

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 725 Insurance Agents and Adjusters

SPONSOR(S): Economic Affairs Committee, Government Operations Appropriations Subcommittee, Insurance & Banking Subcommittee and Hager

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 938

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N, As CS	Keith	Topp
3) Economic Affairs Committee	17 Y, 0 N, As CS	Callaway	Tinker

SUMMARY ANALYSIS

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. Insurance adjusters include public adjusters which represent policyholders in insurance claims, independent adjusters which represent insurers in insurance claims but are not employed by the insurer, and company employee adjusters which represent insurers in insurance claims and work in-house for the insurer. Like insurance agents, insurance adjusters must be licensed by DFS and appointed. Currently, the DFS licenses and regulates approximately 540,000 individuals as insurance agents or adjusters, of which 80,000 are adjusters and 54,000 are insurance agencies. These individuals hold an estimated 726,000 licenses.

The bill makes numerous changes to the agent and adjuster licensure laws. Major changes made by the bill include consolidation of current law relating to examination and continuing education of all licensees of DFS and merging various types of licenses for agents and adjusters issued by DFS into larger license classes, reducing the number of types of licenses that can be issued by DFS. Other provisions make current law relating to licensure of insurance agents also apply to insurance adjusters, codifying certain practices of DFS. The bill also repeals or corrects outdated language in statute.

The bill has an insignificant fiscal impact. The department indicates that combining the credit lines of insurance and mortgage guaranty insurance licenses will result in a loss annually of \$14,340 in license and appointment fee revenues that are deposited into the Insurance Regulatory Trust Fund. A \$50,000 bond posted with DFS by surplus lines insurance agents is also repealed by the bill.

Additionally, the provisions of the bill associated with the repeal of section 626.928, F.S., which currently requires the \$50,000 surety bond for surplus lines agent applicants prior to becoming licensed will allow for the reduction of 1.00 FTE position and a cost savings of \$35,567 to the Insurance Regulatory Trust Fund.

The bill is effective October 1, 2012, unless otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on Licensure of Insurance Agents and Adjusters in Florida

Florida law recognizes several types of insurance representatives, including agents, customer representatives, service representatives, and adjusters, among others.

In general, insurance agents transact insurance on behalf of an insurer or insurers. 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.¹ 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. License requirements for insurance agents vary by line, or type of insurance, and based upon resident or nonresident license type.

Limited lines insurance agents are individuals, or in some cases entities, licensed as insurance agents but limited to selling one or more of the following forms of insurance (each requiring a separate license): motor vehicle physical damage and mechanical breakdown insurance; industrial fire or burglary; travel insurance; motor vehicle rental insurance; credit life or disability insurance; credit insurance; credit property insurance; crop hail and multiple-peril crop insurance; in-transit and storage personal property insurance; communications equipment property insurance, communications equipment inland marine insurance, or communication equipment service warranty agreement sales.²

Adjusters include public adjusters, independent adjusters, or company employee adjusters.³ Like insurance agents, insurance adjusters must be licensed by DFS and appointed.⁴ Generally, a public adjuster is any person, other than a licensed attorney, who prepares, completes, or files an insurance claim for a policyholder or who negotiates or settles an insurance claim on behalf of an insured.⁵ An independent adjuster is a 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 policy.⁶ A company adjuster is a 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 policy.⁷

Licensing for agents and adjusters are also broken down into resident or nonresident licenses. Applicants for a resident agent or adjuster license must be Florida residents. Applicants for a nonresident agent or adjuster license must be licensed in good standing in their home state.

Although licensing requirements for insurance agents and insurance adjusters vary by the type of license and particular line(s) of insurance transacted, general requirements for 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.⁸ Once licensed, continuing education requirements are required for agents and adjusters to keep their license.⁹

¹ s. 626.112, F.S.

² s. 626.321, F.S.

³ s. 626.015(1), F.S.

⁴ s. 626.112(3), F.S.

⁵ s. 626.854, F.S.

⁶ s. 626.855, F.S.

⁷ s. 626.856, F.S.

⁸ s. 626.171, F.S.

⁹ s. 626.2815, F.S. (for insurance agents), s. 626.869, F.S. (for insurance adjusters).

A limited lines insurance agent license generally has fewer requirements for licensing than other insurance agents. These licensees must, however, file an application with DFS, be fingerprinted¹⁰ and be appointed by an insurance company.

Currently, the DFS licenses and regulates approximately 540,000 individuals as insurance agents or adjusters, of which 80,000 are adjusters and 54,000 are insurance agencies. These individuals hold an estimated 726,000 licenses.¹¹

Effect of Proposed Changes

The bill makes numerous changes to the agent and adjuster licensure laws. Major changes made by the bill include consolidation of current law relating to examination and continuing education of all licensees of DFS and merging various types of licenses for agents and adjusters issued by DFS into larger license classes, reducing the number of types of licenses that can be issued by DFS. Other provisions make current law relating to licensure of insurance agents also apply to insurance adjusters, codifying certain practices of DFS. The bill also repeals or corrects outdated language in statute.

Changes Relating to Licensure of Adjusters

Resident Independent and Company Employee Adjuster Licenses

Currently, DFS issues 12 different licenses for resident company employee and resident independent adjusters. Resident company employee adjusters live in Florida and are employed in-house by an insurance company licensed in Florida. Resident independent adjusters live in Florida and are self-employed or employed by an adjusting firm. In total, over 30,000 adjusters are currently licensed under the 12 different resident licenses. The license types and number of licensees are:

1. Independent All-Lines Adjuster (13,804 licensees),
2. Company Employee All-Lines Adjuster (14,787 licensees),
3. Independent Workers' Compensation Adjuster (731 licensees),
4. Company Employee Workers' Compensation Adjuster (342 licensees),
5. Independent Property and Casualty Adjuster (386 licensees),
6. Company Employee Property and Casualty Adjuster (288 licensees),
7. Independent Motor Vehicle Physical Damage and Mechanical Breakdown Adjuster (34 licensees),
8. Company Employee Motor Vehicle Physical Damage and Mechanical Breakdown Adjuster (121 licensees),
9. Independent Health Adjuster (14 licensees),
10. Company Employee Health Adjuster (11 licensees),
11. Company Employee Casualty Adjuster (1 licensee), and
12. Company Employee Motor Vehicle Physical Damage and Mechanical Breakdown and Fire and Allied Lines including Marine Adjuster (10 licensees).¹²

The bill consolidates all 12 licenses into one license, an all-lines adjuster license. Resident adjusters holding an adjuster license to adjust motor vehicle physical damage and mechanical breakdown, workers' compensation, health or property and casualty insurance claims¹³ as of October 1, 2012 can remain licensed and the license can be renewed, but no new licenses to adjust only these types of claims can be issued after October 1, 2012.¹⁴

¹⁰ Licensees for a limited license as a communications equipment insurance agent do not have to be fingerprinted.

¹¹ Information obtained from DFS on 12/12/11, on file with the Insurance & Banking Subcommittee.

¹² Information obtained from DFS on 12/2/11, on file with the Insurance & Banking Subcommittee.

¹³ Licenses numbered 3-10 above.

¹⁴ No new licenses for company employee motor vehicle physical damage and mechanical breakdown and fire and allied lines including marine insurance adjuster or company employee casualty insurance adjuster (licenses numbered 11 and 12 above) have been issued since October 1, 1990 pursuant to s. 626.869(2), F.S.

The bill makes numerous conforming changes to reflect the licensure consolidation and renaming. The license consolidation does not make any changes to the qualifications for licensure as a resident adjuster under current law.

Nonresident Independent and Company Employee Adjuster Licenses

DFS issues another 12 nonresident company employee and nonresident independent adjuster licenses. Nonresident company employee adjusters do not live in Florida, hold an adjuster license in another state (the home state), and are employed in-house by an insurance company licensed in Florida. Nonresident independent adjusters do not live in Florida, hold an adjuster license in another state, and are self-employed or employed by an adjusting firm.¹⁵ In total, over 46,000 adjusters are licensed under the 12 different nonresident licenses. The nonresident license types and number of licensees are:

1. Nonresident Company Employee All-Lines Adjuster (13,639 licensees),
2. Nonresident Independent All-Lines Adjuster (6,629 licensees),
3. Nonresident Independent Workers' Compensation Adjuster (250 licensees),
4. Nonresident Company Employee Workers' Compensation Adjuster (502 licensees),
5. Nonresident Independent Property and Casualty Adjuster (7,424 licensees),
6. Nonresident Company Employee Property and Casualty Adjuster (16,360 licensees),
7. Nonresident Independent Motor Vehicle Physical Damage and Mechanical Breakdown Adjuster (44 licensees),
8. Nonresident Company Employee Motor Vehicle Physical Damage and Mechanical Breakdown Adjuster (1,242 licensees),
9. Nonresident Independent Health Adjuster (11 licensees),
10. Nonresident Company Employee Health Adjuster (76 licensees),
11. Nonresident Company Employee Casualty Adjuster (1 licensee), and
12. Nonresident Company Employee Casualty and Fire and Allied Lines including Marine Adjuster (2 licensees).¹⁶

The bill consolidates all 12 licenses into one license, a nonresident all-lines adjuster license. Nonresident adjusters holding an adjuster license to adjust motor vehicle physical damage and mechanical breakdown, workers' compensation, health or property and casualty insurance claims¹⁷ as of October 1, 2012 can remain licensed and the license can be renewed, but no new licenses to adjust only these types of claims can be issued after October 1, 2012.¹⁸

The bill makes numerous conforming changes to reflect the licensure consolidation and renaming. License qualifications provided by the bill for the new nonresident all-lines license are not substantially different than the qualifications in current law for nonresident company employee adjusters.¹⁹ For the new nonresident all-lines license, the bill makes two changes to current law providing license qualifications for nonresident independent adjusters.

First, currently, in order to be licensed as a nonresident independent adjuster, an applicant for licensure must submit a certificate or letter of authorization to DFS indicating the applicant is a licensed adjuster in the applicant's home state. The bill waives this requirement for the new nonresident all-lines adjuster license if the applicant's licensing status can be verified through a database maintained by the National Association of Insurance Commissioners. This same requirement is waived for applicants that are not

¹⁵ Under s. 626.8584, F.S., a nonresident independent adjuster must pass the Florida adjuster examination if the adjuster's home state does not license independent adjusters.

¹⁶ Information obtained from DFS on 12/2/11 on file with the Insurance & Banking Subcommittee staff.

¹⁷ Licenses numbered 3-10 above.

¹⁸ No new licenses for nonresident company employee casualty adjuster or nonresident company employee casualty and fire and allied lines including marine adjuster (licenses numbered 11 and 12 above) have been issued since October 1, 1990 pursuant to s. 626.869(2), F.S.

¹⁹ Information received from DFS.

licensed as an adjuster in the applicant's home state, but are a licensed adjuster in another state within the three years prior to the application for a Florida license.²⁰

Second, under current law, each licensed nonresident independent adjuster must submit an affidavit by January 1st certifying the adjuster is familiar with the Florida insurance laws and rules. For the new nonresident all-lines adjuster license, the bill removes the requirement that the certification be submitted annually by January 1st. The affidavit is still required but no time period for submission is prescribed.

Temporary Independent and Company Employee Adjuster Licenses

DFS also issues temporary adjuster licenses for independent and company employee adjuster and currently issues ten different temporary licenses. In total, 73 adjusters are licensed as temporary adjusters. The types of temporary licenses and number of licensees are:

1. Temporary Independent All-Lines Adjuster (14 licensees),
2. Temporary Company Employee All-Lines Adjuster (50 licensees),
3. Temporary Independent Workers' Compensation Adjuster (5 licensees),
4. Temporary Company Employee Workers' Compensation Adjuster (1 licensee),
5. Temporary Independent Property & Casualty Adjuster (1 licensee),
6. Temporary Company Employee Property & Casualty Adjuster (2 licensees),
7. Temporary Independent Motor Vehicle Physical Damage & Mechanical Breakdown Adjuster, (0 licensees)
8. Temporary Company Employee Motor Vehicle Physical Damage & Mechanical Breakdown Adjuster (0 licensees),
9. Temporary Independent Health Adjuster (0 licensees),
10. Temporary Company Employee Health Adjuster (0 licensees).²¹

The bill consolidates all ten licenses into one license, a temporary all-lines license. Adjusters holding a temporary adjuster license to adjust motor vehicle physical damage and mechanical breakdown, workers' compensation, health or property and casualty insurance claims²² as of October 1, 2012 can remain licensed and the license can be renewed, but no new licenses to adjust only these types of claims can be issued after October 1, 2012.

The bill makes numerous conforming changes to reflect the licensure consolidation and renaming.

The bill only makes one change to current law relating to the qualifications for a temporary adjuster license. Current law requires an applicant for a temporary adjuster license to provide DFS a certificate of employment and a report from the applicant's employer relating to the applicant's integrity and moral character. This requirement is removed by the bill. Requirements remaining in current law for a temporary adjuster license include: the applicant must be an employee of an adjuster, insurer, or adjusting firm that is licensed in Florida; the applicant must be 18 years old; the applicant must reside in Florida; and the applicant must be trustworthy with a good business reputation.

Public Adjuster Licenses

DFS also licenses public adjusters. Public adjusters represent policyholders in insurance claims. Under current law, public adjusters have a different regulatory scheme than company employee or independent adjusters. Public adjusters have ten different permanent licenses.²³ These licenses are:

1. Resident Public All-Lines Adjuster,
2. Nonresident Public All-Lines Adjuster,
3. Resident Public Workers' Compensation Adjuster,
4. Nonresident Public Workers' Compensation Adjuster,
5. Resident Public Property and Casualty Adjuster,

²⁰ Because the nonresident independent adjuster license is renamed the nonresident all-lines adjuster license, these changes apply to the nonresident all-lines adjuster license, whereas, current law only applies to the nonresident independent adjuster license.

²¹ Information obtained from DFS on 12/2/11 on file with the Insurance & Banking Subcommittee staff.

²² Licenses numbered 3-10 above.

²³ Public adjusters cannot be licensed as temporary adjusters.

6. Nonresident Public Property and Casualty Adjuster,
7. Resident Public Motor Vehicle Physical Damage and Mechanical Breakdown Adjuster,
8. Nonresident Public Motor Vehicle Physical Damage and Mechanical Breakdown Adjuster,
9. Resident Public Health Adjuster, and
10. Nonresident Public Health Adjuster

DFS also licenses public adjuster apprentices in accordance with s. 626.8651, F.S.

A new qualification for licensure as a public adjuster is added by the bill. In order to be licensed as a public adjuster, an applicant must have been licensed as a public adjuster apprentice and compliant with the apprentice licensing requirements during the apprenticeship. This change is consistent with current law (s. 626.8651(9), F.S.) which allows a public adjuster apprentice to apply for a license as a public adjuster after completing the apprentice requirements.

Changes Relating to Appointment of Adjusters

All adjusters must be appointed after they are licensed. Adjusters are either appointed by an insurer or an employer. Appointment gives a licensed adjuster authority to adjust insurance claims on behalf of the appointing insurer or employer.

Under current law, a resident, nonresident, or temporary adjuster is licensed and appointed as a company employee or independent adjuster. However, under the bill, a resident, nonresident, or temporary adjuster is licensed as the appropriate all-lines adjuster and is appointed as an independent or company employee adjuster, depending on the adjuster's employer. The bill makes numerous conforming changes to current law reflecting the change from licensing and appointing independent and company employee adjusters to just appointing independent and company employee adjusters and licensing all-lines adjusters instead.

Other Changes Relating to Adjusters

The bill adds a ground for refusal, denial, suspension, or revocation of a license of an adjusting firm. Current law allows DFS to refuse, deny, suspend, or revoke a license of an adjusting firm if anyone involved in the operation of the firm violates an order or rule of the Office of Insurance Regulation or Financial Services Commission. Under the bill, a violation of an order or rule of DFS would also be grounds for DFS to refuse, deny, suspend, or revoke a license of an adjusting firm.

The bill allows adjusters licensed and in good standing in another state to transfer their adjuster license to a Florida all-lines adjuster license. Adjusters cannot transfer licenses under current law, only resident agents can. Thus, this change allows license transfers for both agents and adjusters.

Changes Relating to Application for Licenses & Renewal of Licenses Issued by DFS

The bill allows a third party to complete, submit, and sign an application for licensure as an agent or adjuster as long as the applicant agrees. The applicant is accountable for any misstatements or misrepresentations on the application. No authority for third parties to complete license applications is provided in current law.

Instead of submitting proof of completion of the required pre-licensing course, the bill requires applicants for licensure as an agent or adjuster to provide a statement in the application indicating what method the applicant used to meet the required pre-licensing education, experience, knowledge, or instructional requirements. This change allows a person to apply for licensure while taking a pre-licensing course, rather than having to wait to apply until the completion of the course. The change does not give DFS authority to grant a license until the pre-licensing course is complete.

Any person licensed by DFS must currently notify the agency of any name, address, phone or e-mail address change within 60 days of the change. The bill reduces the notification time period to 30 days.

DFS is given another ground to deny an application for, suspend, revoke, or refuse to renew or continue a license or appointment of an agent, adjuster, customer representative, service representative, or managing general agent. The bill allows DFS to deny an application for, suspend,

revoke, or refuse to renew or continue a license for those licensees who do not comply with any civil, criminal, or administrative action to determine paternity or relating to child support.

The bill changes the appointment renewal time for licensees of DFS. Currently, appointees licensed by DFS must renew their appointment during the original licensure month or birth month. The bill changes the appointment renewal to the month of original appointment or birth month.

Changes Relating to Examination for Licensure for DFS Licensees

Under current law, an applicant for an insurance related license can take the examination needed for licensure prior to submission of an application for licensure. To do so, the applicant must submit an application for examination through the DFS internet website. The bill allows applicants to submit an application for examination through the DFS internet website or through the website of a person designated by DFS to give the examination. Additionally, current law requires the application for examination to contain information specified in statute. The bill allows, rather than requires, DFS to require the application for examination to contain specified information.

The bill deletes the requirement in current law that an applicant for examination provides his or her age in the application for examination and instead requires the applicant for examination to provide his or her date of birth. The bill requires the applicant to provide an e-mail address on the examination application.

Presently, DFS must provide written notice of the time and place of a licensure examination by mail. The bill requires notice of the time and place of a licensure examination to be provided by DFS by e-mail, rather than mail. Section 626.171(2)(a), F.S., requires applicants for DFS licensure to provide an e-mail address on the license application and s. 626.551, F.S., requires DFS licensees to notify DFS if their e-mail address changes. According to DFS, the department currently only notifies applicants for licensure of examination information by e-mail, so the bill codifies the current practice of DFS.

The bill restricts all licensure applicants from taking a licensing examination for the same license type more than five times in a 12-month period. There are no limitations on how many times an examination can be taken under current law.

Changes Relating to Continuing Education Requirements for DFS Licensees

The bill consolidates continuing education requirements in current law for all insurance agents, including bail bond agents, and adjusters licensed by DFS into one section of law.

The majority of agents and adjusters licensed by DFS must complete 24 hours of continuing education every two years. But, agents holding an agent license for six or more years are required to take only 20 hours of continuing education every two years. There is no similar reduced continuing education requirement for adjusters licensed for six or more years, but it is the practice of DFS to require 20 hours, rather than 24 hours, of continuing education for these adjusters. The bill codifies the current practice of DFS and reduces the number of continuing education hours from 24 hours every two years to 20 hours every two years for adjusters licensed for six or more years. Thus, agent and adjuster continuing education requirements will be the same for these licensees.

An agent holding a limited license for crop or hail or multi-peril crop insurance is exempt from continuing education under the bill. Current law allows DFS to adopt rules exempting agents holding limited licenses from continuing education.

DFS licensees who cannot complete the required continuing education due to active duty in the military can request a waiver of the continuing education requirements. There is no military waiver for continuing education in current law.

The time period for a sponsor of a continuing education course to provide DFS a roster of course attendees is reduced from 30 days to 15 days. Furthermore, the roster no longer must be written or certified by the course sponsor and the fee²⁴ required to be submitted to DFS with the roster is no longer required. According to DFS, rosters are currently submitted electronically and DFS does not collect a fee on electronic submission of rosters. Thus, the change codifies the current practice of DFS.

Section 626.2815(5), F.S., requires DFS to refuse to renew the appointment of an insurance agent that does not complete the required continuing education.²⁵ The bill deletes this requirement and instead allows DFS to use its' discretion to refuse to renew the appointment or to terminate the appointment an agent that does not complete the required continuing education. Additionally, the bill expands which licensees are covered by this statutory provision. The current statute only applies to insurance agents whereas the bill applies the statute to agents and adjusters. According to DFS, the department's current practice is to refuse to renew appointments of adjusters that do not meet the required continuing education, so the expansion of the scope of current law provided in the bill is a codification of agency practice. The change also treats agents and adjusters the same in this regard.

The bill repeals an 11 member continuing education advisory board appointed by the Chief Financial Officer to advise DFS on continuing education courses.²⁶ According to DFS, this board has not met in over ten years.

Starting October 1, 2014, the bill changes the types of courses a DFS licensee must take to satisfy the license continuing education requirements. The bill maintains the 24 hour continuing education requirement required for most DFS licensees, but proposes seven of the 24 hours be an update course specific to the licensee's license and covering insurance law updates, premium discounts, ethics, disciplinary trends, industry trends, and determining suitability of insurance products. The remaining 17 hours of continuing education required are elective hours. DFS licensees that are required to take less than 24 hours of continuing education every two years are still required to take the seven hour update course, but their required elective hours are reduced in accordance with the total number of continuing education hours required for their license.

Furthermore, under current law, licensees are required to take two hours of ethics as part of the 24 hour continuing education requirement. The bill removes the mandatory ethics requirement, but requires ethics to be taught in the seven hour update course required to be taken by all licensees.

For licensees holding two different licenses from DFS, current law specifies how many of the 24 required continuing education hours the licensee must take in each license subject area. The bill repeals this specification but requires licensees holding more than one license from DFS to complete the seven hour update course in the subject area of one license.

Starting October 1, 2014, current law requiring general lines agents and customer representatives to have one hour of the 24 required continuing education hours on hurricane mitigation premium discounts is repealed.

Under current law, title insurance agents must complete 10 hours of continuing education every 2 years on any insurance products sold in Florida. For compliance periods beginning on or after October 1, 2014, the bill maintains the requirement that title insurance agents complete 10 continuing education credits over 2 years, but specifies that the credits must be earned in title insurance and escrow management courses specific to Florida that have been approved by the DFS. At least three of the continuing education hours must be in ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

²⁴ According to DFS, continuing education course sponsors were required to submit a \$1 fee per person on the course roster when hard copies of the rosters were submitted to the department. Because course rosters are now submitted to DFS electronically, the fee is no longer collected.

²⁵ s. 626.2815, Rule 69B-228.220, F.A.C.

²⁶ HB 4145 also repeals the Continuing Education Advisory Board. The staff analysis for HB 4145 provides additional background information on the Board.

Under current law, bail bond agents must take 14 hours of continuing education every two years.²⁷ Starting October 1, 2014, bail bond agents must still complete 14 hours of continuing education every two years, but the hours must include a seven hour update course and seven hours of elective courses.

Other Changes Relating to DFS Licensees

Current law prohibits a DFS licensee with a suspended or revoked license from transacting business requiring an insurance license or owning, controlling or being employed by any insurance entity licensed by DFS. The bill extends this prohibition until the revoked or suspended license is reinstated or a new license issued. This change is consistent with the practice of DFS.

Generally, s. 626.536, F.S., requires insurance agents and agencies to notify DFS of administrative actions taken against the agent or agency by a Florida governmental agency or a governmental agency in another state or jurisdiction. The bill expands current law to require all DFS licensees, rather than only agents and agencies, to report administrative actions taken against the licensee. Thus, this change requires insurance adjusters to report any administrative actions, whereas, current law does not require adjusters to report any actions. Furthermore, the bill expands the types of administrative actions required to be reported from actions by governmental agencies to actions by governmental agencies or other regulatory agencies.

For insurance agents or customer representatives holding two or more licenses from DFS, if DFS suspends, revokes, or does not renew one of the licenses, current law requires DFS to also suspend or revoke all other licenses or appointments for that agent or customer representative. The bill expands the application of this provision from applying only to agents or customer representatives to applying to all insurance representatives. Thus, insurance adjusters would have all insurance related licenses suspended if their adjuster license was suspended.

Changes Relating to Licensing of Limited Lines Insurance Agents

The bill consolidates many of the types of licenses for limited lines insurance agents. A limited lines insurance agent license allows the agent to sell only certain types of insurance. Limited lines agents are licensed as a resident agent or a nonresident agent. Under current law, a limited lines insurance agent license can be obtained for the following types of insurance:

- Motor vehicle physical damage and mechanical breakdown,
- Industrial fire or burglary,
- Travel,
- Motor vehicle rental,
- Credit life or disability,
- Credit,
- Credit property,
- Mortgage Guaranty,
- Crop hail and multiple-peril crop,
- In-transit and storage personal property,
- Communications equipment property,
- Communications equipment inland marine, and
- Communications equipment service warranty agreement sales.

The bill allows a limited lines insurance agent license for the following types of insurance:

- Motor vehicle physical damage and mechanical breakdown,
- Industrial fire or burglary,
- Travel,
- Motor vehicle rental,
- Credit,
- Crop hail and multiple-peril crop,
- In-transit and storage personal property, and

²⁷ s. 648.385(2), F.S.

- Portable electronics insurance.

License for Motor Vehicle Physical Damage and Mechanical Breakdown Insurance

Currently, DFS has 31 licensees holding an agent's limited license for motor vehicle physical damage and mechanical breakdown insurance. The bill prevents DFS from issuing new licenses for this limited license after October 1, 2012. Those licensees licensed as of October 1, 2012 can renew their license, but no new licenses can be issued. After October 1, 2012, only general lines agents²⁸ will be able to sell motor vehicle physical damage and mechanical breakdown insurance.

License for Credit Insurance

The limited licenses for credit life or disability, credit property, and mortgage guaranty insurance are consolidated into the credit insurance limited license and the scope of the license is expanded to cover credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection, and any other type of insurance covering the extension of credit to extinguish a credit obligation.²⁹ The main parameters of a limited license for credit insurance in current law are maintained.

All currently existing licenses covering the types of insurance being consolidated into the credit insurance limited license are converted to a credit insurance limited license as of October 1, 2012. If a licensee whose license is converted wants to obtain a new license reflecting the new name and type of the license, the licensee must pay the \$5 fee currently prescribed in law for issuance, reissuance, reinstatement, or modification of a license.

Current law setting forth parameters on the limited license for credit life or disability insurance and credit property insurance is repealed as a conforming change. Such parameters include who can be issued licenses to sell credit life or disability and credit property insurance and what additional licenses these agents can possess.

License for Mortgage Guaranty Insurance

Generally, mortgage guaranty insurance is insurance that insures lenders against financial loss due to nonpayment of monies owed under a note, bond, mortgage, deed of trust, or other document constituting a lien on real estate or nonpayment of rent or other monies owed under a lease. Section 635.051, F.S., provides for the licensing and appointment of mortgage guaranty insurance agents. A license as a mortgage guaranty insurance agent is a limited license which limits the agent to handling only mortgage guaranty insurance.

The bill repeals the mortgage guaranty insurance agent license and its associated licensing requirements as of October 1, 2012 because this license is subsumed into the expanded credit insurance license. Mortgage guaranty insurance agents licensed before October 1, 2012 are transferred to a credit insurance agent. After October 1, 2012, in order to transact mortgage guaranty insurance, an agent must be licensed and appointed as a credit insurance agent.

License for Communications Equipment Insurance

Current law outlining the scope and restrictions associated with all limited agent licenses relating to communications equipment insurance is repealed and a new limited license related to the sale of portable electronics insurance is created by the bill. This license is in lieu of the current license for insurance for communications equipment. The scope of a portable electronics license is greater than that of a communications equipment license. Specifically, the new license allows retail vendors selling portable electronics, instead of only communications equipment, to sell or offer customers insurance covering the portable electronics, instead of only covering communications equipment. The insurance sold on portable electronics will cover loss, theft, mechanical failure, malfunction or damage on these electronics.

²⁸ A general lines insurance agent is an insurance agent authorized to transact one or more of the following kinds of insurance: property insurance, casualty insurance, surety insurance, health insurance, or marine insurance.

²⁹ Resident and nonresident limited licenses for credit life or disability and mortgage guaranty insurance are consolidated.

The definition of portable electronics is much broader than the definition of communications equipment in current law, so the newly created portable electronics license will cover more types of equipment than is currently covered by the communications equipment license. For example, the portable electronics license covers insurance for cellular phones, pagers, portable computers, GPS units, gaming systems, docking stations, digital cameras and video cameras. However, the communications equipment license in current law primarily covers cellular phones, pagers, and portable computers.

The bill provides parameters for the portable electronics insurance limited license. Some of the parameters are the same as those that applied to the communications equipment limited license. However, many new parameters are added. New parameters cover subjects such as:

- Licensing of employees of licensed portable electronics insurance agents,
- Payment of commissions for the sale of portable electronics insurance,
- Required disclosures in brochures related to portable electronics insurance,
- Exemptions from the portable electronics insurance limited license,
- Billing and collection of premiums for portable electronics insurance by a licensee,
- Terms for termination or modification of coverage under a portable electronics insurance policy, and
- Requirements for required notices or correspondence under the portable electronics insurance policy.

Other Changes Relating to Insurance Agents

The bill expands current law relating to who can bind insurance coverage. Only general lines agents or customer representatives can bind insurance coverage under current law and the bill gives this authority to all agents or customer representatives. By definition, general lines agents transact only property, casualty, surety, or health insurance. The definition of agent is broader than that of general lines agent and includes agents transacting any kind of insurance and specifically includes general lines agents, agents transacting life insurance, agents transacting health insurance, and agents transacting title insurance. Personal lines agents are also allowed to bind coverage under the bill and are not allowed under current law.

Changes Relating to Licensing of Bail Bond Agents

DFS also licenses bail bond agents. As part of the licensing requirements, applicants for a bail bond agent license must pass an examination. Under current law, DFS must mail notice of the bail bond agent examination to applicants. The bill requires only notice of the exam by e-mail and repeals the requirement that notice be mailed to the applicant. This change is consistent with the change made in the bill requiring only notification by e-mail of license examination information to other DFS licensees. According to DFS, the department currently only notifies applicants for licensure of examination information by e-mail, so this change is a codification of current agency practice.

The bill also specifies information required on an application for a bail bond license and requires bail bond agents to notify DFS of e-mail address changes within ten days of the change. No such provisions are contained in current law.

Changes Relating to Licensing of General Lines Agents

A general lines insurance agent is an insurance agent 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. A personal lines agent is a general lines agent who can only transact property and casualty insurance for noncommercial purposes.

Current law setting forth license requirements for general lines agents and personal lines agents relating to knowledge, experience or instruction are comingled. For clarity, the bill separates these requirements and specifically outlines what requirements are required for licensure as a general lines agent and what requirements are required for a personal lines agent.

Changes Relating to Title Insurance Agents and Agencies

Title insurance agents are appointed by title insurance companies to issue and countersign title insurance policies.³⁰ Title insurance agents are licensed by DFS. The number of licensed title insurance agencies has decreased in recent years, from 3,996 in 2007 to 1,911 in 2011.

Under current law, specified provisions that apply to general lines agents also apply to title insurance agents or agencies. The bill adds two provisions that apply to general lines agents to also make them apply to title insurance agents and the bill deletes one provision from also applying to title insurance agents. One provision that will now apply to title insurance agents allows title insurance agents to work at their place of residence if specified conditions are met. The other provision requires a title insurance agency to provide the name of each title insurance agent that is charge of the agency office on a full-time basis on the title insurance agency license application. The provision that is removed from applying to title insurance agents is allowance for a temporary title agent license.

The bill also prohibits employees of title insurance agents or agencies from initiating contact with a potential insured to solicit title insurance. Only licensed title agents or licensed attorneys can initiate contact to solicit title insurance. There is a similar provision in current law which prohibits employees of insurance agents or agencies from initiating contact with any person to solicit insurance and allows only licensed agents or customer representatives to do so.

Currently, as a qualification for licensure, title insurance agencies are required to deposit \$35,000 in securities with DFS or post and maintain a \$35,000 surety bond with DFS as a mechanism to protect title insurers from fraudulent behavior of their agents.³¹ If a claim is filed by a title insurer against a title insurance agency for violation of the contract between the insurer and the agency, DFS can use the bond or deposit to pay the claim. However, DFS does not decide the merits of a claim against the bond; the merits are determined by the surety company issuing the bond. DFS is merely a payment conduit because the department holds the bond. DFS must return the securities on deposit or the bond posted to the title insurance agency one year after the agency has ended all appointments with title insurers, if no claim against the deposit or bond has been made.

According to DFS, many title insurance agencies regularly fail to maintain the required surety bond. Last year these cases accounted for 23 percent of the administrative complaints filed by the Division of Agent and Agency Services in DFS. The bill requires title insurers to certify on an application filed with DFS that the title insurance agency to be appointed for the insurer has a \$35,000 surety bond payable to the insurer.

Changes Relating to Bonding of Surplus Lines Insurance Agents

Surplus lines insurance is a category of insurance for which there is no market available through insurance companies licensed to transact insurance in Florida. Surplus lines insurance is sold by surplus lines agents. These agents are licensed by DFS. Under current law, applicants for a license as a surplus lines agent must post a \$50,000 bond with DFS and must maintain the bond during the duration of the license. The bond is used to pay any surplus lines premium tax or service fee required to be paid by the surplus lines agent but not paid. The bill repeals the bond requirement, however, current law allowing DFS to file suit to recover surplus lines premium tax or service fees owed by a surplus lines agent is maintained.

B. SECTION DIRECTORY:

Section 1: Amends s. 626.015, F.S., relating to definitions.

Section 2: Amends s. 626.0428, F.S., relating to agency personnel powers, duties, and limitations.

³⁰ s. 626.841, F.S.

³¹ s. 626.8418(2), F.S.

Section 3: Amends s. 626.171, F.S., relating to application for license as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary.

Section 4: Amends s. 626.191, F.S., relating to repeated applications.

Section 5: Amends s. 626.221, F.S., relating to examination requirements; exemptions.

Section 6: Amends s. 626.231, F.S., relating to eligibility; application for examination.

Section 7: Amends s. 626.241, F.S., relating to scope of examination.

Section 8: Amends s. 626.251, F.S., relating to time and place of examination; notice.

Section 9: Amends s. 626.281, F.S., relating to reexamination.

Section 10: Amends s. 626.2815, F.S., relating to continuing education; requirements.

Section 11: Amends s. 626.2815, F.S., relating to continuing education; requirements. These changes are effective October 1, 2014.

Section 12: Amends s. 626.292, F.S., relating to transfer of license from another state.

Section 13: Amends s. 626.311, F.S., relating to scope of license.

Section 14: Amends s. 626.321, F.S., relating to limited licenses.

Section 15: Amends s. 626.342, F.S., relating to furnishing supplies to unlicensed agent prohibited; civil liability.

Section 16: Amends s. 626.381, F.S., relating to renewal, continuation, reinstatement, or termination of appointment.

Section 17: Amends s. 626.536, F.S., relating to reporting of administrative actions.

Section 18: Amends s. 626.551, F.S., relating to notice of change of address, name.

Section 19: Amends s. 626.621, F.S., relating to grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agents license or appointment.

Section 20: Amends s. s. 626.641, F.S., relating to duration of suspension or revocation.

Section 21: Amends s. 626.651, F.S., relating to effect of suspension, revocation upon associated licenses and appointments and licensees and appointees.

Section 22: Amends s. 626.730, F.S., relating to purpose of license.

Section 23: Amends s. 626.732, F.S., relating to requirement as to knowledge, experience, or instruction.

Section 24: Amends s. 626.8411, F.S., relating to application of Florida Insurance Code provisions to title insurance agents or agencies.

Section 25: Amends s. 626.8419, F.S.; relating to appointment of title insurance agency.

Section 26: Creates s. 626.8548, F.S., to provide a definition of "all-lines adjuster."

- Section 27:** Amends s. 626.855, F.S., relating to the definition of “independent adjuster.”
- Section 28:** Amends s. 626.856, F.S., relating to the definition of “company employee adjuster.”
- Section 29:** Repeals s. 626.858, F.S., relating to the definition of “nonresident company employee adjuster.”
- Section 30:** Amends s. 626.8584, F.S., relating to the definition of “nonresident all-lines adjuster.”
- Section 31:** Amends s. 626.863, F.S., relating to claims referrals to independent adjusters.
- Section 32:** Amends s. 626.864, F.S., relating to adjuster license types.
- Section 33:** Amends s. 626.865, F.S., relating to public adjuster’s qualifications, bond.
- Section 34:** Amends s. 626.866, F.S., relating to all-lines adjuster qualifications.
- Section 35:** Repeals s. 626.867, F.S., relating to company employee adjuster qualifications.
- Section 36:** Amends s. 626.869, F.S., relating to license, adjusters; continuing education.
- Section 37:** Amends s. 626.8697, F.S., relating to grounds for refusal, suspension, or revocation of adjusting firm license.
- Section 38:** Amends s. 626.872, F.S., relating to temporary license.
- Section 39:** Repeals s. 626.873, F.S., relating to nonresident company employee adjusters.
- Section 40:** Amends s. 626.8734, F.S., relating to nonresident all-lines adjuster license qualifications.
- Section 41:** Amends s. 626.8736, F.S., relating to nonresident independent or public adjusters; service of process.
- Section 42:** Amends s. 626.874, F.S., relating to catastrophe or emergency adjusters.
- Section 43:** Amends s. 626.875, F.S., relating to office and records.
- Section 44:** Amends s. 626.876, F.S., relating to exclusive employment; public adjusters, independent adjusters.
- Section 45:** Amends s.626.927, F.S., relating to licensing of surplus lines agent.
- Section 46:** Repeals s. 626.928, F.S., relating to surplus lines agent’s bond.
- Section 47:** Amends s. 626.933, F.S., relating to collection of tax and service fee.
- Section 48:** Amends s. 626.935, F.S., relating to suspension, revocation, or refusal of surplus lines agent’s license.
- Section 49:** Amends s. 626.952, F.S., relating to risk retention and purchasing group agents.
- Section 50:** Amends s. 635.051, F.S., relating to licensing and appointment of mortgage guaranty insurance agents.
- Section 51:** Amends s. 648.34, F.S., relating to bail bond agents; qualifications.

Section 52: Amends s. 648.38, F.S., relating to licensure examination for bail bond agents; time; place; fees; scope.

Section 53: Amends s. 648.385, F.S., relating to continuing education required; application; exceptions; requirements; penalties.

Section 54: Amends s. 648.421, F.S., relating to notice of change of address or telephone number.

Section 55: Provides an effective date of October 1, 2012, except where otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has an insignificant negative fiscal impact on state funds. DFS indicates that combining the credit lines of insurance and mortgage guaranty insurance licenses will result in an annual loss of \$14,340 in license and appointment fee revenue that is deposited into the Insurance Regulatory Trust Fund³².

2. Expenditures:

The provisions of the bill will require modifications to the computer systems of the Division of Insurance Agent and Agency Services. However, the department indicates that the costs of modifying the computer systems can be absorbed within current resources.

Additionally, DFS indicates that there will be a workload reduction associated with the repeal of section 626.928, F.S., which currently requires a \$50,000 surety bond be paid by surplus lines agent applicants prior to becoming licensed. The workload reduction will allow for the reduction of 1.00 FTE position and a cost savings of \$35,567 annually.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The license consolidation provided in the bill reduces the appointment fees for licensees holding more than one license.

Surplus lines insurance agents will no longer post a \$50,000 bond with DFS.

DFS believes changing the continuing education requirements to require a seven hour update course will have a neutral impact on the providers currently offering continuing education courses because DFS assumes most providers will apply to offer the seven hour update continuing education course.

³² E-mail correspondence from DFS to House Appropriations Staff, February 3, 2012, on file with the House Government Operations Appropriations Staff.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities 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:

DFS is given authority to adopt rules to implement the 30 day notification period for DFS licensees to notify DFS of any change in the licensee's name, address, phone number, or e-mail address and the penalties authorized in statute for failure to provide the required notification.

C. DRAFTING ISSUES OR OTHER COMMENTS:

If the bill sponsor's intent is to remove DFS from holding and administering the surety bond relating to title insurance, then the bill should be amended to repeal s. 626.8418(2), F.S. This statute requires DFS to hold the title insurance surety bond and provides parameters relating to DFS using the bond to pay claims made by the title insurer against the title agent.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Insurance & Banking Subcommittee heard the bill, adopted a strike all amendment, and reported the bill favorably as a Committee Substitute. Many of the changes made by the strike all amendment corrected bill drafting errors and internal inconsistencies in the bill. In addition, the following changes were made by the strike all amendment:

- Limited the examination exemption for adjusters reinstating their license after a four year suspension to all-lines adjusters, instead of all adjusters. DFS still decides whether the adjuster should be exempt from examination; the exemption is not automatic.
- Restored rulemaking authority for the DFS relating to the adoption of revised versions of the uniform application for licensure.
- Required applicants for licensure to provide email addresses on the application for license examination.
- Restricted license applicants from taking the licensing examination more than 5 times in a 12 month period.
- Exempted only limited lines agents for crop or hail or multi-peril crop insurance from continuing education requirements, instead of all limited license agents. Corrected a drafting error and restores current law requiring continuing education on suitability of annuities for life insurance agents until October 1, 2014. This requirement is removed after that date when suitability of insurance products is required as part of the 7 hour continuing education update course.
- Corrected a drafting error and restored current law requiring continuing education on suitability of annuities for life insurance agents until October 1, 2014. This requirement is removed after that date when suitability of insurance products is required as part of the 7 hour continuing education update course.
- Clarified the continuing education requirement for bail bond agents is 14 hours, instead of 24 hours.
- Required the 7 hour continuing education update course covers premium discounts.

- Corrected a drafting error and restored current law relating to parameters of a credit insurance limited license because that license is still available.
- Required renewal of a branch office's appointment to sell portable electronics insurance every 24 months after the lead business's initial appointment date.
- Corrected an internal inconsistency and conformed qualifications of a nonresidential all-lines adjuster to the definition of this type of adjuster.
- Specified information required on an application for a bail bond agent license.
- Required bail bond agents to notify DFS of e-mail address changes within 10 days of the change.
- Removed repeal of the \$35,000 surety bond or deposit required for title insurance agencies and provided to the DFS.
- Removed the provision in the bill relating to bail bond forfeitures.

On February 13, 2012, the House Government Operations Appropriations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute.

- Amendment 1 removed the repeal of the \$200 title insurance agency administrative surcharge. Additionally, the bill removed the repeal of the \$6 county tax that agents pay each county if they maintain an office or place of business in more than one county.
- Amendment 2 specifies disclosure information that must be made on a customer's bill or marketing materials that are made available at the point of sale.

On February 22, 2012, the Economic Affairs Committee heard the bill, adopted 6 amendments, and reported the bill favorably as a Committee Substitute. The amendments:

- Prohibited contact for solicitation of title insurance by employees of title insurance agents or agencies that are not licensed title insurance agents or attorneys;
- Changed the continuing education requirements for title insurance agents to conform with the requirements in CS/CS/HB 643;
- Made the entities authorized to provide pre-licensing and continuing education instruction to general lines agents and personal lines agents consistent with life and health agents; and
- Required title insurers to certify on an application to DFS that title insurance agents to be appointed by the insurer have a surety bond payable to the title insurer.

The staff analysis was updated to reflect the Committee Substitute adopted in the Economic Affairs Committee.