

# HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/CS/HB 1133	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Regulatory Affairs Committee; Insurance & Banking Subcommittee; Fant and others	117 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 1222	<b>GOVERNOR'S ACTION:</b>	Pending

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## SUMMARY ANALYSIS

CS/CS/HB 1133 passed the House on April 22, 2015, and subsequently passed the Senate on April 24, 2015.

The Department of Financial Services is the state agency responsible for regulation and licensure of insurance agents and agencies. The bill amends the insurance agent and agency licensure laws. The following changes are among the major provisions of the bill:

- Removes the general lines agent's limitation to only sell health insurance when that health insurance is from an insurer that the agent represents for property and casualty insurance. An agent can now transact health insurance with any health insurer under the agent's general lines license;
- Reduces the number of lines that the agent in charge must be licensed to transact. The agent in charge is required to be licensed in at least two of the location's lines, rather than all of the location's lines, except that if the location only handles one line, the agent in charge must be licensed in that line of insurance;
- Eliminates the examination for customer representative licensing. Applicants for such licensure will qualify if they have achieved certain specified professional designations or a qualifying academic degree within 4 years prior to application;
- Allows the general lines agent, personal lines agent, and all-lines adjuster license applicants an exemption from the required examination, upon certain conditions, including obtaining certain professional designations or a qualifying academic degree;
- Removes examination exemption limitations applicable to license transferees from other states;
- Allows non-resident agent applicants to receive an examination exemption if they hold a comparable license in another state with similar examination requirements;
- Requires attendees to complete 75 percent of course hours in prelicensure courses for applicants to receive credit. This replaces a rule requirement that was repealed for lack of rulemaking authority;
- Revises various knowledge, experience, or instruction requirements governing applicants for licensure as a general lines agent, personal lines agent, life agent, or health agent;
- Allows a customer representative to share in an agent's commissions, as long as the customer representative is primarily paid by salary;
- Establishes a mandatory five year records retention requirement for insurance agents;
- Defines the term "surrender," in relation to an annuity or life insurance policy that is surrendered upon the recommendation of an agent;
- Eliminates a required form and revises the minimum information that must be provided to a consumer prior to surrender of an annuity or life insurance policy that is surrendered upon agent recommendation;
- Removes or revises various terminologies to adjust to current usage in the insurance industry; and
- Deletes references to correspondence courses to allow a greater variety of instruction methods.

The bill does not impact state or local government revenues or expenditures. The bill has an indeterminate positive impact on the private sector.

Subject to the Governor's veto powers, the effective date of the bill is July 1, 2015.

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

**STORAGE NAME:** h1133z.IBS

**DATE:** May 13, 2015

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### General Lines Agent

A general lines agent<sup>1</sup> is one who sells the following lines of insurance: property;<sup>2</sup> casualty,<sup>3</sup> including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,<sup>4</sup> or a workers' compensation self-insurance fund;<sup>5</sup> surety;<sup>6</sup> health;<sup>7</sup> and, marine.<sup>8</sup> The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.<sup>9</sup>

The bill removes the general lines agent's limitation to only sell health insurance under their general lines license when that health insurance is from an insurer that the agent represents for property and casualty insurance. An agent can transact health insurance under the agent's general lines license with any health insurer that appoints them for this purpose.

#### Agent in Charge

In 2014, HB 633<sup>10</sup> created s. 626.0428(4), F.S., defining the term "agent in charge"<sup>11</sup> and establishing the agent in charge's role, duties, and accountability. An insurance agency<sup>12</sup> must designate an agent in charge for each location where it conducts business.<sup>13</sup> An agency may designate the same agent in charge for multiple locations. The agency must file with the Department of Financial Services (DFS) the name and license number of the agent in charge and physical location of the place(s) of business that the designated agent in charge will have the responsibility for overseeing. With proper notice to the DFS, the agency can change its designation at will. If an agency has not designated an agent in charge for a location, or comes to lack such a designated agent, the location cannot conduct business until this condition is corrected. The agent in charge is responsible for violations of the Insurance Code<sup>14</sup> committed by licensees, agents, and any person under their supervision.<sup>15</sup>

An agent in charge must be licensed for each line of insurance that the particular location of the agency handles.<sup>16</sup> Prior to the 2014 law change, the agent in charge was not required to maintain a license in

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<sup>1</sup> s. 626.015(5), F.S.

<sup>2</sup> s. 624.604, F.S.

<sup>3</sup> s. 624.605, F.S.

<sup>4</sup> As defined in s. 624.462, F.S.

<sup>5</sup> Pursuant to s. 624.4621, F.S.

<sup>6</sup> s. 626.606, F.S.

<sup>7</sup> ss. 624.603 and 627.6482, F.S.

<sup>8</sup> s. 624.607, F.S.

<sup>9</sup> s. 626.829, F.S.

<sup>10</sup> Chapter No. 2014-123, L.O.F.

<sup>11</sup> An "agent in charge" is the licensed and appointed agent who is responsible for the supervision of all individuals within an insurance agency location, 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. s. 626.0428(4)(d), F.S.

<sup>12</sup> "Insurance agency" means a business location at which an individual, firm, partnership, corporation, association, or other entity, other than an employee of the individual, firm, partnership, corporation, association, or other entity and other than an insurer as defined by s. 624.03 or an adjuster as defined by subsection (1), engages in any activity or employs individuals to engage in any activity which by law may be performed only by a licensed insurance agent. s. 626.015(8), F.S.

<sup>13</sup> s. 626.0428(4), F.S.

<sup>14</sup> Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code." s. 624.01, F.S.

<sup>15</sup> An agent in charge is only criminally liable for violations occurring under their supervision if they personally committed the act or knew or should have known of the act and related facts that amount to a violation of Ch. 626, F.S. s. 626.0428(4)(e), F.S.

<sup>16</sup> s. 626.0428(4)(a), F.S.

every line that the location was handling. The DFS reports that this requirement has proven unrealistic and unnecessary. The bill reduces the number of lines that the agent in charge must be licensed to transact in order to qualify for the designation. The agent in charge is required to be licensed in at least two of the location's lines, except that if the location only handles one line, the agent in charge must be licensed in that line of insurance. The bill results in a larger number of insurance agents eligible to fulfill the agent in charge role.

## Customer Representatives

The customer representative license is unique to our state. A "customer representative" is an individual appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.<sup>17</sup> Customer representatives are not agents.<sup>18</sup> They must be licensed<sup>19</sup> by the DFS and appointed by an insurer or employer.<sup>20</sup> Since this license is unique to Florida, there is no licensing reciprocity for this credential with other states.

An individual can become licensed as a customer representative upon application to the DFS either through satisfactory performance on an examination<sup>21</sup> or by achieving a professional designation specified in statute.<sup>22</sup> The following designations facilitate licensure as a customer representative without examination:

- Chartered Property and Casualty Underwriter (CPCU) from the American Institute for Property and Liability Underwriters;
- Accredited Advisor in Insurance (AAI) from the Insurance Institute of America;
- Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors;
- Accredited Customer Service Representative (ACSR) from the Independent Insurance Agents of America;
- Certified Professional Service Representative (CPSR) from the National Foundation for Certified Professional Service Representatives;
- Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives; or
- Certified Insurance Representative (CIR) from the National Association of Christian Catastrophe Insurance Adjusters.

Also, an examination exemption is available to an applicant for license as a customer representative who has earned an associate degree or bachelor's degree from an accredited college or university and has completed at least 9 academic hours of property and casualty insurance curriculum, or the equivalent, or has earned one of the following the designations:

- Certified Customer Service Representative (CCSR) from the Florida Association of Insurance Agents;
- Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in this state; or
- Professional Customer Service Representative (PCSR) from the Professional Career Institute.

The DFS reports that 99.85 percent<sup>23</sup> of customer representative licenses issued in 2014 were attained by achieving one of the designations listed above.

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<sup>17</sup> s. 626.015(4), F.S.

<sup>18</sup> s. 626.015(2), F.S.

<sup>19</sup> s. 626.112, F.S.

<sup>20</sup> s. 626.112(3), F.S. "Appointment" means the authority given by an insurer or employer to a licensee to transact insurance or adjust claims on behalf of an insurer or employer. s. 626.015(3), F.S.

<sup>21</sup> The scope of the examination is described in s. 626.241, F.S.

<sup>22</sup> s. 626.221, F.S.

<sup>23</sup> There were 3,979 customer representative applicants in 2014 and only 6 qualified by examination.  $(3,973 / 3,979 = 99.85 \text{ percent})$

The bill eliminates the examination for customer representative licensing. Applicants for such licensure will qualify if they have achieved the following designations within 4 years prior to application:

- From the Insurance Institute of America:
  - Accredited Advisor in Insurance (AAI);
  - Associate in General Insurance (AINS); or
  - Accredited Customer Service Representative (ACSR);
- Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors;
- Certified Professional Service Representative (CPSR) from the National Foundation for CPSR;
- Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives;
- Certified Insurance Representative (CIR) from All-Lines Training;
- Professional Customer Service Representative (PCSR) from the Professional Career Institute; or
- Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in the state whose curriculum is approved by the department and includes comprehensive analysis of basic property and casualty lines of insurance and testing which demonstrates mastery of the subject.

The applicant can also satisfy the designation requirement with a degree from an accredited institution of higher learning, approved by the department, when the degree includes a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance.

Customer representatives are prohibited from being paid by commission.<sup>24</sup> They must be paid a salary, which cannot be primarily based on producing applications, insurance, or premiums. Also, an agent is limited to sharing their commissions only with other agents.<sup>25</sup> The bill permits a customer representative to share in an agent's commissions, so long as the customer representative's compensation is primarily based on a salary.

The bill also corrects the names of credentialing entities specified in statute that have changed their names since they were named therein.

### **Exemptions from Examination**

As mentioned above, an applicant may attain licensure without examination upon attainment of certain designations. This is true for applicants for life and health agents,<sup>26</sup> general lines agents,<sup>27</sup> adjusters,<sup>28</sup> resident or nonresident all-lines adjusters,<sup>29</sup> license transferees from another state,<sup>30</sup> and non-resident agents,<sup>31</sup> too. The bill allows the following license applicants to qualify for an exemption from the required examination, upon the conditions specified below:

- General lines agents, personal lines agents,<sup>32</sup> or all-lines adjusters who receive the CPCU designation from the American Institute for Chartered Property Casualty Underwriters;

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<sup>24</sup> s. 626.7354(3), F.S.

<sup>25</sup> s. 626.753(1), F.S.

<sup>26</sup> s. 626.221(g), F.S.

<sup>27</sup> s. 626.221(h), F.S.

<sup>28</sup> Id.

<sup>29</sup> s. 626.221(j), F.S.

<sup>30</sup> s. 626.221(k), F.S.

<sup>31</sup> s. 626.211(l), F.S.

<sup>32</sup> "Personal lines agent" means a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes. s. 626.015(15), F.S.

- General lines agents or all-lines adjusters earning a degree in insurance from an accredited institution of higher learning approved by the department. Qualifying degrees must indicate a minimum of 18 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, health, and commercial insurance; and
- Personal lines agents earning a degree from an accredited institution of higher learning approved by the department. Qualifying degrees must indicate a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance.

The bill removes any examination exemption limitations applicable to license transferees from other states. Also, non-resident agent applicants receive an examination exemption if they hold a comparable license in another state with similar examination requirements.

## **Examination Requirements**

Currently, there is not a minimum course completion requirement to qualify for educational course credit. In 2014, the DFS repealed a rule, for lack of rulemaking authority, that required prelicensure course attendees to complete 75 percent of the course hours to receive credit. The bill places this former rule requirement into statute. It requires attendees to complete 75 percent of course hours in required prelicensure courses for applicants to receive credit. This provides a uniform course completion standard for course providers.

## **Knowledge, Experience, or Instruction Requirements**

### General Lines Agent and Personal Lines Agent Applicants

Currently, general lines agent applicants must meet specified knowledge and experience requirements within the four years preceding their application. These requirements are waived if the applicant holds the CPCU designation. The bill eliminates some requirements and revises others. The bill requires general lines agent applicants that satisfy their knowledge requirement through coursework to complete 200 aggregate hours of DFS approved coursework in the following areas of insurance: property, casualty, surety, health, and marine. These subjects are consistent with the areas of insurance business that a general lines agent may transact. The DFS asserts that this conforms to current administrative requirements for coursework hours applicable to this license. The bill eliminates the option to meet this requirement by correspondence course and six-months of relevant work experience. General lines agent applicants can claim experience credit if they have 1 year of relevant experience as a service representative<sup>33</sup> or personal lines agent.

Similarly, personal lines agent applicants must meet specified knowledge and experience requirements within the four years preceding their application. These requirements are waived if the applicant holds the CPCU designation. The bill eliminates some requirements and revises others. The bill requires personal lines agent applicants that satisfy their knowledge requirement through coursework to complete 60 aggregate hours, rather than 52 hours, of DFS approved coursework in the following areas of insurance: property, casualty, and inland marine. These subjects are consistent with the areas of insurance business that a personal lines agent may transact. The bill eliminates the option to meet this requirement by correspondence course and six-months of relevant work experience. Personal lines agent applicants can claim experience credit if they have six months of relevant experience as a service representative.

### Life Agent Applicants

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<sup>33</sup> “Service representative” means an individual employed by an insurer or managing general agent for the purpose of assisting a general lines agent in negotiating and effecting insurance contracts when accompanied by a licensed general lines agent. A service representative shall not be simultaneously licensed as a general lines agent in this state. This subsection does not apply to life insurance. s. 626.015(17), F.S.

Currently, life agent<sup>34</sup> applicants must meet specified knowledge and experience requirements within the four years preceding their application. These requirements are waived if the applicant holds the Chartered Life Underwriter (CLU) designation. The bill eliminates some requirements and revises others. It specifies that whoever satisfies their knowledge requirement through coursework must do so in the subjects of life insurance, annuities, and variable contracts, rather than simply insurance. A life agent applicant may satisfy their knowledge requirement by earning or maintaining one of the following designations in the four years prior to application:

- Chartered Financial Consultant (ChFC) from the American College of Financial Services;
- Fellow, Life Management Institute (FLMI) from the Life Management Institute; or
- Certified Financial Planner (CFP) from the Certified Financial Planner Board of Standards.

The bill permits a life agent applicant to qualify for licensure if they have completed at least 60 hours of coursework in multiple lines of insurance, including life insurance, annuities, and variable contracts.<sup>35</sup> The coursework must include instruction in unauthorized insurance entities and three hours of ethics training. The bill also allows those applicants that rely on prior employment with the DFS or the Office of Insurance Regulation (OIR) to claim credit for their employment experience for four years following their separation from employment, rather than only 90 days.

### Health Agent Applicants

Currently, health agent<sup>36</sup> applicants must meet specified knowledge and experience requirements within the four years preceding their application. These requirements are waived if the applicant holds the Chartered Life Underwriter (CLU) designation. The bill eliminates some requirements and revises others. It specifies that whoever satisfies their knowledge requirement through coursework must do so in the subject of health insurance, rather than simply insurance. A health agent applicant may satisfy their knowledge requirement by earning or maintaining one of the following designations in the four years prior to application:

- From the American College of Financial Services:
  - Registered Health Underwriter (RHU);
  - Chartered Healthcare Consultant (ChHC); or
  - Registered Employee Benefits Consultant (REBC);
- Certified Employee Benefit Specialist (CEBS) from the Wharton School of the University of Pennsylvania;
- Health Insurance Associate (HIA) from America's Health Insurance Plans; or
- Certified Financial Planner (CFP) from the Certified Financial Planner Board of Standards.

The bill permits a health agent applicant to qualify for licensure if they have completed at least 60 hours of coursework in multiple areas of insurance, including health insurance. The coursework must include instruction in unauthorized insurance entities and three hours of ethics training. The bill also allows those applicants that rely on prior employment with the DFS or the OIR to claim credit for their employment experience for four years following their separation from employment, rather than only 90 days.

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<sup>34</sup> "Life agent" means an individual representing an insurer as to life insurance and annuity contracts, or acting as a viatical settlement broker as defined in s. 626.9911, including agents appointed to transact life insurance, fixed-dollar annuity contracts, or variable contracts by the same insurer. s. 626.015(10), F.S.

<sup>35</sup> "Variable contracts" means indeterminate value contracts for which assets are held in a separate account. s. 627.8015(2), F.S.

<sup>36</sup> "Health agent" means an agent representing a health maintenance organization or, as to health insurance only, an insurer transacting health insurance. s. 626.015(6), F.S.

## Retention of Records by Agents

Currently, there is no records retention requirement applicable to insurance agents. The bill requires agents to retain records for at least five years following policy expiration.

## Recommendations to Surrender Annuities

Under current law, an insurance agent or insurance agency (if no agent is involved), including persons performing agent activities under a licensing exemption, is required to provide certain information to persons surrendering an annuity or life insurance policy (i.e., cashing out the value of the annuity or life insurance policy) on the recommendation of the agent or agency. The law applies if the agent or agency is not recommending that the annuity proceeds be used to purchase another annuity or a life insurance policy. Upon the occurrence of these conditions, the required information notice must be provided to the annuity owner or life insurance owner before the annuity is surrendered. The agent must disclose information including the amount of the surrender charge, the loss of minimum interest rate guarantees, the tax consequences, the amount of the forfeited death benefit, and the value of any other investment performance guarantees that result from the surrender of the annuity. This information is required to be presented on a form that meets informational standards established by rule.

The bill eliminates DFS rulemaking authority concerning the content of the form used to deliver the required information. The required notice will solely be governed by the standards specified in s. 627.4553, F.S. The bill requires the notice to be in writing, but does not remove or increase any of the elements already specified in law. The bill requires the agent to maintain a record of the notice that it delivers to the surrendering annuity owner. It also defines the term “surrender.”<sup>37</sup>

## Miscellaneous

The bill:

- Strikes a defunct term from s. 626.2817, F.S., which regulates educational courses and providers;
- Eliminates a DFS prescribed affidavit form. Interested parties will now provide an attestation in the format of their choosing;
- Deletes out of date educational course subject matter requirements;<sup>38</sup>
- Removes references to correspondence courses that currently satisfy knowledge requirements so that various methods of course delivery may be used for these purposes;
- Revises the provision allowing the collection of the exact amount of a credit card facility fee to make the provision applicable without regard to any other provision of law. This is out of the apparent concern that the prohibition in s. 501.0117, F.S., on collecting a surcharge for accepting payment by credit card is a limitation on an agent’s authority to collect the credit card facility fee allowed to agents under s. 626.9541(o), F.S.;
- Allows electronic return receipt delivery of required insurer insolvency notices to policy holders. This required notice is triggered when an agent is unable to replace a policyholder’s coverage upon the insolvency of their insurer; and
- Makes various technical and grammatical changes to accommodate changes in terminologies presently used in the insurance industry.

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<sup>37</sup> "Surrender" is defined as “the voluntary surrender, by the owner's request, of the annuity or life insurance policy before its maturity date, in exchange for the policy's current cash surrender value which results in a surrender or termination of the policy or contract. The term excludes any involuntary termination that is otherwise required by the terms of the policy contract and excludes all transactions other than a surrender, such as maturity, policy loan, lapse for nonpayment of premium, or withdrawal of policy or contract values, annuitization, or exercise of reduced-paid-up or extended-term nonforfeiture options.” CS/CS/HB 1133, enrolled, lines 745-755.

<sup>38</sup> Specifically, coursework concerning the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision and regulation of health insurance by employers is eliminated.

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

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

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

None.

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

None.

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

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

None.

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

None.

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

The bill will have a positive impact on insurance agents and agencies by increasing the pool of agents that qualify for agent in charge designations and facilitating the licensure of qualified applicants. It will have a negative impact on them by requiring record retention for five years following the expiration of a policy.

### **C. FISCAL COMMENTS:**

#### **1. None.**