

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1381 Branch Insurance Agencies
SPONSOR(S): Policy & Budget Council and Richter
TIED BILLS: **IDEN./SIM. BILLS:** SB 2702

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Insurance</u>	<u>9 Y, 0 N</u>	<u>Davis</u>	<u>Overton</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Davis</u>	<u>Thorn</u>
3) <u>Policy & Budget Council</u>	<u>23 Y, 0 N, As CS</u>	<u>Martin</u>	<u>Hansen</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill makes the following changes pertaining to the regulation of insurance agents and adjusters under the authority of the Department of Financial Services (DFS):

- Provides that the current exemptions from taking the written examination for an adjuster's license, that are based on completing certain educational programs, apply to persons who are applying for an independent adjuster or company employee adjuster license.
- Allows correspondence courses offered by independent programs of study to be approved by DFS as satisfying the pre-licensing education requirements for obtaining a life or health insurance agent license;
- Allows a licensed insurance agent in charge of an insurance agency to be the agent in charge of branch insurance locations, subject to certain conditions;
- Clarifies that the surety bond required for a public adjuster must be maintained continuously throughout the existence of the license and for at least one year after termination of the license;
- Allows DFS, for good cause, to extend an insurance adjuster's continuing education requirement deadline for no more than one year;
- Clarifies that DFS regulates public adjusters;
- Requires that the Florida Surplus Lines Association submit an agents manual to DFS for approval by order;
- Provides definition of and responsibilities for risk-bearing entities; and
- Requires DFS and the Financial Services Commission (FSC) to adopt rules to protect members of the United States Armed Forces from dishonest and predatory insurance sales practices by insurers and agents involving the offer of life insurance products.

The bill provides an appropriation of \$132,000 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Division of Agent and Agency services to upgrade their computer systems to reflect the changes to the branch agency requirement.

This bill becomes effective on July 1, 2007, except that the branch insurance agency provision becomes effective on January 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--- The bill allows insurance agencies to have a licensed agent in charge be the agent in charge of other branch locations.

Provide limited government--- The bill authorizes the Department of Financial Services and the Financial Services Commission to protect members of the Armed Forces from dishonest or predatory insurance sales practices by insurers and insurance agents.

Safeguard individual liberty--- The bill increases options of independent and company employee adjusters license applicants by allowing more options for pre-licensing requirements.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Licensure of Insurance Agents in Florida

In general, insurance agents transact insurance on behalf of an insurer and must be licensed by DFS and be appointed (i.e., given the authority by an insurer to transact business on its behalf) by at least one insurer.¹ Requirements for insurance agents vary by license, line of authority, and resident or nonresident status. 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. The Florida Statutes provide for and define various types of insurance agents.

Insurance Adjusters

Under current law, the term “adjusters” include public adjusters, independent adjusters, or company employee adjusters. Adjusters are regulated under Part VI of chapter 626, Florida Statutes. A “public” adjuster is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third party claimant in negotiating or settling an insurance claim on behalf of an insured or third party. 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. A “company” 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. In general, adjusters must complete 24 hours of continuing education every 2 years.

Examination Requirements/Exemptions

Section 626.221, Florida Statutes, sets forth the examination requirements and exemptions for an insurance agent, adjuster, or customer representative. There are numerous exemptions from the examination requirement and if an applicant for licensure meets one of the exemptions, he or she is not required to take the written examination associated with the license. Examples of individuals exempted from the adjuster examination are applicants who have the designation of Accredited Claims Adjuster

¹ Insurance agents are regulated under ch. 626, F.S.

(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 DFS approves the curriculum of the educational institutions and ensures that the curriculum covers a comprehensive analysis of insurance, which includes testing at least equal to testing given by the DFS for the all-lines adjuster license.

Branch Agencies

An insurance agency is a company that employs insurance agents and must be either licensed or registered with DFS.² Effective October 1, 2006, section 626.112(7), Florida Statutes (F.S.), requires that entities that act in their own name or under a trade name as an insurance agency obtain an insurance agency license for each place of business at which activity occurs that can only be performed by a licensed insurance agent. Currently, the law provides that each insurance agency branch location must be in the full-time charge of a licensed general lines agent or life or health agent who is appointed to represent one or more insurers. Any entity that has established one or more branch places of business must have at least one licensed general lines agent who is appointed to represent one or more insurers at each agency location, including the headquarters. The agent in charge cannot be in charge of more than one location.

Predatory Insurance Sales Practices Involving Members of the United States Armed Forces

In July of 2004, state regulators initiated a coordinated multi-state investigation into allegations of illegal sales practices involving the sale of life insurance products to members of the United States Armed Forces (Armed Forces). The investigation was coordinated by a National Association of Insurance Commissioners (NAIC) working group and was co-chaired by the states of Georgia and Texas.

The investigation uncovered a number of deceptive and improper sales practices leading to nationwide settlements with four life insurance companies. As a result of these agreements, approximately 59,000 service members received cash refunds and other benefits valued at over \$70 million. The multi-state regulatory investigations are ongoing. At the request of Congress, the Government Accountability Office (GAO) conducted its own investigation into these allegations.

As numerous investigations, studies, and congressional hearings have shown, individuals within the insurance and financial products industry have been taking advantage of military personnel in order to turn a quick profit. The military personnel they target are often young, inexperienced in financial matters, and particularly vulnerable to the aggressive sales tactics used by some companies. Also, Department of Defense Directives and state regulations were violated or completely ignored by these salespersons, without repercussion. In some cases, service men and women were sold life insurance policies with low benefits and premiums as high as fourteen times the amount available to every enlisted person under the service members' Group Life Insurance program.

In other cases, they were sold investments that have all but disappeared from the civilian markets because they can rob investors of years of earnings. Congressional hearings revealed that life insurance sales were made without informing soldiers that life insurance was available to them through the federal government. State investigators discovered that agents were convincing service members, many of whom were young and single, to purchase a relatively small amount (typically \$20,000 to \$30,000) of additional life insurance from anywhere between \$50 and \$100 per month. These soldier already had available \$500,000 or more in federally sponsored death and other survivor benefits for about \$28 a month.

² Section 626.172, F.S.

On September 29, 2006, President Bush signed the Military Personnel Financial Services Protection Act (Act).³ In passing the Act, Congress had concluded that service members must be offered first-rate financial products, be shielded from “abusive and misleading sales practices,” and be protected from certain life insurance products that are “improperly marketed as investment products, providing minimal death benefits in exchange for excessive premiums that are front-loaded in the first few years, making them entirely inappropriate for most military personnel.”

Prior to the Act, there was uncertainty about whether state regulators had authority to aggressively pursue the individuals involved in these practices on military installations. In the Act, Congress clarified the state regulators’ authority to pursue improper sales practices of insurance products on military reservations worldwide. The NAIC Model makes actionable certain acts and practices which until now have not been declared to be false, misleading, deceptive, or unfair under state trade practices statutes.

PROPOSED CHANGES

Section 1: DFS representatives assert that they have received numerous complaints against public adjusters during the 2004 and 2005 hurricane seasons and believe that it is important for these adjusters to take the prelicensing written examination. The current exemptions from the examination requirement would continue to apply for insurance company adjusters and independent adjusters. The bill amends section 626.221, Florida Statutes, relating to insurance agent examination requirements. The bill would no longer allow applicants for a “public adjusters” license to be exempt from the examination requirement for licensure. The effect of this provision requires all public adjusters to pass an examination as a requisite for licensure.

Sections 2 & 3: Under current law, classroom courses may be offered by independent programs, but correspondence courses may only be offered by an accredited institution of higher learning. The bill amends sections 626.7851 and 626.8311, Florida Statutes. The bill allows individuals to meet the pre-licensing education requirement for life and health insurance agent licenses by taking a correspondence course offered by an independent program of study.

Section 4: The bill amends section 626.747, Florida Statutes. It allows a licensed insurance agent in charge of an insurance agency to be the agent in charge of branch insurance locations, subject to certain conditions. A licensed agent may serve as the agent in charge of branch locations as long as: no insurance activities requiring licensure take place when the agent is not physically present, and no unlicensed employee engages in any activities that require agent licensure. This portion of the bill becomes effective on January 1, 2008.

Section 5: Additionally, the bill amends section 626.865, Florida Statutes. It clarifies that a public adjuster’s surety bond must be maintained continuously throughout the licensure period and until one year after termination of the license. This provision conforms to surety bond requirements for bail bond agents and surplus lines agents. The current amount of the bond is \$50,000.

Section 6: The bill amends section 626.869, Florida Statutes, and it allows DFS, for good cause, to extend the deadline for an insurance adjuster to meet continuing education requirements for no more than one year. Good cause may stem from circumstances such as illness, natural disasters, etc. The bill conforms to the current continuing education requirements for insurance agents.

Section 7: The bill amends section 626.8698, Florida Statutes, to correct an incorrect reference as to which agency regulates insurance adjusters. DFS regulates public adjusters, not the Office of Insurance Regulation or the Financial Services Commission, as is currently stated in the statute.

³ Public Law 109-290.

Section 8: The bill amends section 626.921, Florida Statutes, and it requires that the Florida Surplus Lines Service Office submit an agent's manual to the DFS which must provide administrative procedures that surplus lines insurance agents must follow with respect to their duties to the Service Office. DFS must approve the manual.

Section 9: The bill amends section 626.9531, Florida Statutes, which pertains to advertising materials and other communications developed by insurers. The bill requires risk-bearing entities (in addition to insurers) to clearly indicate that such communications relate to insurance products, and requires them to clearly indicate to prospective insureds that they are acting as insurance agents when soliciting or selling insurance products.

The bill also relieves any licensed and appointed insurance agent of liability for the insolvency of any risk-bearing entity when such entity has been duly authorized or approved by the office to do business in Florida. An exception to this rule arises if the licensed and appointed agent was a controlling producer, as defined in 626.7491(2),⁴ of the risk-bearing entity within 2 years preceding the insolvency. In such a case, the agent is subject to penalty as provided in s. 626.7491(8). These penalties include ceasing business and being subject to civil actions.

The bill also defines risk-bearing entities as follows:

- a reciprocal insurer as defined in s. 629.021;
- commercial self-insurance fund as defined in s. 624.462;
- group self-insurance fund as defined in s. 624.4621;
- local government self-insurance fund as defined in s. 624.4622;
- self-insured public utility as defined in s. 624.46225;
- and independent educational institution self-insurance fund as defined in s. 624.4623.

For the purposes of this section, the term "risk bearing entity" does not include an authorized insurer as defined in s. 624.09.

Section 10: The bill amends section 626.9611, Florida Statutes. It requires DFS and FSC to adopt rules to protect service members of the United States Armed Forces from dishonest and predatory insurance sales practices by insurers and insurance agents. The rules must identify false, misleading, deceptive, or unfair methods of competition, acts or practices which are prohibited under s. 626.9541, F.S. (Unfair Methods of Competition and Unfair or Deceptive Acts) or s. 626.9551, F.S. (Coercion of Debtors). The rules must be based upon model rules or model laws adopted by the National Association of Insurance Commissioners. This provision is in response to the federal Military Personnel Financial Services Act that expressed the intent of Congress that every state adopt rules or laws to protect members of the military from deceptive and improper life insurance sales practices. The Act was signed into law by President Bush on September 29, 2006.

Section 11: The bill appropriates \$132,000 in non-recurring funds for fiscal year 2007-2008 from the Insurance Regulatory Trust Fund to DFS for computer system changes necessary to implement the provisions of the bill pertaining to branch insurance agencies.

Section 12: Except as otherwise provided in the bill, the act shall take effect on July 1, 2007.

C. SECTION DIRECTORY:

⁴ "Controlling producer" means a producer who, directly or indirectly, controls an insurer. Under section 626.7491(2)(f), Florida Statutes, "producer" means an insurance agent or agents or any other person who, for any compensation, commission, or other thing of value, acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person.

Section 1: Amends section 626.221, Florida Statutes; provides that current adjuster's license examination apply to persons who are applying for an independent adjuster or company employee adjuster license.

Section 2: Amends section 626.7851, Florida Statutes; provides that applicants for a life insurance agent license may complete the pre-licensing education requirement by participating in a correspondence course offered by an independent program of study.

Section 3: Amends section 626.8311, Florida Statutes; provides that applicants for a health insurance agent license may complete the pre-licensing education requirement by participating in a correspondence course offered by an independent program of study.

Section 4: Amends section 626.747, Florida Statutes; provides that a licensed agent in charge of an insurance agency may serve as the agent in charge of a branch insurance agency, subject to certain conditions; provides effective date of January 1, 2008.

Section 5: Amends section 626.865, Florida Statutes; provides that a public adjuster's surety bond must be maintained for at least one year after the termination of the adjuster's license.

Section 6: Amends section 626.869, Florida Statutes; allows DFS to extend an adjuster's continuing education deadline for no more than one year, due to showing of good cause.

Section 7: Amends section 626.8698, Florida Statutes; corrects an improper reference to the entity that regulates public adjusters.

Section 8: Amends section 626.921, Florida Statutes; requires submission of Florida Surplus Lines Service Office manual to DFS for approval.

Section 9: Amends section 626.9531; provides responsibilities for risk bearing entities; removes liability of licensed and appointed agents for insolvency of risk-bearing entity except in certain circumstances; defines risk bearing entities.

Section 10: Amends section 626.9611, Florida Statutes; requires DFS and FSC to adopt rules to protect service members of the United States Armed Forces from certain practices.

Section 11: Provides an appropriation of \$132,000 to DFS for the 2007-2008 fiscal year.

Section 12: Provides an effective date of July 1, 2007, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DFS Division of Agent and Agency Services estimates the following non-recurring expenditures:

Cost to make changes to the division's computer systems:

Online application (AALF/MyProfile) -	\$44,000
Licensing database (ALIS) -	<u>\$88,000</u>
Total cost to change systems -	\$132,000

The bill provides an appropriation of \$132,000 in nonrecurring funds from the Insurance Regulatory Trust Fund to implement the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Applicants for a public adjuster's license will no longer be exempt from the examination requirement based on certain pre-licensing education courses. Public adjusters will be required to extend their surety bond for 1 year after termination of their license. Life and health agents may meet pre-licensing education requirements by taking correspondence courses offered by independent study programs.

This bill will reduce the economic impact of having to place a licensed insurance agent at each branch location, or alternatively, having to discontinue offering insurance products at certain branch locations that may be less productive than others.

Military personnel will benefit under the bill's provisions because DFS and FSC are mandated to adopt rules to protect such personnel from dishonest or predatory insurance practices by insurers and agents offering life insurance products.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not: require counties or municipalities to spend funds or to take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

D. STATEMENT OF THE SPONSOR:

Prior to 2005, Florida was the only state that did not require insurance agencies to be licensed. During the 2005 Legislative Session, the Legislature passed SB 1912 to bring Florida in line with the other states. The bill and its subsequent interpretations did not account for the ways financial institutions, securities brokers, and funeral homes offer various insurance products to their customers. This bill is a remedy to these unintended consequences while still keeping with the intent of the law. More specifically, the bill allows financial institutions and securities brokers to continue to offer insurance products to their customers at multiple locations as they were currently allowed prior to implementation of the new law. The bill also allows funeral directors who offer pre-need policies to their customers at multiple funeral home locations, which they were previously allowed to do. Financial Institutions, Securities Brokers and funeral homes will still be required to obtain an agency license. Thank you for your consideration of this matter.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 22, 2007, the Committee on Insurance adopted one amendment:

Amendment 1 provides that a licensed insurance agent in charge of an insurance agency that is not affiliated with a financial institution, securities dealer, or funeral establishment may also be the agent in charge of branch insurance locations. Activities that require licensure may not take place when the agent is not physically present. Additionally, no unlicensed individuals may conduct activities that require a license.

On April 20, 2007, the Policy and Budget Council adopted a strike-all amendment to the bill. The strike-all resulted in the following changes:

- Provides that the current exemptions from taking the written examination for an adjuster's license for persons who complete certain educational programs apply to persons who are applying for an independent adjuster or company employee adjuster license. Therefore, the exemptions would no longer apply to applicants for a public adjuster licensee;
- Allows correspondence courses to be approved by the DFS for satisfying the pre-licensing education requirements for obtaining a life or health insurance agent license;
- Clarifies that the surety bond required for a public adjuster must be maintained continuously and for one year after termination of the license;
- Allows the DFS to extend the deadline for up to one year for an insurance adjuster to meet continuing education requirements, for good cause;
- Clarifies that the agent manual of the Florida Surplus Lines Service Office must be approved by the DFS; and
- Requires the DFS and the Financial Services Commission (FSC) to adopt rules to protect service members of the United States Armed Forces from dishonest and predatory insurance sales practices by insurers and agents involving the offer of life insurance products.

The Policy and Budget Council also adopted two amendments to the strike-all amendment.

Amendment 1 adds another class of independent or company employee adjuster applicants who are exempt from licensing examinations. The amendment provides that an applicant for a license as an independent or company employee adjuster, who has the designation of a Certified Professional Claims Adjuster (CPCA) from ALL LINES Training, is also be exempt from the examination requirement.

Amendment 2 requires that risk bearing entities authorized by the insurance code and authorized to do business in this state clearly indicate that advertising materials and other communications relate to insurance products. The amendment also provides that a licensed and appointed insurance agent shall not be liable for the insolvency of any risk bearing entity that has been duly authorized or approved by OIR to do business in Florida; however, an agent who was a controlling producer of the risk bearing entity within 2 years preceding the insolvency, is subject to applicable penalties. The amendment also defines risk bearing entities for the purpose of the section.

The staff analysis was updated to reflect the amendments.