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DATE: April 2, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 1607
RELATING TO: Rulemaking authority of the Department of Insurance
SPONSOR(S): Representative(s) Bennet
TIED BILL(S):

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

- (1) INSURANCE
 - (2) HEALTH PROMOTION
 - (3) COUNCIL FOR COMPETITIVE COMMERCE
 - (4)
 - (5)
-

I. SUMMARY:

The 1999 Legislature amended the Administrative Procedure Act to limit agency rule making authority to rules implementing or interpreting "specific powers and duties" granted by statute.

HB 1607 would codify the substance of a number of Department of Insurance rules, and, in other instances, grant the Department of Insurance specific statutory authority to adopt certain rules currently in force. The Department of Insurance would be granted the authority to adopt numerous rules, including those:

- To administer market conduct examinations, including rules enabling the Department of Insurance to ascertain compliance with Insurance Code.
- Regarding the licensure application process for insurance company representatives, including photo identification, character and credit reports, prelicensing courses, the impact of criminal and law enforcement history, in order to determine an applicant's trustworthiness to engage in the business of insurance.
- Necessary to assure the proper administration of claims and protection of third-party claimants from unfair policy defenses not attributable to the third-party claimant.

In other instances, rules of the Department of Insurance would be codified, such as rules requiring insurers to provide first dollar coverage to third-party claimants without a deductible in commercial motor vehicle policies issued to satisfy mandatory financial responsibility requirements of state or local government, requiring borrower notification in single interest insurance, and requiring certain rate filings use department forms.

This bill would not have a fiscal impact on state government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The Department of Insurance would be given specific rule making authority. In some instances, the current rules of the Department of Insurance would be codified.

2. Lower Taxes Yes No N/A

The State Employees' Deferred Compensation Program administered by the Division of Treasury within the Department of Insurance would require that all fees would be paid by the investment providers and could be recouped by their plan participants.

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

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 previously adopted by the agencies under the previous standard. Rather than immediately invalidate these rules, the Legislature in the 1996 reform legislation required each agency to examine all of its rules adopted prior to the effective date of the 1996 amendments, in light of the new standard, and report to the Joint Administrative Procedures Committee which rules 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 Administrative Procedures Act 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 adopted or reviewed under a different interpretation of the 1996 standard.

In the 2000 session, the Legislature was required to consider whether specific legislation authorizing the identified rules, or portions of these rules, should be enacted. For any rule not authorized, the agency was to have initiated proceedings by January 1, 2001, to repeal the rule.

The Joint Administrative Procedures Committee or any substantially affected person may petition for repeal of an identified rule after July 1, 2001.

C. EFFECT OF PROPOSED CHANGES:

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

For a detailed discussion of the department 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. 112.215, F.S.

Present Situation: The Department of Insurance (department) has a rule relating to the State Employees Deferred Compensation Plan (Rule 4C-6.003, F.A.C.). This rule prescribes forms that are used in the plan, but makes no provision for funding of the plan.

Effect of Section: Section 112.115, F.S., would be amended to provide that the cost of the deferred compensation program would be wholly or partially self-funded and the fees for self-funding would be paid by investment providers and could be recouped from their participants.

Section 2. Amends s. 624.3161, F.S.

Present Situation: The department has rules relating to insurer and agent conduct in handling and settling property insurance claims (Rules 4-166.023, 4-166.026, 4-166.027, and 4-166.028, F.A.C.).

Effect of Section: Rulemaking authority would be created allowing the department to adopt rules to administer market conduct examinations, including rules enabling the department to ascertain compliance with Chapters 624, 626, 627, 634, 635, 642, and 651, F.S.

Section 3. Amends s. 626.171, F.S.

Present Situation: The department has adopted rules relating to the insurance company representative licensure process. These rules govern the type of photo identification required and the exemptions from that requirement, character and credit reports required of the applicant, prelicensing courses, and the affect of law enforcement records on applications for licensure (Chapter 4-211, F.A.C.). The purpose of this rule chapter is to establish procedures and adopt forms for insurance company representative licensing under the provisions of Chapter 626, F.S.

Effect of Section: The department would be given specific authority to adopt rules regarding the license application process, including photo identification, character and credit reports, prelicensing courses, the impact of criminal and law enforcement history, in order to determine an applicant's ability to engage in the business of insurance.

Section 4. Amends s. 626.748, F.S.

Present Situation: The department has a rule requiring insurers to maintain records of all insurance policies issued, including the name and address of the insureds, the beneficiaries, and the coverage provided (Rule 4-184.004, F.A.C.).

Effect of Section: The substance of Rule 4-184.004, F.A.C., would be codified in statute, but the record keeping requirements from the rule would be applied to "transacting agents" rather than insurers.

Section 5. Amends s. 626.9541, F.S.

Present Situation: The department has several rules relating to unfair discrimination in premiums charged for private passenger motor vehicle insurance [Rules 4-175.007 (location of risk), 4-175.008 (accidents more than 3 years old), and 4-175.009 (type of vehicle)]. Under Rule 4-175.009, F.A.C., insurers may include a surcharge or discount based on the type of vehicle, if the insurer provides statistical justification for the surcharge or discount.

Effect of Section: The substance of Rules 4-175.007, 4-175.008, and 4-175.009, F.A.C., would be codified in the unfair trade practice section of law. The codification of Rule 4-175.009, F.A.C., would not include the exception for insurers providing statistical evidence for the surcharge or discount.

Section 6. Creates s. 626.9552, F.S.

Present Situation: The department has rules relating to single interest insurance written in connection with a finance or loan transaction (Rules 4-184.016 and 4-184.019, F.A.C.). Single interest insurance protects lenders in situations where the loan collateral is damaged and the borrower has failed to maintain insurance. These rules require notification to the borrower that this type of insurance has been written at the expense of the borrower to protect the collateral of the lender.

Effect of Section: The substance of Rules 4-184.016 and 4-184.019, F.A.C., would be codified in statute.

Section 7. Amends s. 627.062, F.S.

Present Situation: The department has a rule prescribing the forms used in property and casualty insurance rate filings (Rule 4-170.013, F.A.C.).

Effect of Section: Section 627.062, F.S., would be amended to require that rate filings be in a manner and on forms prescribed by the department, thereby codifying Rule 4-170.013, F.A.C.

Section 8. Amends s. 627.0625, F.S.

Present Situation: The department has a rule establishing standards for deductibles in commercial motor vehicle insurance policies issued to satisfy mandatory financial responsibility requirements of state or local government and requiring insurers to provide first dollar coverage to third-party claimants (Rule 4-175.011, F.A.C.).

Effect of Section: Authority would be provided for the department to enact rules "necessary to assure the proper administration of claims and protection of third-party claimants from unfair policy defenses not attributable to the third-party claimant." Similarly, the section of Rule 4-175.011, F.A.C., requiring insurers to provide first dollar coverage to third-party claimants without a deductible in commercial motor vehicle insurance policies issued to satisfy mandatory

financial responsibility requirements of state or local government, would be codified in s. 627.0625, F.S.

Section 9. Creates s. 627.385, F.S.

Present Situation: The department has a rule governing the conduct of the members of the boards of the following joint underwriting associations (JUAs): Florida Medical Malpractice JUA, Florida Auto JUA, Florida Comprehensive Health Association, Florida Windstorm Underwriting Association, Florida Property and Casualty JUA, and Florida Residential Property and Casualty JUA (Rule 4J-4.002, F.A.C.). Board members are prohibited from acting as a servicing carrier or an administering entity for the JUA, using their position for financial gain, and receiving gifts.

Effect of Section: The substance of Rule 4J-4.002, F.A.C., would be codified in statute. Section s. 627.385, F.S., also would include legislative findings speaking to the need for coverage from the residual market associations to be provided and administered in a manner balancing the needs of consumers and member insurers. The legislative findings also state that the provisions of s. 627.385, F.S., are necessary to protect the public interest.

Section 10. Creates s. 627.4065, F.S.

Present Situation: The department has a rule requiring insurers issuing disability policies in this state to disclose to insureds that they have 10 days to return the policy for a full refund (4-154.003, F.A.C.).

Effect of Section: The substance of Rule 4-154.003, F.A.C., would be codified in statute, but would apply only to health insurance policies issued in this state.

Section 11. Amends s. 627.7276, F.S.

Present Situation: The department has rules requiring automobile policies not containing bodily injury and property damage coverage be clearly stamped or specifically printed on the declaration page of the policy that those coverages are not provided (Rules 4-184.011 and 4-184.012, F.A.C.). Section s. 627.7276, F.S., currently requires motor vehicle policies not containing bodily injury or property damage liability to be stamped with printed notice.

Effect of Section: The substance of Rules 4-184.011 and 4-184.012, F.A.C., would be codified in statute.

Section 12. Creates s. 627.795, F.S.

Present Situation: The department has a rule requiring a title insurance commitment to be issued on all real estate closing transactions when a title insurance policy is to be issued, except when there are multiple conveyances on the same property (Rule 4-186.011, F.A.C.). A title insurance commitment sets forth the status of the title and the commitment of the insurer to issue a policy.

Effect of Section: The substance of Rule 4-186.011, F.A.C., would be codified in statute.

Section 13. Amends s. 627.918, F.S.

Present Situation: The department has a rule requiring insurers to report certain information on forms established by the department (Rule 4-171.002, F.A.C.).

Effect of Section: Statutory authority would be provided allowing the department to establish by rule standards for approving forms.

Section 14. Amends s. 627.9408, F.S.

Present Situation: Sections 627.9401 through 627.9408, F.S., regulate long-term care insurance policies, in regard to rates, policies, and standards. The department is given general rule making authority for this part under s. 627.9408, F.S. The department has rules regulating long-term care insurance (Rules 4-157.001 – 4-157.022, F.A.C.).

Effect of Section: Section 627.9408, F.S., would be amended to give the department the authority to adopt by rule, the model regulation for long-term care insurance adopted by the National Association of Insurance Commissioners in June 2000.

Section 15. Amends s. 641.2342, F.S.

Present Situation: The department has a rule that subjects any contract providers to financial examination, if deemed necessary by the department (Rule 4-191.073, F.A.C.).

Effect of Section: Rule 4-191.073, F.A.C, would be codified in s. 641.2342, F.S.

Section 16. Amends s. 641.31, F.S.

Present Situation: The department has a rule governing health maintenance organizations and the payment of claims for emergency care (Rule 4-191.048, F.A.C.). Health maintenance organizations are required to pay providers or reimburse the subscribers. Health maintenance organizations also must include instructions for the insured to follow in contracts and member handbooks to secure emergency care.

Effect of Section: Rule s.4-191.048, F.A.C., would be codified in s. 641.31, F.S.

Section 17. Amends s. 641.3108, F.S.

Present Situation: The department has a rule prohibiting health maintenance organizations from canceling individual or group contracts except for nonpayment of premium or termination of eligibility. The rule also allows a subscriber group contract that is not renewed due to claims experience to receive the loss ratio of the group (Rule 4-191.043, F.A.C.).

Effect of Section: Rule 4-191.043, F.A.C., would be codified in s. 641.3108, F.S.

Section 18. 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:

Section 1 of this bill would require the State Employees' Deferred Compensation Program to be self-funded. Investment providers participating in the program could recoup these fees from their participants.

D. FISCAL COMMENTS:

Section 1 of this bill would require the State Employees' Deferred Compensation Program to be self-funded. Investment providers participating in the program could recoup these fees from their participants.

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:

None

B. RULE-MAKING AUTHORITY:

This is a rule authorization bill. In 17 sections, this bill either establishes specific rulemaking authority or codifies existing rules of the Department of Insurance.

C. OTHER COMMENTS:

N/A

STORAGE NAME: h1607.in.doc

DATE: April 2, 2001

PAGE: 8

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

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