

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 1210

INTRODUCER: Banking and Insurance Committee and Senator Bean

SUBJECT: Division of Insurance Agents and Agency Services

DATE: March 12, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1210 amends statutes relating to the regulation of insurance agents and agencies by the Department of Financial Services (DFS). This bill:

- Eliminates the insurance agency licensing requirement for agencies owned and operated by a single licensed agent under certain conditions.
- Allows third parties to sign agency applications.
- Specifies circumstances under which branch agencies do not have to be licensed.
- Repeals a provision allowing insurance agencies to obtain a registration in lieu of a license, converts all agency registrations to licenses, and eliminates the 3-year expiration period for agency licenses.
- Repeals current law governing branch agencies and defines agent in charge and specifies the responsibilities of the agent in charge.
- Provides for agency licenses to automatically expire if the agency does not designate a new agent in charge with the DFS within 90 days after the agent in charge on record has left the agency.
- Creates a new type of insurance agent, an unaffiliated insurance agent, and specifies the scope of the license.
- Requires the DFS to immediately suspend the license or appointment of licensees charged with crimes that would preclude them from applying for licensure from the DFS.
- Exempts members of the United States Armed Forces, their spouses, and veterans who have retired within 24 months from the application filing fee for specified licenses.

- Requires agents who recommend the surrender of an annuity or life insurance policy to provide financial information to the consumer.
- Amends eligibility requirements for mediators under alternative dispute resolution programs administered by the DFS.
- Requires the DFS to deny an application to be a mediator or neutral evaluator or revoke or suspend a mediator or neutral evaluator in certain circumstances.
- Authorizes the DFS to investigate improper conduct of mediators, neutral evaluators, and navigators.
- Allows the DFS to share investigative information with other regulatory bodies.
- Amends requirements for licensure as a nonresident surplus lines agent.
- Bars issuance of any new limited customer representative licenses after September 30, 2014.
- Authorizes additional methods for service of process in certain administrative actions.
- Deletes requirement that applicants who take a licensure examination in Spanish must pay all associated costs.

The DFS informs that the exemption from licensing application fees for members of the military will have minimal fiscal impact.

The bill is effective July 1, 2014, except as otherwise provided.

II. Present Situation:

The Department of Financial Services

The DFS licenses insurance agencies and agents. The DFS Division of Agent and Agency Services receives licensing applications, issues licenses, and investigates violations of the Insurance Code.¹ In order to transact insurance, a person must be licensed by the DFS and appointed by an insurer to transact insurance on its behalf.² If an agent fails to maintain an appointment during a four year period, the agent's license expires and the agent must qualify as a first time applicant before transacting insurance.³

Section 624.310, F.S., gives the DFS the authority to initiate administrative proceedings to seek cease and desist orders, to seek the removal of affiliated parties, to impose administrative fines, and to suspend or revoke licenses. Any service of documents authorized or required by s. 624.310, F.S., must be made by certified mail, personal delivery, or by service of process in accordance with ch. 48, F.S. Section 624.310, F.S., does not allow for service by electronic mail.

Insurance Agency Licensure and Registration

The DFS is responsible for licensing insurance agencies in accordance with s. 626.172, F.S. An application for licensure must be signed by the owner of the agency.⁴ Insurance agents who are

¹ The Division of Agent and Agency Services website is found at <http://www.myfloridacfo.com/Division/Agents/#.UxnmwPldUeG> (last accessed March 7, 2013).

² See ss. 626.015(3) and 626.112 F.S.

³ See s. 626.431, F.S.

⁴ See s. 626.172(2), F.S.

sole proprietors and do not employ other insurance agents must be licensed as both an insurance agent and an insurance agency.⁵

Each place of business where an agent transacts insurance must have an agency license.⁶ Section 626.747, F.S., requires a licensed insurance agent to be at each branch location where activities requiring licensure as an insurance agent occur. Such an agent is commonly referred to as the “agent in charge.”

Section 626.112(7), F.S., provides that agencies existing prior to January 1, 2003, are allowed to file an application for registration in lieu of applying for licensure. A benefit of registration over licensing is that registrations do not expire, whereas licenses expire every 3 years.⁷ DFS staff indicates that Florida is the only state that registers insurance agencies in lieu of licensing them and that many registered agencies are seeking licensure.⁸

Insurance Agents

A “general lines agent” is an agent who transacts property insurance, casualty insurance, surety insurance, certain types of health insurance, and marine insurance.⁹ A “customer representative” means an individual 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.¹⁰ A “limited customer representative” is a customer representative appointed by a general lines agent or agency to assist that agent or agency in transacting only the business of private passenger motor vehicle insurance from the office of that agent or agency.¹¹

Regulation of Navigators

In 2010, the federal Patient Protection and Affordable Care Act became law. The act created “navigators” to aid consumers in selecting a health plan. Part XIII of ch. 626, F.S., requires navigators to register with the DFS and creates a registration process for navigators.¹² Section 626.9957, F.S., provides disciplinary rules for navigators and grounds for the denial of registration.

Alternative Dispute Resolution Programs

The DFS administers alternative dispute programs for various types of insurance and has mediation programs for property insurance¹³ and automobile insurance¹⁴ claims. The DFS has a

⁵ See s. 626.112(7), F.S.

⁶ See s. 626.112(7), F.S.

⁷ See s. 626.382, F.S.

⁸ Interview with DFS staff, March 7, 2014.

⁹ See s. 626.015(5), F.S.

¹⁰ See s. 626.015(4), F.S.

¹¹ See S. 626.015(11), F.S.

¹² <http://www.myfloridacfo.com/Division/Agents/Industry/News/Navigators.htm#UxsW4vldUeE> (last accessed March 8, 2014).

¹³ See s. 627.7015, F.S.

¹⁴ See s. 626.745, F.S.

neutral evaluation program, similar to mediation, for sinkhole insurance claims.¹⁵ The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.¹⁶

To qualify as a mediator for the property or automobile mediation programs, a person must possess graduate level degrees in specified areas, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.¹⁷ In addition, an applicant must complete a training program approved by the DFS.¹⁸

To qualify as a neutral evaluator for sinkhole insurance claims, a neutral evaluator must be a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution approved by the DFS and who is determined by the DFS to be fair and impartial.¹⁹

According to an analysis provided by the DFS,²⁰ the number of reported mediations and neutral evaluations is:

	Fiscal Year 2010-2011	Fiscal Year 2011-2012	Fiscal Year 2012-2013
Mediations	3,489	3,323	3,966
Neutral Evaluations	2,245	2,681	1,867

The DFS does not have the explicit authority to investigate, remove, or discipline mediators and neutral evaluators.

III. Effect of Proposed Changes:

Section 1 of this bill changes the name of the Division of Insurance Agents and Agency Services within the DFS to the Division of Agent and Agency Services.

Section 2 of this bill authorizes the DFS to serve administrative complaints and other documents required to be served pursuant to s. 624.310, F.S., by electronic mail if service by mail cannot be obtained. This bill allows for service by hand delivery by DFS investigators. According to the DFS, the department will send electronic mail and will receive an electronic receipt from the person once the email is received. The DFS will receive a second receipt once the email is opened. In addition, the DFS will ask the recipient to respond and confirm receipt of the email. If the recipient does not confirm receipt, the DFS will serve the document by delivery or publication.²¹

¹⁵ See s. 627.7074, F.S.

¹⁶ See ss. 627.7015, 627.7074, and 627.745, F.S.

¹⁷ See ss. 627.7015, 627.745(3), F.S.

¹⁸ See ss. 627.7015, 627.745(3), F.S.

¹⁹ See s. 627.706, F.S.

²⁰ See Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014) (on file with the Committee on Banking and Insurance).

²¹ Interview with DFS staff, March 6, 2014.

Section 3 prohibits DFS and OIR investigators from removing original records from the offices of any person that is being examined or investigated without the advance, written consent of such person or pursuant to a court order.

Unaffiliated Agents (Sections 4, 5, 14)

According to the DFS, some insurance agents act as advisors to clients for a fee. These agents provide advice and recommendations regarding, among other things, insurance products but do not sell the products. This bill defines in statute a new type of insurance agent, an unaffiliated insurance agent, and specifies the scope of the license. This agent acts as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by a written contract signed by the parties. This bill defines this type of agent as a licensed insurance agent, except a limited lines agent, who is not appointed by or affiliated with any insurer, but is self-appointed. This bill prohibits an unaffiliated insurance agent from holding an appointment from an insurer, from transacting an insurance contract for an insurer, and from interfering with commissions from an appointed insurance agent. Unaffiliated insurance agents may continue to receive commissions on sales made before the date of appointment as an unaffiliated insurance agent as long as the agent discloses the receipt of commissions to the client when making recommendations or evaluating products of the entity from which commissions are received.

The unaffiliated agent is not appointed by an insurer to sell insurance products. This can lead to a situation where an agent's license expires because the agent is not appointed during a four year period.²² This bill allows an unaffiliated agent to appoint himself or herself and requires unaffiliated insurance agents to pay the same agent appointment fees required under current law for agents appointed by insurers.

Agent in Charge and Branch Agencies (Section 6, 22)

Effective January 1, 2015, this bill creates s. 626.0428(4), F.S., which defines an agent in charge as the licensed and appointed agent responsible for the supervision of all individuals within an insurance agency location. Each business location established by an agent or insurance agency must be in the active full-time charge of a licensed and appointed agent holding the required licenses for the lines of insurance transacted at the location. The agent in charge of an insurance agency may be the agent in charge of additional branch locations if: (1) insurance activities requiring licensure as an insurance agent do not occur at the locations when an agent is not physically present and (2) unlicensed employees at the locations do not engage in insurance activities that require licensure as an insurance agent or customer representative.

This bill requires each insurance agency and branch office to designate an agent in charge and to file the agent's name, license number, and physical address of the insurance agency location with the DFS at the DFS website. A change of the designated agent in charge must be reported to the DFS within 30 days, and becomes effective upon notification to the DFS.

²² Phone interview with DFS staff.

This bill provides that an insurance agency location is precluded from conducting the business of insurance unless an agent in charge is designated by and providing services to the agency at all times. When the agent in charge ends his or her affiliation with the agency, the agency must designate another agent in charge within 30 days. If the agency fails to make such designation within 90 days after the designated agent has ended his or her affiliation with the agency, the agency license automatically expires 91 days after the designated agent ended his or her affiliation with the agency.

This bill provides that an agent in charge of an insurance agency is accountable for the wrongful acts, misconduct or violations committed by the licensee or agent or by any person under her or his supervision acting on behalf of the agency. However, the agent in charge is not criminally liable for the misconduct unless she or he personally committed the act or knew or should have known of the acts and of the facts that constitute the violation.

This bill repeals s. 626.747, F.S., relating to branch agencies, effective January 1, 2015. The section is incorporated and expanded in the new s. 624.0428(4), F.S.

Customer Representatives and Limited Customer Representatives (Sections 7, 12, 21)

Section 7 provides that no new limited customer representative licenses may be issued after September 30, 2014. Section 21 of the bill amends s. 626.7355, F.S., to allow an applicant for a customer representative license to obtain a temporary license if the applicant is not disqualified by s. 626.207, F.S. Current law provides an applicant cannot obtain a temporary license if the applicant has been convicted of or entered a guilty or nolo contendere plea to a felony within the previous 5 years. Section 626.207, F.S., provides that persons convicted of felony crimes are disqualified from applying for licensure for periods ranging from seven years to a permanent bar. The length of the disqualification depends on the severity of the crime.

Insurance Agency Licensing and Registration (Sections 8, 10, 15, 16)

Section 8 of this bill eliminates the insurance agency licensing requirement for agencies that are owned and operated by a single licensed agent who conducts business in her/his own name and does not employ or use other insurance licensees. Section 8 is effective January 1, 2015.

The bill provides that a branch place of business established by a licensed agency is considered a branch agency.²³ A branch agency is not required to be licensed if it: (1) transacts business under the same name and federal tax identification number as the licensed agency and has designated with the DFS a licensed agent in charge of the branch location; and (2) has submitted to the DFS for inclusion in the licensing record of the licensed agency the address and telephone number of the branch location within 30 days after insurance transactions began at the branch location.

This bill repeals current law allowing certain insurance agencies to obtain a registration in lieu of a license and makes conforming changes due to this repeal. This bill converts all agency registrations to licenses effective October 1, 2015. Effective January 1, 2015, the bill also

²³ This bill further provides that a license issued to a business entity that offers motor vehicles for rent encompasses each employee or authorized representative at a designated branch.

eliminates the three-year expiration of an agency license. Thus, an agency license will continue in force until canceled, suspended, revoked, or until it is otherwise terminated or it expires by operation of law.

Section 10 allows an owner, partner, officer, director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management and control of the agency, to complete and sign an insurance agency application. This bill also allows a third party to complete, submit, and sign an agency license application on the agency's behalf. However, the agency is responsible for ensuring that the information provided by the third party is true and correct and is accountable for any misstatements or misrepresentations.

This bill also requires additional information relating to an agency or branch agency to be provided on the agency license application. Such additional information includes the name, address, and e-mail address of the agency's registered agent or person authorized to accept service on the agency's behalf, the physical address of the branch location, including its name, e-mail address, and telephone number, the date that the branch office began transacting insurance, and the fingerprints of each individual required to be listed in the agency application.

Licensure Filing Fees and Members of the Military (Section 9)

This bill exempts members of the United States Armed Forces, their spouses, and veterans who have retired within 24 months who apply for licensure as an insurance agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary from the application filing fee. This bill lists documents applicants can submit with the application to establish eligibility for the exemption.

Suspension of Licenses (Sections 11, 18)

This bill requires the DFS, upon receipt of information or an indictment, to immediately temporarily suspend a license or appointment when the licensee is charged with a felony enumerated in s. 626.207(3), F.S. Those felonies include all capital and first degree felonies, crimes involving fraud, embezzlement, or money laundering, or a felony directly related to the financial services business. The suspension shall continue if the licensee is found guilty of, or pleads guilty or nolo contendere to, the crime, regardless of whether a judgment or conviction is entered, during a pending appeal.

Licensure Examinations in Spanish (Section 13)

Current law requires that an applicant who wishes to take licensure examinations in Spanish must bear the cost of the development, preparation, administration, grading, and evaluation of the examination. This bill removes that requirement. The DFS said the changes will be implemented using the current budget.²⁴

²⁴ Department of Financial Services, *Bill Analysis and Fiscal Impact Statement*, (February 25, 2014) (on file with the Senate Committee on Banking and Insurance).

Mediators, Navigators, and Neutral Evaluators (Sections 17, 29, 30, 31, 32)

Section 17 gives the DFS the authority to investigate mediators, neutral evaluators, and navigators in the same manner it investigates agencies and agents. This bill allows the DFS to initiate investigations of neutral evaluators, navigators, and mediators on its own authority or after a complaint is received. The DFS may require a neutral evaluator, navigator, or mediator to open its books and records for inspection.

The bill gives the DFS the authority to discipline mediators and neutral evaluators. Section 29 of the bill requires the DFS to adopt rules for the denial of application, suspension, and other penalties for mediators. Section 31 requires the DFS to adopt rules for certifying, denying certification, and revoking the certification as a neutral evaluator.

Section 31 provides that the DFS must deny an application of a neutral evaluator or suspend or revoke the approval of a neutral evaluator if there is:

- A material misstatement, misrepresentation, or fraud in the attempt to obtain approval;
- A demonstrated lack of fitness and trustworthiness to act as a neutral evaluator; and
- Fraudulent or dishonest practices in the conduct of an evaluation or in the conduct of financial services business, or violations of statutes, DFS rules, or DFS orders.

The DFS has similar power to discipline insurance agents and other regulated persons or entities.

Section 32 provides that the DFS must deny an application as a mediator or suspend or revoke the certification of a mediator if there is:

- A material misstatement, misrepresentation, or fraud in the attempt to obtain approval or certification;
- A demonstrated lack of fitness and trustworthiness to act as a mediator;
- Fraudulent or dishonest practices in the conduct of mediation or financial services business; and
- A violation of statutes, DFS rules, DFS orders, or the Florida Rules for Certified and Court-Appointed Mediators.

The DFS has similar power to discipline insurance agents and other regulated persons or entities.

Section 32 replaces the DFS mediator education, experience, and training program requirements. The bill provides that an individual with an active certification as a Florida Circuit Court Mediator is qualified to be a mediator for the DFS. An individual not certified as a Florida Circuit Court Mediator can be a DFS mediator if the person is an approved DFS mediator on July 1, 2014, and has conducted at least one DFS mediation from July 1, 2010, through July 1, 2014. This provision essentially grandfathers in current and active DFS mediators so they can continue to be DFS mediators, even if they are not certified as a Florida Circuit Court Mediator.

In order to become certified as a Florida Circuit Court Mediator, one must fulfil education requirements set by the Florida Supreme Court, complete a mediation training program certified

by the Florida Supreme Court, and observe and conduct mediations under the supervision of a certified mediator.²⁵

Appointment of Agents by Insurers (Section 20)

When certain entities enter into an agency contract with an insurer, all members, corporate officers and stockholders who solicit, negotiate, or effect insurance contracts must qualify and be licensed individually as agents or customer representatives. Each property and casualty insurer entering into an agency contract is required to individually appoint each such agent, unless the insurer's aggregate net written premium in the agency is \$25,000 or less. The bill deletes the exception for insurers within no more than \$25,000 in net written premium within an agency, and requires insurers to appoint only those agents who solicit, negotiate, or effect insurance contracts for the insurer.

Licensure Examination to Solicit or Sell Variable Products (Section 23)

Current law prohibits individuals from soliciting or selling variable life insurance, variable annuity contracts, or any other indeterminate value or variable contract unless the person has successfully completed a DFS authorized and approved licensure examination relating to variable "annuity" contracts. This bill deletes language limiting the scope of the licensing examination to variable annuity contracts, and requires that the examination relate to variable contracts.

Nonresident Surplus Lines Agents (Sections 27, 33)

Surplus lines insurers are only permitted to write coverage that is not available in the private market. Under current law, applicants for licensure as nonresident surplus lines agents must satisfy the same licensing requirements as resident surplus lines agents. This bill amends licensing requirements for nonresident surplus lines agents to exempt these applicants from the experience or coursework and examination requirements.

Section 627.952, F.S., requires that persons who offer, solicit, sell, purchase, administer, or service insurance contracts, certificates, or agreements for any purchasing group or risk retention group to any Florida resident must be licensed and appointed as a general lines agent (either a resident or nonresident agent). To place business through Florida eligible surplus lines carriers, the agent must also be licensed and appointed as either a resident or nonresident surplus lines agent. Nonresident agents must be licensed and appointed as a surplus lines agent in their state of residence and file a fidelity bond payable to the State of Florida. The bill eliminates the fidelity bond requirement and requires that such persons be licensed and appointed as a surplus lines agent in their state of residence and be licensed and appointed as a nonresident surplus lines agent in Florida.

Information Required With the Surrender of Life Insurance or Annuity (Section 28)

This bill creates s. 627.4553, F.S., to require insurance agents, insurers, or persons performing insurance agent activities under an exemption from licensure, who recommend that a consumer

²⁵ See <http://www.flcourts.org/core/fileparse.php/283/urlt/HowToBecomeMediator.pdf> (last accessed February 7, 2014).

surrender an annuity or life insurance policy with a cash value, but who do not recommend that another such policy be purchased with the proceeds from the surrender, to provide the consumer with information relating to the product to be surrendered before execution of the surrender. The information must include that the amount of any surrender charge, tax consequences resulting from the transaction, and forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction. This bill requires the DFS to adopt rules and forms so the required information can be provided.

Other Provisions

Section 34 requires insurers that write bail bonds to submit a sample power of attorney to Office of Insurance Regulation for approval. Currently, these forms are submitted to and approved by the DFS.

Section 35 prohibits bail bond agents whose license has been suspended or revoked from engaging in any transaction requiring a license or appointment under ch. 648, F.S., until the license is reinstated or a new license is issued.

Sections 36 and 37 prohibits individuals seeking licensure from the DFS who have sealed or expunged criminal history records from denying or failing to acknowledge the arrests covered by the records.

Except as otherwise provided, the bill is effective July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DFS reports the changes to current systems required by this bill will be implemented using the current budget.²⁶ The DFS reports that its Division of Legal Services used process servers 121 times for Agent and Agency cases, at an average cost of \$97 per service. The DFS believes that service of process could have been achieved by email or by delivery by the department investigators. The DFS anticipates some cost savings from the email and hand delivery provisions in this bill.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.121, 624.310, 624.318, 624.501, 626.015, 626.0428, 626.112, 626.171, 626.172, 626.207, 626.241, 626.261, 626.311, 626.321, 626.382, 626.601, 626.611, 626.641, 626.733, 626.7355, 626.7845, 626.8411, 626.861, 626.862, 626.9272, 627.7015, 627.706, 627.7074, 627.745, 627.952, 648.43, 648.49, 943.0585, and 943.059.

This bill creates section 627.4553 of the Florida Statutes.

This bill repeals section 626.747 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 11, 2014:

The committee adopted two amendments to correct a drafting error relating to the effective date of one section of the bill and to add statutory citations.

B. Amendments:

None.

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

²⁶ Department of Financial Services, *Bill Analysis and Fiscal Impact Statement*, (February 25, 2014).

²⁷ Email from the DFS staff (on file with the Committee on Banking and Insurance).