

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 355 CS Termination of Insurance Appointments
SPONSOR(S): Evers and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1060

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	18 Y, 0 N, w/CS	Callaway	Cooper
2) Commerce Council	13 Y, 0 N	Callaway	Liepshutz
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Insurance 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. Under current law, when an insurer wants to terminate an appointment with an agent, the insurer must give a minimum of 60 days written notice to the agent. Sixty days notice is not required for termination based on grounds that would subject the agent to suspension or revocation of their agent license. The agent and appointing entity (insurer) can shorten the 60 day appointment termination notice requirement by contract.

In cases where the insurer wants to terminate an agent's appointment, the bill lengthens the termination notice requirement from a minimum of 60 days notice to a minimum of 120 days notice if the appointment contract does not specify a termination notice period less than 120 days. The longer notice requirement is only applicable to appointment contracts between agents and insurers entered into or amended on or after July 1, 2006. The 120 day termination notice requirement can be shortened or lengthened in the appointment contract entered into by the agent and appointing entity (insurer). However, if termination notice period is not addressed in the appointment contract, the termination notice period is a minimum of 120 days.

The bill maintains current law regarding termination of an agent based on grounds that would subject the agent to suspension or revocation of their agent license. In other words, termination on such grounds can be made immediately without a minimum termination notice period.

The bill does not change current law relating to termination of an appointment by an agent. In other words, the agent is still allowed to terminate an appointment at any time without having to give the insurer notice of the termination for a specified number of days.

There is no fiscal impact on state or local government.

The bill is effective on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill amends statutory provisions governing the actions of insurance agents and insurers who are parties to an insurance appointment contract relating to the length of termination notice required to be given to the agent by the insurer.

Safeguard Individual Liberty: The bill lengthens the minimum notice requirement an insurer is required to give an insurance agent before the insurer can terminate the agent's appointment with the insurer. The bill requires a minimum notice of 120 days, rather than the minimum notice of 60 days required by current law. The bill precludes an insurer and agent from contracting for a termination notice period shorter than 120 days.

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 are based upon resident or nonresident license type. "Resident agents" are agents domiciled and residing in the state of Florida.

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. Classifications include: general lines agent, personal lines agent, health agent, life agent, managing general agent, and limited lines agent.

"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.² 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.

"Personal lines agents" are general lines agents who only sell property and casualty insurance to individuals and families for noncommercial purposes.³

"Health agents" represent a health maintenance organization or an insurer covering health insurance only.⁴

"Life agents" generally represent insurers covering life insurance, annuity contracts or viatical settlements.⁵

"Managing general agents" are persons managing all or part of the insurance business of an insurer.⁶ A managing general agent is authorized to adjust and pay claims and negotiate reinsurance on behalf of the insurer.⁷

¹ s. 626.112, F.S. (2005).

² s. 626.015(5), F.S. (2005).

³ s. 626.015(15), F.S. (2005).

⁴ s. 626.015(6), F.S. (2005).

⁵ s. 626.015(10), F.S. (2005).

⁶ s. 626.015(14), F.S. (2005).

⁷ Id.

“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, communications equipment inland marine, or communications equipment service warranty agreement sales.⁸

In order to be licensed, each type of agent must meet a set of qualifications specific to the particular line(s) of insurance transacted. But, 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.⁹ 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.

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.

Insurance Agent Appointments

According to DFS, there are currently 191,511 insurance agents licensed in Florida that are appointed. These agents hold almost 2 million appointments. There are also approximately 120,000 agents who are licensed but not appointed.¹⁰

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 appointments or on the number of classifications of appointments an agent can hold at a given time.¹¹ The only restriction is that the agent must qualify and be licensed for each appointment held.¹² Appointments must be renewed every 24 months and are in effect until suspended, revoked, or terminated.¹³ To be appointed, the appointing entity files a form with DFS and pays a fee.¹⁴ Additionally, in most cases, at or before the time of appointment the agent and insurer execute a letter of agreement or appointment contract to coincide with the appointment. The letter of agreement or appointment contract sets forth the agreed upon terms of the appointment between the agent and insurer.

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.¹⁵ 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.¹⁶ Such grounds include lack of qualifications; material misstatement, 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.¹⁷ Additionally, the agent and appointing entity can shorten the 60 day appointment termination notice requirement by contract.

⁸ s. 626.321, F.S. (2005).

⁹ See s. 626.171, F.S. (2005).

¹⁰ Personal communication from a representative from DFS dated February 1, 2006.

¹¹ s. 626.331(1), F.S. (2005).

¹² Id.

¹³ s. 626.381, F.S. (2005).

¹⁴ s. 626.311(5), F.S. (2005); s. 626.451, F.S. (2005)

¹⁵ s. 626.471 (1), F.S. (2005).

¹⁶ Id.

¹⁷ s. 624.611, F.S. (2005); s. 626.621, F.S. (2005).

Pursuant to s. 626.471(4), F.S., **an agent** can terminate its appointment at any time as long as he or she gives notice to the appointing entity (the insurer) and DFS. However, there is no minimum notice length that applies when an agent is terminating the appointment.

In cases where the insurer wants to terminate an agent's appointment, the bill lengthens the termination notice requirement from a minimum of 60 days notice to a minimum of 120 days notice if the appointment contract does not specify a termination notice period less than 120 days. The longer notice requirement is only applicable to appointment contracts between agents and insurers entered into or amended on or after July 1, 2006. The 120 day termination notice requirement can be shortened or lengthened by the terms of the appointment contract between the agent and appointing entity (insurer). In other words, the parties may be able to contract for a termination notice period of more or less than 120 days.

The bill maintains current law regarding termination of an agent based on grounds that would subject the agent to suspension or revocation of their agent license. In other words, termination on such grounds can be made immediately without a minimum termination notice period.

The bill does not change current law relating to an appointment termination by an agent. In other words, the agent is still allowed to terminate an appointment at any time without having to give the insurer notice of the termination for a specified number of days.

C. SECTION DIRECTORY:

Section 1: Amends s. 624.471, F.S.; increases the notice requirement an appointing entity must give an appointed insurance agent before terminating the appointment if no notice period is specified in the appointment contract.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For independent insurance agents, a longer termination notice period allows the agent more time to find a new insurer for the insurance policies they have in their book of business.¹⁸ If the agent is able to

¹⁸ Independent agents are those agents who represent two or more insurers. These agents own their book of business and are paid on a commission basis.

find new insurers to write the policies they have in their book of business, the agent is able to retain the commission on the policy and the policyholder does not have to move to a new agent.

For captive insurance agents, a longer termination notice period allows the agent more time to find a buyer and obtain the insurer's approval for sale of the agent's economic interest in their book of business.¹⁹

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None needed and none provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 7, 2006 the Insurance Committee considered the bill, adopted a one amendment, and reported the bill favorably. The amendment changed the bill to allow the insurance agent and appointing entity (insurer) to set the length of a termination notice by contract. This allows the parties to contractually agree to a termination notice period longer or shorter than 120 days. If the parties do not specify the termination notice period in the appointment contract, the termination notice period is 120 days. The staff analysis was updated to reflect the adoption of the amendment.

¹⁹ Captive agents are those agents who are sell insurance for only one insurer. These agents do not own their book of business, the insurer retains ownership. However these agents own an "economic interest" in their book of business. Owning an economic interest allows an agent, under certain circumstances, to sell the economic interest to a new agent at a negotiated price following termination of the agent's appointment with the insurer. In most cases, the insurer must approve any sale of an agent's "economic interest."