

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1149 Insurance Administrators
SPONSOR(S): Clarke and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1432

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	14 Y, 0 N	Cooper	Cooper
2) Business Regulation Committee	18 Y, 0 N	Shoemaker	Liepshutz
3) Commerce Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

In Florida, regulation of the insurance industry is shared by the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR). The state's Chief Financial Officer (CFO) heads DFS while the head of OIR is the Governor and Cabinet members sitting as the Financial Services Commission. Generally, OIR is responsible for granting a certificate of authority or license to an insurer; a domestic insurer, i.e., an insurer based in Florida, must possess a certificate of authority in order to conduct business in Florida.

Insurance administrators provide various services to life or health insurers or self-insured programs such as soliciting coverage, collecting premiums, claims handling, and settling claims. Administrators must be licensed by the Office of Insurance Regulation and are regulated under Part VII of Chapter 626, Florida Statutes

HB 1149 makes changes to Chapter 626, F.S., that are consistent with the National Association of Insurance Commissioners Model Act 090, the NAIC Third Party Administrator Statute. The bill amends the definition of "administrator" to exempt from licensure requirements wholly owned direct or indirect subsidiaries of an employer that provide administrative services for the employer or the employer's subsidiaries or affiliated corporations. The bill creates additional exemptions from licensure for entities meeting certain criteria.

New applicants for licensure, such as an administrator, must file audited financial statements for the past two fiscal years. New applicants must also submit a business plan that details staffing levels and the applicant's ability to provide a sufficient number of qualified personnel to carry out specified duties. The annual report filed by an administrator must include an audited financial statement performed by an independent certified public accountant under the bill, which also provides authority for the electronic submission of such documents.

The bill requires the insurer and its administrator to enter into a written agreement whereby the insurer determines the benefits, premium rates, underwriting criteria, and claims payment procedures the administrator is to follow. The insurer is solely responsible for the competent administration of its programs. Also, an insurer must semiannually review the operations of an administrator handling over 100 insurance certificate holders, with one such review being an on-site audit of the administrator's operations.

The bill does not have a fiscal impact on the local and state government sectors and should only have a minimal impact on the private sector.

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

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DATE: 4/12/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill incorporates the National Association of Insurance Commissioners (NAIC) Model Act regulating third party administrators (TPAs) into Florida Statute, which will make Florida law more standardized with other states. Further, the bill decreases regulation by providing certain exemptions from licensure for entities affiliated or otherwise licensed to perform services within the scope of the TPA license.

Promote Personal Responsibility – This bill increases accountability between TPA's and insurers, and requires TPA licensees and applicants to submit audited financial statements thereby enhancing the ability to determine the company's financial solvency.

B. EFFECT OF PROPOSED CHANGES:

Insurance Regulation

In Florida, regulation of the insurance industry is shared by the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR). The state's Chief Financial Officer heads DFS while the head of OIR is the Governor and Cabinet members sitting as the Financial Services Commission. Generally, OIR is responsible for granting a certificate of authority or license to an insurer; a domestic insurer, i.e., an insurer based in Florida, must possess a certificate of authority in order to conduct business in Florida. The regulation and licensure of insurance agents and agencies is the purview of DFS. DFS staff also provides consumer information and assistance through the Division of Consumer Services.

Insurance Administrators

An "administrator,"¹ more commonly referred to as a third party administrator or TPA, must be licensed by the Office of Insurance Regulation (OIR). Third party administrators provide various administrative services for life and health insurers, health maintenance organizations (HMOs), self-insurance programs, and other types of insurers. Some of the services provided by TPAs include soliciting and making effective insurance coverage, collecting premiums, and adjusting and settling claims.

Administrators are placed under various regulatory requirements pursuant to ss. 626.88-626.894, F.S. For example, an administrator must make its books and records available to the OIR for examination, audit, and inspection and must maintain its business records for five years.² Administrators are also required to file annual financial statements with OIR.³ Administrators must have a written agreement with an insurer containing specified provisions. The insurance company, and not the administrator, must be responsible for determining the benefits, rates underwriting criteria, and claims payment procedures.⁴ A payment to the administrator of any premiums on behalf of the insured are deemed to have been received by the insurer and all premiums collected by an administrator on behalf of an

¹ As provided in s. 626.88(1), F.S., "...[A]n "administrator" is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with authorized commercial self-insurance funds or with insured or self-insured programs which provide life or health insurance coverage . . . or any person who, through a health care risk contract as defined in s. 641.234 with an insurer or health maintenance organization, provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers, . . ."

² s. 626.884, F.S.

³ s. 626.89, F.S.

⁴ ss. 626.8817 and 626.882, F.S.

insurer must be held by the administrator in a fiduciary capacity. If an administrator is collecting premiums for more than one insurer, the administrator must keep records clearly recording each insurer's accounts.

The administrator law requires that a person who provides billing and collection services to HMOs on behalf of health care providers must comply with s. 641.3155, F.S., the prompt payment statute, and s. 641.51(4), F.S., which requires that only a Florida licensed physician or osteopath may render an adverse determination regarding a service provided by a physician and specifies procedures that must be followed.⁵

The National Association of Insurance Commissioners (NAIC) is a voluntary association of insurance regulators from all fifty states.⁶ The NAIC was created to coordinate regulation of multi-state insurers, provide a forum for addressing major insurance issues, and promote consistent laws among the states. The NAIC also has a national accreditation program of reviewing state insurance departments,⁷ serves as a national insurer information clearinghouse, provides a structure for interstate cooperation in examining multi-state insurers, and develops model laws.⁸ Many of the NAIC model laws have been adopted in whole or in part by Florida, including parts of NAIC Model Act 090, the Third Party Administrator Statute, found in sections 626.88-626.899, F.S.

Changes Proposed by the Bill

The provisions of HB 1149 conform to the provisions of the National Association of Insurance Commissioners Model Act 090, the NAIC Third Party Administrator Statute.

The bill amends the definitions of "administrator", and creates definitions for "affiliate" and "affiliated," "control," and "GAAP" in s. 626.88, F.S. The definition of "administrator" is amended to exempt from licensure wholly owned direct or indirect subsidiaries of an employer that provide administrative services for the employer or the employers subsidiaries or affiliated corporations. Current law only provides an exemption for the employer, not its subsidiaries.

The bill also creates three new exemptions from licensure as well. First, the bill exempts an entity that is affiliated with an insurer and only performs contractual duties of an administrator for the direct and assumed insurance business of an affiliated insurer. The insurer is responsible for the acts of the administrator and for providing the administrator's books and records to the insurance commissioner upon request. The second exemption is created for a nonresident entity licensed in its state of domicile that administers only a group plan with 100 or fewer Florida residents for all plans that it administers. The third exemption is for a Florida licensed managing general agent whose activities are limited exclusively to activities covered under such license. According to OIR, the rationale for this change is that services performed by a managing general agent are the same or very similar to those performed by a TPA.

The bill provides definitions for "affiliate" or "affiliated," "control," and "GAAP" (generally accepted accounting principles) that are consistent with the NAIC Model Act.

In section 2 of the bill, s. 626.8805, F.S., is amended to require applicants for licensure as an administrator to file audited financial statements certified by an officer of the applicant and prepared in accordance with GAAP for the two most recent fiscal years that prove the applicant has a positive net worth. If the applicant has been in existence less than two years, then the financial statement must include any completed fiscal years and any month during the current fiscal year for which a financial

⁵ s. 626.88, F.S.

⁶ Also includes the District of Columbia and four U.S. territories.

⁷ Florida was the first state to be accredited by the NAIC and has since been reaccredited twice.

⁸ Florida has enacted via statute a number of NAIC model acts, either in part or in whole. Examples of model acts adopted by Florida include NAIC Model Act 315—Risk Based Capital (RBC) For Insurers Model Act and NAIC Model Act 440—Insurance Holding Company System Regulatory Act.

statement or report has been completed. Currently, applicants must file annual statements or reports for the three most recent years, but they are not required to be audited.

The bill creates a new requirement that an applicant for licensure as an administrator must submit a business plan that includes the staffing levels and proposed activities in Florida and nationwide. The plan must provide for sufficient staffing levels in the areas of claims processing, recordkeeping, and underwriting. Current law does not require a business plan.

The bill amends s. 626.8817, F.S., to add specific requirements to the current obligation that an insurer using the services of an administrator is responsible for determining the benefits, premium rates, underwriting criteria, and claims payments procedures applicable to the coverage, and securing reinsurance, if any is needed. The bill provides that the insurer must make a written agreement between itself and the administrator pertaining to these matters.

The bill adds that the insurer is solely responsible for the competent administration of its programs. The insurer must conduct a semiannual review of an administrator that administers benefits for more than 100 certificate holders on the insurer's behalf, with at least one of the reviews being an on-site audit of the administrator's operations. Current law mandates a written agreement; however, it does not require that the agreement hold the insurer to the level of accountability as proposed in the bill.

Section 4 amends s. 626.89, F.S., to require that an administrator file with OIR, by June 1 of each year, an audited financial statement performed by an independent certified public accountant. The bill also provides authority for the Financial Services Commission to require electronic filing of the annual report.

The bill authorizes the Financial Services Commission to adopt rules necessary to administer this part of the Florida Statutes.

C. SECTION DIRECTORY:

Section 1. Amends s.626.88, F.S., to modify definitions relating to insurance administrators.

Section 2. Amends s. 626.8805, F.S., relating to certificate of authority requirements.

Section 3. Amends s. 626.8817, F.S., relating to responsibilities of insurance companies with respect to administration coverage.

Section 4. Amends s. 626.89, F.S., to require that an administrator file with OIR an audited financial statement performed by an independent certified public accountant and to provide procedures.

Section 5. Creates s. 626.8991, F.S., to provide the Financial Services Commission with rulemaking authority to administer this part of the Florida Statutes.

Section 6. Provides an effective date of October 1, 2005.

II. 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:

Administrator licensees that do not currently obtain audited financial statements will incur the increased cost of a financial audit to be included with its annual report. Also, applicants for licensure will have to pay for an audit of its operations for the two most recent fiscal years it has been in existence.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities

2. Other:
None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the Financial Services Commission.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES