

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Banking and Insurance Committee

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BILL: CS/SB 1480

SPONSOR: Banking and Insurance Committee and Senator Garcia

SUBJECT: Insurance

DATE: April 26, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	<u>WM</u>	_____
5.	_____	_____	<u>RC</u>	_____
6.	_____	_____	_____	_____

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## I. Summary:

Committee Substitute for Senate Bill 1480 makes several changes relating to insurance by providing for the following:

- Authorizes the Office of Insurance Regulation (OIR) to issue an order designating the classes of insurance that are eligible for export to surplus lines companies.
- Permits a representative of an insured, who obtains independently procured coverage from a surplus lines insurer, to file the required report of the policy with the Surplus Lines Service Office and the applicable taxes and service fees.
- Revises provisions relating to security deposits by domestic insurers to conform Florida law to the model law and rules enacted by the National Association of Insurance Commissioners.
- Provides that the state or local governments may require a law enforcement officer and correctional officer to pass a physical exam in order to be eligible for the statutory presumption that when a law enforcement officer or correctional officer has a medical condition caused by tuberculosis, heart disease, or hypertension, it is presumed that the medical condition was suffered in the line of duty, unless shown to the contrary by competent evidence. This legislation would not apply to officers who are currently employed.
- Provides that the state, county, or municipality may set tobacco use standards for law enforcement officers and correctional officers.

The bill amends the following sections of the Florida Statutes: 626.916, 626.938, 626.511, and 943.135.

## II. Present Situation:

### **Independently Procured Insurance Coverage**

Independently procured coverage (IPC) is insurance coverage that an insured in Florida, typically a business, obtains by directly contacting an unauthorized foreign or alien<sup>1</sup> insurer, or self insurer.<sup>2</sup> The insured must file specific information about the policy with the Florida Surplus Lines Service Office (Office) and must pay 5 percent of the gross amount of the premium and a 0.3 percent service fee to the Office.

### **Surplus lines Requirements**

Generally, surplus lines insurance is insurance coverage provided by a company that is not licensed in Florida, but that is allowed to do business in the state, as an “eligible” insurer, because the particular coverage offered is not available from insurers authorized to sell insurance in Florida.<sup>3</sup> The Florida Insurance Code contains specific financial and other requirements that unauthorized insurers must comply with in order to become eligible surplus lines insurers and obtain approval by the Office of Insurance Regulation (OIR).<sup>4</sup> For example, a surplus lines insurer must maintain a surplus as to policyholders of not less than \$15 million, have been licensed in its state or country of domicile for at least three years, and furnish annual and quarterly financial statements to the OIR.<sup>5</sup> Surplus lines insurance is not subject to Florida regulation of rates or forms and there is no insurance guaranty fund protection if the insurer becomes insolvent.

The law also specifies the conditions that must be met before insurance coverage may be exported to an eligible surplus lines insurer, also referred to as a nonadmitted insurer. Currently, under s. 626.916, F.S., the Financial Service Commission (FSC) promulgates rules designating the classes of insurance that are eligible for export to surplus lines companies. According to representatives with the OIR, due to fluctuating market conditions, classes of insurance that are eligible for export change periodically and differ throughout the state. The requirement to have the FSC issue rules involves repeated presentations to the Financial Service Commission and is time consuming and cumbersome, according to these representatives.

Under s. 626.938, F.S., an insured who independently procures coverage from a surplus lines insurer must file a report of the policy with the Surplus Lines Service Office, as noted above. The insured also is required to file the surplus lines tax and fee with the Office within 30 days of procuring the coverage. Representatives with the OIR state that the policy, taxes and fees are supposed to be filed by the insured and not the insured’s agent or broker. However, many

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<sup>1</sup> Insurers are divided into three categories under the Insurance Code: *domestic insurers* are formed under the laws of Florida; *foreign insurers* are formed under the laws of any state, district, or territory or commonwealth of the United States, other than Florida; and *alien insurers* are defined as insurers other than domestic or foreign insurers. Foreign and alien insurers must meet certain capital, surplus, and operational requirements.

<sup>2</sup> Section 626.938, F.S.

<sup>3</sup> Section 626.913-626.937, F.S.

<sup>4</sup> Section 626.918, F.S.

<sup>5</sup> Section 626.918, F.S.

insureds are unaware of the law and are not familiar with the policy information requested by Surplus Lines Service Office and request that their agent or broker file the policy with the Office on their behalf. Additionally, many insureds remit the taxes and service fees directly to the agent or broker with the premium. The broker then, in turn, remits the taxes and service fees to the Surplus Lines Service Office. The OIR representatives state that the law should be clarified to allow the insured's agent or broker to file the policy with the Office along with the appropriate taxes and fees.

### **National Association of Insurance Commissioners**

In 2005, the National Association of Insurance Commissioners (NAIC) issued its model act authorizing domestic insurers to utilize modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate regulations.<sup>6</sup> The model act provides updated definitions and terminology as to clearing corporations, custodians, and securities. According to OIR representatives, it is necessary to amend Florida law and update applicable rules<sup>7</sup> to insure uniformity with the NAIC model act and regulation.<sup>8</sup>

### **Presumption of Disability Relating to Workers' Compensation Insurance**

Presently, s. 112.18(1), F.S., provides that any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or law enforcement officer or correctional officer caused by tuberculosis, heart disease, or hypertension that results in total or partial disability or death shall be presumed to be accidental and suffered in the line of duty, unless shown to the contrary by competent evidence. However, the firefighter or officer must have successfully passed a physical examination upon entering into any service as a firefighter, law enforcement officer or correctional officer, which examination failed to reveal any evidence of any such condition.

This presumption impacts workers' compensation claims determinations. The threshold eligibility test for workers' compensation is whether the disability is work related. If it is, the officer is eligible for benefits under ch. 440, F.S.

Chapter 943, F.S., provides for the authority and responsibilities of the Florida Department of Law Enforcement and for programs relating to law enforcement accreditation, training and conditions of employment for local law enforcement officers and correctional officers, among others.

## **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 626.916, F.S., to authorize the Office of Insurance Regulation to issue an order designating the classes of insurance that are eligible for export to surplus lines companies. Current law requires that this be done by rule by the Financial Services Commission. According to representatives with the OIR, this revision would streamline the process and permit the OIR to be timelier in its response to market changes involving classes of insurance that are eligible for export. Additionally, this change would reduce administrative costs to the OIR, the Financial

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<sup>6</sup> "Model Act to Permit the Use of Clearing Corporations and Federal Reserve Book-Entry System by Insurance Companies," model # 295, 2005 (NAIC).

<sup>7</sup> Rules 69O-143.041, F.A.C. and 69O-143.042, F.A.C.

<sup>8</sup> The Model Regulation is # 298.

Services Commission, and compliance costs to insurers. It also would allow the OIR to respond more rapidly to the need to expand and contract eligibility in the surplus lines marketplace.

**Section 2.** Amends s. 626.938, F.S., to permit a representative of an insured, who obtains independently procured coverage from a surplus lines insurer, to file the required report of the policy with the Surplus Lines Service Office and the applicable taxes and service fees. The insured would still be accountable if the filing is not made or the taxes and fees are not paid.

This change would allow insureds to designate a representative to make the independently procured coverage filing and remit the surplus lines taxes and service fees. The insured would still be accountable if the filing is not made or the taxes and fees are not paid.

**Section 3.** Amends s. 628.511, F.S., to revise the law on security deposits by domestic insurers. This provision would conform Florida law with the National Association of Insurance Commissioners model law and rules. The legislation provides criteria for clearing corporations and broker-dealers to hold investments and eliminates outdated language referring to Federal book entry accounting and member banks.

Specifically, a clearing corporation is defined as a person who is registered as a clearing agency under the federal securities laws, a federal reserve bank, or any other person that provides clearance or settlement services with respect to financial assets.<sup>9</sup> Under the bill, the term also includes “Treasury/Reserve Automated Debt Entry Securities System” and “Treasury Direct” book-entry securities systems established pursuant to federal law. The term “custodian” is expanded to include a broker/dealer that participates in a clearing corporation. The law also deletes the definitions of “Federal Reserve book-entry system” and “member bank.”

**Section 4.** Amends s. 943.135, F.S., to provide that the state or local governments may require a law enforcement officer and correctional officer to pass a physical exam in order to be eligible for the statutory presumption (under s. 112.18(1), F.S.) that when a law enforcement officer or correctional officer has a medical condition caused by tuberculosis, heart disease, or hypertension, it is presumed that the medical condition was suffered in the line of duty, unless shown to the contrary by competent evidence. This legislation would not apply to officers who are “currently employed.” The bill also provides that the state, county, or municipality may set tobacco use standards for law enforcement officers and correctional officers. The reference to “currently employed” is not defined, but would most likely be interpreted as the effective date of the bill, October 1, 2005.

**Section 5.** Provides that the effective date of the bill is October 1, 2005.

According to proponents of this provision, the bill clarifies that the “baseline” physical examination relating to the presumption is the examination that the law enforcement officer or correctional officer took prior to employment with his or her *current employer* because presently, the “baseline” examination has been interpreted to mean the physical examination the officer took years ago with a previous employer. Also, according to proponents, allowing the state and

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<sup>9</sup> Section 678.1021(1)(e), F.S.

local governmental entities to establish tobacco use standards will assist in preventing heart disease and hypertension among employees.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insureds obtaining independently procured coverage will benefit under this bill by having their agent or broker file the necessary policy information, taxes and service fees with the Surplus Lines Service Office.

Insurers providing workers' compensation coverage could benefit by having law enforcement officers and correctional officers adhere to tobacco use standards established by the state and local governments.

C. Government Sector Impact:

The state and local governments will benefit by requiring officers to pass current physical examinations relating to the utilization of the statutory presumption provision.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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