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DATE: March 21, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 1219
RELATING TO: Insurance agents
SPONSOR(S): Representative(s) Brown

TIED BILL(S):

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

- (1) INSURANCE
 - (2) FISCAL POLICY & RESOURCES
 - (3) COUNCIL FOR COMPETITIVE COMMERCE
 - (4)
 - (5)
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I. SUMMARY:

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.
- 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.

This bill would 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:

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” would be defined as:

- Describing the benefits or terms of insurance coverage, answering questions about insurance products, or recommending insurance products;
- Providing and receiving applications or accepting orders for insurance coverage;
- Receiving initial premium payments from purchasers;
- Distributing an invitation to contract to prospective purchasers; or
- Attempting to persuade any person to purchase a particular insurance product.

An employer or employee leasing company licensed under Chapter 468 would be permitted to provide and receive enrollment forms or take action to effectuate insurance coverage under a group policy or a health maintenance organization contract.

A payment or fee for referrals of prospective insurance purchases to a licensed agent would be prohibited when the payment or 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. Creates s. 626.202, F.S., 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 5. 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 6. 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 7. Creates s. 626.9531, F.S., to require the advertising materials and communications used by insurers and insurance agents to indicate that the potential insured is dealing with an insurer or insurance agent regarding an insurance product.

Section 8. 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 9. 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 10. 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 11, 12, and 13. 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.

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 14. 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 15. 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 16. 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 17. 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 18. Amends the catchline of s. 626.873, F.S. Technical.

Section 19. 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.

Section 20. Amends s. 624.501, F.S, to repeal subsections (11), regarding the appointment fee for vending machines, and subsection (23), relating to appointment fees for health risk managers. Licenses are no longer issued by the Department of Insurance for these classes.

Section 21. 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:

Licenseses 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:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Meredith Woodrum Snowden

Stephen Hogge