

**STORAGE NAME:** s1372s1z.fs  
**DATE:** May 28, 1998

**\*\*FINAL ACTION\*\***  
**\*\*SEE FINAL ACTION STATUS SECTION\*\***

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
FINANCIAL SERVICES  
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/SB 1372, 3rd Engrossed

**RELATING TO:** Insurance

**SPONSOR(S):** Senate Committee on Banking and Insurance and Sen. Williams

**COMPANION BILL(S):** CS/HB 4451 (s)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) SENATE BANKING AND INSURANCE YEAS 9 NAYS 0
- (2)
- (3)
- (4)
- (5)

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I. FINAL ACTION STATUS:

CS/SB 1372, 3rd Engrossed, passed the House 117-0 on May 1, 1998, and passed the Senate 36-0 on May 1, 1998. It became law without the Governor's signature on May 24, 1998: Chapter 98-199, Laws of Florida. The bill includes parts or all of CS/HB 4047, CS/HB 4251, CS/HB 4267, and SB 1316; see Section VI, COMMENTS, below, for details.

II. SUMMARY:

This bill would:

conform Chapter 626, F.S., (insurance agents and field representatives) to several prior enactments, and provide statutory authorization for current practices of the Department of Insurance with respect to reinstatement of licensees and refundability of fees.

provide for regulation of nonresident independent adjusters and nonresident public adjusters.

increase fines for willful violations by persons licensed under Chapter 626, provide for restitution, and increase the amount of the surety bonds that must be filed by surplus lines agents and by public adjusters.

require the use of a licensed and appointed agent to transact insurance on behalf of a group (i.e., workers' compensation) self-insurance fund, require adjusters to maintain records of adjustments for 3 years instead of 1 year, and allow the holder of a limited credit insurance license to hold certain other licenses.

exempt certain newly-formed, minority-owned insurers from certain taxes and assessments.

allow a credit life or disability policy to be issued for a period shorter than the term of the loan.

increase the amount that the Florida Hurricane Catastrophe Fund may advance to certain insurers after a hurricane.

allow the sale of unregulated health insurance policies to foreign residents at international airports.

authorize privatization of the Special Disability Trust Fund (SDTF).

regulate employers and employee leasing companies relative to the provision of workers' compensation coverage for leased employees.

The bill appropriates \$200,000 to implement the SDTF privatization provisions.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Insurance agents and other "field representatives," such as adjusters and customer representatives, are licensed and regulated by the Department of Insurance under Chapter 626, F.S.

1990 Sunset legislation: licensure and appointment, customer representatives, claims investigators

The 1990 Sunset review of Chapter 626, F.S.,<sup>1</sup> changed the terminology of insurance agent licensure. Previously, an agent was licensed separately for each company the agent represented. The 1990 revision provided that an agent would hold a single *license* issued by the department, and would be separately *appointed* by each insurer that the agent represents. The 1990 revision did not, however, make these terminology changes throughout Chapter 626, F.S., and, as a result, various provisions of the chapter refer to licensure when the appropriate reference is appointment.

The 1990 Sunset revision of Chapter 626 also created a licensure category known as "customer representative,"<sup>2</sup> and eliminated the permit category of "claims investigator."<sup>3</sup> These changes were not reflected throughout Chapter 626, F.S., and, as a result, various provisions of the chapter do not refer to customer representatives where a reference to claims investigators would apparently be appropriate, or continue to refer to claims investigators even though permits to act as claims investigators are no longer issued.

Licensure of title insurance agents and title insurance agencies

Since 1992, both title insurance agents and title insurance agencies have been licensed by the department.<sup>4</sup> As with the 1990 revisions to Chapter 626, F.S., the chapter has not been revised to conform all provisions to the changes made by the 1992 act.

Reinstatement; refundability of fees

According to the Department of Insurance, an applicant for reinstatement of a license under Ch. 626, F.S., is subject to all provisions relating to licensure of applicants; however, those provisions do not specifically refer to reinstatement. This application of the law has not been challenged.

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<sup>1</sup> Chapter 90-363, Laws of Florida.

<sup>2</sup> Under s. 626.072, F.S., a customer representative is a person appointed by an insurance agent to assist the agent in transacting insurance business from the agent's office.

<sup>3</sup> The 1990 act repealed s. 626.121, F.S. (1989), which provided for permitting of claims investigators. A claims investigator's functions are now included within the scope of an adjuster's license.

<sup>4</sup> See ss. 11-17, Ch. 92-318, Laws of Florida.

Since the adoption of appointment requirements in 1990, the department has treated appointment fees as being nonrefundable, although the statutes are silent on the issue. By contrast, the statutes specifically provide that license fees are nonrefundable. According to the department, this application of the law also has not been challenged.

Licensure of reinsurance intermediaries

Reinsurance intermediaries<sup>5</sup> have been required to be licensed since 1992.<sup>6</sup> Reinsurance intermediaries are subject to the licensure, appointment, renewal, continuation, reinstatement, termination, and disciplinary provisions that apply to insurance agents generally;<sup>7</sup> however, those provisions have not all been amended to reflect their applicability to reinsurance intermediaries.

Nonresident adjusters

In 1997, the Circuit Court for the Second Judicial Circuit declared unconstitutional the requirement of s. 626.865(1)(b), F.S., that a public adjuster be a bona fide resident of Florida and enjoined the Department of Insurance from denying or refusing to process an application for a public adjuster's license on the basis of the residency of the applicant.<sup>8</sup> The department is construing this decision as applying to residency requirements for independent adjusters as well as residency requirements for public adjusters.<sup>9</sup>

"Truncated" credit life and disability insurance policies

Credit life and disability insurance policies pay amounts due on a loan when the debtor dies or becomes disabled. The Insurance Code explicitly prohibits the issuance of credit life or disability policies that have a term in excess of 10 years.<sup>10</sup> The department construes another provision of the Code to prohibit the issuance of credit life or disability policies for a term shorter than the term of the loan, except where specifically allowed because of the debtor's age.<sup>11</sup> As a result of the department's view that these

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<sup>5</sup> A reinsurance intermediary is a person who brokers a reinsurance contract between an insurer and a reinsurer.

<sup>6</sup> See s. 41, Ch. 92-146, Laws of Florida, creating s. 626.7492, F.S.

<sup>7</sup> See s. 626.7492(3)(g) and (h), F.S.

<sup>8</sup> Papa v. Florida, Case No. 96-1610, August 1, 1997.

<sup>9</sup> A company adjuster is a full-time employee of the insurer who adjusts claims on behalf of the insurer; an independent adjuster is an independent contractor who adjusts claims on behalf of the insurer; and a public adjuster adjusts claims on behalf of the policyholder.

<sup>10</sup> See s. 628.681, F.S.

<sup>11</sup> Letter from Carl B. Morstadt, III, Senior Attorney, Department of Insurance to L. Wayne Pressgrove, Jr., Esq., November 6, 1997, construing s. 627.6785(3), F.S. Under s. 627.6785, F.S., a

“truncated” credit insurance policies are prohibited, taken together with the prohibition on credit insurance policies with a term in excess of 10 years, there are some loans for which no credit insurance policy may be issued.<sup>12</sup>

#### Special Disability Trust Fund

The Legislature created the Special Disability Trust Fund (SDTF) in 1955, as an incentive for employers to hire workers with pre-existing physical impairments. Administrative responsibility for the SDTF, which is established in Chapter 440, F.S., is delegated to the Division of Workers' Compensation within the DLES. The SDTF is funded through annual assessments imposed on workers' compensation insurers which are based upon the pro rata share of premiums written by these insurers. The assessment formula is set forth in s. 440.49(9)(b), F.S. In the 1997 session, the Legislature terminated the SDTF effective with accidents occurring on or after January 1, 1998. The Legislature also capped the assessment rate at 4.52 percent. The Division of Workers' Compensation contracted with the firm of Milliman & Robertson, Inc., to determine the SDTF's liability. Milliman & Robertson, Inc., estimated the total dollar amount as of January 13, 1998, at \$4.05 billion undiscounted and \$1.65 billion discounted.

#### Employee Leasing Companies

Employee leasing companies (ELC), or as they are sometimes called, professional employer organizations, are firms that enter into arrangements with businesses (the client) where they lease employees to a client and allocate the direction of and control over the leased employees. The ELC assumes responsibility and liability as the employer for the leased employees (which are commonly the client's former employees). Under this arrangement, the ELC is deemed to be the employer of the leased employees and, therefore, assumes regulatory responsibilities such as payroll administration and procurement of workers' compensation coverage for the leased employees. However, the client exercises everyday control over the leased employees.

#### Other matters

Other aspects of the present situation that are affected by the bill are discussed in the Section-by-Section Research, below.

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credit life policy may terminate at the first anniversary of the loan after the debtor's 71st birthday, and a credit disability policy may terminate on the first anniversary of the loan after the debtor's 66th birthday.

<sup>12</sup> As stated in the Morstadt letter, “The Department is aware that in the past, some truncated credit insurance has been approved. However, the Department is presently in the process of revising its credit insurance rules to, among other things, clarify that consistent with this opinion, truncated credit insurance coverage is not authorized under Florida law.”

**B. EFFECT OF PROPOSED CHANGES:**

Conforming and technical changes

The bill would conform all of Chapter 626, F.S., to the changes made by these earlier acts of the Legislature:

Chapter 90-363, Laws of Florida, the 1990 Sunset review of Chapter 626.

Chapter 92-318, Laws of Florida, which provided for licensure of both title agents and title agencies.

Chapter 92-146, Laws of Florida, which provided for the licensure of reinsurance intermediaries.

The bill would also provide statutory authorization for current practices of the department with respect to reinstatement and refundability of fees.

Nonresident adjusters

The bill would create licensing provisions for nonresident independent adjusters and nonresident public adjusters. In general, the qualifications and procedures for licensure as a nonresident would be the same as the qualifications and procedures for licensure as a resident, except that the examination requirement would be waived for a person who passed an examination in a state that has reciprocity with Florida. Nonresident licensees would be subject to the same disciplinary provisions as resident licensees.

Minority-owned insurers

The bill would exempt residential property insurance policies issued by certain newly-formed, minority-owned insurers from premium taxes, excise taxes on property and casualty insurance premiums, and regular assessments (but not emergency assessments) of the Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association until October 1, 2003.

"Truncated" credit life and disability insurance policies

The bill would allow a credit life or disability policy to be issued for a period shorter than the term of the loan. The term of a policy would have to extend for at least 5 years or for the term of the indebtedness, whichever is less, unless provisions relating to the age of the debtor<sup>13</sup> allow a policy to be issued for a shorter term.

Special Disability Trust Fund

The bill would authorize the creation of the Special Disability Trust Fund Privatization Commission to study the feasibility of privatizing all, or portions of, the SDTF. If the commission's analysis concludes that privatization of the SDTF could substantially

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<sup>13</sup> See footnote 11, above.

reduce the costs and be more effective than the current administration, the commission, in consultation with the Division of Workers' Compensation, would be authorized to issue and receive proposals from admitted insurers to assume the reimbursement obligations of the SDTF, and would be authorized to receive proposals from entities to operate as an administrator of SDTF claims.

#### Employee Leasing Companies

The bill would require an employee leasing company to pay workers' compensation premiums that are commensurate with the exposure and claims experience for all of its employees. An employee leasing company would also be required to provide information to the insurer so that an experience rating modification can be calculated for the employee leasing company and each employer. Upon termination of an employee leasing arrangement, the bill would require that the claims experience incurred during the employee leasing arrangement apply to the employee leasing company and each employer when procuring future workers' compensation coverage.

#### Other matters

Other changes that would be made by the bill are discussed in the Section-by-Section Research, below.

### C. APPLICATION OF PRINCIPLES:

#### 1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill removes provisions requiring the Department of Insurance to adopt rules for determining when an insurer is in "substantial compliance" with the Insurance Code.

The bill also authorizes the Special Disability Trust Fund Privatization Commission to promulgate rules necessary to perform its duties and responsibilities.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The bill provides for licensing of nonresident public adjusters and nonresident independent adjusters by the Department of Insurance.

The bill also imposes new duties on state attorneys and law enforcement agencies. The bill would require a state attorney to furnish the department with a copy of any indictment or information filed against a licensed agent, adjuster, service representative, solicitor, customer representative, or

managing general agent. Any law enforcement agency or state attorney's office that is aware that any such licensee has been convicted of, or pleaded guilty or nolo contendere to, any felony charge would be required to inform the department of that fact.

The bill also replaces requirements that liability insurers annually report certain information to the Department of Insurance with a requirement that insurers provide the information to the department upon request of the department.

The Department of Insurance would no longer regulate the forms or rates of certain health insurance policies delivered or issued for delivery in Florida to residents of foreign countries.

If the Special Disability Trust Fund Privatization Commission's analysis concludes that privatization of the SDTF could substantially reduce the costs and be more effective than the current administration, the commission, in consultation with the Division of Workers' Compensation, would be authorized to issue and receive proposals from admitted insurers to assume the reimbursement obligations of the SDTF, and would be authorized to receive proposals from entities to operate as an administrator of SDTF claims.

(3) any entitlement to a government service or benefit?

The bill creates an exemption from premium taxes, excise taxes, and certain assessments for property insurance policies issued by certain newly-formed, minority-owned property and casualty insurers.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

If the Special Disability Trust Fund Privatization Commission's analysis is favorable to privatization of the SDTF, the commission, in consultation with the Division of Workers' Compensation, would be authorized to issue and receive proposals from admitted insurers to assume the reimbursement obligations of the SDTF, and would be authorized to receive proposals from entities to operate as an administrator of SDTF claims. To the extent that the various duties of administering the SDTF are privatized, the Division of Workers' Compensation's responsibilities would be passed on to a private entity.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

Accountability to the people governed is achieved through the required participation of various public officials in the privatization process. The Special Disability Trust Fund Privatization Commission is composed of the Governor, the Treasurer, and the Comptroller, or their designees.

In addition, if the Special Disability Trust Fund Privatization Commission determines that it would be cost efficient and would be in the best interest of the SDTF, the state, insurers, and employers, to finance the liabilities of the SDTF through the issuance of bonds or notes, it may establish the Florida Special Disability Trust Fund Financing Corporation (corporation), a public benefits corporation. The corporation could be for profit, or not for profit, and would operate under a board of directors composed of the Governor, the Treasurer, and the Comptroller, or their designees.

Also, the corporation would be authorized to contract with the State Board of Administration (SBA) to act as trustee of the corporation.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No. The bill amends several provisions of s. 624.501, F.S., relating to fees charged by the Department of Insurance, but all of the amendments conform the language of the statute to fees currently being collected by the department.

The bill provides for increased fines for willful violations by insurance agents, and allows fines to be imposed in addition to, rather than in lieu of, suspension or revocation of a license.

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill:

Provides circumstances under which the holder of a limited license to sell credit insurance may be licensed to sell other forms of insurance;

Authorizes the sale of credit life and credit disability insurance policies for a term shorter than the term of the loan;

Removes residency requirements for independent adjusters and public adjusters;

Allows certain nonresidents to act as customer representatives; and

Allows a surplus lines agent to delegate certain duties to a general lines agent.

Allows an insurer group to transfer a policy from one member of the group to another without the new policy being countersigned by a resident agent.

The bill provides circumstances under which an insurer may deliver or issue for delivery in Florida an unregulated health insurance policy covering a resident of a foreign country.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The bill requires the use of a licensed and appointed agent in insurance transactions of group self-insurance funds; the use of a licensed and appointed agent is not currently required in such transactions.

The bill prohibits a surplus lines insurer from filing an election to be subject to the minimum surplus requirements applicable to admitted insurers, rather than the higher requirements applicable to surplus lines insurers.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

Chapters 215, 440, 624, 626, 627, 634, and 642, F.S.

**E. SECTION-BY-SECTION RESEARCH:**

As described in "Effects of Proposed Changes," above, the bill would make numerous conforming and technical changes to provisions relating to insurance agents and other field representatives to reflect prior legislation and current practice. This section of the Bill Research includes a table which catalogues these conforming and technical changes. The effects of the sections of the bill that make substantive changes to current practice are described after the table of conforming and technical changes.

<b>Table of conforming and technical changes in CS/SB 1372, 3rd Engrossed</b>			
<b>Issue</b>	<b>Section of bill</b>	<b>Section of Florida Statutes</b>	<b>Subject of affected section of Florida Statutes</b>
Appointment and licensing of agents	1	624.425	Resident agent and countersignature required
	2	624.428	Licensed agent law; life and health
	3	624.478	Use of agents
	4	624.501	Fees
	8	626.112	License and appointment required
	14	626.221	Examinations
	44	626.837	Excess or rejected business; health agents
	71	626.927	Licensing; surplus lines agents
	72	626.9271	Temporary license; surplus lines
	73	626.929	Placement of surplus lines business
	74	626.935	Surplus lines agent license; suspension, etc.
	75	626.944	Health care risk managers; qualifications
Customer representatives	9	626.141	Violation not to affect validity of insurance
	10	626.171	Application for license
	11	626.181	Number of applications
	13	626.211	Application; approval or disapproval
	14	626.221	Examinations

Table of conforming and technical changes in CS/SB 1372, 3rd Engrossed			
Issue	Section of bill	Section of Florida Statutes	Subject of affected section of Florida Statutes
	15	626.266	Examination security
	16	626.281	Reexamination
	17	626.311	Scope of license
	25	626.561	Reporting and accounting for funds
	28	626.611	Compulsory suspension, etc., of license
	30	626.641	Duration of suspension or revocation
	31	626.651	Effect of suspension, etc.
	35	626.727	Scope of Part II, Ch. 626, F.S.
	36	626.730	Purpose of license
	37	626.732	Educational and experience requirements
	38	626.733	Agency firms and corporations
Reinsurance intermediaries	5	626.022	Scope of Part I, Ch. 626, F.S.
	23	626.521	Character and credit reports
Claims investigators	7	626.062	Definition of "health agent"
	8	626.112	License and appointment required
	22	626.511	Termination of appointment
	23	626.521	Character and credit reports
	28	626.611	Compulsory suspension, etc., of license
	29	626.621	Discretionary suspension, etc., of license
	45	626.8411	Title agents and agencies; applicability of Insurance Code
	51	626.852	Scope of Part VI, Ch. 626, F.S.
	67	626.877	Adjustments; compliance with contract and law
Reinstatement	4	624.501	Fees
	12	626.201	Investigations
	14	626.221	Examinations
Refundability of fees	19	626.331	Number of appointments
Licensure of both title agents and title agencies	4	624.501	Fees
	12	626.201	Investigations
	48	626.8437	Compulsory suspension, etc., of license

Table of conforming and technical changes in CS/SB 1372, 3rd Engrossed			
Issue	Section of bill	Section of Florida Statutes	Subject of affected section of Florida Statutes
	49	626.844	Discretionary suspension, etc., of license
	50	626.8443	Duration of suspension or revocation
Other clarifications	20	626.342	Furnishing supplies to unlicensed agent
	25	626.561	Reporting and accounting for funds
	40	626.739	Temporary license
	52	626.858	Nonresident company employee adjusters
	56	626.873	Nonresident company employee adjusters
	62	626.869	Continuing education; workers' compensation adjusters
	78	634.420	Service warranty association sales representatives

**Sections of CS/SB 1372, 3rd Engrossed, containing other than conforming and technical changes:**

**Section 3** amends s. 624.478, F.S., relating to requirements that agents be used for insurance sales transactions of self-insurance funds.

Currently, s. 624.478, F.S., requires a *commercial self-insurance fund* to use a DOI-licensed agent to perform duties within the scope of an agent's license. The section does not impose similar requirements for *group self-insurance funds*.<sup>14</sup> The section also authorizes commercial self-insurance funds to "license" agents. This use of the term "license" apparently refers to *appointment* by the fund, rather than licensure by the state. Under current law, an agent is "licensed" only by the state to transact insurance, and is "appointed" by an insurer to transact insurance on its behalf.<sup>15</sup> Before the 1990 Sunset review of agent regulation, an agent was "licensed," rather than "appointed," by an insurer to act on the insurer's behalf.

An agent who is not appointed by an insurer is essentially a broker rather than a person acting on behalf of the insurer.

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<sup>14</sup> A *commercial self-insurance fund* is created by a trade association or similar entity (or by a nonprofit group of condominium associations) to provide property, casualty, or surety coverage through pooling of liabilities. See s. 624.462, F.S. A *group self-insurance fund* is created by two or more employers to provide workers' compensation coverage. See s. 624.4621, F.S.

<sup>15</sup> See ss. 626.103, 626.104, and 626.112, F.S.

An insurer must pay a biennial appointment fee of \$60 to the Department of Insurance for each agent it appoints.<sup>16</sup>

The bill would require all self-insurance funds to use Department of Insurance-licensed agents and would authorize all self-insurance funds to appoint agents. The effect of this change is to apply to all self-insurance funds the current requirement that a licensed and appointed agent be used in insurance transactions.

Section 624.478, F.S., was repealed by CS/HB 4047, 1st Engrossed. If both this bill and CS/HB 4047, 1st Engrossed, become law, it is not clear whether the amendment or the repeal will be construed as best reflecting the will of the Legislature.

**Section 6** amends s. 626.051, F.S., relating to life insurance agents. Currently, a person who sells variable contracts such as variable annuities must be licensed as a life insurance agent. The current examination includes variable annuity issues, but some life agents were licensed before the examination included variable annuities. According to the Department of Insurance, these agents have been required to take a separate variable annuity examination before being authorized to sell variable annuities, but there is no statutory authorization for a separate variable annuity examination. This section of the bill would require a person to pass an examination on variable annuities before being authorized to sell variable annuities.

**Section 18** amends s. 626.321, F.S., relating to limited licenses. Current law authorizes several classes of "limited licenses," under which a person may sell a particular type of insurance without being subject to all of the requirements of licensure as an insurance agent. One such limited license is the license to sell credit insurance.<sup>17</sup> A person who holds a limited license for credit insurance is prohibited from selling any other insurance.

This section of the bill removes two restrictions on limited licenses to sell credit insurance. The holder of such a license would be prohibited from selling any other kind of life or health insurance, but would be able to obtain a license to sell property, casualty, or surety insurance. The holder of such a license would also be able to obtain a limited license to sell credit life and disability insurance.<sup>18</sup>

**Section 21** amends s. 626.451, F.S., relating to appointment of agents and other representatives. Currently, there is no requirement that law enforcement agencies or

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<sup>16</sup> See s. 624.501, F.S.

<sup>17</sup> "Credit insurance" is insurance against loss or damage resulting from the failure of a debtor to pay obligations to the creditor, which failure results from a cause other than death or disability of the debtor. "Credit life insurance" and "credit disability insurance," which are covered by another class of limited license, cover debts that are unpaid as a result of death or disability of the debtor. See s. 624.605(1)(i) and (j), F.S.

<sup>18</sup> The licensee could also sell credit property insurance, which is defined by s. 624.605(1)(j), F.S., as casualty insurance. In addition, the limited license to sell credit life and disability also allows the licensee (if it is not a lending or financial institution) to sell credit property insurance. See s. 626.321(1)(e), F.S.

judicial agencies report to the Department of Insurance any criminal activity by a department licensee.

This section of the bill would require a state attorney to furnish the department with a copy of any indictment or information filed against a licensed agent, adjuster, service representative, solicitor, customer representative, or managing general agent. Any law enforcement agency or state attorney's office that is aware that any such licensee has been convicted of, or pleaded guilty or nolo contendere to, any felony charge would be required to inform the department of that fact.

**Section 24** amends s. 626.541, F.S., relating to agents and adjusters doing business under a firm or corporate name. Currently, the firm must notify the department of any change in the directors or president of the firm. This section of the bill would require notice of any change in any of the officers or directors of the firm.

**Section 26** amends s. 626.592, F.S., relating to primary agents. Each insurance agency, and each office of a multiple-location agency, must file with the department a designation of a "primary agent" for that agency or office. A change in the designation of a primary agent must be filed with the department, and would take effect upon notification of the department.

This section of the bill would require notice of change to be sent to the department within 30 days after the change. It is not clear whether the result of this amendment would be to make the change in designation effective prior to filing with the department.

**Section 27** amends s. 626.601, F.S., relating to investigations of licensees. The department is currently authorized to investigate a licensee on its own motion and required to investigate a licensee on the basis of a complaint. This section of the bill makes investigation on the basis of complaints permissive rather than mandatory and adds language authorizing the department to initiate an investigation when it has reasonable cause to believe that the licensee has violated any provision of the Insurance Code. It is not clear whether this new language either expands or contracts the investigative authority of the department.

This section of the bill would also require the department to contact a licensee who is being investigated unless the department determines that contacting the person would jeopardize the investigation or injure the public.

**Section 29** amends s. 626.621, F.S., relating to grounds for discretionary refusal, suspension, or revocation of a license. Cheating on a licensure examination is currently one of the grounds for which the department may refuse, suspend, or revoke a license. This section of the bill expands this ground for disciplinary action to include violation of any test center or examination procedures, whether provided orally, in writing, or electronically, provided the test center and examination procedures are clearly established and documented.

**Sections 30 and 49** amend ss. 626.641 and 626.8443, F.S., relating to the effect of a suspension or revocation of an agent's license or a title agent's license, respectively. Currently, a person whose license has been suspended or revoked is prohibited from engaging in any business for which a license is required under the Insurance Code and

from being employed by any insurance agency or agent. These sections of the bill add a prohibition against being employed by any adjuster or adjusting firm.

**Section 32** amends s. 626.681, F.S., relating to fines. Currently, the department may impose fines in lieu of suspending or revoking a license. The maximum fine for a willful violation is \$2,500, and the maximum fine for other violations is \$500.

This section of the bill would allow the department to impose these fines in addition to or in lieu of suspending or revoking the license. The bill also raises the maximum fine for willful violations to \$3,500.

**Section 33** amends s. 626.691, F.S., relating to probation. Currently, the department may place a licensee on probation for up to 2 years in lieu of suspending or revoking the license. This section of the bill authorizes probation in addition to or in lieu of suspension or revocation of the license. It is not clear whether the 2-year period would commence at the time the penalty is imposed or at the end of the period of suspension or revocation.

**Section 34** creates s. 626.692, F.S., relating to restitution. When grounds exist for the suspension, revocation, or refusal of a license and the licensee has misappropriated, converted, or unlawfully withheld money belonging to others, this section would allow the department to order the licensee to pay restitution to any person who was deprived of money by the licensee's action.

**Section 39** amends s. 626.7351, F.S., relating to qualifications for a customer representative's license. Currently, an applicant for licensure as a customer representative must be a bona fide Florida resident. This section of the bill would allow a resident of a state bordering Florida (i.e., Georgia or Alabama) who has been employed for at least 6 months by a Florida resident general lines agent to apply for a customer representative's license. The applicant would be subject to all other requirements that apply to customer representatives.

**Sections 41, 42, and 43** amend ss. 626.741, 626.792, and 626.835, F.S., relating to nonresident general lines agents, nonresident life agents, and nonresident health agents, respectively. These sections would allow a holder of a nonresident agent's license who becomes a Florida resident to transact insurance under the nonresident license for up to 90 days. The authority to transact insurance would expire after 90 days unless the agent applied for and received a resident agent's license.

Section 41 also amends s. 626.741, F.S., to specify that an applicant for a nonresident customer representative's license (see section 39, above) need not hold a similar license in the applicant's state of residence.

**Section 46** amends s. 626.8417, F.S., relating to title insurance agents' licenses. Currently, one of the ways an applicant for licensure as a title agent may satisfy education and experience requirements is to have 12 months of responsible experience working for a title insurer or title agency. The bill would also allow this requirement to be

satisfied with 12 months of responsible experience working for a title agency or for an attorney who conducts real estate closings and issues title insurance policies.<sup>19</sup>

**Section 47** amends s. 626.8418, F.S., relating to title insurance agencies' licenses. A title agency is currently required to deposit at least \$35,000 of securities with the department or post a bond in that amount payable to the insurer damaged by the actions of the agency. The bill would make the bond payable to the department for the benefit of the damaged insurer, and would limit the damage to damage caused by the agency's violation of its contract with the insurer.

**Section 52** amends s. 626.858, F.S., relating to the definition of "nonresident adjuster." This section limits the scope of the current definition<sup>20</sup> to nonresident *company employee* adjusters, and removes the prohibition on nonresident company employee adjusters maintaining offices in Florida.

**Section 53** creates s. 626.8582, F.S., relating to the definition of "nonresident public adjuster." This section would define a nonresident public adjuster as a person who does not reside in Florida, who is either licensed as a public adjuster in his or her state of residence or has passed the Florida examination for licensure if the state of residence does not license public adjusters, and who is a self-employed public adjuster or is associated with or employed by a public adjuster.

**Section 54** creates s. 626.8584, F.S., relating to the definition of "nonresident independent adjuster." This section would define a nonresident independent adjuster as a person who does not reside in Florida, who is either licensed as an independent adjuster in his or her state of residence or has passed the Florida examination for licensure if the state of residence does not license independent adjusters, and who is a self-employed independent adjuster or is associated with or employed by an independent adjuster.

**Section 55** amends s. 626.865, F.S., relating to public adjusters' bonds. Currently, a public adjuster must file with the department a bond conditioned on the faithful performance of duties as a public adjuster. The bill would raise the amount of this bond to \$50,000 from the current \$5,000.

**Sections 56 and 65** both amend s. 626.873, F.S., relating to nonresident adjusters. Section 626.873, F.S., currently provides for licensure of a person who meets certain qualifications as a "nonresident adjuster." By its terms, the current statute applies only to employees of insurers.

Section 56 amends this provision to explicitly limit its scope to nonresident company employee adjusters, and to conform the section to the definition of nonresident company employee adjuster in s. 626.858, F.S., as amended by Section 52 of the bill.

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<sup>19</sup> An attorney is exempt from the requirement of licensure as a title agent. See s. 626.8417(4)(a), F.S.

<sup>20</sup> A nonresident adjuster is currently defined as a nonresident of Florida who is a licensed or authorized adjuster in another state, who is an employee of a Florida-licensed insurer or insurer group, and who does not maintain an office in Florida.

Section 65 amends s. 626.873, F.S., to allow a holder of a nonresident adjuster's license who becomes a Florida resident to adjust claims under the nonresident license for up to 90 days. The authority to adjust claims would expire after 90 days unless the adjuster applied for and received a resident adjuster's license. Section 65 includes the current text of s. 626.873, F.S. (the language that was amended by Section 56); in Section 65, that language is not amended, but the existing statutory section is renumbered as subsection (1) of s. 626.873, F.S. The new language creating a grace period appears as new subsections (2) and (3).

These apparently conflicting amendments to the same statute raise the question of whether the Legislature intended that the authorization for a nonresident who moves to Florida to continue adjusting claims under the nonresident license (Section 65) apply only to nonresident company employee adjusters or to all nonresident adjusters; that is, does the amendment in Section 56 limit the scope of the amendment in Section 65? Under s. 1.04, F.S., differing amendments to the same section should be harmonized, if possible.<sup>21</sup>

One way to harmonize the amendments and give each its "full effect," as required when possible by s. 1.04, F.S., would be to treat Section 65, which creates a grace period, as being applicable to all classes of nonresident adjusters, and to treat Section 56 as a conforming amendment that applies only to the existing language of the section, and not to the language added by Section 65. According to the Department of Insurance, this is the construction that will be applied by the department.

**Section 57** creates s. 626.8732, relating to qualifications for a nonresident public adjuster's license. The requirements are the same as for residents,<sup>22</sup> except that the examination requirement would not apply to a public adjuster who has passed an examination in a state that has a reciprocity agreement with Florida. The applicant would also be required to submit fingerprints and evidence of licensure from the state of residence or licensure. The required bond for a nonresident public adjuster would be \$50,000. Nonresident public adjusters would be required to retain records of all adjustments for 3 years. A nonresident public adjuster would be required annually to file an affidavit certifying familiarity with Florida insurance law.

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<sup>21</sup> Section 1.04, F.S., provides:

1.04 Statutory construction; amendatory acts passed at the same session.--Acts passed during the same legislative session and amending the same statutory provision are in pari materia, and full effect should be given to each, if that is possible. Language carried forward unchanged in one amendatory act, pursuant to s. 6, Art. III of the State Constitution, should not be read as conflicting with changed language contained in another act passed during the same session. Amendments enacted during the same session are in conflict with each other only to the extent that they cannot be given effect simultaneously.

<sup>22</sup> See s. 626.865, F.S. The qualifications relate generally to passage of an examination, trustworthiness, and experience, training, or instruction.

**Section 58** creates s. 626.8734, F.S., relating to qualifications for a nonresident independent adjuster's license. The requirements are the same as for residents,<sup>23</sup> except that the examination requirement would not apply to an independent adjuster who has passed an examination in a state that has a reciprocity agreement with Florida. The applicant would also be required to submit fingerprints and evidence of licensure from the state of residence or licensure. Nonresident independent adjusters would be required to retain records of all adjustments for 3 years. A nonresident independent adjuster would be required annually to file an affidavit certifying familiarity with Florida insurance law.

**Section 59** creates s. 626.8736, F.S., relating to service of process on nonresident independent adjusters and nonresident public adjusters, to require the designation of the Insurance Commissioner as the adjuster's agent for service of process.

**Section 60** creates s. 626.8737, F.S., relating to a retaliatory provision. This section would require the department to impose on an applicant for a nonresident public adjuster's license or a nonresident independent adjuster's license any restrictions that the applicant's state of residence imposes on residents of Florida.

**Section 61** creates s. 626.8738, F.S., relating to falsely holding oneself out as a resident or nonresident public adjuster. Any person who holds himself or herself out as a public adjuster or nonresident public adjuster without a license would commit a third degree felony.

**Section 63** amends s. 626.8695, F.S., relating to primary adjusters. Each adjusting firm, and each office of a multiple-location firm, must file with the department a designation of a "primary adjuster" for that firm or office. A change in the designation of a primary adjuster must be filed with the department, and would take effect upon notification of the department.

This section of the bill would require notice of change to be sent to the department within 30 days after the change. It is not clear whether the result of this amendment would be to make the change in designation effective prior to filing with the department.

**Section 64** amends s. 626.872, F.S., relating to temporary adjuster's and independent adjuster's licenses. Currently, the department may issue a temporary license with a duration of up to 1 year to an employee of a licensed adjuster or an employee of an adjusting firm who is supervised by a licensed adjuster. The bill would prohibit the department from issuing a temporary license to a person who has previously held such a temporary license in Florida.

**Section 66** amends s. 626.875, F.S., relating to adjusters' records. This section would increase the length of time for which an adjuster must retain records of an adjustment to 3 years after completion of the adjustment from the current 1 year after completion of the adjustment.

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<sup>23</sup> See s. 626.866, F.S. The qualifications relate generally to passage of an examination, trustworthiness, and experience, training, or instruction.

**Section 68** amends s. 626.918, F.S., relating to minimum surplus requirements for surplus lines insurers.

A surplus lines insurer is an insurance company that does not hold a Florida certificate of authority, but is eligible (i.e., approved by the Florida Department of Insurance) to write coverage in Florida when the coverage cannot be procured from an admitted insurer (i.e., an insurer holding a certificate of authority issued by the Florida Department of Insurance). Eligible surplus lines insurers are exempt from many provisions of the Insurance Code, and are subject to different financial requirements from those applicable to admitted insurers.<sup>24</sup>

In general, under s. 626.918, F.S., surplus lines insurers approved after January 1, 1994, must have a surplus of at least \$15 million. The \$15 million surplus requirement reflects 1993 legislation that significantly increased the minimum surplus for surplus lines insurers. The increase was phased in for surplus lines insurers that were eligible (approved) on December 31, 1993; those insurers must have \$5.5 million surplus by December 31, 1997, and a \$6.5 million surplus by December 31, 1998. The full \$15 million minimum will apply to those insurers beginning on December 31, 2003.

Authorized property and casualty insurers obtaining a certificate of authority in Florida after January 1, 1994, must have a \$5 million surplus when initially licensed (s. 624.407, F.S.), and must thereafter maintain a \$4 million surplus. (s. 624.408, F.S.) For authorized insurers licensed before January 1, 1994, the increase from the former \$2.5 million surplus requirement to the \$4 million requirement is phased in through 2004.

Chapter 97-106, Laws of Florida, amended s. 626.918, F.S., to allow a surplus lines insurer to elect to be subject to the minimum surplus requirements applicable to authorized insurers, rather than the higher requirements applicable to surplus lines insurers generally. An insurer making this election must be a member of a holding company which also owns a Florida-domiciled admitted insurer, and the surplus lines insurer must comply with Chapter 625, F.S., which governs insurers' accounting and investments. The Department of Insurance reports that only one insurer has filed for an election to be subject to the lower, alternative surplus requirements, though other insurers would appear to qualify.

This section of the bill provides that only those surplus lines insurers that have an application on file with the Department of Insurance before February 28, 1998, may elect to be subject to the lower, alternative surplus requirements authorized by 1997 legislation.

**Section 69** amends s. 626.922, F.S., relating to the duties of surplus lines agents. When a surplus lines insurance policy is issued, the surplus lines agent must provide the insured with documentation of coverage, consisting of either the insurance policy or other evidence of insurance, signed or countersigned by the surplus lines agent. The bill would allow the surplus lines agent to delegate to a licensed general lines agent the duty to issue the documentation of coverage, by providing the general lines agent with prior written authorization.

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<sup>24</sup> See, generally, ss. 626.013-626.937, F.S.

**Section 70** amends s. 626.928, F.S., relating to surplus lines agents' bonds. A surplus lines agent is currently required to post with the department a surety bond conditioned on the agent's faithful performance of his or her duties in the amount of at least \$5,000. The department may require particular agents to post larger bonds based on the volume of surplus lines business they transact; according to the department, it has required the posting of bonds in amounts as high as \$50,000.

The bill would raise the minimum amount of the bond to \$50,000, and would retain the department's power to require a bond in a higher amount.

**Section 76** amends s. 627.745, F.S., relating to mediation of motor vehicle claims. Currently, either the claimant or the insurer may demand nonbinding mediation of motor vehicle claims for personal injury under \$10,000 or property damage. One of the qualifications for appointment as a mediator is completion of a 40-hour training program and passage of an examination approved by the department. The bill would change the term "appointment" to "approval," require that the training program be completed no more than 4 years before the mediator files an application for approval, and require that the examination be included in the training program.

**Section 77** amends s. 634.317, F.S., relating to home warranty sales representatives. The bill would specify that a licensed and appointed sales representative is directly responsible and accountable for all acts of his or her employees.

**Section 79** amends s. 642.036, F.S., relating to legal expense insurance sales representatives. The bill would delete a requirement that each casualty insurer file biennially with the department information regarding each general lines agent who sells legal expense insurance on behalf of the insurer.

**Section 80** amends s. 624.412, F.S., relating to alien insurers' deposit and surplus requirements.<sup>25</sup> This section of the bill would repeal a provision that, if read literally, would require non-U.S. insurers to maintain surplus equal to the amount of surplus that would be required if the insurer were a U.S. company, *plus* the company's outstanding reserves and liabilities attributable to U.S. insurance transactions. The Department of Insurance has stated that this was not the intent and that the department is not requiring alien insurers to maintain surplus in excess of the surplus that would be required of U.S. insurers.

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<sup>25</sup> An "alien" insurer is an insurer domiciled in a country other than the United States. An alien insurer may not transact business in Florida unless it maintains trust deposits within the United States available for discharge of its U.S. insurance obligations. The amount of the deposit must be at least the outstanding reserves and other liabilities arising out of U.S. insurance transactions, together with the minimum surplus as to policyholders required by Florida law under s. 624.408, F.S. Subsection 624.412(2), F.S., provides that the amount so held on deposit is deemed to be the minimum surplus of the insurer required to be maintained. Reserves and surplus are not the same; reserves are balance sheet liabilities created to account for known or expected losses, while surplus is the insurance equivalent of net worth. A literal reading of current law would require surplus equal to reserves plus other liabilities, plus the minimum statutory surplus; the Department of Insurance does not believe this to be the result intended by the Legislature.

**Section 81** creates s. 624.4072, F.S., relating to minority-owned property and casualty insurers. The bill would exempt residential insurance policies issued by newly-formed, minority-owned property and casualty insurers from insurance premium taxes,<sup>26</sup> excise taxes on property and casualty insurance premiums,<sup>27</sup> and regular assessments (but not emergency assessments) of the Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association.<sup>28</sup>

In order to qualify for the exemptions, the insurer would have to be 51 percent owned by minority persons<sup>29</sup> and would be required:

to have received its initial certificate of authority to do business in Florida after May 1, 1998;

to have a home office or regional office in Florida;

to have permanent employees in Florida; and

to have an average, in any given tax year or assessment year, of at least 10 percent of its in-force Florida residential policies in enterprise zones designated under s. 290.0065, F.S.

All exemptions under this section would terminate on July 1, 2003.

**Section 82** creates s. 624.123, F.S., relating to sale of health insurance policies at international airports to residents of foreign countries.

The forms (contract terms) and rates for health insurance policies delivered or issued for delivery in Florida are regulated by the Department of Insurance under ss. 627.410 and 627.411, F.S. Section 627.410, F.S., generally requires that forms be filed with and approved by the department before they are used, and s. 627.411, F.S. sets out the grounds for disapproval. The department is required to disapprove a form for health insurance if the benefits provided by the policy are unreasonable in relation to the premium charged.<sup>30</sup>

When a form is used by a domestic (i.e., Florida-domiciled) insurer for delivery outside of Florida, the form is subject to regulation under ss. 627.410 and 627.411, F.S., if the insurance regulator of the jurisdiction in which the form is delivered notifies the Florida

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<sup>26</sup> See s. 624.509, F.S.

<sup>27</sup> See ss. 175.101 and 185.08, F.S.

<sup>28</sup> See s. 627.351(2) and (6), F.S.

<sup>29</sup> As defined in s. 288.703(3), F.S., the term includes African Americans, Hispanic Americans, Asian Americans, Native Americans, and American Women. The bill provides that the failure to meet the residency requirement of s. 288.703(3), F.S., does not make the insurer ineligible for the exemptions.

<sup>30</sup> Paragraph 627.411(1)(e), F.S.

Department of Insurance that the form is not subject to approval or disapproval in that jurisdiction.<sup>31</sup>

Parts VI and VII of Chapter 627, F.S., set out the language of several mandatory policy provisions for individual and group health insurance policies,<sup>32</sup> and require health insurance policies to contain certain mandatory benefits.<sup>33</sup>

Under this section of the bill, health insurance policies delivered or issued for delivery in Florida to residents of foreign countries would not be subject to rate or form regulation under s. 627.410, F.S. or to any coverage mandates. The policy could be sold only at an international airport and only by an agent who was licensed by the Department of Insurance and appointed by the insurer.

An "international health insurance policy" is defined as an individual health insurance policy that covers only residents of foreign countries and is sold on an annual basis. A "resident of a foreign country" does not include any person who is a U.S. citizen, maintains a residence in the U.S., or stays in Florida for more than 120 consecutive days. The sale of international health insurance policies to residents of foreign countries could occur only in an airport that enplanes more than 1 million persons a year and is served by U.S. Customs (Miami, Orlando, Tampa, Ft. Lauderdale, Palm Beach, Ft. Myers, and Jacksonville).

Each international policy would carry a disclaimer stating that the policy may not be sold to a U.S. resident; does not comply with coverage, underwriting, and other provisions of the Florida Insurance Code; and must comply with insurance regulatory provisions of the insured's country of residence.

The policy would not be subject to any form approval, rate approval, underwriting restrictions, guaranteed availability, or coverage mandates of the Insurance Code. The policy would be exempt from all provisions of the Insurance Code, except for the following provisions:

Section 624.155, F.S. (Civil remedy).

Section 624.316, F.S. (Examination of insurers).

Section 624.3161, F.S. (Market conduct examinations).

Sections 626.951-626.9601, F.S. (Unfair insurance trade practices).

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<sup>31</sup> Subsection 627.410(5), F.S.

<sup>32</sup> See, e.g., s. 627.607, F.S., relating to time limits on certain defenses, s. 627.608, F.S., relating to grace periods, or s. 627.610, F.S., relating to notice of claims.

<sup>33</sup> See, e.g., s. 627.6056, F.S., relating to coverage for ambulatory surgical center services, s. 627.6408, F.S., relating to diabetes treatment services, s. 627.6409, F.S., relating to osteoporosis, or s. 627.6418, F.S., relating to mammograms.

Section 627.413, F.S. (Content of policies: forms must specify names of parties, the subject of the insurance, perils, term, premium, etc.).

Section 627.4145, F.S. (Readable language).

Section 627.428, F.S. (Attorney's fees).

Section 627.6043, F.S. (Notice of cancellation, nonrenewal, or rate change).

**Section 83** amends s. 627.681, F.S., relating to the term of credit life and credit disability insurance policies. The bill would allow for the issuance of a credit life or credit disability policy for a term shorter than the term of the loan; that is, the bill would authorize the issuance of "truncated" credit life and credit disability policies. The term of the truncated policy would have to extend for at least 5 years unless the policy is eligible to be terminated earlier because of the age of the debtor.

**Section 84** amends s. 440.49, F.S., relating to the Special Disability Trust Fund (SDTF). The bill, in part, authorizes the creation of the Special Disability Trust Fund Privatization Commission to study the feasibility of privatizing all, or portions of, the SDTF. If the commission's analysis is favorable to privatization, the commission, in consultation with the Division of Workers' Compensation, could issue and receive proposals from "qualified entities" to assume the reimbursement obligations of the SDTF, and could receive proposals from entities to operate as an administrator of SDTF claims.

Under the bill, the "qualified entity" would be required to provide the commission with the financial assurance that it may assume any and all liabilities of the SDTF. The financial assurances could include cash reserves, reinsurance, guarantees, or letters of credit.

The "qualified entity" would receive bond proceeds from a public benefits corporation, called the Florida Special Disability Trust Fund Financing Corporation (the "corporation"), which is created in the bill to issue bonds so as to ensure the existence of a sufficient funding source for reimbursements to employers and carriers and to pay the liabilities of the SDTF. The corporation could be for profit, or not for profit, and would operate under a board of directors composed of the Governor, the Treasurer, and the Comptroller, or their designees. In addition, the bill authorizes the corporation to contract with the State Board of Administration to act as trustee.

The proceeds of the revenue bonds would be paid to the "qualified entity" to pay the obligations of the SDTF. The corporation may pledge all or a portion of the SDTF assessments (currently capped at 4.52 percent) charged against workers' compensation insurers, to secure the bonds. The bonds would not be considered a debt of the state or of any political subdivision of the state, and the corporation would not have the power to pledge the credit, the revenues, or the taxing power of the state or of any political subdivision.

**Section 85** provides a \$200,000 appropriation from the Special Disability Trust Fund to the Special Disability Trust Fund Privatization Commission for the purpose of implementing Section 84.

**Section 86** amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund.

Currently, reimbursement payments from the Catastrophe Fund are structured so that all payments to insurers are made after the end of a hurricane season (as distinguished from traditional reinsurance, which pays insurers immediately after a covered event). The delayed payment structure enables the Catastrophe Fund to calculate the total losses for a hurricane season and determine whether it will have the resources to pay all reimbursements in full or will have to prorate payments to insurers.

The delayed payment structure created the possibility that insurers with limited resources, such as the Residential Property and Casualty Joint Underwriting Association (RPCJUA) and Florida Windstorm Underwriting Association (FWUA) and small domestic insurers, might not be able to pay all claims until they received their Catastrophe Fund reimbursements several months after the end of the hurricane season, resulting in possible insolvency for the small companies and deficits for the residual market. In 1995,<sup>34</sup> the Legislature provided that companies designated as "*limited apportionment companies*" for purposes of the FWUA law<sup>35</sup> would be the first to be paid by the fund, but this provision expired when the cash balance of the fund went over \$2 billion.

In 1996, the current Catastrophe Fund provision on limited apportionment companies was adopted.<sup>36</sup> Under the current provision, the Catastrophe Fund may advance to any insurer a portion of that reinsurer's projected reimbursement. For the RPCJUA, the FWUA, and limited apportionment companies, the amount of the advance is:

The greater of:

90% of the State Board of Administration's estimate of the amount of reimbursement that will be payable to the insurer; or

90% of the current liquid assets of the fund, multiplied by the insurer's share of the fund's total premium revenues for the year.

The power of the Catastrophe Fund to make advances is subject to these limitations:

1. The advance must be a loan at market interest rates.
2. The party applying for the advance must demonstrate that receipt of the advance is essential in order for it to pay claims.
3. The final reimbursement paid to the insurer must be reduced by the amount of the advance and any interest.

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<sup>34</sup> See Ch. 95-276, Laws of Florida.

<sup>35</sup> A "limited apportionment company" is an insurer that has surplus of \$20 million or less and that writes at least 25% of its countrywide property insurance business in Florida. See s. 627.351(2)(b)3., F.S. The FWUA reports that in 1997, there were 28 limited apportionment companies.

<sup>36</sup> See Ch. 96-194, Laws of Florida.

Under this bill, the Catastrophe Fund would be allowed to advance to a limited apportionment company the full amount of its projected reimbursement.<sup>37</sup> The “advance” would still be a loan, subject to interest at market rates, and subject to an offset against the insurer’s final reimbursement (i.e., if the advance exceeds the final determination of the insurer’s reimbursement, the insurer would not be required to pay back the excess). No demonstration of necessity would be required. The fund’s authority to make advances to the RPCJUA and FWUA and other insurers would not be changed by the bill.

**Section 87** amends s. 624.316, F.S., relating to financial examination of insurers. The Department of Insurance is required to conduct financial examinations of insurers; the examination is one of the means for monitoring an insurer’s solvency and compliance with the Insurance Code. Current law generally requires the department to conduct a financial examination of an insurer at least once every 3 years, except that the department must conduct a financial examination at least once a year with respect to an insurer that has continuously held a certificate of authority for less than 3 years. The department must conduct a financial examination at least once every 5 years, instead of once every 3 years, if the insurer has continuously held a certificate of authority for more than 15 years and if the insurer has “demonstrated sufficient compliance” as determined under s. 624.316(2)(f)3., F.S. The department is authorized to limit the scope of these examinations if the insurer has “demonstrated sufficient compliance” as determined under s. 624.316(2)(f)3., F.S. That provision requires the department to adopt procedures and criteria for determining whether an insurer has demonstrated sufficient compliance with the Insurance Code and cooperation with the department. The department has never adopted the required procedures and criteria for determining whether an insurer has demonstrated sufficient compliance.

The bill would allow the department to limit the scope of the examination without regard to whether the insurer has demonstrated “sufficient compliance,” would provide for 5-year examinations of insurers that have held a certificate for at least 15 years without regard to whether the insurer has demonstrated “sufficient compliance,” and would repeal s. 624.316(2)(f)3., F.S., which provides for adoption of rules for determination of sufficient compliance.

**Section 88** amends s. 624.426, F.S., relating to resident agent countersignature requirements. Currently, a property, casualty, or surety insurance policy may not be issued in Florida unless the policy is issued through or by a Florida-resident agent and unless the policy is countersigned by the resident agent.<sup>38</sup> Currently, the only policies that are exempt from this requirement are reinsurance contracts, policies covering railroad rolling stock, and U.S. Customs surety bonds.<sup>39</sup>

The bill would create another exemption to the countersignature requirement. When an insurer’s agents represent only that insurer and other members of an insurer group

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<sup>37</sup> Calculated pursuant to s. 215.555(4)(d), F.S., as the lesser of \$10 million or 10 times the reimbursement premium paid by the insurer to the Cat Fund for the current year.

<sup>38</sup> See s. 624.425, F.S.

<sup>39</sup> See s. 624.426, F.S.

under common ownership, the insurer could transfer a policy from one member of the insurer group to another member of the insurer group without the new policy being countersigned by a resident agent. The exemption would not apply if there was also a change in the agent of record. The exemption, as created by the bill, would remove an obstacle to the creation of new, Florida-only companies by insurers that currently have a substantial number of Florida policies in force.

**Section 89** amends s. 624.610, F.S., relating to reinsurance. In 1997, the Legislature addressed problems arising from the insolvency of non-U.S. insurers and reinsurers.<sup>40</sup> The 1997 legislation contained several technical flaws. It placed a statement of purpose, purporting to describe the purpose of Chapter 624, F.S., but in fact describing only the purpose of provisions relating to the insolvency of non-U.S. insurers and reinsurers, in a new s. 624.22, F.S. The 1997 law also contained erroneous cross-references to insurers' credits for reinsurance and referred to insurance regulators of other states as "superintendents" rather than "commissioners."

This section of the bill places the purpose language from the 1997 law in s. 624.610, F.S., which relates to reinsurance. The bill also corrects the cross references and changes the term "superintendent" to "commissioner."

It is possible that an apparent drafting error in this section of the bill could be construed to repeal paragraphs (a) and (c) of existing subsection 624.610(2), F.S. The directory line of Section 89 states, in pertinent part, that "subsection (2) is amended to read..." The section includes the text of paragraph (b) of subsection (2), but does not include the text of paragraphs (a) and (c). Technically, the failure to reprint those paragraphs might constitute their repeal; however, there is no evidence that the Legislature considered the repeal of these paragraphs at any point during the 1998 Session. Further, House Rules regarding the coding of bills require that deleted language be printed and hyphenated-through, and the repeal of these paragraphs without any reference to the repeal in the bill's title could violate Article III, Section 6 of the State Constitution.

**Section 90** amends s. 627.7275, relating to motor vehicle insurance policies. Currently, when a person obtains a private passenger motor vehicle policy in order to reinstate driving privileges that have been suspended or revoked for failure to maintain required insurance, the policy must be for a term of at least 6 months and may not be canceled by the insured for any reason. Premiums on the noncancellable policy are "fully earned"<sup>41</sup>

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<sup>40</sup> See Ch. 97-214, Laws of Florida. Under that law, if the alien (non-U.S.) insurer or reinsurer maintains a trust fund for its U.S. obligations, then, upon insolvency, the trust will continue to be maintained in the U.S., claims will be filed with and valued by the state insurance commissioner having regulatory oversight, and the assets will be distributed under the insurance laws of the state where the trust is maintained. An insurer is allowed to receive credit on financial statements for reinsurance ceded to a non-approved reinsurer if the reinsurer maintains a trust fund in the U.S. to cover U.S. claims. The trust must include a trustee account in an amount equal to the reinsurer's U.S. reinsurance liabilities and a trustee surplus of at least \$20 million. In the event of insolvency, the trustee must deliver the assets to the U.S. receiver, to be distributed in the same way as assets of an insolvent domestic insurer are distributed.

<sup>41</sup> A premium is "fully earned" when the full amount belongs to the insurer. Usually, a premium is not fully earned until the end of the policy period, and an early cancellation will entitle the

(i.e., nonrefundable) at the inception of the policy. If, while the 2-year proof of insurance requirements apply to the insured,<sup>42</sup> the insured obtains additional coverage or coverage for an additional risk, the insured must obtain a new 6-month noncancellable policy.

The bill would require the insured also to obtain a new 6-month noncancellable policy if the insured moves from one rating territory to another.<sup>43</sup> If the insured obtained the new 6-month noncancellable policy from the same insurer as issued the previous 6-month noncancellable policy, the insured would be required to receive a credit for any premium paid on the previous policy. The bill would also provide that the premium on the noncancellable policy is "nonrefundable," rather than "fully earned" (see footnote 4, above).

**Section 91** amends s. 627.9126, F.S., relating to reports by liability insurers. Since 1986,<sup>44</sup> liability insurers have been required by s. 627.9126, F.S., to maintain information on judgments, settlements, and final dispositions of cases not resulting in payments on behalf of insureds, and the department has been required to conduct annual samplings of this information. The annual sampling requirement, in effect, requires insurers to report the information to the department annually. Insurers are also required by that section to provide the department with more detailed information upon request.

According to the Department of Insurance, the department retains these reports and reports under s. 627.913, F.S.,<sup>45</sup> but does not do anything with them, the reports are rarely requested by the public, and the usefulness of the information has not been demonstrated.

This section of the bill would remove the requirement that the department conduct annual samplings of the information in the liability insurers' reports; the result is that insurers would be required to maintain the records, and would be required to furnish information upon request of the department, as under current law, but annual reporting would no longer be required.

**Section 92** amends s. 627.913, F.S., relating to reports of information by products liability insurers. Since 1978,<sup>46</sup> products liability insurers have been required by s. 627.913, F.S., to provide the department with annual reports of products liability

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insured to a refund of the "unearned" portion of the premium. The effect of declaring a premium to be "fully earned" at the inception of the policy is to make the premium nonrefundable.

<sup>42</sup> See s. 627.733(7), F.S.

<sup>43</sup> Usually, moving from one territory to another will change the premium applicable to a motor vehicle policy.

<sup>44</sup> See Ch. 86-160, Laws of Florida.

<sup>45</sup> See the summary of Section 92, below.

<sup>46</sup> See Ch. 78-224, Laws of Florida.

premiums, claims, reserves, income, losses, and judgments. The department is required to provide a summary of the information in its annual report.

This section of the bill would replace the annual reporting requirement with a requirement that the insurer provide the information upon request of the department. The department would no longer be required to provide a summary of the information in the department's annual report.

**Section 93** repeals s. 624.22, F.S., relating to the purpose of provisions relating to the insolvency of a non-U.S. insurer or reinsurer. Section 89 of the bill places the substance of this repealed provision in s. 624.610, F.S., relating to reinsurance.

**Section 94** repeals s. 626.532, F.S., relating to sale of insurance by vending machines, and s. 626.857, relating to the definition of "claims investigator." New insurance vending machine licenses have been prohibited since 1990,<sup>47</sup> and there are no longer any active insurance vending machine licenses. The same 1990 act eliminated "claims investigator" as a class of license.

**Section 95** creates s. 627.192, F.S., relating to employee leasing arrangements. The bill would require an employee leasing company to pay workers' compensation premiums that are commensurate with the exposure and claims experience for all employees. An employee leasing company covered in the voluntary market would be required to provide information on an annual basis to the insurer that would permit the calculation of an experience modification factor for each employer. The bill also requires the insurer to assign an experience modification factor to each employer after a leasing arrangement is terminated, which includes the experience incurred for any leased employees during the leasing arrangement.

The bill also:

provides that the information accrued during the term of an employee leasing arrangement shall continue to be used for future experience ratings of the ELC;

requires ELCs to notify the insurer when an employee leasing arrangement is terminated;

provides that a lessee shall not enter into an employee leasing arrangement or be eligible for workers' compensation coverage in the voluntary market if the lessee owes its current or previous insurer any premium or if the lessee owes any amounts under a current or previous employee leasing arrangement;

requires that insurers conduct annual audits of payroll and classification of ELCs and specifies audit requirements; and

requires employers to pay a premium, not to exceed three times the amount of the most recent annual premium, if a lessor or lessee fails to provide access to payroll and classification records for an audit.

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<sup>47</sup> See Ch. 90-363, Laws of Florida.

**Section 96** provides that the bill will take effect on October 1, 1998, except as otherwise provided.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The bill appropriates \$200,000 from the Special Disability Trust Fund (SDTF) to the Special Disability Trust Fund Privatization Commission for the purpose of studying the feasibility of privatizing all or part of the SDTF.

2. Recurring Effects:

The bill provides tax exemptions for residential property insurance policies issued by certain newly-formed, minority-owned insurance companies. The impact of this provision would depend both on the number of eligible minority-owned insurers that might be formed between the time the exemptions take effect and July 1, 2003, when they expire, and on the premium volume of residential property insurance policies written by these companies. Because of the remote and speculative nature of any projections either of the number of companies that might be eligible for the exemptions or of the premium volume these companies might generate, the fiscal impact of this provision is indeterminate.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

See above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The bill would increase the amounts of the surety bonds that must be posted by public adjusters and surplus lines agents to \$50,000 from the current \$5,000. The bill creates costs for adjusters, who would be required to retain records for 3 years instead of 1 year.

A person who has a noncancellable motor vehicle policy and who moves from one rating territory to another would be required to obtain a new policy and pay a new premium; such a person would be entitled to a credit for the earlier premium only if the new policy is issued by the same insurer as the old policy.

Persons who are residents of another country but who spend substantial amounts of time in Florida could be put at a disadvantage relative to Florida residents by the provision authorizing the sale in Florida of unregulated health insurance policies to foreign residents, in that they could be charged more than would otherwise be allowed for a policy providing less coverage than would otherwise be allowed.

2. Direct Private Sector Benefits:

To the extent that increased penalties (higher fines, the ability of the department to impose fines in addition to other sanctions, restitution) act as a deterrent, costs to the public arising out of misconduct by agents could decline.

A person damaged by an agent's misappropriation of funds could receive restitution under the bill.

The bill increases the amount that the Catastrophe Fund may advance to certain small insurers after a hurricane. A larger advance should improve these insurers' ability to pay claims quickly without jeopardizing solvency.

The bill authorizes the department to conduct financial examinations of certain insurers at least once every 5 years, instead of at least once every 3 years; this provision may reduce insurers' costs of compliance.

The bill exempts transfers of policies from one company to another within the same insurer group from resident agent countersignature requirements. This exemption should reduce the costs involved in establishing a Florida-only subsidiary or other large transfers of policies from one insurer to another affiliated insurer.

The replacement of liability insurer annual reporting requirements with requirements that information be furnished upon request of the department could reduce insurers' costs of compliance.

A Florida-domiciled health insurer would have additional opportunities to market products to foreign residents. Currently, a Florida-domiciled health insurer may sell an unregulated policy to a foreign resident only if the policy is delivered or issued for

delivery outside of Florida; the bill would allow the insurer to deliver such a policy to a foreign resident at any of seven Florida airports.

If the Special Disability Trust Fund Privatization Commission determines that privatizing the SDTF is feasible, the private entity would extinguish the liability of the SDTF sooner than would the Division of Workers' Compensation, thereby reducing the number of years that the Division of Workers' Compensation would need to levy assessments on private insurers for the SDTF.

Employers will no longer be able to avoid development of an experience rating modification ("experience mod") through the use of employee leasing arrangements. Upon termination of an employee leasing arrangement, an employer who leases employees from an employee leasing company will now be assigned an experience mod based on experience incurred during the employee leasing arrangement. This experience mod will then be used to determine the employer's workers' compensation premium when the employer purchases workers' compensation insurance in the voluntary market.

3. Effects on Competition, Private Enterprise and Employment Markets:

The bill would provide for licensure and regulation of nonresident public adjusters and nonresident independent adjusters. The Department of Insurance is currently enjoined from enforcing statutory Florida residency requirements for independent adjusters and public adjusters.

The bill would create tax and assessment exemptions for certain newly-formed, minority-owned property and casualty insurers, which may give these insurers a competitive advantage over competing insurers -- whether minority-owned or not minority-owned -- that are not eligible for the exemptions.

D. FISCAL COMMENTS:

The bill amends several provisions of s. 624.501, F.S., relating to fees charged by the Department of Insurance, but all of the amendments conform the language of the statute to fees currently being collected by the department.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

VI. COMMENTS:

Legislative history

This bill incorporates provisions that were identical to, or substantially similar to, provisions in several bills that also passed the House or were available for action by the House, as follows:

Sections 1-67, 69-81, 83, and 94 were contained in CS/HB 4451, which was pending Consent Calendar in the House at the end of the Session.

Section 68 was contained in SB 1316, which died in Messages in the House at the end of the Session.

Section 82 was contained in CS/HB 4047, 1st Engrossed, which passed both the House and the Senate.

Sections 84 and 85 were contained in HB 4815, 2nd Engrossed, which passed the House and died in Messages in the Senate at the end of the Session.

Section 95 was contained in CS/HB 4267, 1st Engrossed, which passed the House and died in the Senate Committee on Banking and Insurance at the end of the Session.

In addition, Sections 86-93 were contained in CS/HB 4251, which passed the Committee on Financial Services and died in the Committee on Civil Justice and Claims at the end of the Session.

Drafting notes

Several provisions of the bill, listed below, raise issues of statutory construction. See the relevant sections of the Section-by-Section Research, above, for further details.

Section 3 amends s. 624.478, F.S., relating to use of agents by self-insurance funds. CS/HB 4047, 1st Engrossed, which also passed the Legislature, repeals s. 624.478, F.S.

Sections 56 and 65 both amend, in different ways, s. 626.873, F.S., relating to nonresident adjusters.

Section 89 purports to amend subsection (2) of s. 624.610, F.S., relating to reinsurance, but shows the text of only one paragraph of that subsection; this action might be construed as repealing the other paragraphs of that subsection.

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**DATE:** May 28, 1998

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VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VIII. SIGNATURES:

**COMMITTEE ON FINANCIAL SERVICES:**

Prepared by:

Legislative Research Director:

\_\_\_\_\_  
Leonard Schulte

\_\_\_\_\_  
Stephen Hogge

**FINAL RESEARCH PREPARED BY COMMITTEE ON FINANCIAL SERVICES:**

Prepared by:

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