

STORAGE NAME: s0766.fs

DATE: April 6, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: SB 766 (1st Engrossed)

RELATING TO: Insurance (continuing education; auto insurance down payments)

SPONSOR(S): Senator Diaz-Balart

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The Department of Insurance rules regulating providers of continuing education courses for insurance agents are not clearly authorized by statute, and the department has identified two of the rules as exceeding the department's statutory authority. This bill would provide the department with the authority to regulate continuing education course providers, instructors, school officials, and monitor groups, including investigations and imposition of fines.

Since 1995, applicants for auto insurance policies have been required to pay a down payment equal to 2 months' premium. The bill would add an exception to the minimum down payment requirement for auto premiums paid through payroll deduction plans or automatic electronic funds transfer plans.

The bill appears to have no fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Rule authorization requirements

In 1996, the Legislature substantially revised the Administrative Procedure Act (APA).¹ Among many other changes, the revised APA modified the standards which authorize rulemaking and provided for periodic review of rules by agencies with rulemaking authority.²

During the 1998 legislative session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agency's rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

The Joint Administrative Procedures Committee (J.A.P.C.) reports that some 5,850 rules or portions of rules were reported as exceeding the agency's rulemaking authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards whose rules are not contained in the Florida Administrative Code (F.A.C.). However, 2,240 rules contained in the F.A.C. were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

Insurance agent continuing education

Insurance agents and other persons engaged in the sale of insurance are subject to continuing education requirements under s. 626.2815, F.S.³ The continuing education courses must be approved by the Department of Insurance in order to count toward the licensee's continuing education obligation.⁴ There are no other statutory references granting the Department of Insurance authority over continuing education providers.

Chapter 4-228, Florida Administrative Code (F.A.C.), consists of Department of Insurance rules for continuing education courses and providers. The chapter includes rules governing such matters as restrictions on entities that may offer agents' continuing

¹ See Ch. 96-159, Laws of Florida.

² Prior to these revisions of the APA, it was generally held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

³ Other continuing education requirements, subject to the same rules as programs established under s. 626.2815, are established in s. 626.869(5), F.S. (adjusters), s. 648.385, F.S. (bail bond agents), and s. 648.386 (bail bond licensing schools).

⁴ See s. 626.2815(3)(a), F.S.

education programs,⁵ school officials' qualifications,⁶ instructors and speakers,⁷ fees,⁸ and school facilities.⁹

The Department of Insurance has identified two rules relating to continuing education, adopted in 1993, that exceed the department's rulemaking authority:

Rule 4-228.210, F.A.C., which provides penalties, including fines, for specified violations by a continuing education provider, school official, instructor, or monitor.¹⁰

Rule 4-228.220, F.A.C., which establishes miscellaneous compliance requirements for licensees.

Motor vehicle insurance; minimum down payment

Since 1995,¹¹ an applicant for a new private passenger motor vehicle insurance policy has been required to make a down payment equal to at least 2 months' premium on the policy. Insurers, agents, and premium finance companies are prohibited from advancing the down payment to the applicant or otherwise circumventing the requirement that the down payment come from the applicant.

According to the House Insurance Committee staff summary of the law that created the minimum down payment requirement:

There are at least two distinct purposes served by the minimum down payment requirement. One is enforcement of mandatory auto insurance laws, in order to prevent the sale of insurance with no down payment to someone who may immediately cancel coverage after registering a vehicle. A second purpose is related to insurer solvency, to prevent financial loss to an insurer with a premium payment plan or affiliated with a premium finance company by assuming liability for auto insurance claims upon issuance of a policy without collecting a down payment. One additional impact of the law, if not a purpose, is to eliminate a

⁵ See Rule 4-228.040, F.A.C.

⁶ See Rule 4-228.050, F.A.C.

⁷ See Rules 4-228.060 and 4-228.070, F.A.C.

⁸ See Rule 4-228.120, F.A.C.

⁹ See Rule 4-228.130, F.A.C.

¹⁰ A "monitor" is a person who supervises self-study examinations. See Rule 4-228.030(22)-(24), F.A.C.

¹¹ See s. 627.7295(7), Florida Statutes, as created by Chapter 95-424, Laws of Florida.

market advantage of any insurer or premium finance company that would finance premiums without a minimum down payment.¹²

There are several exceptions to the minimum down payment requirement, including exceptions for replacement policies and for policies issued by an insurer that limits its insureds to current and former military personnel.

B. EFFECT OF PROPOSED CHANGES:

Agents' continuing education

A continuing education provider, instructor, school official, or monitor group would be required by statute to be approved by the Department of Insurance.

The department would be required to adopt rules establishing standards for the "approval, regulation, and operation of the continuing education programs," and would also be required to adopt rules providing for the discipline of licensees, course providers, instructors, school officials, and monitor groups. The "standards" would be "designed to assure that such course providers, instructors, officials and monitor groups have the knowledge, competence and integrity to fulfill the educational objectives" of the continuing education requirements.

The department would also be required to adopt rules and forms for determining compliance with continuing education requirements.

Continuing education providers, instructors, school officials, and monitor groups would be subject to investigation in the same manner as other department licensees, and would be subject to fines of up to \$2,500 per violation.

Motor vehicle insurance: minimum down payment

When an employer's payroll deduction plan provides for payment of employees' private passenger motor vehicle insurance premiums, the employees would be exempt from the minimum down payment requirement. The down payment requirement also would not apply when the premiums are paid through an automatic electronic funds transfer payment plan.

At least one insurer collects motor vehicle insurance premiums from employees of state universities through payroll deduction. Staff research was unable to identify any other instances of payroll deduction plans being used to pay automobile insurance premiums.

C. APPLICATION OF PRINCIPLES:

¹² Final Bill Analysis and Economic Impact Statement, HB 2471, House Committee on Insurance, June 18, 1995.

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill would require the Department of Insurance to adopt rules for the regulation of continuing education course providers, instructors, school officials, and monitor groups.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. A person whose automobile insurance premium is paid through a payroll deduction plan or an automatic electronic funds transfer plan would be able to apply for a new policy without being required to make a down payment equal to 2 months' premium.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

N/A

E. SECTION-BY-SECTION RESEARCH:

Section 1 creates s. 626.2816, F.S., relating to regulation of continuing education. This section provides for approval of continuing education course providers, instructors, school officials, and monitor groups; requires the Department of Insurance to adopt rules for approval, regulation, operation, and discipline of these persons; and requires the department to adopt rules to determine compliance with continuing education requirements.

Section 2 amends s. 626.601, F.S., relating to investigations, to authorize the department to investigate continuing education providers, instructors, school officials, and monitor groups.

Section 3 amends s. 626.681, F.S., relating to administrative fines, to authorize the department to impose fines on continuing education providers, instructors, school officials, and monitor groups.

Section 4 amends s. 627.7295, relating to motor vehicle insurance, to exempt premiums paid through payroll deduction or automatic electronic funds transfer from the minimum down payment requirement.

Section 5 provides that the bill will take effect July 1, 1998.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

The bill would remove uncertainty with respect to the Department of Insurance's authority to regulate continuing education providers.

The bill would facilitate the use of payroll deduction plans and electronic funds transfers for paying automobile insurance premiums by exempting premiums paid by these methods from the 2-month minimum down payment that would otherwise be required for issuance of a new policy.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

STORAGE NAME: s0766.fs

DATE: April 6, 1998

PAGE 10

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

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