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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2000-370, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
FINAL ANALYSIS**

BILL #: CS/SB 2478

RELATING TO: State agencies authority (RAB)

SPONSOR(S): Governmental Oversight and Productivity and Senator Geller

TIED BILL(S):

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

- (1) GOVERNMENTAL OVERSIGHT AND PRODUCTIVITY YEAS 5 NAYS 0
 - (2) BANKING AND INSURANCE
 - (3) RULES AND CALENDAR
 - (4)
 - (5)
-

I. SUMMARY:

The 1999 Legislature amended the Administrative Procedure Act to provide that an agency may adopt only rules implementing or interpreting "specific powers and duties" granted by statute. On October 1, 1999, each agency submitted to the Joint Administrative Procedures Committee a list of rules adopted before June 18, 1999, which exceed the new standard for rulemaking authority. The Department of Insurance submitted a report identifying 124 rules or portions of rules needing additional statutory authority. By law, the Legislature is required to consider whether specific legislation authorizing the identified rules, or portions of these rules, should be enacted.

CS/SB 2478 codifies the substance of a number of Department of Insurance rules, and in other instances, grants specific statutory authority to adopt certain rules currently in force.

This bill is not expected to have a fiscal impact on state government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Rulemaking Authority

In 1996, the Legislature significantly revised the Administrative Procedure Act (APA) to require executive branch agencies to adhere to statutory authority when adopting rules. The 1996 amendments created a new section, s. 120.536(1), F.S., requiring existing and proposed rules to "implement or interpret the specific powers and duties granted by the enabling statute."

The Legislature recognized that imposing a new statutory standard to determine the validity of rules might suddenly invalidate many rules which had previously been adopted by the agencies under the previous standard. Rather than immediately invalidate these rules, the 1996 reform legislation required each agency to examine all of its rules that had been adopted prior to the effective date of the 1996 amendments, in light of the new standard, and report to the Joint Administrative Procedures Committee (JAPC) the list of rules which exceeded the new standard.

Rules identified by the agencies were temporarily shielded from legal challenges on the grounds that they exceeded rulemaking authority under the new standard. This shield left these rules in place during the 1998 legislative session, allowing the Legislature to determine which policies established by these rules should be codified. If legislation enacted during the 1998 session provided statutory support for the rule, it remained in effect. If no such legislation was enacted, agencies were directed to initiate repeal of these rules by January 1, 1999.

In 1999, the Legislature again amended the APA standard authorizing an agency to adopt only rules that implement or interpret "specific powers and duties" granted by statute. The Legislature again recognized that revising the standard might invalidate rules which had been adopted or reviewed under a different interpretation of the 1996 standard.

The 1999 Legislature¹ provided for another round of rule review and authorization. Agencies were directed to submit to the JAPC a list of rules adopted before June 18, 1999,

¹Chapter 99-370, Laws of Florida.

which exceeded the new standards for rulemaking authority. The Legislature is required to consider in the 2000 Regular Session whether specific legislation authorizing the identified rules, or portions of these rules, should be enacted. For any rule not authorized, the agency must initiate proceedings by January 1, 2001, to repeal the rule. The JAPC or any substantially affected person may petition for repeal of an identified rule after July 1, 2001.

Rules Identified by the Department of Insurance

Under the new standards enacted by the Legislature in 1999, the Department of Insurance (DOI) identified more than 100 rules as lacking the requisite statutory authority. See the Section-by-Section Analysis for a discussion of the rules authorized by this bill.

C. EFFECT OF PROPOSED CHANGES:

Specific statutory authority would be granted to the DOI for various rules or portions of rules identified by the DOI as lacking the requisite statutory authority. Other DOI rules lacking the requisite statutory authority would be codified in statute.

For a detailed discussion of the DOI rules which have been provided specific statutory authority or which have been codified in statute, see the Section-by-Section Analysis.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 386.205, F.S.

Present Situation - The DOI has rules prohibiting smoking tobacco in any DOI buildings (Rules 4E-3.001, 4E-3.002, 4E-3.003, 4E-3.004, 4E-3.005, 4E-3.006, 4E-3.007, and 4E-3.008, F.A.C.).

Effect of Section - Any state agency would be given the authority to adopt rules implementing the provisions of the "Florida Clean Indoor Air Act."

Section 2: Amends s. 554.115, F.S.

Present Situation - The DOI has rules setting forth the conduct which could give rise to disciplinary proceedings by the State Fire Marshall against persons who operate a boiler in a manner contrary to Chapter 554, F.S., or to DOI rules (Rule 4A-51.040, F.A.C.). This conduct includes operating a boiler at a public assembly location without a valid certificate and giving false information to DOI or an inspector.

Effect of Section - The substance of the Rule 4A-51.040 would be codified in statute.

Section 3: Creates s. 624.4135, F.S.

Present Situation - The DOI has rules establishing forms, procedures, and fees relating to the redomestication of foreign insurers. "Redomestication" occurs when a foreign insurer becomes a Florida domestic insurer (Rule 4.143.061, F.A.C.).

Effect of Section - Rulemaking authority would be created allowing the DOI to adopt rules establishing procedures and forms for a foreign insurer to apply for a certificate of authority as a domestic insurer.

Section 4: Amends s. 625.305, F.S.

Present Situation - The DOI has a rule setting forth limitations which apply to a life insurer when investing money received from variable annuities in common stock (Rule 4-162.011, F.A.C.).

Effect of Section - The substance of Rule 4-162.011, F.A.C., would be codified in statute.

Section 5: Creates s. 625.765, F.S.

Present Situation - The DOI has rules allowing persons to be exempt from the reporting requirements of ss. 625.75 and 625.76, F.S., (which require certain directors and officers of domestic stock insurers to report their ownership interests in equity securities) (Rules 4-143.006 - 4-143.018, F.A.C.).

Effect of Section - Rulemaking authority would be provided giving the DOI the authority to grant exemptions from ss. 625.75 and 625.76, F.S., in certain specified circumstances.

Section 6: Creates s. 626.2817, F.S.

Present Situation - The DOI has rules establishing procedures and standards for insurance agent pre-licensing education courses, instructors, and schools (Rules 4-211.110 - 4-211.310, F.A.C.).

Effect of Section - Rulemaking authority would be created allowing the DOI to enact rules to regulate course providers, instructors, school officials, and monitor groups involved in prelicensure education for insurance agents and other licensees.

Section 7: Amends s. 626.7353, F.S.

Present Situation - The DOI has rules governing the procedures and forms relating to appointment of customer service representatives (Rule 4-213.060, F.A.C.).

Effect of Section - The DOI would be authorized to adopt by rule forms relating to the appointment of customer service representatives.

Section 8: Amends s. 627.062, F.S.

Present Situation - The DOI has a rule requiring insurers to consider the availability of water supplies in setting fire insurance rates (Rule 4-170.011, F.A.C.).

Effect of Section - The rule requirement that insurers consider the availability of water supplies in setting fire insurance rates would be codified in the rating law.

Section 9: Amends s. 627.429, F.S.

Present Situation - The DOI has a rule requiring prepaid limited health service organizations to comply with the AIDS protection provisions of s. 627.429, F.S. (Rule 4.203.25, F.A.C.).

Effect of Section - Authority would be provided to the DOI to include prepaid limited health service organizations within the scope of its rulemaking under s. 627.429, F.S.

Section 10: Amends s. 627.481, F.S.

Present Situation - The DOI has rules requiring issuers of donor annuity agreements to submit a sworn statement on a form prescribed by the DOI, attesting that the issuer has met all requirements of law (Rules 4-202.012, and 4-202.015, F.A.C.).

Effect of Section - Authority would be provided to the DOI for it to adopt forms and rules relating to the filing of annual statements and agreements pertaining to donor annuity organizations.

Section 11: Creates s. 627.7276, F.S.

Present Situation - For automobile policies which do not contain bodily injury and property damage coverage, the DOI has a rule requiring insurers to notify insureds by either stamping or printing on the declaration page that this coverage is not provided (Rule 4-184.012, F.A.C.).

Effect of Section - The substance of Rule 4-184.012, F.A.C., would be codified in statute.

Section 12: Amends s. 627.7282, F.S.

Present Situation - The DOI has rules requiring insurers issuing private passenger motor vehicle policies to complete the underwriting of the policy and make a final determination of the correct premium within 60 days after the effectuation of the coverage. If the insurer determines the insured has been charged the incorrect premium, the insurer is required to provide notice to the insured, which must include a period of time no less than 10 days and no more than 45 days for the insured to pay additional premium or to cancel the policy and demand a refund of unearned premiums. See Rule 167.002, F.A.C.).

Effect of Section - Authority would be provided for the DOI to adopt rules prescribing the format of the notice.

Section 13: Creates s. 627.796, F.S.

Present Situation - The DOI has a rule prohibiting the issuance of any title insurance policy based on a search performed by any person other than an employee of a title insurer or title insurance agency, unless that person has certain insurance coverage (Rule 4-186.012, F.A.C.).

Effect of Section - The substance of Rule 4-186.012, F.A.C., would be codified in statute.

Section 14: Creates s. 627.797, F.S.

Present Situation - The DOI has a rule requiring title insurers to file with the DOI the name and address of every appointed agent exempt from licensure under s. 626.8417(4), F.S., issuing or countersigning binders, commitments, title insurance policies, or guarantees of title. The rule also requires insurers to report to the DOI, on a monthly basis, the name and address of every non-licensed agent whose appointment is granted or terminated. (See Rule 4-186.014, F.A.C.).

Effect of Section - The substance of Rule 4-186.012, F.A.C., would be codified in statute.

Section 15: Creates s. 627.798, F.S.

Present Situation - The DOI has a rule requiring title insurers, business trust title insurers, agents of title insurers, and agents, employees, or officials of lending institutions to disclose to a purchaser-mortgagor that a mortgagee title insurance policy does not protect the purchaser as owner. The DOI also has a rule specifying the form which title insurers, business trust title insurers, agents of title insurers, and agents, employees, or officials of lending institutions must use when making the disclosure. (See Rules 4-186.001 and 4-186.002, F.A.C.).

Effect of Section - The DOI would be granted authority to adopt a form to be used in notifying a purchaser-mortgagor that the purchaser-mortgagor is not protected by the title policy of the mortgagee.

Section 16: Amends s. 627.8405, F.S.

Present Situation - The DOI has a rule requiring agents, whenever motor vehicle insurance is financed, to disclose any insurance coverages that are financed along with personal injury protection, other than property damage liability, bodily injury, collision, uninsured motorist, or comprehensive coverage. The rule also prescribes the form of the required disclosure and requires the disclosure to be signed by the insured. (See Rule 4-196.021, F.A.C.).

Effect of Section - Statutory authority would be provided for the DOI to prescribe the form of the disclosure.

Section 17: Amends s. 627.848, F.S.

Present Situation - The DOI has a rule requiring premium finance companies to use a specified form notifying the insured of certain rights and duties whenever it cancels an insurance contract pursuant to a premium finance agreement (Rule 4-196.001, F.A.C.).

Effect of Section - Statutory authority would be provided to the DOI for the purpose of adopting a standard cancellation notice for use by premium finance companies, including the color of the notice required to be used.

Section 18: Creates s. 627.955, F.S.

Present Situation - The DOI has a rule prohibiting purchasing groups from purchasing insurance with a deductible or self-insured retention applicable to the group as a whole. The purchasing group, however, may provide for a deductible or self-insured retention applicable to individual members. (See Rule 4-136.033(2), F.A.C.).

Effect of Section - The substance of Rule 4-136.033(2), F.A.C., would be codified in statute.

Section 19: Amends s. 635.071, F.S.

Present Situation - The DOI has a rule prohibiting insurers from insuring mortgages offered for sale to the public by advertisement, where the advertisement stresses the

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value or worth of the mortgage by virtue of the proposed mortgage guaranty insurance or its regulation by an agency of the state or federal government (Rule 4-185.005, F.A.C.).

Effect of Section - The substance of Rule 4-185.005, F.A.C., would be codified in statute.

Section 20: Amends s. 648.4425, F.S.

Present Situation - Section 648.4425, F.S., requires bail bond agents, upon issuing a bond, to provide an informational notice to the principal and the party rendering collateral. This notice must include a statement noting with particularity the restrictions placed on the principal, the bail bond agent's powers to cancel the bond, and the name, address, and telephone number of the DOI for complaints or inquiries.

The DOI has a rule establishing a form which sets forth the terms and conditions which must be in all bail bond contracts (Rule 4-221.100, F.A.C.).

Effect of Section - The DOI would be granted the authority to prescribe forms to administer s. 648.4425, F.S.

Section 21: Amends s. 791.015, F.S.

Present Situation - The DOI, Division of State Fire Marshall, has rules governing the registration requirements for persons wishing to engage in the manufacture, distribution, wholesale, retail, or seasonal retail of sparklers (Rules 4A-50.001 and 4A-50.005, F.A.C.).

Effect of Section - Statutory authority would be provided to the DOI to adopt rules establishing a form to be used by entities wishing to do business in Florida as a manufacturer, distributor, wholesaler, or retailer of sparklers.

Section 22: Provides that the bill takes effect July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill either establishes rulemaking authority for, or codifies in statute, existing rules of the Department of Insurance.

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C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Robert E. Wolfe, Jr.

Stephen Hogge

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

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