



Canadian Life & Health
Insurance Association
Association canadienne des
compagnies d'assurances
de personnes

October 3, 2022

Kari Toovey
Financial and Corporate Sector Policy Branch
Ministry of Finance
Government of British Columbia

Submitted by email to: fiareview@gov.bc.ca

**Re: Implementation of the *Financial Institutions Amendment Act, 2019 (Bill 37)*:
Consultation Regarding Restricted Insurance Licenses**

Dear Kari,

The industry commends the Government of British Columbia (Government of BC) for taking the next steps to introduce a restricted insurance agent licence in BC through this Consultation regarding Restricted Insurance Licences (the Consultation).

While we are not aware of any current consumer protection issues in British Columbia in this distribution channel, the life and health insurance industry supports the introduction of a restricted licensing regime in British Columbia.

Distribution of insurance through restricted licensing regimes can provide consumers with economical and easily accessible insurance solutions that, due to a variety of reasons (geographic location, affordability, insurability, etc.), consumers may not be able to access on their own.

Adequacy of insurance coverage is decreasing for all Canadians¹ and the industry supports restricted licensing regimes as one way of promoting access to insurance which can help Canadians protect themselves from unexpected events and financial burden.

In this way restricted licensing regimes support the fair treatment of customers, by removing barriers to accessing insurance that some populations face, while ensuring:

- Appropriate expertise on the part of the people distributing the product; and
- Delivery of the appropriate disclosures and information to customers.

The Government of BC can help the life and health insurance industry continue to meet the evolving needs of Canadians with affordable insurance solutions by implementing a simplified regulatory regime for restricted licensing that is harmonized as much as possible with other restricted licensing jurisdictions.

Our detailed comments to the Government of BC's Consultation Questions are included in the attached **Appendix A**.

Thank you for the opportunity to comment. We are available to answer any questions you may have or to provide clarification, as needed.

Sincerely,

Brent Mizzen
Assistant Vice President, Market Conduct Policy and Regulation

¹ *Canadian Life Insurance Ownership Study – 2019 – Household Trends Report – LIMRA*

Consultation Questions:

Classes of Licensees

Prescribed businesses and transferring Licensing Exemptions - General comments

The industry agrees with the Government of BC's efforts to promote consistency and simplicity amongst the provinces that have, or are soon to have, restricted insurance agent licenses.

The industry is also encouraged by Government of BC's proposal to make additional classes of insurance available under their restricted insurance agent licence having regard to aspects unique to BC.

The Life and Health insurance industry does not comment on the businesses being considered by BC which are proposed to offer Property & Casualty insurance since these types of insurance cannot be underwritten by most of CLHIA's members - life and health insurers with a federal incorporation.

The Life and Health insurance industry does however comment on travel insurance since CLHIA's members offer travel insurance.

Which businesses should be prescribed as potential licensees for the purposes of FIA s. 174.1(1)?

General comments:

A harmonized approach with the other provinces that offer restricted licences is critical for the insurance industry. There are numerous regulatory regimes across Canada within which insurance companies must operate, and harmonization, to the greatest extent possible, provides the least amount of regulatory burden for our members.

The industry supports the list of businesses that may obtain a restricted insurance agent licence at page 4 of the Consultation since it is generally harmonized with the other provinces that offer restricted licences.

Using the term business:

Instead of using the term 'business' for defining who can apply for a licence, the industry prefers to use clearer language. Describing that 'persons, partnerships and entities' may apply for and hold a restricted insurance agent licence is clearer. What would or would not be considered a 'business' may be subject to interpretation.

The industry supports the following entities being able to offer travel insurance under restricted insurance agent licenses, as mentioned in the Consultation:

- Educational institutions offering travel medical policies to out-of-province students.
- Tour Operators and public carriers (i.e., airlines, bus companies, ferry companies) offering trip interruption or cancellation policies.

3rd parties engaged by restricted licensees for selling insurance:

The industry commends the BC Ministry of Finance for authorizing employees' and agents to act through corporate licenses. The industry would support the requirement in Manitoba where a restricted license holder can act through a third party as long as there is a contract in place between the two parties providing sufficient consumer protection. See MB. Insurance Agents and Adjusters Regulation ss 27(1) and (2).

The industry also recommends including a provision that allows for 'a person or business engaged on behalf of the prescribed categories of applicants or an insurer to solicit, sell or arrange insurance'. By allowing a person or business who is engaged by a restricted licence holder to apply for a restricted insurance licence in their own right, British Columbia is allowing smaller businesses the ability to outsource some functions that they may not have the resources to carry out themselves. As well as ensuring expertise and oversight where larger organizations outsource some functions. We would also note that allowing businesses engaged by a licence holder to apply for their own licence aligns with the approach taken in Saskatchewan.

In addition, it is often the insurer who manages the third-party relationship. The third-party is an agent of the insurer for the purposes of soliciting, selling, or arranging insurance on behalf of the restricted licence holder and the insurer. An example would be a call center retained by the insurer. Accordingly, we would request that businesses engaged on behalf of insurers for the solicitation, sale or arranging of insurance also be permitted to apply for a restricted insurance licence in their own right.

Inserting a catch-all provisions for future categories:

The industry also recommends inserting a category intended to cover possible future applicants not covered by the specific categories. This can be achieved by inserting a catch-all provision to allow the Superintendent to issue a restricted insurance agent licence to any applicant who in the opinion of the Superintendent is appropriate to hold a restricted insurance agent licence. The insurance distribution market is a highly competitive and innovative space and including a 'catch-all provision' allows for new types of businesses to be included as distribution channels evolve without the need to amend the proposed rules or regulations.

If the Government of BC does not support including a 'catch-all provision', the industry strongly encourages the Government of BC to insert a clause in the new regulations allowing the Insurance Council of BC to create new categories of applicants, without the need to change the regulations.

Restricting the classes of insurance that each type of business may obtain:

Finally, the Government of BC appears to have already contemplated restricting the classes of insurance that each type of business may obtain under their restricted insurance agent licence (see page 4). The industry does not support the strict assignment of classes of insurance to specific types of businesses. We believe this is an overly restrictive approach that impedes the evolution of new or existing products through existing or evolving distribution channels.

At a minimum, the industry strongly encourages the Government of BC to allow the Superintendent the discretion to specify, upon issuing a restricted insurance agent's licence, the classes of insurance with respect to which a restricted licensee may solicit, negotiate, sell, or arrange on behalf of an insurer. This kind of approach would harmonize with the approach in Saskatchewan.

Which businesses should not be prescribed?

The life and health insurance industry has no comments on which businesses should not be prescribed.

Should any exemptions in the ILER be fully repealed in favour of offering a restricted insurance agent licence?

Should any exemptions in the ILER be partially repealed in favour of offering a restricted insurance agent licence? For example, the exemption in ILER s. 2(1)(a) for sale of product warranty insurance could be maintained for products below a certain value threshold; a licence would be required to sell product warranty coverage for values over that threshold.

The industry supports fully repealing the exemptions to licensing provided in the *Insurance Licensing Exemptions Regulation* as listed on page 5 of the Consultation in favour of the restricted licensing regime.

The industry believes that restricted insurance licences provide opportunities for clearer roles and responsibilities for manufacturers and distributors of insurance than can be achieved under exemptions to licensing. As mentioned, restricted licensing provides opportunities for increased regulatory oversight ensuring there is sufficient expertise on the part of the people distributing the product; and that the appropriate disclosures are provided.

Accordingly, the industry believes that FICOM Bulletin INS-15-002 on Creditor's Group Insurance will need to be revised to consolidate expectations for insurers and restricted licence holders in BC under the proposed restricted licensing framework, rather than under the Bulletin. Any approach that leaves separate expectations for insurers and intermediaries under the Bulletin will lead to increased regulatory burden in BC and a patchwork of expectations that could risk the restricted licensing framework not being effectively implemented.

The industry believes that the role of the creditor where they are not the group policyholder should be revised. Specifically, the requirement that creditors play an active and substantial role in the procurement of the insurance contract, product design, and negotiation of the terms and conditions of the insurance is particularly burdensome for insurers where creditors are not the group policyholder. We believe sufficient oversight requirements exist under restricted insurance licensing frameworks to remove this requirement in FICOM Bulletin INS-15-002. Accordingly, the continuous oversight requirement should also be reviewed and revised to align with the oversight requirements that already exist in restricted insurance agent frameworks.

Ultimately, the Bulletin will need to be revised to ensure BC's restricted insurance licensing regime is as harmonized as possible with the other provinces already offering a restricted licence.

Classes of Insurance

What classes of insurance should be prescribed for the purposes of FIA s. 174.1(2)?

The following non-exhaustive list of classes of insurance should be prescribed:

- a) creditor's group disability insurance;
- b) creditor's group critical illness insurance;
- c) creditor's group life insurance;
- d) creditor's group loss-of-employment insurance;
- e) mortgage insurance;
- f) travel insurance
- g) personal accident type insurance; and
- h) funeral expense insurance.

The industry would appreciate being consulted on the definitions for these classes of insurance. Various and differing definitions currently exist for these classes of insurance across the provinces with restricted insurance agent framework. As well, corresponding product definitions are found under the *Insurance Business (Banks and Bank Holding Companies) Regulation* under the *Bank Act (Canada)* ("the *Insurance Business Regulations*"). The industry generally supports the definitions under the *Insurance Business Regulations*. However, there are instances where different definitions may be needed. For example, some travel insurance distributed by restricted licensees are medically underwritten individual policies that do not fit within the definitions in the *Insurance Business Regulation*.

The life and health insurance industry does not comment on the other classes of insurance currently being considered by BC on page 6 of the consultation since these are P&C-type coverages.

However, the industry would like to see discretion added for the Superintendent to issue restricted insurance licenses for any other class of insurance that, in the opinion of the Superintendent, is similar to or contains significant features of any of the classes of insurance already mentioned.

The alternative distribution marketplace is highly competitive which results in an ongoing evolution of products. The ability to distribute a new or hybrid product should not be limited purely because there is no easy avenue to include it under a restricted licence. Finally, including this type of discretion aligns with the framework for restricted insurance licenses in Saskatchewan. It has proven to be helpful in other jurisdictions issuing licenses for classes of insurance that did not fit clearly within their legislation and regulations.

What classes of insurance should not be prescribed?

The life and health insurance industry has no comments on what classes of insurance should not be prescribed.

Incidental Sale of Insurance

Do you have any comments on the proposal to restrict the classes of insurance that can be sold by a licensee to those that are incidental to their ordinary business?

Should there be any exemptions to this incidental rule? If so, for which businesses or classes of insurance?

The industry does not agree that the insurance is “incidental”

The insurance coverage provided by restricted insurance agents is important coverage that is offered at a critical time. Restricted insurance agents allow customers to access insurance that protects them from unexpected risks and resulting financial burden at the very time they are assuming those risks. To refer to these classes of insurance as ‘incidental’ suggests that they should be a second thought, whereas insurance is as important to consider as the initial product that has created the need for the insurance.

The term “incidental” is not a term that is used in the industry. The term “incidental” could imply that the insurance is not important which could deter some customers from properly considering these types of coverages. At a time when insurance coverage is decreasing for all Canadians, we would encourage the Government of BC to reconsider this language and instead use language that promotes the need for insurance.

The term “incidental” has practical implications that can inhibit access to insurance

The industry does not support restricting the classes of insurance that can be sold to those that are incidental to a licence holder’s ordinary business.

Linking British Columbia’s restricted licencing regime with incidental selling limits who may be issued a restricted insurance licence restricts the scope of the regime. It means that current and any future products that are not necessarily sold incidental to the sale of another product or service may fall outside the scope of the regime. A good example of this is travel insurance sold through bank branches. Many customers would not take out travel insurance if they were not able to access it easily and economically through their bank branch when they are, say, exchanging currency, prior to their travel. Similarly, such a link would inhibit or prevent licensing for entities that are “service providers” to other licensed entities such as telemarketers, as described above.

As mentioned above, the industry would prefer including discretion for the Superintendent to specify, upon issuing a restricted insurance agent’s licence, the classes of insurance with respect to which it’s appropriate for a restricted licensee to solicit, negotiate, sell, or arrange on behalf of an insurer.

We would therefore recommend that British Columbia harmonize with Alberta and Saskatchewan by introducing a restricted licensing regime that does not restrict the classes of insurance or use the terminology ‘incidental’.

General Issues

Please note that we only responded to the questions that are relevant from a life and health perspective.

What disclosure and documentation requirements should be required when a restricted insurance agent licensee sells an insurance product? What must they provide to a consumer? When? In what form? Should any disclosures be made by the insurer?

The industry supports the following disclosures and documents being provided:

1. **At the time of application, the restricted licence holder is to ensure:**
 - That the person applying is informed that the person is contracting with the insurer and not with the restricted licence holder and how that insurer may be contacted for further information,
 - That the person applying is provided with a summary of:
 - the terms, including significant limitations and restrictions, of the insurance, and
 - the circumstances under which the insurance commences and terminates and the procedures to follow in making a claim.
 - That the person applying is notified that, upon approval of the application
 - the insurance policy and documentation describing the insurance coverage will be sent to the person, or
 - a certificate will be sent to the person if the insurance applied for is group insurance.
 - That the person applying is informed whether the restricted licensee, an employee of the licensee or qualified entity receives any compensation, inducement, or benefit from an insurer, directly or indirectly, for selling insurance.
2. **Then, within 20 business days of the insurance coverage coming into force the restricted licence holder is to provide the person applying with:**
 - Documentation evidencing the insurance coverage and stating the name of the insurer and how it may be contacted.
 - Documentation stating that the person applying is informed that the person is contracting with the insurer and not with the restricted licence holder).
 - The policy and documentation describing the insurance coverage or the certificate, if the insurance applied for was group insurance.
 - In the case of creditor's disability insurance, creditor's life insurance, creditor's loss of employment insurance or mortgage insurance, a statement that the duration of the insurance is less than the term of the amortization period of any related loan, or that the amount of the insurance is less than the indebtedness, if that is the case.

In relation to the question of whether any disclosures should be made by the insurer, it is the restricted insurance agent's responsibility to provide the disclosures and documentation mentioned above. Insurers are responsible to establish policies and procedures to ensure that restricted licence holders provide the required disclosures and documentation. Insurers generally do not provide the disclosures directly to clients of restricted licence holders.

Should a restricted insurance agent licensee be restricted in selling a policy where the eligibility of the insured is not certain? For example, should the licensee be required to facilitate contact with the insurer providing the policy if the customer has a question the licensee is unable to answer?

Insurers provide training, application forms and procedure documents to restricted licence holders about eligibility details such as age, employment, residency, and medical status and restricted licence holders should appropriately screen potential customers for eligibility. Restricted licence holders should facilitate contact with insurers if there are any doubts about a customer's eligibility.

In the case of creditor's group insurance, CLHIA Guideline G7 provides that a statement about who is eligible to apply for the insurance must be provided to the debtor at the time of application. Additionally, travel insurance products disclose exclusions such as 'no fly' rules where the customer is not eligible for the insurance if the travel is against a physician's orders.

Restricted insurance agent licensees should refer customers to the insurer if there is a question that the restricted insurance agent cannot answer.

Should any classes of insurance products sold by a restricted insurance agent licensee be subject to a cooling off period or include a right of rescission?

The industry supports a right to rescind (also known as a "review period") in the case of a person applying to a restricted licensee for creditor's disability insurance, creditor's life insurance, creditor's loss of employment insurance, mortgage insurance and personal life insurance.

CLHIA Guideline G7 already provides for a statement to be delivered at the time of application that the Debtor has a specified period of time, to be not less than 20 days, after receipt of the Certificate, to review the insurance during which time the insurance can be canceled for a full refund.

There are however classes of insurance that should not be subject to a 20-day review period, such as travel insurance, since travel insurance policies are often in effect for less than 20 days, and the insured is usually traveling soon after taking out the policy. In those instances, it would not be appropriate to issue a refund in circumstances where the risk is already being covered by the insurer.

Should any restricted insurance agent licensees be limited in the commissions or fees they may charge?

It is insurers rather than restricted insurance agent licensees that set commission and compensation structures related to insurers' products sold by restricted insurance agent licensees. Restricted insurance agents generally do not set or charge their own fees.

Further, insurers should not be limited in the compensation they may pay. Adequate consumer protection is already provided for under the conflict-of-interest provisions of the CCIR/CISRO Guidance on the Conduct of Insurance Business and Fair Treatment of Customers. Under this guideline, insurers must

ensure that their compensation structures, performance targets or performance management criteria are sufficiently linked to customer outcomes. This helps to ensure appropriate consumer protection.

Any limit to compensation in British Columbia would be an added regulatory burden for insurers and could limit the insurance options available to British Columbians. The industry would strongly urge British Columbia to harmonize requirements for incentive structures with the rest of Canada through the Canadian Council of Insurance Regulators.

Under all the current restricted licensing regimes, if the licensee, or a qualified entity acting on their behalf, receives direct or indirect compensation, inducements, or other benefits from the insurer, only the fact compensation is received is disclosed to any person considering obtaining the insurance.

We recommend the Government of BC adopts the general standard in the industry to disclose the fact that there is compensation paid rather than imposing limits on the amount of the compensation paid.

For harmonization, we recommend the Government of BC align with the requirements in the other restricted licensing jurisdictions which do not include a limit on the compensation that can be paid to restricted insurance agent licensees. To ensure regulatory harmonization, the industry believes that any reforms relating to commissions are best dealt with under the CCIR's ongoing work on an Incentive Management Guideline.

Should value limits be imposed for any types of insurance such that a restricted insurance agent licensee would not be authorized to sell policies with a value over that limit?

The industry does not support value limits generally on types of insurance that restricted insurance agents can sell since that would be an additional regulatory burden that is not included in any of the other provinces with restricted insurance representative regimes.

The one exception would be 'funeral expense insurance' which is limited to a maximum of \$15,000 of coverage in Manitoba and \$25,000 in Saskatchewan.

The industry would however prefer a definition for 'funeral expense insurance' that includes contributions for funeral services that do not exceed \$15,000 and contributions for cemetery services that do not exceed \$20,000 up to a combined maximum of \$35,000. This would align with 148.1(1) of the *Income Tax Act* (Canada), for "eligible funeral arrangement".

Any additional value limits on types of insurance that restricted insurance agents can sell would be an additional regulatory burden that does not exist in any other Canadian jurisdiction with a restricted licensing framework. Insurers would have to develop specific policies and procedures in British Columbia to adhere to any additional value limits which would increase the costs associated with providing these coverages in British Columbia, which would ultimately be passed on to customers in British Columbia.

Is a deferred sales model appropriate for any restricted insurance agent licences? For example, an insurance product could not be marketed until a set number of days after the primary purchase is made or contract agreed to.

A deferred sales model could lead to further underinsurance in Canada

As mentioned, 2019 LIMRA research found a general decline in insurance coverage adequacy for all Canadians. Regulators have the opportunity through restricted insurance regimes to make insurance more accessible and more affordable for more Canadians. Regulators can do this by implementing simple & harmonized frameworks which produce the least amount of regulatory burden possible. Thus, allowing insurers to continue to be receptive to the evolving needs of customers.

The industry would be concerned about implementing a deferred sales model for any restricted insurance agent licensing since the result would be contrary to the policy considerations that generally underlie restricted insurance agent frameworks. As discussed, restricted licensing can make insurance more accessible to customers at the place and time they are obtaining the credit, mortgage, service, or item they are looking to insure.

Accordingly, the industry believes that a deferred sales model would make it more difficult for people to get insurance and could lead to further under-insurance. Restricted insurance agent frameworks should be making access to insurance easier not harder.

There are risks associated with deferred sales models

A deferred sales model would also mean that customers are left without important coverage that can protect them from uncertainty or financial hardship. Under a deferred sales model, customers would be exposed to unexpected events until they can access insurance, at the end of the deferred sales period, or at some other location.

A deferred sales model would also be an ineffective safeguard against sales misconduct. Those who could potentially be taken advantage of will still be vulnerable at the end of the deferred sales period. At the same time, those more-informed customers would be prevented from obtaining the important insurance coverage that they may need. Which would be an unfair result.

The industry believes that adequate customer protection already exists under the CCIR/CISRO Guidance on the Conduct of Insurance Business and Fair Treatment of Customers. In addition, we note that the 20-day “review period” discussed above already provides a period for the consumer to cancel their insurance for a full refund if they wish. Finally, we believe the safeguards against misconduct should be harmonized across Canada and therefore would not support introducing a deferred sales model for restricted insurance agent licences in British Columbia.

Additional Observations:

Transitional Considerations

The industry is requesting expected timelines for implementation of the proposed rules or regulations for the introduction of restricted insurance agent licensing in BC.

Similarly, we are requesting that the proposed rules or regulations include expected timelines for becoming licensed. The industry would be pleased to provide input about the feasibility of these timelines.

Businesses Outside of British Columbia to be Eligible for Restricted Licenses

Please note that most insurance companies today operate across Canada and often work with national restricted licence holders. It will therefore be important for businesses based outside of British Columbia to be able to obtain restricted insurance licensing to do business in British Columbia. This could include advertising on the internet, and selling insurance, in British Columbia. Travel agencies are good examples of businesses that are often based outside of British Columbia but do business within British Columbia.

Restricting Post-Claim Underwriting by Restricted Licence Holders, Employees and Agents

We note that the proposed new section in the FIA (section 225.1 (2) (iii)) makes reference to “post-claim underwriting”. The term post-claim underwriting is a new concept to our industry and does not accurately describe the process by which insurers assess claims for material misrepresentations during the application process. The CLHIA has written to the BC Ministry of Finance in December 2019 to raise concerns with any amendments to the FIA including the term “*Post-claim underwriting*”.

In response to the CLHIA’s letter, the BC Ministry of Finance committed to further consult with the industry should regulations be developed around innocent misrepresentation and/or post claims underwriting. While it is not clear that the amendments required to be enacted to introduce a restricted insurance agent licensing framework in BC will include any regulations for “post-claim underwriting”, the industry strongly recommends that this term be removed from any proposed rules or regulations. As well, the industry strongly wishes to be consulted if any regulations related to “post-claim underwriting” are planned to be introduced.

For additional context on why the industry feels strongly that the concept of “post-claim underwriting” should be removed from any proposed rules or regulations, BC Ministry of Finance should be aware of the following:

- Post-claim underwriting is not a term used by the industry.
- Post-claim underwriting suggests that insurers are not assessing the risk of providing coverage at the time the insurance is applied for. This is not correct.
- The risk assessment works as follows:
 - For insurance with health questionnaires, insurers will either issue or deny coverage based on the answers to those questions.
 - For insurance without health questionnaires, insurers disclose the pre-existing conditions that will not be covered, in a clear and obvious manner in plain language.
- When a claim is made, insurers confirm the information in the application and that eligibility is met. Insurers will confirm that no material misrepresentation was made in the health questions. Insurers will also ensure that the claim is not the result of a pre-existing medical condition that was excluded at the time of application.
- It should be noted that pre-existing medical conditions are only excluded for a maximum of 24 months according to the application insurance legislation.