

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/CS HB 633	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Regulatory Affairs Committee; Insurance & Banking Subcommittee; Ingram and others	116 Y's	0 N's
COMPANION BILLS:	CS/SB 1210	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/CS/HB 633 passed the House on March 27, 2014, and subsequently passed the Senate on April 25, 2014. The bill amends the insurance agency licensure law. Among other changes, the bill:

- Eliminates the insurance agency licensing requirement for agencies owned and operated by a single licensed agent under certain conditions;
- Allows third parties to sign agency applications;
- Specifies circumstances under which branch agencies do not have to be licensed;
- Repeals provision allowing insurance agencies to obtain a registration in lieu of a license and converts all agency registrations to licenses;
- Eliminates the three-year expiration period for agency licenses;
- Repeals current law governing branch agencies and creates s. 626.0428(4), F.S., to define agent in charge and specifies responsibilities;
- Provides for agency licenses to automatically expire if the agency does not designate a new agent in charge with the Department of Financial Services (DFS) within 90 days after the agent in charge on record has left the agency;
- Creates a new type of insurance agent, an unaffiliated insurance agent, and specifies the scope of the license;
- Requires DFS to immediately suspend the license or appointment of licensees charged with certain crimes;
- Bars applicants for licensure with sealed or expunged criminal history records from denying or failing to acknowledge arrests covered by these records;
- Exempts members of the United States Armed Forces, their spouses, and veterans who have retired within 24 months from the application filing fee for specified licenses;
- Requires agents who recommend the surrender of an annuity or life insurance policy to provide financial information to the consumer;
- Amends eligibility requirements for mediators under alternative dispute resolution programs administered by DFS;
- Requires DFS to deny an application to be a mediator or neutral evaluator (sinkhole claims) or revoke or suspend a mediator or neutral evaluator in certain circumstances;
- Amends the definitions of neutral evaluator and professional engineer;
- Authorizes DFS to investigate improper conduct of mediators, neutral evaluators, and navigators and permits DFS to share investigative information with any regulatory agency;
- Amends requirements for licensure as a nonresident surplus lines agent;
- Bars issuance of any new limited customer representative license after September 30, 2014;
- Authorizes additional methods for service of process in certain administrative actions; and
- Deletes requirement that applicants who take a licensure examination in Spanish must pay all associated costs.

The bill has an insignificant, yet indeterminate fiscal impact on state revenues deposited into the Insurance Regulatory Trust Fund within DFS. Any technology changes DFS must make to the current licensure system relating to unaffiliated agents and insurance agency licensure will be insignificant and can be implemented and absorbed within current resources.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2014, except as otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0633z.IBS

DATE: May 14, 2014

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Insurance Agency Licensure

The bill makes significant changes to the insurance agency licensure law to streamline the licensing process and to better align the regulation of insurance agencies in Florida with other states. The Department of Financial Services (DFS) is the state agency responsible for licensing insurance agencies in accordance with s. 626.172, F.S. In Florida, insurance agents who are sole proprietors and do not employ other insurance agents must be licensed as both an insurance agent and an insurance agency.¹ According to DFS, no other state requires licensure of an insurance agency when the licensed insurance agent is the sole proprietor of the agency. Furthermore, because insurance agents are vetted by the agent license process, DFS believes also licensing the agency serves no purpose. The bill eliminates the insurance agency licensing requirement for agencies that are owned and operated by a single licensed agent who conducts business in her/his own name and does not employ or use other insurance licensees.

Only specified persons owning or managing an insurance agency may sign an agency license application. The bill amends current law to require the following persons to sign the license application: each owner, partner, officer, director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management and control of the agency, whether through ownership of voting securities, by contract, by ownership of an agency bank account, or otherwise. Further, the bill allows a third party to complete, submit, and sign an agency license application on the agency's behalf. However, the agency is responsible for ensuring that the information provided by the third party is true and correct and is accountable for any misstatements or misrepresentations.

The bill also requires additional information relating to an agency or branch agency to be provided on the agency license application. Such additional information includes the name, address, and e-mail address of the agency's registered agent or person authorized to accept service on the agency's behalf; the physical address of the branch location, including its name, e-mail address, and telephone number; the date that the branch office began transacting insurance; and the fingerprints of each individual required to be listed in the agency application.

According to DFS, when the agency licensing law was created, some existing agencies were given the opportunity to register in lieu of licensing the agency. The primary benefit of registration over licensing is that registrations do not expire, whereas licenses expire every three years. DFS indicates that Florida is the only state that registers insurance agencies in lieu of licensing them. Thus, insurance agencies registered in Florida cannot be recognized in other states because the states only recognize licensed agencies. As a result, insurance agencies have been turning in their registrations to DFS and applying for a Florida agency license. This allows the agency to also obtain an agency license in other states. DFS asserts that the number of registered agencies is steadily declining. Over the past four years an average of 38 registered agencies per month have canceled their registrations. Currently, there are over three times as many licensed insurance agencies as registered ones, with over 40,000 licensed agencies and less than 13,000 registered ones.

The bill provides that a branch place of business established by a licensed agency is considered a branch agency. A branch agency is not required to be licensed if it: (1) transacts business under the same name and federal tax identification number as the licensed agency and has designated with DFS a licensed agent in charge of the branch location; and (2) has submitted to DFS for inclusion in the licensing record of the licensed agency the address and telephone number of the branch location within 30 days after insurance transactions began at the branch location.

¹ See s. 626.112(7), F.S.

The bill repeals current law allowing certain insurance agencies to obtain a registration in lieu of a license and makes conforming changes due to this repeal. The bill converts all agency registrations to licenses effective October 1, 2015. Effective January 1, 2015, the bill also eliminates the three-year expiration of an agency license. Thus, an agency license will continue in force until canceled, suspended, revoked, or until it is otherwise terminated or it expires by operation of law.

Agent in Charge

Each person operating an insurance agency and each location of a multiple location agency must designate a licensed and appointed agent in charge for each location.² Under current law, the term agent in charge is not defined and the scope of such agent's responsibilities is not clearly delineated. Effective January 1, 2015, the bill deletes s. 626.747, F.S., relating to branch agencies, and creates s. 626.0428(4), F.S., which defines agent in charge and specifies the scope of their responsibilities.

An agent in charge is defined as the licensed and appointed agent responsible for the supervision of all individuals within an insurance agency.³ Each business location established by an agent or insurance agency must be in the active full-time charge of a licensed and appointed agent holding the required licenses for the lines of insurance transacted at the location. The agent in charge of an insurance agency may be the agent in charge of additional branch locations if: (1) insurance activities requiring licensure as an insurance agent do not occur at the location(s) when an agent is not physically present and (2) unlicensed employees at the location(s) do not engage in insurance activities that require licensure as an insurance agent or customer representative.

Under the bill, each insurance agency and branch office is required to designate an agent in charge and to file the agent's name, license number, and physical address of the insurance agency location with DFS at the DFS website. A change of the designated agent in charge must be reported to DFS within 30 days, and becomes effective upon notification to DFS. An insurance agency location is precluded from conducting the business of insurance unless an agent in charge is designated by, and providing services to, the agency at all times. When the agent in charge ends her/his affiliation with the agency, the agency must designate another agent in charge within 30 days. If the agency fails to make such designation within 90 days after the designated agent has ended their affiliation with the agency, the agency license automatically expires 91 days after the designated agent ended their affiliation with the agency.

The bill provides that an agent in charge of an insurance agency is accountable for misconduct or violations committed by the licensee or agent or by any person under her or his supervision acting on behalf of the agency. However, the agent in charge is not criminally liable for the misconduct unless she or he personally committed the act or knew or should have known of the acts and of the facts that constitute the violation.

Title Insurance and Branch Agencies

Title insurance insures owners of real property (owner's policy) or others having an interest in real property, as well as lenders (mortgagee policies) against loss by encumbrance, defective title, invalidity, or adverse claim to title. It is a policy issued by a title insurer that, after evaluating a search of title, insures against a number of covered risks, including title defects or liens that are not identified as exceptions. In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.⁴

With respect to title insurance agents and agencies, the bill limits application of s. 626.0428(4), F.S., which is created by the bill and discussed earlier, to provisions that essentially mirror those currently

² See ss. 627.172 and 636.747, F.S.

³ Regardless of whether the agent in charge handles a specific transaction or deals with the general public in the solicitation or negotiation of insurance contracts or the collection or accounting of moneys.

⁴ Section 627.786, F.S.

found in s. 626.747, F.S., which is repealed by the bill. The reasons for the differential treatment of title insurance agents and agencies with respect to this section are unclear.

Appointment of Agents by Insurers

When certain entities⁵ enter into an agency contract with an insurer, all members, corporate officers and stockholders who solicit, negotiate, or effect insurance contracts must qualify and be licensed individually as agents or customer representatives. Each property and casualty insurer entering into an agency contract is required to individually appoint each such agent, unless the insurer's aggregate net written premium in the agency is \$25,000 or less.

The bill deletes the above-mentioned exception for insurers with no more than \$25,000 in net written premium within an agency, and requires insurers to appoint only those agents who solicit, negotiate, or effect insurance contracts for the insurer.

Unaffiliated Insurance Agent

The bill creates a new type of insurance agent, an unaffiliated insurance agent, and specifies the scope of the license. The bill defines this type of agent as a licensed insurance agent, except a limited lines agent, who is not appointed by or affiliated with any insurer, but is self-appointed. This agent acts as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by a written contract signed by the parties. The bill prohibits an unaffiliated insurance agent from being affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents. However, these agents may continue to receive commissions on sales made before the date of appointment as an unaffiliated insurance agent, as long as the agent discloses the receipt of commissions to the client when making recommendations or evaluating products of the entity from which commissions are received. The bill requires unaffiliated insurance agents to pay the same agent appointment fees required under current law for agents appointed by insurers.

Temporary Suspension of License or Appointment for Specified Felonies

Under current law, persons who commit a first degree felony; a capital felony; a felony involving money laundering, fraud or embezzlement; or a felony directly related to a financial services business are permanently barred from applying for a license from DFS (e.g., an insurance agent license).⁶ The bill requires DFS to immediately temporarily suspend a license or appointment when a licensee is charged with any of the above-enumerated felonies. Such suspension will continue if the licensee is found guilty of, or pleads guilty or nolo contendere to, any such crime, regardless of whether a judgment or conviction is entered, during a pending appeal. A person may not transact insurance business after suspension of their license or appointment. Further, the bill prohibits persons seeking licensure from DFS who have sealed or expunged criminal history records from denying or failing to acknowledge the arrests covered by such records.

Licensure Filing Fees and Members of the Military

The bill exempts members of the United States Armed Forces, their spouses, and veterans who have retired within 24 months who apply for licensure as an insurance agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary from the application filing fee prescribed by law. The bill lists documents applicants can submit with the application to establish eligibility for the exemption.

Information Required With the Surrender of a Life Insurance Policy or Annuity

The bill creates s. 627.4553, F.S., to require insurance agents, insurers, or persons performing insurance agent activities under an exemption from licensure, who recommend that a consumer surrender an annuity or life insurance policy with a cash value, but who do not recommend that another

⁵ Sole proprietorships, partnerships, corporations, and associations.

⁶ For other crimes, the law provides waiting periods for licensure.

such policy be purchased with the proceeds from the surrender, to provide the consumer with information relating to the product to be surrendered before execution of the surrender. The information, which must be provided on a form that satisfies the requirements of the rule adopted by DFS, includes the amount of any: surrender charge; tax consequences resulting from the transaction; or forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction.

Licensure Examination to Solicit or Sell Variable Products

Current law prohibits individuals from soliciting or selling variable life insurance, variable annuity contracts, or any other indeterminate value or variable contract unless the person has successfully completed a DFS authorized and approved licensure examination relating to variable “annuity” contracts. The bill deletes language limiting the scope of the licensing examination to variable annuity contracts, and requires that the examination relate to variable contracts in general.

Insurance Mediation Programs

Current law provides for alternative dispute programs, administered by DFS for various types of insurance. DFS runs mediation programs for property insurance and automobile insurance claims and a neutral evaluation program, similar to mediation, for sinkhole insurance claims.⁷ DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole claims.

To qualify as a mediator for the property or automobile mediation programs, a person must meet specific education or experience requirements set out in statute.⁸ The person must possess certain masters or doctorate degrees, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.

Also, to qualify as a DFS mediator, a person must successfully complete a training program approved by DFS. According to DFS, the required mediation training program is no longer available from outside vendors due to the low volume of DFS mediators.⁹ However, in order to ensure there was a training program available for those who wanted to be DFS mediators, for the past seven or eight years DFS approved the mediator training program offered by courts.

The bill replaces the DFS mediator education, experience, and training program requirements, set out above, with new ones. Under the bill, a person with an active certification as a Florida Supreme Court certified circuit court mediator is qualified to be a mediator for DFS. Also, a person not certified as a Florida Circuit Court Mediator can be a DFS mediator if the person is an approved DFS mediator on July 1, 2014 and has conducted at least one DFS mediation from July 1, 2010-July 1, 2014. This provision essentially grandfathers in current and active DFS mediators so they can continue to be DFS mediators, even if they are not certified as a Florida Circuit Court Mediator.

According to DFS, 224 of the 379 current DFS mediators are certified as Florida Circuit Court Mediators,¹⁰ so these mediators would still qualify to be a DFS mediator under the new qualifications provided in the bill. The remaining 155 mediators are grandfathered in by the bill and would still qualify to be DFS mediators even though they are not certified as a Florida Circuit Court Mediator. DFS estimates that changing the DFS mediator qualifications to allow Florida Circuit Court Mediators will expand the pool of mediators qualified to mediate for DFS to over 3,500 mediators.

⁷ See s. 627.7015, F.S., for property insurance claim mediation program; s. 627.7074, F.S., for sinkhole claim mediation program; and s. 627.745, F.S., for automobile insurance claim mediation program.

⁸ Section 627.745, F.S.

⁹ DFS does not provide the training program in house.

¹⁰ Information obtained from DFS dated February 5, 2014, on file with the Insurance & Banking Subcommittee.

The bill also requires DFS to deny an application to be a mediator or neutral evaluator or revoke or suspend a mediator or neutral evaluator in specified circumstances. These circumstances primarily involve the mediator or neutral evaluator committing fraud, violating laws or DFS orders, violating a rule governing mediators certified by the Florida courts, or not being qualified. Additionally, DFS is authorized to inquire into and investigate improper conduct of mediators, neutral evaluators, or navigators.¹¹ DFS does not have this authority in current law, but does have authority to inquire into and investigate improper conduct of other persons licensed by DFS, such as insurance agents and insurance adjusters. The bill allows DFS to share investigative information with any regulatory agency. Current law only allows the information to be shared with a law enforcement agency.

Regarding the property insurance mediation program, the bill requires that DFS rules additionally provide for the denial of applications, suspension, revocation and other penalties for mediators. DFS is also authorized to adopt rules for certifying, denying certification of, and revoking certification of neutral evaluators.

Sinkhole Claims

Engineers used in sinkhole claims must have expertise in two engineering specialties, geotechnical and structural. As there are very few engineers with expertise in both areas, the bill permits engineers used in sinkhole claims to have expertise in either specialty. For issues in a sinkhole claim as to which an engineer does not have expertise, she/he must find an engineer with the requisite expertise to opine on the issue and complete and co-sign the sinkhole report.

Nonresident Surplus Lines Agents

Surplus lines insurers are only permitted to write coverage that is not available in the private market. They are not required to be licensed by the Office of Insurance Regulation (OIR), but must have a Letter of Eligibility.¹²

Under current law, applicants for licensure as nonresident surplus lines agents must satisfy the same licensing requirements as resident surplus lines agents. The bill amends licensing requirements for nonresident surplus lines agents, exempting these applicants from the experience or coursework and examination requirements that must be satisfied by applicants for a resident surplus lines agent license. DFS informs that the change is consistent with how other states address the licensing of nonresident surplus lines agents and is designed to create reciprocity with other states. DFS relates an example in which another state required a Florida agent to take its surplus lines examination because Florida requires nonresident agents to take the Florida examination.

Section 627.952, F.S., requires that persons who offer, solicit, sell, purchase, administer, or service insurance contracts, certificates, or agreements for any purchasing group or risk retention group to any Florida resident must be licensed and appointed as a general lines agent (either a resident or

¹¹ Navigators are established under the federal Patient Protection and Affordable Care Act (PPACA). Under PPACA, individuals and small businesses can purchase private health insurance through state-based marketplaces called Affordable Insurance Exchanges (Exchanges). Exchanges must certify Qualified Health Plans (QHPs) offered by the insurers through the Exchange. The U.S. Department of Health and Human Services establishes and operates Exchanges within states that do not elect to establish an Exchange, including Florida. The PPACA directs Exchanges to award grants to navigators, who conduct public education activities concerning QHPs, distribute fair and impartial information concerning enrollment in QHPs, and provide referrals to any applicable office of consumer or health insurance ombudsman for any enrollee with a grievance, complaint or question about their health care coverage. Navigators do not make eligibility determinations, do not select QHPs for consumers, or enroll applicants into QHPs, but help applicants through the eligibility and enrollment process. In Florida, individuals acting or offering to act as navigators are required to be registered with DFS. The express purpose of registration is to identify qualified individuals to assist the insurance-buying public in selecting a QHP through an Exchange by providing fair, accurate, and impartial information regarding QHPs and the availability of premium tax credits and cost-sharing reductions for such plans, and to protect the public from unauthorized activities or conduct.

¹² For additional information, see "Surplus Lines Insurance," a presentation made by OIR to the Insurance & Banking Subcommittee on September 25, 2013. Available at: [http://www.flair.com/search/search.aspx#surplus lines insurance](http://www.flair.com/search/search.aspx#surplus%20lines%20insurance) (Last accessed: February 13, 2014).

nonresident agent). To place business through Florida eligible surplus lines carriers, the agent must also be licensed and appointed as either a resident or nonresident surplus lines agent. Nonresident agents must be licensed and appointed as a surplus lines agent in their state of residence and file a fidelity bond payable to the State of Florida. The bill eliminates the fidelity bond requirement and requires that such persons be licensed and appointed as a surplus lines agent in their state of residence and be licensed and appointed as a nonresident surplus lines agent in Florida.

Miscellaneous

- Renames the Division of Insurance Agents and Agency Services as the Division of Insurance Agent and Agency Services;
- Provides that no new limited customer representative licenses may be issued after September 30, 2014;¹³
- Amends criteria for issuance of a temporary license as a customer representative and specifies in part that such temporary license may be issued only after DFS has determined that the applicant has not committed a crime that would disqualify her or him from applying for a license under s. 626.207, F.S.;
- Prohibits an employee or authorized representative located at a designated branch of an agent or agency from binding insurance coverage or from initiating contact with any person for the purpose of soliciting insurance unless licensed and appointed as an agent or customer representative;
- Provides for additional methods of service of process for certain administrative actions (cease and desist orders, removal of affiliated parties, and administrative fines);
- Prohibits DFS and OIR investigators from removing *original* records from the offices of any person that is being examined or investigated without the advance, written consent of such person or pursuant to a court order;
- Requires insurers that write bail bonds to submit a sample power of attorney to OIR for approval. Currently, these forms are submitted to and approved by DFS;
- Prohibits bail bond agents whose license has been suspended or revoked from engaging in any transaction requiring a license or appointment under ch. 648, F.S. (bail bond agents), until the license is reinstated or a new license is issued;
- Deletes the requirement that applicants who seek to take a licensure examination in Spanish must pay all costs related to preparing, administering, grading, and evaluating the Spanish language examination;
- Requires each agency location to prominently display the agency license to make it clearly visible to persons entering the location; and
- Amends the scope of the license issued to a business entity that offers motor vehicles for rent or lease.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will have an insignificant, yet indeterminate fiscal impact on state revenues deposited into the Insurance Regulatory Trust Fund within DFS. According to DFS, the number of application fee

¹³ As of January 2014, 68 people held the limited customer representative license and only 40 of these licenses were active. Over the past three years, DFS has issued two limited customer representative licenses.

exemptions for members of the United States Armed Forces, their spouses, and veterans of the United States Armed Forces who have retired within 24 months prior to application for licensure is unknown at this time.¹⁴

2. Expenditures:

According to DFS, the bill will require changes to the current licensure system relating to unaffiliated agents and insurance agency licensure. However, DFS confirms that any technology changes as a result of this legislation will be insignificant and can be implemented and absorbed within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Members of the United States Armed Forces, their spouses, and veterans who are retired for up to 24 months and apply for specified licenses with DFS will be exempt from paying licensing fees.

D. FISCAL COMMENTS:

None.

¹⁴ Email correspondence with the Department of Financial Services (February 26, 2014) on file with the Government Operations Appropriations Subcommittee.