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HOUSE OF REPRESENTATIVES
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS

BILL #: CS/HB 1219
RELATING TO: Insurance agents
SPONSOR(S): Council for Competitive Commerce and Representative(s) Brown

TIED BILL(S):

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

- (1) INSURANCE YEAS 14 NAYS 0
 - (2) FISCAL POLICY & RESOURCES YEAS 13 NAYS 0
 - (3) COUNCIL FOR COMPETITIVE COMMERCE YEAS 12 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 1219 makes a number of changes relating to the licensure of insurance company representatives. Changes include:

- Requiring licensed insurance agents marketing other products to maintain separate records relating to insurance products and transactions.
- Allowing the Department of Insurance access to any insurance agent records maintained at a third party location.
- Specifying the activities constituting the "solicitation of insurance."
- Eliminating the collection of certain information by the Department of Insurance.
- Extending the amount of time a licensee would have to obtain an appointment after the termination of his or her last appointment.
- Declaring that the requirements of the insurance code would apply equally to all insurance transactions, insurance agents, and insurance agencies, unless otherwise specified in the Insurance Code.
- Allowing the Department of Insurance to revoke or suspend the license of a licensee selling securities not registered as required under Chapter 517, F.S.

This bill does not have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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"/> |

B. PRESENT SITUATION:

Insurance representatives are required by Florida law to be licensed by the Department of Insurance prior to conducting business in the state. The Department issues over 70 different types of licenses for insurance company representatives, including 32 different types for agents and 30 different types for adjusters. Adjusters who are attorneys in good standing with the Florida Bar are not required to be licensed by the Department.

The purpose of a license is to authorize and enable an insurance representative to actively and in good faith engage in the insurance business with respect to the public and to facilitate the public supervision these activities in the public interest.

Generally, applicants for licensure by the Department of Insurance must be at least 18 years old; be a resident of the state; pass a state licensing examination; maintain a place of business in the state; and be fingerprinted. Applicants also must fulfill certain educational requirements and pay a licensing fee. The Department of Insurance also licenses nonresident agents.

Certain applicants for licensure are exempt from the examination requirements. For example, agent applicants holding certain designations, such as a CPCU (Chartered Property and Casualty Underwriter) or CLU (Certified Life Underwriter), may be exempt from taking an examination.

The Department may deny, suspend, or revoke a license for good cause. Reasons for denial, suspension, or revocation can include lack of qualifications; the use of fraudulent information in the license application; willful misrepresentation of an insurance policy; failure to comply with the Insurance Code; or a demonstrated lack of trustworthiness to engage in the insurance business.

In addition to being licensed, an agent must be appointed by an insurer to act on its behalf within the scope of the agency.

See II.D., Section-by-Section Analysis, for the present situation specific to proposed changes.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 1219 makes a number of changes and revisions relating to the licensure of insurance company representatives. Changes include:

- Requiring licensed insurance agents marketing other products to maintain separate records relating to insurance products and transactions.
- Allowing Department of Insurance access to any insurance agent records maintained at a third party location.
- Specifying the activities constituting the “solicitation of insurance.”
- Eliminating the collection of certain information and data by the Department of Insurance.
- Expanding the amount of time a licensee would have to obtain an appointment after the termination of his or her last appointment.
- Declaring that the requirements of the insurance code would apply equally to all insurance transactions, insurance agents, and insurance agencies, unless otherwise specified in the insurance code.
- Allowing the Department of Insurance to revoke or suspend the license of a licensee selling securities not registered as required under Chapter 517, F.S.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 624.318, F.S., to require licensed insurance agents marketing other products to maintain separate records relating to insurance products and transactions. Additionally, the Department of Insurance would be given access to any records of the insurance agent maintained at a third party location.

Current law. Licensed insurance agents marketing other products are not required to maintain separate records for insurance products and insurance transactions. The Department of Insurance does not have express authority to inspect records held in a third party location.

Section 2. Amends s. 626.112, F.S., to specify the activities constituting the “solicitation of insurance.” The “solicitation of insurance” is defined as the attempt to persuade a person to purchase an insurance product by:

- Describing the benefits or terms of insurance coverage, including premiums and rates of return;
- Distributing an invitation to contract to prospective purchasers;
- Making general or specific recommendations as to insurance products;
- Completing orders or applications; or
- Comparing insurance products or advising as to insurance matters or interpreting policies or coverages.

The bill also specifies the activities that an employee leasing company may engage in (including delivery of proposals, classification of employees, collection of information, receiving forms, and explaining coverages to employees or clients), and specifies that an employee leasing company may engage in any activities authorized for general lines, life, or health agents, consistent with ss. 626.041, 626.051, and 626.062, F.S.

The bill prohibits agents, agencies, and other licensees from paying an unlicensed person any fee for referrals of prospective insurance purchasers when the payment of the fee depends on the purchase of insurance.

Current Law. The insurance code does not specify activities constituting the “solicitation of insurance.”

Section 3. Amends s. 626.171, F.S., relating to applications for licensure, to eliminate the collection of information not relevant to a determination of an applicant’s eligibility for licensure. This section also eliminates a reference to claims investigators. Claims investigators are no longer licensed by the Department of Insurance.

Current Law. In addition to being fingerprinted, applicants for licensure as agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents, and reinsurance intermediaries also are required to provide the Department of Insurance with the following information in their applications:

- Full name, age, social security number, residence, place of business, and occupation for the 5-year period preceding the date of application.
- Qualifications for the license, which include: the efforts made to become familiar with the insurance laws and with the provisions of the contracts to be negotiated; what insurance experience they have had; what insurance instruction they have had or expect to receive; what approved insurance courses they have completed or are in the process of completing which may be used to meet any educational requirements.
- Whether they have been refused or have voluntarily surrendered or have had suspended or revoked a license to solicit insurance by the Department of Insurance in this or any other state.
- Whether any insurer or any managing general agent claims the applicant is indebted under any agency contract or otherwise and, if so, the name of the claimant, the nature of the claim, and the applicant's defense thereto, if any.
- Whether the applicant will devote all or part of his or her efforts to acting as an insurance representative and, if part only, how much time will be devoted to such work and in what other business or businesses he or she is engaged or employed.

Section 4. Amends s. 626.181, to limit the circumstances under which a person who has been licensed as an agent, customer representative, or adjuster will be required to take another examination for a similar license. The bill provides that a new examination will be required if the person was, for a period of 48 months or more since the filing of the original license application, not appointed by any insurer as an agent, customer representative, or adjuster.

Current Law. The requirement for a new examination attaches if the person has not held an appointment for 24 months.

Section 5. Creates s. 626.202, to require any new officer, owner, or director of an insurance firm to submit fingerprints and a processing fee to the Department of Insurance. A change in ownership or control would be defined as acquiring 10 percent or more of voting securities.

Current Law. Persons applying for licensure as an insurance agency are required to be fingerprinted under s. 626.171, F.S.

Section 6. Amends s. 626.341, F.S., to expand to 4 years the amount of time licensees would have to obtain an appointment after the termination of their last appointment.

Current Law. Licensees have 2 years to obtain an appointment after the termination of their last appointment.

Section 7. Amends s. 626.5715, F.S., to specify that the requirements of the insurance code would apply equally to all insurance transactions, insurance agents, and insurance agencies, unless otherwise specified in the insurance code.

Current Law. The Department of Insurance has the authority to adopt rules to assure parity among the different types of financial institutions authorized to sell insurance.

Section 8. Creates s. 626.9531, to require the advertising materials used by insurers to clearly indicate that the advertised product is an insurance product, and to require insurance agents to indicate to prospective insureds that they are dealing with an insurance agent regarding an insurance product.

Section 9. Amends s. 626.541, F.S., to require that an insurance agent transacting insurance under a business name file notification with the Department of Insurance within 30 days of the initial transaction of insurance. Also, an agency would be required to notify the Department of Insurance within 30 days of any change of information contained in its application. Any change in name, director, owner or personnel associated with the firm would be required to be reported within 30 days.

Current Law. Insurance agents doing business under a firm or corporate name or doing business under a name other than their own are required annually, by January 1, to file a statement of the name being used, the office address, and the name and social security number of each officer, director, and individual association with the firm or corporation. Any change in name, director, owner or personnel associated with the firm is required to be reported within 60 days. Any change in the application information supplied to the Department of Insurance is required to be reported to the Department of Insurance annually, by January 1.

Section 10. Amends s. 626.601, F.S., removes the ability of the licensee to waive the confidentiality of the investigative files of the Department of Insurance. This change would make the information in investigative files confidential until the investigation has been completed.

Current Law. A licensee under investigation could waive the right of confidentiality of the investigative files of the Department of Insurance.

Section 11. Amends s. 626.611, F.S., to allow the Department of Insurance to revoke or suspend the license of a licensee selling securities not registered as required under Chapter 517, F.S.

Current Law. The Department may deny, suspend, or revoke a license for good cause. Reasons for denial, suspension, or revocation can include lack of qualifications; the use of fraudulent information in the license application; willful misrepresentation of an insurance policy; failure to comply with the Insurance Code; or a demonstrated lack of trustworthiness to engage in the insurance business.

Sections 12, 13, and 14. Amend ss. 626.7411, 626.792, and 626.835, F.S., to specify that licenses issued by the Department of Insurance to nonresident agents would be limited to the lines of insurance for which they are licensed in their own state of residence, and further limited to the specific lines authorized under the Florida nonresident agent license.

Current Law. Current practice of the Department of Insurance is to limit the license of nonresident agents to the scope of the license in their state of residence.

Section 15. Amends s. 626.972, F.S., limiting to 4 years from the date that the application for licensure is filed with the Department of Insurance the amount of time in which agents must

complete either 1 year of work for a licensed surplus lines agent or 60 hours of class work. Surplus lines agents would be granted 4 years after being licensed by the Department of Insurance to obtain an appointment without having to take an additional written exam.

Current Law. Agents are required to complete either 1 year of work for a surplus lines agent or 60 hours of class work prior to becoming a surplus lines agent. Florida law does not limit the amount of time it may take. Surplus lines agents have 2 years after obtaining a license to be appointed by an insurer without having to take an additional written exam.

Section 16. Amends s. 626.872, F.S., to specify that adjusters issued temporary licenses would be prohibited from adjusting losses after the expiration of their temporary licenses without having been issued a regular adjuster's license.

Current Law. Adjusters issued temporary licenses may adjust claims if their temporary license has expired if they have passed the written exam.

Section 17. Amends s. 626.8427, F.S., to expand from 2 to 4 years the amount of time title agents would have to obtain an appointment after the termination of their last appointment.

Current Law. Title agents have 2 years to obtain an appointment after the termination of their last appointment.

Section 18. Amends the definition of "company employee adjuster" in s. 626.856, F.S., to specify that a "company employee adjuster" includes employees of wholly-owned subsidiaries of insurers.

Current Law. "Company employee adjuster" includes a person on an insurer's staff of adjusters.

Section 19. Amends the catchline of s. 626.873, F.S. Technical.

Section 20. Amends s. 626.521, F.S., by requiring appointing entities to furnish information to the Department of Insurance on appointees only if requested by the Department of Insurance.

Current Law. The appointing entity is required to furnish information regarding the character of the appointee to the Department of Insurance.

Sections 21, 22, and 23. Amend ss. 648.315, 648.38, and 648.384, relating to appointment of bail bond agents. These sections provide a 48-month appointment period (providing a 48-month period in which a person who is not appointed may be issued a new license without taking a new examination, requiring appointment within 48 months after initial licensure, and providing that a bail bond agent who fails to maintain an appointment for 48 months will not be granted a reappointment until qualifying as a first-time applicant). These changes conform bail bond agent requirements to other provisions of the bill relating to appointment periods for other agents.

Current Law. Current law contains the same requirements, but specifies a 24-month appointment period rather than a 48-month period.

Section 24. Repeals subsections (11) and (23) of s. 624.501, F.S. Subsection (11) specifies the appointment fee for vending machines, and subsection (23) specifies the appointment fees for health risk managers. Licenses are no longer issued by the Department of Insurance for these classes.

Section 25. Provides an effective date of October 1, 2001.

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:

Licenses of the Department of Insurance would have to file fewer forms with the Department of Insurance. Some reporting requirements would decrease, also. For example, an insurance representative transacting insurance under a business name would be required to report to the Department of Insurance once, rather than annually as in current law.

D. FISCAL COMMENTS:

None

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 municipalities or counties 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:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

CS/HB 1219 incorporates several amendments adopted by the Committee on Insurance, as further amended by the Council for Competitive Commerce. The CS includes:

- Revised language on the definition of "solicitation of insurance."
- Providing that a new examination will be required when a licensee has been without any appointment for a period of 48 months (instead of 24 months as under current law).
- Revised language on disclosure that products being sold are insurance products and that persons selling such products are insurance agents.
- Clarification of the authority of the Department of Insurance to limit the scope of a nonresident agent's license.
- Extending the appointment period for bail bond agents to 48 months (24 months under current law), to conform to provisions on other agents.

VII. SIGNATURES:

COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:

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Staff Director:

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AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

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