

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1101 Insurance

**SPONSOR(S):** Insurance & Banking Subcommittee and Horner

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee			
3) Health & Human Services Committee			
4) Economic Affairs Committee			

### SUMMARY ANALYSIS

The bill contains changes for various types of insurance. Issues addressed include: insurance agent and adjuster licensure, insurance required for salvage motor vehicle dealers, travel insurance, portable electronics insurance, the filing of reinsurance statements, disclosure for surplus lines insurance, dividends for crop insurance, changes to insurance policy terms, mediation program for property insurance claims, cancellation of auto insurance, and interest owed on personal injury protection (PIP) benefits. Specifically, the bill:

- Expands the coverage of travel insurance to include event cancellation and damage to travel accommodations and lengthens the travel period that can be covered by a policy from 60 to 90 days;
- Expands who can be licensed to sell travel insurance;
- Exempts certain employees of licensed insurance agents or licensed insurance adjusters selling portable electronics insurance from having to be licensed as an insurance adjuster;
- Changes the required disclosures for commercial insurance sold in the surplus lines market;
- Clarifies current law relating to the filing of reinsurance summary statements by insurers with the Office of Insurance Regulation (OIR);
- Allows the Department of Financial Services (DFS) to give licensure exams in Spanish and requires license applicants requesting a Spanish exam to pay the costs related to the exam;
- Allows a "Notice of Change in Policy Terms" to be used to remove sinkhole coverage from a base property insurance policy;
- Limits who can request mediation via the DFS property insurance mediation program to policyholders, as first-party claimants, and insurers;
- Makes property insurance claims filed more than 36 months after the Governor declares a state of emergency due to a hurricane ineligible for the DFS property insurance mediation program;
- Confirms the definition of "limited apportionment company" in the insurance code;
- Prohibits production credit associations or federal land bank associations from paying any type of patronage dividend, credit, or discount to a policyholder relating to crop insurance;
- Exempts a salvage motor vehicle dealer from having to carry garage liability or PIP insurance on vehicles that have been issued a certificate of destruction and that cannot be operated on the road;
- Allows cancellation of an auto insurance policy within the first 60 days for non-payment of premium when the check or other method of payment presented is subsequently dishonored; and
- Confirms the interest on overdue PIP benefits to the rate of interest on judgments generally.

The bill has no fiscal impact on local government. DFS estimates the bill will cost the agency \$50,000. The bill may increase the license examination costs for applicants wanting an examination in Spanish, will take away dividends given to farmers for crop insurance, should allow insurance agents and insurers not able to provide patronage dividends for crop insurance to be more competitive with those that do, will save certain insurance costs for salvage motor vehicle dealers, and will create additional expenses for insurers wanting to write the expanded type of travel insurance allowed under the bill. The bill is effective July 1, 2012, except as otherwise provided.

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

STORAGE NAME: h1101.INBS

DATE: 1/27/2012

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The bill contains changes for various types of insurance. Issues addressed include: insurance agent and adjuster licensure, insurance required for salvage motor vehicle dealers, travel insurance, portable electronics insurance, the filing of reinsurance statements, disclosure for surplus lines insurance, dividends for crop insurance, changes to insurance policy terms, mediation program for property insurance claims, and interest owed on personal injury protection benefits.

#### **Limited Lines Insurance**

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.<sup>1</sup>

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; and
- Communications equipment property insurance, communications equipment inland marine insurance, or communication equipment service warranty agreement sales.<sup>2</sup>

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 fingerprinted<sup>3</sup> and be appointed by an insurance company. Licensure requirements to sell some limited lines insurance require an agent pass an examination in order to be licensed, others do not.

#### ***Travel Insurance Limited Licenses***

##### **License Coverage**

Current law provides travel insurance covers:

- Accident death or dismemberment of a traveler;
- Trip cancellation, interruption, or delay;
- Loss of or damage to personal effects or travel documents;
- Baggage delay;
- Emergency medical travel or evacuation of a traveler; or
- Medical, surgical, and hospital expenses related to an illness or emergency of a traveler.

The bill expands the coverage of travel insurance to include event cancellation and damage to travel accommodations.

---

<sup>1</sup> s. 626.112, F.S.

<sup>2</sup> s. 626.321, F.S.

<sup>3</sup> Licensees for a limited license as a communications equipment insurance agent do not have to be fingerprinted.

### Policy Term

Under current law, a travel insurance policy can cover no more than 60 days of travel within the policy term, although the policy term may be longer than 60 days. The bill lengthens the travel period that can be covered by a policy from 60 days to 90 days, with a corresponding extension of the allowable policy term.

### Eligible Licensees

Generally, current law only allows employees of a common carrier, employees of a transportation ticket agency, timeshare developers, timeshare exchange companies, and sellers of travel regulated under chapter 559 (e.g., sellers of tour packages and tour-guide services) to sell travel insurance. The bill expands who can be licensed to sell travel insurance to allow full-time salaried employees of general lines agents<sup>4</sup> and business entities that do travel planning to sell travel insurance.

The bill specifies travel insurance license requirements for business entities that do travel planning to ensure each office location of the entity is covered by the license. These requirements are virtually the same as those required for business entities with offices that offer motor vehicles for rent or lease and are eligible to offer motor vehicle rental insurance under a limited license.

### License Fees

The bill makes a conforming change to the insurance agent licensing fee statute to require and specify travel insurance licensing fees for offices of a business entity that does travel planning. The change is consistent with the motor vehicle rental insurance licensing fees required for offices of business entities that rent motor vehicles and sell motor vehicle rental insurance. Biennial appointment fees for each office of a business entity doing travel planning is still required, but each office will no longer pay a one-time license application fee.

### Adjusters for Portable Electronics Insurance Claims

Portable electronics insurance is not recognized in current law, but CS/HB 725 creates this type of insurance and creates a limited license for an agent to sell this type of insurance. According to CS/HB 725, portable electronics insurance covers the loss, theft, mechanical failure, malfunction or damage on portable electronics. Portable electronics is broadly defined by CS/HB 725 to encompass electronic equipment such as cellular phones, pagers, portable computers, GPS units, gaming systems, docking stations, digital cameras and video cameras.

Generally, persons who adjust insurance claims must be licensed as an insurance adjuster.<sup>5</sup> The bill exempts certain employees of licensed insurance agents or licensed insurance adjusters from having to be licensed as an insurance adjuster. Specifically, employees who handle claim information or enter data into a preprogrammed automated claims adjudication system for portable electronic insurance do not have to be licensed as an adjuster. The bill provides parameters for the licensing exemption for these employees.

Furthermore, the bill provides consistency in the licensing of nonresident independent adjusters adjusting portable electronics insurance claims for adjusters residing in the United States and in Canada. Nonresident independent adjusters are recognized by s. 626.8584, F.S., and license qualifications for this type of adjuster are prescribed in s. 626.8734, F.S. Under current law, generally, a nonresident independent adjuster is not a resident of Florida, is a licensed independent adjuster in the adjuster's state of residence,<sup>6</sup> and is self-employed or employed by an independent adjusting firm or other independent adjuster. Thus, adjusters holding a license in a state other than Florida can obtain a nonresident adjuster license in Florida due to Florida's reciprocity with the licensing state (home state). In order to be able to adjust claims in the U.S., adjusters residing in Canada often become licensed in a state in the U.S. and use that license to obtain a license as a nonresident adjusters in

---

<sup>4</sup> A general lines insurance agent is an insurance agent authorized to transact one or more of the following kinds of insurance for commercial or noncommercial purposes: property insurance, casualty insurance, surety insurance, health insurance, or marine insurance.

<sup>5</sup> Part VI, Chapter 626, F.S. There are numerous licenses for adjusters, depending on the nature of the adjuster's employment and resident status.

<sup>6</sup> If the adjuster's state of residence does not license independent adjusters, then the adjuster must pass an adjuster examination in Florida in order to be licensed as a nonresident independent adjuster.

another state with a reciprocity agreement with their initial licensing state (or home state). The bill requires this licensing arrangement for adjusters that reside in Canada and adjust portable electronics insurance. To that end, the bill requires Canadian residents to be licensed in a state in the U.S. in order to be licensed as a nonresident independent adjuster in Florida.

### **Surplus Lines Insurance – Disclosures Required**

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). There are three basic categories of surplus lines risks:

1. Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
2. Niche risks for which admitted carriers do not have a filed policy form or rate; and
3. Capacity risks which are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida.<sup>7</sup> Rather, surplus lines insurers are “unauthorized” or “nonadmitted” insurers, but are eligible to transact surplus lines insurance under the surplus lines law as “eligible surplus insurers”.<sup>8</sup>

For most types of insurance sold in the surplus lines market, before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.<sup>9</sup> Section 626.914, F.S. defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is \$1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

Furthermore, for most types of insurance sold in the surplus lines market, the premium rate for policies written by a surplus lines insurer must be higher than the rate used by a majority of insurers in the admitted market for the same coverage on a similar risk.<sup>10</sup>

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover losses sustained by the business.<sup>11</sup> Major types of commercial insurance are: boiler and machinery, business income, commercial auto, comprehensive general liability, directors and officers liability, medical malpractice liability, product liability, professional liability, and workers’ compensation. Some commercial insurance, such as workers’ compensation, is required to be purchased by businesses;<sup>12</sup> however, most commercial insurance is purchased by businesses on a voluntary basis. The commercial insurance a business purchases also depends, in part, on the business type and industry.

Current law exempts certain types of commercial lines insurance sold in the surplus lines market from the diligent effort and premium requirements outlined above.<sup>13</sup> However, surplus lines agents selling these types of commercial insurance must disclose specified information about the insurance to policyholders. The required disclosure identifies the policy as a surplus lines policy and notifies the

---

<sup>7</sup> s. 624.09(1), F.S., defines “authorized” insurer.

<sup>8</sup> s. 624.09(2), F.S. defines “unauthorized” insurer, s. 626.914(2), F.S., defines “eligible surplus lines insurer,” and s. 626.918, F.S., provides eligibility for surplus lines insurers.

<sup>9</sup> s. 626.916(1)(a), F.S.

<sup>10</sup> s. 626.916(1)(b), F.S.

<sup>11</sup> <http://www2.iii.org/glossary/> (defining commercial lines) (last viewed December 11, 2011).

<sup>12</sup> Generally, non-construction businesses employing four or more employees have to buy workers’ compensation insurance. Construction businesses must buy workers’ compensation insurance if the business has one or more employees.

<sup>13</sup> The types of commercial insurance exempt are: excess or umbrella; surety and fidelity; boiler and machinery and leakage and fire extinguishing equipment; errors and omissions; directors and officers, employment practices, fiduciary liability, and management liability; intellectual property and patent infringement liability; advertising injury and internet liability insurance; property risks rated under a highly protected risks rating plan; general liability; nonresidential property, except for collateral protection insurance; nonresidential multi-peril; excess property; burglary and theft; and any other commercial lines categories as determined by the Office of Insurance Regulation. Rates for these types of insurance are also exempt from the rate approval process.

policyholder that superior coverage may be available in the admitted market at a lower premium. The disclosure also notifies the policyholder that the policy is not protected by the Florida Insurance Guaranty Association (FIGA) if the surplus lines insurer becomes insolvent.<sup>14</sup> The bill changes the required disclosures for commercial insurance sold in the surplus lines market that is exempt from the diligent effort and premium requirements applicable to surplus lines insurance. The bill requires the disclosure to state that coverage may be available in the admitted market, rather than superior coverage may be available at a lesser cost. The disclosure related to FIGA is still required.

### **Filing of Reinsurance Summary Statements**

Reinsurance is insurance bought by insurers to insure their book of business. Reinsurers do not pay policyholder claims. Instead, they reimburse insurers for claims paid by the insurer. Reinsurance effectively increases an insurer's capital and therefore the insurer's capacity to sell more insurance. The reinsurance business is global, with some of the largest reinsurers based in Europe and Bermuda.<sup>15</sup>

Reinsurance is not regulated by the OIR because reinsurers are not licensed by OIR. However, with limited exceptions, reinsurers must be accredited by OIR for insurers to take credit for reinsurance purchased on the insurer's financial statements. Section 624.610, F.S., provides requirements for reinsurer accreditation. Reinsurance rates are also not regulated by OIR and are negotiated by the insurer and reinsurer.

Generally, all insurers formed in Florida buying reinsurance on their book of business must file with the OIR a summary of the reinsurance purchased. The summary is used by OIR, in part, to monitor the solvency of the insurer. The contents of the summary statement are set in s. 627.610(11)(a), F.S. There are, however, three exceptions to current law requiring insurers to file reinsurance summary statements. Insurers with surplus over \$100 million, insurers with premiums less than \$500,000 during a calendar year, and insurers with less than 1,000 policyholders at the end of a calendar year do not have to file reinsurance summary statements with OIR for the reinsurance the insurer purchases. Current law also specifies an exception to the exception. The exception to the exception requires insurers with less than 1,000 policyholders that have less than \$500,000 in premium in a calendar year, but have \$250,000 of the \$500,000 of premium written in the last quarter of the calendar year, to file reinsurance statements.

The bill rewords and clarifies the exception to the exception. It does not substantively change the exception to the exception or how the OIR applies the exception to the exception. Thus, insurers with less than 1,000 policyholders and less than \$500,000 in premium in a calendar year, but with \$250,000 of the \$500,000 in premium written in the last quarter of the year, will still have to file reinsurance statements with the OIR.

### **DFS Licensure Examinations in Spanish**

DFS licenses many different types of insurance related professionals, including insurance agents and adjusters. Although s. 626.261, F.S., sets forth certain license examination requirements, there is no provision in current law allowing or requiring DFS to give licensure examinations in any language other than English. And, according to DFS, the department does not currently give any license examination in a language other than English.

The bill allows DFS to give licensure examinations in Spanish and requires license applicants requesting an examination in Spanish to pay the full costs related to the development, preparation, administration, grading and evaluation of the examination. The bill requires DFS to consider the percentage of the population who speak Spanish when determining whether it is in the public interest for an examination to be given in Spanish.

---

<sup>14</sup> Statutory provisions relating to the Florida Insurance Guaranty Association (FIGA), which was created in 1970, are contained in part II of chapter 631, F.S. FIGA is a nonprofit corporation composed of all insurers licensed to sell property and casualty insurance in Florida. When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders that have paid premiums for insurance are not left without valid claims being paid. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

<sup>15</sup> <http://www2.iir.org/glossary> (last viewed December 20, 2011).

Other licensing agencies in Florida are allowed to give licensure examinations in languages other than English. In fact, this bill is similar to s. 455.217(6), F.S., which allows boards within the Department of Business and Professional Regulation (DBPR) that regulate various professions to provide licensure examinations in an applicant's native language, if that language is not English or Spanish. The DBPR examination statute requires license exam applicants wanting an examination translated to a language other than English or Spanish to file a request for a translated examination with the licensing board at least six months before the exam is scheduled to be taken. The Department of Agriculture and Consumer Services (DACS) has an identical provision to the DBPR provision allowing DACS to give examinations in languages other than English and Spanish for land surveyors and mappers license applicants.<sup>16</sup>

### **Change of Policy Terms In Insurance Policies**

In 2011, legislation<sup>17</sup> was enacted allowing insurance companies to change terms contained in a property and casualty policy at policy renewal without nonrenewing the entire policy. To effectuate a change in policy terms without nonrenewing a policy, the insurer must give the policyholder a written "Notice of Change in Policy Terms" with the policy renewal notice and the policy renewal notice must be provided to the policyholder in accordance with current law. A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide a "Notice of Change in Policy Terms" to the policyholder, the terms of the insurance policy are not changed. The OIR still must approve the change in policy terms via a form filing.<sup>18</sup>

Section 627.706(4), F.S., enacted in 2009,<sup>19</sup> requires property insurance insurers to nonrenew property insurance policies to remove sinkhole coverage from the base property insurance policy when the insurer decides to only offer catastrophic ground cover collapse coverage in the base policy.<sup>20</sup> There is uncertainty as to whether property insurers can remove sinkhole coverage from the base policy at renewal using a "Notice of Change in Policy Terms" or whether the insurer must nonrenew the policy to remove sinkhole coverage and then issue a new policy without sinkhole coverage. To clarify this uncertainty, the bill allows an insurer to use a "Notice of Change in Policy Terms" to remove sinkhole coverage from a base property insurance policy at renewal. Current law allowing insurers to nonrenew the policy and issue a new policy without sinkhole coverage is retained. Thus, insurers have the option to renew the policy and exclude sinkhole coverage by providing a "Notice of Change of Policy Terms" with the notice of renewal premium or to nonrenew the policy and issue a new policy without sinkhole coverage.

### **Mediation of Property Insurance Claims**

A property mediation program for hurricane and non-hurricane related property insurance disputes is established under s. 627.7015, F.S. The mediation program is conducted by DFS. The program is not available if the appraisal process set forth in an insurance policy or litigation under the policy has begun. The mediation program is available for personal and commercial residential claims but not to other commercial claims, to private passenger motor vehicle insurance claims, to disputes relating to liability claims in property insurance policies, or to claims under policies issued by the National Flood Insurance Program. Specific mediation procedures and timeframes are set forth in Rule 69J-166.031, F.A.C., for personal residential policies and 69J-166.002, F.A.C., for commercial residential policies.

Four types of property insurance claims under current law are not eligible for the property insurance mediation program. Claims where the insurer suspects fraud are not eligible. Claims for losses that

---

<sup>16</sup> s. 472.0131(6), F.S.

<sup>17</sup> Ch. 2011-142, L.O.F.

<sup>18</sup> With limited exceptions, s. 627.410, F.S., requires every insurance policy, application, endorsement, or rider to be filed with and approved by the OIR prior to use by the insurance company.

<sup>19</sup> s. 1, Ch. 2009-178, L.O.F.

<sup>20</sup> Sinkhole coverage is more extensive coverage than catastrophic ground cover collapse coverage. Sinkhole coverage insures the property against sinkhole losses caused by sinkhole activity. Catastrophic ground cover collapse coverage insures against geological activity that causes abrupt ground cover collapse causing structural damage to the property that renders the structure being condemned. Section 627.706(1), F.S., requires all insurers to cover catastrophic ground cover collapse in a property insurance policy and to offer sinkhole coverage to the policyholder for an additional premium.

are not covered under the insurance policy are not eligible. Claims that the insurer denies due to a material misrepresentations of fact by the policyholder are not eligible. And, claims with less than \$500 in controversy are not eligible. The bill makes a fifth type of property insurance claim not eligible for the mediation program. Property insurance claims filed more than 36 months after the Governor declares a state of emergency due to a hurricane are not eligible for the mediation program.

The bill limits who can request mediation to policyholders, as first-party claimants, and insurers and makes conforming changes. First-party claimants are those in a direct contractual relationship with their insurance company. Limiting mediation to policyholders and insurers prevents other persons, such as vendors and contractors, who are involved in a claim and are assigned benefits of the claim by the policyholder from requesting mediation of the claim.

### **Definition of Limited Apportionment Insurance Companies**

The bill provides a consistent definition of “limited apportionment company.” Limited apportionment company is defined in two places in statute, s. 627.351(2)(b)3., F.S. relating to windstorm risk apportionment<sup>21</sup> and s. 627.351(6)(c)13., F.S., relating to the Coastal Account in Citizens Property Insurance Corporation (Citizens).<sup>22</sup> The definitions are the same except for the maximum amount of surplus the insurer must have in order to meet the definition. The definition in the windstorm risk apportionment statute requires \$20 million or less in surplus, whereas, the definition in the Citizens’ statute requires \$25 million or less. The bill changes the amount in the windstorm risk apportionment statute to \$25 million or less to make it consistent with the amount in the Citizens’ statute.

### **Patronage Dividends for Crop Insurance**

Crop insurance is purchased by agricultural producers (i.e., farmers) for protection against either the loss of their crops due to natural disasters or the loss of revenue due to declines in the prices of agricultural commodities. In the United States, a subsidized multi-peril federal insurance program, administered by the Risk Management Agency, is available to most farmers. The program is authorized by the Federal Crop Insurance Act (title V of the Agricultural Adjustment Act of 1938, P.L. 75-430).

Multi-peril crop insurance covers the broad perils of drought, flood, insects, disease, etc., which may affect many insureds/farmers at the same time and present the insurer with excessive losses. To make this class of insurance, the perils are often bundled together in a single policy, called a multi-peril crop insurance (MPCI) policy. MPCI coverage is usually offered by a government insurer and premiums are usually partially subsidized by the government.

Section 626.753, F.S., allows insurance agents selling crop insurance to farmers to share commissions on the sale of this insurance with production credit associations<sup>23</sup> or federal land bank associations, the

---

<sup>21</sup> The Florida Windstorm Underwriting Association (FWUA) was formed under the authority of s. 627.351(2), F.S. The FWUA provided wind-only coverage for property in coastal areas that could not procure coverage in the admitted market. The FUWA is no longer active. Its policies were transferred to Citizens in 2002 when Citizens was created. (see s. 627.351(6)(v), F.S.)

<sup>22</sup> Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation:

1. Personal Lines Account (PLA) – Multi-peril Policies  
Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2. Commercial Lines Account (CLA) – Multi-peril Policies  
Consists of condominium association, apartment building, homeowner’s association policies, and commercial non-residential multi-peril policies on property located outside the Coastal Account area; and
3. Coastal Account – Wind-only and Multi-peril Policies  
Consists of wind-only and multi-peril policies for personal residential, commercial residential, and commercial non-residential issued in limited eligible coastal areas.

<sup>23</sup> The Farm Credit System, a government-sponsored enterprise established in 1916, provides financing and financial services related to agriculture and includes a number of credit organizations. A Production Credit Association (PCA) delivers short and intermediate-term loans to farmers and ranchers, and to rural residents for housing. A PCA also makes loans to these borrowers for basic processing and marketing activities, and to farm-related businesses. A PCA obtains funds from a Farm Credit Bank to lend to its members and owns the loan assets. A Federal Land Bank Association (FLBA) was a lending agent for a Federal Land Bank and later

entities loaning funds to the farmers who are purchasing crop insurance. The insurance agents cannot share commissions with the farmers purchasing crop insurance as this would be a rebating of commission which is prohibited by s. 626.9541(1)(h), F.S.

Production credit associations and federal land bank associations provide patronage dividends (i.e., loyalty dividends) to farmers borrowing money through the association. These associations are akin to cooperatives. Farmers obtaining loans through the associations become owners of the association through the purchase of stock in the association in proportion to their loan amount. Each year the association's board of directors determines if the association had sufficient earnings to pay a patronage dividend to the farmers borrowing funds through the association (i.e., the stockholders of the association) and will pay a dividend if there are sufficient earnings. Patronage dividends reduce the tax expense of the association because the association is given a tax deduction for the amount of net income the association distributes in patronage dividends.<sup>24</sup> However, the dividend is treated as income to the farmer receiving the dividend.<sup>25</sup>

In addition to agricultural loans, some associations offer farmers crop insurance. The bill prohibits production credit associations or federal land bank associations from paying any type of patronage dividend, credit, or discount to a policyholder/farmer relating to crop insurance, making it an unlawful rebate. An insurance agent sharing commission with an association that knows the association is giving patronage dividends for crop insurance is deemed to be violating the law allowing commission sharing.

### **Salvage Motor Vehicle Dealers – Insurance Requirements**

The Department of Highway Safety and Motor Vehicles (DHSMV) is responsible for the licensing and certification of motor vehicle dealers.<sup>26</sup> A salvage motor vehicle dealer is any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.<sup>27</sup> Among the requirements to receive a license, a motor vehicle dealer must provide to the DHSMV evidence that the applicant is insured under a garage liability insurance policy<sup>28</sup> or a general liability insurance policy coupled with a business automobile policy,<sup>29</sup> which shall include, at a minimum, \$25,000 combined single-limit liability coverage including bodily injury and property damage protection and \$10,000 personal injury protection. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy.<sup>30</sup>

The bill provides that salvage motor vehicle dealers are exempt from the requirements for garage liability insurance and personal injury protection on those vehicles issued a certificate of destruction if that vehicle cannot be legally operated on state roads, highways or streets.

---

the Farm Credit Bank. FLBAs made and serviced long-term mortgage loans to farmers and ranchers, and to rural residents for housing. FLBAs did not own the loan assets, but made loans on behalf of the Federal Land Bank/Farm Credit Bank with which they were affiliated. As of October 1, 2000, there are no longer any FLBAs in the Farm Credit System.

(<https://reports.fca.gov/FCSInstDescr.asp>, last viewed January 20, 2011).

<sup>24</sup> See Internal Revenue Code, Part 4, Chapter 44, Section 1, available at [http://www.irs.gov/irm/part4/irm\\_04-044-001-cont01.html](http://www.irs.gov/irm/part4/irm_04-044-001-cont01.html) (last viewed January 22, 2011).

<sup>25</sup> See Internal Revenue Publication 225 (2011) Farmer's Tax Guide, available at <http://www.irs.gov/publications/p225/ch03.html> (last viewed January 22, 2011).

<sup>26</sup> s. 320.27, F.S.

<sup>27</sup> s. 320.27(1)(c), F.S.

<sup>28</sup> Garage liability insurance is a form of business insurance generally covering liability for the premises, operations, products, and completed operations within a commercial garage.

<sup>29</sup> A business insurance policy generally covers a company's use of cars, trucks, and other vehicles in the course of carrying out its business.

<sup>30</sup> s. 320.27(3), F.S.



### **Cancellation of Motor Vehicle Insurance Policies**

Prior to the effective date of a private passenger motor vehicle insurance policy or a binder for such a policy, the insurer or agent must collect from the insured an amount equal to 2 months' premium. This is not applicable if:

- The insured or member of the insured's family is renewing or replacing a policy or a binder for such policy written by the same insurer or a member of the same insurer group.
- The insurer issues private passenger motor vehicle coverage primarily to active duty or former military personnel or their dependents.
- All policy payments are paid through a payroll deduction plan or an automatic electronic funds transfer payment plan from the policyholder.<sup>31</sup>

For policies under which the first two months of premium do not have to be paid up front, the insurer may not cancel the new policy or binder during the first 60 days immediately following the effective date of the policy or binder except for nonpayment of premium.

The bill allows cancellation of any private passenger motor vehicle insurance policy, regardless of whether or not the first two months of premiums need to be paid up front, within the first 60 days for non-payment of premium when the check or other method of payment presented is subsequently dishonored. The bill also removes language that limits cancellation of policies within the first 60 days to nonpayment of premium.

### **Interest Rate for Overdue Payment of Personal Injury Protection Benefits**

The bill provides for interest on overdue PIP benefits at the rate for the quarter in which the payment became overdue, rather than the rate for the year in which the payment became overdue. This conforms to a change made last year to s. 55.03, F.S., concerning the rate of interest on judgments generally.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 320.27, F.S., relating to motor vehicle dealers.

**Section 2:** Amends s. 624.501, F.S., relating to filing, license, appointment, and miscellaneous fees.

**Section 3:** Amends s. 624.610, F.S., relating to reinsurance.

**Section 4:** Amends s. 626.261, F.S., relating to conduct of examination.

**Section 5:** Amends s. 6226.321, F.S., relating to limited licenses.

**Section 6:** Amends s. 626.753, F.S., relating to sharing commissions; penalty.

**Section 7:** Creates s. 626.8685, F.S., relating to portable electronics insurance claims; exemption; licensure.

**Section 8:** Amends s. 626.916, F.S., relating to eligibility for export.

**Section 9:** Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

**Section 10:** Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

**Section 11:** Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

---

<sup>31</sup> s. 627.7295(7), F.S.

**Section 12:** Amends s. 627.706, F.S.; relating to sinkhole insurance; catastrophic ground cover collapse; definitions.

**Section 13:** Amends s. 627.7295, F.S., relating to motor vehicle insurance contracts and is effective upon becoming a law.

**Section 14:** Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims and is effective upon becoming a law.

**Section 15:** Provides an effective date of July 1, 2012, except as otherwise provided.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

DFS estimates their cost to implement the bill is approximately \$50,000.<sup>32</sup> The department estimates \$45,000 of the \$50,000 cost will be associated with translation of the agency's licensure exams from English to Spanish by a vendor. The remaining \$5,000 cost is associated with updating the department's computer system to implement the new procedure for travel insurance provide by the bill.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

#### **Impact of DFS Licensure Examinations in Spanish**

The provision requiring DFS license examinations in Spanish could result in examination costs to license applicants wanting to take the exam in Spanish being higher than those for the English language exam. The bill requires applicants wanting an exam in Spanish to bear the examination cost. Thus, if few applicants want a Spanish examination, the cost of the examination for the ones that do will be higher. It is impossible to know how many license applicants will request a Spanish examination, and thus impossible to determine how much a Spanish exam will cost so that the cost of a Spanish examination can be compared to the cost of an English examination.

However, DFS obtained data from Texas regarding the number of times the Texas exams for life insurance agents and limited lines agents were given in Spanish.<sup>33</sup> According to this data, from September 30, 2010 – August 31, 2011, Texas gave their life insurance agent exam 3,563 times, with the exam given in Spanish 101 of the 3,563 times. Comparably, Florida gave their life insurance examination 3,712 times annually. During the same September 2010 – August 2011 time period, the Texas limited license examination was given a total of 2,308 times, with the exam being given 29 of the 2,308 times in Spanish. Based on the Texas data and if the cost to translate the Florida license exam to Spanish was recouped by DFS in one fiscal year, DFS estimates a license applicant talking a

<sup>32</sup> DFS Bill Analysis and Fiscal Impact Statement for HB 1101 dated 1/13/12.

<sup>33</sup> DFS Bill Analysis and Fiscal Impact Statement for HB 1101 dated 1/13/12.

Spanish examination in Florida would pay \$341 per examination, \$298 more than the \$43 cost to take an examination in English.

#### **Impact of Changes to Travel Insurance**

Insurers wanting to offer the expanded coverage for travel insurance allowed by the bill will incur costs associated with changing their insurance contracts reflecting the expanded coverage and filing the new contracts with the OIR for approval before implementing the new coverage.

#### **Impact of Patronage Dividends for Crop Insurance**

Farmers who currently receive patronage dividends based on crop insurance will no longer receive those dividends. Insurance agents that sell crop insurance for insurers that do not provide patronage dividends should be more competitive with those agents that now sell crop insurance with patronage dividends. Insurers writing crop insurance that do not provide patronage dividends should be more competitive with insurers that currently write crop insurance with patronage dividends.

#### **Impact of Salvage Motor Vehicle Dealers – Insurance Requirements**

Salvage motor vehicle dealers will no longer have to purchase garage liability and personal protection insurance on certain vehicles.

#### **D. FISCAL COMMENTS:**

Changes made by the bill that require insurers to obtain OIR approval for revised insurance contracts will increase the workload of the OIR product review unit which reviews and approves insurance contracts, however, the OIR did not quantify the increased workload in the agency bill analysis.

### **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:**

None provided in the bill and none repealed by the bill.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

The provision in the bill exempting salvage motor vehicle dealers from having to carry certain types of insurance coverage is also contained in HB 1223.

The provisions in the bill relating to portable electronics insurance are meaningless unless CS/HB 725, which creates this type of insurance, is enacted. Consideration should be given to incorporating the changes to portable electronics insurance into CS/HB 725 which creates this type of insurance and removing the provision from the bill.

The provisions in the bill relating to travel insurance do not incorporate the bill drafting changes to the travel insurance statute contained in CS/HB 725. For consistency, the changes in CS/HB 725 could be incorporated into the bill.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 24, 2012, the Insurance and Banking Subcommittee heard a Proposed Committee Substitute (PCS), adopted one amendment to the PCS, and reported the PCS favorably. The amendment placed the bill's provision clarifying a "Notice of Change in Policy Terms" can be used to remove sinkhole coverage from a base property insurance policy into a different section of law.

The staff analysis was updated to reflect the Committee Substitute.