

HOUSE MESSAGE SUMMARY

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BILL: CS/SB 2588
SPONSOR: Banking & Insurance Committee and Sen. Diaz de la Portilla
SUBJECT: Department of Financial Services
PREPARED BY: Senate Committee on Banking and Insurance
DATE: April 27, 2004

I. Amendments Contained in Message:

House Amendment 1 - 467323 (body with title)

House Amendment 2 - 880001 (body with title)

II. Summary of Amendments Contained in Message:

House Amendment 1

CONTINUING EDUCATION FOR INSURANCE AGENTS

Section 15. Eliminates a requirement that continuing education (CE) classes for insurance agents (life, health and property and casualty agents) include instruction on the subject of unauthorized entities that sell insurance. The eliminated provision required a minimum of 2 hours of CE every 2 years as part of the minimum 24 hours of CE every 2 years. This provision is contained in CS/CS/SB 2800 which is on 2nd reading on the Senate Calendar.

PERSONAL LINES AGENTS

Sections 16-22. Creates a new type of insurance agent license for a "personal lines agent" to mean a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes. It amends the scope of ch. 626, F.S., (including licensing procedures and general requirements for insurance representatives; general lines agents; customer representatives; services representatives; and managing general agents) to clarify that provisions of ch. 626, F.S., that apply to general lines agents and applicants also apply to personal lines agents and applicants, except where otherwise provided. It provides that an examination for licensure as a personal lines agent consist of 100 questions and is limited in scope to the kinds of insurance transacted under a personal lines license. Requires specified pre-licensing education requirements for personal lines agents and general lines agents that pertain to completion of classroom courses, correspondence courses, or employment experience. Provides that the Department of Financial Services is not required to begin issuing personal lines insurance agent licenses on the effective date of this act, if its licensing systems have not been changed to accommodate the new license. These provisions are contained in CS/CS/SB 2800 which is on 2nd reading on the Senate Calendar.

BRANCH OFFICES

Section 23. Amends s. 626.747, F.S., requires that one licensed general lines agent, who is appointed to represent one or more insurers, be located at each branch office including the

headquarters location. This provision is contained in CS/CS/SB 2800 which is on 2nd reading on the Senate Calendar.

CITIZENS PROPERTY INSURANCE CORPORATION

Section 24. Amends s. 627.351, F.S., related to the Citizens Property Insurance Corporation (Citizens), to provide that a salaried employee of Citizens who performs policy administrative services *after* the effectuation of a policy is not required to be a licensed insurance agent under s. 626.112, F.S. This provision is contained in CS/CS/SB 2800 which is on 2nd reading on the Senate Calendar.

LIMITED LICENSES

Section 25. Amends s. 626.321, F.S., to provide that an entity applying for a limited insurance agent license for baggage and motor vehicle excess liability insurance is required to submit only one application for a license; is required to obtain a license for each office; and is required to pay applicable license fees. The amendment provides that a business entity offering this type of insurance or personal accident insurance under a limited license may use part-time employees to offer such insurance. The amendment also corrects a statutory cross-reference. These provisions are contained in CS/CS/SB 2994, as amended on 3rd reading and passed by the Senate, and is similar to a provision in CS/CS/SB 2800 which is on 2nd reading on the Senate Calendar.

NOTICE OF WORKERS' COMPENSATION DRUG FREE WORKPLACE DISCOUNT

Section 26. Amends s. 627.0915, F.S., to require an insurer who offers a workers' compensation rate plan that provides a drug-free workplace premium discount to notify the employer of the discount's availability at the time of the initial quote for the policy and at the time of each renewal of the policy. This is similar to a provision contained in CS/CS/SB 2270 (2nd Eng.) which is in House messages, except that bill requires notification at the time of a "written offer of insurance" rather than at the time of the "initial quote".

MUTUAL INSURANCE HOLDING COMPANY

Section 27. Amends s. 628.709, F.S., related to the conversion of a mutual insurer to a stock insurer, through the formation of a mutual insurance holding company. Currently all of the initial shares of the capital stock of the insurance company which reorganized as a subsidiary insurance company must be issued either to the mutual insurance holding company, or to an intermediate holding company which is wholly owned by the mutual insurance holding company. The membership interests of the policyholders of the subsidiary insurance company must become membership interests in the mutual insurance holding company. Policyholders of the subsidiary insurance company which was formerly the mutual insurer must be members of the mutual insurance holding company. At the time of formation, policyholders of any other subsidiary insurance company of the mutual insurance holding company may not be members of the mutual insurance holding company unless they are policyholders of a subsidiary which was a mutual insurer which merged with the holding company. The amendment provides another option to allow policyholders of an affiliated stock insurer to be members of the mutual insurance holding company and have stock in the newly formed mutual insurance holding company if they were policyholders of a mutual insurer whose policies were assumed by the affiliated stock insurer in connection with a conversion from a mutual insurance company to a mutual insurance holding company with subsidiary stock insurer.

INSURERS REHABILITATION AND LIQUIDATION ACT

Present Situation:

The provisions of Sections 28 -36 amend provisions in Part I of ch. 631, F.S., the Insurers Rehabilitation and Liquidation Act (“the act”). These provisions are also included in CS/SB 3024 which is now in the Judiciary Committee.

The act governs the receivership process for insurance companies in Florida. The Office of Insurance Regulation oversees active insurance companies and monitors their financial health. When insurers experience severe financial difficulty and are impaired or insolvent, they are subject to a delinquency proceeding such as rehabilitation, liquidation, reorganization or conservancy whereby the insurer is placed into receivership. Federal law specifies that insurance companies cannot file for bankruptcy.¹ Thus the receivership provisions of ch. 631, F.S., are the sole means by which an insurance company may be placed into receivership.²

A delinquency proceeding is initiated when the director of the OIR notifies the Department of Financial Services (Department) that a determination has been made that ground(s) exist for initiating a delinquency proceeding against an insurer. The Department may then commence the delinquency proceeding by applying to the court³ for an order directing the insurer to show cause why the Department should not be the receiver of the insurance company pursuant to receivership proceedings. A full hearing is held and the court either grants or denies the application. The Department may also commence a delinquency proceeding by applying to the court by petition for the entry of a consent order of conservation, rehabilitation, or liquidation.⁴ Rehabilitation and liquidation are the most commonly utilized delinquency proceedings by the Division of Rehabilitation and Liquidation (division) of the Department of Financial Services. Each seeks to apportion equitably any unavoidable losses and to maximize the recovery of assets for the benefit of policyholders, creditors, the public, and other claimants of the insurer.⁵

In rehabilitation, the Department takes possession of the property of the insurer (referred to as a receivership) and conducts the insurer’s business in such a way as to attempt to correct the financial condition of the company.⁶ If the rehabilitation is successful, the insurance company regains possession of its property and continues operations. However, if the rehabilitation is unsuccessful, then liquidation is likely to occur.

An insurer is subject to liquidation if it is, or is about to become, insolvent. In liquidation the Department takes possession of all property and assets of the insurer and gives notice to all creditors who have claims against the insurer to present claims.⁷ The outstanding claims against the insurer are settled and at the end of the liquidation process the insurance company ceases to exist because it has no assets with which to operate.

¹ 11 U.S.C. § 109(b)(2)

² Section 631.021, F.S. (2003).

³ The venue of a delinquency proceeding or summary proceeding is the Circuit Court of Leon County. Appeal is available to the Florida First District Court of Appeal. Sections 631.021(2) & (3), F.S. (2003).

⁴ Section 631.031, F.S. (2003).

⁵ Section 631.001, F.S. (2003).

⁶ Section 631.101, F.S. (2003).

⁷ Section 631.111, F.S. (2003).

In both rehabilitation and liquidation, receivership estates are created whereby the receiver (the Department) receives control over the insurer and its assets. The division administers the receivership estates. Generally, all receivership expenses are paid for out of the assets of the receivership estate (the insurance company's assets). The receiver has authority to hire outside attorneys, accountants, and other experts to audit the accounts and policies of the impaired insurer, though the court must approve the use of any company funds to hire professionals to aid in the receivership process.

Once the division successfully places an insurer into receivership, staff and any contractors hired by the division spend their time marshalling the assets of the company and paying claims. This process includes selling real property and other assets of the company, as well as prosecuting lawsuits against negligent actuaries, auditors, company directors and officers of the insurer. The division also collects any reinsurance that is due, which is often of the insurer's largest assets. Representatives from the division indicate that receivership is often a long-term undertaking that can last over 10 years.

Effect of Proposed Changes:

Section 28. Amends s. 631.021, F.S., to give domiciliary courts that acquire jurisdiction over persons subject to s. 631.021, F.S., in an insurance delinquency proceeding exclusive jurisdiction except as limited by the section.

Section 29. Amends s. 631.041, F.S., to provide that the estate of an insurer in rehabilitation or liquidation is entitled to actual damages, including costs and attorney's fees if it is injured by a willful violation of an applicable stay or injunction. Additional sanctions may be imposed if appropriate.

Section 30. Amends s. 631.0515, F.S., to provide that a managing general agent or holding company with a controlling interest in a Florida domestic insurer is subject to jurisdiction of the court under the provisions of s. 631.025, F.S. The purpose is to enable a court to exercise jurisdiction over "shell corporations" designed to shelter an insurance company's assets.

Section 31. Amends s. 631.141(7), F.S., to allow the Department to recover expenses for employing a special agent, counsel, clerks or assistants in a delinquency proceeding in which recovery of administrative expenses is authorized.

Section 32. Amends s. 631.205, F.S., to specify that an order of conservation, rehabilitation or liquidation against an insurer cannot be deemed an anticipatory breach of a reinsurance contract, and cannot be used to retroactively revoke or cancel a reinsurance contract.

Section 33. Creates s. 631.206, F.S., which provides a standard arbitration provision to replace any other arbitration provision the insurer in receivership has entered into for resolution of disputes which shall be void. Arbitration must be conducted pursuant to the American Arbitration Association Commercial Arbitration Rules and ch. 682, F.S. Venue is in Leon County, Florida. Disputes must be submitted to a panel of three arbitrators, with each party choosing one arbitrator, and the third being selected by the two arbitrators chosen by the parties. The arbitrators must be selected from a list of qualified arbitrators with 10 years experience in the insurance industry. The section also contains a section regarding "mediators," stating if the

parties cannot agree on a mediator, each party shall select one from a list approved by the receivership court, but the reference to “mediator(s)” is in error and should refer to “arbitrator(s).”

Section 34. Amends s. 631.261, F.S., related to the current law that provides that a transfer of property by an insurer is voidable if it is made within 4 months prior to the commencement of any delinquency proceeding “with the intent” of giving any creditor a preference or of enabling the creditor to obtain a greater percentage of his or her debt than any other creditor of the same class. The bill eliminates the intent requirement so that any transfer within this 4 month period is voidable if it gives any creditor a greater percentage of debt than any other creditor of the same class.

The amendment also states that a transfer or lien upon the property of an insurer or its affiliate that is made between 4 months to 1 year prior to the commencement of a delinquency proceeding under the chapter is void if the transfer or lien benefited a director, officer, employee, stockholder, member, subscriber, affiliate, managing general agent, insider, of the insurer, or a relative of any of the foregoing. A transfer is not made or created until the insurer or its affiliate has acquired rights in the transferred property.

Section 35. Amends s. 631.262, F.S., to state that a transfer made within 1 year of a successful petition for a delinquency proceeding is not made until the insurer or affiliate has acquired rights in the transferred property. Conforms to changes made to s. 631.261, F.S.

Section 36. Amends s. 631.262, F.S., to state that a transfer made after a successful petition for a delinquency proceeding is not made until the insurer or affiliate has acquired rights in the transferred property. Conforms to changes made to s. 631.261, F.S.

INSURANCE GUARANTY ASSOCIATIONS

Sections 37-38. The amendments to ss. 631.54 and 631.904, F.S., provide that neither the Florida Insurance Guaranty Association (FIGA) or the Florida Workers’ Compensation Insurance Guaranty Association (FWCIGA) would provide coverage for an insurance claim against an insolvent insurer if the claim has been rejected by any other state guaranty fund on the grounds that the insured’s net worth is greater than that allowed under that state’s guaranty fund or liquidation law. The amendment is similar to CS/SB 2070, which is on the Senate Calendar, except that the House amendment provides an exception for employers who entered into an agreement with the FWCIGA prior to April 30, 2004, to preserve the employer’s right to seek coverage of claims rejected by another state’s guaranty fund.

WARRANTY ASSOCIATIONS

Sections 39-42. The amendment authorizes a sales representative who sells motor vehicle service agreements, home warranties, or service warranties for consumer products to offer rebates of his or her sales commission to consumers. The rebate amount must conform to a schedule that is prominently displayed in the sales representative’s office. The sales representative must offer the same rebate to all similarly situated individuals.

The bill also provides that a service warranty association is not required to maintain an unearned premium reserve or contractual liability insurance and may allow its premiums to net assets ratio

to exceed 7-to-1 if the association has a net worth of at least \$100 million; or the association maintains at least \$750,000 in net assets and is a wholly owned subsidiary of a parent corporation with a net worth of at least \$100 million which guarantees the performance of the warranty obligations of the association.

Sections 39-42 are also included in CS/SB 1848 (1st Eng.) which was laid on the table, and in the Senate amendments to the substituted House bill, CS/HB 1433, now in House Messages.

Section 43. Amends s. 627.4133, F.S., to provide that the cancellation of a workers' compensation policy and employer's liability insurance policy, at the request of the policyholder, would be effective on the date the carrier sends the notification to the insured rather than be subject to the 30 days notice requirement of s. 440.42(3), F.S. This provision is also included in CS/CS/SB 2994, as amended on 3rd reading in the Senate.

House Amendment 2

INSURANCE AGENT LICENSE SUSPENSION OR REVOCATION

Amends s. 626.641, F.S., to require the completion of continuing education (CE) courses for the reinstatement of an insurance agent's license, appointment, or eligibility, after a second suspension. The Department of Financial Services or the Office of Insurance Regulation is authorized to prescribe and approve the CE courses.

This amendment also reenacts s. 626.935(4)(a), F.S., which applies the requirements of s. 626.641, F.S., (amended in the section above) to apply that section to surplus lines agent's licenses.