

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 12, 1998 Revised: _____

Subject: Insurance (Insurance Agents)

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	<u>Withdrawn</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

CS/SB 1372 makes various changes to the laws affecting insurance agents and other individuals licensed by the Department of Insurance. The bill: (1) conforms various provisions to the requirement that agents be appointed (rather than licensed) by each insurer that they represent; (2) applies various requirements that currently apply to agents to customer representatives; (3) increases maximum administrative fines from \$2,500 to \$3,500 for agents and other licensees for each willful violation, specifies that fines may be in addition to probation or suspension, and authorizes the department to require an agent to make restitution to an injured party in addition to other penalties; (4) authorizes individuals holding a limited license for credit insurance to hold certain additional licenses; (5) requires life agents to pass an examination relating to variable annuity contracts in order to sell such contracts; (6) eliminates references to "claims investigators" which is a licensure classification no longer provided; (7) authorizes nonresidents to be licensed as a customer representatives under certain conditions; (8) requires individuals holding a Florida nonresident agent's license to become licensed as a resident agent with 90 days after the individual becomes a resident of Florida; (9) expands the options for applicants for a title insurance agent's license to meet prior education or experience requirements; (10) applies certain requirements for individual title insurance agents to title insurance agencies; (11) specifies the purpose of the deposit or bond for title agents; (12) requires law enforcement agencies, the state attorney's office and court clerks to notify the department of any insurance agent or other licensee who has been found guilty of a felony; (13) increases the required surety bond for surplus lines agents from \$5,000 to \$50,000; (14) specifies conditions under which a surplus lines agent may delegate to a producing agent the requirement to provide documentation of coverage to an insured; (15) requires that individuals be licensed as salespersons for motor vehicle service warranty associations; (16) requires insurance agencies to notify the department of a re-designation of the primary agent; (17) provides for the licensure of non-resident public adjuster and non-resident independent adjusters; (18) provides for responsibility and accountability of sales

representatives of warranty associations; and (19) repeals obsolete statutes relating to the licensing of claims investigators and insurance vending machine licenses.

This bill amends the following sections of the Florida Statutes: 624.425, 624.428, 624.478, 624.501, 626.022, 626.051, 626.062, 626.112, 626.141, 626.171, 626.181, 626.201, 626.211, 626.221, 626.266, 626.281, 626.311, 626.321, 626.331, 626.342, 626.451, 626.511, 626.521, 626.541, 626.561, 626.592, 626.601, 626.611, 626.621, 626.641, 626.651, 626.681, 626.691, 626.727, 626.730, 626.732, 626.733, 626.7351, 626.739, 626.741, 626.792, 626.835, 626.837, 626.8411, 626.8417, 626.8418, 626.8437, 626.844, 626.8443, 626.852, 626.858, 626.865, 626.873, 626.869, 626.8695, 626.872, 626.873, 626.875, 626.877, 626.922, 626.928, 626.927, 626.9271, 626.929, 626.935, 626.944, 627.745, 634.317, 634.420, and 642.036.

The bill creates the following sections of the Florida Statutes: 626.692, 626.8582, 626.8584, 626.8732, 626.8734, 626.8736, 626.8737, and 626.8738.

The bill repeals the following sections of the Florida Statutes: 626.532 and 626.857.

II. Present Situation:

Chapter 626, Florida Statutes, provides for the licensure and regulation of insurance agents and certain other types of individuals by the Department of Insurance.

Licensure vs. Appointment -- Various provisions in the current law have not been amended to conform to legislative changes that have made over the years. For example, in 1990 the licensure process was revised to require agents to receive one license from the state for each class of business, rather than separate licenses from each insurer they represent, and to require agents to be *appointed* by each insurer they represent. (Chap. 90-363, L.O.F.) Various provisions of the chapter incorrectly refer to licensure, rather than appointment.

Customer representatives -- The 1990 law cited above also eliminated licensure of *claims investigators*, and those duties are now contained within the licensure category for *customer representatives*. However, the term claims investigator has not been eliminated from all sections of the statute. Also, various provisions of the chapter that apply to insurance agents do not specifically apply to customer representatives.

Administrative Fines -- Currently, the department may impose fines in lieu of suspension, revocation or refusal of an agent's license for a violation of the Insurance Code. (s. 626.681, F.S.) The maximum fine is \$500 for nonwillful violation and \$2,500 for a willful violation.

Non-resident adjusters -- On August 12, 1997, the Circuit Court of the Second Judicial Circuit (Case No. 96-1610), ruled as unconstitutional the statutory requirement that an applicant for a public adjuster's license must be a bona fide resident of Florida. As a result, the department is enjoined from refusing to process or deny applications for license as a public adjuster solely based upon the residency of the applicant. Current law provides for the licensure of insurance company

employees as nonresident adjusters, but state residency is required for both public adjusters and independent adjusters.

Other aspects of the present situation addressed by the bill are summarized in the section-by-section analysis below.

III. Effect of Proposed Changes:

Section 1 amends s. 624.425, F.S., to technically conform to the change in the agent licensure process made in 1990 when chapter 626, F.S., was revised to provide for agents to receive one license from the state, rather than from each insurer they represent, and to require those insurers to *appoint* rather than license agents.

Section 2 amends s. 624.428, F.S., to technically conform to the requirement that agents be *appointed* by each insurer it represents (See Section 1).

Section 3 amends s. 624.478, F.S., to technically conform to the requirement that agents be *appointed* by each insurer it represents (See Section 1). This section also specifies that any *self-insurance fund* rather than just a *commercial self-insurance fund* must use licensed insurance agents to perform any of the activities for which an insurance agent's license is legally required. Section 624.461, F.S. defines *self-insurance fund* for purposes of the Florida Insurance Code to mean both commercial self-insurance funds organized under s. 624.462, F.S., and group self-insurance funds organized under s. 624.4621, F.S., the latter of which are workers' compensation self-insurance funds.

Section 4 amends s. 624.501, F.S., relating to agent fees. Subsections (16) and (17) are amended to conform to the appointment of agents by insurers, rather than licensure, to clarify that a \$5 fee applies to reinstatement of an agent's appointment. In subsection (29) the bill makes a conforming change to the 1992 amendment to s. 626.841, F.S. (Ch. 92-318, L.O.F.) requiring licensure of individual title insurance *agents*, rather than licensure of *agencies*. However, when title agent provisions of the fee section were also amended in 1992 (Ch. 92-324, L.O.F.) it retained the word *agents* which could be interpreted to mean that each insurer is required to remit \$200 for each individual agent instead of the original intent of \$200 *per agency*. The bill clarifies that this fee is applied for each agency.

Section 5 amends s. 626.022, F.S., relating to the scope of part I of chapter 626, which includes general requirements for all insurance agents, including licensure requirements, grounds for revocation of a license or a fine, continuing education requirements, rebating restrictions, etc.

Currently, part I does not apply to reinsurance. The bill provides an exception to make certain provisions of chapter 626 applicable to *reinsurance intermediaries*, as defined in s. 626.7492, F.S. That section provides for the licensure and regulation of reinsurance intermediaries which, generally, are persons who negotiate reinsurance contracts between insurers and reinsurers. The bill clarifies current law since s. 626.6492(3)(g)-(h), F.S., currently provides that reinsurance

intermediaries must be licensed, appointed, renewed, continued, reinstated, or terminated as prescribed in chapter 626 for insurance representatives in general, except that they shall be exempt from the photo, education, and examination provisions, and provides that the grounds and procedures for suspension or revocation of a reinsurance intermediary are as set forth in part I in ss. 626.611 - 626.691, F.S.

Section 6 amends s. 626.051, F.S., to provide that no person other than a licensed and appointed life agent who has successfully completed a department-approved examination relating to variable annuity contracts may solicit or sell variable life, variable annuity, or any type of variable contract as defined in s. 627.8015. The current examination for a life agent license covers variable contracts, but some life agents were originally licensed at a time before this was included. The department has required such life agents to take a variable annuity test to be authorized to solicit or sell such products.

The bill also makes a technical change to delete a reference in the current definition of “life agent” to an agent appointed as to health insurance. A separate definition and license applies to health insurance agents.

Section 7 amends s. 626.062 (2), F.S., to make a technical change to correct a cross-reference.

Section 8 amends s. 626.112, F.S., to repeal subsection (6) relating to claims investigators because that licensure category has been eliminated from the Insurance Code; the other subsections and cross-references are corrected to conform to the repeal of subsection (6). During the Sunset of chapter 626 by Ch. 90-363, Laws of Florida, the license for a claims investigator was eliminated, and those duties are now contained within the licensure category for consumer representatives. However, the term *claims investigator* has not been eliminated from all sections of the statute.

Section 9 amends s. 626.141, F.S., to include *customer representatives* in the section that specifies that insurance is valid and binding even if procured by an agent who was not licensed or appointed. In 1990, the license category of customer representative was created. A customer representative must be employed by only one general lines agent or agency that will supervise his or her work, and must be a salaried employee whose compensation may not include commissions or be primarily based on production of applications, insurance, or premiums. The customer representative must spend all business time in the employment of the agency, be domiciled in that office, and may not engage in the transaction of insurance outside that office. The license may not cover life insurance or any kind of insurance for which the appointing agent or agency is not licensed. The customer representative may solicit customers and, consistent with the contract with an insurer, engage in transacting insurance (such as binding coverage). This section, and several other sections of the bill, correct the apparently unintentional failure to include references to customer representatives in various sections of chapter 626.

Section 10 amends s. 626.171, F.S., to provide that the *application for license filing fee* prescribed in s. 624.501, F.S., is not refundable. Currently, this section provides that the *license*

fee is not refundable, but the current fee statute does not refer to a license fee. Section 624.501, F.S., currently provides that all insurance representatives must pay an initial *application for license fee* (\$50) in addition to an initial (and biennially, upon renewal) *appointment fee* (\$42), state tax (\$12), and county tax (\$6). (See Section 19, below, which provides that the appointment fee is not refundable.) The department reports that all of these fees are currently treated as non-refundable, which the bill clarifies.

This section also deletes references to solicitor and claims investigator, which are no longer licensure categories.

Section 11 amends s. 626.181, F.S., to include *customer representatives* in the section that specifies when an applicant for license is required to take another examination for a similar license. It also deletes a reference to *solicitor*, which is no longer a licensure category.

Section 12 amends s. 626.201, F.S., to include license applicants subject to *reinstatement* as persons whom the department may question relating to their qualifications, residence, prospective place of business, and any other matter which the department feels is necessary for the protection of the public.

Section 13 amends s. 626.211, F.S., to include *customer representatives* in the section relating to approval of applicants for licensure. It also deletes a reference to *solicitor*.

Section 14 amends s. 626.221, F.S., which currently authorizes the department to waive an examination requirement for an applicant for an agent's license whose license had been suspended within 2 years prior the date of application. The bill clarifies that the application is for *reinstatement* of a license *or appointment*, and makes the section applicable to customer representatives.

Sections 15 and 16 amends ss. 626.266 and 626.281, F.S., to include customer representatives in the sections relating to approval of applicants for licensure, examination requirements, examination security, and reexamination.

Section 17 amends s. 626.311, F.S., to include customer representatives in the sections relating to the scope of license. It also deletes references to solicitors.

Section 18 amends s. 626.321, F.S., relating to limited licenses. Currently, s. 626.321, F.S., authorizes the department to issue to a qualified individual or entity a limited license as an agent authorized to transact a limited class of business.

Currently, an individual holding a limited license covering only credit insurance may not hold a license as an agent or solicitor as to any other or additional kind of insurance. The bill narrows this prohibition to holding any additional kind of *life or health* insurance license, thereby allowing a person who has a limited license for credit insurance to also hold any additional type of

property, casualty, or surety license. The bill specifically allows a person with a limited credit insurance license to also hold a limited license to sell credit life or disability insurance.

The bill also provides catch line titles for each of the types of limited licenses in each of the respective paragraphs of this statute, for ease of understanding.

Section 19 amends s. 626.331, F.S., to provide that an *appointment fee* is non-refundable. Currently, s. 626.171(6), F.S., provides that a *license fee* is not refundable, which is changed by Section 10 of the bill to refer to the *application for license filing* fee prescribed in s. 624.501, F.S. Section 624.501, F.S., currently provides that all insurance representatives must pay an initial application for license fee (\$50) in addition to an initial (and biennially, upon renewal) appointment fee (\$42), state tax (\$12), and county tax (\$6). An appointment differs from a license in that an appointment is the authority given by an insurer or employer to a person licensed by the state to transact insurance or adjust claims on behalf of an insurer or employer. The department reports that all of these fees are currently treated as non-refundable, which the bill clarifies.

Section 20 amends s. 626.342, F.S., to technically correct the reference to *general agent to managing general agent* in the section that prohibits furnishing supplies to unlicensed agents. The term general agent is not a defined term, but managing general agent is defined in s. 626.091, F.S. Other technical changes are made.

Section 21 amends s. 626.451, F.S., to require any law enforcement agency, state attorney's office, and court clerk to notify the department if they are aware that an insurance agent or other specified persons licensed by the department have been found guilty of a felony. The bill also requires the state attorney or clerk of the circuit court to immediately furnish the department with a certified copy of the information or indictment filed against an agent or other licensee.

Section 22 amends s. 626.511, F.S., to delete references to *claims investigator* from the statute relating to reasons for termination, since that licensure category has been eliminated.

Section 23 amends s. 626.521, F.S., to authorize the department to obtain an independent credit and character report, at the cost of an applicant for a reinsurance intermediary's license who is to be self-employed. Currently, the department has this authority as to an applicant for an adjuster's license who is to be self-employed.

The bill also deletes references to claims investigators.

Section 24 amends s. 626.541, F.S., relating to firm, corporate, and business names. Currently, an agent or adjuster doing business under a firm or corporate name is required to file an annual notice to the department of the name being used, and the social security number of each director and the president of the corporation. The bill deletes the reference to *president* and adds *officer* which would require all officers' (and directors') names and social security numbers to be included in the report.

Section 25 amends s. 626.561, F.S., to include customer representatives in the section relating to reporting and accounting for funds.

Section 26 amends s. 626.592, F.S., to require a person operating an insurance agency to notify the department, on forms prescribed by the department, within 30 days after the designation of the primary agent changes. Currently, each person operating an insurance agency and each location of a multiple location agency is required to designate a primary agent for each location and notify the department. The primary agent may be changed at the option of the agency, with the change becoming effective upon notification provided to the department.

Section 27 amends s. 626.601, F.S., relating to improper conduct. Currently, the department may, upon its own motion, and shall, upon written complaint filed with the department, inquire into any alleged improper conduct of any licensed agent, and other specified licensees. The bill deletes the provision that requires the department to make an inquiry of alleged misconduct upon receipt of a written complaint and, instead, gives the department discretion whether to inquire into the matter.

The bill adds customer representatives, title insurance agents, and title insurance agencies to the types of licensees for which the department may inquire into alleged misconduct, and deletes a reference to claims investigators, who are no longer licensed.

The bill further provides that after a department inquiry, the department may initiate an investigation if it has reasonable cause to believe that the licensee has violated any provision of the Insurance Code. The bill further requires the department to contact the licensee being investigated unless the department determines that this would jeopardize the successful completion of the investigation or cause injury to the public.

Section 28 amends s. 626.611, F.S., relating to improper conduct and grounds for compulsory refusal, suspension, or revocation of a license or appointment, to delete references to claims investigators and to include customer representatives.

Section 29 amends s. 626.621, F.S., relating to discretionary grounds for suspension or revocation of a license or appointment, to specify that cheating on an examination or violation of test center rules or examination procedures, published orally or in writing, are grounds for discretionary refusal, suspension, or revocation of a license or appointment. The bill requires the department to be responsible for making clear and documenting the communication of the test center rules and examination procedures. The bill also deletes references to claims investigators.

Section 30 amends s. 626.641, F.S., to include customer representative in the section relating to the duration of a suspension or revocation of a license or appointment and to the effect of suspension, revocation upon associated licenses and appointments.

The section also includes adjusters or adjusting firms in the prohibition of engaging in business when the licensee is revoked or suspended.

Section 31 amends s. 626.651, F.S., to include customer representative in the section relating to the duration of a suspension or revocation of a license or appointment and to the effect of suspension, revocation upon associated licenses and appointments.

Section 32 amends s. 626.681, F.S., relating to administrative fines. Currently, the department may impose fines in lieu of suspension, revocation or refusal of an agent's license, if an agent commits certain specified actions. The current level of fines has not been increased in several years. The bill allows the department to impose a fine *in addition to* or in lieu of suspension, revocation, or in lieu of refusal. The administrative penalty is increased from \$2,500 to \$3,500 for a willful violation.

Section 33 amends s. 626.691, F.S., to authorize the department to place a licensee on probation *in addition to* suspension or revocation of his license or appointment. Currently, probation is authorized only *in lieu of* suspension or revocation of a license.

Section 34 creates s. 626.692, F.S., to authorize the department to require a licensee who has had his license suspended, revoked, or refused by the department because of penalties of misappropriation, conversion, or unlawful withholding, to pay restitution to any person who has incurred a financial loss due to that act. The amount of the restitution may not exceed the amount of money misappropriated, converted, or unlawfully withheld. The bill further provides that this section does not limit or restrict a person's right to seek any other remedies provided by law.

Section 35 amends s. 626.727, F.S., to include customer representatives within the scope of part II of chapter 626, which currently includes sections that regulate customer representatives.

Section 36 amends s. 626.730, F.S., to include customer representative in the sections relating to the purpose of a license.

Sections 37 and 38 amend ss. 626.732 and 626.733, F.S., to include customer representatives in the sections relating to individuals who become qualified for licensure because of employment with the department, and special requirements for agency firms and corporations.

Section 39 amends s. 626.7351, F.S., which provides qualifications for a customer representative's license. Current law requires that the applicant must be a resident of this state and must actually reside in the state at least 6 months out of the year. The bill allows the applicant to be a resident of another state sharing a common boundary with this state (Georgia and Alabama) as long as the applicant has been employed in this state for more than 6 months by a licensed and appointed Florida resident general lines agent and conducts business solely within the confines of the office of the agent or agency whom he represents in Florida. (See Section 41, below, which additionally authorizes issuance of a nonresident license to a customer representative.)

Section 40 amends s. 626.739, F.S., to clarify that the temporary license that the department may issue under this section is a temporary license authorizing appointment as a general lines agent.

Section 41 amends s. 626.741, F.S., which currently relates to issuance of licenses to nonresident agents, to allow the department to issue a nonresident license to a customer representative who is a resident of a state sharing a common boundary with Florida (Georgia and Alabama). Currently, a nonresident agent's license may be issued only if an individual is licensed in their state of residence. The bill provides that this requirement does not apply to a nonresident customer representative license unless the home state licenses residents of that state in a like manner. Also, the prohibition in the current law against having an office or place of business in this state would not apply to a customer representative who is required to conduct business solely within the confines of the office of a licensed and appointed Florida resident general lines agent in this state.

The bill also provides that any individual holding a Florida nonresident agent's license and who has become a resident of this state must, within a 90-day period, apply for and become licensed as a resident agent.

Section 42 amends 626.792, F.S., which provides for licensure of nonresident life agents. The bill allows any individual who holds a Florida nonresident's license and becomes a resident of this state the authority to transact insurance in this state under the nonresident license for a period not to exceed 90 days. Any individual who fails to apply for licensure as a resident agent within the 90 days would have his license and any appointments canceled immediately.

Section 43 amends s. 626.835, F.S., which provides for licensure of nonresident health agents. The bill allows any individual who holds a Florida nonresident's license and becomes a resident of this state the authority to transact insurance in this state under the nonresident license for a period not to exceed 90 days. Any individual who fails to become licensed as a resident agent within the 90 days would have his license and any appointments canceled immediately.

Section 44 amends s. 626.837, F.S., relating to exchange of business, to correct a reference to *licensing* which should be *appointing* since it relates to an insurer appointing an agent.

Section 45 amends s. 626.8411, F.S., relating to those sections of part I of chapter 626 that do not apply to title insurance agents or agencies. The bill corrects the cross-reference from subsection (8) to subsection (7) of s. 626.112, F.S. Subsection (8) deals with licensing of insurance agencies, which would clearly apply to title agents and agencies. Subsection (7) deals with individuals employed by a life or health insurer, which would clearly not be applicable to title agents and agencies.

Section 46 amends s. 626.8417, F.S., relating to licensure of title insurance agents. Currently, the requirements include prior educational or experience requirements. The experience requirements refer to 12 months of experience in responsible title insurance duties while working in the title insurance business as an employee of a title agency or title insurer. The bill further allows for such employment to be with a title agent or an attorney who conducts real estate closings and issues title insurance policies but who is exempt from licensure as a title agent.

Section 47 amends s. 626.8418, F.S., relating to qualifications for licensure as a title insurance agency. Under current law, the applicant for an agency license must deposit with the Department of Insurance securities with a market value of \$35,000 or post a surety bond in that amount, for the purpose of securing the performance by the agency of its duties under its agency contract with the insurer. The deposit or bond must remain unimpaired as long as the agency continues in business in Florida and until one year after termination of all title insurance agency licenses held by the agency.

The bill specifies that the deposit or bond must be payable to the department for the benefit of any appointing insurer or an insured damaged by a violation by a title insurance agency at which time the department may remit the proceeds to the damaged insurer or insured.

Section 48 amends s. 626.8437, F.S., which provides grounds for compulsory refusal, suspension, or revocation of license or appointment. Currently, the department may deny, suspend, revoke, or refuse to renew the license of any title insurance agent lacking the qualifications specified in s. 626.8417, F.S. The bill applies this same authority to the department with respect to any title insurance agency if the agency lacks the qualifications specified in ss. 626.8418 and 626.8419, F.S.

Section 49 amends s. 626.844, F.S., which currently authorizes the department to deny, suspend, revoke, or refuse to renew the license or appointment of any title insurance agent, based on certain grounds. The bill applies the same authority to the department with respect to any title insurance agency.

Section 50 amends s. 626.8443, F.S., which provides for the duration of suspension or revocation of a title insurance agent's license. The bill applies the provisions to suspension or revocation of a title agency's license and adds that during the period of suspension or after revocation, the former licensee may not directly or indirectly own, control, or be employed in any manner by any insurance agent or agency or adjuster or adjusting firm.

Section 51 amends s. 626.852, F.S., to delete a reference to claims investigators in the section dealing with the scope of part VI, relating to insurance adjusters.

Sections 52-61 relate to licensure of non-resident adjusters. On August 12, 1997, the Circuit Court of the Second Judicial Circuit (Case No. 96-1610), ruled as unconstitutional the statutory requirement that an applicant for a public adjuster's license must be a bona fide resident of Florida. As a result, the department is enjoined from refusing to process or deny applications for license as a public adjuster solely based upon the residency of the applicant. Current law provides for the licensure of insurance company employees as nonresident adjusters, but state residency is required for both public adjusters and independent adjusters. Sections 52-61, below, creates three categories of nonresident adjuster for each of these three types of adjusters.

Section 52 amends s. 626.858, F.S., relating to the definition of a nonresident company employee adjusters, to strike the prohibition against maintaining an office in Florida for adjusting losses in Florida.

Section 53 creates s. 626.8582, F.S., to define *nonresident public adjuster* as, generally, a non-resident of Florida who is licensed as a public adjuster in his or her state of residence for the types of insurance which the person intends to adjust claims in Florida. If the person is a resident of a state that does not license public adjusters, the person must pass the department's adjuster examination.

Section 54 creates s. 626.8584, F.S., to define *nonresident independent adjuster* as, generally, a non-resident of Florida who is licensed as an independent adjuster in his or her state of residence for the types of insurance for which the person intends to adjust claims in Florida. If the person is a resident of a state that does not license independent adjusters, the person must pass the department's adjuster examination.

Section 55 amends s. 626.865, F.S., to increase the amount of the surety bond required for a public adjuster from \$5,000 to \$50,000. This requirement applies to resident public adjusters (and applied by Section 57, below, to non-resident public adjusters.).

Section 56 amends s. 626.873, F.S., relating to nonresident company employee adjuster, to add that the individual may be an employee of a wholly owned subsidiary of an insurer, and to delete the prohibition against having an office in Florida for the purpose of adjusting losses in Florida.

Section 57 creates s. 626.8732, F.S., relating to qualifications for a nonresident public adjuster's license. The requirements are the same as apply to resident public adjusters (18 years of age, payment of fees, must be trustworthy and have sufficient experience, fingerprinted, and post a \$50,000 surety bond, as required by the bill for public adjusters, above, increasing the current \$5,000 surety bond requirement), with certain exceptions: (1) The examination requirement for a non-resident public adjuster may be waived if Florida has entered into a reciprocal agreement with the applicant's state of residence or other state where he is licensed as an adjuster and the applicant was required to pass an adjuster exam in that state. (2) The department must wait for a criminal history report from the Florida Department of Law Enforcement and the FBI after submitting fingerprints prior to authorizing the applicant to sit for the required exam. (3) The applicant must submit a letter of certification from the state where he is licensed. (4) After being licensed, a non-resident public adjuster must annually file an affidavit with the department certifying that he or she is familiar with Florida's insurance laws. Non-resident public adjusters would be required to maintain records for 3 years, which would also apply to resident public adjusters as amended by this bill, below (an increase of the current 1 year requirement).

Section 58 creates s. 626.8734, F.S., relating to qualifications for a nonresident independent adjusters license, which are essentially the same as required for nonresident public adjusters described in the section above, except that a surety bond requirement does not apply, and the department is not required to wait for a criminal history report from the Florida Department of

Law Enforcement and the FBI after submitting fingerprints prior to authorizing the applicant to sit for the required exam.

Section 59 creates s. 626.8736, F.S., relating to service of process, requiring that each nonresident independent or public adjuster must appoint the Insurance Commissioner to receive service of legal process for causes of action arising in Florida out of transaction under his license.

Section 60 creates s. 626.8737, F.S., relating to retaliatory provisions for nonresident adjusters, providing that when another state imposes any fine, tax, penalty, license fee, deposit of money, or security or other obligation upon resident insurance adjusters of Florida in connection with a nonresident adjuster's license under the laws of that state, then the same requirements apply to every insurance adjuster of that state doing business in Florida under a nonresident adjuster's license. (The provision is identical in substance to the current retaliatory tax provision that applies to nonresident agents in s. 626.711, F.S.)

Section 61 creates s. 626.8378, F.S., relating to penalties for violation, to create a third-degree felony for any person who acts as a resident or nonresident public adjuster without being licensed by the department and appointed as a public adjuster.

Section 62 amends s. 626.869, F.S., relating to continuing education requirements for adjusters. The current law provides that any person holding an adjuster's license and who adjusts workers' compensation claims must certify to the department every 2 years, at least 90 days prior to the renewal date, the fact that he or she has completed a course of instruction regarding current workers' compensation laws. This section also includes requirements for an eligible course, including a requirement of 24 hours of classroom instruction, 2 hours of which relate to ethics.

The bill makes minor changes by providing, instead, that any person holding an adjuster's license for 24 consecutive months or longer and who engages in adjusting workers' compensation claims must, beginning in their birth month and every 2 years thereafter, complete 24 hours of courses regarding workers' compensation laws, 2 hours of which related to ethics. The section replaces the current requirement that the sponsor of a continuing education course send the department a copy of an attendee's certificate of completion, with a requirement that the course provider submit a roster to the department in a format prescribed by the department.

Section 63 amends s. 626.8695, F.S., relating to the current law that requires each person operating an adjusting firm to designate a primary adjuster and file that name with the department. The bill requires that notice be sent on a form prescribed by the department within 30 days after inception of the firm or change of the primary adjuster designation.

Section 64 amends s. 626.872, F.S., which authorizes the department to issue a temporary license as an independent adjuster or as a company employee adjuster. The bill prohibits the department from issuing a temporary license to any individual who has ever previously held such a license in this state.

Section 65 amends s. 626.873, F.S., to provide that any individual who holds a Florida nonresident adjuster's license and has become a resident of this state may continue to adjust claims in this state for a period not to exceed 90 days. The individual must become licensed as a resident adjuster within the 90 days or the individual will have his license canceled immediately.

Section 66 amends s. 626.875, F.S., to increase from 1 year to 3 years the time period that an adjuster must maintain records of each claim in his or her place of business. This is consistent with the record-keeping requirements for insurance agents.

Section 67 amends s. 626.877, F.S., to delete a reference to claims investigator.

Section 68 amends s. 626.922, F.S., relating to the documentation of surplus lines insurance that must be provided to an insured. Currently, the statute requires the surplus lines agent to issue to the insured evidence of the insurance consisting of a policy, certificate, or such other documentation of coverage, containing information specified by this statute. The bill provides that the surplus lines agent may not delegate the duty to issue any such document (bind coverage) to the producing agent without prior written authority from the surplus lines insurer. A general lines agent would be authorized to issue the documentation (bind coverage) if the agent has prior written authority from the surplus lines agent.

Section 69 amends s. 626.928, F.S., relating to a surplus lines agent's bond. The bill increases the amount of the required bond for surplus lines agents from \$5,000 to \$50,000. Current law, retained by the bill, authorizes the department to require a bond in a larger amount than \$5,000 commensurate with the volume of surplus lines business transacted, which the department reports that it has done in some cases, as high as \$50,000. As provided in current law (and unchanged), the bond must be issued in the name of the department and must be conditioned that the surplus lines agent will faithfully conduct business under the license in accordance with the law and rules and that the licensee will promptly remit to the department the taxes as provided for by law.

Sections 70 - 74 amend ss. 626.927, 626.9271, 626.929, 626.935, and 626.944, F.S., all related to surplus lines agents, to add references to "appointment" in those provisions that currently refer to licensure.

Section 75 amends s. 627.745, F.S., relating to mediation of motor vehicle insurance claims. Currently, s. 627.745, F.S., allows either party to demand mediation of a motor vehicle insurance claim filed with an insurer for personal injury in an amount of \$10,000 or less or a claim for property damage in any amount. Requests for mediation are filed with the department and the department randomly selects mediators, subject to the right of either party to make one rejection. Costs are divided equally by both parties. The current law specifies qualifications for mediators, including completion of a 40-hour training program approved by the department and successful passage of an examination.

The bill requires that an applicant for approval as a mediator must file with the department an application under oath. It also provides that the 40-hour training program required under current

law must be completed within 4 years prior to the date of application, and specifies that the training program.

A technical change is made in referring to department's authority to rather than *appoint*

Sections 76 and 77 amend ss. 634.317 and 634.420, F.S., to provide that licensed and appointed shall be directly responsible and accountable for the actions of the licensee's employees.

Section 78

The bill deletes the current requirement that each casualty insurer must biennially file with the department the name and business address of each general lines agent or solicitor who sells legal

Section 79 repeals ss. 626.532 and 626.857, F.S. Section 626.532, F.S., relates to insurance sale of insurance by vending machines and grandfathered in those existing licenses. The department has reported that there are currently no more active licenses. Section 626.857, F.S., is

Section 80 provides an October 1, 1998, effective date.

Constitutional Issues:

A.

This bill will require counties and municipalities to spend funds or take an action requiring the expenditure of funds. The bill requires clerks of the court, state attorneys, and local law

insurance agent or other specified persons licensed by the department have been found guilty of a felony. The department reports that only 75 to 100 such instances occur annually

B. Public Records/Open Meetings Issues:

C. Trust Funds Restrictions:

V.**A. Tax/Fee Issues:**

The licensure authority for nonresident adjusters (made necessary by a judicial determination that the residency requirement is unconstitutional), includes a retaliatory tax and fee provision

licensed in such states. The provision is identical in substance to the current retaliatory tax provision that applies to nonresident agents in s. 626.711, F.S.

Private Sector Impact:

Sections 32-34.

for willful violations of specified grounds for suspension or revocation of a license. Such fines and amounts required to be paid in restitution could be imposed, in addition to suspension or

Section 55.

Public adjusters (both resident and non-resident) would be subject to increased costs of requirement.

Section 61.

adjuster without being licensed.

Section 69.

bond, as compared to the current \$5,000 surety bond requirement.

C.**Sections 32-34.**

Maximum fines for willful violations are increased from \$2,500 to \$3,500, which will estimate has been made.

Section 60.

that the residency requirement is unconstitutional), includes a retaliatory tax and fee provision for non-resident adjusters from states that impose obligations on Florida resident adjusters

provision that applies to nonresident agents in s. 626.711, F.S. No estimate has been made of the fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
