

CHAMBER ACTION

1 The Insurance Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

HB 1065

2005
CS

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

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

626.901 Representing or aiding unauthorized insurer prohibited.--

(4) This section does not apply to:

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

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

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

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

626.902 Penalty for representing unauthorized insurer.--

51 (3) This section does not apply to actions of a person who
 52 assists the office at the office's direction in administering
 53 the office's responsibilities under ss. 626.904-626.912, the
 54 Unauthorized Insurers Process Law.

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

57 626.908 Defense of action by unauthorized insurer or
 58 person representing or aiding such insurer; damages and attorney
 59 fee.--

60 (1) Before an unauthorized insurer or person representing
 61 or aiding such insurer files or causes to be filed any pleading
 62 in any action or proceeding instituted against it under s. ss.
 63 626.906, s. and 626.907, or s. 626.909 or in a suit instituted
 64 by the office or the department enforcing agency action against
 65 unauthorized insurers pursuant to s. 120.69, an unauthorized
 66 insurer or person representing or aiding such insurer shall:

67 (a) Procure a certificate of authority to transact
 68 insurance in this state, or

69 (b) Deposit with the clerk of the court in which such
 70 action or proceeding is pending cash or securities or file with
 71 such clerk a bond with good and sufficient sureties, to be
 72 approved by the court, in an amount to be fixed by the court
 73 sufficient to secure the payment of any final judgment which may
 74 be rendered in such action. The court may in its discretion make
 75 an order dispensing with such deposit or bond where the insurer
 76 makes a showing satisfactory to the court that it maintains in a
 77 state of the United States funds or securities, in trust or
 78 otherwise, sufficient and available to satisfy any final

HB 1065

2005
CS

79 judgment which may be entered in such action or proceeding, and
80 that the insurer or person representing or aiding such insurer
81 will pay any final judgment entered therein without requiring
82 suit to be brought on such judgment in the state where such
83 funds or securities are located, and that if, nevertheless, such
84 suit is brought on such final judgment the insurer or person
85 representing or aiding such insurer shall waive all defenses
86 thereto.

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

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

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

HB 1065

2005
CS

106 | (a) That such unauthorized insurer or person representing
107 | or aiding such insurer has not done any of the acts enumerated
108 | in s. 626.906; or

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

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