

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: CS/SB 2702

INTRODUCER: Banking and Insurance Committee and Senator Aronberg

SUBJECT: Insurance Representatives

DATE: April 16, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Fav/CS
2.			RI	
3.				
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5.				
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I. Summary:

Committee Substitute for Senate Bill 2702 makes the following changes pertaining to the regulation of insurance agents and adjusters under the authority of the Department of Financial Services (DFS or department):

- Allows an insurance agent to be in charge of more than one agency branch location;
- 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 rules must be based upon model rules or model laws adopted by the National Association of Insurance Commissioners. This is in response to a 2006 federal law that expresses the intent of Congress that every state adopt rules or laws to protect members of the military from deceptive and improper insurance sales practices;
- 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;
- 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 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;
- Provides an appropriation of \$132,000 to the DFS from the Insurance Regulatory Trust fund to make necessary computer system changes.

This bill amends the following sections of the Florida Statutes: 626.221, 626.7851, 626.8311, 626.747, 626.865, 626.869, 626.8698, 626.921 and 626.9611.

II. Present Situation:

Licensure of Insurance Agents in Florida

In general, insurance agents transact insurance on behalf of an insurer and must be licensed by the Department of Financial Services (DFS or department) 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. There are various types of insurance agents including, but not limited to, the following:

- “Agent” means a general lines agent, life agent, health agent, or title agent, or other enumerated agent within the context of the Insurance Code.²
- “Adjusters” include public adjusters, independent adjusters, or company employee adjusters:
 - 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.³
- “Customer representatives” are persons appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.⁴
- “Surplus lines” agent is an individual licensed to provide for the placement of insurance coverages with unauthorized insurers and to place such coverages with authorized insurers as to which the licensee is not licensed as an agent.⁵

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

² Section 626.015(2), F.S.

³ Insurance adjusters are regulated under Part VI of ch. 626, F.S.

⁴ Section 626.015(4), F.S.

⁵ Section 626.914(1), F.S.

Examination Requirements/Exemptions

Section 626.221, F.S., 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. One of the exemptions from the adjuster examination is for applicants who have the designation of Accredited Claims Adjuster (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 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.⁶ A branch agency is a place of business established by an agent or agency, firm, or association which must be in the active full-time charge of a licensed general lines agent or life or health agent who is appointed to represent one or more insurers. An agent or agency which has one or more branches must have at least one licensed general lines agent at each location of the agency including its headquarters location.⁷ 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.⁸

Financial institutions such as banks may offer a range of property and casualty insurance products to their customers. Securities brokers may also offer life insurance and annuity products. These entities must utilize a licensed agent to offer these insurance products and must have at least one agent at each business location.

Predatory Insurance Sales Practices by Life Insurers and Agents to Service 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,

⁶ Section 626.172, F.S.

⁷ Section 626.747, F.S.

⁸ Section 626.015, F.S.

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 soldiers already had available \$500,000 or more in federally sponsored death and other survivor benefits for about \$28 a month.

On September 29, 2006, President Bush signed the Military Personnel Financial Services Protection Act ("Act").⁹ In passing the Act, Congress had concluded that given the great sacrifices that members of the Armed Forces make to protect our country, they must be offered first-rate financial products. Congress found it imperative that members of our Armed Forces be shielded from "abusive and misleading sales practices," and 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 regarding state regulators 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.

III. Effect of Proposed Changes:

Section 1. Amends s. 626.221, F.S., 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. Representatives with the DFS 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

⁹ Public Law 109-290.

examination. The current exemptions from the examination requirement would continue to apply for insurance company adjusters and independent adjusters (that also work for insurance companies).

Section 2. Amends s. 626.7851, F.S., pertaining to pre-licensing education requirements for life insurance agents. The bill allows individuals to meet the pre-licensing education requirement for obtaining a life insurance agent license by taking a correspondence course offered by an independent program of study. 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.

Section 3. Amends s. 626.8311, F.S., applying to pre-licensing education requirements for health insurance agents. The bill allows individuals to meet the pre-licensing education requirement for obtaining a health insurance agent license by taking a correspondence course offered by an independent program of study. 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.

Section 4. Amends s. 626.747, F.S., relating to branch agencies. Effective January 1, 2008, the bill allows a licensed insurance agent in charge of an insurance agency to also be the agent in charge of additional branch office locations of the agency if insurance activities requiring licensure as an insurance agent do not occur at any location when the agent in charge is not physically present and unlicensed employees at the location do not engage in any insurance activities requiring licensure as an insurance agent or customer service representative.

Section 5. Amends s. 626.865, F.S., pertaining to public adjuster's qualifications. The bill clarifies that a public adjuster's surety bond must be maintained continuously 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. Amends s. 626.869, F.S., relating to adjuster continuing education (CE) requirements. The bill allows the DFS to extend the deadline for an insurance adjuster to meet continuing education requirements if there is good cause to do so. Such an extension could not exceed 1 year. According to representatives with the DFS, an extension may be necessary if an adjuster is ill or if a natural disaster occurs (i.e., a hurricane) that would cause substantial additional workload for an adjuster and delay completing the CE requirement. In general, adjusters must complete 24 hours of CE every 2 years. The bill conforms to the current continuing education requirements for insurance agents.

Section 7. Amends s. 626.8698, F.S., pertaining to disciplinary guidelines for public adjusters, to correct an incorrect reference as to which agency regulates insurance adjusters. The DFS regulates adjusters, not the Office of Insurance Regulation or the Financial Services Commission.

Section 8. Amends s. 626.921, F.S., relating to the Florida Surplus Lines Service Office. The bill 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. Amends s. 626.9611, F.S., relating to rules by the DFS and Financial Services Commission (FSC). The bill requires the DFS and the 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 provisions). 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 10. Provides for an appropriation of \$132,000 for fiscal year 2007-08, in nonrecurring funds from the Insurance Regulatory Trust Fund to the DFS for computer system changes necessary to implement the provisions of Section 4 of the bill pertaining to branch agencies.

Section 11. Provides that except as otherwise provided in the bill, the act shall take effect on July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Military personnel will benefit under the bill's provisions because the 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.

Applicants for a public adjuster's license will no longer be exempt from the examination requirement based on certain prelicensing education courses. Public adjusters will be required to extend their surety bond for 1 year after termination of their license. Insurance agencies (and agents) will benefit because they will not have to hire a licensed and appointed agent to be in charge of each of their locations when insurance is not being transacted at that location. Also, life and health agents may meet prelicensing education requirements by taking correspondence courses offered by independent study programs.

C. Government Sector Impact:

Officials with the Division of Agent and Agency Services of the DFS state that the division's computer systems will have to be reprogrammed to allow agencies to file lists of their agents in charge of multiple locations pursuant to the bill's provisions. The division estimates the following non-recurring expenditure:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
