HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 501 Insurance Field Representatives and Operations
SPONSOR(S): Berfield
TIED BILLS: **IDEN./SIM. BILLS:** SB 1002; SB 1952

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee		Callaway	Cooper
2) State Administration Appropriations Committee			
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

Under current law, a general lines agent cannot simultaneously hold a managing general agent license. The bill changes current law by removing that prohibition, thus allowing an insurance agent to hold a license as a general agent and a managing general agent.

Current law requires each business location of a seller of communication equipment property insurance and communication equipment inland marine insurance (communication equipment insurance) to be licensed to sell such equipment. The bill permits licensure of the primary business location for a seller of such equipment in lieu of licensure of each business location. The bill allows the primary license holder (i.e. primary business location) to annually submit a list to the Department of Financial Services (DFS) of the physical addresses of each business location allowed to sell communications equipment insurance under the primary license holder's license. The list must be updated annually.

The bill provides fees for allowing the sale of communications equipment insurance under a primary location license and the transfer of a business location license to a primary location license.

The bill amends current law by allowing entities obtaining a limited lines license to sell communications equipment insurance to sell service warranty agreements for communications equipment without obtaining a separate license and appointment to sell service warranty agreements.

The bill amends current law by extending the notice requirement relating to termination of an agent's appointment from a minimum of 60 days to 120 days, unless shortened by contract.

The bill's changes to the licensure and appointment procedures and fees for communications equipment insurance and service warranties are likely to reduce overall revenue for DFS, to increase expenditures for DFS, and to reduce revenue for counties.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill will likely reduce revenue collected by the Department of Financial Services because it allows sellers of communication equipment insurance to also sell communications equipment service warranties without a separate license and appointment as is currently required by law. It will also reduce revenues of DFS because the bill requires only the primary business location of a seller of communications equipment insurance to be licensed and appointed, as opposed to each business location, as is currently provided by law. This change will also reduce revenues counties receive as part of the counties' share of appointment fees.

Provide limited government: The bill allows licensees and insurance agent appointments for an insurance license limited to the sale of communications equipment to include the sale of service warranties relating to the sale of communications equipment. Under current law, two separate licenses and insurance agent appointments are needed to sell communication equipment insurance and service warranties relating to such.

Safeguard individual liberty: The bill allows licensees and insurance agent appointments for an insurance license limited to the sale of communications equipment to include the sale of service warranties without obtaining additional licensure and appointment. It also allows licensees with numerous business locations to license each business location under the primary business location licensee in lieu of obtaining a license for each business location.

Promote personal responsibility: The bill makes a licensed entity (i.e. primary business location) responsible for the actions of the branch locations listed by it and operating under its license, but only subjects a person to criminal liability or disciplinary proceedings if the person personally committed the unlawful act or should have known of the act and of the facts which resulted in a violation of chapter 626.

B. EFFECT OF PROPOSED CHANGES:

Licensure of Insurance Agents in Florida

There are many different types of insurance representatives. These include agents, customer representatives, service representatives, adjusters, and others.

In general, insurance agents transact insurance on behalf of an insurer or insurers. Agents must be licensed by the Department of Financial Services (DFS) 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.[1] Requirements for insurance agents vary by line and based upon resident or nonresident license type. "Resident agents" are agents domiciled and residing in the state of Florida.[2]

Insurance agents may be classified according to the number of products they may sell, the type of products they sell, and their place of residency. "General lines agents" are authorized under state law to transact any or all of the following lines of insurance: property, casualty, surety, health, and marine insurance. However, a general lines agent may sell health insurance without being separately licensed as a health agent only for those insurers also represented by that same agent as to property or casualty or surety insurance.

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[1] s. 626.112, F.S. (2004).

[2] s. 626.015(16), F.S. (2004).

"Managing general agents" are persons managing all or part of the insurance business of an insurer.[3] A managing general agent is authorized to adjust and pay claims and negotiate reinsurance on behalf of the insurer.[4]

Under current law, a general lines agent cannot simultaneously hold a managing general agent license. The bill changes current law by removing that prohibition, thus allowing an insurance agent to hold a license as a general agent and a managing general agent.

"Limited lines agents" are individuals, or in some cases entities, licensed as agents but limited to selling one or more of the following forms of insurance (each requiring a separate license): motor vehicle physical damage and mechanical breakdown; industrial fire or burglary; personal accident; baggage and motor vehicle excess liability; credit life or disability; credit insurance; credit property; crop hail and multiple peril crop insurance; in-transit and storage personal property; communications equipment property, or communications equipment inland marine.[5]

Licensing Requirements -Although requirements vary by line of authority, general requirements for agent licensure include 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. Applicants for a resident agent license must be Florida residents. Applicants for a nonresident license must be licensed in good standing in their home state, but generally do not have to pass a pre-licensing examination because Florida has reciprocity agreements with all states to waive that requirement.

Each type of agent, for example, general lines agent, health agent and life agent have a set of qualifications specific to the particular lines of insurance transacted.

Applicants for a limited lines license generally do not have to satisfy any pre-licensing education or examination requirements to be licensed. Such applicants must; however, file an application with DFS, be fingerprinted and after obtaining a license, be appointed by an insurance company.

Licensure for the Sale of Insurance for Communication Equipment

Communications equipment property insurance and communications equipment inland marine insurance (communication equipment insurance) are types of limited lines insurance. This type of insurance covers loss, theft, mechanical failure, damage or malfunctioning of communication equipment (e.g. cellular phones, laptop computers, personal digital assistants).

Under current law, a limited license to sell this type of insurance can be issued only to employees or authorized representatives of a licensed general lines agent, to each business location of a communications equipment retail vendor, and to employees, agents or authorized representatives of such vendor. As with several other limited lines of insurance, agents selling this product are exempt from the pre-licensing examination and education requirements applicable to general lines agents. However, unlike other limited lines licensees, licensees selling this product are required to receive initial training from, and have a "contractual relationship" with, a general lines agent.

An entity obtaining a limited lines license for communication equipment insurance must obtain a license for each business location of a retail vendor of communications equipment, although the license for each business location is made on a simplified license form. Each business location of a retail vendor of communication equipment insurance must also obtain an appointment by each insurance company represented.

The bill changes current law by requiring licensure for the sale of communication equipment insurance for only the primary business location of a retail vendor of communications equipment, rather than each business or branch location. The bill allows the primary license holder (i.e. primary business location) to

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3 s. 626.015(14), F.S. (2004).
4 Id.
5 s. 626.321, F.S. (2004).

annually submit a list to DFS of the physical addresses of each office opened by the primary license holder in the past 12 months and allowed to sell communications equipment insurance under the primary license holder's license in lieu of each business or branch location obtaining its own license to sell communications equipment. This type of licensing is authorized in New York, Texas, and Washington.[6]

Under current law, DFS collects a $50 filing fee for a limited lines insurance license for communication equipment insurance, a $5 licensing fee, and a $60 original appointment fee and $60 biennial renewal appointment fee for each business location of a retail vendor of this type of insurance.[7]

According to the bill, a $55 fee must be submitted for each business location contained on the initial list submitted by the licensed entity (i.e. the primary business location). Each year, the licensed entity must submit a list of business locations and a $55 fee for any business locations added and a $5 transfer fee for each business location transferred from another entity's license to sell communication equipment insurance. If a business location elects to be licensed under a primary business location's license, the business location will no longer have to pay a $60 appointment and appointment renewal fee. Only the primary business location will pay this fee.

Business locations individually licensed before January 1, 2006 can surrender its individual license and transfer to a license for the primary business location at no charge (as long as the business location is identified on the list submitted by the primary business location).

The bill makes the primary business location responsible for the actions of the branch locations listed by it and operating under its license. However, it only subjects a person to criminal liability or disciplinary proceedings if the person personally committed the unlawful act or should have known of the act and of the facts which resulted in a violation of chapter 626.

Additionally, the bill amends current law by allowing entities obtaining a limited lines license to sell communications equipment insurance to sell service warranty agreements for communications equipment without obtaining a license and appointment to sell service warranty agreements under Chapter 634. Under current law, persons who sell service warranties are licensed and regulated by the DFS pursuant to part III of chapter 634, F.S. (as part of DFS' authority to license and regulate insurance agents) and separate licenses and appointments are required for persons or entities to sell communications equipment insurance and service warranties for communications equipment.

Insurance Agent Appointments

As noted previously**,** agents must 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. There is no statutory limit on the number of categories of appointments an agent can hold at a given time.[8] The only restriction is that the agent must qualify and be licensed for each appointment held.[9] Appointments must be renewed every 24 months and are in effect until suspended, revoked, or terminated.[10]

Under current law, an appointment can be terminated at any time by the appointing entity upon a minimum of 60 days written notice to the appointed agent.[11] Sixty days notice is not required for termination based on grounds that would subject the appointed agent to suspension or revocation of their agent license.[12] Such grounds include lack of qualifications; material misstatement,

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6 Personal communication from Florida Association of Insurance and Financial Advisors.

7 s. 624.501, F.S. (2004). The appointment fee is broken down as follows: $42 for appointment fee, $12 for state tax, and $6 for county tax.

8 s. 626.331(1), F.S. (2004).

9 <u>Id.</u>

10 s. 626.381, F.S. (2004).

11 s. 626.471 (1), F.S. (2004).

12 <u>Id.</u>

misrepresentation or fraud in obtaining the license; willful misrepresentation or deception relating to an insurance policy or annuity contract; lack of trustworthiness; technical incompetence; violations of the Insurance Code; fraudulent or dishonest practices; and others.[13] Additionally, the agent and appointing entity can shorten the appointment termination notice requirement by contract.

The bill amends current law by extending the notice requirement relating to termination of an agent's appointment from a minimum of 60 days to 120 days. The agent and appointing entity can still shorten the appointment termination notice period by contract.

C. SECTION DIRECTORY:

Section 1: Amends s. 624.321, F.S.; provides entities with a limited lines insurance license to sell communications equipment can also sell service warranties for communication equipment without meeting licensure and appointment requirements for service warranty sellers; provides for streamlined licensure and appointment procedures for a limited lines license for communication equipment.

Section 2: Amends s. 624.471, F.S.; increases the notice requirement an appointing entity must give an appointed insurance agent before terminating the appointment.

Section 3: Amends s. 626.731, F.S.; eliminates the prohibition of a general lines agent also being a managing general agent.

Section 4: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

I. FISCAL IMPACT ON STATE AGENCIES:

A. Revenues

According to DFS, out of the 2,348 appointments relating to the sale communications equipment insurance 5 or 6 appointments are currently for primary business locations. All appointments are renewed biennially. DFS estimates an additional 4 or 5 primary business locations are eligible for appointments relating to the sale of communications equipment and may obtain appointments under the bill. The appointment fee and appointment renewal fee is $60 per appointment or renewal. DFS collects $54 of the $60 fee as $6 of it goes to counties as a county tax. Thus, DFS estimates it will collect $540 in additional revenue due to appointment or appointment renewal of the 10 estimated primary business locations.[14]

According to DFS, 2,348 branch locations currently have an appointment for the sale of communications equipment insurance. Each of these 2,348 branch locations also holds an appointment for the sale of service warranties. As its share of the appointment fee, DFS collects $54 per appointment and appointment renewal. The bill eliminates the requirement that each branch location be appointed to sell communications equipment insurance. Thus, the estimated loss in revenue for appointment for the sale of communications equipment is $126,792 biennially ($54 x 2,348). Another $126,792 is also lost in revenue for the appointment for the sale of service warranties. Thus, the total loss revenue is $253,584.[15]

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[13] s. 624.611, F.S. (2004); s. 626.621, F.S. (2004).
[14] Personal communication from DFS on March 14, 2005.
[15] Legislative Bill Analysis from DFS dated January 28, 2005.

Because the bill requires an initial $55 fee for each branch location put on the primary business locations' licensing list, DFS will collect additional revenue from this fee. However, DFS believes the amount of revenue generated by this fee is indeterminable.[16] Additionally, the bill requires a $55 fee for each branch location added to a primary business location's licensing list after the initial list is made. This fee will also generate additional revenue for DFS; however, the amount is indeterminable.[17] The chart below does not account for revenue from either fee.

REVENUES BY DFS

	FY 2005-2006	FY 2006-2007	FY 2007-2008
Recurring for Insurance Regulatory Trust Fund (10 estimated primary business locations x. $60 appointment fee)	$ 540	$ 0	$ 540
Recurring for Insurance Regulatory Trust Fund (2,348 appointments x $54 due to loss of state portion of $60 appointment fee x 2 due to loss of appointment fee for limited license and service warranty)	($253,584)	$ 0	($253,584)

B. Expenditures

The licensing and appointment process for agents is currently fully automated and is done electronically. The computer programming is based on licensure and appointment for each branch location. Because the bill allows licensure and appointment of each primary business location instead of each branch location, DFS believes additional computer programming must be done to process such licenses and appointments at a cost of $147,467.[18]

EXPENDITURES BY DFS

	FY 2005-2006	FY 2006-2007	FY 2007-2008
Recurring for Insurance Regulatory Trust Fund	$ 0	$ 0	$ 0
Non-recurring for Insurance Regulatory Trust Fund (for electronic submission system)	$ 147,467	$ 0	$ 0

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

For the limited license relating to the sale of communications equipment, counties receive $6 per agent appointment and appointment biennial renewal as their share of tax revenue.[19] According to DFS, estimated loss of revenue <u>every two years</u> for the appointments and appointments renewal of branch offices that sell communication equipment property insurance is as follows:

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16 Id.
17 Id..
18 Id.
19 s. 624.501(9), F.S. (2004).

REVENUE LOSS FOR COUNTIES FOR LOSS OF TAX ON COMMUNICATIONS EQUIPMENT INSURANCE

	FY 2005-5006	FY 2006-2007	FY 2007-2008
County Share of Tax on Appointment & Renewal of Insurance Agents (2,348 appointments x $6/appointment)	($14,088)	$0	($14,088)

The bill allows the entities licensed to sell communications equipment property insurance to also sell "service warranties" under the communications equipment license. Currently, the sale of “service warranties” requires a separate license with separate license and appointment fees. According to DFS, counties receive $6 per agent appointment and biennial appointment renewal as their share of tax revenue relating to the appointment and biennial appointment renewal for the sale of service warranties. Information received from the industry by DFS indicates that a majority of the branch offices holding the communications equipment property insurance license also hold service warranty licenses.[20] Therefore, this would create an additional estimated loss of revenue every two years as follows:

REVENUE LOSS FOR COUNTIES FOR LOSS OF TAX ON SERVICE WARRANTIES

	FY 2005-5006	FY 2006-2007	FY 2007-2008
County Share of Tax on Appointment & Renewal of Insurance Agents (2,348 appointments x $6/appointment)	($14,088)	$0	($14,088)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private entities currently licensed to sell communications equipment insurance may save money by having to only license and appoint its primary business location, rather than each business location. Also, if the entity also sells service warranties for communications equipment, the entity may save money by having to obtain only one license and appointment to sell communications equipment insurance and service warranties, rather than separate licenses and appointments for sale of such insurance and service warranties.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

[20] Legislative Bill Analysis from DFS dated January 28, 2005.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In its bill analysis, DFS raised implementation challenges relating to the changes to the licensing provisions applicable to the sale of communications equipment. The challenges included: the possibility that submission of a list of branch offices could require reversion from an electronic license application and appointment submission process to a paper submission process, could require additional staff to process paper submissions, or could require changes to the current electronic process.[21]

In its bill analysis, DFS indicated section 3 of the bill that removes the elimination of a general lines agent simultaneously being licensed as a managing general lines agent conflicts with s. 626.745, F.S.[22] According to DFS, section 626.745 requires a general lines agent to accompany a managing general agent if the managing general agent is transacting insurance.[23] If an individual can hold both a general lines agent license and a managing general agent's license at the same time, then DFS believes the managing general agent will not have to have a general agent to accompany him/her while transacting insurance because he/she is a general agent too.[24]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

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21 Id.
22 Id.
23 Personal communication with DFS on March 14, 2005.
24 Id.