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CS/CS/HB 1381, Engrossed 2

2007 Legislature

1 A bill to be entitled
2 An act relating to insurance; amending s. 626.112, F.S.;
3 authorizing certain agencies designated as a branch office
4 to file an application for registration in lieu of
5 licensure; amending s. 626.221, F.S.; providing an
6 exemption from the required written examination to certain
7 applicants for licensure as a claims adjuster; amending s.
8 626.7851, F.S.; authorizing certain programs to offer
9 correspondence courses to applicants for licensure as a
10 life insurance agent; amending s. 626.8311, F.S.;
11 authorizing certain programs to offer correspondence
12 courses to applicants for licensure as a health insurance
13 agent; amending s. 626.747, F.S.; authorizing certain
14 licensed agents to be the agent in charge of branch
15 locations under certain circumstances; amending s.
16 626.865, F.S.; requiring public adjusters to maintain
17 their surety bond unimpaired for a certain period;
18 amending s. 626.869, F.S.; authorizing an extension of
19 time to complete continuing education requirements for
20 public adjusters; amending s. 626.8698, F.S.; designating
21 the Department of Financial Services as the appropriate
22 agency responsible for disciplinary action against public
23 adjusters; amending s. 626.921, F.S.; providing that the
24 department is responsible for approval of the surplus
25 lines agent manual; amending s. 626.9531, F.S.; revising
26 requirements for identification of insurers, agents, and
27 insurance contracts; specifying absence of liability and
28 prohibiting causes of action against certain agents for

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29 | insolvency of certain entities under certain
30 | circumstances; providing definitions; amending s.
31 | 626.9611, F.S.; requiring that the department and
32 | Financial Services Commission adopt rules prohibiting the
33 | use of unfair and deceptive practices in the sale of
34 | insurance to members of the United States Armed Forces;
35 | providing limitations; providing an appropriation;
36 | providing effective dates.

37 |

38 | Be It Enacted by the Legislature of the State of Florida:

39 |

40 | Section 1. Paragraph (a) of subsection (7) of section
41 | 626.112, Florida Statutes, is amended to read:

42 | 626.112 License and appointment required; agents, customer
43 | representatives, adjusters, insurance agencies, service
44 | representatives, managing general agents.--

45 | (7) (a) Effective October 1, 2006, no individual, firm,
46 | partnership, corporation, association, or any other entity shall
47 | act in its own name or under a trade name, directly or
48 | indirectly, as an insurance agency, unless it complies with s.
49 | 626.172 with respect to possessing an insurance agency license
50 | for each place of business at which it engages in any activity
51 | which may be performed only by a licensed insurance agent. Each
52 | agency engaged in business in this state before January 1, 2003,
53 | which is wholly owned by insurance agents currently licensed and
54 | appointed under this chapter, each incorporated agency whose
55 | voting shares are traded on a securities exchange, each agency
56 | designated and subject to supervision and inspection as a branch

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57 office under the rules of the National Association of Securities
 58 Dealers, and each agency whose primary function is offering
 59 insurance as a service or member benefit to members of a
 60 nonprofit corporation may file an application for registration
 61 in lieu of licensure in accordance with s. 626.172(3). Each
 62 agency engaged in business before October 1, 2006, shall file an
 63 application for licensure or registration on or before October
 64 1, 2006.

65 1. If an agency is required to be licensed but fails to
 66 file an application for licensure in accordance with this
 67 section, the department shall impose on the agency an
 68 administrative penalty in an amount of up to \$10,000.

69 2. If an agency is eligible for registration but fails to
 70 file an application for registration or an application for
 71 licensure in accordance with this section, the department shall
 72 impose on the agency an administrative penalty in an amount of
 73 up to \$5,000.

74 Section 2. Paragraph (k) of subsection (2) of section
 75 626.221, Florida Statutes, is amended to read:

76 626.221 Examination requirement; exemptions.--

77 (2) However, no such examination shall be necessary in any
 78 of the following cases:

79 (k) An applicant for license as an independent or company
 80 employee adjuster who has the designation of Accredited Claims
 81 Adjuster (ACA) from a regionally accredited postsecondary
 82 institution in this state, Professional Claims Adjuster (PCA)
 83 from the Professional Career Institute, Professional Property
 84 Insurance Adjuster (PPIA) from the HurriClaim Training Academy,

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85 Certified Adjuster (CA) from ALL LINES Training, or Certified
 86 Claims Adjuster (CCA) from the Association of Property and
 87 Casualty Claims Professionals whose curriculum has been approved
 88 by the department and whose curriculum includes comprehensive
 89 analysis of basic property and casualty lines of insurance and
 90 testing at least equal to that of standard department testing
 91 for the all-lines adjuster license. The department shall adopt
 92 rules establishing standards for the approval of curriculum.

93 Section 2. Subsection (2) of section 626.7851, Florida
 94 Statutes, is amended to read:

95 626.7851 Requirement as to knowledge, experience, or
 96 instruction.--No applicant for a license as a life agent, except
 97 for a chartered life underwriter (CLU), shall be qualified or
 98 licensed unless within the 4 years immediately preceding the
 99 date the application for a license is filed with the department
 100 he or she has:

101 (2) Successfully completed a correspondence course in
 102 insurance, 3 hours of which shall be on the subject matter of
 103 ethics, satisfactory to the department and regularly offered by
 104 accredited institutions of higher learning in this state or by
 105 independent programs of study, approved by the department.
 106 Courses must include instruction on the subject matter of
 107 unauthorized entities engaging in the business of insurance, to
 108 include the Florida Nonprofit Multiple-Employer Welfare
 109 Arrangement Act and the Employee Retirement Income Security Act,
 110 29 U.S.C. ss. 1001 et seq., as it relates to the provision of
 111 life insurance by employers to their employees and the
 112 regulation thereof;

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113 Section 3. Subsection (2) of section 626.8311, Florida
 114 Statutes, is amended to read:

115 626.8311 Requirement as to knowledge, experience, or
 116 instruction.--No applicant for a license as a health agent,
 117 except for a chartered life underwriter (CLU), shall be
 118 qualified or licensed unless within the 4 years immediately
 119 preceding the date the application for license is filed with the
 120 department he or she has:

121 (2) Successfully completed a correspondence course in
 122 insurance, 3 hours of which shall be on the subject matter of
 123 ethics, satisfactory to the department and regularly offered by
 124 accredited institutions of higher learning in this state or by
 125 independent programs of study, approved by the department.
 126 Courses must include instruction on the subject matter of
 127 unauthorized entities engaging in the business of insurance, to
 128 include the Florida Nonprofit Multiple-Employer Welfare
 129 Arrangement Act and the Employee Retirement Income Security Act,
 130 29 U.S.C. ss. 1001 et seq., as it relates to the provision of
 131 health insurance by employers to their employees and the
 132 regulation thereof;

133 Section 4. Effective January 1, 2008, subsection (1) of
 134 section 626.747, Florida Statutes, is amended to read:

135 626.747 Branch agencies.--

136 (1) (a) Each branch place of business established by an
 137 agent or agency, firm, corporation, or association shall be in
 138 the active full-time charge of a licensed general lines agent or
 139 life or health agent who is appointed to represent one or more
 140 insurers. Any agent or agency, firm, corporation, or association

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141 which has established one or more branch places of business
 142 shall be required to have at least one licensed general lines
 143 agent who is appointed to represent one or more insurers at each
 144 location of the agency including its headquarters location.

145 (b) Notwithstanding paragraph (a), the licensed agent in
 146 charge of an insurance agency may also be the agent in charge of
 147 additional branch office locations of the agency if insurance
 148 activities requiring licensure as an insurance agent do not
 149 occur at any location when the agent is not physically present
 150 and unlicensed employees at the location do not engage in any
 151 insurance activities requiring licensure as an insurance agent
 152 or customer service representative.

153 Section 5. Subsection (2) of section 626.865, Florida
 154 Statutes, is amended to read:

155 626.865 Public adjuster's qualifications, bond.--

156 (2) At the time of application for license as a public
 157 adjuster, the applicant shall file with the department a bond
 158 executed and issued by a surety insurer authorized to transact
 159 such business in this state, in the amount of \$50,000,
 160 conditioned for the faithful performance of his or her duties as
 161 a public adjuster under the license for which the applicant has
 162 applied, and thereafter maintain the bond unimpaired throughout
 163 the existence of the license and for at least 1 year after
 164 termination of the license ~~for~~. The bond shall be in favor of
 165 the department and shall specifically authorize recovery by the
 166 department of the damages sustained in case the licensee is
 167 guilty of fraud or unfair practices in connection with his or
 168 her business as public adjuster. The aggregate liability of the

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169 surety for all such damages shall in no event exceed the amount
 170 of the bond. Such bond shall not be terminated unless at least
 171 30 days' written notice is given to the licensee and filed with
 172 the department.

173 Section 6. Paragraph (c) of subsection (4) of section
 174 626.869, Florida Statutes, is amended to read:

175 626.869 License, adjusters.--

176 (4)

177 (c) The department shall adopt rules necessary to
 178 implement and administer the continuing education requirements
 179 of this subsection. For good cause shown, the department may
 180 grant an extension of time during which the requirements imposed
 181 by this section may be completed, but such extension of time may
 182 not exceed 1 year.

183 Section 7. Subsection (1) of section 626.8698, Florida
 184 Statutes, is amended to read:

185 626.8698 Disciplinary guidelines for public
 186 adjusters.--The department may deny, suspend, or revoke the
 187 license of a public adjuster, and administer a fine not to
 188 exceed \$5,000 per act, for any of the following:

189 (1) Violating any provision of this chapter or a rule or
 190 order of the department ~~office or commission~~;

191 Section 8. Paragraphs (a) and (c) of section 626.921,
 192 Florida Statutes, are amended to read:

193 626.921 Florida Surplus Lines Service Office.--

194 (5) (a) The association shall submit to the office a plan
 195 of operation, and any amendments thereto, to provide operating
 196 procedures for the administration of the service office. The

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197 plan of operation and any amendments thereto shall become
 198 effective upon approval by order of the office. The association
 199 shall submit to the department an agents' manual, and any
 200 amendments thereto, which shall provide administrative
 201 procedures that surplus lines insurance agents must follow with
 202 respect to their duties to the service office. The manual shall
 203 be prepared in cooperation with the department, and any changes,
 204 updates, or amendments shall be submitted to the department
 205 before distribution. The manual shall be approved by order of
 206 the department.

207 (c) All surplus lines agents licensed in this state must
 208 comply with the plan of operation and the agent's manual.

209 Section 9. Section 626.9531, Florida Statutes, is amended
 210 to read:

211 626.9531 Identification of insurers, agents, and insurance
 212 contracts.--

213 (1) Advertising materials and other communications
 214 developed by insurers, or other risk bearing entities authorized
 215 under this code and approved by the office to do business in
 216 this state, regarding insurance products shall clearly indicate
 217 that the communication relates to insurance products. When
 218 soliciting or selling insurance products, agents shall clearly
 219 indicate to prospective insureds that they are acting as
 220 insurance agents with regard to insurance products and
 221 identified insurers, or other risk bearing entities authorized
 222 under this code and approved by the office to do business in
 223 this state.

224 (2) There shall be no liability to the insured on the part

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225 of, and no cause of action of any nature shall arise against,
 226 any licensed and appointed insurance agent for the insolvency of
 227 any risk bearing entity when such entity has been duly
 228 authorized or approved by the office to do business in this
 229 state. However if the licensed and appointed agent was a
 230 controlling producer, as defined in s. 626.7491(2), of the risk
 231 bearing entity within 2 years preceding the insolvency, the
 232 agent is subject to penalty as provided in s. 626.7491(8).

233 (3) For the purposes of this section, the term "risk
 234 bearing entity" means a reciprocal insurer as defined in s.
 235 629.021, a commercial self-insurance fund as defined in s.
 236 624.462, a group self-insurance fund as defined in s. 624.4621,
 237 a local government self-insurance fund as defined in s.
 238 624.4622, a self-insured public utility as defined in s.
 239 624.46225, or an independent educational institution self-
 240 insurance fund as defined in s. 624.4623. For the purposes of
 241 this section, the term "risk bearing entity" does not include an
 242 authorized insurer as defined in s. 624.09.

243 Section 10. Section 626.9611, Florida Statutes, is amended
 244 to read:

245 626.9611 Rules.--

246 (1) The department or commission may, in accordance with
 247 chapter 120, adopt reasonable rules as are necessary or proper
 248 to identify specific methods of competition or acts or practices
 249 which are prohibited by s. 626.9541 or s. 626.9551, but the
 250 rules shall not enlarge upon or extend the provisions of ss.
 251 626.9541 and 626.9551.

252 (2) The department and the commission shall, in accordance

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253 with chapter 120, adopt rules to protect members of the United
254 States Armed Forces from dishonest or predatory insurance sales
255 practices by insurers and insurance agents. The rules shall
256 identify specific false, misleading, deceptive, or unfair
257 methods of competition, acts, or practices which are prohibited
258 by s. 626.9541 or s. 626.9551. The rules shall be based upon
259 model rules or model laws adopted by the National Association of
260 Insurance Commissioners which identify certain insurance
261 practices involving the solicitation or sale of insurance and
262 annuities to members of the United States Armed Forces which are
263 false, misleading, deceptive, or unfair.

264 Section 11. For the 2007-2008 fiscal year, the sum of
265 \$132,000 in nonrecurring funds is appropriated from the
266 Insurance Regulatory Trust Fund to the Department of Financial
267 Services for computer system changes necessary to implement the
268 provisions of s. 626.747, Florida Statutes.

269 Section 12. Except as otherwise expressly provided in this
270 act, this act shall take effect July 1, 2007.