

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 863 Insurance Agents
SPONSOR(S): Murzin
TIED BILLS: **IDEN./SIM. BILLS:** SB 2364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (Sub)		Cheek	Schulte
2) Insurance			
3) Finance & Tax			
4)			
5)			

SUMMARY ANALYSIS

HB 863 conforms to the National Association of Insurance Commissioners (NAIC) Model Act, addresses regulatory issues of the Department of Financial Services (DFS), and deletes references to types and classes of licenses that are no longer available. More specifically, the bill does the following:

- Deletes references to solicitors to conform to prior deletions;
- Revises certain fingerprinting requirements;
- Provides for a fee for certain late appointment filings;
- Revises applicant address requirements;
- Revises licensure eligibility criteria to specify United States citizenship or certain legal alien status;
- Requires certain continuing education hour and subject requirements
- Conforms specific laws to the NAIC's Model Act;
- Addresses regulatory issues that adversely affect DFS; and
- Deletes references to types and classes of license that are no longer available.

The bill has a positive state fiscal impact of less than \$500,000 a year. This bill has no fiscal impact on local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0863.doc
DATE: March 10, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Solicitor

The availability of a “solicitor” license was repealed by the 2002 Legislature. Individuals licensed and appointed as a solicitor were given the option to convert their solicitor license to a general lines agent license. Failure to do so resulted in the license and appointment being cancelled. There are no longer any individuals licensed/appointed as solicitors.

National Association of Insurance Commissioners (NAIC) Model Act

The bill conforms to the NAIC’s Model Act. Specifically the bill does the following:

- Conforms Florida law to the NAIC’s Model Act by amending all applicant qualification sections of the law to comply with the NAIC Model Law, which provides that applicants for licensure must be at least 18 years of age and a United States citizen or legal alien who possesses work authorization from the U.S.A. Immigration Services.
- Conforms s. 626.7315, F.S., dealing with prohibitions against the unlicensed transaction of general lines insurance, to s. 626.0428(1), F.S., which provides that individuals employed by an agent or agency on salary who devote full time to clerical work, with incidental taking of insurance applications or quoting or receiving premiums on incoming inquires in the office of the agent or agency, to not be deemed an “agent” for licensing purposes. Section 626.7315(2), F.S., expressly prohibits anyone but an agent from receiving or issuing a receipt for money.

Continuing Education

The bill conforms Florida’s continuing education (CE) laws to the NAIC’s Model Law by reducing the number of required hours from 28 to 24, including completion of CE hours for licensees who are required to complete a reduced amount of hours because of exceptions found in the law (i.e. 14 to 12). The bill also amends sections of the law dealing with continuing education (CE) and prelicensing education to require that all courses utilized by licensees to meet their CE and/or prelicensing requirements include 3 hours of training on the subject matter of ethics. These are not additional hours over and above the required amount. The bill deletes reference to administrative agent (see Section 10 above); corrects reference in the law to the Florida Association of Life Underwriters (FALU) to reflect the association’s new name, the Florida Association of Insurance and Financial Advisors (FAIFA). The bill also changes the term “requirement cycle” in s. 626.2816, F.S., dealing with continuing education to “compliance period.”

In addition the bill requires that all adjusters (insurance company employee, public and independent) must complete 24 hours of CE courses every 2 years. Currently, only workers' compensation adjusters are required to complete 24 hours of CE courses every 2 years on WC insurance.

The bill also deletes reference in s. 626.2817, F.S., to the "establishment of a precicensure cycle for insurance agents and other licensees." Unlike continuing education requirements that must be met every 2 years, courses used by applicants for license in order to meet precicensing educational requirements are valid for 4 years; consequently, there is no "precicensure cycle."

Appointments

The bill combines ss. 626.361 and 626.371, F.S., into one section dealing with the appointment process. Appointing entities that fail to notify the Department of Financial Services (DFS) within 45 days of the appointment of a licensee will be required to pay a delinquent fee of \$250. The bill provides that this fee cannot be charged back to the appointee.

The bill provides for the automation of the appointment functions and will permit persons designated by DFS to handle the appointment of licensees. It amends the law pertaining to the renewal of appointments to assess a \$20 late filing fee when appointing entities fail to renew appointments within the statutory time period and provides that this fee cannot be charged back to the appointee.

The bill amends s. 626.322, F.S., dealing with appointment of licensees to provide for the automation of the appointment functions. The bill expands the certification requirements imposed on appointing entities to include submissions that are submitted to DFS or its designee using paperless transmissions.

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The bill provides for the automation of the appointment functions and expands the certification requirements imposed on appointing entities to include submissions that are submitted to the DFS or its designee using paperless transmissions. The bill requires licensees to advise the Department in writing within 30 days after having been found guilty of or having pled guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under federal or state laws, etc. Currently, ss. 626.611(14) and 626.621(11), F.S., provide for disciplinary action to be taken against a licensee for failing to notify the department; however, there is not a specific requirement in the law for licensees to provide this information to the department.

The bill provides for an appointee to terminate his or her appointment by electronic means as well as in writing. It eliminates the current requirement that an appointee provide DFS with a copy of his or her correspondence to the appointing entity requesting termination of the appointment. It permits the department or its designee to notify the appointing entity that a request from the appointee has been received and the appointment is being terminated.

Law Enforcement Requirements

The bill complies with the FBI's requirement that our statutes expressly authorize the use of FBI records for the screening of applicants for licensure.

The bill provides that the application for license must include an applicant's mailing address. It amends the law to comply with the FBI's requirement that our statutes expressly ("submit to the FBI") or by implication ("submit for a national check") authorize the use of FBI records for the screening of applicants for licensure. The bill amends the law to provide that fingerprints may be taken by an entity

approved by the DFS. Also, the bill changes the term “law enforcement officer” to “law enforcement agency.”

Miscellaneous Changes

The bill amends the law to provide that fingerprints may be taken by an entity approved by DFS. It changes the term “law enforcement officer” to “law enforcement agency.”

The bill amends s. 626.207, F.S., in order to clarify that the waiting periods promulgated in department rules apply to any applicant for licensure; not just those who have applied for licensure and were previously denied licensure or who have had a license suspended or revoked.

The bill amends s. 626.221, F.S., to extend the period of time a licensee has prior to the expiration of his or her license after their last appointment has been cancelled or not renewed from 24 months to 48 months. This change was made during the 2002 Legislative Session; however, this particular section of the law was overlooked during the amendatory process.

The bill amends the law to address the department’s purported lack of rule authority to require certain terms of public adjuster contracts and prohibited activities.

The bill corrects a reference in the law to the Florida Association of Life Underwriters to reflect the association’s new name, the Florida Association of Insurance and Financial Advisors.

The bill amends the law to make the prohibition against “sliding” apply to all lines of insurance and not just motor vehicle insurance.

The bill deletes references to “runners” in chapter 648, F.S., that were not taken care of during the repeal of this type and class of license during the 2002 Legislative Session.

The bill requires filing requirements imposed on fraternal benefit societies to “upon request by the Department.” Currently, on or before March 1 of each year, fraternal benefit societies must register certain information with DFS. The bill negates this requirement unless specifically requested by the department.

The bill repeals references to “administrative agents.” Since the inception of this type and class of license in 1992, there has been only one individual licensed and appointed as such. There are currently no licensees/appointees for this type and class of license.

C. SECTION DIRECTORY:

Section 1: Amends s. 624.04, F.S. – *“Person” defined.*

Section 2: Amends s. 624.303, F.S. - *Seal; certified copies as evidence.*

Section 3: Amends s. 624.313, F.S. – *Publications.*

Section 4: Amends s. 624.317, F.S., - *Investigation of agents, adjusters, administrators, service companies, and others.*

Section 5: Adds s. 624.34, F.S. – *Authority of the Department of Law Enforcement to accept fingerprints of, and exchange criminal history records with respect to, certain persons.*

Section 6: Amends s. 624.501, F.S. – *Filing license, appointment, and miscellaneous fees...*

Section 7: Amends s. 624.504, F.S. – *Liability for state, county tax.*

Section 8: Amends 624.506, F.S. – *County tax; deposit and remittance.*

Section 9: Amends s. 624.521, F.S. – *Deposit of certain tax receipts; refund of improper payments.*

Section 10: Amends s. 626.015, F.S. – *Definitions.*

Section 11: Amends s. 626.022, F.S. – *Scope of part.*

Section 12: Amends s. 626.112, F.S. – *License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.*

Section 13: Amends 626.171, F.S. – *Application of license.*
Section 14: Amends s. 626.175, F.S. – *Temporary Licensing.*
Section 15: Amends s. 626.202, F.S. – *Finger printing requirements.*
Section 16: Amends 626.207, F.S. – *Department rulemaking authority; waiting periods for applicants; penalties against licensees.*
Section 17: Amends s. 626.221, F.S. – *Examination requirement; exemptions.*
Section 18: Amends s. 626.2815, F.S. – *Continuing education required; application; exceptions; requirements; penalties.*
Section 19: Amends s. 626.2816, F.S. – *Regulation of continuing education for licensees, course providers, instructors, school officials, and monitor groups.*
Section 20: Amends s. 626.2817, F.S. – *Regulation of course providers, instructors, school officials and monitor groups involved in prelicensure education for insurance agent and other licensees.*
Section 21: Amends s. 626.321, F.S. – *Limited licenses.*
Section 22: Amends s. 626.322, F.S. – *License, appointment certain military installations.*
Section 23: Amends s. 626.341, F.S. – *Additional appointments; general lines, life, and health agents.*
Section 24: Amends s.626.371, F.S., – *Payment of fees, taxes for appointment period without appointment.*
Section 25: Amends s. 626.381, F.S. – *Renewal, continuation, reinstatement, or termination of appointment.*
Section 26: Amends. 626.451, F.S. – *Appointment of agent or other representative.*
Section 27: Amends s. 626.461, F.S. – *Continuation of appointment of agent or other representative.*
Section 28: Amends s. 626.471, F.S. – *Termination of appointment.*
Section 29: Amends s. 626.601, F.S. – *Improper conduct; inquiry; fingerprinting.*
Section 30: Amends s. 626.731, F.S. – *Qualifications for general lines agent’s license.*
Section 31: Amends s. 626.7315, F.S. – *Prohibition against the unlicensed transaction of general lines insurance.*
Section 32: Amends s. 626.732, F.S. – *Requirement as to knowledge, experience, or instruction.*
Section 33: Amends s. 626.722, F.S. – *Agency firms and corporations; special requirements.*
Section 34: Amends s. 626.7351, F.S. – *Qualifications for customer representative’s license.*
Section 35: Amends s. 626.7354, F.S. – *Customer representative’s powers; agent’s or agency’s responsibility.*
Section 36: Amends s. 626.7355, F.S. – *Temporary license as customer representative pending examination.*
Section 37: Amends s. 626.741, F.S. – *Nonresident agents; licensing restrictions.*
Section 38: Amends s. 626.753, F.S. – *Sharing commissions; penalty.*
Section 39: Amends s. 626.785, F.S. – *Qualifications for license.*
Section 40: Amends s. 626.7851, F.S. – *Requirement as to knowledge, experience, or instruction.*
Section 41: Amends s. 626.829, F.S. – *“Health agent” defined.*
Section 42: Amends s. 626.831, F.S. – *Qualifications for license.*
Section 43: Amends s. 626.8311, F.S. – *Requirement as to knowledge, experience, or instruction.*
Section 44: Amends s. 626.8414, F.S. – *Qualifications for examination.*
Section 45: Amends s. 626.8417, F.S. – *Title insurance agent licensure; exemptions.*
Section 46: Amends s. 626.865, F.S. – *Public adjuster’s qualifications, bond.*
Section 47: Amends s. 626.866, F.S. – *Independent adjuster’s qualifications.*
Section 48: Amends s. 626.867, F.S. – *Company employee adjuster’s qualifications.*
Section 49: Amends s. 626.869, F.S. – *License, adjusters.*
Section 50: Amends s. 628.874, F.S. – *Catastrophe or emergency adjusters.*
Section 51: Amends s. 626.878, F.S. – *Rules; code of ethics.*
Section 52: Amends s. 626.797, F.S. – *Code of ethics.*
Section 53: Amends 626.9541, F.S. – *Unfair methods of competition and unfair or deceptive acts or practices defined.*
Section 54: Amends 626.9916, F.S. – *Viatical settlement broker license required; application for license.*
Section 55: Amends s. 632.634, F.S. – *Licensing and appointment of agents.*
Section 56: Amends s. 634.171, F.S. – *Salesperson to be licensed and appointed.*

- Section 57: Amends s. 634.420, F.S. – *License and appointment of sales representatives.*
Section 58: Amends s. 642.034, F.S. – *License and appointment required.*
Section 59: Amends s. 642.036, F.S. – *Sales representatives to be licensed and appointed.*
Section 60: Amends s. 642.045, F.S. – *Procedure for refusal, suspension, or revocation of license and appointment of sales representative; departmental action upon violation by licensed insurance agent.—*
Section 61: Amends s. 648.27, F.S. – *Licenses and appointments; general.*
Section 62: Amends s. 648.34, F.S. – *Bail bond agents; qualifications.*
Section 63: Amends s. 648.355, F.S. – *Temporary limited license as limited surety agent or professional bail bond agent; pending examination.*
Section 64: Amends s. 648.382, F.S. – *Appointment of bail bond agents and temporary bail bond agents; effective date of appointment.*
Section 65: Amends s. 648.383, F.S. – *Renewal, continuation, reinstatement, and termination of appointment; bail bond agents.*
Section 66: Amends s. 648.50, F.S. – *Effect of suspension, revocation upon associated licenses and licensees.*
Section 67: Repeals ss. 626.032 and 626.361, F.S.
Section 68: Provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENTO

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:	(FY 03-04)	(FY 04-05)	(FY 05-06)
	Amount / FTE	Amount / FTE	Amount / FTE
Recurring			
Renewal Late Filing Fees:	\$ 96,000	\$ 48,000	\$24,000
Delinquent Fees:	\$275,000	\$125,000	\$65,000
CE Course Provider Fees:	\$ 61,300	\$ 30,500	\$15,000
Non-Recurring	-0-	-0-	-0-

2. Expenditures:

Processes will be handled by current staff and systems.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Adjuster licensees will be required to complete department-approved CE courses in order to maintain their license. Course providers charge a fee for such courses. The direct private sector cost is unknown. However, Florida's insurance consumers may be better served as a result of licensees being schooled on current laws and regulations pertaining to insurance contracts, forms, and the business of adjusting claims.

Renewal Late Filing Fees: \$96,000

There are approximately 400 appointees each month whose appointments are not filed with the department in a timely manner by appointing entities. This equates to approximately 4,800 appointments per year resulting in approximately \$96,000 in revenue (400 x 12 mos. = 4,800 x \$20 = \$96,000).

Delinquent Fees: \$275,000

Statistics from fiscal year 2001-2002 show that approximately 1,100 individuals were not appointed in accordance with s. 626.371, FS. In some instances, companies have failed to appoint an agent for more than 12 months. The delinquent fee of \$250 will produce approximately \$275,000 in revenue in the first year. With the introduction of the delinquent fee we predict that companies will become more responsive to the appointment requirements and the delinquent fees will decrease considerably in subsequent years. (1,100 x \$250 + \$275,000).

Continuing Education for Adjusters:

At the present time, current law requires only workers compensation adjusters to complete continuing education. To date, the department has approved 613 providers for the workers compensation CE courses. It is estimated these 613 providers will expand their programs to include all adjuster categories. Courses are approved on a one-time basis, unless the provider makes a substantive change to the course outline. After initial approval, only minimal growth in the provider population is expected. Currently there are 38,943 individuals licensed as public, independent, or insurance company employee adjusters. These are the individuals who will be required to complete CE in order to maintain their license status.

A fee of \$100 per course offering is required pursuant to s. 624.501(19), FS.

Course Provider Fee: 613 providers x \$100 = \$61,300
305 providers x \$100 = \$30,500
150 providers x \$100 = \$15,000

Cost to Licensee: Average cost per credit hour is \$10 x 24 hours = \$240 biannually.

D. FISCAL COMMENTS:

Adjuster Continuing Education: Continuing education is an important element of the insurance industry in order to protect the public, maintain high standards of professional competence in the adjusting field, and maintain or improve the adjusting skills and knowledge of licensees. The business of insurance is complex and laws change. It is important that licensees keep abreast of industry practices and statutory and administrative rule changes.

Late Filing and Delinquent Fees: Appointing entities (insurance companies, adjusting firms, etc.) are given 45 days in which to notify DFS that a licensee has been given authority to represent the entity and pay the required appointment fee. Under current law, failure to appoint a licensee in a timely manner only results in a penalty fee of \$10 (\$5 to reinstate and \$5 to continue) each appointment. This has not been a deterrent to appointing entities. When consumers call the department or check the department's web site to determine if a licensee is properly appointed, a void is created that can result in a hardship for the licensee because his or her appointing entity has not timely notified the department of such appointment. Appointing entities have historically been very lax in the filing of appointments and fees. We anticipate increasing the penalty fees will have a positive impact on timely filing by companies, employers, etc.

NOTE: All of the above-discussed fees are deposited into the Treasurer's Regulatory Trust Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

There are currently rules in place to administer the continuing education functions for insurance agents, customer representatives, and adjuster licensees who handle worker's compensation insurance claims (Rule Chapter 4-228). These rules will need to be amended to include all types of classes of adjusters.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.