

STORAGE NAME: h0943a.in

DATE: March 18, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 943

RELATING TO: Insurance

SPONSOR(S): Representative Cosgrove

COMPANION BILL(S): SB 1472 (i)

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

- (1) INSURANCE YEAS 11 NAYS 0
- (2) REAL PROPERTY & PROBATE
- (3) GOVERNMENTAL RULES & REGULATIONS
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. SUMMARY:

HB 943 would provide that a policy issued by an insurer whose agents represent only one company in Florida, commonly known as captive agents or exclusive agents, would be exempt from the countersignature law. Under this exemption, a captive or exclusive agent would not be required to countersign an insurance policy, provided that the agent lawfully signed the application when it was submitted to the insurer.

Under s. 627.7015, F.S., the term "claim" would be defined in statute for purposes of mediating personal lines property insurance claims. As is current practice under the DOI's rules, "claim" would refer to any dispute between an insurer and an insured relating to a material issue of fact. A "claim" for which the mediation program would not be available would include the following:

- ◆ those claims in which the insurer has a reasonable basis to suspect fraud;
- ◆ those claims for which no coverage exists; or
- ◆ those claims where there has been a material misrepresentation of fact which is relevant to the claim on the part of the insured.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Countersignature

Under s. 624.425, F.S., a property, casualty, or surety insurance policy may not be issued in Florida unless the policy is issued through or by a Florida-resident agent or unless the policy is countersigned by a resident agent. According to s. 624.426, F.S., the only policies that are exempt from this requirement are reinsurance contracts, policies covering railroad rolling stock, U.S. and customs surety bonds. Another exemption created in 1998 exempts policies issued by an insurer whose agents represent only that insurer and other members of an insurer group under common ownership, if the insurer is transferring a policy from one member of the insurer group to another member of the insurer group.

Mediation of personal lines property insurance claims

Section s. 627.7015, F.S., relating to mediation of personal lines property insurance claims was created by the Legislature in 1993. Mediation is available for first-party claims (i.e., claims made by the insured) upon request of either the insurer or the insured prior to commencement of the appraisal process or litigation, or upon referral by a court. Participation by legal counsel is allowed if requested by the insured.

The Department of Insurance currently uses Rule 4-166.031 of the Florida Administrative Code to govern the mediation program. Under this rule, a "claim" refers to dispute between the insurer and the insured regarding a material issue of fact. Exceptions to this definition are:

- ◆ a dispute as to which the insurer has a reasonable basis to suspect fraud; and
- ◆ a dispute where there was no coverage under the policy.

Costs of mediation are borne by the insurer, except that when the insured fails to appear at a mediation conference, the insured must pay costs of the rescheduled conference. According to the Department of Insurance, mediation costs the insurer approximately \$300. Mediators are supplied by the Supreme Court and are chosen by the insurer.

Statements made and documents produced at mediation conferences are deemed to be negotiations in anticipation of litigation under s. 90.408, F.S., which provides that such negotiations are not admissible in evidence. Parties to the mediation are required to have authority to settle claims, and are required to negotiate in good faith.

Mediation under this section is not binding, but if a settlement is reached, the insured has 3 business days within which to rescind the settlement unless he has cashed or deposited any payment received under the settlement. If the insurer requested the mediation and either party rejects the mediation results, the insured is exempted from any contractual appraisal requirements as a precondition to an action for breach of contract.

B. EFFECT OF PROPOSED CHANGES:

Countersignature

A policy issued by an insurer whose agents represent only one company in Florida, commonly known as captive agents or exclusive agents, would be exempt from the countersignature law. Under this exemption, a captive or exclusive agent would not be required to countersign an insurance policy, provided that the agent lawfully signed the application when it was submitted to the insurer.

Mediation of personal lines property insurance claims

Under s. 627.7015, F.S., the term "claim" would be defined in statute for purposes of mediating personal lines property insurance claims. As is current practice under the DOI's rules, "claim" would

refer to any dispute between an insurer and an insured relating to a material issue of fact. A "claim" for which the mediation program would not be available would include the following:

- ◆ those claims in which the insurer has a reasonable basis to suspect fraud;
- ◆ those claims for which no coverage exists; or
- ◆ those claims where there has been an material misrepresentation of fact which is relevant to the claim on the part of the insured.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

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

N/A

- (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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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. An agent who works for only one insurer, commonly referred to as a captive or exclusive agent, would not be required to countersign an insurance policy.

- 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:

Amends ss. 624.246 and 627.7015, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 624.426, F.S., to exempt captive or exclusive agents from the countersignature law.

Section 2. Amends s. 627.7015, F.S., to define the term "claim" for the purposes of personal lines property insurance mediation program.

Section 3. Provides an effective date of upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

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:

N/A

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

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON INSURANCE:

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