

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1113 CS Insurance Agents
SPONSOR(S): Lopez-Cantera and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2526

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	18 Y, 0 N, w/CS	Callaway	Cooper
2) State Administration Appropriations Committee		Rayman	Belcher
3) Commerce Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Under current law, applicants for licensure by the Department of Financial Services (DFS or department) as an insurance agent, customer representative, service representative, managing general agent, or reinsurance intermediary have to be fingerprinted as a condition of licensure. Fingerprinting is done by a law enforcement agency or by other department-approved entities. The fingerprinting is done so the department can obtain the applicant's state, federal, and local criminal history to use in its investigation into an applicant's qualifications for licensure. The department provides fingerprinting at 68 locations throughout the state. Sixty four locations are at county public school administrative offices and the locations in Duval, Dade, Broward, and Palm Beach counties are at county facilities (rather than school administrative offices). This is in addition to the law enforcement facilities where applicants can get fingerprinted. Applicants for licensure must pay a fee sufficient to "cover fingerprint processing" which is currently \$64 per applicant, set by department rule.

The department requires most license applicants to pass an examination in order to become licensed. The bill requires the DFS to offer fingerprinting services to licensure applicants at each of its testing centers. The department currently has 19 testing centers. Currently, fingerprinting services are not available at the testing centers.

The bill allows a license applicant to take the license examination before his or her license application is submitted or approved and requires the applicant to take a prelicensing course before taking the license examination. The bill requires the department to collect self-reported race/ethnicity and gender information from testing examinees and to use this information to prepare and publish reports on testing results, separated by race/ethnicity and gender.

Requiring fingerprinting at the testing centers may increase testing space lease or rental fees the testing vendor has to pay. Additionally, the department may not be able to find a private vendor to perform fingerprinting at each testing location due to the costs of the fingerprinting equipment (\$285,000+) in relation to the fingerprinting fee of \$64 per applicant. Accordingly, the department would have to do the fingerprinting in-house which entails the purchase the fingerprinting equipment and associated expenses. The department will need additional resources to implement the bill, if it cannot find a private vendor to contract with to provide fingerprinting services at examination locations. The bill requires the department to spend an additional \$158,99 per year for 3 new FTEs. In addition, the department estimates \$233,709 will need to be spent in fiscal year 2006-2007 for implementation of the bill. The bill does not provide an appropriation to the department for implementation.

The bill provides and effective July 1, 2006.

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill requires the DFS to provide fingerprinting services for license applicants at 19 new locations.

The bill requires the DFS to collect additional information from testing examinees and to compile and publish testing results.

Safeguard Individual Liberty: A license applicant will have 19 new locations to obtain the fingerprinting required as part of his or her license application.

The bill requires license applicants to take a prelicensing course before being able to take the licensing examination.

Promote Personal Responsibility: The bill exempts adjusters having a specified adjusting designation from having to take the adjuster licensing test.

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 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.¹ Requirements for insurance agents vary by line and based upon resident or nonresident license type.

“Managing general agents” are persons managing all or part of the insurance business of an insurer.² A managing general agent is authorized to adjust and pay claims and negotiate reinsurance on behalf of the insurer.³

“Customer representatives” are persons appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.⁴

“Adjusters” include public adjusters, independent adjusters, or company employee adjusters.⁵ Generally, a public adjuster is any person, other than a licensed attorney, who prepares, completes, or files an insurance claim for an insured or who negotiates or settles an insurance claim on behalf of an insured.⁶ An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage or to settle an insurance claim under an insurance contract.⁷ A company

¹ s. 626.112, F.S. (2005).

² s. 626.015(14), F.S. (2005).

³ Id.

⁴ s. 626.015(4), F.S. (2005).

⁵ s. 626.015(1), F.S. (2005).

⁶ s. 626.854, F.S. (2005).

⁷ s. 626.855, F.S. (2005).

adjuster is any person employed in-house by an insurer who ascertains and determines the amount of an insurance claim, loss, or damage or settles an insurance claim under an insurance contract.⁸

“Service representatives” are persons employed by an insurer or managing general agent for the purpose of assisting a general lines agent in negotiating and affecting an insurance contract.⁹

“Reinsurance intermediaries” include reinsurance intermediary brokers and reinsurance intermediary managers.¹⁰ A reinsurance intermediary broker is any person who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the power to bind reinsurance on behalf of the ceding insurer.¹¹ A reinsurance intermediary manager is any person who has authority to bind the assumed reinsurance business of a reinsurer or manages the reinsurance business of a reinsurer and acts as an agent of the reinsurer.¹²

Licensing Requirements

All of the above-defined insurance representatives require a license from the DFS. Although requirements vary by license and line of authority, general requirements for 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.

Fingerprinting Requirement

The fingerprint requirement in current law (s. 626.171(4), F.S.) requires the agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary applicant's application for licensure to be accompanied by a set of the applicant's fingerprints. If the applicant is not an individual (i.e. a sole proprietorship, partnership, or corporation), fingerprints must be provided by the sole proprietor, majority owner, partners, officers, and directors, whichever applicable. If an insurance representative entity licensed by the DFS changes ownership or if new partners, officers, or directors of the entity are employed or appointed, the new owners, partners, officers, or directors must submit fingerprints to the DFS within 30 days after the change.

The applicant's fingerprints must be taken by a law enforcement agency or other entity approved by the DFS. The DFS uses the fingerprints as part of its investigation into an applicant's qualifications under s. 626.201, F.S., Section 626.201, F.S., requires the DFS to submit an applicant's fingerprints to the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) to discern whether the applicant has a state, federal or local criminal record. Section 624.34, F.S., sets forth what procedures the FDLE uses to accept and process the applicant's fingerprints.

In addition to a law enforcement agency location, an applicant for licensure as one of the above described insurance representatives can get fingerprinted at 64 county public school administrative offices. However, in Duval, Dade, Broward, and Palm Beach counties,¹³ fingerprinting is provided by the DFS at county government locations, rather than at the school administrative offices.

The department provides fingerprinting services at the school administrative offices under a memorandum of understanding between the DFS and the Department of Education (DOE). The DOE is required to provide fingerprinting of numerous school personnel, especially after the passage of the Jessica Lunsford Act (Ch. 2005-28, L.O.F.). The DOE contracts with a private vendor to provide fingerprinting services at the county school offices and the memorandum of understanding between the DFS and the DOE allows the DFS to provide fingerprinting for its license applicants under the DOE contract with the private vendor. The school district offices offer fingerprinting during normal business hours.

⁸ s. 626.856, F.S. (2005).

⁹ s. 626.015(17), F.S. (2005).

¹⁰ s. 626.7492(2)(e), F.S. (2005).

¹¹ s. 626.7492(2)(f), F.S. (2005).

¹² s. 626.7492(2)(g), F.S. (2005).

¹³ Fingerprint locations are in Jacksonville, Miami, Ft. Lauderdale, and West Palm Beach.

According to the department, the fingerprinting fee for fingerprints done at most school district locations is \$61 and the exact fingerprinting fee at the school districts varies by district, although by administrative rule, the DFS sets the fingerprinting fee at \$64.¹⁴ The applicant typically pays the fingerprint vendor on-line by debit or credit card; however, the vendor also accepts money orders at the fingerprinting site. The vendor then pays FDLE and the FBI for processing the fingerprints and the vendor electronically sends the fingerprints to the FDLE for processing in accordance with the statute.

The department contracts with a different vendor to provide fingerprinting services at the fingerprinting locations in Duval, Dade, Broward, and Palm Beach counties. This vendor charges license applicants \$64 for fingerprinting and is paid directly by the applicant.

The department does not pay any money for fingerprinting services and processing directly to the DOE, the school boards, or to the fingerprinting vendor at the four county locations. Rather, the entire fee is borne by the applicant.

In most cases, if the applicant submits his or her fingerprints prior to the licensure examination, the DFS receives the results of the applicant's criminal background check prior to the examination date. If the applicant has a criminal history that would preclude licensure, the department notifies the applicant before he or she takes the licensure examination and incurs the examination fee of \$56.¹⁵

The department contracts with one private vendor to administer its licensure examinations in 19 cities¹⁶ in Florida. Licensure examinations are given frequently, based on the demand for testing due to the applications received. The testing vendor leases permanent space to conduct the testing and does not own any testing locations itself. The examinations are offered Monday through Friday from 8:00 am until 9:30 pm, and on Saturday from 8:00 am until 5:00 pm.¹⁷

Proposed Changes Relating to Fingerprinting Requirement

The bill requires the DFS to provide fingerprinting at all of its examination centers during the examination times. The department currently has 19 examination centers in Florida and contracts with a private vendor for the administering of its examinations. Examination times are not set by statute or administrative rule; rather they are set based on the demand. According to proponents of the bill, permitting fingerprinting at testing locations will allow license applicants to be fingerprinted at the examination centers rather than having them leave work to be fingerprinted at the current fingerprinting locations.

Section 624.501, F.S., allows the DFS to charge a fee for fingerprinting. The fee amount is not set by statute; rather the statute allows the department to charge an amount sufficient "to cover fingerprint processing." By administrative rule, the department established the fee at \$64 and the fingerprint processing fees are paid directly from the applicant to the fingerprint vendor.

Fingerprinting equipment is estimated to cost \$15,000 per machine, for a total of \$285,000 to put machines at all 19 testing locations. According to the department, maintenance contracts are needed on the machines and personnel are required to be hired to run them. Because there is no way to ascertain how many license applicants will get fingerprinted at the testing location, the fingerprinting vendor providing fingerprinting at the testing locations may not be able to recoup the \$285,000+ expense, especially at a fingerprinting fee of \$64 per applicant. Thus, the department may not be able to locate a private vendor willing to provide fingerprinting at the testing centers and thus may have to provide the fingerprinting itself.

Additionally, if an applicant gets his or her fingerprinting done at the testing location, the department will be unable to review the fingerprint results prior to the applicant taking the license examination. This

¹⁴ Rule 69B-211.005, F.A.C. Additionally, \$47 of the fingerprinting fee is paid by the vendor to the FDLE and the FBI, with the remainder kept by the vendor.

¹⁵ Rule 69B-211.005, F.A.C. sets the examination fee at \$56 per examination.

¹⁶ Examination centers are located in Boyton Beach, Coral Gables, Fort Lauderdale, Ft. Myers (2 locations), Gainesville, Hollywood, Jacksonville, Lake Mary, Lakeland, Melbourne, Miami, Orlando, Ormond Beach, Pensacola, Sarasota, St. Petersburg, Tallahassee, and Tampa.

¹⁷ Personal communication from a representative of the DFS, on file with the Insurance Committee.

could lead to applicants taking the license examination that are not qualified for a license due to a criminal background. Currently, the department receives the fingerprint results prior to the applicant taking the license examination and is able to notify the applicant he or she is not qualified for a license based on their background check. This prevents the applicant from incurring the examination fee unnecessarily.

The department believes all of its testing centers are rented or leased by the examination vendor. If the testing centers are not large enough to accommodate fingerprinting equipment and any traffic flow associated with the fingerprinting, then the examination vendor would have to find new or additional testing space, possibly increasing the rental fee to the vendor or compromising the lease the vendor is already obligated to for the space. Any increased cost in testing space rental or lease cannot be passed on to the policyholder as the testing fee is set by administrative rule. Thus, the department may have to incur the increased cost.

License Application Requirement

Section 626.171, F.S., provides application requirements for licenses as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary. Section 626.211, F.S., requires the DFS to approve a license application prior to the applicant taking the licensure examination if the department believes the applicant meets the license qualifications and the applicant's application is complete. Once the applicant's application is complete, the department must notify the applicant of the examination date and time. Once the applicant takes the licensure examination and passes it, he or she is issued the appropriate license.

The bill amends current law and allows a license applicant to take the licensure examination before submitting their license application or before obtaining approval of their license application. If the applicant takes the licensing test before applying for the license, the department is required to issue the license within 15 days after it approves the license application. If an applicant chooses to take the licensure examination first, the applicant will receive their test results before investing moneys (\$114 maximum for the application submission and fingerprinting) in the application process. The bill's proponents believe allowing license applicants to take the licensure examination before submitting their licensure application or obtaining approval of it will streamline the licensing process to help increase the number of insurance representatives, especially increasing the number of insurance representatives servicing minority communities.

Examination Requirement

Exemptions -- Section 626.221, F.S., sets forth the examination requirements and exemptions for insurance agent, adjuster, and customer representative licenses. At least 13 exemptions from the examination requirement are provided in the statute. If an applicant for licensure as an agent, adjuster, or customer representative meets one of the exemptions, he or she does not have to take the examination associated with the license applied for. One of the exemptions from the adjuster examination is for applicants who have the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in Florida or the designation of Professional Claims Adjuster (PCA) from the Professional Career Institute. Exemptions are provided for these designated adjusters because the DFS approves the curriculum of the educational institutions and ensures the curriculum covers a comprehensive analysis of insurance and included testing at least equal to testing given by the DFS for the all-lines adjuster license.

The bill includes a new adjuster designation in the adjuster examination exemption. Adjusters designated as a Certified Claims Adjuster (CCA) from the Association of Property and Casualty Claims Professionals are exempt from adjuster license examinations.

Prelicensing Courses -- There is no provision in current law requiring an applicant for a license as an insurance representative to take a prelicensing course before being allowed to take the licensing examination. License applicants are only required to have his or her application for licensure approved and to pay the examination fees in order to take the license examination. The bill removes these two requirements and requires applicants for licensure to complete a prelicensing course in order to sit for

the licensure examination. Thus, the only examination prerequisite will be completion of a prelicensing course.

Testing Information and Results -- The bill also adds information for the DFS to request and gather from licensee examinees and requires the department to report specified testing information. The bill requires the department to request license examinees to voluntarily self-report race/ethnicity and gender information. Based on the race/ethnicity and gender information collected, the department is required to prepare, publicly announce, and publish an Examination Report for each examination administered in the year. The Examination Report is due on May 1st and contains pass/fail information and test score information for each examination given on a race/ethnicity and gender basis. An Item Report is also required to be done annually by the department. This report is also due on May 1st and contains statistical information relating to each operational item on each test form administered in the prior year, separated by race/ethnicity, the correct-answer rates, and the correlations.

License examination retention requirements are also added by the bill. The department is also required to reasonably accommodate disabled examinees. According to the DFS, their contract with the testing vendor already requires the vendor to comply with the American with Disabilities Act.

C. SECTION DIRECTORY:

Section 1: Amending s. 626.171, F.S.; requiring fingerprinting of applicants for licensure by the department to be done at all department examination centers.

Section 2: Amending s. 626.211, F.S.; revising circumstances under which the department must notify an applicant about license examinations.

Section 3: Amending s. 626.221, F.S.; expanding the authorized adjuster designations for exemptions from adjuster license examinations.

Section 4: Amending s. 626.231, F.S.; requiring license examinees to take a prelicensing course as a prerequisite for taking the licensing examination.

Section 5: Amending s. 626.261, F.S.; providing for license examinees to voluntarily report race or ethnicity or gender information; requiring the department to prepare and publish examination reports summarizing testing results based on race or ethnicity or gender; requiring records retention of specified testing information by the department; requiring the department to reasonably accommodate disabled examinees.

Section 6: Amends 626.291, F.S.; requiring the DFS to issue a license within 15 days of the DFS's approval of an application if the applicant took the licensing exam prior to submitting their application.

Section 7. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

FY 2006-07

FY 2007-08

1. Revenues:

None.

2. Expenditures:

Recurring

Salaries and Benefits (3 FTE) (Salary rate 103,285)	\$ 138,607	\$ 138,607
Expenses	19,209	19,209
Human Resources Services	<u>1,179</u>	<u>1,179</u>
Total – recurring	\$ 158,995	\$ 158,995
Non-Recurring		
OPS	\$ 217,980	
Expenses	\$ 10,029	
Operating Capital Outlay	<u>5,700</u>	
Total – non-recurring	\$ 233,709	
Total Expenditures:		
Insurance Regulatory Trust Fund	\$ 392,704	\$ 158,995

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Being able to get fingerprinted at the testing location would allow applicants to complete more application requirements at one location; however, the fingerprints taken at the examination center would not likely to be able to be processed and the results furnished to the DFS before the examination, as is the current process. Thus, applicants may incur an examination fee and then be disqualified for a license based on the criminal background check. Having the criminal background check done before the examination allows the department to notify applicants disqualified for a license due to a criminal history before the applicant incurs the examination fee.

Allowing license applicants to take the license examination before submitting their license application will save applicants money (\$114 maximum for the application submission and fingerprinting).

Requiring license applicants to take a prelicensing course will cost applicants money if the course is not free.

Providing a new exemption from the adjuster examination for adjusters having a CCA designation will save money for those adjusters having the designation as they will no longer incur the testing fee of \$56.

If a testing vendor has to lease additional testing space or has to secure new space to accommodate fingerprinting at the testing centers, then the vendor may have to break an existing lease, incurring a fee for such, or may have increased costs associated with renting additional space.

D. FISCAL COMMENTS:

Unless the department undertakes the fingerprinting process itself at the examination centers, it is not likely the department will derive any additional revenue from allowing fingerprinting at the testing locations. Even if the department does the fingerprinting at testing locations, \$47 of the \$64 fingerprinting fee is paid to the FDLE and the FBI. Accordingly, very little revenue will be generated per applicant. Also, allowing fingerprinting at testing locations is unlikely to increase the number of license applicants; it is primarily a convenience for applicants.

In addition, the following fiscal information was provided by the DFS:¹⁸

According to the department, two new Regulatory Consultant positions are needed due to the bill's provision allowing license testing before the license application is approved. The change in processing applications to allow testing prior to qualifying for a license will require applications to be processed at least twice. It is estimated that this change will increase the workload of the department's Division of Agent and Agency Services at least 20,000 applications the first year and then continue to increase the workload.

In addition, one new Examination Development Specialist (psychometrician) position is needed due to the bill's provisions relating to preparing and publishing information on license testing results. Although the department's testing vendor provides psychometric services for test development, the Bureau must have testing expertise on staff to analyze the data of the reports required in this bill and translate and report that information. It is essential that the department has staff with the knowledge of testing and psychometric science to work with the vendor in the development and revision of test items and forms that will better serve the citizens of Florida. Without this level of testing expertise on the Bureau staff, the results of the statistics may not properly impact the testing program as required by this bill.

The OPS non-recurring funding is needed for changes in contracts to enhance the department's technology systems and the contractor's cost of implementing this legislative change.

Examination Administrator Vendor (Promissor)	
Examination Statistical Reports	\$ 92,000
Enhancements to technology systems	\$ 21,640
Enhancements to Agents Licensing Insurance System (ALIS)	\$ 75,300
Enhancements to Agents and Agencies Licensing Functionality (AALF)	\$ 29,040
Expense/Capital Equipment – non recurring	\$ 15,729
<u>Total Funds Required</u>	\$233,709

Enhancements are to modify contractors' programs to change the systems to allow for examination prior to qualification and provide statistical data on examinations. These enhancements have been identified as areas that would change the department's technology systems and the current agreement of services with Promissor, the testing vendor. To implement the provisions of the bill the department and its vendors will need at least six months for design, development and implementation.

If the testing vendor has to acquire additional testing space to accommodate fingerprinting at the testing locations, it may incur additional rental fees. In such a case the testing vendor may pass the increased fees to the department because it cannot pass them to the applicant due to the testing fee being set by administrative rule.

If the department cannot find a private vendor to perform fingerprinting at its testing locations and has to do it in-house to comply with the bill, then the department will incur additional costs associated with the fingerprint processing. These costs include the purchase of 19 fingerprinting machines at \$15,000 each (for a total of \$285,000), the purchase of maintenance contracts on the machines (cost unknown), and the payment of wages to personnel hired to work the fingerprinting processing. The cost of hiring personnel is unknown and indeterminate and in part, will depend on the demand for fingerprint processing at the testing location and the length of the testing. The bill does not include an

¹⁸ Fiscal Analysis by the DFS dated April 4, 2006.

appropriation to the department if it must do fingerprinting in-house. The department believes it will need additional resources to implement the bill, if it cannot find a private vendor to contract with to provide fingerprinting services at examination locations.¹⁹

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Insurance Committee considered the bill, adopted a strike-all amendment, and reported it favorably. The strike-all reworded the fingerprinting requirement in the original bill and added several provisions regarding license examinations and reporting. The added provisions:

- Allow an insurance license applicant to take their licensure exam prior to submitting their license application.
- Require license applicants to complete a pre-licensing course before taking a license exam. Current law does not require a pre-licensing course.
- Require the DFS to make demographic data available to the public via reports identifying the number of examinees, the pass/fail data of examinees, the average scores of examinees, reported by ethnicity and gender.
- Require the DFS to reasonably accommodate any disabled examinees.
- Require the DFS to issue a license within 15 days of the DFS's approval of an application if the applicant took the licensing exam prior to submitting his or her application.
- Allow an adjuster to be exempt from taking the adjuster license examination if he or she has the specified adjuster designation from the Association of Property and Casualty Claims Professionals. Current law allows an exemption from the license examination for adjusters with a different designation.

According to the department, implementation of the strike-all amendment will require three new FTEs and a recurring appropriation from trust fund moneys of \$158,995 associated with the new FTEs. In addition, the department believes \$233,709 in nonrecurring trust fund moneys will have to be spent in fiscal year 2006-2007 on technology improvements needed to implement the bill and on the examination contractor's cost of implementing the bill.

The staff analysis was updated to reflect the changes made to the bill by the strike-all amendment.

¹⁹ Personal communication received from a representative of the Department of Financial Services, on file with the Insurance Committee.