

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1549

Examination of Insurers

**SPONSOR(S):** Rivera

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2782

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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 &amp; Entrepreneurship Council</u>	<u>13 Y, 0 N</u>	<u>Davis</u>	<u>Thorn</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

Currently, an insurer is subject to an examination of its affairs, transactions, accounts, records, and assets, no less frequently than once every 3 years. This bill amends the frequency of the required examination to no less frequently than once every 5 years.

The bill expands the list of entities that qualify to conduct examinations. The current list includes independent certified public accountants, actuaries, and reinsurance specialists. The bill adds investment specialists and information technology specialists to the list of qualified examiners.

The bill provides that OIR is the selector of the examining firm, and it removes language that previously involved the insurer in the process of deciding which firm would conduct the examination.

The bill also provides additional criteria for examining firms. Rates charged by examination firms should be consistent with rates charged by other firms in similar professions, and the firm selected by OIR to conduct an examination should have no conflicts of interest that would preclude an independent examination.

This bill does not appear to have a fiscal impact on state or local governments.

This bill becomes effective on July 1, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** The bill reduces, from not less than once every 3 years to not less than once every 5 years, the frequency that insurer examinations must be conducted.

#### B. EFFECT OF PROPOSED CHANGES:

### BACKGROUND

OIR is responsible for examining “the affairs, transactions, accounts, records, and assets of each authorized insurer.”<sup>1</sup> OIR may examine an insurer “as often as it deems advisable,”<sup>2</sup> but each domestic insurer<sup>3</sup> must be examined not less frequently than once every 3 years.<sup>4</sup> Automobile insurers are subject to additional examination requirements set forth in section 627.915, Florida Statutes.<sup>5</sup>

The exam must cover the preceding 3 fiscal years, and it must begin within 12 months after the end of the most recent fiscal year being covered in the examination.<sup>6</sup> Exceptions to this requirement exist where a domestic insurer has continuously held a certificate of authority for less than 3 years.<sup>7</sup> In that case, OIR must examine the insurer at least once every year; the exam must cover the preceding fiscal year or the period since the last exam.<sup>8</sup> An additional exception exists where an insurer has continuously held a certificate of authority without a change in ownership (subject to sections 624.4245 or 628.461, Florida Statutes), for more than 15 years.<sup>9</sup> That insurer is subject to an examination no less than once every 5 years.

#### Examination Scope

The exam may cover: any period of the insurer’s operations since the last exam; any prior period that affects the insurer’s present financial condition; and events subsequent to the end of the most recent fiscal year.<sup>10</sup> Currently, an independent certified public accountant’s audit report prepared consistent with the Florida Insurance Code may substitute for OIR’s own examination of a given insurer (except for automobile insurers).<sup>11</sup>

#### Initial Certificates, Foreign<sup>12</sup> and Alien<sup>13</sup> Insurers

The statute also has special provisions for insurers seeking an initial certificate and for foreign and alien insurers.

*Initial Certificates:* Before granting any insurer’s application for initial certification to transact insurance in Florida, OIR must examine the insurer.<sup>14</sup>

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<sup>1</sup> Section 624.316(1), F.S.

<sup>2</sup> Section 624.316(1)(a), F.S.

<sup>3</sup> “A ‘domestic’ insurer is one formed under the laws of this state.” Section 624.06(1), F.S.

<sup>4</sup> Section 624.316(2)(a), F.S.

<sup>5</sup> Section 624.316(1)(b), F.S.

<sup>6</sup> Id.

<sup>7</sup> Section 624.316(2)(f)1.a., F.S.

<sup>8</sup> Id.

<sup>9</sup> Section 624.316(2)(f)2., F.S.

<sup>10</sup> Section 624.316(2)(a), F.S.

<sup>11</sup> Section 624.316(2)(a), F.S.

<sup>12</sup> “A ‘foreign’ insurer is one formed under the laws of any state, district, territory, or commonwealth of the United States other than [the state of Florida].” Section 624.06(2), F.S.

<sup>13</sup> “An ‘alien’ insurer is an insurer other than a domestic or foreign insurer.” Section 624.06(3), F.S.

*Foreign Insurers:* With respect to foreign insurers, OIR may accept a full report of the last recent examination, provided that the report is certified by the insurance supervisory official of another state.<sup>15</sup>

*Alien Insurers:* When conducting an examination of an alien insurer, unless otherwise required by OIR, OIR must limit its examination to the insurer's insurance transactions and affairs in the United States.<sup>16</sup>

### **Examiner Criteria and Procedures**

Currently, if OIR and the insurer agree, an examination may be conducted by independent certified public accountants, actuaries, and reinsurance specialists meeting criteria specified by rule.<sup>17</sup> Also, OIR must provide the insurer with a list of 3 OIR-approved firms to complete the examination; the insurer must select one firm from the list to complete the examination.<sup>18</sup> If OIR reasonably suspects the insurer's involvement in criminal conduct, the insurer's agreement is not required.<sup>19</sup>

The insurer must pay the firm conducting the examination, and it must do so in a manner that is consistent with rates and terms agreed to by OIR, the insurer, and the examining firm.<sup>20</sup> If the examination is conducted without the insurer's consent, and the examining firm finds impairment, insolvency, or criminal misconduct on the insurer's part, the insurer must pay all of the examining firm's reasonable charges.<sup>21</sup>

### **PROPOSED CHANGES**

The bill amends section 624.316(2)(a), Florida Statutes, changing the frequency of OIR examinations from not less than once every 3 years to not less than once every 5 years. Removed from this section is the language that permits an independent certified public accountant's audit report to substitute for OIR's own examination; the related procedures are also removed.

The provisions for initial certification, and for foreign and alien insurers stay the same.

The bill also amends section 624.316(2)(e), Florida Statutes, which pertains to OIR's rules for insurer examinations. The section is amended by removing the language that calls for an agreement between OIR and the insurer as to the entity that conducts the examination. This section is also amended to expand the types of entities that may conduct examinations. Added to the list of qualified are investment specialists and information technology specialists. Sub-subparagraphs within section 624.316(2)(e), Florida Statutes, are also amended. Each of these sub-subparagraphs relates to OIR rules content.

Sub-subparagraph 1. OIR rules must provide that the rates charged to the insurer by the examining firm be consistent with rates charged by other firms in a similar profession. Language stating that the insurer's agreement is not required if OIR reasonably suspects criminal conduct, is removed from this subsection.

Sub-subparagraph 2. OIR rules must provide that the firm that OIR selects to conduct the examination be free of any conflicts of interest that might prevent an independent performance.

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<sup>14</sup> Section 624.316(2)(b), F.S.

<sup>15</sup> Section 624.316(2)(c), F.S.

<sup>16</sup> Section 624.316(2)(d), F.S.

<sup>17</sup> Section 624.316(2)(e), F.S.

<sup>18</sup> Section 624.316(2)(e)2., F.S.

<sup>19</sup> Section 624.316(2)(e)1., F.S.

<sup>20</sup> Section 624.316(2)(e)3., F.S.

<sup>21</sup> Section 624.316(2)(e)4., F.S.

Sub-subparagraph 3. OIR rules must provide that the insurer's payment for the examination must be done in accordance with rates and terms established by OIR and the examining firm. The bill changes the phrase "agreed to" to "established," and it removes the insurer from the process of determining the rates and terms.

Sub-subparagraph 4. This language, which required the insurer to pay all of the examining firm's reasonable charges under certain circumstances, is completely removed.

The bill also amends section 624.316(2)(f). Remaining in the statute is the requirement that a domestic insurer that has continuously held a certificate of authority for less than 3 years be examined at least once every year; also remaining are provisions for the scope of the examination. The following provisions are removed:

OIR may not accept an independent certified public accountant's audit report.

An insurer may not be required to pay more than \$25,000 to cover the costs of any one examination under subparagraph (2)(f). Removing this language removes the cap on the examination payment obligations of a domestic insurer who has continuously held a certificate of authority for less than 3 years.

An insurer that has continuously held a certificate of authority, without a change in ownership (subject to sections 624.4245 or 628.461, Florida Statutes), for more than 15 years, must have an examination no less frequently than once every 5 years. Removing this language is consistent with the amended language that subjects all insurers (with the exception noted above) to an examination no less than once every 5 years.

C. SECTION DIRECTORY:

Section 1: Amends section 624.316(2), Florida Statutes; changes frequency of required insurer examinations; expands list of qualified examiners; specifies rule content.

Section 2: States effective date of July 1, 2007.

## 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:

Most insurers should realize a savings due to less frequent examinations. Domestic insurers who have continuously held a certificate of authority for less than 3 years may see increased expenses due to the removal of the \$25,000 cap. This increase might be tempered by the language which provides that the rules must provide that examination rates be consistent with rates charged by other firms in a similar profession.

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:

The bill provides OIR with the authority to adopt rules that conform existing OIR rules to the statutory provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR:

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.