

STORAGE NAME: h0943s1.rpp

DATE: March 31, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
Real Property and Probate
ANALYSIS**

BILL #: CS/HB 943

RELATING TO: Insurance

SPONSOR(S): Committee on Real Property and Probate and Representative Cosgrove

COMPANION BILL(S): SB 1472 (i)

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

- (1) INSURANCE YEAS 11 NAYS 0
- (2) REAL PROPERTY AND PROBATE YEAS 8 NAYS 0
- (3) GOVERNMENTAL RULES & REGULATIONS
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. SUMMARY:

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

Current law regarding alternative dispute resolution with respect to property insurance claims is amended to exclude

- ◆ those claims in which the insurer has a reasonable basis to suspect fraud;
- ◆ those claims, where there are agreed-upon facts as to the cause of loss, but where there is no coverage under the policy (as determined by the insurer);
- ◆ those claims where the insurer has a reasonable basis to believe that the claimant has intentionally made a material misrepresentation of fact which is relevant to the claim, and the entire request for payment of a loss has been denied on the basis of the material misrepresentation; or
- ◆ where the amount in controversy is less than \$500, unless the parties agree to mediate a dispute involving a lesser amount.

This bill does not appear to have a fiscal impact on state or local government.

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 rolling stock of railroad companies doing general freight and passenger business;
- ◆ U.S. Customs surety bonds issued by a corporate surety, approved by the U.S. Department of Treasury with the United States as beneficiary; and
- ◆ 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.

“The present law serves to protect consumers by assuring that the agent in Florida, knowledgeable about Florida law, is subject to the legal responsibilities associated with being an agent for the policy. It also serves to protect the economic interests of Florida resident agents by at least indirectly assuring them part of the commission on the policy. In some cases, it acts as an administrative hindrance to multi-state insurers who require their Florida agents to submit policy applications to a regional office outside the state, which must be then sent back to the Florida agent for a countersignature prior to issuance of the policy.” Senate Staff Analysis and Economic Impact Statement, SB 1472, March 11, 1999, (Senate Analysis) at 2.

Mediation of personal lines property insurance claims

Section s. 627.7015, F.S., relating to mediation of personal lines property insurance claims, was enacted 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 court referral. 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. Unless the parties agree to mediate a claim involving a lesser amount, a “claim” involves a request for \$500 or more to settle the dispute, or the difference between the positions of the parties is \$500 or more, notwithstanding any applicable deductible. Also, in order to qualify as a “claim”, as policy must have been in existence at the time of the loss. 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.¹

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.

¹ The Department of Insurance filed proposed amendments to the rule to exclude from mediation cases involving material misrepresentation. The Joint Administrative Procedures Committee (JAPC) determined that under the new Administrative Procedures Act, the department had no statutory authority to do so. In October 1998, JAPC suggested that the department seek a clear legislative directive in the form of a statutory amendment in order to give the department the authority needed. Senate Analysis, at 3.

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

Subsection (9) is added to s. 627.7015, F.S., (which deals with mediation of personal lines property insurance claims) and defines the term "claim" to refer to any dispute between an insurer and an insured relating to a material issue of fact except

- ◆ those claims in which the insurer has a reasonable basis to suspect fraud;
- ◆ those claims, where there are agreed-upon facts as to the cause of loss, but where there is no coverage under the policy (as determined by the insurer);
- ◆ those claims where the insurer has a reasonable basis to believe that the claimant has intentionally made a material misrepresentation of fact which is relevant to the claim, and the entire request for payment of a loss has been denied on the basis of the material misrepresentation; or
- ◆ where the amount in controversy is less than \$500, unless the parties agree to mediate a dispute involving a lesser amount.

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?

No

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

No

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

No

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

An agency or program is not 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?

No

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

No

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?

No

5. Family Empowerment:

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

This bill does not purport 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?

No

- 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:

This bill does not create or change a program providing services to families or children.

- (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 the 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:

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:

None

2. Recurring Effects:

There will be a decrease in the mediation revenues to the Department of Insurance, but the bill does not have a measurable fiscal impact.

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

This bill creates a reduction in the administrative costs of exclusive agents, as well as a decrease in the delay in getting the policy to the insured. The bill allows a more efficient business practice for insurance companies with a captive agent force. Florida independent insurance agents will not be affected and will still be entitled to a commission on any Florida policy on which they serve as the countersignature agent. Senate Analysis, at 4.

"Proponents of the bill believe the exclusions will remove inappropriate claims from the mediation programs and ultimately save policyholders money. It is more cost and time efficient to exclude

certain cases from mediation that are unlikely to be resolved, such as those excluded by the bill, where the insurance company believes it is the victim of fraud or misrepresentation, or where [the insurance company believes] there is no coverage after reviewing the agreed upon facts.”
Id.

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

None

D. FISCAL COMMENTS:

None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

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

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

“Information provided by the Independent Insurance Agents of America indicates that only 12 states, including Florida, impose additional requirements on non-resident licensees, such as the countersignature law.” *Id.* at 4.

HB 943 codifies section (b)(1) of Rule 4-166.031, of the Florida Administrative Code, excluding claims from mediation where there is fraud or no coverage. The bill does not address section (b)(2) and (3) of that same rule. These subsections refer to the jurisdictional amount required for mediation and that a policy must have been in effect at the time of the loss in order to qualify as a “claim”. The committee substitute does, however, address the jurisdictional amount.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 30, 1999, the Committee on Real Property and Probate adopted one amendment, by Representative Cosgrove, which added an exemption to the claims mediation requirement. The exemption is for controversies less than \$500. The bill, as amended, was reported out favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

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