

**STORAGE NAME:** h4451s1.fs

**DATE:** April 13, 1998

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

**BILL #:** CS/HB 4451

**RELATING TO:** Insurance

**SPONSOR(S):** Committee on Financial Services and Rep. Rayson

**COMPANION BILL(S):** CS/SB 1372, 2nd Engrossed (s)

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

- (1) FINANCIAL SERVICES YEAS 10 NAYS 0
- (2) FINANCE & TAXATION
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

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**I. SUMMARY:**

Insurance agents and other field representatives are licensed and regulated by the Department of Insurance under Chapter 626, F.S. Chapter 626, F.S., has not been revised to conform the chapter to terminology changes made by the 1990 Sunset review, (the last major revision of Chapter 626, F.S.), a 1992 law providing for licensure of both title insurance agents and title insurance agencies, or a 1992 law providing for licensure of reinsurance intermediaries. This bill would conform Chapter 626, F.S., to these prior enactments, and would also provide statutory authorization for current practices of the department with respect to reinstatement of licensees and refundability of fees.

The bill would provide for licensure and regulation of nonresident independent adjusters and nonresident public adjusters, in response to an injunction which prohibits the department from enforcing Florida residency requirements for independent adjusters or public adjusters.

The bill would increase fines for willful violations by persons licensed under Chapter 626, would provide for restitution when an agent misappropriates funds, and would increase the amount of the surety bonds that must be filed by surplus lines agents and by public adjusters to \$50,000 from the current \$5,000.

Among numerous other changes to laws regulating insurance agents and field representatives, the bill would require the use of an agent to transact insurance on behalf of a group (i.e., workers' compensation) self-insurance fund, would require adjusters to maintain records of adjustments for 3 years instead of 1 year, and would allow the holder of a limited credit insurance license to hold certain other licenses.

The bill would exempt 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 July 1, 2003.

The bill would provide circumstances under which a credit life or disability policy could be issued for a period shorter than the term of the loan.

The fiscal impact of the minority-owned insurer exemptions has not been determined; the bill appears to have no other fiscal impacts.

II. 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>

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

**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

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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.”

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.

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?

No.

(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. Section 24 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.

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

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

Section 1 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?

N/A

- (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?

N/A

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. Section 6 of 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.

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

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

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 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/HB 4451</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	3	624.425	Resident agent and countersignature required
	4	624.428	Licensed agent law; life and health
	5	624.478	Use of agents
	6	624.501	Fees
	10	626.112	License and appointment required
	16	626.221	Examinations
	46	626.837	Excess or rejected business; health agents
	72	626.927	Licensing; surplus lines agents
	73	626.9271	Temporary license; surplus lines
	74	626.929	Placement of surplus lines business
	75	626.935	Surplus lines agent license; suspension, etc.
	76	626.944	Health care risk managers; qualifications
Customer representatives	11	626.141	Violation not to affect validity of insurance
	12	626.171	Application for license
	13	626.181	Number of applications
	15	626.211	Application; approval or disapproval
	16	626.221	Examinations

Table of conforming and technical changes in CS/HB 4451			
Issue	Section of bill	Section of Florida Statutes	Subject of affected section of Florida Statutes
	17	626.266	Examination security
	18	626.281	Reexamination
	19	626.311	Scope of license
	27	626.561	Reporting and accounting for funds
	30	626.611	Compulsory suspension, etc., of license
	32	626.641	Duration of suspension or revocation
	33	626.651	Effect of suspension, etc.
	37	626.727	Scope of Part II, Ch. 626, F.S.
	38	626.730	Purpose of license
	39	626.732	Educational and experience requirements
	40	626.733	Agency firms and corporations
Reinsurance intermediaries	7	626.022	Scope of Part I, Ch. 626, F.S.
	25	626.521	Character and credit reports
Claims investigators	7	626.022	Scope of Part I, Ch. 626, F.S.
	10	626.112	License and appointment required
	24	626.511	Termination of appointment
	25	626.521	Character and credit reports
	30	626.611	Compulsory suspension, etc., of license
	31	626.621	Discretionary suspension, etc., of license
	47	626.8411	Title agents and agencies; applicability of Insurance Code
	53	626.852	Scope of Part VI, Ch. 626, F.S.
	69	626.877	Adjustments; compliance with contract and law
Reinstatement	6	624.501	Fees
	14	626.201	Investigations
	16	626.221	Examinations
Refundability of fees	21	626.331	Number of appointments
Licensure of both title agents and title agencies	6	624.501	Fees
	14	626.201	Investigations
	50	626.8437	Compulsory suspension, etc., of license

Table of conforming and technical changes in CS/HB 4451			
Issue	Section of bill	Section of Florida Statutes	Subject of affected section of Florida Statutes
	51	626.844	Discretionary suspension, etc., of license
	52	626.8443	Duration of suspension or revocation
Other clarifications	22	626.342	Furnishing supplies to unlicensed agent
	27	626.561	Reporting and accounting for funds
	42	626.739	Temporary license
	54	626.858	Nonresident company employee adjusters
	64	626.869	Continuing education; workers' compensation adjusters
	80	634.420	Service warranty association sales representatives

### Sections of CS/HB 4451 containing other than conforming and technical changes:

**Section 1** 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>14</sup> excise taxes on property and casualty insurance premiums,<sup>15</sup> and regular assessments (but not emergency assessments) of the Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association.<sup>16</sup>

In order to qualify for the exemptions, the insurer would have to be 51 percent owned by minority persons<sup>17</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

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<sup>14</sup> See s. 624.509, F.S.

<sup>15</sup> See ss. 175.101 and 185.08, F.S.

<sup>16</sup> See s. 627.351(2) and (6), F.S.

<sup>17</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.

to write at least 20 percent of its policies in urban and inner-city areas.

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

**Section 2** amends s. 624.412, F.S., relating to alien insurers' deposit and surplus requirements.<sup>18</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.

**Section 5** amends s. 624.478, F.S., relating to requirements that agents be used for insurance sales transactions of self-insurance funds. Currently, the requirement applies only to *commercial* self-insurance funds, which are authorized to provide commercial property or casualty insurance,<sup>19</sup> but not *group* self-insurance funds, which are authorized to provide workers' compensation insurance.<sup>20</sup> This section of the bill would apply the requirement to all self-insurance funds.

**Section 8** 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 20** 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

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<sup>18</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.

<sup>19</sup> See s. 624.462, F.S.

<sup>20</sup> See s. 624.4621, F.S.

agent. One such limited license is the license to sell credit insurance.<sup>21</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>22</sup>

**Section 23** amends s. 626.451, F.S., relating to appointment of agents and other representatives. Currently, there is no requirement that law enforcement agencies or 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 26** 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 28** 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 29** 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

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<sup>21</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>22</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.

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 31** 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 32 and 51** 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 34** 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 35** 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 36** 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 41** 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 42, 43, and 44** 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 42 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 48** 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>23</sup>

**Section 49** 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 55** 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 56** 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 57** 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.

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<sup>23</sup> An attorney is exempt from the requirement of licensure as a title agent. See s. 626.8417(4)(a), F.S.

**Section 59** creates s. 626.8732, relating to qualifications for a nonresident public adjuster's license. The requirements are the same as for residents,<sup>24</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.

**Section 60** 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>25</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 61** 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 62** 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 63** 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 65** 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.

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<sup>24</sup> See s. 626.865, F.S. The qualifications relate generally to passage of an examination, trustworthiness, and experience, training, or instruction.

<sup>25</sup> See s. 626.866, F.S. The qualifications relate generally to passage of an examination, trustworthiness, and experience, training, or instruction.



**Section 66** 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 67** amends s. 626.873, F.S., relating to nonresident adjusters. This section would 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 68** 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.

**Section 70** 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.

**Section 71** 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 77** 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 78** 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 79** 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 81** 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 82** 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>26</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 83** provides that the bill will take effect on October 1 of the year in which it is enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

Section 1 of 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.

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<sup>26</sup> See Ch. 90-363, Laws of Florida.

**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.

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.

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:**

Section 6 of 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.

IV. 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

V. COMMENTS:

On April 10, 1998, the Director of House Bill Drafting attached to the completed draft of this bill a letter stating, in part, that "the addition of Section 1 of the bill adds a potential equal protection issue to the legislation."

Equal protection of the laws is guaranteed to all persons by the Fourteenth Amendment to the U.S. Constitution and by Article I, Section 2 of the Florida Constitution. In general, equal protection requires that the law provide similar treatment to persons who are similarly situated. When the law treats similarly situated persons differently, the determination of whether the Constitution has been violated depends on the persons affected and the rights implicated. Typically, when the law implicates "fundamental" rights, such as the rights guaranteed by the First, Fourth, and Fifth Amendments to the U.S. Constitution, or when the unequal treatment is based on a "suspect" classification, such as race, the law will be subject to "strict scrutiny," and a compelling state interest must be shown before the law will pass constitutional muster. However, where the law does not affect fundamental rights and where the law does not discriminate against a suspect class, it will generally survive a constitutional challenge if there was a rational basis for the law.<sup>27</sup>

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee Substitute is the same as HB 4451 as filed, with the following exceptions:

The bill as filed did not include any provision for tax or assessment exemptions for newly-formed, minority-owned insurers; the Committee Substitute includes such an exemption.

The bill as filed did not address alien insurers' surplus or deposit requirements; the Committee Substitute removes language that could have been construed to establish surplus requirements for alien insurers.

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<sup>27</sup> See, generally, 10 Fla. Jur. 2d, Constitutional Law, ss. 339-358.

**STORAGE NAME:** h4451s1.fs

**DATE:** April 13, 1998

**PAGE 21**

The bill as filed did not address the issue of "truncated" credit life and credit disability insurance policies; the Committee Substitute provides circumstances under which such policies may be issued.

Under the bill as filed, court clerks, state attorneys, and law enforcement agencies would have been required to report certain criminal justice information to the Department of Insurance; the Committee Substitute, these duties would apply only to state attorneys and law enforcement agencies.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

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Leonard Schulte

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Stephen Hogge