

1 House BILL NO. 388
 2 INTRODUCED BY Rasmussen

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE INSURANCE
 5 CONSULTANTS TO ACQUIRE A LICENSE FROM THE COMMISSIONER OF
 6 INSURANCE; TO PROVIDE FOR THEIR LICENSURE; AND PENALTIES FOR
 7 VIOLATION."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Short title. This act may be cited as "The
 11 Montana Insurance Consultant Licensure Act".

12 Section 2. Prohibition. (1) Any person, firm,
 13 association, or corporation not licensed as an insurance
 14 agent, broker, or consultant in this state who identifies or
 15 holds himself or itself out to be an insurance advisor,
 16 insurance consultant or insurance counselor without having
 17 been licensed as an insurance agent or broker under this
 18 act; or any person, firm, association, or corporation who
 19 uses any other designation or title which is likely to
 20 mislead the public and holds himself or itself out in any
 21 manner as having particular insurance qualifications other
 22 than those for which he may be otherwise licensed or
 23 otherwise qualified, is guilty of a misdemeanor and upon
 24 conviction shall be fined one thousand five hundred dollars
 25 (\$1,500).

1 (2) Any person, firm, association, or corporation not
 2 licensed as an insurance agent, broker, or consultant with
 3 respect to the relevant kinds of insurance who receives any
 4 money, fee, commission, or thing of value for examining,
 5 appraising, reviewing, or evaluating any insurance policy,
 6 annuity or pension contract, plan or program or who shall
 7 make recommendations or give advice with regard to any of
 8 the above without first having been licensed by the
 9 commissioner as an insurance agent, broker or consultant is
 10 guilty of a misdemeanor and upon conviction shall be fined
 11 one thousand five hundred dollars (\$1,500).

12 Section 3. Application -- fee -- expiration. Before
 13 an insurance consultant's license is issued or renewed the
 14 prospective licensee shall: (1) properly file in the
 15 office of the commissioner a written application or forms
 16 the commissioner prescribes, and

17 (2) pay a fee of fifty dollars (\$50). Sublicensees
 18 may be included in the application when properly listed and
 19 a fee of fifty dollars (\$50) each sublicensee paid. Every
 20 consultant's license shall expire on the thirty-first day of
 21 May next following the date of issue.

22 Section 4. Commissioner may issue license --
 23 limitations. The commissioner may issue an insurance
 24 consultant's license to any person, firm, association, or
 25 corporation who or which has complied with the requirements

INTRODUCED BILL

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1 of this chapter with respect to either (1) life insurance,
 2 meaning all of those kinds of insurance authorized in
 3 sections 40-2902, 40-2903, 40-3901, 40-4101, 40-4104,
 4 40-4204 or (2) general insurance, meaning all of those kinds
 5 of insurance authorized in sections 40-2903 through 40-2908
 6 inclusive, as specified in such license. Any license issued
 7 to a firm or association authorizes only the members of the
 8 firm or association named in the license as sublicensees to
 9 act individually as consultants thereunder; and any license
 10 issued to a corporation authorizes only the officers and
 11 directors thereof named in the license as sublicensees to
 12 act individually as consultants thereunder. Each
 13 sublicensee named in a license shall be qualified to obtain
 14 a license as an insurance consultant, and for each
 15 sublicensee the fee specified in subsection (3) of this act
 16 shall be paid. Every sublicensee acting individually as a
 17 consultant under a license issued to a firm, association or
 18 corporation is authorized to act only in the name of that
 19 firm, association or corporation.

20 Section 5. Examination -- fee. In order to determine
 21 the competency of every applicant for license as an
 22 insurance consultant, the commissioner shall require an
 23 applicant to pass a personal, written examination concerning
 24 the kinds of insurance specified in section 4. The fee for
 25 each examination is fifty dollars (\$50). The commissioner

1 may accept, in lieu of any part or all of an examination,
 2 the result of any previous written examination given by the
 3 commissioner, the American college of life underwriters, the
 4 American college of property and liability underwriters, the
 5 society of actuaries, the casualty actuarial society, or the
 6 American academy of actuaries.

7 Section 6. Commissioner may refuse to issue license.
 8 The commissioner may refuse to issue an insurance
 9 consultant's license if, in his judgment, the applicant or
 10 any proposed sublicensee is not trustworthy and competent to
 11 act as a consultant, or has given cause for revocation or
 12 suspension of a license, or has failed to comply with any
 13 prerequisite for the issuance of a license. The
 14 commissioner may revoke or suspend any insurance
 15 consultant's license for a period he determines, if, after
 16 notice and hearing as specified in this chapter, he
 17 determines that the licensee:

18 (a) has violated any provision of, or any obligation
 19 imposed by, the insurance law, or has violated any law in
 20 the course of his dealings as a consultant; or

21 (b) has made a material misstatement in application
 22 for a consultant's license; or

23 (c) has been guilty of fraudulent or dishonest
 24 practices; or

25 (d) has demonstrated his incompetency or

1 untrustworthiness to act as an insurance consultant.

2 Section 7. Consideration for services only on written
3 memorandum. No person licensed as an insurance agent or
4 broker or as a consultant under this act may receive any
5 fee, commission or thing of value for examining, appraising,
6 reviewing or evaluating any insurance policy, bond, annuity
7 or pension or profit-sharing contract, plan or program or
8 for making recommendations or giving advice with regard to
9 any of the above, unless the compensation is based upon a
10 written memorandum signed by the party to be charged and
11 specifying or clearly defining the amount or extent of the
12 compensation. A copy of every memorandum or contract shall
13 be retained by the licensee for not less than three years
14 after those services have been fully performed.

15 Section 8. Limitation on type of consideration. No
16 person licensed as an insurance agent or broker or as a
17 consultant may receive any compensation, direct or indirect,
18 as a result: (a) of the sale of insurance or annuities to,
19 or (b) the use of securities or trusts in connection with
20 pensions for, any person to whom any licensee has performed
21 any related consulting service for which he has received a
22 fee or contracted to receive a fee within the preceding
23 twelve (12) months unless that compensation is provided for
24 in the memorandum or contract required under section 7 of
25 this act. Nothing in this chapter prohibits the offset, in

1 whole or in part, of compensation payable under section 7 of
2 this act by compensation otherwise payable to a consultant
3 as agent or broker as a result of the sale of insurance or
4 annuities or the use of securities or trusts in connection
5 with pensions, provided that any offset is provided for in
6 the written memorandum or contract required under section 7
7 of this act.

8 Section 9. Licensee may not recommend. No person
9 licensed as an insurance consultant under this section may
10 recommend or encourage the purchase of insurance, annuities
11 or securities from any authorized insurer in which he or any
12 member of his immediate family holds an executive position
13 or holds a substantial interest.

14 Section 10. Nonapplicability. Nothing in this act
15 applies to: (1) licensed attorneys at law in this state
16 acting in their professional capacity;

17 (2) an actuary or a certified public accountant who
18 provides information, recommendations, advice or services in
19 his professional capacity, if neither he nor his employer
20 receives any compensation directly or indirectly on account
21 of any insurance, bond, annuity or pension contract that
22 results in whole or part from that information,
23 recommendation, advice or services;

24 (3) regular salaried officers or employees of an
25 insurer who devote substantially all of their services to

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1 activities other than the rendering of consulting services
2 to the insuring public while discharging the duties of their
3 employment.

-End-

Approved by Committee
on Business and Industry

HOUSE BILL NO. 388

INTRODUCED BY RASMUSSEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE INSURANCE CONSULTANTS TO ACQUIRE A LICENSE FROM THE COMMISSIONER OF INSURANCE; TO PROVIDE FOR THEIR LICENSURE; AND PENALTIES FOR VIOLATION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as "The Montana Insurance Consultant Licensure Act".

Section 2. Prohibition. (1) Any person~~---firm, association--or--corporation~~ not licensed as an insurance agent~~---broker--or~~ consultant in this state who identifies or holds himself ~~or-itself~~ out to be an insurance~~--adviser,~~ insurance consultant ~~or-insurance-counselor~~ without having been licensed as an insurance agent~~--or--broker~~ CONSULTANT under this act; or any person~~---firm--association--or~~ ~~corporation~~ who uses any other designation or title which is likely to mislead the public and holds himself ~~or-itself~~ out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified, is guilty of a misdemeanor and upon conviction shall be fined one thousand five hundred dollars (\$1,500).

(2) Any person~~---firm, association, or corporation~~ not licensed as an insurance agent~~---broker--or~~ consultant with respect to the relevant kinds of insurance who receives any money~~---fee--commission--or--thing-of-value~~ for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan or program or who shall make recommendations or give advice with regard to any of the above without first having been licensed by the commissioner as an insurance agent~~---broker--or~~ consultant is guilty of a misdemeanor and upon conviction shall be fined one thousand five hundred dollars (\$1,500).

Section 3. Application -- fee -- expiration. Before an insurance consultant's license is issued or renewed the prospective licensee shall: (1) properly file in the office of the commissioner a written application or forms the commissioner prescribes, and

(2) pay a fee of fifty dollars (\$50). ~~Sublicensees may--be-included-in-the-application-when-properly-listed-and a-fee-of-fifty-dollars-(\$50)-each-sublicensee--paid.~~ Every consultant's license shall expire on the thirty-first day of May next following the date of issue.

Section 4. Commissioner may issue license -- limitations. The commissioner may issue an insurance consultant's license to any NATURAL person~~---firm, association--or--corporation~~ who ~~or-which~~ has complied with

1 the requirements of this chapter with respect to either (1)
 2 life insurance, meaning all of those kinds of insurance
 3 authorized in sections 40-2902, 40-2903, 40-3901, 40-4101,
 4 40-4104, 40-4204 or (2) general insurance, meaning all of
 5 those kinds of insurance authorized in sections 40-2903
 6 through 40-2908 inclusive, as specified in such license.
 7 ~~Any license issued to a firm or association authorizes only~~
 8 ~~the members of the firm or association named in the license~~
 9 ~~as sublicensees to act individually as consultants~~
 10 ~~thereunder, and any license issued to a corporation~~
 11 ~~authorizes only the officers and directors thereof named in~~
 12 ~~the license as sublicensees to act individually as~~
 13 ~~consultants thereunder. Each sublicensee named in a license~~
 14 ~~shall be qualified to obtain a license as an insurance~~
 15 ~~consultant, and for each sublicensee the fee specified in~~
 16 ~~subsection (3) of this act shall be paid. Every sublicensee~~
 17 ~~acting individually as a consultant under a license issued~~
 18 ~~to a firm, association or corporation is authorized to act~~
 19 ~~only in the name of that firm, association or corporation.~~

20 Section 5. Examination-----fee. QUALIFICATION. In
 21 order to determine the competency of every applicant for
 22 license as an insurance consultant, the commissioner shall
 23 require ~~an applicant to pass a personal written examination~~
 24 ~~concerning the kinds of insurance specified in section 4.~~
 25 ~~The fee for each examination is fifty dollars (\$50). The~~

1 ~~commissioner may accept, in lieu of any part or all of an~~
 2 ~~examination, the result of any previous written examination~~
 3 ~~given by the commissioner.~~ MEMBERSHIP IN ONE OR MORE OF THE
 4 FOLLOWING: the American college of life underwriters, the
 5 American college of property and liability underwriters, the
 6 society of actuaries, the casualty actuarial society, or the
 7 American academy of actuaries, OR REQUIRE THE APPLICANT TO
 8 PASS AN EXAMINATION.

9 Section 6. Commissioner may refuse to issue license.
 10 The commissioner may refuse to issue an insurance
 11 consultant's license if, in his judgment, the applicant ~~or~~
 12 ~~any proposed sublicensee~~ is not trustworthy and competent to
 13 act as a consultant, or has given cause for revocation or
 14 suspension of a license, or has failed to comply with any
 15 prerequisite for the issuance of a license. The
 16 commissioner may revoke or suspend any insurance
 17 consultant's license for a period he determines, if, after
 18 notice and hearing as specified in this chapter, he
 19 determines that the licensee:

20 (a) has violated any provision of, or any obligation
 21 imposed by, the insurance law, or has violated any law in
 22 the course of his dealings as a consultant; or

23 (b) has made a material misstatement in application
 24 for a consultant's license; or

25 (c) has been guilty of fraudulent or dishonest

1 practices; or

2 (d) has demonstrated his incompetency or
3 untrustworthiness to act as an insurance consultant.

4 Section 7. Consideration for services only on written
5 memorandum. No person licensed as an insurance ~~agent--or~~
6 ~~broker--or--as--a~~ consultant under this act may receive any
7 ~~fee, commission or thing of value~~ for examining, appraising,
8 reviewing or evaluating any insurance policy, bond, annuity
9 or pension or profit-sharing contract, plan or program or
10 for making recommendations or giving advice with regard to
11 any of the above, unless the compensation is based upon a
12 written memorandum signed by the party to be charged and
13 specifying or clearly defining the amount or extent of the
14 compensation. A copy of every memorandum or contract shall
15 be retained by the licensee for not less than three years
16 after those services have been fully performed.

17 Section 8. Limitation on type of consideration. No
18 person licensed as an insurance ~~agent-or-broker-or-as-a~~
19 consultant may receive any compensation, direct or indirect,
20 as a result: (a) of the sale of insurance or annuities to,
21 or (b) the use of securities or trusts in connection with
22 pensions for, any person to whom any licensee has performed
23 any related consulting service for which he has received a
24 fee or contracted to receive a fee within the preceding
25 twelve (12) months, ~~unless that compensation is provided for~~

1 ~~in--the--memorandum--or--contract--required--under--section--7--of~~
2 ~~this--act;--Nothing--in--this--chapter--prohibits--the--offset;--in~~
3 ~~whole--or--in--part;--of--compensation--payable--under--section--7--of~~
4 ~~this--act--by--compensation--otherwise--payable--to--a--consultant~~
5 ~~as--agent--or--broker--as--a--result--of--the--sale--of--insurance--or~~
6 ~~annuities--or--the--use--of--securities--or--trusts--in--connection~~
7 ~~with--pensions;--provided--that--any--offset--is--provided--for--in~~
8 ~~the--written--memorandum--or--contract--required--under--section--7~~
9 ~~of--this--act.~~

10 Section 9. Licensee may not recommend. No person
11 licensed as an insurance consultant under this section may
12 recommend or encourage the purchase of insurance, annuities
13 or securities from any authorized insurer in which he or any
14 member of his immediate family holds an executive position
15 or holds a substantial interest.

16 Section 10. Nonapplicability. Nothing in this act
17 applies to: (1) licensed attorneys at law in this state
18 acting in their professional capacity; OR

19 (2) an actuary or a certified public accountant who
20 provides information, recommendations, advice or services in
21 his professional capacity, if neither he nor his employer
22 receives any compensation directly or indirectly on account
23 of any insurance, bond, annuity or pension contract that
24 results in whole or part from that information,
25 recommendation, advice or services;.

1 ~~(3) regular salaried officers or employees of an~~
2 ~~insurer who devote substantially all of their services to~~
3 ~~activities other than the rendering of consulting services~~
4 ~~to the insuring public while discharging the duties of their~~
5 ~~employment.~~

-End-

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13 ~~association7--or--corporation~~ not licensed as an insurance
14 ~~agent7-broker7--or~~ consultant in this state who identifies or
15 holds himself ~~ex-itself~~ out to be an ~~insurance--adviser7~~
16 insurance consultant ~~or-insurance-counselor~~ without having
17 been licensed as an insurance ~~agent--or--broker~~ CONSULTANT
18 under this act; or any person~~7--firm7--association7--or~~
19 ~~corporation~~ who uses any other designation or title which is
20 likely to mislead the public and holds himself ~~ex-itself~~ out
21 in any manner as having particular insurance qualifications
22 other than those for which he may be otherwise licensed or
23 otherwise qualified, is guilty of a misdemeanor and upon
24 conviction shall be fined one thousand five hundred dollars
25 (\$1,500).

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2 licensed as an insurance ~~agent7-broker7--or~~ consultant with
3 respect to the relevant kinds of insurance who receives any
4 ~~money7 fee7--commission7--or--thing-of-value~~ for examining,
5 appraising, reviewing, or evaluating any insurance policy,
6 annuity or pension contract, plan or program or who shall
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11 one thousand five hundred dollars (\$1,500).

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13 an insurance consultant's license is issued or renewed the
14 prospective licensee shall: (1) properly file in the
15 office of the commissioner a written application or forms
16 the commissioner prescribes, and

17 (2) pay a fee of fifty dollars (\$50). ~~Sublicensees~~
18 ~~may--be-included-in-the-application-when-properly-listed-and~~
19 ~~a-fee-of-fifty-dollars--(\$50)--each-sublicensee--paid.~~ Every
20 consultant's license shall expire on the thirty-first day of
21 May next following the date of issue.

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23 limitations. The commissioner may issue an insurance
24 consultant's license to any NATURAL person~~7--firm7~~
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 8 ~~the members of the firm or association named in the license~~
 9 ~~as sublicensees to act individually as consultants~~
 10 ~~thereunder, and any license issued to a corporation~~
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20 Section 5. Examination-----fee: QUALIFICATION. In
 21 order to determine the competency of every applicant for
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 2 ~~examination, the result of any previous written examination~~
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 4 ~~FOLLOWING: the American college of life underwriters, the~~
 5 ~~American college of property and liability underwriters, the~~
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 7 ~~American academy of actuaries, OR REQUIRE THE APPLICANT TO~~
 8 ~~PASS AN EXAMINATION.~~

9 Section 6. Commissioner may refuse to issue license.
 10 The commissioner may refuse to issue an insurance
 11 consultant's license if, in his judgment, the applicant ~~or~~
 12 ~~any proposed sublicensee~~ is not trustworthy and competent to
 13 act as a consultant, or has given cause for revocation or
 14 suspension of a license, or has failed to comply with any
 15 prerequisite for the issuance of a license. The
 16 commissioner may revoke or suspend any insurance
 17 consultant's license for a period he determines, if, after
 18 notice and hearing as specified in this chapter, he
 19 determines that the licensee:

20 (a) has violated any provision of, or any obligation
 21 imposed by, the insurance law, or has violated any law in
 22 the course of his dealings as a consultant; or

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 24 for a consultant's license; or

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1 practices; or

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3 untrustworthiness to act as an insurance consultant.

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7 ~~fee--commission-or-thing-of-value~~ for examining, appraising,
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11 any of the above, unless the compensation is based upon a
12 written memorandum signed by the party to be charged and
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19 consultant may receive any compensation, direct or indirect,
20 as a result: (a) of the sale of insurance or annuities to,
21 or (b) the use of securities or trusts in connection with
22 pensions for, any person to whom any licensee has performed
23 any related consulting service for which he has received a
24 fee or contracted to receive a fee within the preceding
25 twelve (12) months, ~~unless-that-compensation-is-provided-for~~

1 ~~in--the--memorandum--or-contract-required-under-section-7-of~~
2 ~~this-act;--Nothing-in-this-chapter-prohibits-the-offset;--in~~
3 ~~whole-or-in-part,--of-compensation-payable-under-section-7-of~~
4 ~~this--act--by-compensation-otherwise-payable-to-a-consultant~~
5 ~~as-agent-or-broker-as-a-result-of-the-sale-of--insurance--or~~
6 ~~annuities--or--the-use-of-securities-or-trusts-in-connection~~
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23 of any insurance, bond, annuity or pension contract that
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22 Section 4. Commissioner may issue license --
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 24 ~~concerning the kinds of insurance specified in section 4.~~
 25 ~~The fee for each examination is fifty dollars (\$50). The~~

1 ~~commissioner may accept, in lieu of any part or all of an~~
 2 ~~examination, the result of any previous written examination~~
 3 ~~given by the commissioner, MEMBERSHIP IN ONE OR MORE OF THE~~
 4 ~~FOLLOWING: the American college of life underwriters, the~~
 5 ~~American college of property and liability underwriters, the~~
 6 ~~society of actuaries, the casualty actuarial society, or the~~
 7 ~~American academy of actuaries, OR REQUIRE THE APPLICANT TO~~
 8 ~~PASS AN EXAMINATION.~~

9 Section 6. Commissioner may refuse to issue license.
 10 The commissioner may refuse to issue an insurance
 11 consultant's license if, in his judgment, the applicant or
 12 ~~any proposed sublicensee~~ is not trustworthy and competent to
 13 act as a consultant, or has given cause for revocation or
 14 suspension of a license, or has failed to comply with any
 15 prerequisite for the issuance of a license. The
 16 commissioner may revoke or suspend any insurance
 17 consultant's license for a period he determines, if, after
 18 notice and hearing as specified in this chapter, he
 19 determines that the licensee:

- 20 (a) has violated any provision of, or any obligation
- 21 imposed by, the insurance law, or has violated any law in
- 22 the course of his dealings as a consultant; or
- 23 (b) has made a material misstatement in application
- 24 for a consultant's license; or
- 25 (c) has been guilty of fraudulent or dishonest

1 practices; or

2 (d) has demonstrated his incompetency or
3 untrustworthiness to act as an insurance consultant.

4 Section 7. Consideration for services only on written
5 memorandum. No person licensed as an insurance ~~agent or~~
6 ~~broker or as a~~ consultant under this act may receive any
7 ~~fee, commission or thing of value~~ for examining, appraising,
8 reviewing or evaluating any insurance policy, bond, annuity
9 or pension or profit-sharing contract, plan or program or
10 for making recommendations or giving advice with regard to
11 any of the above, unless the compensation is based upon a
12 written memorandum signed by the party to be charged and
13 specifying or clearly defining the amount or extent of the
14 compensation. A copy of every memorandum or contract shall
15 be retained by the licensee for not less than three years
16 after those services have been fully performed.

17 Section 8. Limitation on type of consideration. No
18 person licensed as an insurance ~~agent or broker or as a~~
19 consultant may receive any compensation, direct or indirect,
20 as a result: (a) of the sale of insurance or annuities to,
21 or (b) the use of securities or trusts in connection with
22 pensions for, any person to whom any licensee has performed
23 any related consulting service for which he has received a
24 fee or contracted to receive a fee within the preceding
25 twelve (12) months, ~~unless that compensation is provided for~~

1 ~~in the memorandum or contract required under section 7 of~~
2 ~~this act; nothing in this chapter prohibits the offset, in~~
3 ~~whole or in part, of compensation payable under section 7 of~~
4 ~~this act by compensation otherwise payable to a consultant~~
5 ~~as agent or broker as a result of the sale of insurance or~~
6 ~~annuities or the use of securities or trusts in connection~~
7 ~~with pensions, provided that any offset is provided for in~~
8 ~~the written memorandum or contract required under section 7~~
9 ~~of this act.~~

10 Section 9. Licensee may not recommend. No person
11 licensed as an insurance consultant under this section may
12 recommend or encourage the purchase of insurance, annuities
13 or securities from any authorized insurer in which he or any
14 member of his immediate family holds an executive position
15 or holds a substantial interest.

16 Section 10. Nonapplicability. Nothing in this act
17 applies to: (1) licensed attorneys at law in this state
18 acting in their professional capacity; OR

19 (2) an actuary or a certified public accountant who
20 provides information, recommendations, advice or services in
21 his professional capacity, if neither he nor his employer
22 receives any compensation directly or indirectly on account
23 of any insurance, bond, annuity or pension contract that
24 results in whole or part from that information,
25 recommendation, advice or services.

1 ~~(3) regular salaried officers or employees of an~~
2 ~~insurer who devote substantially all of their services to~~
3 ~~activities other than the rendering of consulting services~~
4 ~~to the insuring public while discharging the duties of their~~
5 ~~employment.~~

-End-