

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1329 CS  
**SPONSOR(S):** Grant  
**TIED BILLS:**

Insurance; Filing Required Information Electronically  
**IDEN./SIM. BILLS:** CS/SB 1506

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	18 Y, 0 N, w/CS	Tinney	Cooper
2) Commerce Council	14 Y, 0 N, w/CS	Tinney	Randle
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The bill authorizes the Office of Insurance Regulation (OIR) to collect electronic financial statements and other information from viatical settlement providers, life expectancy providers, premium finance companies, and continuing care retirement communities. Currently, such entities submit these statements or filings only by hard copy. The bill authorizes the Financial Services Commission (Governor and Cabinet) to require by rule that certain statements or filings be submitted by electronic means in a computer-readable form, compatible with the electronic data format specified by the Commission. The bill also authorizes OIR to require that records of a particular transaction of an insurer be submitted by remote electronic access. OIR reports that electronic filings facilitate efficient financial statement analysis and provide uniformity for insurance entities regulated by the office.

In s. 626.9913, F.S., relating to the regulation of viatical settlement providers by OIR, the bill delays the effective date by which such providers must submit their first annual audited financial statement to the office. Beginning December 1, 2007, viatical settlement providers are required by the bill to submit an annual audited financial statement for the previous calendar year to OIR. The bill also changes the due date for subsequent annual submissions of financial statements to June 1<sup>st</sup>.

There is no direct fiscal impact either to OIR or its regulated entities as a result of the bill. The bill takes effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government**—Under current law, insurers are required to file documents with OIR periodically. The law also authorizes OIR to examine specific records if the office wishes to audit a licensee or otherwise investigate a specific issue or complaint. Under the bill, specified records may be filed with OIR electronically, rather than by hard copy.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Financial Services Commission**

The Financial Services Commission (FSC) is composed of the Governor, the Attorney General, the Chief Financial Officer and the Commissioner of Agriculture. The FSC serves as the agency head of both the Office of Insurance Regulation and the Office of Financial Regulation (OFR) for purposes of rulemaking and for selecting the director of each of these offices and authorizing their organizational structure.<sup>1</sup>

##### **Office of Insurance Regulation**

In FY 2004-05, the Legislature appropriated \$2.4 million to the Office of Insurance Regulation (OIR) to develop a system to receive electronic financial filings from insurance entities regulated by the office.<sup>2</sup> As a result, OIR is developing the Financial Analysis and Monitoring/Electronic Document Management (FAME) system to accept and process these electronic filings. Under the bill, OIR seeks to expand this program to capture the electronic financial filings from viatical settlement providers, premium finance companies, and continuing care providers. Under current law, the annual filings of these entities are submitted as paper documents and manually keypunched by staff of OIR into computer spreadsheets.

Current law authorizes the following regulated entities to provide electronic filings, rather than hard copy submissions, to OIR:

- Insurance administrators under s. 626.89(5), F.S.
- Motor vehicle service agreement companies under s. 634.137(5), F.S.
- Home warranty associations under s. 634.313(5), F.S.
- Service warranty associations under s. 634.415(6), F.S., and
- Legal expense insurance corporations under s. 642.032, F.S., (referencing s. 624.424(1)(c), F.S.)<sup>3</sup>

Staff of OIR reports that approximately 400 financial filings currently are submitted electronically by these companies. The OIR also seeks legislative authority to view specified insurer transaction records electronically; current law requires an insurer to provide paper copies of records to OIR upon request of the office.

Representatives of OIR assert that electronic filings facilitate efficient financial statement analysis and provide uniformity for insurance entities regulated by the office. In addition, the FAME system permits the office to best utilize the expertise of its financial review staff that presently must devote a portion of

<sup>1</sup> Section 20.121(3), F.S., 2005.

<sup>2</sup> Chapter 2004-268, L.O.F., section 6.

<sup>3</sup> Legislative Bill Analysis of HB 1329 from OIR; dated March 31, 2006; on file with the committee.

its work hours manually entering financial data. The office reports that using electronic filing formats has reduced the number of errors associated with manually entering such data. Further, the regulated entities presently using electronic filings report that filing required forms electronically with OIR is more convenient and it saves money when compared to providing hard copies of the records.

## **Viatical Settlements**

In general, a viatical settlement transaction is an agreement under which the owner of a life insurance policy ("viator") sells the policy to another person ("viatical settlement provider") in exchange for an up-front payment, which is generally less than the expected death benefit under the policy.<sup>4</sup> Rather than retaining the policy, the provider usually sells all or a part of the policy to one or more investors ("viatical settlement purchasers"). In return for providing funds, these investors receive the death benefit, or a proportionate share, when the insured dies.

In determining the value of viatical contract, i.e., life insurance policy, viatical settlement providers may rely upon information provided by a life expectancy provider. A life expectancy provider is a person who determines life expectancies or mortality ratings used to determine life expectancies.<sup>5</sup> This information provides the data necessary for a viatical settlement provider to assess the value of life insurance policies prior to selling them or selling interest in the viated policies. Pursuant to s. 626.99175, F.S., life expectancy providers must register with OIR providing specified background, financial, audit, and other information, and must file other specified records and information with the office.

Under s. 626.9913, F.S., a viatical settlement provider licensee<sup>6</sup> must file annually, by March 1st, with OIR, a statement containing specified financial and other information. The viatical settlement provider is also required to pay OIR an annual license fee of \$500. The annual records submitted to OIR must include an audited financial statement, or, if such statement is not completed, an unaudited financial statement and an affidavit from an officer of the licensee stating that the audit has not been completed.<sup>7</sup> The bill amends current law to specify that such annual audited financial statements must be provided to OIR after December 1, 2007, and annually by June 1<sup>st</sup> in subsequent years. The audited financial statements must reflect the previous calendar year.

Additionally, the annual statement must include a report of all life expectancy providers who have provided information to the provider for use in connection with a viatical settlement contract or investment. Further, information regarding a related provider trust<sup>8</sup> established by the viatical settlement provider must be submitted. Failure to timely file the annual statement or pay the license fee is grounds for immediate license suspension.

## **Premium Finance Companies**

A premium finance company is a business that enters into a premium finance agreement with an insured under which the insured agrees to pay the company the amount advanced under the agreement to an insurer, in payment of premiums on an insurance contract, together with a service charge.<sup>9</sup> Under s. 627.836, F.S., a licensed premium finance company must annually submit to OIR, by March 1<sup>st</sup>, a report under oath containing information specified by OIR.

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<sup>4</sup> The regulation of viatical settlements is authorized under Part X of chapter 626, F.S., 2005.

<sup>5</sup> See definition of life expectancy provider in s. 626.9911(4), F.S., 2005.

<sup>6</sup> A viatical settlement provider licensee is a person who is licensed to effectuate a viatical settlement contract.

<sup>7</sup> The licensee must file the audited financial statement by June 1.

<sup>8</sup> A related provider trust is a titling trust established by a licensed viatical settlement provider for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financial transaction.

<sup>9</sup> Premium finance companies are regulated under Part XV of chapter 627, F.S., 2005.

## Stock and Mutual Insurers

Part I of chapter 628, F.S., pertains to the regulation of stock and mutual insurers by OIR. A stock insurer is an incorporated insurer with its capital divided into shares and owned by its stockholders while a mutual insurer is an incorporated insurer without permanent capital stock and its governing body is elected pursuant to the provisions contained in Part I. Under s. 628.281, F.S., an insurer is required to produce at its principal corporate offices in Florida, upon written request by OIR, any records relating to a particular transaction or transactions of the insurer.

## Continuing Care Retirement Communities

Chapter 651, F.S., provides for the licensure and regulation of Continuing Care Retirement Communities (CCRCs) by OIR. Under s. 651.026, F.S., a CCRC must submit its annual report to OIR by May 1<sup>st</sup> annually. Further, under s. 651.0261, F.S., if OIR determines that information is needed to monitor the financial condition of a CCRC or to protect the public interest, OIR is authorized by law to require a CCRC to submit a statement within 45 days after the end of each fiscal quarter.

### C. SECTION DIRECTORY:

**Section 1** amends s. 626.9913, F.S. to authorize the Financial Services Commission (FSC) to prescribe by rule the format for viatical settlement providers to submit information and records to OIR electronically.

**Section 2** amends s. 626.99175, F.S., to authorize the FSC to prescribe by rule the format for life expectancy providers to submit information and records to OIR electronically.

**Section 3** amends s. s. 627.836, F.S., to authorize the FSC to prescribe by rule the format for premium finance companies to submit information and records to OIR electronically.

**Section 4** amends s. 628.281, F.S., to authorize the FSC to prescribe by rule the format for stock and mutual insurers to submit information and records to OIR electronically.

**Section 5** amends s. 651.026, F.S., to authorize the FSC to prescribe by rule the format for continuing care contract providers to submit information and records to OIR electronically.

**Section 6** amends s. 651.0261, F.S., to authorize the FSC to prescribe by rule the format for continuing care contract providers to submit information and records to OIR electronically.

**Section 7** provides the bill takes effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The Office of Insurance Regulation reports that authority to accept electronic filings, rather than handling paper records, saves time and labor for OIR staff. When records are submitted using computers, OIR staff is not required to enter the data into spreadsheets manually, thus saving time and increasing efficiency.<sup>10</sup>

<sup>10</sup> Legislative Bill Analysis of HB 1329 from OIR; dated March 31, 2006; on file with the committee.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

According to OIR, some of the companies currently authorized to submit forms and information to the office electronically have reported that electronic filings are more efficient, thus saving some administrative expense over preparing hard copies of forms and having them delivered to OIR by mail or delivery service.

**D. FISCAL COMMENTS:**

In the FY 2004-2005 General Appropriations Act, OIR was authorized to spend \$2.4 million for development of a system to receive electronic financial filings from insurance entities. The Financial Analysis and Monitoring/Electronic Document Management System (FAME) is currently under development using those funds. OIR reports FAME will collect electronic filings of financial reports from the regulated entities the law currently authorizes to file electronically. The bill authorizes OIR to collect specified forms and documents electronically from additional regulated entities. Currently, such records are submitted by hard copy to OIR and subsequently manually keypunched by OIR staff into computer spreadsheets.<sup>11</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill directs the Financial Services Commission to adopt rules specifying the form and content of information to be submitted to OIR electronically by specified regulated entities.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

At its April 5, 2006 meeting, the Insurance Committee adopted an amendment to HB 1329. The change amends s. 626.99175, F.S., to authorize the Financial Services Commission also to adopt rules specifying the form and content of information submitted electronically to OIR by registered life expectancy providers. This analysis has been updated to reflect the changes adopted in the amendment.

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<sup>11</sup> See *supra*, Note 10.

At the April 18, 2006 meeting of the Commerce Council, the council adopted an amendment to the bill to delay the date by which viatical settlement providers must provide an annual, audited financial statement to OIR. The amendment delays until after December 1, 2007 the requirement for viatical settlement providers to provide their audited financial statements for the previous calendar year to OIR as part of the annual reporting requirements for viatical settlement providers. Annual submissions after 2007, must be submitted to OIR by June 1<sup>st</sup> annually.

This analysis has been updated to reflect the amendment adopted by the Commerce Council 4/18/06.