An applicant whose license as a life insurance agent expired less than one year prior to the date of application may, in the discretion of the State Board of Insurance, be issued a license without written examination;

(3) A person who holds the designation Chartered Life Underwriter (CLU);

(4) An applicant that is a *partnership* or corporation.

(d) An applicant other than a *partnership* or corporation for a license to act as a combination life insurance agent for a combination company, or as an industrial life agent for an industrial company, may, in lieu of taking and passing to the satisfaction of the Commissioner a personal written examination as provided in Sub-section (a) of this Section 5, submit to a personal written examination given by the combination or industrial insurer for which he is to be licensed, subject to the following definitions and conditions:

(1) A combination life insurance agent is hereby defined as an agent writing both weekly premium life insurance on a debit basis and ordinary contracts of life insurance. An industrial life agent is an agent writing only weekly life insurance on a debit basis. A combination company is hereby defined as an insurer actually writing weekly premium life insurance on a debit basis and ordinary contracts of life insurance. An industrial company is an insurer writing only weekly premium life insurance on a debit basis.

(2) Any combination or industrial insurer desiring to qualify to administer the examination to its agents shall file with the Commissioner a complete outline and explanation of the course of study and instruction to be given such applicants and the nature and manner of conducting the examinations of applicants and, after official approval thereof by the Commissioner, may administer such examinations.

(3) The combination or industrial insurer shall certify as to each applicant that he has completed the approved course of study and instruction and has successfully passed the examination in writing without aid.

(4) It shall be the duty of the Commissioner to investigate the manner and method of instruction and examination of each combination and industrial insurer as often as deemed necessary by the Commissioner and the Commissioner may, in his discretion, withdraw from any insurer the privilege of examining agents in lieu of the examination prescribed in Sub-section (a) of this Section 5.

(5) The license to act as a life insurance agent issued to an applicant pursuant to the provisions of this Sub-section (d) shall be stamped COMBINATION OR INDUSTRIAL LICENSE on its face and shall automatically expire and be of no further force and effect when the holder ceases to act as a combination or industrial agent for a combination or industrial company.

SECTION 12. Section 13, Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 13. JUDICIAL REVIEW OF ACTS OF COMMISSIONER. *If the Commissioner refuses an application for license as provided by this Act or suspends, revokes, or refuses to renew a license at a hearing provided by this Act, and the action is upheld on review to the Board as provided by this Code, and if the applicant or accused is dissatisfied with the action of the Commissioner and the Board, the applicant or accused may appeal from that action in accordance with Section (f), Article 1.04, Insurance Code* [~~If the said Insurance Commissioner shall refuse an application for any license provided for in this Act, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit against the Insurance Commissioner as defendant in any of the District Courts of Travis County, Texas, or in any District Court in the county of the applicant's residence or principal place of business, and not elsewhere, within twenty (20) days from the date of the order of said Insurance Commissioner.~~

~~[Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder].~~

SECTION 13. Subsection (d), Section 16, Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended to read as follows:

(d) A written examination is not required of:

(1) an applicant for license under this Section 16 if the applicant has previously been licensed and currently holds on the effective date of this section a valid license issued by the State Board of Insurance under either Article 21.07, Article 21.07-1, or Article 21.14 of this code;

(2) an applicant whose license expires less than one year before the date of application and who may, in the discretion of the State Board of Insurance, be issued a license without written examination, provided the prior expired license granted the applicant the right to act as an agent for accident and health insurance; or

(3) an applicant that is a *partnership or corporation*; provided, however, that a *partnership or corporation* may be licensed hereunder only if it otherwise complies with the provisions of [Subsection (d) of] Section 4 of this article, but in the application of such section to such compensation hereunder, any requirement pertaining to or reference therein to "life insurance" shall be changed and limited to "health and accident insurance" only as is intended by the terms of the Section 16.

SECTION 14. Chapter 757, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.07-3, Vernon's Texas Insurance Code), is amended by adding Section 4A to read as follows:

Sec. 4A. PERSONS OTHER THAN LICENSED MANAGING GENERAL AGENTS WHO MAY SHARE IN PROFITS OF A MANAGING GENERAL AGENT. (a) On the death of a licensed managing general agent who is a member of an agency partnership, the surviving spouse and children, if any, of the deceased partner, or a trust for the surviving spouse and children may share in the profits of the agency partnership during the lifetime of the surviving spouse or children, as provided by a written partnership agreement, or in the absence of any written agreement, as agreed by the surviving partner or partners and the surviving spouse, the trustee, and the legal representative of the surviving children. Such surviving spouse and any surviving children or trusts are not required to qualify as managing general agents to participate in the profits but may not perform any act of a managing general agent on behalf of the partnership without having qualified as a managing general agent. A licensed managing general agent who is a member of an agency partnership may, with the approval of the other members of the partnership, transfer an interest in the agency partnership to his children or a trust for his children, and may operate that interest for their use and benefit. The children or trusts are not required to qualify as a managing general agent to participate in the profits but may not perform any act of a managing general agent on behalf of the partnership without having qualified as a managing general agent.

(b) On the death of a licensed managing general agent, who is a sole proprietorship, unless otherwise provided by the will admitted to probate of the deceased agent, the surviving spouse and children, if any, of the deceased agent, or a trust for the surviving spouse or children, may share in the profits of the continuance of the agency business of the deceased agent, if the agency business is continued by a licensed managing general agent. The surviving spouse, trusts, or children may participate in the profits during the lifetime of the surviving spouse and children. The surviving spouse, trusts, or children are not required to qualify as managing general agents in order to participate in the profits of the agency but may not perform any act of a managing general agent in connection with the continuance of the agency business without first having been licensed as a managing general agent. A licensed managing general agent who is a sole proprietorship may transfer an interest in his agency to his children, or a trust for his children, and may operate that interest for their use and benefit. The children may share in the profits of the managing general agency during their lifetime, and during that time are not required to qualify as a managing general agent in order to participate in those profits, but may not perform any act of a managing general agent in connection with the agency business without first being licensed as a managing general agent.

(c) On the death of a shareholder in a corporate licensed managing general agency, the surviving spouse and children, if any, of the deceased shareholder, or a trust for the surviving spouse and children may share in the profits of the corporate agency during the lifetime of the surviving spouse or children, if and as provided by a contract entered into by and between all of the shareholders and the corporation. The surviving spouse, surviving children, or trusts are not required to individually qualify as a managing general agent in order to participate in the profits but may not do or perform any act of a managing general agent on behalf of the corporation without having qualified as a managing general agent. A shareholder in a corporate licensed managing general agency may, if provided by a contract entered into by and between all of the shareholders and the corporation, transfer an interest in the agency to his children or a trust for his children, and the children or trusts may share in the profits of the agency to the extent of the interest during their lifetime. The children or trusts are not required to qualify as a managing general agent to participate in those profits but may not perform any act of a managing general agent on behalf of the corporation without having qualified as a managing general agent.

SECTION 15. Section 14, Chapter 757, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.07-3, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 14. JUDICIAL REVIEW OF ACTS OF COMMISSIONER AND THE BOARD. If the commissioner shall refuse an application for license as provided in this Act, or shall suspend, revoke or refuse to renew any license at a hearing as ~~heretofore~~ provided by *this Act*, and such action is upheld upon review to the board as in this Code provided, and if the applicant or accused thereafter ~~is~~ ~~be~~ dissatisfied with the action of the commissioner and the board, ~~the applicant or accused may appeal from that action in accordance with Section (f), Article 1.04, Insurance Code [he may appeal from such action by filing suit against the commissioner and the board as defendants in any of the district courts of Travis County, Texas, or in any district court in the county of applicant's residence, and not elsewhere, within 20 days from the date of the order and action of the said board.~~

~~[Said action shall have precedence over all other causes of a different nature on the docket. Upon the filing and perfection of such appeal, orders of the commissioner and the board shall be suspended and held for naught until a final court order or decree affirming such action. This appeal shall not be limited to questions of law and shall be tried and determined upon trial de novo to the same extent as now provided in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The commissioner and the board shall not be required to give any appeal bond in any cause arising hereunder].~~

SECTION 16. Subsection (c), Section 3, Article 21.14, Insurance Code, is amended to read as follows:

(c) The Board shall issue a license to a corporation if the Board finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act or the Texas Professional Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as a local recording agent; and

(2) That every officer, director and shareholder of the corporation is individually licensed as a local recording agent under the provisions of this Insurance Code, except as may be otherwise permitted by this Section or Section 3a of this article, ~~or that every officer and director of the corporation is individually licensed as a local recording agent under this Insurance Code, that the corporation is a wholly owned subsidiary of a parent corporation that is licensed as a local recording agent under this Insurance Code, and that every shareholder of the parent corporation is individually licensed as a local recording agent under this Insurance Code, and except as specifically provided by this article, [and]~~ that no shareholder of the corporation is a corporate entity; and

(3) That such corporation will have the ability to pay any sums up to ~~\$25,000 [Twenty-Five Thousand Dollars (\$25,000.00)]~~ which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business as a local recording agent. The term "customer" as used herein shall mean any person, firm or corporation to whom such corporation sells or attempts to sell a policy of insurance, or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(a) An errors and omissions policy ~~[issued by an insurance company licensed to do business in the State of Texas]~~ insuring such corporation against errors and omissions in at least the sum of ~~\$100,000 [One Hundred Thousand Dollars (\$100,000.00)]~~, with no more than a ~~\$10,000 [Five Thousand Dollars (\$5,000.00)]~~ deductible feature ~~issued by an insurance company licensed to do business in the State of Texas or, if a policy cannot be obtained from a company licensed to do business in Texas, a policy issued by a company not licensed to do business in Texas, on filing an affidavit with the State Board of Insurance stating the inability to obtain coverage and receiving the Board's approval; or~~

(b) A bond executed by such corporation as principal and a surety company authorized to do business in this state, as surety, in the principal sum of \$25,000 [~~Twenty-Five Thousand Dollars (\$25,000.00)~~], payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(c) A deposit of cash or securities of the class authorized by Articles 2.08 and 2.10 of this Code, having a fair market value of \$25,000 [~~Twenty-Five Thousand Dollars (\$25,000.00)~~] with the State Treasurer. The State Treasurer is hereby authorized and directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Board evidence satisfactory to it that the corporation has withdrawn from business, and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as hereinbefore provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of a local recording agent without obtaining a local recording agent's license. The Board shall not require a corporation to take the examination provided in Section 6 of this Article 21.14.

If at any time, any corporation holding a local recording agent's license does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as a local recording agent shall be cancelled or denied in accordance with the provisions of Sections 16, 17 and 18 of this Article 21.14; provided, however, that should any person who is not a licensed local recording agent acquire shares in such a corporation by devise or descent, they shall have a period of 90 [~~ninety (90)~~] days from date of acquisition within which to obtain a license as a local recording agent or to dispose of the shares to a licensed local recording agent except as may be permitted by Section 3a of this article.

Should such an unlicensed person, except as may be permitted by Section 3a of this article, acquire shares in such a corporation and not dispose of them within said period of 90 [~~ninety (90)~~] days to a licensed local recording agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation, as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the Board of Directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the Articles of Incorporation, the Bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as a local recording agent shall file, under oath, a list of the names and addresses of all of its officers, directors and shareholders with its application for renewal license.

Each corporation licensed as a local recording agent shall notify the State Board of Insurance upon any change in its officers, directors or shareholders not later than the 30th day after the date on which the change became effective.

The term "firm" as it applies to local recording agents in Sections 2, 12 and 16 of this Article 21.14 shall be construed to include corporations.

SECTION 17. Section 18, Article 21.14, Insurance Code, is amended to read as follows:

Sec. 18. APPEAL. *If the Commissioner refuses an application for license as provided by this article, or suspends, revokes, or refuses to renew any license at a hearing as provided by this article, and the action is upheld on review to the Board as provided by this Code, and if the applicant or accused is dissatisfied with the action of the Commissioner and the Board, the applicant or accused may appeal from the*

~~action in accordance with Section (f), Article 1.04, of this Code [If the said Board shall refuse an application for any license provided for in this article, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit in any of the District Courts of Travis County, Texas, or in any District Court in the County of the applicant's residence, and not elsewhere within twenty (20) days from the date of the order of said Board, such appeal to the District Court shall be by a trial de novo, as such term is commonly used and intended in an appeal from justice court to county court. On the date of the rendition of any such order of the Board, a registered letter containing a copy of such order shall be mailed by the Board to the applicant or the accused involved].~~

SECTION 18. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 6, 1987, by the following vote: Yeas 136, Nays 2, 1 present, not voting. Passed by the Senate on May 23, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 18, 1987.

Effective June 18, 1987.