

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.)

Prepared By: Banking and Insurance Committee

BILL: CS/SB 1912

SPONSOR: Banking and Insurance Committee and Senator Argenziano

SUBJECT: Insurance Agents and Agencies

DATE: March 30, 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>CA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Florida Department of Financial Services (DFS) currently licenses insurance agents while the Office of Insurance Regulation (OIR) issues certificates of authority to insurance companies to operate in Florida.¹ However, insurance agencies, which employ agents, and their owners, are not licensed. According to the National Association of Insurance Commissioners (NAIC), Florida is the only state in the country that does not require insurance agencies and their owners to obtain licenses.

Committee Substitute for Senate Bill 1912 would mandate that insurance agencies be licensed or registered with DFS. Specifically, the bill provides for the following regulatory changes:

- Requires insurance agencies to be licensed or registered with the Department of Financial Services (DFS) by October 1, 2006;
- Provides that agencies that are wholly owned by licensed agents and were in business before January 1, 2003, to register with the DFS in lieu of obtaining a license;
- Authorizes the DFS to obtain background information and fingerprints as to insurance agency applicants and obtain additional information as required to ascertain the trustworthiness and competence of such applicants;
- Authorizes the DFS to impose administrative penalties for agencies which are required to be licensed or registered but which fail to do so;

¹ The DFS regulates insurance agents under chapter 626, F.S. Insurance companies transacting insurance in Florida or from offices located in the state are required to obtain a certificate of authority (COA) issued by the OIR pursuant to s. 624.401, F.S.

- Prohibits the use of deceptive insurance agency names that may mislead the public or imply that the agency is a state or federal entity or a charitable organization;
- Repeals the requirement that a primary agent be designated for each agency location;
- Requires each agency to display its license or registration prominently in a manner that is clearly visible to a customer;
- Allows persons who live outside the state, but who work in a Florida insurance agency, to obtain a Florida “resident” agent’s license;
- Allows DFS to electronically scan records of insurance entities and agents when they are being investigated or examined;
- Eliminates the examination requirement for adjusters who apply to change from one adjuster license type to another;
- Requires insurers to be bound by the acts of their agents that are committed within the scope of the agent’s appointment;
- Deletes the disciplinary authority that allowed DFS to take action against an insurance agent when such agent committed acts that were “detrimental to the public interest” because the phrase was ruled unconstitutionally vague;
- Clarifies that an agent who had his or her license revoked or suspended will not necessarily be granted a new license after the required waiting period;
- Requires a minimum age of 18 to qualify for a customer representative license;
- Allows nonresident title insurance agents to become licensed in Florida in the same manner as nonresident general lines agents; and,
- Provides that licensed insurance agents may not be prohibited from competing for any insurance product purchased any political subdivision of the state on the basis of the compensation, contractual or employment arrangement granted to the agent by the employer, insurer, licensed agency.

This bill substantially amends the following sections of the Florida Statutes: 626.317; 626.318; 626.501; 626.015; 626.016; 626.025; 626.112; 626.171; 626.172; 626.221; 626.2815; 626.292; 626.321; 626.342; 626.382; 626.451; 626.536; 626.561; 626.572; 626.601; 626.602; 626.6115; 626.621; 626.6215; 626.641; 626.7351; 626.7355; 626.747; 626.8411; and 648.50.

The bill creates the following sections of the Florida Statutes: 626.84201 and 626.1275.

The bill repeals the following section of the Florida Statutes: 626.592.

II. Present Situation:

Insurance Agents and Agencies

In general, insurance agents transact insurance on behalf of an insurer or insurers.² An agent must be licensed by the Department of Financial Services (DFS or department) to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers. Agent requirements vary by line of insurance and are based upon resident or

² Insurance agents are regulated under chapter 626, F.S.

nonresident license type.³ General requirements for agent licensure include being 18 years of age; submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints for criminal background investigations. Applicants for a resident agent license must reside in Florida.

An insurance agency is a company which employs insurance agents; however, neither the company nor its owner has to be licensed by the DFS. However, under s. 626.112, F.S., an agency is required to be licensed if its owner or another principal in the agency is convicted of a specific crime or has committed certain enumerated violations. Insurance agencies are defined as a business location at which an individual, firm, partnership, corporation, association, or other entity engages in any activity or employs individuals to engage in any activity which by law may be performed only by a licensed insurance agent.⁴ According to the National Association of Insurance Commissioners (NAIC), Florida is the only state in the country that does not require insurance agencies and their owners to obtain licenses.

According to representatives with the DFS, in each of the past three years, the department has investigated an average of 400 complaints involving misappropriation of funds for insurance sold at insurance agencies. The department does not currently have the ability to track, monitor, or perform background checks on insurance agencies and their unlicensed owners and thus does not know whether such owners have a history of fiduciary-related crimes. In addition, the DFS is unable to take administrative action against these unlicensed agencies and their owners who participate in a misappropriation scheme. The department can only take action against licensed insurance agents who are involved in such schemes. Furthermore, according to these representatives, if an employee or associate's license is suspended or revoked, the unlicensed owners of the insurance agency simply hire or contract with another licensee to continue as agent.

The department representatives assert that licensing agencies will facilitate the department's ability to investigate and ultimately seek punishment against unlawful agency activity. Florida law does not require an insurance agency to be owned by a licensed agent which means that when the DFS investigates a complaint against an agency, the unlicensed owner may have closed the agency or relocated it so that the owner can continue conducting unauthorized or fraudulent business.

The Division of Agent and Agency Services within DFS

The division administers the insurance laws and rules relating to the licensing, qualifications and eligibility of insurance agents, including examination, continuing education, and pre-licensing schools and courses.⁵ The division also issues licenses and appointments for all classes of insurance representatives, including maintenance of an internet-based computer application for licensure. Allegations of fraud, misappropriation of funds, and other similar activities are

³ There are currently 252,177 licensed resident insurance agents in Florida and 123,933 non-resident agents licensed in the state.

⁴ Section 626.015(8), F.S. The exceptions to this definition are employees of the individual, firm, partnership, corporation, association, or other entity, an insurer as defined by s. 624.03, F.S., or an adjuster as defined in s. 626.015(1), F.S.

⁵ Sections 626.011-626.711, F.S.

investigated by the division with the support of other DFS staff. Similarly, the division investigates complaints received from various sources alleging violations of the Florida Insurance Code by licensees as well as unlicensed persons. As a result of those complaints and investigations, the division may take administrative action against a licensee resulting in fines and probation, license revocation, or a permanent suspension from participating in the insurance industry.

Misleading/Deceptive Insurance Agency Names

Staff of the Division of Agent and Agency Services states that, in addition to lacking administrative oversight over the owner/operator of insurance agencies, the DFS is not granted specific authority to prohibit an agency from using a deceptive or misleading word in the name of an insurance agency. Consumers have reported to DFS that because of a misleading business name, they were led to believe the agency offered financial advice or counseling, or the agency was a governmental entity, when, in fact, the agency offered long-term care insurance, annuities, or other insurance products.

Primary Agents

Under current law, each person operating an insurance agency and each location of a multi-office agency must designate a primary agent for each agency location and must file the name of the person so designated with the location address with the department.⁶ The primary agent is a licensed insurance agent responsible for the hiring and supervision of all individuals within an agency. A primary agent may serve at only one insurance agency location.

III. Effect of Proposed Changes:

Section 1. Amends s. 626.317, F.S., to give the DFS the authority to investigate the accounts, records, documents and transactions affecting the affairs of insurance agencies.

Section 2. Amends s. 624.318, F.S., relating to the conduct of examinations or investigations and access to records. The bill creates subsection (7) to provide authority to the DFS or the OIR, and their examiners and investigators, to electronically scan records, accounts, documents, files, or information relating to the subject of the examination or investigation in the possession of the person being examined.

Current law states that neither the department nor the office shall remove any document of the person being examined except with written consent of such person given in advance of such removal, or pursuant to a court order.

Section 3. Amends s. 624.501, F.S., pertaining to fees associated with licenses and agent appointments by an insurer. The bill removes the term “insurance agency” from the list of entities required to pay a licensing fee and requires adjusting firms to pay an original fee and a renewal fee every three years of \$60.00.

⁶ Section 626.592, F.S.

Section 4. Amends s. 626.015, F.S., which is the definition of “home state” and “resident” so that a person who lives outside of Florida but works in a Florida insurance agency may obtain a Florida resident agent’s license.

Section 5. Amends s. 626.016(1), F.S., relating to the powers and duties of DFS, the Financial Services Commission, and OIR, to include insurance agencies under the authority of those agencies.

Section 6. Amends s. 626.025, F.S., relating to consumer protections, to include licensure and registration of insurance agencies under s. 626.112, F.S., which pertains to licensing and appointment requirements.

Section 7. Amends s. 626.112(7)(a), F.S., relating to the license and appointment of agents, customer service representatives, adjusters, insurance agencies, service representatives, and managing general agents. The bill requires that effective October 1, 2006, an individual, firm, partnership or association shall not act in its own name or trade name, directly or indirectly, as an insurance agency unless it files an application for licensure or registration for each place of business at which it engages in any insurance activity.

The legislation also requires that each insurance agency engaged in business in Florida before January 1, 2003, which is wholly owned by licensed and appointed insurance agents, each incorporated agency whose voting shares are traded publicly, and each agency whose primary function is offering insurance as a service or member benefit to members of a nonprofit corporation, may file an application for registration, in lieu of licensure. Each agency doing business before October 1, 2006, must file an application for licensure or registration on or before that date.

The bill specifies mandatory administrative penalties for an agency that fails to seek licensure (up to \$10,000) or registration (up to \$5,000). The legislation requires a registered insurance agency to obtain an insurance agency license if the DFS finds that, with respect to a majority owner, director, or manager, such a person has been found guilty of, or pleaded guilty or nolo contendere to, a felony relating to the business of insurance or committed other specified violations. Also, the bill deletes provisions that currently require agency licensure if its owner or another principal in the agency is convicted of a specific crime or has committed certain enumerated violations.

Section 8. Amends s. 626.171, F.S., governing the application for a license. The bill adds agent, customer representative, adjuster, service representative and other terms to the title of the section; it deletes references to an insurance agency license and removes an obsolete date.

Section 9. Amends s. 626.172, F.S., to specify the requirements for licensure or registration of an insurance agency. The bill states that the DFS may issue a license as an insurance agency to any person only after such person files an application and qualifies for such license. An application for an insurance agency license must be signed by the owners of the agency and, if an agency is incorporated, the bill requires the corporate president and secretary to sign the application.

The legislation sets forth the persons required to be fingerprinted (and to submit a fee) for an agency license; however, persons who are currently licensed and appointed do not need to file their fingerprints with the department. This provision does not apply to corporations whose voting shares are traded publicly. The bill provides that the DFS may not require certain credit or character reports to be submitted for persons required to be listed on the agency application. Beginning October 1, 2005, the DFS shall accept the uniform application for nonresident agency licensure and may adopt appropriate rules.

The DFS must issue a registration as an insurance agency to any agency that files a written application and so qualifies for registration. The application for registration requires the insurance agency to provide the same information required for an agency applying for licensure. The bill specifies requirements for agency registration including the provision that the application must be signed by the owner of the agency, and if the agency is incorporated, the application must be signed by the president and secretary. An agent who owns the agency need not file fingerprints with the DFS if the agent obtained a license and such license is currently valid. If an application for registration is denied, the agency must file a license application no later than 30 days after the date the registration is denied.

A registered insurance agency must file an application for licensure no later than 30 days after the date that any person who is not a licensed and appointed agent in Florida acquires any ownership interest in the agency. The DFS shall impose a penalty of up to \$5,000 for an agency which fails to file such application. Agencies are required to display their licenses or registrations prominently in a manner that makes it clearly visible to any customer.

Section 10. Amends s. 626.221, F.S., relating to examinations. The bill provides that an adjuster who wants to switch from one license type to another must file an application to obtain the new license with the department; however no examination will be required. This provision would apply to the three types of adjusters: company, independent and public adjusters.

Section 11. Amends s. 626.2815, F.S., pertaining to continuing education, to remove obsolete dates.

Section 12. Amends s. 626.292, F.S., to correct a statutory reference.

Section 13. Amends s. 626.321, F.S., to correct a statutory cross-reference.

Section 14. Amends s. 626.342, F.S., to include an insurance agency in the law regarding the prohibition of furnishing supplies (e.g., blank forms, applications, stationery) to unlicensed agents and the civil liability the insurance agency could be subject to under this provision.

Section 15. Amends s. 626.382, F.S., to require the insurance agency license that is issued for a period of three years to be renewed upon submission of a renewal request to the DFS on a form adopted by department rule.

Section 16. Amends s. 626.451, F.S., relating to appointments, to require insurers to be bound by the acts of their agents that are committed within the scope of the agent's employment or "appointment." Current law requires insurers to be bound by the acts of their agents that are

committed within the scope of the agent's employment; however, since many agents are not employees of insurers but are appointed by insurers to be their agent, the bill would change the law to read employment or "appointment."

Section 17. Amends s. 626.536, F.S., to include an insurance agency in the requirement to report to the DFS within 30 days after the final disposition of any administrative action taken against the agent by a government agency relating to the business of insurance or other specified activity involving fraud, dishonesty or breach of fiduciary duty.

Section 18. Amends s. 626.561, F.S., to include an insurance agency in the requirements for receiving and keeping funds in a fiduciary capacity. Current law requires that such funds are to be kept in a separate account to allow the DFS or the OIR to properly audit the funds. Any insurance agency that diverts or misappropriates such funds commits criminal penalties which are ranked according to the amount of funds diverted or misappropriated.

Section 19. Amends s. 626.572, F.S., to include an insurance agency in the provisions as to when the rebating of commissions to insureds is allowed.

Section 20. Amends s. 626.601, F.S., to allow the department to investigate alleged improper conduct of an insurance agency upon the department's motion or upon a written complaint signed by an interested person and filed with the department.

Section 21. Creates s. 626.602, F.S., to allow the department to disapprove the use of certain insurance agency names. The bill provides particular instances when such disapproval is appropriate; for example, when the name is too similar to a name already filed with the DFS or when its use may mislead the public in any respect.

Section 22. Amends s. 626.6115, F.S., relating to grounds for suspension or revocation of an insurance agency license. The bill creates subsection (3) to provide that the DFS can use the denial, suspension or revocation of a license issued for any regulated profession, business, or vocation relating to the business of insurance as grounds for refusal, suspension, or revocation of a Florida insurance agency license. However, any administrative action taken against a licensed agency does not in and of itself constitute grounds for action against any other licensed agency that is under common ownership with or owned by the agency for which grounds for administrative action exist.

Section 23. Amends s. 626.6215, F.S., by creating subsection (6) which allows the department to refuse, suspend or revoke an insurance agency license on the grounds of failure to take corrective action or report a violation to the department within 30 days after an individual licensee's violation is known or should have been known by one or more of the partners, officers or managers of the agency. However, any administrative action taken against a licensed agency does not in and of itself constitute grounds for action against any other licensed agency that is under common ownership with or owned by the agency for which grounds for administrative action exist.

Section 24. Amends s. 626.621, F.S., which deletes a provision that allowed the department to take disciplinary action against agents when they committed acts that were “detrimental to the public interest.” This phrase was ruled unconstitutionally vague many years ago.

Section 25. Amends s. 626.641, F.S., pertaining to duration of a suspension or revocation. The bill clarifies that when an agent has a license revoked, the fact that the law allows this person to apply for a new license in two years does not mean that a license will necessarily be granted. The statutes and rules that require or allow the DFS to deny a license to an applicant apply to applicants who were previously licensed. Therefore, the same would be true for an agent who has had a license suspended and applies for reinstatement.

Section 26. Amends s. 626.7351, F.S., relating to qualifications for customer representatives, to require that a person must be at least 18 years of age to qualify to obtain such a license.

Section 27. Amends s. 626.7355, F.S., to delete a reference to the primary agent law.

Section 28. Amends s. 626.747, F.S., relating to branch agencies. The bill provides that each branch agency include a “life or health agent.” Under current law, the provision requires only a licensed general lines agent to be in the branch agency.

Section 29. Amends s. 626.8411, F.S., by deleting an obsolete reference.

Section 30. Creates s. 626.84201, F.S., to allow nonresident title insurance agents to become licensed in this state in the same manner as nonresident general lines agents.

Section 31. Amends s. 624.50, F.S., to delete the term “or runners” relating to bail bond agents.

Section 32. Repeals s. 626.592, F.S., relating to the requirements for primary agents. This is because the licensing of insurance agencies replaces the need for designating one (primary) agent as the person responsible for the acts of other agents in the agency.

Section 33. Creates s. 624.1275, F.S., to provide that a licensed insurance agent shall not be prohibited from competing or negotiating for any insurance product or plan purchased or endorsed by a state agency or political subdivision of this state on the basis of the compensation, contractual or employment arrangement granted to the agent by an employer, insurer, or licensed agency.

Under current law (s. 287.022, F.S.), there is a prohibition against excluding any licensed insurance agent from competitively bidding on any “state” procured insurance product on the basis of the compensation, contractual or employment arrangement granted to the agent by an employer, insurer, or licensed agency. However, according to representatives with the insurance agents, various local governments prohibit independent agents from bidding on insurance products (e.g., life or health insurance for governmental employees) because they do not want to pay an agent’s commission. Such local governments only allow agents who directly write for insurers to bid on such contracts because these agents are employed by one insurance company or group of related companies and do not receive a commission. The agent representatives state

that independent agents receiving commissions can often bid at levels below direct writers and should not be precluded from bidding on local government insurance products.

Section 34. Provides that the bill will take effect October 1, 2005.

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:

Insurance agencies and their owners will have to be licensed or registered with the DFS; however, the bill does not require a fee for such entities or persons seeking licensure.

If officers of the insurance agency are licensed agents and have filed a fingerprint card with the department within the last ten years, a fingerprint-processing fee will not be required. In cases where officers are not licensed agents, a \$64 fee will be required if the officer submits a paper fingerprint card for processing. If the officer uses the Live Scan process now available in Florida, the cost will be \$60 in most locations to submit his or her fingerprints electronically. The fingerprint charge is a one-time charge for the agency unless there are changes in ownership or officers.

C. Government Sector Impact:

According to information provided by the Division of Agent and Agency Services of DFS, it estimates that approximately 12,715 firms are currently operating in Florida as insurance agencies.⁷ These firms are required by the bill to be licensed as insurance agencies and such license will be valid for three years; however, the bill does not require a fee for a person or entity seeking licensure as an agency. Representatives with the DFS

⁷ The Division used as a guide, “*The Florida Research and Economic Database*” to estimate the number of firms operating as insurance agencies.

state that they will carry out these additional licensing responsibilities without requesting any additional positions or funding.

Officials with the department claim that the Insurance Regulatory Trust Fund will receive \$1,615,616 in fiscal year 2005-2006 from fingerprint fees. However, these moneys will be passed through to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for processing such fingerprints.

These officials state that the current licensing computer systems will need to be upgraded to accommodate on-line applications for insurance agencies. The estimated cost is \$62,000 in fiscal year 2005-2006. Programs for renewal for insurance agency licenses will be needed in fiscal year 2007-2008 and the estimated cost is \$45,000.

According to these officials, the revenue received by the DFS from adjuster fees will be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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