

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 565 Insurance
SPONSOR(S): Policy & Budget Council; and Nelson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	15 Y, 0 N, As CS	Reilly/Topp	Cooper/Overton
1) Committee on Insurance	11 Y, 0 N	Reilly/Topp	Overton
2) Jobs & Entrepreneurship Council	15 Y, 0 N, As CS	Reilly/Topp	Thorn
3) Policy & Budget Council	27 Y, 0 N	Martin	Hansen
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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 or Bachelors degree from an accredited college or university with at least 9 academic hours, or the equivalent, 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 authorizes agents to take independent study programs for continuing education credits when the final closed book examination is taken without a proctor provided that the student subsequently presents the education provider with a sworn affidavit that he/she did not receive any outside assistance while taking the examination.

The bill also creates a new license for "unaffiliated insurance consultants" and permits agents to self-appoint with the Department of Financial Services. These consultants are not affiliated with any insurer and practice as an independent insurance consultants providing objective advice to the buyers of insurance.

The Department of Financial Services estimates a non-recurring Insurance Regulatory Trust Fund expense for OPS/Contracted Services of \$98,000 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. This cost will be offset by an unknown amount due to the new \$60 license fee to be charged for "unaffiliated insurance consultants".

The bill takes effect upon becoming law. However, several sections take effect on January 1, 2009.

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.¹ 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.² 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.³ 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
- Self-appoints with the Department and pays the applicable fee for each license for which the agent self-appoints as an unaffiliated insurance agent.

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

² Section 626.015(4), F.S.

³ Section 626.112

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.

The bill authorizes examinations for continuing education (CE) independent study programs presented on paper or in printed material in which a final closed book examination is taken without a proctor provided that the student submits a signed, sworn affidavit to the education provider 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.

The bill also provides that an appointing entity, except one that appoints individuals who are employees or exclusive independent contractors of the appointing entity, may not require, directly or indirectly, as a condition of such appointment or the continuation of such appointment, the taking of an approved course or program by any appointee or potential appointee that is not of the appointee's choosing. Any entity created or existing pursuant to s. 627.351 may require employees to take training of any type relevant to their employment but may not require appointees who are not employees to take any approved course or program unless the course or program deals solely with the appointing entity's internal procedures or products or with subjects substantially unique to the appointing entity.

The bill also provides that an appointing entity may require an appointee to attend training and education programs of the appointing entity in order for the appointee to receive a new appointment or maintain an existing appointment. However, an appointing entity may not require, directly or indirectly, any appointee to attend any training programs that are wholly or partially approved for general continuing education credit. In addition, each appointing entity may appoint only those persons who have met the continuing education requirements of the license necessary for such appointment as provided in s. 626.2815. However, an appointing entity may not make or allow, directly or indirectly, the appointment of any appointee or potential appointee to be contingent, in whole or in part, on any appointee's attendance at any course that is approved, in whole or in part, for continuing education credit pursuant to s. 626.2815.

Lastly, the bill allows an agent to impose a service charge for processing, as a convenience and accommodation to the insured, a premium installment payment to an insurance company or premium finance company which the insured could have made directly. The agent may not collect more than one service charge on any one payment.

C. SECTION DIRECTORY:

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

Section 2: Amends s. 626.2815, F.S., relating to independent study courses for continuing education credits for agents.

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

Section 4: Amends s. 626.381, F.S., authorizing appointing entities to require appointees to attend certain training and education programs for certain purposes and limits an appointing entity's appointment authority to those persons who have met the requisite continuing education requirements. It also prohibits appointments to be contingent upon an appointee's attendance at certain courses

Section 5: Amends s. 627.901, F.S., authorizing an agent to impose a service charge for processing an insured's premium installment payment to an insurance company or premium finance company.

Section 6: Provides that the act takes effect upon becoming law, except that sections 1 and 3 take effect on January 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The \$60 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 \$98,000 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:

None.

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:

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 5, 2008, 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.

On March 20, 2008, the Committee on Insurance adopted one amendment which:

- Renames the bill as an act relating to insurance representatives.
- Amends educational requirements to be exempt from the customer service licensing examination.
- Requires insurance agents who, as part of an independent study program for continuing education credits, take a closed-book final examination without a proctor to submit to the education provider a signed affidavit that the student did not receive any outside assistance on the examination.
- Removes provision expanding the authority of the continuing education advisory board.
- Authorizes unaffiliated insurance consultants to self-appoint with the Department of Financial Services.
- Amends the effective date, and provides different effective dates for various sections of the bill.

On March 27, 2008, the Jobs & Entrepreneurship Council adopted two amendments, which removed language that prohibited insurers from requiring agents to take specified continuing education courses as a condition of appointment or continuing appointment of the agent.

On April 10, 2008, the Policy and Budget Council adopted three amendments:

- Amendment #1 expands the application of certain continuing education requirements; providing limited exceptions to compliance with continuing education requirements as a condition precedent to certain appointments.
- Amendment #2 authorizes appointing entities to require appointees to attend certain training and education programs for certain purposes and limits an appointing entity's appointment authority to those persons who have met the requisite continuing education requirements. It also prohibits appointments to be contingent upon an appointee's attendance at certain courses.
- Amendment #3 authorizes an agent to impose a service charge for processing an insured's premium installment payment to an insurance company or premium finance company.