

1                                   A bill to be entitled  
 2       An act relating to unauthorized insurers; amending s.  
 3       626.901, F.S.; clarifying nonapplication of prohibitions  
 4       against representing or aiding unauthorized insurers to  
 5       certain independently procured coverage; authorizing the  
 6       Office of Insurance Regulation or the Department of  
 7       Financial Services to issue certain cease and desist  
 8       orders under certain circumstances; providing a  
 9       legislative finding; authorizing the office to investigate  
 10      accounts, records, documents, and transactions pertaining  
 11      to unauthorized insurers and certain persons; amending s.  
 12      626.902, F.S.; specifying nonapplication of provisions  
 13      relating to penalties for representing unauthorized  
 14      insurers to matters authorized by the office under the  
 15      Unauthorized Insurers Process Law; amending s. 626.908,  
 16      F.S.; applying requirements imposed on unauthorized  
 17      insurers in certain actions to certain additional actions;  
 18      providing a time period for unauthorized insurers or  
 19      certain persons to file certain motions; providing an  
 20      effective date.

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 22   Be It Enacted by the Legislature of the State of Florida:

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 24           Section 1. Paragraph (d) of subsection (4) of section  
 25   626.901, Florida Statutes, is amended, and subsections (5) and  
 26   (6) are added to said section, to read:

27           626.901 Representing or aiding unauthorized insurer  
 28   prohibited.--

29 (4) This section does not apply to:

30 (d) Independently procured coverage written pursuant to s.  
 31 626.938 that is not solicited, marketed, negotiated, or sold in  
 32 this state.

33 (5) In its discretion and without advance notice or  
 34 hearing, the office or department may issue, pursuant to s.  
 35 120.569, an immediate final order to cease and desist to any  
 36 person or entity that violates this section. The Legislature  
 37 finds that a violation of this section constitutes an imminent  
 38 and immediate threat to the public health, safety, and welfare  
 39 of the residents of this state.

40 (6) The office is authorized to investigate the accounts,  
 41 records, documents, and transactions pertaining to the  
 42 activities of any unauthorized insurer or person, as defined in  
 43 s. 624.04, who is or may be aiding or representing an  
 44 unauthorized insurer.

45 Section 2. Subsection (3) is added to section 626.902,  
 46 Florida Statutes, to read:

47 626.902 Penalty for representing unauthorized insurer.--

48 (3) This section does not apply to matters authorized by  
 49 the office under ss. 626.904-626.912, the Unauthorized Insurers  
 50 Process Law.

51 Section 3. Subsections (1) and (3) of section 626.908,  
 52 Florida Statutes, are amended to read:

53 626.908 Defense of action by unauthorized insurer or  
 54 person representing or aiding such insurer; damages and attorney  
 55 fee.--

56 (1) Before an unauthorized insurer or person representing  
 57 or aiding such insurer files or causes to be filed any pleading  
 58 in any action or proceeding instituted against it under s. ~~ss-~~  
 59 626.906, s. ~~and~~ 626.907, or s. 626.909 or in a suit instituted  
 60 by the office or the department enforcing agency action against  
 61 unauthorized insurers pursuant to s. 120.69, an unauthorized  
 62 insurer or person representing or aiding such insurer shall:

63 (a) Procure a certificate of authority to transact  
 64 insurance in this state, or

65 (b) Deposit with the clerk of the court in which such  
 66 action or proceeding is pending cash or securities or file with  
 67 such clerk a bond with good and sufficient sureties, to be  
 68 approved by the court, in an amount to be fixed by the court  
 69 sufficient to secure the payment of any final judgment which may  
 70 be rendered in such action. The court may in its discretion make  
 71 an order dispensing with such deposit or bond where the insurer  
 72 makes a showing satisfactory to the court that it maintains in a  
 73 state of the United States funds or securities, in trust or  
 74 otherwise, sufficient and available to satisfy any final  
 75 judgment which may be entered in such action or proceeding, and  
 76 that the insurer or person representing or aiding such insurer  
 77 will pay any final judgment entered therein without requiring  
 78 suit to be brought on such judgment in the state where such  
 79 funds or securities are located, and that if, nevertheless, such  
 80 suit is brought on such final judgment the insurer or person  
 81 representing or aiding such insurer shall waive all defenses  
 82 thereto.

CODING: Words **stricken** are deletions; words **underlined** are additions.

83 (c) Any proof, evidence, or testimony in support of such  
84 motion shall be taken in the jurisdiction of the court in which  
85 the action or proceeding is pending.

86 (d) If the unauthorized insurer or person representing or  
87 aiding such insurer seeks to take discovery or de bene esse  
88 depositions of witnesses beyond the jurisdiction of the court in  
89 which the action is pending, upon seasonable application by the  
90 plaintiff, the court by appropriate order shall require the  
91 unauthorized insurer or person representing or aiding such  
92 insurer, before such depositions are taken, to make similar  
93 deposit as described in paragraph (b), in sufficient amount to  
94 pay the reasonable expenses of the plaintiff and his or her  
95 attorney in attending the taking of such depositions, including  
96 reasonable attorney's fees to be fixed by the court.

97 (3) Nothing in subsection (1) is to be construed to  
98 prevent an unauthorized insurer or person representing or aiding  
99 such insurer from filing, within 30 days after service, a motion  
100 to quash or to set aside the service of any process made in the  
101 manner provided in s. 626.907 hereof on the ground either:

102 (a) That such unauthorized insurer or person representing  
103 or aiding such insurer has not done any of the acts enumerated  
104 in s. 626.906; or

105 (b) That the person on whom service was made pursuant to  
106 s. 626.907(2) was not doing any of the acts therein enumerated.

107 Section 4. This act shall take effect July 1, 2005.