

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 565 Insurance  
**SPONSOR(S):** Government Efficiency & Accountability Council and Nelson  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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| REFERENCE   | ACTION    | ANALYST     | STAFF DIRECTOR |
|---|-----------|-------------|----------------|
| Orig. Comm.: Government Efficiency & Accountability Council | 15 Y, 0 N | Reilly/Topp | Cooper/Overton |
| 1) Committee on Insurance                                   |           | Reilly/Topp | Overton        |
| 2) Jobs & Entrepreneurship Council                          |           |             |                |
| 3) _____  |           |             |                |
| 4) _____  |           |             |                |
| 5) _____  |           |             |                |

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### SUMMARY ANALYSIS

Customer representatives are not insurance agents, but are appointed by a general lines agent or agency to assist in transacting the business of insurance. This bill exempts from the customer service licensing exam applicants who have earned an Associate's degree from an accredited college with at least 9 academic hours in property and casualty insurance classes.

In general, insurance agents transact business on behalf of an insurer and must be licensed by the Department of Financial Services (the Department) and be appointed (i.e., given the authority to transact business on its behalf) by at least one insurer. The bill prohibits insurers, including Citizens Property Insurance Corporation, from requiring insurance agents who are not employees or exclusive independent contractors of the insurer to take specified continuing education (CE) courses as a condition of appointment or continuation of such appointment. While insurers cannot compel agents to take specified CE courses, including those developed by the insurer, they may require agents to attend training classes that deal solely with the insurer's processes or products and decline to appoint or continue the appointment of agents who do not attend. The latter training is not eligible for approval as a CE course pursuant to Department rule.

This bill authorizes exams for CE correspondence courses to be given without a proctor provided that the student subsequently submits a sworn affidavit that he/she did not receive any outside assistance while taking the examination. Further, the duties of the continuing education advisory board are expanded to require the board to advise on issues related to insurance agent appointments based upon appointees meeting continuing education requirements.

The bill also establishes a new license for "unaffiliated insurance consultants" and waives the appointment requirement as to such persons.

The bill is effective June 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Licensure of Insurance Agents in Florida**

In general, insurance agents transact business on behalf of an insurer and must be licensed by the Department of Financial Services (the Department) and be appointed (i.e., given the authority by an insurer to transact business on its behalf) by at least one insurer.<sup>1</sup> Requirements for insurance agents vary by license and line of authority, among other factors. Agent is defined to mean general lines agent, life agent, health agent, or title agent, or all such agents, as indicated by context, but does not include a customer representative.<sup>2</sup> Customer representatives are appointed by a general lines agent or agency to assist in transacting the business of insurance from the office of that agent or agency. This bill adds to the list of persons exempt from the customer service licensing exam applicants who have earned an Associate's degree from an accredited college or university with a minimum of 9 hours in property and casualty insurance curriculum.

As previously noted, insurance agents must be licensed and appointed by at least one insurer.<sup>3</sup> The appointment requirement extends to agents who work strictly as independent insurance consultants to assess clients' insurance needs, e.g., a risk manager hired by a public entity. Agents who serve as independent consultants do not sell insurance, do not recommend insurers from which coverage can be purchased, and are paid by their clients and not by any insurer, either directly or indirectly. The insurer does not receive a benefit from appointing the agent, as the agent will not write any business for the insurer.

This bill creates a new license for "unaffiliated insurance consultants," who are authorized to transact insurance within the scope of their license without being appointed by an insurer.

"Unaffiliated insurance consultant" is defined as a person who is not affiliated with any insurer and chooses to practice as an independent insurance consultant providing objective advice to the buyers of insurance and who:

- Is a licensed agent for the type of insurance for which the agent transacts the business of insurance;
- Is not appointed by any insurer or other authorized appointing authority;
- Does not sell or service insurance on behalf of any insurer, insurance agent or insurance agency, in connection with the sale or service of insurance on behalf of an insurer or by the insurance agent or insurance agency;
- Does not receive any commission or any form of compensation from any insurer, insurance agent or insurance agency, in connection with the sale or servicing of insurance on behalf of an insurer or by the insurance agent or insurance agency; and
- Provides the Department with evidence that the agent:
  - Has been licensed for at least 2 years in the type of insurance he or she will transact;
  - Satisfies specified insurance education requirements or is a member of the Florida Bar;
  - Holds certain insurance designations; or

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<sup>1</sup> Insurance agents are regulated under ch. 626, F.S.

<sup>2</sup> Section 626.015(4), F.S.

<sup>3</sup> Section 626.112

- o Meets any other requirements established by the Department to qualify as an unaffiliated insurance agent.

Applicants must submit to the Department a signed, sworn statement that the agent meets the statutory definition of unaffiliated insurance consultant and pay \$120 for each license for which the agent seeks to qualify as an unaffiliated insurance agent. Every two years thereafter, the agent must apply for continuation of such qualification and pay all applicable fees.

Unaffiliated insurance consultants cannot hold themselves out as acting as an agent for an insurer or as replacing the need for an appointed agent in the placement or sale of insurance and cannot act as a countersigning agent for an insurer.

### **Continuing Education Requirements**

Section 626.2815, F.S., establishes the requirements and standards for continuing education (CE) courses for persons licensed to solicit or sell insurance in Florida for all lines of insurance for which an examination is required for licensing. Generally, persons to whom this section applies who have been licensed for less than 6 years must complete 24 CE hours every 2 years, 3 hours of which must be on the topic of ethics. The number of required CE hours decreases for licensees with 6 or more years of experience.

Pursuant to Rule 69B-228.080, F.A.C., all CE courses must be submitted to and approved by the Department. In addition to Department-approved CE courses, insurers generally require agents, as a condition of appointment or continuation of appointment, to take training classes on the insurer's procedures and processing requirements. These training classes are not of general application and consumer benefit and are thus not eligible course topics for approved CE classes as per Department rule.

Citizens Property Insurance Corporation (Citizens) has created an "Agent Certification Program" (the Program), which has been approved by the Department as a CE course for 1 CE credit. The Program includes four modules – Agent/Agency Compliance; Personal Residential; Commercial Residential; and Commercial Nonresidential. The classroom version of the Program covers all four modules in a 3 ½ hour session, does not provide for tests, and costs \$30. The online version of the Program requires successful completion of a test at the end of each module for each line of business for which an agent seeks appointment or renewal of appointment and costs \$15. Citizens requires agents seeking a new appointment (effective February 15, 2008) or renewal of appointment (beginning in May 2008) either to attend the 3 ½ hour classroom Program or to successfully complete the test for each module for each line of business for which the agent seeks appointment or renewal of appointment. Agents are required to complete the Program every 2 years. Citizens states that the Program was created to improve upon the level of service offered to Citizens' customers.<sup>4</sup>

This bill prohibits any appointing entity, including all residual markets (i.e., Citizens), from requiring agents who are not employees or exclusive independent contractors of the appointing insurer to take any CE course that is not of the agent's choosing. The bill, however, does not bar an insurer from offering a CE course or from declining to appoint or continue the appointment of an agent who does not take a training class required by the insurer that deals solely with the insurer's internal procedures or subjects substantially unique to the appointing insurer.

The bill also authorizes examinations for CE correspondence courses to be given without a proctor provided that the student submits a signed, sworn affidavit that he/she did not receive any outside assistance while taking the examination. Students who are employees of an agency or corporate entity must also have their supervisor or manager/ owner of the agency or corporate entity sign the sworn affidavit. Students who are self-employed, sole proprietors, or partners, or if the examination is administered online must also have the affidavit signed by a disinterested third party. The affidavit must be received by the approved CE provider prior to reporting CE credits to the Department.

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<sup>4</sup> Telephone conversation with Christine Turner, Director of Communication & Legislative Affairs, Citizens Property Insurance Corporation.

Further, the responsibilities of the continuing education advisory board (the Board) are expanded. The Board, while currently not active, is comprised of 11 members appointed by the Chief Financial Officer for terms of 4 years. The Board is responsible for advising the Department in determining standards by which courses may be evaluated and categorized for CE purposes. The bill requires the Board also to advise the Department on issues related to appointments based upon appointees meeting CE requirements.

C. SECTION DIRECTORY:

Section 1. Amends 626.221, F.S., to add an exemption from the customer service licensing exam.

Section 2. Amends 626.2815, F.S., to prohibit Citizens and other state insurers from requiring agents to take specified CE courses as a condition of appointment or continued appointment.

Section 3. Amends 626.311, F.S., to create a new license for unaffiliated insurance consultants.

Section 4. Amends 626.381, F.S., to prohibit insurers from requiring agents to take specified CE courses as a condition of appointment or continued appointment.

Section 5. Provides an effective date of June 1, 2008.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The \$120 fee for licensure as an independent insurance consultant will have a positive fiscal impact on the Insurance Regulatory Trust Fund. It is unknown how many agents will apply for the license; however, the Specialty Agents Association estimates that only a small percentage of agents will likely qualify for this license.

2. Expenditures:

The Department of Financial Services estimates a non-recurring expense for OPS/Contracted Services of \$118,000 to program computers to accept the additional exemption from the customer representative examination created by the bill and to process requests for the new designation of unaffiliated insurance consultant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Agents requesting the designation of unaffiliated insurance consultant will be required to pay \$120 for each license for which they seek the designation.

D. FISCAL COMMENTS:

None.

### **III. COMMENTS**

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or take an 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:

The Florida Association of Insurance Agents (FAIA) has expressed concern that permitting an appointing entity to require agents (who are not employees or exclusive independent contractors of the appointing entity) to take specified CE courses, including those developed by the appointing entity, may lead to the CE market ultimately being monopolized by a small number of insurers, and agents being compelled to attend programs that are not solely about the appointing entity's procedures. Citizens has stated that its "Agent Certification Program" is designed to improve the level of service provided to Citizens' customers.

The provisions of the bill barring appointing insurers from requiring agents, other than their own employees or exclusive independent contractors, to take specified CE courses may create detection and enforcement challenges between the Department (which oversees the licensure of agents) and the Office of Insurance Regulation (which regulates insurers).

#### D. STATEMENT OF THE SPONSOR

None.

### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 5, 2007, the Government Efficiency & Accountability Council heard a proposed council substitute. HB 565, as filed, required a specified amount of contributions to the Florida Retirement System to be distributed to the Florida Hurricane Catastrophe Fund. This provision was removed from the proposed council substitute. The Government Efficiency & Accountability Council reported favorably on the proposed council substitute.