

By the Committee on Judiciary; and Senators Fasano and Atwater

590-1855-05

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A bill to be entitled
An act relating to insurance; amending s.
626.901, F.S.; revising an exception from the
prohibition against representing or aiding
unauthorized insurers; providing for immediate
cease-and-desist orders for violations of the
prohibition; providing legislative findings;
authorizing investigations of activities that
may constitute violations of the prohibition;
amending s. 626.902, F.S.; providing an
exception from penalty provisions for a person
who cooperates with the office to administer
the Unauthorized Insurers Process Law; amending
s. 626.908, F.S.; providing conditions on
defenses of certain actions against
unauthorized insurers and persons representing
or aiding them; prescribing a time limit on
motions to quash or set aside service of
process in actions against such unauthorized
insurers and other persons; providing an
effective date.

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

Section 1. Subsection (4) of section 626.901, Florida
Statutes, is amended, and subsections (5) and (6) are added to
that section, to read:

626.901 Representing or aiding unauthorized insurer
prohibited.--

(4) This section does not apply to:

1 (a) Matters authorized to be done by the office under
2 the Unauthorized Insurers Process Law, ss. 626.904-626.912.

3 (b) Surplus lines insurance when written pursuant to
4 the Surplus Lines Law, ss. 626.913-626.937.

5 (c) Transactions as to which a certificate of
6 authority is not required of an insurer, as stated in s.
7 624.402.

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

11 (5) The office or department may, pursuant to s.
12 120.569 and in its discretion and without advance notice or
13 hearing, issue an immediate final order to cease and desist to
14 any person or entity that violates this section. The
15 Legislature finds that a violation of this section constitutes
16 an imminent and immediate threat to the health, safety, and
17 welfare of the residents of this state.

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

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

25 626.902 Penalty for representing unauthorized
26 insurer.--

27 (3) This section does not apply to actions of a person
28 who is assisting the office at its direction in the
29 administration of its responsibilities under ss.
30 626.904-626.912, the Unauthorized Insurers Process Law.
31

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

3 626.908 Defense of action by unauthorized insurer or
4 person representing or aiding such insurer; damages and
5 attorney fee.--

6 (1) Before an unauthorized insurer or person
7 representing or aiding such insurer files or causes to be
8 filed any pleading in any action or proceeding instituted
9 against it under s. ~~ss.~~ 626.906, s. ~~and~~ 626.907, or s. 626.909
10 or a suit instituted by the office or the department enforcing
11 agency action against unauthorized insurers under s. 120.69,
12 an unauthorized insurer or person representing or aiding such
13 insurer shall:

14 (a) Procure a certificate of authority to transact
15 insurance in this state, or

16 (b) Deposit with the clerk of the court in which such
17 action or proceeding is pending cash or securities or file
18 with such clerk a bond with good and sufficient sureties, to
19 be approved by the court, in an amount to be fixed by the
20 court sufficient to secure the payment of any final judgment
21 which may be rendered in such action. The court may in its
22 discretion make an order dispensing with such deposit or bond
23 where the insurer makes a showing satisfactory to the court
24 that it maintains in a state of the United States funds or
25 securities, in trust or otherwise, sufficient and available to
26 satisfy any final judgment which may be entered in such action
27 or proceeding, and that the insurer or person representing or
28 aiding such insurer will pay any final judgment entered
29 therein without requiring suit to be brought on such judgment
30 in the state where such funds or securities are located, and
31 that if, nevertheless, such suit is brought on such final

1 judgment the insurer or person representing or aiding such
2 insurer shall waive all defenses thereto.

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

6 (d) If the unauthorized insurer or person representing
7 or aiding such insurer seeks to take discovery or de bene esse
8 depositions of witnesses beyond the jurisdiction of the court
9 in which the action is pending, upon seasonable application by
10 the plaintiff, the court by appropriate order shall require
11 the unauthorized insurer or person representing or aiding such
12 insurer, before such depositions are taken, to make similar
13 deposit as described in paragraph (b), in sufficient amount to
14 pay the reasonable expenses of the plaintiff and his or her
15 attorney in attending the taking of such depositions,
16 including reasonable attorney's fees to be fixed by the court.

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

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

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

29 Section 4. This act shall take effect July 1, 2005.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1662

The committee substitute clarifies the exception provided in the bill from penalties for representing unauthorized insurers. The committee substitute specifies that the penalties do not apply to actions of persons who assist the Office of Insurance Regulation in the administration of its duties under the Unauthorized Insurers Process Law (ss. 626.904-626.912, F.S.).