

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 Appropriations Subcommittee on General Government

BILL: CS/SB 1222

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Division of Insurance Agent and Agency Services

DATE: April 1, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1222 revises requirements relating to various insurance agent licensing examinations and various insurance agent education requirements. The bill:

- Provides that licensed agents can charge and collect the “exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card” in addition to the premium charged by insurers;
- Requires an agent that recommends the surrender of a life insurance policy or annuity to provide written information relating to the possibility of tax consequences instead of providing the amount of tax consequences resulting from the transaction. Also requires the agent to maintain a copy of the written information provided and the date the information was provided to the owner;
- Removes a restriction that limits general lines agents to selling health insurance only for companies which also sell property, casualty, or surety insurance;
- Provides that the agent-in-charge of an insurance agency must be licensed to transact at least two of the lines of insurance being handled at an agency location instead of being licensed to handle all lines of insurance;
- Removes the requirement that persons seeking licensure as a customer representative pass a written examination;
- Changes the education requirements for persons seeking licensure as a customer representative to reflect new designations or name changes by educational institutions;

- Exempts applicants for licensure as general lines agents or all-lines adjusters from certain examination requirements if they have a degree in insurance or designations from various insurance industry organizations;
- Requires agents to maintain certain policy records for five years after policy expiration;
- Allows agents to deliver notices of insolvency by electronic mail with delivery receipt required; and
- Revises the requirements for prelicensure education courses for life insurance agents, health insurance agents, and other licensees by specifying hours of coursework required or designations accepted in lieu of coursework.

There is no fiscal impact to state funds.

The bill is effective July 1, 2015.

II. Present Situation:

In general, insurance agents transact insurance on behalf of an insurer or insurers. Insurance agents must be licensed by the Department of Financial Services (DFS or department) to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.

General Lines Agents and Health Insurance Agents

A general lines agent is authorized to transact, for commercial or noncommercial purposes, one or more of the following kinds of insurance: property insurance, casualty insurance, surety insurance, health insurance, or marine insurance.¹ In order to be licensed as a general lines agent, one must complete certain prerequisites, pass an examination, submit fingerprints for a background check, and complete an application. Prerequisites include completion of a classroom course on insurance,² completion of at least one year in responsible insurance duties as a substantially full-time bona fide employee in all lines of property and casualty insurance, completion of at least one year of responsible insurance duties as a customer representative, limited customer representative, or service representative and completion of classroom courses approved by the DFS, or completion 15 semester hours of college credit in property and casualty insurance.³

A general lines agent can only transact health insurance for an insurer if the agent also represents that insurer for property or casualty or surety insurance.⁴ A health agent is authorized to transact health insurance.⁵ In order to receive either license, applicants must complete required training and pass a state examination. A general lines agent may complete a 200 hour course which includes training on health insurance while a health agent may complete a 40 hour course on

¹ See s. 626.015(5), F.S.

² The course is a 200 hour course. See <http://www.myfloridacfo.com/division/agents/Licensure/General/docs/2-20.htm#.VPx0TfnF8eF> (last accessed on March 8, 2015).

³ See s. 626.732, F.S.

⁴ See s. 626.015(5)(d), F.S.

⁵ See s. 626.015(6), F.S.

health insurance.⁶ According to the DFS, persons preparing to take the examination for licensure as a general lines agent or as a health agent study health insurance as part of their required training and the same examination questions on health insurance are used in each examination.⁷ Section 626.8311, F.S., provides education and experience requirements for obtaining a health insurance license. The requirements include:

- Successful completion of 40 hours of classroom courses in insurance, three hours of which must be on the subject matter of ethics, satisfactory to the DFS. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act as it relates to the provision of health insurance by employers to their employees; or
- Successful completion of a correspondence course in insurance, three hours of which shall be on the subject matter of ethics, satisfactory to the DFS. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act as it relates to the provision of health insurance by employers to their employees.

Employment by the DFS or the Office of Insurance Regulation (OIR) in health regulatory matters may count as required experience if the application for the examination is made within 90 days after leaving employment and if the employee was not terminated for cause. Licensure in another state may also fulfil experience requirements.

Agents in Charge of an Insurance Agency

Section 626.0428, F.S., requires that an agent who can transact all lines of insurance transacted at an insurance agency be in charge of an insurance agency. The DFS suggests that it is not necessary for the agent-in-charge to be licensed to sell all types of insurance that might be transacted at a particular agency.⁸

Customer Representatives

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.⁹ A customer representative license is more limited than a general lines agent license. For example, a customer representative is a salaried employee of an agent or agency and cannot earn commissions. The customer representative license does not cover life insurance.¹⁰

⁶ <http://www.myfloridacfo.com/division/agents/Licensure/General/docs/2-20.htm#.VPxtovnf8eE> (explaining the training and examination requirements for a general lines agent)(last accessed March 8, 2015); <http://www.myfloridacfo.com/division/agents/Licensure/General/docs/2-40.htm#.VPxt7PnF8eE> (explaining the training and examination requirements for a health agent)(last accessed March 8, 2015).

⁷ Department of Financial Services, HB 1133 Bill Analysis (March 6, 2015)(on file with the Senate Committee on Banking and Insurance).

⁸ *Id.*

⁹ *See* s. 626.015(4), F.S.

¹⁰ *See* s. 626.7354, F.S.

To obtain a license as a customer representative, an applicant must, within the two years next preceding the date the application for license was filed, complete a course in insurance, three hours of which shall be on the subject matter of ethics or has had at least six months' experience in responsible insurance duties as a substantially full-time employee.¹¹ The insurance course must include instruction on the subject of unauthorized entities engaging in the business of insurance.¹² An applicant can also obtain a customer representative license by passing a licensure examination but the DFS reports that very few applicants obtain a license via examination.¹³

Licensure Examinations

Section 626.221(2), F.S., provides exemptions from licensure examination requirements for some applicants for various insurance licenses. Section 626.221(2)(g), F.S., exempts an applicant from the examination requirement for a life or health agent if the applicant has received the designation "chartered life underwriter" from the American College of Life Underwriters and has been engaged in the insurance business within the past four years, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code.

Applicants for general lines agent licenses, all-lines adjuster licenses, and personal lines agent licenses must pass a state examination even if they have a college degree in insurance. The DFS reports that, unlike Florida, other states grant licenses to applicants with college degrees in insurance or significant college coursework in insurance.¹⁴

Record Retention

Section 626.748, F.S., requires an agent to maintain records of policies transacted by him or her so that the policyholders or the DFS can obtain all necessary information. The current law does not provide for the destruction of records.

Life Insurance Agents

Section 626.7851, F.S., sets forth education or experience requirements for becoming a life insurance agent. The requirements include:

- Successful completion of 40 hours of classroom courses in insurance, three hours of which shall be on the subject matter of ethics or other authorized course of study approved by the DFS. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act as it relates to the provision of life insurance by employers to their employees;
- Successful completion of a correspondence course in insurance, three hours of which shall be on the subject matter of ethics, satisfactory to the DFS. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include

¹¹ See s. 626.7351, F.S.

¹² *Id.*

¹³ See Department of Financial Services, HB 1133 Bill Analysis (March 6, 2015)(on file with the Senate Committee on Banking and Insurance).

¹⁴ See Department of Financial Services, HB 1133 Bill Analysis (March 6, 2015)(on file with the Senate Committee on Banking and Insurance).

the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act as it relates to the provision of life insurance by employers to their employees.

Employment by the DFS or the OIR in life and health regulatory matters can count as required experience if the application for the examination is made within 90 days after leaving employment and if the employee was not terminated for cause. Licensure in another state may also fulfil experience requirements.

Credit Card Transactions

Section 501.0117, F.S., prohibits a seller from imposing a surcharge on the buyer for electing to use a credit card in lieu of payment by cash or check. Violation of s. 501.0117, F.S., is a second degree misdemeanor.

Section 626.9541(1)(o)2., F.S., provides, in part:

This provision shall not be deemed to prohibit... the charging and collection, by licensed agents, of the exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card, as authorized by subparagraph (q)3., in addition to the premium required by the insurer.

According to the DFS, there is a conflict between the two statutes. Section 626.9541(1)(o)2., F.S., allows an insurer that accepts payment by credit card to charge customers the exact amount of a fee charged by a credit card facility in connection with the use of the card while s. 501.0117, F.S., prohibits such charges.¹⁵

Surrender of an Annuity or Life Insurance Policy

Section 627.4553, F.S., requires an insurance agent, insurer, or person performing insurance agent activities under an exemption from licensure (who recommends a consumer surrender an annuity or life insurance policy having a cash value) to provide a consumer with information relating to the product being surrendered (before execution of the surrender) if no recommendation to purchase another such policy with the proceeds is made. The information must include 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.

III. Effect of Proposed Changes:

General Lines Agents – s. 626.015, F.S., and s. 626.311, F.S.

Sections 1 and 6 allow a general lines agent to transact health insurance. The bill removes the restriction that limits a general lines agent to selling health insurance only for companies which

¹⁵ See Department of Financial Services, HB 1133 Bill Analysis (March 6, 2015)(on file with the Senate Committee on Banking and Insurance).

also sell property, casualty, or surety insurance. According to the DFS, this change will reduce redundant training because general lines agents and health agents receive the same training and testing on health insurance.¹⁶

Section 7 amends s. 626.732, F.S., relating to the prerequisites to obtaining a general lines agent license. The bill places the 200 hour course requirement in statute and removes obsolete references to correspondence courses. It makes technical changes to clarify the method that customer representatives, services representatives, and personal lines agents may upgrade their licenses to a general lines agent license.

Agents in Charge of an Insurance Agency – s. 626.0428, F.S.

Section 2 provides that the agent-in-charge of an insurance agency must be licensed to transact at least two of the lines of insurance being handled at an agency location instead of being licensed to handle all lines of insurance. If only one line of insurance is sold at an agency, the agent-in-charge must be licensed for that line of insurance.

Customer Representatives – s. 626.221, F.S., and s. 626.7351, F.S.

Section 3 removes the requirement that persons seeking licensure as a customer representative pass a written examination. According to the DFS, customer representatives are unique to Florida and most applicants for the license obtain it by completing education requirements and exempting from the examination.¹⁷

Section 8 changes the education requirements for customer representatives. Instead of completing courses approved by the DFS, the applicant can obtain the license by earning specific designations or completing college coursework. The time frame within which the applicant must achieve the designation or complete college coursework is increased from two years to four years after the application is submitted to the DFS. The designations include:

- Accredited Advisor in Insurance, Associate in General Insurance, or Accredited Customer Service Representative from the Insurance Institute of America;
- Certified Insurance Counselor from the Society of Certified Insurance Service Counselors;
- Certified Professional Service Representative from the National Foundation for CPSRs;
- Certified Insurance Service Representative from the Society of Certified Insurance Service Representatives;
- Certified Insurance Representative from All-Lines Training;
- Professional Customer Service Representative from the Professional Career Institute;
- Registered Customer Service Representative from a regionally accredited postsecondary institution in the state whose curriculum is approved by the DFS and includes comprehensive analysis of basic property and casualty lines of insurance and testing which demonstrates mastery of the subject; or

¹⁶ Department of Financial Services, HB 1133 Bill Analysis (March 6, 2015)(on file with the Senate Committee on Banking and Insurance).

¹⁷ *Id.*

- A degree from an accredited institution of higher learning approved by the DFS when the degree includes a minimum of nine credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance.

The bill requires the DFS to adopt rules establishing standards for the approval of curriculum.

Licensure Examinations – s. 626.221, F.S., and s. 626.241, F.S.

Section 3 revises certain exemptions from the licensure examination. The bill:

- Revises the existing exemption from examination for a life or health agent. The applicant no longer would be required to have been engaged in the insurance business within the past four years. Current law is clarified by specifying that the exemption is available if the applicant has received the designation “chartered life underwriter” from the American College of Financial Services.
- Applies to an applicant for a personal lines agent license or all-lines agent license, the existing exemption from licensure examination for an applicant for a general lines agent who has received the designation “chartered property and casualty underwriter from the American Institute for Chartered Property Casualty Underwriters. The exemption no longer requires the applicant to have been engaged in the insurance business within the past four years.
- Exempts an applicant from the examination requirement as general lines agent or an all-lines adjuster if the applicant has a received a degree in insurance¹⁸ from an accredited institution of higher learning approved by the DFS, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code;
- Exempts an applicant from the examination requirement as personal lines agent if the applicant has a received a degree from an accredited institution of higher learning approved by the DFS and has a minimum of nine credit hours of instruction in insurance, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code;
- Exempts an applicant from the examination requirement as all-lines adjuster if the applicant has a designation of Associate in Claims from the Insurance Institute of America or a Certified Claims Adjuster from AE21 Incorporated;
- Exempts an applicant from the examination requirement as a life agent or as a health agent if the applicant has received a degree of higher learning approved by the DFS and has a minimum of nine credit hours of instruction in life or health insurance products; and
- Exempts an applicant from the examination requirement if the applicant qualifies for a license transfer from another state.

The section also makes conforming changes to reflect that applicants for licensure as a customer representative will no longer be required to take a licensure examination;

Section 4 provides that the life insurance examination covers annuities and variable contracts. The examination covers the subject but the statute does not reflect current practice.

¹⁸ The bill requires that the degree indicate a minimum of 18 credit hours of instruction in insurance including specific instruction in property, casualty, health, and commercial insurance.

Life Insurance Agents – s. 626.7851, F.S.

Section 10 revises the requirement placed on life agent applicants, other than chartered life underwriters, to demonstrate sufficient knowledge, experience, or education to obtain a license. The bill revises the existing ways to satisfy this requirement and adds a fifth option.

Under current law, 40 hours of coursework in insurance is one option. The bill specifies that the 40 hours must consist of instruction in life insurance, annuities, and variable contracts, including three hours on ethics. Current law requiring instruction on unauthorized entities engaging in the business of insurance is maintained. Currently, the instruction only is required in statute to cover insurance generally, though the DFS has authority to determine the types of coursework that satisfy the requirement. The coursework must be approved by the DFS. The bill removes references to correspondence courses.

Alternatively, the bill provides that an applicant can complete at least 60 hours of coursework approved by the DFS in multiple areas of insurance, including life insurance, annuities, and variable contracts. The coursework must include at least three hours instruction in ethics and instruction on the subject of unauthorized entities engaging in the practice of insurance. The bill provides that a person who has earned or maintained an active designation as a Chartered Financial Consultant from the American College of Financial Services or a Fellow, Life Management Institute from the Life Management Institute has the experience requirements to become a life insurance agent.

An applicant that held an active license in life insurance may continue to meet this requirement, as under current law. However, under the bill, having held a license in life and health from another state does not qualify.

The bill revises the fifth option by stating that an employee of the DFS or the OIR in life insurance matters who applies for the examination within four years, instead of 90 days, satisfies the education/experience requirement to take the examination.

Health Insurance Agents – s. 626.8311, F.S.

Section 11 revises the requirement placed on health agent applicants, other than chartered life underwriters, to demonstrate sufficient knowledge, experience, or education to obtain a license. The bill revises the existing ways to satisfy this requirement and adds a fifth option.

Under current law, 40 hours of coursework in insurance is one option. The bill specifies that the 40 hours of pre-licensure education for a health agent license applicant must consist of instruction in health insurance approved by the DFS. The bill removes references to correspondence courses. Currently, the instruction only is required in statute to cover insurance generally, though the DFS has authority to determine the types of coursework that satisfy the requirement.

The bill provides that an applicant can complete at least 60 hours of coursework approved by the DFS in multiple areas of insurance, including health insurance. The coursework must include at

least three hours instruction in ethics and instruction on the subject of unauthorized entities engaging in the practice of insurance.

The bill provides that a person who has earned or maintained an active designation as a Registered Health Underwriter, Chartered Healthcare Consultant, or a Registered Employee Benefits Consultant from the American College of Financial Services, a Certified Employee Benefit Specialist from the Wharton School of the University of Pennsylvania, or a Health Insurance Associate from America's Health Insurance Plans has the experience requirements to become a life insurance agent.

An applicant that held an active license in health insurance may continue to meet this requirement, as under current law. However, under the bill, having held a license in life and health from another state does not qualify.

The bill provides that an employee of the DFS or the OIR in health insurance matters who applies for the examination within four years, instead of 90 days, satisfies the education/experience requirement to take the examination.

Credit Card Transactions – s. 626.9541(1)(o)2., F.S.

Section 12 provides that notwithstanding any other provision of law, licensed agents can charge and collect the “exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card” in addition to the premium charged by insurers.

Surrender of an Annuity or Life Insurance Policy – s. 627.4553, F.S.

Section 13 amends s. 627.4553, F.S., relating to the surrender of an annuity or life insurance policy. The bill requires an agent to provide written information relating to the possibility of tax consequences instead of providing the amount of tax consequences resulting from the transaction. The bill requires the agent to maintain a copy of the written information provided and the date the information was provided to the owner.

Other Provisions of the Bill

Section 5 amends s. 626.2817, F.S., to provide that prelicensure course providers may not grant credit to students unless the student attends at least 75 percent of the required course hours. Currently, there is no standard in law for course attendance. The section also removes references to “monitor groups” because they have not been in existence for some time. The groups acted as monitors when the licensure examinations were on paper but no longer exist now that the DFS administers examinations by computer.

Section 9 amends s. 626.748, F.S., to require an agent to maintain records of insurance transactions for at least five years after the policy expires. Such records include daily reports, applications, change endorsements, and documents signed or initialed by the insured.

Section 14 amends s. 631.341, F.S., to provide that agents may give notices of insolvency to insureds by electronic mail with delivery receipt required. Current law allows notice by registered or certified mail.

Section 15 of this bill provides an effective date of July 1, 2015.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.015, 626.0428, 626.221, 626.241, 626.2817, 626.311, 626.732, 626.7351, 626.748, 626.7851, 626.8311, 626.9541, 627.4553, and 631.341.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 17, 2015:

- Removes provisions from the bill relating to regulation of instruction schools for bail bond agents.
- Removes provisions from the bill relating to prelicensure requirements for all-lines adjusters.
- Exempts an applicant from the examination requirement as a life agent or as a health agent is the applicant has received a degree of higher learning approved by the DFS and has a minimum of nine credit hours of instruction in life or health insurance products.
- Adds experience requirements to allow applicants to qualify to take the examination as a life and health agent.

- B. **Amendments:**

None.