Government Operations Appropriations Subcommittee

Monday, February 13, 2012
1:45 PM - 4:45 PM
404 HOB

Meeting Packet

Dean Cannon
Speaker

Ed Hooper
Chair

The Florida House of Representatives

Appropriations Committee

Government Operations Appropriations Subcommittee

Dean Cannon
Speaker

Ed Hooper
Chair

February 13, 2012

AGENDA
1:45 PM – 4:45 PM
404 HOB

I. **Call to Order/Roll Call**

II. **Consideration of Bills**

HB 249 Public Lodging by Representative Bembry

CS/CS/HB 385 Medical Malpractice by Representative by Representative Gaetz

CS/HB 725 Insurance Agents and Adjusters by Representative Hager

CS/HB 1011 Warranty Associations by Representative Abruzzo

CS/HB 1065 Annuities by Representative Broxson

HB 1305 Pub. Rec./Officers-Elect by Representative Adkins

III. **Adjourn**

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850)488-0621 Fax: (850)488-9633

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 249 Public Lodging Establishments
SPONSOR(S): Bembry
TIED BILLS: **IDEN./SIM. BILLS:** SB 454

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	14 Y, 0 N	Morton	Creamer
2) Government Operations Appropriations Subcommittee		Topp	Topp BDT
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill would provide an exemption from regulation as public lodging establishments for apartment complexes that are inspected by the U.S. Department of Housing and Urban Development, or its agent, that are designated primarily as housing for persons age 55 or older.

The bill is expected to have a negative fiscal impact of $72,540 annually on the Department of Business and Professional Regulation's Hotels and Restaurants Trust Fund.

The bill will become effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Lodging Establishments

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) oversees the regulation of Public Lodging and Food Service Establishments. Chapter 509, F.S., divides public lodging establishments first by the length of time they are rented, and then by their use.

Occupancy is 'transient' if the parties intend it to be temporary. If the unit is not the guest's primary residence, there is a rebuttable presumption that occupancy is transient. Likewise, occupancy is nontransient if the operator intends the unit to be the guest's primary residence.

Public lodging establishments that are rented more than three times a year for periods of less than a month are deemed transient. Nontransient public lodging establishments are rented for periods of more than a month. If an establishment is advertised for rent, it is also considered a public lodging establishment and classified as transient or nontransient based on the advertised rental term.

Public lodging establishments are further classified based on use, as follows:

Hotel:	Accommodations for 25 or more guests and provides services generally provided by a hotel and recognized as such by the community or industry (i.e. Hilton).
Motel:	At least six rental units with an exit to outside, off-street parking, and a bathroom, onsite central office, which is recognized as a motel in the community or the industry (i.e. Motel 6).
Bed and breakfast inn:	Modified family home providing accommodation and meal services generally offered by a bed and breakfast inn, and recognized as such in the community or the hospitality industry.
Nontransient apartment or roominghouse:	Rental accommodations intended to be used as primary residences (75 percent or more nontransient).
Transient apartment or roominghouse:	Rental accommodations with a substantial portion of units held for transient guests (more than 25 percent transient).
Roominghouse:	Any public lodging establishment not otherwise classified.
Vacation rentals:	Any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family dwelling house or dwelling unit that is also a transient public lodging establishment.

All public lodging establishments are licensed, but the degree of inspections and the relevant fees differ based on the type of establishment. The Division inspects apartments annually.

Transient apartments pay a total in annual fees ranging from $145 to $325, which includes a base fee of $125, an incremental unit-based fee ranging from $10 for a single unit to $190 for more than 500 units, and a $10 Hospitality Education Program fee.

Non-transient apartments pay a total in annual fees ranging from $125 to $295, which includes a base fee of $95, an incremental unit-based fee ranging from $20 to $95, and a $10 Hospitality Education

Program fee.

As of October 3, 2011, DHR licenses 17,516 nontransient apartments and 1,005 transient apartments.

The following types of lodging are excluded from the definition of public lodging establishment, and, therefore, are not subject to the regulations:

- Dormitories or other facilities maintained by schools, colleges, or universities for housing students, faculty, or visitors.
- Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Family Services.
- Migrant labor camps or residential migrant housing permitted by the Department of Health.
- Mobile home and recreational vehicle parks inspected by the Department of Health.
- Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.
- Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.

U.S. Department of Housing and Urban Development

The U.S. Department of Housing and Urban Development (HUD) operates five programs that designate assisted housing developments for either low-income elderly residents alone, or low-income elderly residents and residents with disabilities. The primary HUD program that provides housing for low-income elderly households is the Section 202 Supportive Housing for the Elderly program. The Public Housing and project-based Section 8 housing programs have projects dedicated to elderly households. The Section 221(d)(3) Below Market Interest Rate and Section 236 programs are mortgage subsidy programs that provide housing for all age levels, but have properties specifically dedicated to elderly households.[1]

HUD designates certain property as elderly housing. HUD programs define elderly housing as households where one or more persons are age 62 or older. If owners are unable to rent units to elderly families, they may give preference to near-elderly families (defined as age 50 or older) with an adult member who has a disability.[2]

HUD Rental Housing Programs for Low-Income Elderly Households		
Program	**Income Eligibility**	**Units Designated for Elderly Households[3]**
Section 202		262,704
1981 to present	50% of area median income.	
1974 to 1981	80% of area median income.	
1968 to 1974	Higher of 80% of area median income or 135% of Public Housing income limits.	
1962 to 1968	Income limits set on a community basis.	
1959 to 1962	No income limits.	
Section 8 Rental Assistance	50% of area median income.	200,455
Public Housing	80% of area median income.	76,638

[1] Congressional Research Service, Section 202 and Other HUD Rental Housing Programs for Low-Income Elderly Residents, RL33508 (Sept. 2010), *available online at* http://aging.senate.gov/crs/aging13.pdf.
[2] *Id.*
[3] Data from 2005. *Id.*

Section 236	80% of area median income.	65,877
Section 221(d)(3) BMIR	95% of area median income.	1,154

Under Section 202, HUD provides capital advances to finance the construction, rehabilitation or acquisition of housing for very low-income elderly persons and provides rent subsidies for the projects to help make them affordable. Occupancy in Section 202 housing is open to any very low-income household comprised of at least one person who is at least 62 years old at the time of initial occupancy.

The Real Estate Assessment Center (REAC) conducts physical inspections of housing that is owned, insured or subsidized by HUD, including section 202 properties. REAC inspections cover all building exteriors, all building systems, all common areas and all units.[4] The frequency of REAC inspections is based on the outcome of previous reviews, with the best performing properties (90 points or higher) inspected every 3 years, and the worst performing properties (79 points or less) inspected annually. Such housing is also subject to Management and Occupancy Reviews (MOR), which review compliance with relevant agreements and laws and include physical inspections of the buildings and grounds.[5]

The Housing Choice Voucher Program, also known as Section 8 Housing, provides certain populations, including the elderly, with financial assistance with rent costs.[6] Applicants meeting eligibility criteria, including income limits, are given vouchers toward rental costs in approved rental units. The program regulations set forth basic housing quality standards (HQS) which all units must meet before assistance can be paid on behalf of a family and at least annually throughout the term of the assisted tenancy.[7] Local public housing agencies inspect the units for health and safety.

The HQS covers 13 key aspects of housing quality, including sanitary facilities, food preparation and refuse disposal, space and security, thermal environment, illumination and electricity, structure and materials, interior air quality, water supply, lead-based paint, access, site and neighborhood, sanitary condition, and smoke detectors.

Certain housing is designated for use by elderly persons, including congregate housing, where tenants share dining spaces and are given food service, and group homes, and must meet additional quality standards.[8]

There are three different types of HQS inspections:

Initial Inspections	Upon application to use voucher for specific housing unit, before lease is signed. Annual Inspections of units currently under lease. Annual inspections ensure that HCV housing units continue to meet HQS throughout the tenancy of the HCV participant family.
Special Inspections	In response to complaints or quality control inspections.
Quality control inspections	Sample of housing units within a local public housing association's jurisdiction made throughout the year.

[4] *See* HUD Physical Inspection Library, *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac/library/lib_phyi.
[5] *See* HUD, Occupancy Requirements of Subsidized Multifamily Housing Programs, 4350.3, *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh/4350.3.
[6] *See* Housing Choice Vouchers Fact Sheet, U.S. Dept. of Housing and Urban Development, *available at* http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8.
[7] 24 CFR Part 982.
[8] Housing Choice Voucher Program Guidebook, U.S. Dept. of Housing and Urban Development, Ch. 17, Special Housing Types, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11761.pdf.

Proposed Changes

The bill would provide an exemption from regulation as public lodging establishments for apartment complexes that are inspected by the U.S. Department of Housing and Urban Development, or its agent, that are designated primarily as housing for persons age 55 or older. The DBPR indicates that a total of 372 nontransient apartment licenses would likely become exempt under the provisions of the bill.[9]

The bill would become effective upon becoming law.

B. SECTION DIRECTORY:

Section 1 amends s. 509.013, F.S., to provide an exemption from regulation as public lodging establishments for certain apartment complexes inspected by the U.S. Department of Housing and Urban Development.

Section 2 provides the bill will become effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill is expected to have a negative fiscal impact on revenues to the Hotels and Restaurants Trust Fund. DBPR estimates the provisions of the bill will result in an annual reduction in revenue of $72,540 [10]

2. Expenditures:

The bill will have a minimal impact on expenses related to apartment inspections by an amount equivalent to the number of establishments meeting the exemption, approximately 372. The DBPR estimates the statewide workload decrease is equivalent to 0.1 FTE position.[11]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

[9] Department of Business and Professional Regulation Bill Analysis dated October 18, 2011 and updated as of February 7, 2012.
[10] *Id.*
[11] *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would reduce costs of those establishments meeting the exemption requirements. The DBPR estimates 372 nontransient apartment licenses would likely become exempt under the provisions of the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Division of Hotels and Restaurants reports:

> The bill does not identify what entity designates the apartment complex as housing primarily for persons at least 55 years of age. The Division does not currently have the ability to perform this designation and the bill does not provide the division rule authority to define the designation.

Under several existing programs, HUD designates property as 'elderly housing,' if at least one tenant in each unit is age 62 or older, and inspects such property. Property may also be exempt from the Fair Housing Act, which prohibits discrimination in housing based on age, if the property is intended and operated for occupancy by persons 55 years of age or older, and meets certain criteria. However it is unclear at this time whether HUD makes a formal designation before a claim of discrimination arises.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public lodging establishments; amending s. 509.013, F.S.; revising the definition of the term "public lodging establishment" to exclude certain apartment complexes designated primarily as housing for persons at least 55 years of age; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 509.013, Florida Statutes, is amended to read:

509.013 Definitions.—As used in this chapter, the term:

(4)(a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever

is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.~~;~~

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Family Services or other similar place regulated under s. 381.0072.~~;~~

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.~~;~~

4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a

single complex of buildings are available for rent.~~;~~

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.~~;~~

6. Any establishment inspected by the Department of Health and regulated by chapter 513.~~; and~~

7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

8. Any apartment complex inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 55 years of age.

Section 2. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Bembry offered the following:

Amendment (with title amendment)

Remove lines 66-69 and insert:

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The Division may adopt rules to implement this requirement.

Amendment No. 1

T I T L E A M E N D M E N T

Remove lines 5-6 and insert:

certain apartment buildings designated primarily as housing for persons at least 62 years of age; authorizing the Division of Hotels and Restaurants to require written documentation from an apartment building operator that such building is in compliance with certain criteria; authorizing the Division to adopt certain rules;

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Bembry offered the following:

Amendment

Remove line 70 and insert:

Section 2. This act shall take effect October 1, 2012.

CS/CS/HB 385
Medical Malpractice

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 385 Medical Malpractice
SPONSOR(S): Judiciary Committee; Civil Justice Subcommittee; Gaetz; Renuart and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1506

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 2 N, As CS	Bond	Bond
2) Judiciary Committee	11 Y, 2 N, As CS	Bond	Havlicak
3) Government Operations Appropriations Subcommittee		Keith	Topp BDT
4) Health & Human Services Committee			

SUMMARY ANALYSIS

This bill allows a prospective defendant in a medical malpractice action to interview a claimant's health care providers without the presence of the claimant if the prospective defendant provides 10 days notice of the intent to interview.

This bill provides that a plaintiff in a medical negligence action must prove by clear and convincing evidence that the failure of a health care provider to order, perform, or administer supplemental diagnostic tests is a breach of the standard of care.

Medical professionals on duty in a hospital emergency room or trauma center are required by federal and state law to evaluate any individual who presents himself or herself as needing medical treatment, and provide emergency medical treatment, regardless of whether the individual pays or has the ability to pay for such services. This bill makes legislative findings declaring that these medical professionals are agents of the government performing a government duty.

Sovereign immunity is a legal concept that protects governments from being sued without their consent. The protection is often extended to government contractors performing governmental functions. This bill provides that a physician, osteopathic physician, podiatrist or dentist working in a hospital emergency room or trauma center is an agent of the state protected by sovereign immunity. These medical professionals may elect to opt out of sovereign immunity, and may later opt back in. A medical professional covered by the sovereign immunity protection recognized in this bill is required to reimburse the state for claims and costs up to the sovereign immunity limits, and the failure to reimburse the state is grounds for discipline against the medical license.

The Department of Financial Services (DFS) estimates that the bill will have an annual negative fiscal impact on the State Risk Management Trust Fund of between $7.0 million and $24.1 million. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Medical Malpractice Actions - In General

In general, a person has a common law cause of action against another for personal injury occasioned by the other's negligence. The term "medical malpractice" refers to personal injury lawsuits related to negligence committed by medical professionals. Negligence actions in general are governed by ch. 768, F.S.; medical malpractice actions are also governed by ch. 766, F.S.

Standard of Proof in Medical Malpractice Cases Relating to Supplemental Diagnostic Tests

Section 766.102(4), F.S., provides that the "failure of a health care provider to order, perform, or administer supplemental diagnostic tests shall not be actionable if the health care provider acted in good faith and with due regard for the prevailing professional standard of care."

Section 766.102, F.S., provides that a claimant in a medical negligence action must prove by "the greater weight of the evidence" that actions of the health care provider represented a breach of the prevailing professional standard of care. Greater weight of the evidence means the "more persuasive and convincing force and effect of the entire evidence in the case."[1]

Other statutes, such as license disciplinary statutes, require a heightened standard of proof called "clear and convincing evidence." Clear and convincing evidence has been described as follows:

> [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.[2]

Section 766.111, F.S., prohibits a health care provider from ordering, procuring, providing, or administering unnecessary diagnostic tests.

The bill provides that the claimant in a medical negligence case where the death or injury resulted from a failure of a health care provider to order, perform, or administer supplemental diagnostic tests must prove that the health care provider breached the standard of care by clear and convincing evidence. This bill would have the effect of making such claims more difficult to prove. Standards of proof in other medical negligence cases would remain unchanged.

Interviews with Treating Health Care Providers in Medical Malpractice Cases

Background

Section 766.203(2), F.S., requires a claimant (a prospective medical malpractice plaintiff) to investigate whether there are any reasonable grounds to believe that a health care provider was negligent in the care and treatment of the claimant and whether such injury resulted in injury to the claimant prior to issuing a presuit notice. The claimant must corroborate reasonable grounds to initiate medical negligence litigation by submitting an affidavit from a medical expert.[3] After completion of presuit

---

[1] *Castillo v. E.I. Du Pont De Nemours & Co., Inc.*, 854 So.2d 1264, 1277 (Fla. 2003).
[2] *Inquiry Concerning Davey*, 645 So.2d 398, 404 (Fla. 1994)(quoting *Slomowitz v. Walker*, 429 So.2d 797, 800 (Fla. 4th DCA 1983).
[3] Section 766.203(2), F.S.

investigation, a claimant must send a presuit notice to each prospective defendant.[4] The presuit notice must include a list of all known health care providers seen by the claimant for the injuries complained of subsequent to the alleged act of negligence, all known health care providers during the 2-year period prior to the alleged act of negligence who treated or evaluated the claimant, and copies of all of the medical records relied upon by the expert in signing the affidavit.[5] However, the requirement of providing the list of known health care providers may not serve as grounds for imposing sanctions[6] for failure to provide presuit discovery.[7]

Once the presuit notice is provided, no suit may be filed for a period of 90 days. During the 90-day period, the statute of limitations is tolled and the prospective defendant must conduct an investigation to determine the liability of the defendant.[8] Once the presuit notice is received, the parties must make discoverable information available without formal discovery.[9] Informal discovery includes:

1. Unsworn statements - Any party may require any other party to appear for the taking of an unsworn statement.

2. Documents or things - Any party may request discovery of documents or things.

3. Physical and mental examinations - A prospective defendant may require an injured claimant to appear for examination by an appropriate health care provider. Unless otherwise impractical, a claimant is required to submit to only one examination on behalf of all potential defendants.

4. Written questions - Any party may request answers to written questions.

5. Unsworn statements - The claimant must execute a medical information release that allows a prospective defendant to take unsworn statements of the claimant's treating health care providers. The claimant or claimant's legal representative has the right to attend the taking of such unsworn statements.[10]

Section 766.106(7), F.S., provides that a failure to cooperate during the presuit investigation may be grounds to strike claims made or defenses raised. Statements, discussions, documents, reports, or work product generated during the presuit process are not admissible in any civil action and participants in the presuit process are immune from civil liability arising from participation in the presuit process.[11]

At or before the end of the 90 days, the prospective defendant must respond by rejecting the claim, making a settlement offer, or making an offer to arbitrate in which liability is deemed admitted, at which point arbitration will be held only on the issue of damages.[12] Failure to respond constitutes a rejection of the claim.[13] If the defendant rejects the claim, the claimant can file a lawsuit.

Ex Parte Interviews with Physicians by Defense Counsel

In many civil cases, counsel for any party can meet with any potential witness who is willing to speak without notice to the opposing counsel. In 1984, the Florida Supreme Court ruled that there was no

[4] Section 766.106(2)(a), F.S.
[5] Section 766.106(2)(a), F.S.
[6] Sanctions can include the striking of pleadings, claims, or defenses, the exclusion of evidence, or, in extreme cases, dismissal of the case.
[7] Section 766.106(2)(a), F.S.
[8] Section 766.106(3), (4), F.S.
[9] Section 766.106(6)(a), F.S. The statute also provides that failure to make information available is grounds for dismissal of claims or defenses.
[10] Section 766.106(6), F.S.
[11] Section 766.106(5), F.S.
[12] Section 766.106(3)(b), F.S.
[13] Section 766.106(3)(c), F.S.

common law or statutory privilege of confidentiality as to physician-patient communications[14] and that there was no prohibition on defense counsel communicating with a claimant's physicians. In 1988, the Legislature enacted a statute to create a physician-patient privilege.[15] The current version of the statute provides, in relevant part:

> Except as otherwise provided in this section and in s. 440.13(4)(c), [patient medical records] may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient.[16]

The statute provides some exceptions to the confidentiality in medical malpractice cases but the Florida Supreme Court has ruled that defense counsel are barred by the statute from having an ex parte conference with a claimant's current treating physicians.[17]

The Governor's Select Task Force on Healthcare Professional Liability Insurance noted problems caused by the inability of defense counsel to interview a claimant's treating physicians:

> [T]he defendant is frequently in the position of having to investigate the plaintiff's medical history or current condition in order to discover other possible causes of the plaintiff's injury that could be used in defending the action. In addition, this information is often useful in determining the strength of the plaintiff's case, which the defendant could use to decide whether to settle the claim or proceed to trial. It is often necessary to interview several of the plaintiff's treating healthcare providers in order to acquire this information. But, because formal discovery is an expensive and time consuming process, defendants are often unable to adequately gather this information in preparation of their defense.[18]

Opponents of allowing defendants access to ex parte interviews with treating physicians argued the system was not broken. The report continued:

> The problem the Legislature corrected was the private, closed-door meetings between insurance adjusters, defense lawyers, and the person being sued. Typically, the person being sued would speak with his or her colleagues and say "I need your help here. I'm getting sued. I need you to help me out on either the causation issue or the liability issue or the damage issue.
>
> The present system is not broken. Crafting language to go back prior to 1988, to allow unfettered access, is not appropriate. To allow a situation where a defense lawyer or an insurance adjuster and the doctor go to see a patient's treating physician on an informal basis would further drive a wedge between that physician and the patient.[19]

In 2003, the Legislature amended s. 706.106, F.S., to require a claimant to execute a medical information release to allow prospective defendants to take unsworn statements of the claimant's treating physician on issues relating to the personal injury or wrongful death during the presuit process. The claimant and counsel are entitled to notice, an opportunity to be heard, and to attend the taking of the statement. The legislation did not provide for ex parte interviews by defense counsel with a claimant's treating physicians.[20]

---

[14] See *Coralluzzo v. Fass*, 671 So.2d 149 (Fla. 1984).
[15] Chapter 88-208, L.O.F.
[16] Section 456.057(7)(a), F.S.
[17] *See Acosta v. Richter*, 671 So.2d 149 (Fla. 1996).
[18] *Report of the Govenor's Select Task Force on Healthcare Professional Liability Insurance* (2003) at p. 231. The Report can be accessed at www.doh.state.fl.us/myflorida/DOH-Large-Final%20Book.pdf (last accessed January 26, 2012).
[19] *Id.* at 233 (internal footnotes omitted).
[20] Chapter 2003-416, Laws of Florida.

Effect of the Bill - Interviews

This bill provides that a prospective defendant or his or her legal representative may interview the claimant's treating health care providers without the presence of the claimant or the claimant's legal representative. This bill provides that a prospective defendant or his or her representative must provide the claimant with 10 days notice prior such interview.

Medical Malpractice Cases Related to Emergency Medical Treatment

Background - Mandated Emergency Medical Treatment

Under current law, certain health care providers are obligated under state and federal law to provide emergency services.

Section 395.1041(3)(a), F.S., requires every general hospital which has an emergency department to provide emergency services and care for any emergency medical condition when:

- Any person requests emergency services and care; or
- Emergency services and care are requested on behalf of a person by an emergency medical services provider who is rendering care to or transporting the person; or by another hospital when such hospital is seeking a medically necessary transfer.

Section 395.1041(3)(f), F.S., requires emergency services and care to be provided regardless of whether the patient is insured or otherwise able to pay for services.

Section 401.45, F.S(1), F.S. provides that a licensed basic life support service, advanced life support service, or air ambulance service may not deny needed prehospital treatment or transport for an emergency medical condition to any person.

Similarly, federal law requires hospitals to provide a "medical screening evaluation" regardless of an individual's ability to pay.[21]

Background - Liability Laws Related to Emergency Medical Treatment

A health care practitioner providing mandated emergency medical treatment is not liable for civil damages related to such services unless the injured patient can show that the practitioner acted with "a reckless disregard for the consequences so as to affect the life or health of another."[22]

An award of noneconomic damages[23] related to medical malpractice caused by a medical practitioner providing emergency services and care is limited to $150,000 per claimant and $300,000 per incident.[24] There is no limit on the corresponding economic damages.

---

[21] 42 U.S.C. s. 1395dd., which reads at subsection (a):

> In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1) of this section) exists.

[22] Section 768.13(2)(b), F.S.

[23] Noneconomic damages are often referred to as "pain and suffering."

[24] Section 766.118(4), F.S.

Background - Sovereign Immunity

Sovereign Immunity is a "doctrine which precludes bringing suit against the government without its consent."[25] The Florida Constitution recognizes that the concept of sovereign immunity applies to the state[26], although the state may waive its immunity through an enactment of general law.[27] Sovereign immunity extends to all subdivisions of the state, including counties and school boards.

In 1973, the Legislature enacted s. 768.28, F.S., a partial waiver of sovereign immunity, allowing individuals to sue state government and its subdivisions. According to subsection (1), individuals may sue the government under circumstances where a private person "would be liable to the claimant, in accordance with the general laws of [the] state . . . . "

Section 768.28(5), F.S., imposes a $200,000 limit on the government's liability to a single person, and a $300,000 total limit on liability for claims arising out of a single incident. These limits have been upheld as constitutional.[28] The limit applies to the total of economic and noneconomic damages.

An injured party may obtain a judgment in excess of the statutory limits, but cannot enforce payment above the limit. The Legislature may, by general law, provide for payment in excess of the statutory cap by virtue of a claims bill.[29] The courts have explained:

> Even if he is able to obtain a judgment against the Department of Transportation in excess of the settlement amount and goes to the legislature to seek a claims bill with the judgment in hand, this does not mean that the liability of the Department has been conclusively established. The legislature will still conduct its own independent hearing to determine whether public funds would be expended, much like a non jury trial. After all this, the legislature, in its discretion, may still decline to grant him any relief.[30]

Section 768.28(9)(b)2., F.S., defines the term "officer, employee, or agent" (which are the persons to whom sovereign immunity applies). Several identified groups are included in the definition, including health care providers when providing contract services pursuant to s. 766.1115, F.S. That section provides that certain health care providers who contract with the state are considered agents of the state, and thus entitled to the protection of sovereign immunity.

Florida law provides that a number of persons who perform public services are agents of the state and thus covered by sovereign immunity, including:

- Persons or organizations providing shelter space without compensation during an emergency.[31]
- A health care entity providing services as part of a school nurse services contract.[32]
- Members of the Florida Health Services Corps who provide medical care to indigent persons in medically underserved areas.[33]

---

[25] Blacks Law Dictionary, at 1396 (6th ed. 1990).
[26] Article X, s. 13, Fla.Const.
[27] *See generally* Gerald T. Wetherington and Donald I. Pollock, *Tort Suits Against Government Entities in Florida*, 44 U.Fla.L.Rev. 1 (1992).
[28] *Berek v. Metropolitan Dade County*, 422 So.2d 838 (Fla. 1982); *Cauley v. City of Jacksonville*, 403 So.2d 379 (Fla. 1981).
[29] *See generally* D. Stephen Kahn, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, FLA.B.J. 8 (April 1988).
[30] *Gerard v. Dept. of Transportation*, 472 So.2d 1170 (Fla. 1985).
[31] Section 252.51, F.S.
[32] Section 381.0056(10), F.S.
[33] Section 381.0302(11), F.S.

- A person under contract to review materials, make site visits or provide expert testimony regarding complaints or applications received by the Department of Health or the Department of Business and Professional Regulation.[34]

- A business contracted with by the Department of Business and Professional Regulation under the Management Privatization Act.[35]

- Physicians retained by the Florida State Boxing Commission.[36]

- Health care providers under contract to provide uncompensated care to indigent state residents.[37]

- Health care providers or vendors under contract with the Department of Corrections to provide inmate care.[38]

- An operator, dispatcher, or other person or entity providing security or maintenance for rail services in the South Florida Rail Corridor, under contract with the Tri-County Commuter Rail Authority or the Department of Transportation.[39]

- Professional firms that provide monitoring and inspection services of work required for state roadway, bridge or other transportation facility projects.[40]

- A provider or vendor under contract with the Department of Juvenile Justice to provide juvenile and family services. [41]

- Health care practitioners under contract with state universities to provide medical services to student athletes.[42]

- A not-for-profit college or university that owns or operates an accredited medical school or any of its employees or agents that have agreed in an affiliation agreement or other contract to provide patient services as agents of a teaching hospital which is owned or operated by the state, a county, a municipality, a public health trust, a special taxing district, any other governmental entity having health care responsibilities, or a not-for-profit entity that operates such facilities as an agent of that governmental entity under a lease or other contract.[43]

Effect of Bill - Sovereign Immunity and Medical Malpractice Occurring in Emergency Settings

This bill amends s. 768.28, F.S., to provide that an emergency health care provider compelled to provide medical services in an emergency room is an agent of the state and thus entitled to sovereign immunity protection.

[34] Sections 455.221(3) and 456.009(3), F.S.
[35] Section 455.32(4), F.S.
[36] Section 548.046(1), F.S.
[37] Section 768.28(9)(b), F.S.
[38] Section 768.28(10)(a), F.S.
[39] Section 768.28(10)(d), F.S.
[40] Section 768.28(10)(e), F.S.
[41] Section 768.28(11)(a), F.S.
[42] Section 768.28(12)(a), F.S.
[43] Section 768.28(10)(f), F.S.

The term "emergency health care provider" is defined by the bill to include the following medical professionals:

- A physician licensed under ch. 458, F.S.
- An osteopathic physician licensed under ch. 459, F.S.
- A podiatrist licensed under ch. 461, F.S.
- A dentist licensed under ch. 466, F.S.

The sovereign immunity law applies to a person who is an "officer, employee or agent" of the state. This bill amends the definition of an officer, employee or agent of the state to include any person who is an emergency health care provider providing emergency health care mandated by ss. 395.1041 or 401.45, F.S.

The bill allows a health care provider to opt out of sovereign immunity protection, and allows a provider who has opted out to opt back in. Notice must be given to the Department of Health, and is effective upon receipt by the department.

The bill defines, and thus limits the protections of the bill, to "emergency medical services", which is

> [A]ll screenings, examinations, and evaluations by a physician, hospital, or other person or entity acting pursuant to obligations imposed by s. 395.1041 or s. 401.45, and the care, treatment, surgery, or other medical services provided to relieve or eliminate the emergency medical condition, including all medical services to eliminate the likelihood that the emergency medical condition will deteriorate or recur without further medical attention within a reasonable period of time.

The bill also requires a covered emergency health care provider to assume financial duties related to any claim. Initially, an injured person would seek payment from the state. The bill requires the physician to reimburse the state for judgments, settlement costs and all other liabilities incurred by the state. Repayment is limited to the statutory sovereign immunity limits ($200,000 per person, and a total of $300,000 for all claims related to a single incident). The failure of a physician to timely repay the state is grounds for emergency suspension of the medical license. The Department of Health must suspend the license if the physician is more than 30 days delinquent. The bill allows the department to negotiate a payment plan with a physician in lieu of full payment.

Effective Date of this Bill

The bill is effective upon becoming law, and applies to causes of action that accrue on or after that date.

B. SECTION DIRECTORY:

Section 1 provides legislative findings.

Section 2 amends s. 766.102, F.S., regarding medical negligence, standards of recovery.

Section 3 amends s. 766.106, F.S., regarding notice before filing an action for medical negligence.

Section 4 amends s. 768.28, F.S., regarding sovereign immunity for emergency health care workers.

Section 5 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DFS indicates that the bill's provisions which expand the State Risk Management Program coverage to include all emergency room providers statewide is estimated by the DFS to have a negative fiscal impact on the State Risk Management Trust Fund of between $7.0 million and $24.1 million.[44] In addition, the DFS would need four additional staff to process new claims at an annual cost of $232,332.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may lower the cost to physicians for obtaining medical malpractice insurance coverage, and may lower possible recoveries by persons injured due to medical malpractice.

D. FISCAL COMMENTS:

State government will incur costs to investigate and cover the claims for health care providers providing services in an emergency room or trauma center in Florida. The state agency or division responsible for such claims is the Division of Risk Management in the Department of Financial Services. Although the bill requires responsible physicians to reimburse the state up to a limit, it is possible that state government may incur losses for uncollectible reimbursements.[45] The potential uncollectible amount cannot be reliably estimated.[46]

The State of Florida through the Division of Risk Management provides insurance coverage to 48 state agencies and state universities. Specifically, the Division of Risk Management provides insurance coverage in the areas of workers' compensation, general liability, federal civil rights, automobile liability, and property insurance. The Division is funded with premiums paid by each agency and state university based on their respective loss history. The premiums are deposited in to the State Risk Management Trust Fund. Presently, the funding paid by state agencies and universities is approximately 69% from the General Revenue Fund and 31% state trust funds. Based on the fund split the negative fiscal impact of the bill would likely impact the General Revenue Fund between $4.9 million and $16.8 million.

---

[44] Department of Financial Services' Bill Analysis dated February 3, 2012 on file with the House Government Operations Appropriations Subcommittee.

[45] Situations that may lead to state financial loss include death, bankruptcy or insolvency of a physician. It is also possible that the claim plus claims handling expense could exceed the reimbursement limit.

[46] In reviewing similar bills in the past: In 2011 DFS estimated the potential loss as "UNKNOWN" (See analysis of 2011 HB 623 dated 2/22/2011) with little comment. In 2010 DFS estimated the potential loss at $34.5 million, but that version of the bill required the state to pay all claims handing expenses (See Senate bill analysis of 2010 SB 1474 dated 3/22/2010).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article 1, s. 21, Fla. Const., provides that the "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The Florida Supreme Court has in the past found that this provision limits the ability of the Legislature to amend tort law. In the leading case, the Florida Supreme Court first explained the constitutional limitation on the ability of the Legislature to abolish a civil cause of action:

> We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.[47]

The courts have shown inconsistent treatment of this provision. Some caps on damages have been found unconstitutional,[48] but more recently others have been found constitutional.[49] The creation of an alternative recovery system has been found constitutional.[50]

B. RULE-MAKING AUTHORITY:

The bill does not provide any new rulemaking authority. The Department of Health will have to amend rules relating to disciplinary actions to account for the changes made by this bill, which changes can be made within existing authority.[51]

C. DRAFTING ISSUES OR OTHER COMMENTS:

In calendar year 2010, there were 8,117,359 emergency room visits in the state.[52] Also in 2010, there were 2,520 medical malpractice claims closed by medical malpractice insurance carriers, of which 318 (12.6%) were identified as having occurred in an emergency room setting.[53]

---

[47] *Kluger v. White*, 281 So.2d 1, 4 (Fla. 1973).
[48] A $450,000 cap on noneconomic damages applicable to all tort cases is unconstitutional. *Smith v. Dept. of Ins.*, 507 So.2d 1080 (Fla. 1987); but see, *Adams by and through Adams v. Children's Mercy Hosp.*, 832 S.W.2d 898, 906 (Mo. 1992)("We doubt the wisdom of a rule of law that limits the legislature's ability to respond statutorily to changing societal concerns or correct previous policy positions upon receipt of better information.").
[49] Statutory caps on non-economic damages in medical malpractice actions at s. 766.118, F.S., are constitutional. *Estate of McCall ex rel. McCall v. U.S.*, 642 F.3d 944 (11th Cir. 2011); *M.D. v. U.S.*, 745 F.Supp.2d 1274 (Fla. M.D. 2010).
[50] *Lasky v. State Farm Ins. Co.*, 296 So.2d 9 (Fla. 1974)(automobile no-fault insurance law); *Mahoney v. Sears, Roebuck & Co.*, 440 So.2d 1285 (Fla. 1983)(workers compensation law).
[51] Department of Health, Bill Analysis, Economic Statement and Fiscal Note, dated December 7, 2011.
[52] http://www.floridahealthfinder.gov/researchers/OrderData/order-note.aspx#emergency accessed January 26, 2012.
[53] *Florida Office of Insurance Regulation, 2011 Annual Report – October 1, 2011, Medical Malpractice Financial Information Closed Claim Database and Rate Filings*, at page 44. Note that settlements or judgments against uninsured practitioners would not be reflected here and there is no known means to determine claims experience of uninsured practitioners.

A 2007 study by the Senate Committee on Health Regulation regarding the availability of physicians to work in emergency rooms found:

> [I]n general, physicians are reluctant to provide emergency on-call coverage due to the negative impact on their lifestyle, the perceived hostile medical malpractice climate, and the inability to obtain adequate compensation for services rendered. All of these reasons are disincentives to assuming liability for treating emergency patients previously unknown to the physician.[54]

The bill requires a covered emergency health care provider to reimburse the state for judgments, settlement costs and all other liabilities incurred by the state. It is unclear whether an emergency health care provider will have grounds or a means by which to object to defense strategies, settlements, or unreasonable costs.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 7, 2011, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment created a means for a physician to opt out of sovereign immunity, and to opt back in. The amendment also changed the "relating to" clause of the title.

On January 27, 2012, the Judiciary Committee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute adds podiatrists and dentists to the definition of "emergency health care provider," which definition controls who is covered by sovereign immunity. The committee substitute also added provisions on interviews with treating physicians and the burden of proof required in a claim of negligent failure to order a diagnostic test. This analysis is written to the proposed committee substitute adopted by the Judiciary Committee.

[54] Senate interim report 2008-138, at page 1.

A bill to be entitled

An act relating to medical malpractice; providing legislative findings and intent; amending s. 766.102, F.S.; establishing the burden of proof that a claimant must meet in certain damage claims against health care providers based on death or personal injury; amending s. 766.106, F.S.; allowing a prospective medical malpractice defendant to interview a claimant's treating health care providers without the presence of the claimant or the claimant's legal representative; requiring a prospective defendant to provide the claimant notice a specified period before such an interview; amending s. 768.28, F.S.; providing sovereign immunity to emergency health care providers acting pursuant to obligations imposed by specified statutes; providing an exception; providing that emergency health care providers are agents of the state and requiring them to indemnify the state up to the specified liability limits; providing for sanctions against emergency health care providers who fail to comply with indemnification obligations; providing definitions; providing that an emergency medical provider may elect to not be an agent of the state; providing for revocation of such election; providing that elections and revocations are effective upon receipt by the Department of Health; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Legislative findings and intent.—

(1) The Legislature finds and declares it to be of vital importance that emergency services and care be provided by hospitals, physicians, and emergency medical services providers to every person in need of such care. The Legislature finds that providers of emergency services and care are critical elements in responding to disaster and emergency situations that may affect local communities, the state, and the country. The Legislature recognizes the importance of maintaining a viable system of providing for the emergency medical needs of the state's residents and visitors. The Legislature and the Federal Government have required such providers of emergency medical services and care to provide emergency services and care to all persons who present themselves to hospitals seeking such care.

(2) The Legislature has further mandated that emergency medical treatment may not be denied by emergency medical services providers to persons who have or are likely to have an emergency medical condition. Such governmental requirements have imposed a unilateral obligation for providers of emergency services and care to provide services to all persons seeking emergency care without ensuring payment or other consideration for provision of such care. The Legislature also recognizes that providers of emergency services and care provide a significant amount of uncompensated emergency medical care in furtherance of such governmental interest.

(3) The Legislature finds that a significant proportion of the residents of this state who are uninsured or are Medicaid or Medicare recipients are unable to access needed health care on an elective basis because health care providers fear the increased risk of medical malpractice liability. The Legislature finds that such patients, in order to obtain medical care, are frequently forced to seek care through providers of emergency medical services and care.

(4) The Legislature finds that providers of emergency medical services and care in this state have reported significant problems with respect to the affordability of professional liability insurance, which is more expensive in this state than the national average. The Legislature further finds that a significant number of specialist physicians have resigned from serving on hospital staffs or have otherwise declined to provide on-call coverage to hospital emergency departments due to the increased exposure to medical malpractice liability created by treating such emergency department patients, thereby creating a void that has an adverse effect on emergency patient care.

(5) It is the intent of the Legislature that hospitals, emergency medical services providers, and physicians be able to ensure that patients who may need emergency medical treatment and who present themselves to hospitals for emergency medical services and care have access to such needed services.

Section 2. Subsection (4) of section 766.102, Florida Statutes, is amended to read:

766.102 Medical negligence; standards of recovery; expert

witness.—

(4)(a) The Legislature is cognizant of the changing trends and techniques for the delivery of health care in this state and the discretion that is inherent in the diagnosis, care, and treatment of patients by different health care providers. The failure of a health care provider to order, perform, or administer supplemental diagnostic tests is ~~shall~~ not ~~be~~ actionable if the health care provider acted in good faith and with due regard for the prevailing professional standard of care.

(b) In an action for damages based on death or personal injury which alleges that such death or injury resulted from the failure of a health care provider to order, perform, or administer supplemental diagnostic tests, the claimant has the burden of proving by clear and convincing evidence that the alleged actions of the health care provider represented a breach of the prevailing professional standard of care.

Section 3. Paragraph (b) of subsection (6) of section 766.106, Florida Statutes, is amended to read:

766.106 Notice before filing action for medical negligence; presuit screening period; offers for admission of liability and for arbitration; informal discovery; review.—

(6) INFORMAL DISCOVERY.—

(b) Informal discovery may be used by a party to obtain unsworn statements, the production of documents or things, ~~and~~ physical and mental examinations, and ex parte interviews, as follows:

1. Unsworn statements.—Any party may require other parties

to appear for the taking of an unsworn statement. Such statements may be used only for the purpose of presuit screening and are not discoverable or admissible in any civil action for any purpose by any party. A party desiring to take the unsworn statement of any party must give reasonable notice in writing to all parties. The notice must state the time and place for taking the statement and the name and address of the party to be examined. Unless otherwise impractical, the examination of any party must be done at the same time by all other parties. Any party may be represented by counsel at the taking of an unsworn statement. An unsworn statement may be recorded electronically, stenographically, or on videotape. The taking of unsworn statements is subject to the provisions of the Florida Rules of Civil Procedure and may be terminated for abuses.

2. Documents or things.—Any party may request discovery of documents or things. The documents or things must be produced, at the expense of the requesting party, within 20 days after the date of receipt of the request. A party is required to produce discoverable documents or things within that party's possession or control. Medical records shall be produced as provided in s. 766.204.

3. Physical and mental examinations.—A prospective defendant may require an injured claimant to appear for examination by an appropriate health care provider. The prospective defendant shall give reasonable notice in writing to all parties as to the time and place for examination. Unless otherwise impractical, a claimant is required to submit to only one examination on behalf of all potential defendants. The

practicality of a single examination must be determined by the nature of the claimant's condition, as it relates to the liability of each prospective defendant. Such examination report is available to the parties and their attorneys upon payment of the reasonable cost of reproduction and may be used only for the purpose of presuit screening. Otherwise, such examination report is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

4. Written questions.—Any party may request answers to written questions, the number of which may not exceed 30, including subparts. A response must be made within 20 days after receipt of the questions.

5. Unsworn statements of treating health care providers.—A prospective defendant or his or her legal representative may also take unsworn statements of the claimant's treating health care providers. The statements must be limited to those areas that are potentially relevant to the claim of personal injury or wrongful death. Subject to the procedural requirements of subparagraph 1., a prospective defendant may take unsworn statements from a claimant's treating physicians. Reasonable notice and opportunity to be heard must be given to the claimant or the claimant's legal representative before taking unsworn statements. The claimant or claimant's legal representative has the right to attend the taking of such unsworn statements.

6. Ex parte interviews of treating health care providers.—A prospective defendant or his or her legal representative may interview the claimant's treating health care providers without the presence of the claimant or the claimant's legal

representative. A prospective defendant or his or her legal representative that intends to interview a claimant's health care providers must provide the claimant with notice of such intent at least 10 days before the interview.

Section 4. Subsection (9) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(9)(a) No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. However, such officer, employee, or agent shall be considered an adverse witness in a tort action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. The exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity, or the head of such entity in her or his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee,

unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to:~~,~~

a. Any health care provider when providing services pursuant to s. 766.1115; any member of the Florida Health Services Corps, as defined in s. 381.0302, who provides uncompensated care to medically indigent persons referred by the Department of Health; any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f); and any public defender or her or his employee or agent, including, among others, an assistant public defender and an investigator.

b. Any emergency health care provider acting pursuant to obligations imposed by s. 395.1041 or s. 401.45, except for persons or entities that are otherwise covered under this section.

(c)1. Emergency health care providers are agents of the state and shall indemnify the state for any judgments, settlement costs, or other liabilities incurred, only up to the liability limits in subsection (5).

2. Any emergency health care provider who is licensed by the state and who fails to indemnify the state after reasonable notice and written demand to do so is subject to an emergency suspension order of the regulating authority having jurisdiction over the licensee.

3. The Department of Health shall issue an emergency order suspending the license of any licensee under its jurisdiction or any licensee of a regulatory board within the Department of Health who fails to comply within 30 days after receipt by the department of a notice from the Division of Risk Management of the Department of Financial Services that the licensee has failed to satisfy her or his obligation to indemnify the state or enter into a repayment agreement with the state for costs under this subsection. The terms of such agreement must provide assurance of repayment of the obligation which is satisfactory to the state. For licensees within the Division of Medical Quality Assurance of the Department of Health, failure to comply with this paragraph constitutes grounds for disciplinary action under each respective practice act and under s. 456.072(1)(k).

4. As used in this subsection, the term:

a. "Emergency health care provider" means a physician licensed under chapter 458, chapter 459, or chapter 461, or a dentist licensed under chapter 466.

b. "Emergency medical services" means all screenings, examinations, and evaluations by a physician, hospital, or other person or entity acting pursuant to obligations imposed by s. 395.1041 or s. 401.45, and the care, treatment, surgery, or other medical services provided to relieve or eliminate the emergency medical condition, including all medical services to eliminate the likelihood that the emergency medical condition will deteriorate or recur without further medical attention within a reasonable period of time.

5. An emergency health care provider may affirmatively elect in writing not to be considered an agent of the state by submitting a form to that effect to the Department of Health. An emergency health care provider who makes such election may revoke the election by submitting a form revoking the election. An election or revocation is effective upon filing with the department. Any emergency health care provider who declines the status conferred by sub-subparagraph b. shall not be considered an agent of the state.

(d) ~~(c)~~ For purposes of the waiver of sovereign immunity only, a member of the Florida National Guard is not acting within the scope of state employment when performing duty under the provisions of Title 10 or Title 32 of the United States Code or other applicable federal law; and neither the state nor any individual may be named in any action under this chapter arising from the performance of such federal duty.

(e) ~~(d)~~ The employing agency of a law enforcement officer as defined in s. 943.10 is not liable for injury, death, or property damage effected or caused by a person fleeing from a

law enforcement officer in a motor vehicle if:

1. The pursuit is conducted in a manner that does not involve conduct by the officer which is so reckless or wanting in care as to constitute disregard of human life, human rights, safety, or the property of another;

2. At the time the law enforcement officer initiates the pursuit, the officer reasonably believes that the person fleeing has committed a forcible felony as defined in s. 776.08; and

3. The pursuit is conducted by the officer pursuant to a written policy governing high-speed pursuit adopted by the employing agency. The policy must contain specific procedures concerning the proper method to initiate and terminate high-speed pursuit. The law enforcement officer must have received instructional training from the employing agency on the written policy governing high-speed pursuit.

Section 5. This act shall take effect upon becoming a law and shall apply to any cause of action accruing on or after that date.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Gaetz offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (4) of section 766.102, Florida Statutes, is amended to read:

766.102 Medical negligence; standards of recovery; expert witness.—

(4)(a) The Legislature is cognizant of the changing trends and techniques for the delivery of health care in this state and the discretion that is inherent in the diagnosis, care, and treatment of patients by different health care providers. The failure of a health care provider to order, perform, or administer supplemental diagnostic tests is ~~shall~~ not ~~be~~ actionable if the health care provider acted in good faith and with due regard for the prevailing professional standard of care.

(b) In an action for damages based on death or personal injury which alleges that such death or injury resulted from the failure of a health care provider to order, perform, or administer supplemental diagnostic tests, the claimant has the burden of proving by clear and convincing evidence that the alleged actions of the health care provider represented a breach of the prevailing professional standard of care.

Section 2. Paragraph (b) of subsection (6) of section 766.106, Florida Statutes, is amended to read:

766.106 Notice before filing action for medical negligence; presuit screening period; offers for admission of liability and for arbitration; informal discovery; review.—

(6) INFORMAL DISCOVERY.—

(b) Informal discovery may be used by a party to obtain unsworn statements, the production of documents or things, ~~and~~ physical and mental examinations, and ex parte interviews, as follows:

1. Unsworn statements.—Any party may require other parties to appear for the taking of an unsworn statement. Such statements may be used only for the purpose of presuit screening and are not discoverable or admissible in any civil action for any purpose by any party. A party desiring to take the unsworn statement of any party must give reasonable notice in writing to all parties. The notice must state the time and place for taking the statement and the name and address of the party to be examined. Unless otherwise impractical, the examination of any party must be done at the same time by all other parties. Any party may be represented by counsel at the taking of an unsworn

statement. An unsworn statement may be recorded electronically, stenographically, or on videotape. The taking of unsworn statements is subject to the provisions of the Florida Rules of Civil Procedure and may be terminated for abuses.

2. Documents or things.—Any party may request discovery of documents or things. The documents or things must be produced, at the expense of the requesting party, within 20 days after the date of receipt of the request. A party is required to produce discoverable documents or things within that party's possession or control. Medical records shall be produced as provided in s. 766.204.

3. Physical and mental examinations.—A prospective defendant may require an injured claimant to appear for examination by an appropriate health care provider. The prospective defendant shall give reasonable notice in writing to all parties as to the time and place for examination. Unless otherwise impractical, a claimant is required to submit to only one examination on behalf of all potential defendants. The practicality of a single examination must be determined by the nature of the claimant's condition, as it relates to the liability of each prospective defendant. Such examination report is available to the parties and their attorneys upon payment of the reasonable cost of reproduction and may be used only for the purpose of presuit screening. Otherwise, such examination report is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

4. Written questions.—Any party may request answers to written questions, the number of which may not exceed 30,

including subparts. A response must be made within 20 days after receipt of the questions.

5. Unsworn statements of treating health care providers.—A prospective defendant or his or her legal representative may also take unsworn statements of the claimant's treating health care providers. The statements must be limited to those areas that are potentially relevant to the claim of personal injury or wrongful death. Subject to the procedural requirements of subparagraph 1., a prospective defendant may take unsworn statements from a claimant's treating physicians. Reasonable notice and opportunity to be heard must be given to the claimant or the claimant's legal representative before taking unsworn statements. The claimant or claimant's legal representative has the right to attend the taking of such unsworn statements.

6. Ex parte interviews of treating health care providers.—A prospective defendant or his or her legal representative may interview the claimant's treating health care providers without the presence of the claimant or the claimant's legal representative. A prospective defendant or his or her legal representative that intends to interview a claimant's health care providers must provide the claimant with notice of such intent at least 10 days before the interview.

Section 3. This act shall take effect upon becoming a law and shall apply to any cause of action accruing on or after that date.

Amendment No. 1

T I T L E A M E N D M E N T

Remove the entire title and insert:

An act relating to medical malpractice; amending s. 766.102, F.S.; establishing the burden of proof that a claimant must meet in certain damage claims against health care providers based on death or personal injury; amending s. 766.106, F.S.; allowing a prospective medical malpractice defendant to interview a claimant's treating health care providers without the presence of the claimant or the claimant's legal representative; requiring a prospective defendant to provide the claimant notice a specified period before such an interview; providing an effective date.

CS/HB 725
Insurance Agents & Adjusters

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 725 Insurance Agents and Adjusters
SPONSOR(S): Insurance & Banking Subcommittee and Hager
TIED BILLS: **IDEN./SIM. BILLS:** SB 938

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee		Keith	Topp BDT
3) Economic Affairs Committee			

SUMMARY ANALYSIS

In general, insurance agents transact insurance on behalf of an insurer or insurers. Insurance 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. Insurance adjusters include public adjusters which represent policyholders in insurance claims, independent adjusters which represent insurers in insurance claims but are not employed by the insurer, and company employee adjusters which represent insurers in insurance claims and work in-house for the insurer. Like insurance agents, insurance adjusters must be licensed by DFS and appointed. Currently, the DFS licenses and regulates approximately 540,000 individuals as insurance agents or adjusters, of which 80,000 are adjusters and 54,000 are insurance agencies. These individuals hold an estimated 726,000 licenses.

The bill makes numerous changes to the agent and adjuster licensure laws. Major changes made by the bill include consolidation of current law relating to examination and continuing education of all licensees of DFS and merging various types of licenses for agents and adjusters issued by DFS into larger license classes, reducing the number of types of licenses that can be issued by DFS. Other provisions make current law relating to licensure of insurance agents also apply to insurance adjusters, codifying certain practices of DFS. The bill also repeals or corrects outdated language in statute.

A $50,000 bond posted with DFS by surplus lines insurance agents is repealed by the bill. A $200 annual administrative surcharge paid by title insurance agencies to DFS is also repealed. For insurance agents with offices in multiple counties, the bill repeals a $6 biennial county tax owed to every county where an insurance agent has an office if that county is not the agent's county of residence or place of business and retains the tax for either the county of residence or one county designated by the insurer where a place of business is located.

The department indicates that the removal of the requirement that title insurance agencies pay the $200 administrative surcharge will result in a negative fiscal impact of up to $425,000 in loss of revenue to the Insurance Regulatory Trust Fund within DFS. The department also indicates that combining the credit lines of insurance and mortgage guaranty insurance licenses will result in a loss annually of $14,340 in license and appointment fee revenue that is also deposited into the Insurance Regulatory Trust Fund.

Additionally, the provisions of the bill associated with the repeal of s. 626.928, F.S., which currently requires the $50,000 surety bond for surplus lines agent applicants prior to becoming licensed will allow for the reduction of 1.00 FTE position and a cost savings of $35,567 to the Insurance Regulatory Trust Fund.

The bill is effective October 1, 2012, unless otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on Licensure of Insurance Agents and Adjusters in Florida

Florida law recognizes several types of insurance representatives, including agents, customer representatives, service representatives, and adjusters, among others.

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.[1] Agent is defined to mean general lines agent, life agent, health agent, or title agent, or all such agents, as indicated by context, but does not include a customer representative. License requirements for insurance agents vary by line, or type of insurance, and based upon resident or nonresident license type.

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; communications equipment property insurance, communications equipment inland marine insurance, or communication equipment service warranty agreement sales.[2]

Adjusters include public adjusters, independent adjusters, or company employee adjusters.[3] Like insurance agents, insurance adjusters must be licensed by DFS and appointed.[4] Generally, a public adjuster is any person, other than a licensed attorney, who prepares, completes, or files an insurance claim for a policyholder or who negotiates or settles an insurance claim on behalf of an insured.[5] An independent adjuster is a person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage or to settle an insurance claim under an insurance policy.[6] A company adjuster is a person employed in-house by an insurer who ascertains and determines the amount of an insurance claim, loss, or damage or settles an insurance claim under an insurance policy.[7]

Licensing for agents and adjusters are also broken down into resident or nonresident licenses. Applicants for a resident agent or adjuster license must be Florida residents. Applicants for a nonresident agent or adjuster license must be licensed in good standing in their home state.

Although licensing requirements for insurance agents and insurance adjusters vary by the type of license and particular line(s) of insurance transacted, general requirements for licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.[8] Once licensed, continuing education requirements are required for agents and adjusters to keep their license.[9]

---

[1] s. 626.112, F.S.
[2] s. 626.321, F.S.
[3] s. 626.015(1), F.S.
[4] s. 626.112(3), F.S.
[5] s. 626.854, F.S.
[6] s. 626.855, F.S.
[7] s. 626.856, F.S.
[8] s. 626.171, F.S.
[9] s. 626.2815, F.S. (for insurance agents), s. 626.869, F.S. (for insurance adjusters).

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[10] and be appointed by an insurance company.

Currently, the DFS licenses and regulates approximately 540,000 individuals as insurance agents or adjusters, of which 80,000 are adjusters and 54,000 are insurance agencies. These individuals hold an estimated 726,000 licenses.[11]

Effect of Proposed Changes

The bill makes numerous changes to the agent and adjuster licensure laws. Major changes made by the bill include consolidation of current law relating to examination and continuing education of all licensees of DFS and merging various types of licenses for agents and adjusters issued by DFS into larger license classes, reducing the number of types of licenses that can be issued by DFS. Other provisions make current law relating to licensure of insurance agents also apply to insurance adjusters, codifying certain practices of DFS. The bill also repeals or corrects outdated language in statute.

Changes Relating to Licensure of Adjusters

Resident Independent and Company Employee Adjuster Licenses

Currently, DFS issues 12 different licenses for resident company employee and resident independent adjusters. Resident company employee adjusters live in Florida and are employed in-house by an insurance company licensed in Florida. Resident independent adjusters live in Florida and are self-employed or employed by an adjusting firm. In total, over 30,000 adjusters are currently licensed under the 12 different resident licenses. The license types and number of licensees are:

1. Independent All-Lines Adjuster (13,804 licensees),
2. Company Employee All-Lines Adjuster (14,787 licensees),
3. Independent Workers' Compensation Adjuster (731 licensees),
4. Company Employee Workers' Compensation Adjuster (342 licensees),
5. Independent Property and Casualty Adjuster (386 licensees),
6. Company Employee Property and Casualty Adjuster (288 licensees),
7. Independent Motor Vehicle Physical Damage and Mechanical Breakdown Adjuster (34 licensees),
8. Company Employee Motor Vehicle Physical Damage and Mechanical Breakdown Adjuster (121 licensees),
9. Independent Health Adjuster (14 licensees),
10. Company Employee Health Adjuster (11 licensees),
11. Company Employee Casualty Adjuster (1 licensee), and
12. Company Employee Motor Vehicle Physical Damage and Mechanical Breakdown and Fire and Allied Lines including Marine Adjuster (10 licensees).[12]

The bill consolidates all 12 licenses into one license, an all-lines adjuster license. Resident adjusters holding an adjuster license to adjust motor vehicle physical damage and mechanical breakdown, workers' compensation, health or property and casualty insurance claims[13] as of October 1, 2012 can remain licensed and the license can be renewed, but no new licenses to adjust only these types of claims can be issued after October 1, 2012.[14]

---

[10] Licensees for a limited license as a communications equipment insurance agent do not have to be fingerprinted.

[11] Information obtained from DFS on 12/12/11, on file with the Insurance & Banking Subcommittee.

[12] Information obtained from DFS on 12/2/11, on file with the Insurance & Banking Subcommittee.

[13] Licenses numbered 3-10 above.

[14] No new licenses for company employee motor vehicle physical damage and mechanical breakdown and fire and allied lines including marine insurance adjuster or company employee casualty insurance adjuster (licenses numbered 11 and 12 above) have been issued since October 1, 1990 pursuant to s. 626.869(2), F.S.

The bill makes numerous conforming changes to reflect the licensure consolidation and renaming. The license consolidation does not make any changes to the qualifications for licensure as a resident adjuster under current law.

Nonresident Independent and Company Employee Adjuster Licenses
DFS issues another 12 nonresident company employee and nonresident independent adjuster licenses. Nonresident company employee adjusters do not live in Florida, hold an adjuster license in another state (the home state), and are employed in-house by an insurance company licensed in Florida. Nonresident independent adjusters do not live in Florida, hold an adjuster license in another state, and are self-employed or employed by an adjusting firm.[15] In total, over 46,000 adjusters are licensed under the 12 different nonresident licenses. The nonresident license types and number of licensees are:

1. Nonresident Company Employee All-Lines Adjuster (13,639 licensees),
2. Nonresident Independent All-Lines Adjuster (6,629 licensees),
3. Nonresident Independent Workers' Compensation Adjuster (250 licensees),
4. Nonresident Company Employee Workers' Compensation Adjuster (502 licensees),
5. Nonresident Independent Property and Casualty Adjuster (7,424 licensees),
6. Nonresident Company Employee Property and Casualty Adjuster (16,360 licensees),
7. Nonresident Independent Motor Vehicle Physical Damage and Mechanical Breakdown Adjuster (44 licensees),
8. Nonresident Company Employee Motor Vehicle Physical Damage and Mechanical Breakdown Adjuster (1,242 licensees),
9. Nonresident Independent Health Adjuster (11 licensees),
10. Nonresident Company Employee Health Adjuster (76 licensees),
11. Nonresident Company Employee Casualty Adjuster (1 licensee), and
12. Nonresident Company Employee Casualty and Fire and Allied Lines including Marine Adjuster (2 licensees).[16]

The bill consolidates all 12 licenses into one license, a nonresident all-lines adjuster license. Nonresident adjusters holding an adjuster license to adjust motor vehicle physical damage and mechanical breakdown, workers' compensation, health or property and casualty insurance claims[17] as of October 1, 2012 can remain licensed and the license can be renewed, but no new licenses to adjust only these types of claims can be issued after October 1, 2012.[18]

The bill makes numerous conforming changes to reflect the licensure consolidation and renaming. License qualifications provided by the bill for the new nonresident all-lines license are not substantially different than the qualifications in current law for nonresident company employee adjusters.[19] For the new nonresident all-lines license, the bill makes two changes to current law providing license qualifications for nonresident independent adjusters.

First, currently, in order to be licensed as a nonresident independent adjuster, an applicant for licensure must submit a certificate or letter of authorization to DFS indicating the applicant is a licensed adjuster in the applicant's home state. The bill waives this requirement for the new nonresident all-lines adjuster license if the applicant's licensing status can be verified through a database maintained by the National Association of Insurance Commissioners. This same requirement is waived for applicants that are not

---

[15] Under s. 626.8584, F.S., a nonresident independent adjuster must pass the Florida adjuster examination if the adjuster's home state does not license independent adjusters.
[16] Information obtained from DFS on 12/2/11 on file with the Insurance & Banking Subcommittee staff.
[17] Licenses numbered 3-10 above.
[18] No new licenses for nonresident company employee casualty adjuster or nonresident company employee casualty and fire and allied lines including marine adjuster (licenses numbered 11 and 12 above) have been issued since October 1, 1990 pursuant to s. 626.869(2), F.S.
[19] Information received from DFS.

licensed as an adjuster in the applicant's home state, but are a licensed adjuster in another state within the three years prior to the application for a Florida license.[20]

Second, under current law, each licensed nonresident independent adjuster must submit an affidavit by January 1st certifying the adjuster is familiar with the Florida insurance laws and rules. For the new nonresident all-lines adjuster license, the bill removes the requirement that the certification be submitted annually by January 1st. The affidavit is still required but no time period for submission is prescribed.

Temporary Independent and Company Employee Adjuster Licenses
DFS also issues temporary adjuster licenses for independent and company employee adjuster and currently issues ten different temporary licenses. In total, 73 adjusters are licensed as temporary adjusters. The types of temporary licenses and number of licensees are:

1. Temporary Independent All-Lines Adjuster (14 licensees),
2. Temporary Company Employee All-Lines Adjuster (50 licensees),
3. Temporary Independent Workers' Compensation Adjuster (5 licensees),
4. Temporary Company Employee Workers' Compensation Adjuster (1 licensee),
5. Temporary Independent Property & Casualty Adjuster (1 licensee),
6. Temporary Company Employee Property & Casualty Adjuster (2 licensees),
7. Temporary Independent Motor Vehicle Physical Damage & Mechanical Breakdown Adjuster, (0 licensees)
8. Temporary Company Employee Motor Vehicle Physical Damage & Mechanical Breakdown Adjuster (0 licensees),
9. Temporary Independent Health Adjuster (0 licensees),
10. Temporary Company Employee Health Adjuster (0 licensees).[21]

The bill consolidates all ten licenses into one license, a temporary all-lines license. Adjusters holding a temporary adjuster license to adjust motor vehicle physical damage and mechanical breakdown, workers' compensation, health or property and casualty insurance claims[22] as of October 1, 2012 can remain licensed and the license can be renewed, but no new licenses to adjust only these types of claims can be issued after October 1, 2012.

The bill makes numerous conforming changes to reflect the licensure consolidation and renaming.

The bill only makes one change to current law relating to the qualifications for a temporary adjuster license. Current law requires an applicant for a temporary adjuster license to provide DFS a certificate of employment and a report from the applicant's employer relating to the applicant's integrity and moral character. This requirement is removed by the bill. Requirements remaining in current law for a temporary adjuster license include: the applicant must be an employee of an adjuster, insurer, or adjusting firm that is licensed in Florida; the applicant must be 18 years old; the applicant must reside in Florida; and the applicant must be trustworthy with a good business reputation.

Public Adjuster Licenses
DFS also licenses public adjusters. Public adjusters represent policyholders in insurance claims. Under current law, public adjusters have a different regulatory scheme than company employee or independent adjusters. Public adjusters have ten different permanent licenses.[23] These licenses are:

1. Resident Public All-Lines Adjuster,
2. Nonresident Public All-Lines Adjuster,
3. Resident Public Workers' Compensation Adjuster,
4. Nonresident Public Workers' Compensation Adjuster,
5. Resident Public Property and Casualty Adjuster,

---

[20] Because the nonresident independent adjuster license is renamed the nonresident all-lines adjuster license, these changes apply to the nonresident all-lines adjuster license, whereas, current law only applies to the nonresident independent adjuster license.
[21] Information obtained from DFS on 12/2/11 on file with the Insurance & Banking Subcommittee staff.
[22] Licenses numbered 3-10 above.
[23] Public adjusters cannot be licensed as temporary adjusters.

6. Nonresident Public Property and Casualty Adjuster,
7. Resident Public Motor Vehicle Physical Damage and Mechanical Breakdown Adjuster,
8. Nonresident Public Motor Vehicle Physical Damage and Mechanical Breakdown Adjuster,
9. Resident Public Health Adjuster, and
10. Nonresident Public Health Adjuster

DFS also licenses public adjuster apprentices in accordance with s. 626.8651, F.S.

A new qualification for licensure as a public adjuster is added by the bill. In order to be licensed as a public adjuster, an applicant must have been licensed as a public adjuster apprentice and compliant with the apprentice licensing requirements during the apprenticeship. This change is consistent with current law (s. 626.8651(9), F.S.) which allows a public adjuster apprentice to apply for a license as a public adjuster after completing the apprentice requirements.

Changes Relating to Appointment of Adjusters
All adjusters must be appointed after they are licensed. Adjusters are either appointed by an insurer or an employer. Appointment gives a licensed adjuster authority to adjust insurance claims on behalf of the appointing insurer or employer.

Under current law, a resident, nonresident, or temporary adjuster is licensed and appointed as a company employee or independent adjuster. However, under the bill, a resident, nonresident, or temporary adjuster is licensed as the appropriate all-lines adjuster and is appointed as an independent or company employee adjuster, depending on the adjuster's employer. The bill makes numerous conforming changes to current law reflecting the change from licensing and appointing independent and company employee adjusters to just appointing independent and company employee adjusters and licensing all-lines adjusters instead.

Other Changes Relating to Adjusters
The bill adds a ground for refusal, denial, suspension, or revocation of a license of an adjusting firm. Current law allows DFS to refuse, deny, suspend, or revoke a license of an adjusting firm if anyone involved in the operation of the firm violates an order or rule of the Office of Insurance Regulation or Financial Services Commission. Under the bill, a violation of an order or rule of DFS would also be grounds for DFS to refuse, deny, suspend, or revoke a license of an adjusting firm.

The bill allows adjusters licensed and in good standing in another state to transfer their adjuster license to a Florida all-lines adjuster license. Adjusters cannot transfer licenses under current law, only resident agents can. Thus, this change allows license transfers for both agents and adjusters.

Changes Relating to Application for Licenses & Renewal of Licenses Issued by DFS
The bill allows a third party to complete, submit, and sign an application for licensure as an agent or adjuster as long as the applicant agrees. The applicant is accountable for any misstatements or misrepresentations on the application. No authority for third parties to complete license applications is provided in current law.

Instead of submitting proof of completion of the required pre-licensing course, the bill requires applicants for licensure as an agent or adjuster to provide a statement in the application indicating what method the applicant used to meet the required pre-licensing education, experience, knowledge, or instructional requirements. This change allows a person to apply for licensure while taking a pre-licensing course, rather than having to wait to apply until the completion of the course. The change does not give DFS authority to grant a license until the pre-licensing course is complete.

Any person licensed by DFS must currently notify the agency of any name, address, phone or e-mail address change within 60 days of the change. The bill reduces the notification time period to 30 days.

DFS is given another ground to deny an application for, suspend, revoke, or refuse to renew or continue a license or appointment of an agent, adjuster, customer representative, service representative, or managing general agent. The bill allows DFS to deny an application for, suspend,

revoke, or refuse to renew or continue a license for those licensees who do not comply with any civil, criminal, or administrative action to determine paternity or relating to child support.

The bill changes the appointment renewal time for licensees of DFS. Currently, appointees licensed by DFS must renew their appointment during the original licensure month or birth month. The bill changes the appointment renewal to the month of original appointment or birth month.

Changes Relating to Examination for Licensure for DFS Licensees

Under current law, an applicant for an insurance related license can take the examination needed for licensure prior to submission of an application for licensure. To do so, the applicant must submit an application for examination through the DFS internet website. The bill allows applicants to submit an application for examination through the DFS internet website or through the website of a person designated by DFS to give the examination. Additionally, current law requires the application for examination to contain information specified in statute. The bill allows, rather than requires, DFS to require the application for examination to contain specified information.

The bill deletes the requirement in current law that an applicant for examination provides his or her age in the application for examination and instead requires the applicant for examination to provide his or her date of birth. The bill requires the applicant to provide an e-mail address on the examination application.

Presently, DFS must provide written notice of the time and place of a licensure examination by mail. The bill requires notice of the time and place of a licensure examination to be provided by DFS by e-mail, rather than mail. Section 626.171(2)(a), F.S., requires applicants for DFS licensure to provide an e-mail address on the license application and s. 626.551, F.S., requires DFS licensees to notify DFS if their e-mail address changes. According to DFS, the department currently only notifies applicants for licensure of examination information by e-mail, so the bill codifies the current practice of DFS.

The bill restricts all licensure applicants from taking a licensing examination for the same license type more than five times in a 12-month period. There are no limitations on how many times an examination can be taken under current law.

Changes Relating to Continuing Education Requirements for DFS Licensees

The bill consolidates continuing education requirements in current law for all insurance agents, including bail bond agents, and adjusters licensed by DFS into one section of law.

The majority of agents and adjusters licensed by DFS must complete 24 hours of continuing education every two years. But, agents holding an agent license for six or more years are required to take only 20 hours of continuing education every two years. There is no similar reduced continuing education requirement for adjusters licensed for six or more years, but it is the practice of DFS to require 20 hours, rather than 24 hours, of continuing education for these adjusters. The bill codifies the current practice of DFS and reduces the number of continuing education hours from 24 hours every two years to 20 hours every two years for adjusters licensed for six or more years. Thus, agent and adjuster continuing education requirements will be the same for these licensees.

An agent holding a limited license for crop or hail or multi-peril crop insurance is exempt from continuing education under the bill. Current law allows DFS to adopt rules exempting agents holding limited licenses from continuing education.

DFS licensees who cannot complete the required continuing education due to active duty in the military can request a waiver of the continuing education requirements. There is no military waiver for continuing education in current law.

The time period for a sponsor of a continuing education course to provide DFS a roster of course attendees is reduced from 30 days to 15 days. Furthermore, the roster no longer must be written or certified by the course sponsor and the fee[24] required to be submitted to DFS with the roster is no longer required. According to DFS, rosters are currently submitted electronically and DFS does not collect a fee on electronic submission of rosters. Thus, the change codifies the current practice of DFS.

Section 626.2815(5), F.S., requires DFS to refuse to renew the appointment of an insurance agent that does not complete the required continuing education.[25] The bill deletes this requirement and instead allows DFS to use its' discretion to refuse to renew the appointment or to terminate the appointment an agent that does not complete the required continuing education. Additionally, the bill expands which licensees are covered by this statutory provision. The current statute only applies to insurance agents whereas the bill applies the statute to agents and adjusters. According to DFS, the department's current practice is to refuse to renew appointments of adjusters that do not meet the required continuing education, so the expansion of the scope of current law provided in the bill is a codification of agency practice. The change also treats agents and adjusters the same in this regard.

The bill repeals an 11 member continuing education advisory board appointed by the Chief Financial Officer to advise DFS on continuing education courses.[26] According to DFS, this board has not met in over ten years.

Starting October 1, 2014, the bill changes the types of courses a DFS licensee must take to satisfy the license continuing education requirements. The bill maintains the 24 hour continuing education requirement required for most DFS licensees, but proposes seven of the 24 hours be an update course specific to the licensee's license and covering insurance law updates, premium discounts, ethics, disciplinary trends, industry trends, and determining suitability of insurance products. The remaining 17 hours of continuing education required are elective hours. DFS licensees that are required to take less than 24 hours of continuing education every two years are still required to take the seven hour update course, but their required elective hours are reduced in accordance with the total number of continuing education hours required for their license.

Furthermore, under current law, licensees are required to take two hours of ethics as part of the 24 hour continuing education requirement. The bill removes the mandatory ethics requirement, but requires ethics to be taught in the seven hour update course required to be taken by all licensees.

For licensees holding two different licenses from DFS, current law specifies how many of the 24 required continuing education hours the licensee must take in each license subject area. The bill repeals this specification but requires licensees holding more than one license from DFS to complete the seven hour update course in the subject area of one license.

Starting October 1, 2014, current law requiring general lines agents and customer representatives to have one hour of the 24 required continuing education hours on hurricane mitigation premium discounts is repealed.

Under current law, bail bond agents must take 14 hours of continuing education every two years.[27] Starting October 1, 2014, bail bond agents must still complete 14 hours of continuing education every two years, but the hours must include a seven hour update course and seven hours of elective courses.

---

[24] According to DFS, continuing education course sponsors were required to submit a $1 fee per person on the course roster when hard copies of the rosters were submitted to the department. Because course rosters are now submitted to DFS electronically, the fee is no longer collected.

[25] s. 626.2815, Rule 69B-228.220, F.A.C.

[26] HB 4145 also repeals the Continuing Education Advisory Board. The staff analysis for HB 4145 provides additional background information on the Board.

[27] s. 648.385(2), F.S.

Other Changes Relating to DFS Licensees

Current law prohibits a DFS licensee with a suspended or revoked license from transacting business requiring an insurance license or owning, controlling or being employed by any insurance entity licensed by DFS. The bill extends this prohibition until the revoked or suspended license is reinstated or a new license issued. This change is consistent with the practice of DFS.

Generally, s. 626.536, F.S., requires insurance agents and agencies to notify DFS of administrative actions taken against the agent or agency by a Florida governmental agency or a governmental agency in another state or jurisdiction. The bill expands current law to require all DFS licensees, rather than only agents and agencies, to report administrative actions taken against the licensee. Thus, this change requires insurance adjusters to report any administrative actions, whereas, current law does not require adjusters to report any actions. Furthermore, the bill expands the types of administrative actions required to be reported from actions by governmental agencies to actions by governmental agencies or other regulatory agencies.

For insurance agents or customer representatives holding two or more licenses from DFS, if DFS suspends, revokes, or does not renew one of the licenses, current law requires DFS to also suspend or revoke all other licenses or appointments for that agent or customer representative. The bill expands the application of this provision from applying only to agents or customer representatives to applying to all insurance representatives. Thus, insurance adjusters would have all insurance related licenses suspended if their adjuster license was suspended.

Changes Relating to Licensing of Limited Lines Insurance Agents

The bill consolidates many of the types of licenses for limited lines insurance agents. A limited lines insurance agent license allows the agent to sell only certain types of insurance. Limited lines agents are licensed as a resident agent or a nonresident agent. Under current law, a limited lines insurance agent license can be obtained for the following types of insurance:

- Motor vehicle physical damage and mechanical breakdown,
- Industrial fire or burglary,
- Travel,
- Motor vehicle rental,
- Credit life or disability,
- Credit,
- Credit property,
- Mortgage Guaranty,
- Crop hail and multiple-peril crop,
- In-transit and storage personal property,
- Communications equipment property,
- Communications equipment inland marine, and
- Communications equipment service warranty agreement sales.

The bill allows a limited lines insurance agent license for the following types of insurance:

- Motor vehicle physical damage and mechanical breakdown,
- Industrial fire or burglary,
- Travel,
- Motor vehicle rental,
- Credit,
- Crop hail and multiple-peril crop,
- In-transit and storage personal property, and
- Portable electronics insurance.

License for Motor Vehicle Physical Damage and Mechanical Breakdown Insurance
Currently, DFS has 31 licensees holding an agent's limited license for motor vehicle physical damage and mechanical breakdown insurance. The bill prevents DFS from issuing new licenses for this limited license after October 1, 2012. Those licensees licensed as of October 1, 2012 can renew their license, but no new licenses can be issued. After October 1, 2012, only general lines agents[28] will be able to sell motor vehicle physical damage and mechanical breakdown insurance.

License for Credit Insurance
The limited licenses for credit life or disability, credit property, and mortgage guaranty insurance are consolidated into the credit insurance limited license and the scope of the license is expanded to cover credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection, and any other type of insurance covering the extension of credit to extinguish a credit obligation.[29] The main parameters of a limited license for credit insurance in current law are maintained.

All currently existing licenses covering the types of insurance being consolidated into the credit insurance limited license are converted to a credit insurance limited license as of October 1, 2012. If a licensee whose license is converted wants to obtain a new license reflecting the new name and type of the license, the licensee must pay the $5 fee currently prescribed in law for issuance, reissuance, reinstatement, or modification of a license.

Current law setting forth parameters on the limited license for credit life or disability insurance and credit property insurance is repealed as a conforming change. Such parameters include who can be issued licenses to sell credit life or disability and credit property insurance and what additional licenses these agents can possess.

License for Mortgage Guaranty Insurance
Generally, mortgage guaranty insurance is insurance that insures lenders against financial loss due to nonpayment of monies owed under a note, bond, mortgage, deed of trust, or other document constituting a lien on real estate or nonpayment of rent or other monies owed under a lease. Section 635.051, F.S., provides for the licensing and appointment of mortgage guaranty insurance agents. A license as a mortgage guaranty insurance agent is a limited license which limits the agent to handling only mortgage guaranty insurance.

The bill repeals the mortgage guaranty insurance agent license and its associated licensing requirements as of October 1, 2012 because this license is subsumed into the expanded credit insurance license. Mortgage guaranty insurance agents licensed before October 1, 2012 are transferred to a credit insurance agent. After October 1, 2012, in order to transact mortgage guaranty insurance, an agent must be licensed and appointed as a credit insurance agent.

License for Communications Equipment Insurance
Current law outlining the scope and restrictions associated with all limited agent licenses relating to communications equipment insurance is repealed and a new limited license related to the sale of portable electronics insurance is created by the bill. This license is in lieu of the current license for insurance for communications equipment. The scope of a portable electronics license is greater than that of a communications equipment license. Specifically, the new license allows retail vendors selling portable electronics, instead of only communications equipment, to sell or offer customers insurance covering the portable electronics, instead of only covering communications equipment. The insurance sold on portable electronics will cover loss, theft, mechanical failure, malfunction or damage on these electronics.

[28] A general lines insurance agent is an insurance agent authorized to transact one or more of the following kinds of insurance: property insurance, casualty insurance, surety insurance, health insurance, or marine insurance.
[29] Resident and nonresident limited licenses for credit life or disability and mortgage guaranty insurance are consolidated.

The definition of portable electronics is much broader than the definition of communications equipment in current law, so the newly created portable electronics license will cover more types of equipment than is currently covered by the communications equipment license. For example, the portable electronics license covers insurance for cellular phones, pagers, portable computers, GPS units, gaming systems, docking stations, digital cameras and video cameras. However, the communications equipment license in current law primarily covers cellular phones, pagers, and portable computers.

The bill provides parameters for the portable electronics insurance limited license. Some of the parameters are the same as those that applied to the communications equipment limited license. However, many new parameters are added. New parameters cover subjects such as:

- Licensing of employees of licensed portable electronics insurance agents,
- Payment of commissions for the sale of portable electronics insurance,
- Required disclosures in brochures related to portable electronics insurance,
- Exemptions from the portable electronics insurance limited license,
- Billing and collection of premiums for portable electronics insurance by a licensee,
- Terms for termination or modification of coverage under a portable electronics insurance policy, and
- Requirements for required notices or correspondence under the portable electronics insurance policy.

Other Changes Relating to Insurance Agents

The bill expands current law relating to who can bind insurance coverage. Only general lines agents or customer representatives can bind insurance coverage under current law and the bill gives this authority to all agents or customer representatives. By definition, general lines agents transact only property, casualty, surety, or health insurance. The definition of agent is broader than that of general lines agent and includes agents transacting any kind of insurance and specifically includes general lines agents, agents transacting life insurance, agents transacting health insurance, and agents transacting title insurance. Personal lines agents are also allowed to bind coverage under the bill and are not allowed under current law.

Changes Relating to Licensing of Bail Bond Agents

DFS also licenses bail bond agents. As part of the licensing requirements, applicants for a bail bond agent license must pass an examination. Under current law, DFS must mail notice of the bail bond agent examination to applicants. The bill requires only notice of the exam by e-mail and repeals the requirement that notice be mailed to the applicant. This change is consistent with the change made in the bill requiring only notification by e-mail of license examination information to other DFS licensees. According to DFS, the department currently only notifies applicants for licensure of examination information by e-mail, so this change is a codification of current agency practice.

The bill also specifies information required on an application for a bail bond license and requires bail bond agents to notify DFS of e-mail address changes within ten days of the change. No such provisions are contained in current law.

Changes Relating to Licensing of General Lines Agents

A general lines insurance agent is an insurance agent authorized to transact, for commercial or noncommercial purposes, one or more of the following kinds of insurance: property insurance, casualty insurance, surety insurance, health insurance, or marine insurance. A personal lines agent is a general lines agent who can only transact property and casualty insurance for noncommercial purposes.

Current law setting forth license requirements for general lines agents and personal lines agents relating to knowledge, experience or instruction are comingled. For clarity, the bill separates these requirements and specifically outlines what requirements are required for licensure as a general lines agent and what requirements are required for a personal lines agent.

Changes Relating to Licensing of Title Insurance Agents and Agencies
Title insurance agents are appointed by title insurance companies to issue and countersign title insurance policies.[30] Title insurance agents are licensed by DFS. The number of licensed title insurance agencies has decreased in recent years, from 3,996 in 2007 to 1,911 in 2011.

Under current law, specified provisions that apply to general lines agents also apply to title insurance agents or agencies. The bill adds two provisions that apply to general lines agents to also make them apply to title insurance agents and the bill deletes one provision from also applying to title insurance agents. One provision that will now apply to title insurance agents allows title insurance agents to work at their place of residence if specified conditions are met. The other provision requires a title insurance agency to provide the name of each title insurance agent that is charge of the agency office on a full-time basis on the title insurance agency license application. The provision that is removed from applying to title insurance agents is allowance for a temporary title agent license

Current law requires the payment of two $200 administrative surcharges on title insurance each year. One surcharge is paid by insurers to the Office of Insurance Regulation (OIR) for each title insurance agency appointed by the insurer to sell title insurance and for each retail office of the title insurer. The other is paid by title insurance agencies and is paid to DFS. According to DFS, from 2007-2011, 389 title insurance agencies had their license suspended for failure to pay the $200 administrative surcharge to DFS. Additionally, from June 1, 2010 – May 31, 2011, DFS investigated 682 violations for failure to pay the surcharge.[31]

The bill repeals the $200 title insurance surcharge to be paid each year to DFS. The annual $200 administrative surcharge paid to OIR is maintained. As a conforming change, the bill also removes current law outlining how the surcharge collected by DFS is to be used by the department. How the surcharge collected by OIR is to be used by OIR is still prescribed in law.

Changes Relating to Bonding of Surplus Lines Insurance Agents
Surplus lines insurance is a category of insurance for which there is no market available through insurance companies licensed to transact insurance in Florida. Surplus lines insurance is sold by surplus lines agents. These agents are licensed by DFS. Under current law, applicants for a license as a surplus lines agent must post a $50,000 bond with DFS and must maintain the bond during the duration of the license. The bond is used to pay any surplus lines premium tax or service fee required to be paid by the surplus lines agent but not paid. The bill repeals the bond requirement, however, current law allowing DFS to file suit to recover surplus lines premium tax or service fees owed by a surplus lines agent is maintained.

Changes Relating to the County Tax on Insurance Agent Licenses
Under s. 624.501, F.S., biennially, DFS collects a $6 county tax fee on the appointment and renewal of most insurance agent licenses. The tax is paid by each insurer to DFS who transmits the tax to the appropriate county. The tax must be paid to the county where the agent resides or the county where the agent has a place of business, if this county is different than the agent's county of residence. Insurers with agents having places of business in more than one county, none of which is their county of residence, must pay the tax to each county where the agent has a place of business. For these agents, the bill repeals the county tax owed to each county where an insurance agent has an office if that county is not the agent's county of residence. Thus, the county tax will be paid only to the agent's county of residence or one county where the agent has a place of business, if that county is different than the agent's county of residence.

DFS does not currently identify agents that have places of business in more than one county and thus owe the county tax to more than one county. DFS asserts that although the agency can program agency computers to identify these agents, the costs of programming and auditing for compliance exceed the benefits. Last fiscal year, DFS collected $60.00 total in county taxes on agent licenses for agents with places of business in more than one county.

---

[30] s. 626.841, F.S.
[31] Information obtained from DFS, on file with the Insurance & Banking Subcommittee.

B. SECTION DIRECTORY:

Section 1: Amends s. 624.501, F.S., relating to filing, license, appointment, and miscellaneous fees.

Section 2: Amends s. 624.505, F.S., relating to county tax; determination; nonresident agents.

Section 3: Amends s. 626.015, F.S., relating to definitions.

Section 4: Amends s. 626.0428, F.S., relating to agency personnel powers, duties, and limitations.

Section 5: Amends s. 626.171, F.S., relating to application for license as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary.

Section 6: Amends s. 626.191, F.S., relating to repeated applications.

Section 7: Amends s. 626.221, F.S., relating to examination requirements; exemptions.

Section 8: Amends s. 626.231, F.S., relating to eligibility; application for examination.

Section 9: Amends s. 626.241, F.S., relating to scope of examination.

Section 10: Amends s. 626.251, F.S., relating to time and place of examination; notice.

Section 11: Amends s. 626.281, F.S., relating to reexamination.

Section 12: Amends s. 626.2815, F.S., relating to continuing education; requirements.

Section 13: Amends s. 626.2815, F.S., relating to continuing education; requirements. These changes are effective October 1, 2014.

Section 14: Amends s. 626.292, F.S., relating to transfer of license from another state.

Section 15: Amends s. 626.311, F.S., relating to scope of license.

Section 16: Amends s. 626.321, F.S., relating to limited licenses.

Section 17: Amends s. 626.342, F.S., relating to furnishing supplies to unlicensed agent prohibited; civil liability.

Section 18: Amends s. 626.381, F.S., relating to renewal, continuation, reinstatement, or termination of appointment.

Section 19: Amends s. 626.536, F.S., relating to reporting of administrative actions.

Section 20: Amends s. 626.551, F.S., relating to notice of change of address, name.

Section 21: Amends s. 626.621, F.S., relating to grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agents license or appointment.

Section 22: Amends s. s. 626.641, F.S., relating to duration of suspension or revocation.

Section 23: Amends s. 626.651, F.S., relating to effect of suspension, revocation upon associated licenses and appointments and licensees and appointees.

Section 24: Amends s. 626.730, F.S., relating to purpose of license.

Section 25: Amends s. 626.732, F.S., relating to requirement as to knowledge, experience, or instruction.

Section 26: Amends s. 626.8411, F.S., relating to application of Florida Insurance Code provisions to title insurance agents or agencies.

Section 27: Creates s. 626.8548, F.S., to provide a definition of "all-lines adjuster."

Section 28: Amends s. 626.855, F.S., relating to the definition of "independent adjuster."

Section 29: Amends s. 626.856, F.S., relating to the definition of "company employee adjuster."

Section 30: Repeals s. 626.858, F.S., relating to the definition of "nonresident company employee adjuster."

Section 31: Amends s. 626.8584, F.S., relating to the definition of "nonresident all-lines adjuster."

Section 32: Amends s. 626.863, F.S., relating to claims referrals to independent adjusters.

Section 33: Amends s. 626.864, F.S., relating to adjuster license types.

Section 34: Amends s. 626.865, F.S., relating to public adjuster's qualifications, bond.

Section 35: Amends s. 626.866, F.S., relating to all-lines adjuster qualifications.

Section 36: Repeals s. 626.867, F.S., relating to company employee adjuster qualifications.

Section 37: Amends s. 626.869, F.S., relating to license, adjusters; continuing education.

Section 38: Amends s. 626.8697, F.S., relating to grounds for refusal, suspension, or revocation of adjusting firm license.

Section 39: Amends s. 626.872, F.S., relating to temporary license.

Section 40: Repeals s. 626.873, F.S., relating to nonresident company employee adjusters.

Section 41: Amends s. 626.8734, F.S., relating to nonresident all-lines adjuster license qualifications.

Section 42: Amends s. 626.8736, F.S., relating to nonresident independent or public adjusters; service of process.

Section 43: Amends s. 626.874, F.S., relating to catastrophe or emergency adjusters.

Section 44: Amends s. 626.875, F.S., relating to office and records.

Section 45: Amends s. 626.876, F.S., relating to exclusive employment; public adjusters, independent adjusters.

Section 46: Amends s.626.927, F.S., relating to licensing of surplus lines agent.

Section 47: Repeals s. 626.928, F.S., relating to surplus lines agent's bond.

Section 48: Amends s. 626.933, F.S., relating to collection of tax and service fee.

Section 49: Amends s. 626.935, F.S., relating to suspension, revocation, or refusal of surplus lines agent's license.

Section 50: Amends s. 626.952, F.S., relating to risk retention and purchasing group agents.

Section 51: Amends s. 635.051, F.S., relating to licensing and appointment of mortgage guaranty insurance agents.

Section 52: Amends s. 648.34, F.S., relating to bail bond agents; qualifications.

Section 53: Amends s. 648.38, F.S., relating to licensure examination for bail bond agents; time; place; fees; scope.

Section 54: Amends s. 648.385, F.S., relating to continuing education required; application; exceptions; requirements; penalties.

Section 55: Amends s. 648.421, F.S., relating to notice of change of address or telephone number.

Section 56: Provides an effective date of October 1, 2012, except where otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Removal of the requirement that title insurance agencies pay the administrative surcharge will result in a negative fiscal impact of up to $425,000 in loss of revenue to the Insurance Regulatory Trust Fund within the department. In FY 2010-2011, approximately $952,400 was generated by payment of the title administrative surcharge. Title insurers paid total surcharge fees of approximately $526,800 and the title insurance agencies (which the bill repeals) paid $425,600.

   DFS indicates that combining the credit lines of insurance and mortgage guaranty insurance licenses will result in a loss of $14,340 a year in license and appointment fee revenue that is deposited into the Insurance Regulatory Trust Fund[32].

2. Expenditures:

   The provisions of CS/HB 725 will require modifications to the computer systems of the Division of Insurance Agent and Agency Services. However, the department indicates that the costs of modifying the computer systems can be absorbed within current resources.

   Additionally, DFS indicates that there will be a workload reduction associated with the repeal of section 626.928, F.S., which currently requires a $50,000 surety bond be paid by surplus lines agent applicants prior to becoming licensed. The workload reduction will allow for the reduction of 1.00 FTE position and a cost savings of $35,567 annually.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Under current law, insurance agents with offices in more than one county, none of which is the agent's county of residence, must pay a $6 biennial county tax to each county where an office is located. The bill requires the county tax to be paid in only one county where an office is located, rather than each county. Last fiscal year, DFS collected $60 total in county taxes for insurance agent offices located in more than one county.

[32] E-mail correspondence from DFS to House Appropriations Staff, February 3, 2012, on file with the House Government Operations Appropriations Staff.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The license consolidation provided in the bill reduces the appointment fees for licensees holding more than one license.

Insurance agents with offices in multiple counties will no longer pay a $6 biennial county tax to each county where the agent has an office, if that county is not the agent's county of residence or place of business.

Surplus lines insurance agents will no longer post a $50,000 bond with DFS.

Title insurance agencies will no longer pay a $200 annual administrative surcharge to DFS. Deletion of the requirement that title insurance agencies pay an administrative surcharge will result in a savings of approximately $425,000 for title insurance agencies.

DFS believes changing the continuing education requirements to require a seven hour update course will have a neutral impact on the providers currently offering continuing education courses because DFS assumes most providers will apply to offer the seven hour update continuing education course.

D. FISCAL COMMENTS:

The Insurance Regulatory Trust Fund (IRTF) accounts for 46% of the total funding for the Department of Financial Services. In addition, the Office of Insurance Regulation is entirely funded by the IRTF. As of December 31, 2011, the department estimates that revenue collections are $1.1 million under the collections as of the same point in time during FY 2010-11[33].

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:

DFS is given authority to adopt rules to implement the 30 day notification period for DFS licensees to notify DFS of any change in the licensee's name, address, phone number, or e-mail address and the penalties authorized in statute for failure to provide the required notification.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[33] Information obtained from the DFS FY 2011-12 Second Quarter Trust Fund Analysis, dated January 27, 2011 on file with the Government Operations Appropriations staff.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Insurance & Banking Subcommittee heard the bill, adopted a strike all amendment, and reported the bill favorably as a Committee Substitute. Many of the changes made by the strike all amendment corrected bill drafting errors and internal inconsistencies in the bill. In addition, the following changes were made by the strike all amendment:

- Limited the examination exemption for adjusters reinstating their license after a four year suspension to all-lines adjusters, instead of all adjusters. DFS still decides whether the adjuster should be exempt from examination; the exemption is not automatic.
- Restored rulemaking authority for the DFS relating to the adoption of revised versions of the uniform application for licensure.
- Required applicants for licensure to provide email addresses on the application for license examination.
- Restricted license applicants from taking the licensing examination more than 5 times in a 12 month period.
- Exempted only limited lines agents for crop or hail or multi-peril crop insurance from continuing education requirements, instead of all limited license agents. Corrected a drafting error and restores current law requiring continuing education on suitability of annuities for life insurance agents until October 1, 2014. This requirement is removed after that date when suitability of insurance products is required as part of the 7 hour continuing education update course.
- Corrected a drafting error and restored current law requiring continuing education on suitability of annuities for life insurance agents until October 1, 2014. This requirement is removed after that date when suitability of insurance products is required as part of the 7 hour continuing education update course.
- Clarified the continuing education requirement for bail bond agents is 14 hours, instead of 24 hours.
- Required the 7 hour continuing education update course covers premium discounts.
- Corrected a drafting error and restored current law relating to parameters of a credit insurance limited license because that license is still available.
- Required renewal of a branch office's appointment to sell portable electronics insurance every 24 months after the lead business's initial appointment date.
- Corrected an internal inconsistency and conformed qualifications of a nonresidential all-lines adjuster to the definition of this type of adjuster.
- Specified information required on an application for a bail bond agent license.
- Required bail bond agents to notify DFS of e-mail address changes within 10 days of the change.
- Removed repeal of the $35,000 surety bond or deposit required for title insurance agencies and provided to the DFS.
- Removed the provision in the bill relating to bail bond forfeitures.

The staff analysis was updated to reflect the Committee Substitute.

A bill to be entitled

An act relating to insurance agents and adjusters; amending s. 624.501, F.S.; deleting the title insurer administrative surcharge for a licensed title insurance agency; amending s. 624.505, F.S.; deleting a requirement that an insurer pay an agent tax for each county in which an agent represents the insurer and has a place of business; amending s. 626.015, F.S.; revising the definitions of "adjuster" and "home state"; amending s. 626.0428, F.S.; revising provisions relating to who may bind insurance coverage; amending s. 626.171, F.S.; providing that an applicant is responsible for the information in an application even if completed by a third party; requiring an application to include a statement about the method used to meet certain requirements; amending s. 626.191, F.S.; revising provisions relating to when an applicant may apply for a license after an initial application is denied by the Department of Financial Services; amending s. 626.221, F.S.; revising provisions relating to license examinations; conforming provisions relating to all-lines adjusters; deleting an exemption from examination for certain adjusters; amending s. 626.231, F.S.; providing for submitting an application for examination on a designee's website; amending s. 626.241, F.S.; revising the scope of the examination for an all-lines adjuster; amending s. 626.251, F.S.; providing for e-

mailing notices of examinations; amending s. 626.281, F.S.; specifying how many times an applicant may take an examination during a year; amending s. 626.2815, F.S.; revising provisions relating to continuing education requirements; providing that persons on active military duty may seek a waiver; providing for an update course and the contents of such course; deleting requirements relating specifically to certain types of insurance; providing education requirements for bail bond agents and public adjusters; eliminating the continuing education advisory board; amending s. 626.292, F.S.; conforming provisions to changes made by the act relating to all-lines adjusters; amending s. 626.311, F.S.; conforming provisions to changes made by the act relating to limited licenses; amending s. 626.321, F.S.; revising provisions relating to limited licenses; prohibiting the future issuance of new limited licenses for motor vehicle physical damage and mechanical breakdown insurance; combining limited licenses relating to credit insurance; specifying events covered by crop hail and multiple-peril crop insurance; revising in-transit and storage personal property insurance to create a limited license for portable electronics insurance; amending s. 626.342, F.S.; clarifying that the prohibition relating to the furnishing of supplies to unlicensed agents applies to all unlicensed agents; amending s. 626.381, F.S.; revising provisions relating to the reporting of

administrative actions; amending s. 626.536, F.S.; clarifying requirements for reporting administrative actions taken against a licensee; amending s. 626.551, F.S.; shortening the time within which a licensee must report to the department a change in certain information; authorizing the Department of Financial Services to adopt rules relating to notification of a change of address; amending s. 626.621, F.S.; adding failure to comply with child support requirements as grounds for action against a license; amending s. 626.641, F.S.; clarifying provisions relating to the suspension or revocation of a license or appointment; amending s. 626.651, F.S.; revising provisions relating to the suspension or revocation of licenses; amending ss. 626.730 and 626.732, F.S.; revising provisions relating to the purpose of the general lines and personal lines license and certain requirements related to general lines and personal lines agents; conforming provisions to changes made by the act relating to limited licenses; amending s. 626.8411, F.S.; revising requirements and exemptions relating to title insurance agents or agencies; creating s. 626.8548, F.S.; defining the term "all-lines adjuster"; amending s. 626.855, F.S.; revising the definition of "independent adjuster"; amending s. 626.856, F.S.; revising the definition of "company employee adjuster"; repealing s. 626.858, F.S., relating to defining "nonresident company employee

adjuster"; amending s. 626.8584, F.S.; revising the definition of "nonresident all-lines adjuster"; amending s. 626.863, F.S.; conforming provisions to changes made by the act relating to all-lines adjusters; amending s. 626.864, F.S.; revising provisions relating to adjuster license types; amending s. 626.865, F.S.; requiring an applicant for public adjuster to be licensed as a public adjuster apprentice; amending s. 626.866, F.S.; conforming provisions to changes made by the act relating to all-lines adjusters; repealing s. 626.867, F.S., relating to qualifications for company employee adjusters; amending s. 626.869, F.S.; revising provisions relating to an all-lines adjuster license; ceasing the issuance of certain adjuster licenses; revising continuing education requirements; amending s. 626.8697, F.S.; revising provisions relating to the violation of rules resulting in the suspension or revocation of an adjuster's license; amending s. 626.872, F.S.; conforming provisions to changes made by the act relating to all-lines adjusters; repealing s. 626.873, F.S., relating to licensure for nonresident company employee adjusters; amending s. 626.8734, F.S.; amending provisions relating to nonresident all-lines adjusters; providing for verifying an applicant's status through the National Association of Insurance Commissioners' Producer Database; amending ss. 626.8736, 626.874, 626.875, and

626.876, F.S.; conforming provisions to changes made by the act relating to all-lines adjusters; amending s. 626.927, F.S.; deleting a requirement that a licensed surplus lines agent maintain a bond; repealing s. 626.928, F.S., relating to a surplus lines agent's bond; amending ss. 626.933, 626.935, and 627.952, F.S.; conforming cross-references; amending s. 635.051, F.S.; requiring persons transacting mortgage guaranty insurance to be licensed and appointed as a credit insurance agent; amending s. 648.34, F.S.; requiring application information for bail bond agents; amending s. 648.38, F.S.; revising the notice of examination requirements for bail bond agents; amending s. 648.385, F.S.; revising continuing education courses for bail bond agents, to conform to changes made by the act; amending s. 648.421, F.S.; requiring a bail bond agent to provide notification of a change in his or her e-mail address; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) of subsection (27) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as

follows:

(27) Title insurance agents:

(e) Title insurer ~~and title insurance agency~~ administrative surcharge:

~~1.~~ On or before January 30 of each calendar year, each title insurer shall pay an administrative surcharge of $200 to the office for each licensed title insurance agency appointed by the title insurer and for each title insurer's retail office as of ~~the insurer on~~ January 1 of that calendar year ~~an administrative surcharge of $200.00~~.

~~2. On or before January 30 of each calendar year, each licensed title insurance agency shall remit to the department an administrative surcharge of $200.00.~~ The ~~administrative~~ surcharge may be used solely to defray the costs to the ~~department and~~ office for gathering and evaluating ~~in their examination or audit of title insurance agencies and retail offices of title insurers and to gather~~ title insurance data from title insurance agencies and insurers for statistical purposes, which shall ~~to~~ be furnished to and used by the office in its regulation of title insurance.

Section 2. Subsection (1) of section 624.505, Florida Statutes, is amended to read:

624.505 County tax; determination; ~~additional offices;~~ nonresident agents.—

(1) The county tax imposed ~~provided for~~ under s. 624.501 for ~~as to~~ an agent shall be paid by each insurer for each agent only for the county where the agent resides, or if the ~~such~~ agent's place of business is not located in the ~~a~~ county where

the agent resides ~~other than that of her or his residence~~, ~~then~~ for the county in which the agent's ~~wherein is located such~~ place of business is located. ~~If an agent maintains an office or place of business in more than one county, the tax shall be paid for her or him by each such insurer for each county wherein the agent represents such insurer and has a place of business.~~ If ~~When under this subsection~~ an insurer is paying the ~~required to pay~~ county tax ~~for an agent~~ for a county ~~or counties~~ other than the agent's county of residence, the insurer must ~~shall~~ designate the county ~~or counties~~ for which the taxes are paid.

Section 3. Subsections (1) and (7) of section 626.015, Florida Statutes, are amended to read:

626.015 Definitions.—As used in this part:

(1) "Adjuster" means a public adjuster as defined in s. 626.854, a public adjuster apprentice as defined in s. 626.8541, or an all-lines adjuster as defined in s. 626.8548 ~~independent adjuster as defined in s. 626.855, or company employee adjuster as defined in s. 626.856~~.

(7) "Home state" means the District of Columbia and any state or territory of the United States in which an ~~insurance~~ agent or adjuster maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance agent or adjuster.

Section 4. Subsections (2) and (3) of section 626.0428, Florida Statutes, are amended to read:

626.0428 Agency personnel powers, duties, and limitations.—

(2) An ~~No~~ employee of an agent or agency may not bind

insurance coverage unless licensed and appointed as an ~~a general lines~~ agent or customer representative.

(3) An ~~No~~ employee of an agent or agency may not initiate contact with any person for the purpose of soliciting insurance unless licensed and appointed as an ~~a general lines~~ agent or customer representative.

Section 5. Subsection (1) and paragraph (b) of subsection (2) of section 626.171, Florida Statutes, are amended to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary.—

(1) The department may ~~shall~~ not issue a license as agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary to any person except upon written application ~~therefor~~ filed with the department ~~it~~, meeting the qualifications for the license applied for as determined by the department ~~qualification therefor~~, and payment in advance of all applicable fees. The ~~Any such~~ application must ~~shall~~ be made under the oath of the applicant and be signed by the applicant. An applicant may permit a third party to complete, submit, and sign an application on the applicant's behalf, but is responsible for ensuring that the information on the application is true and correct and is accountable for any misstatements or misrepresentations. The department shall accept the uniform application for nonresident agent licensing. The department may adopt revised versions of the uniform application by rule.

(2) In the application, the applicant shall set forth:

(b) A statement indicating the method the applicant used or is using to meet any required prelicensing education, knowledge, experience, or instructional requirements for the type of license applied for. ~~Proof that he or she has completed or is in the process of completing any required prelicensing course.~~

However, the application must contain a statement that an applicant is not required to disclose his or her race or ethnicity, gender, or native language, that he or she will not be penalized for not doing so, and that the department will use this information exclusively for research and statistical purposes and to improve the quality and fairness of the examinations.

Section 6. Section 626.191, Florida Statutes, is amended to read:

626.191 Repeated applications.—The failure of an applicant to secure a license upon ~~an~~ application does ~~shall~~ not preclude the applicant from applying again. However ~~as many times as desired~~, ~~but~~ the department may ~~shall~~ not consider ~~give consideration to~~ or accept any further application by the same applicant ~~individual~~ for a similar license dated or filed within 30 days after ~~subsequent to~~ the date the department denied the last application, except as provided under ~~in~~ s. 626.281.

Section 7. Subsection (2) of section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(2) However, an ~~no such~~ examination is not ~~shall be~~

necessary for ~~in~~ any of the following ~~cases~~:

(a) An applicant for renewal of appointment as an agent, customer representative, or adjuster, unless the department determines that an examination is necessary to establish the competence or trustworthiness of the ~~such~~ applicant.

(b) An applicant for a limited license as agent for travel insurance, motor vehicle rental ~~personal accident insurance, baggage and motor vehicle excess liability insurance, credit life or disability~~ insurance, credit insurance, ~~credit property insurance,~~ in-transit and storage personal property insurance, or portable electronics ~~communications equipment property insurance or communication equipment inland marine~~ insurance under s. 626.321.

(c) In the discretion of the department, an applicant for reinstatement of license or appointment as an agent, customer representative, ~~company employee adjuster,~~ or all-lines ~~independent~~ adjuster whose license has been suspended within the 4 years before ~~prior to~~ the date of application or written request for reinstatement.

(d) An applicant who, within the 4 years before ~~prior to~~ application for license and appointment as an agent, customer representative, or adjuster, was a full-time salaried employee of the department who ~~and~~ had ~~continuously been such an employee with~~ responsible insurance duties for at least ~~not less than~~ 2 continuous years and who had been a licensee within the 4 years before ~~prior to~~ employment by the department with the same class of license as that being applied for.

(e) An applicant ~~A person~~ who has been licensed as an all-

lines adjuster and appointed as an independent adjuster or company employee adjuster ~~as to all property, casualty, and surety insurances may be licensed and appointed as a company employee adjuster or independent adjuster, as to these kinds of insurance, without additional written examination~~ if an application for licensure is filed with the department within 48 months following the date of cancellation or expiration of the prior appointment.

~~(f) A person who has been licensed as a company employee adjuster or independent adjuster for motor vehicle, property and casualty, workers' compensation, and health insurance may be licensed as such an adjuster without additional written examination if his or her application for licensure is filed with the department within 48 months after cancellation or expiration of the prior license.~~

(f) ~~(g)~~ An applicant for a temporary license, except as otherwise provided in this code.

(g) ~~(h)~~ An applicant for a license as a life or health agent ~~license~~ who has received the designation of chartered life underwriter (CLU) from the American College of Life Underwriters and ~~who~~ has been engaged in the insurance business within the past 4 years, except that the applicant ~~such an individual~~ may be examined on pertinent provisions of this code.

(h) ~~(i)~~ An applicant for license as a general lines agent, customer representative, or adjuster who has received the designation of chartered property and casualty underwriter (CPCU) from the American Institute for Property and Liability Underwriters and ~~who~~ has been engaged in the insurance business

within the past 4 years, except that the applicant ~~such an individual~~ may be examined on pertinent provisions of this code.

(i) ~~(j)~~ An applicant for license as a customer representative who has earned the designation of Accredited Advisor in Insurance (AAI) from the Insurance Institute of America, the designation of Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors, the designation of Accredited Customer Service Representative (ACSR) from the Independent Insurance Agents of America, the designation of Certified Professional Service Representative (CPSR) from the National Foundation for Certified Professional Service Representatives, the designation of Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives, or the designation of Certified Insurance Representative (CIR) from the National Association of Christian Catastrophe Insurance Adjusters. Also, 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 ~~with~~ at least 9 academic hours of property and casualty insurance curriculum, or the equivalent, or has earned the designation of Certified Customer Service Representative (CCSR) from the Florida Association of Insurance Agents, or the designation of Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in this state, or the designation of Professional Customer Service Representative (PCSR) from the Professional Career Institute, whose curriculum has been approved by the department and which

~~whose curriculum~~ includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the customer representative license. The department shall adopt rules establishing standards for the approval of curriculum.

(j) ~~(k)~~ An applicant for license as a resident or nonresident all-lines ~~an independent or company employee~~ adjuster who has the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state, Professional Claims Adjuster (PCA) from the Professional Career Institute, Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy, Certified Adjuster (CA) from ALL LINES Training, or Certified Claims Adjuster (CCA) from the Association of Property and Casualty Claims Professionals whose curriculum has been approved by the department and which ~~whose curriculum~~ includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

(k) ~~(l)~~ An applicant qualifying for a license transfer under s. 626.292~~,~~ if the applicant:

1. Has successfully completed the prelicensing examination requirements in the applicant's previous home state which are substantially equivalent to the examination requirements in this state, as determined by the department;

2. Has received the designation of chartered property and casualty underwriter (CPCU) from the American Institute for

Property and Liability Underwriters and ~~has~~ been engaged in the insurance business within the past 4 years if applying to transfer a general lines agent license; or

3. Has received the designation of chartered life underwriter (CLU) from the American College of Life Underwriters and ~~has~~ been engaged in the insurance business within the past 4 years~~,~~ if applying to transfer a life or health agent license.

(l) ~~(m)~~ An applicant for a license as a nonresident agent ~~license,~~ if the applicant:

1. Has successfully completed prelicensing examination requirements in the applicant's home state which are substantially equivalent to the examination requirements in this state, as determined by the department, as a requirement for obtaining a resident license in his or her home state;

2. Held a general lines agent license, life agent license, or health agent license before ~~prior to the time~~ a written examination was required;

3. Has received the designation of chartered property and casualty underwriter (CPCU) from the American Institute for Property and Liability Underwriters and has been engaged in the insurance business within the past 4 years, if an applicant for a nonresident license as a general lines agent; or

4. Has received the designation of chartered life underwriter (CLU) from the American College of Life Underwriters and ~~has~~ been in the insurance business within the past 4 years, if an applicant for a nonresident license as a life agent or health agent.

Section 8. Subsection (2) of section 626.231, Florida

Statutes, is amended to read:

626.231 Eligibility; application for examination.—

(2) A person required to take an examination for a license may ~~be permitted to~~ take an examination before ~~prior to~~ submitting an application for licensure pursuant to s. 626.171 by submitting an application for examination through the department's Internet website or the website of a person designated by the department to administer the examination. The department may require ~~In the application,~~ the applicant to provide the following information as part of the application ~~shall set forth~~:

(a) His or her full name, date of birth ~~age~~, social security number, e-mail address, residence address, business address, and mailing address.

(b) The type of license which ~~that~~ the applicant intends to apply for.

(c) The name of any required prelicensing course he or she has completed or is in the process of completing.

(d) The method by which the applicant intends to qualify for the type of license if other than by completing a prelicensing course.

(e) The applicant's gender ~~(male or female)~~.

(f) The applicant's native language.

(g) The highest level of education achieved by the applicant.

(h) The applicant's race or ethnicity ~~(African American, white, American Indian, Asian, Hispanic, or other)~~.

However, the application form must contain a statement that an applicant is not required to disclose his or her race or ethnicity, gender, or native language, that he or she will not be penalized for not doing so, and that the department will use this information exclusively for research and statistical purposes and to improve the quality and fairness of the examinations.

Section 9. Subsection (6) of section 626.241, Florida Statutes, is amended to read:

626.241 Scope of examination.—

(6) In order to reflect the differences between adjusting claims for an insurer and adjusting claims for an insured, the department shall create an examination for applicants seeking licensure as a public adjuster and a separate examination for applicants seeking licensure as an all-lines ~~a company employee adjuster or independent~~ adjuster.

(a) Examinations ~~given applicants~~ for a license as an all-lines adjuster must ~~shall~~ cover adjusting in all lines of insurance, other than life and annuity~~; or, in accordance with the application for the license, the examination may be limited to adjusting in:~~

~~(a) Automobile physical damage insurance;~~

~~(b) Property and casualty insurance;~~

~~(c) Workers' compensation insurance; or~~

~~(d) Health insurance~~.

(b) An ~~No~~ examination for workers' ~~on worker's~~ compensation insurance or health insurance is not ~~shall be~~ required for public adjusters.

Section 10. Subsection (1) of section 626.251, Florida Statutes, is amended to read:

626.251 Time and place of examination; notice.—

(1) The department, or a person designated by the department, shall provide ~~mail written~~ notice of the time and place of the examination to each applicant for examination and each applicant for license required to take an examination who will be eligible to take the examination as of the examination date. The notice shall be e-mailed ~~so mailed, postage prepaid, and addressed~~ to the applicant at the e-mail ~~his or her~~ address shown on the application for license or examination ~~at such other address as requested by the applicant in writing filed with the department prior to the mailing of the notice~~. Notice is ~~shall be~~ deemed given when so mailed.

Section 11. Section 626.281, Florida Statutes, is amended to read:

626.281 Reexamination.—

(1) An ~~Any~~ applicant for license or ~~applicant for~~ examination who has ~~either~~:

(a) Taken an examination and failed to make a passing grade, or

(b) Failed to appear for the examination or to take or complete the examination at the time and place specified in the notice of the department,

may take additional examinations, after filing with the department or its designee an application for reexamination together with applicable fees. The failure of an applicant to

pass an examination, ~~or the failure~~ to appear for the examination, or to take or complete the examination does not preclude the applicant from taking subsequent examinations.

(2) Applicants may not take an examination for a license type more than five times in a 12-month period.

(3) ~~(2)~~ The department may require an ~~any~~ individual whose license as an agent, customer representative, or adjuster has expired or ~~has~~ been suspended to pass an examination before ~~prior to~~ reinstating or relicensing the individual as to any class of license. The examination fee must ~~shall~~ be paid for ~~as to~~ each examination.

Section 12. Section 626.2815, Florida Statutes, is amended to read:

626.2815 Continuing education ~~required; application; exceptions;~~ requirements~~; penalties~~.—

(1) The purpose of this section is to establish requirements and standards for continuing education courses for individuals ~~persons~~ licensed to solicit, ~~or~~ sell, or adjust insurance in the state.

(2) Except as otherwise provided in this section, ~~the provisions of~~ this section applies ~~apply~~ to individuals ~~persons~~ licensed to engage in the sale of insurance or adjustment of insurance claims in this state for all lines of insurance for which an examination is required for licensing and to each insurer, employer, or appointing entity, including, but not limited to, those created or existing pursuant to s. 627.351. ~~The provisions of~~ This section does ~~shall~~ not apply to an ~~any~~ individual who holds ~~person holding~~ a license for the sale of

any line of insurance for which an examination is not required by the laws of this state or who holds a~~, nor shall the provisions of this section apply to any~~ limited license as a crop or hail and multiple-peril crop insurance agent ~~the department may exempt by rule~~. Licensees who are unable to comply with the continuing education requirements due to active duty in the military may submit a written request for a waiver to the department.

(3)~~(a)~~ Each licensee ~~person~~ subject to ~~the provisions of~~ this section must, except as set forth in paragraphs (b), (c), ~~and~~ (d), and (f), complete a minimum of 24 hours of continuing education courses every 2 years in basic or higher-level courses prescribed by this section or in other courses approved by the department.

(a) Each licensee ~~person subject to the provisions of this section~~ must complete~~, as part of his or her required number of continuing education hours,~~ 3 hours of continuing education, approved by the department, every 2 years on the subject matter of ethics. Each licensed general lines agent and customer representative ~~subject to this section~~ must complete~~, as part of his or her required number of continuing education hours,~~ 1 hour of continuing education, approved by the department, every 2 years on the subject matter of premium discounts available on property insurance policies based on various hurricane mitigation options and the means for obtaining the discounts.

(b) A licensee ~~person~~ who has been licensed for ~~a period of~~ 6 or more years must complete 20 hours of continuing education every 2 years in intermediate or advanced-level

courses prescribed by this section or in other courses approved by the department.

(c) A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in upper-level insurance-related courses must complete 10 hours of continuing education courses every 2 years in courses prescribed by this section or in other courses approved by the department.

(d) An individual ~~Any person~~ who holds a license as a customer representative, limited customer representative, title agent, motor vehicle physical damage and mechanical breakdown insurance agent, ~~crop or hail and multiple-peril crop insurance agent,~~ or ~~as~~ an industrial fire insurance or burglary insurance agent and who is not a licensed life or health ~~insurance~~ agent, must ~~shall be required to~~ complete 10 hours of continuing education courses every 2 years.

(e) An individual ~~Any person~~ who holds a license to solicit or sell life or health insurance and a license to solicit or sell property, casualty, surety, or surplus lines insurance must complete ~~the continuing education requirements by completing~~ courses in life or health insurance for one-half of the total hours required and courses in property, casualty, surety, or surplus lines insurance for one-half of the total hours required. However, a licensee who holds an industrial fire or burglary insurance license and who is a licensed life or health agent must ~~shall be required to~~ complete 4 hours of continuing education courses every 2 years related to industrial

fire or burglary insurance and the remaining number of hours of continuing education courses ~~required~~ related to life or health insurance.

(f) An individual subject to chapter 648 must complete a minimum of 14 hours of continuing education courses every 2 years.

(g) Excess hours accumulated during any 2-year compliance period may be carried forward to the next compliance period.

(h) An individual teaching an approved course of instruction or lecturing at any approved seminar and attending the entire course or seminar qualifies for the same number of classroom hours as would be granted to a person taking and successfully completing such course or seminar. Credit is limited to the number of hours actually taught unless a person attends the entire course or seminar. An individual who is an official of or employed by a governmental entity in this state and serves as a professor, instructor, or other position or office, the duties and responsibilities of which are determined by the department to require monitoring and review of insurance laws or insurance regulations and practices, is exempt from this section.

(4) ~~(f)1.~~ ~~Except as provided in subparagraph 2.,~~ Compliance with continuing education requirements is a condition precedent to the issuance, continuation, reinstatement, or renewal of any appointment subject to this section. However:

(a) ~~2.a.~~ An appointing entity, except one that appoints individuals who are employees or exclusive independent contractors of the appointing entity, may not require, directly

or indirectly, as a condition of such appointment or the continuation of such appointment, the taking of an approved course or program by any appointee or potential appointee which ~~that~~ is not of the appointee's choosing.

(b)~~b.~~ Any entity created or existing pursuant to s. 627.351 may require employees to take training of any type relevant to their employment but may not require appointees who are not employees to take any approved course or program unless the course or program deals solely with the appointing entity's internal procedures or products or with subjects substantially unique to the appointing entity.

~~(g) A person teaching any approved course of instruction or lecturing at any approved seminar and attending the entire course or seminar shall qualify for the same number of classroom hours as would be granted to a person taking and successfully completing such course, seminar, or program. Credit shall be limited to the number of hours actually taught unless a person attends the entire course or seminar. Any person who is an official of or employed by any governmental entity in this state and serves as a professor, instructor, or in any other position or office the duties and responsibilities of which are determined by the department to require monitoring and review of insurance laws or insurance regulations and practices shall be exempt from this section.~~

~~(h) Excess classroom hours accumulated during any compliance period may be carried forward to the next compliance period.~~

(5)~~(i)~~ For good cause shown, the department may grant an

extension of time during which the requirements of ~~imposed by~~ this section may be completed, but such extension ~~of time~~ may not exceed 1 year.

(6) ~~(j)~~ A nonresident licensee who must complete continuing education requirements in his or her home state may use the home state requirements to also meet this state's continuing education requirements ~~as well,~~ if the licensee's ~~resident's~~ home state recognizes reciprocity with this state's continuing education requirements. A nonresident licensee whose home state does not have a continuing education requirement but is licensed for the same class of business in another state that has ~~which does have~~ a continuing education requirement may comply with this section by furnishing proof of compliance with the other state's requirement if that state has a reciprocal agreement with this state relative to continuing education. A nonresident licensee whose home state does not have such continuing education requirements, and who is not licensed as a nonresident licensee ~~agent~~ in a state that has continuing education requirements and reciprocates with this state, must meet the continuing education requirements of this state.

(7) ~~(k)~~ Any person who holds a license to solicit or sell life insurance in this state must complete a minimum of 3 hours in continuing education, approved by the department, on the subject of suitability in annuity and life insurance transactions. This requirement does not apply to an agent who does not have any active life insurance or annuity contracts. In applying this exemption, the department may require the filing of a certification attesting that the agent has not sold life

insurance or annuities during the continuing education compliance cycle in question and does not have any active life insurance or annuity contracts. A licensee may use the hours obtained under this paragraph to satisfy the requirement for continuing education in ethics under paragraph (3)(a).

(8)~~(4)~~ The following courses may be completed in order to meet the elective continuing education course requirements:

(a) Any part of the Life Underwriter Training Council Life Course Curriculum: 24 hours; Health Course: 12 hours.

(b) Any part of the American College "CLU" diploma curriculum: 24 hours.

(c) Any part of the Insurance Institute of America's program in general insurance: 12 hours.

(d) Any part of the American Institute for Property and Liability Underwriters' Chartered Property Casualty Underwriter (CPCU) professional designation program: 24 hours.

(e) Any part of the Certified Insurance Counselor program: 21 hours.

(f) Any part of the Accredited Advisor in Insurance: 21 hours.

(g) In the case of title agents, completion of the Certified Land Closer (CLC) professional designation program and receipt of the designation: 24 hours.

(h) In the case of title agents, completion of the Certified Land Searcher (CLS) professional designation program and receipt of the designation: 24 hours.

(i) Any insurance-related course that ~~which~~ is approved by the department and taught by an accredited college or university

per credit hour granted: 12 hours.

(j) Any course, including courses relating to agency management or errors and omissions, developed or sponsored by an ~~any~~ authorized insurer or recognized agents' association or insurance trade association or an ~~any~~ independent study program of instruction, subject to approval by the department, qualifies for the equivalency of the number of classroom hours assigned ~~thereto~~ by the department. However, unless otherwise provided in this section, continuing education hours may not be credited toward meeting the requirements of this section unless the course is provided by classroom instruction or results in a monitored examination. A monitored examination is not required for:

1. An independent study program of instruction presented through interactive, online technology that the department determines has sufficient internal testing to validate the student's full comprehension of the materials presented; or

2. An independent study program of instruction presented on paper or in printed material which ~~that~~ imposes a final closed book examination that meets the requirements of the department's rule for self-study courses. The examination may be taken without a proctor if ~~provided~~ the student presents to the provider a sworn affidavit certifying that the student did not consult any written materials or receive outside assistance of any kind or from any person, directly or indirectly, while taking the examination. If the student is an employee of an agency or corporate entity, the student's supervisor or a manager or owner of the agency or corporate entity must also

sign the sworn affidavit. If the student is self-employed, a sole proprietor, or a partner, or if the examination is administered online, the sworn affidavit must also be signed by a disinterested third party. The sworn affidavit must be received by the approved provider before ~~prior to~~ reporting continuing education credits to the department.

(9) ~~(k)~~ Each person or entity sponsoring a course for continuing education credit must furnish, within 15 ~~30~~ days after completion of the course, in a form satisfactory to the department or its designee, a ~~written and certified~~ roster showing the name and license number of all persons successfully completing such course and requesting credit~~, accompanied by the required fee~~.

(10) ~~(5)~~ The department may immediately terminate or ~~shall~~ refuse to renew the appointment of an ~~any~~ agent or adjuster who has been notified by the department that ~~who has not had~~ his or her continuing education requirements have not been certified, unless the agent or adjuster has been granted an extension or waiver by the department. The department may not issue a new appointment of the same or similar type~~, with any insurer,~~ to a licensee ~~an agent~~ who was denied a renewal appointment for failing ~~failure~~ to complete continuing education as required until the licensee ~~agent~~ completes his or her continuing education requirement.

~~(6)(a) There is created an 11-member continuing education advisory board to be appointed by the Chief Financial Officer. Appointments shall be for terms of 4 years. The purpose of the board is to advise the department in determining standards by~~

~~which courses may be evaluated and categorized as basic, intermediate, or advanced. The board shall submit recommendations to the department of changes needed in such criteria not less frequently than every 2 years. The department shall require all approved course providers to submit courses for approval to the department using the criteria. All materials, brochures, and advertisements related to the approved courses must specify the level assigned to the course.~~

~~(b) The board members shall be appointed as follows:~~

~~1. Seven members representing agents of which at least one must be a representative from each of the following organizations: the Florida Association of Insurance Agents; the Florida Association of Insurance and Financial Advisors; the Professional Insurance Agents of Florida, Inc.; the Florida Association of Health Underwriters; the Specialty Agents' Association; the Latin American Agents' Association; and the National Association of Insurance Women. Such board members must possess at least a bachelor's degree or higher from an accredited college or university with major coursework in insurance, risk management, or education or possess the designation of CLU, CPCU, CHFC, CFP, AAI, or CIC. In addition, each member must possess 5 years of classroom instruction experience or 5 years of experience in the development or design of educational programs or 10 years of experience as a licensed resident agent. Each organization may submit to the department a list of recommendations for appointment. If one organization does not submit a list of recommendations, the Chief Financial Officer may select more than one recommended person from a list~~

~~submitted by other eligible organizations.~~

~~2. Two members representing insurance companies at least one of whom must represent a Florida Domestic Company and one of whom must represent the Florida Insurance Council. Such board members must be employed within the training department of the insurance company. At least one such member must be a member of the Society of Insurance Trainers and Educators.~~

~~3. One member representing the general public who is not directly employed in the insurance industry. Such board member must possess a minimum of a bachelor's degree or higher from an accredited college or university with major coursework in insurance, risk management, training, or education.~~

~~4. One member, appointed by the Chief Financial Officer, who represents the department.~~

~~(c) The members of the board shall serve at the pleasure of the Chief Financial Officer. Each board member shall be entitled to reimbursement for expenses pursuant to s. 112.061. The board shall designate one member as chair. The board shall meet at the call of the chair or the Chief Financial Officer.~~

(11) ~~(7)~~ The department may contract services relative to the administration of the continuing education program to a private entity. The contract shall be procured as a ~~contract for a~~ contractual service pursuant to s. 287.057.

Section 13. Effective October 1, 2014, subsections (3) and (7) of section 626.2815, Florida Statutes, as amended by this act, are amended, and subsections (8) through (11) of that section are redesignated as subsections (7) through (10), respectively, to read:

626.2815 Continuing education requirements.—

(3) Each licensee ~~subject to this section~~ must~~, except as set forth in paragraphs (b), (c), (d), and (f),~~ complete a 7-hour update course every 2 years which is specific to the license held by the licensee. The course must be developed and offered by providers and approved by the department. The content of the course must address all lines of insurance for which examination and license is required and include the following subject areas: insurance law updates, ethics for insurance professionals, disciplinary trends and case studies, industry trends, premium discounts, determining suitability of products and services, and other similar insurance-related topics the department determines are relevant to legally and ethically carrying out the responsibilities of the license granted. A licensee who holds multiple insurance licenses must complete an update course that is specific to at least one of the licenses held. Except as otherwise specified, any remaining required hours of continuing education are elective and may consist of any continuing education course approved by the department or under this section ~~minimum of 24 hours of continuing education courses every 2 years in basic or higher-level courses prescribed by this section or in other courses approved by the department~~.

(a) Except as provided in paragraphs (b), (c), (d), and (e), each licensee must also complete 17 ~~3~~ hours of elective continuing education courses~~, approved by the department,~~ every 2 years ~~on the subject matter of ethics~~. ~~Each licensed general lines agent and customer representative must complete 1 hour of~~

~~continuing education, approved by the department, every 2 years on the subject matter of premium discounts available on property insurance policies based on various hurricane mitigation options and the means for obtaining the discounts.~~

(b) A licensee who has been licensed for 6 or more years must also complete a minimum of 13 ~~20~~ hours of elective continuing education every 2 years ~~in intermediate or advanced-level courses prescribed by this section or in other courses approved by the department~~.

(c) A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in ~~upper-level~~ insurance-related courses must also complete a minimum of 3 ~~10~~ hours of elective continuing education courses every 2 years ~~in courses prescribed by this section or in other courses approved by the department~~.

(d) An individual who holds a license as a customer representative, limited customer representative, title agent, motor vehicle physical damage and mechanical breakdown insurance agent, or an industrial fire insurance or burglary insurance agent and who is not a licensed life or health agent, must also complete a minimum of 3 ~~10~~ hours of continuing education courses every 2 years.

~~(e) An individual who holds a license to solicit or sell life or health insurance and a license to solicit or sell property, casualty, surety, or surplus lines insurance must complete courses in life or health insurance for one-half of the total hours required and courses in property, casualty, surety,~~

~~or surplus lines insurance for one-half of the total hours required. However, a licensee who holds an industrial fire or burglary insurance license and who is a licensed life or health agent must complete 4 hours of continuing education courses every 2 years related to industrial fire or burglary insurance and the remaining number of hours of continuing education courses related to life or health insurance.~~

(e) ~~(f)~~ An individual subject to chapter 648 must complete the 7-hour update course and a minimum of 7 ~~14~~ hours of elective continuing education courses every 2 years.

(f) Elective continuing education courses for public adjusters must be specifically designed for public adjusters and approved by the department. Notwithstanding this subsection, public adjusters for workers' compensation insurance or health insurance are not required to take continuing education courses pursuant to this section.

(g) Excess hours accumulated during any 2-year compliance period may be carried forward to the next compliance period.

(h) An individual teaching an approved course of instruction or lecturing at any approved seminar and attending the entire course or seminar qualifies for the same number of classroom hours as would be granted to a person taking and successfully completing such course or seminar. Credit is limited to the number of hours actually taught unless a person attends the entire course or seminar. An individual who is an official of or employed by a governmental entity in this state and serves as a professor, instructor, or other position or office, the duties and responsibilities of which are determined

by the department to require monitoring and review of insurance laws or insurance regulations and practices, is exempt from this section.

~~(7) Any person who holds a license to solicit or sell life insurance in this state must complete a minimum of 3 hours in continuing education, approved by the department, on the subject of suitability in annuity and life insurance transactions. This requirement does not apply to an agent who does not have any active life insurance or annuity contracts. In applying this exemption, the department may require the filing of a certification attesting that the agent has not sold life insurance or annuities during the continuing education compliance cycle in question and does not have any active life insurance or annuity contracts. A licensee may use the hours obtained under this paragraph to satisfy the requirement for continuing education in ethics under paragraph (3)(a).~~

Section 14. Subsections (1) and (2) of section 626.292, Florida Statutes, are amended to read:

626.292 Transfer of license from another state.—

(1) An ~~Any~~ individual licensed in good standing in another state may apply to the department to have the license transferred to this state to obtain a ~~Florida~~ resident agent or all-lines adjuster license for the same lines of authority covered by the license in the other state.

(2) To qualify for a license transfer, an individual applicant must meet the following requirements:

(a) The individual must ~~shall~~ become a resident of this state.

(b) The individual must ~~shall~~ have been licensed in another state for a minimum of 1 year immediately preceding the date the individual became a resident of this state.

(c) The individual must ~~shall~~ submit a completed application for this state which is received by the department within 90 days after the date the individual became a resident of this state, along with payment of the applicable fees set forth in s. 624.501 and submission of the following documents:

1. A certification issued by the appropriate official of the applicant's home state identifying the type of license and lines of authority under the license and stating that, at the time the license from the home state was canceled, the applicant was in good standing in that state or that the state's Producer Database records, maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries, indicate that the agent or all-lines adjuster is or was licensed in good standing for the line of authority requested.

2. A set of the ~~individual~~ applicant's fingerprints in accordance with s. 626.171(4).

(d) The individual must ~~shall~~ satisfy prelicensing education requirements in this state, unless the completion of prelicensing education requirements was a prerequisite for licensure in the other state and the prelicensing education requirements in the other state are substantially equivalent to the prelicensing requirements of this state as determined by the department. This paragraph does not apply to all-lines adjusters.

(e) The individual must ~~shall~~ satisfy the examination

requirement under s. 626.221, unless exempted ~~exempt thereunder~~.

Section 15. Subsections (2) and (3) of section 626.311, Florida Statutes, are amended to read:

626.311 Scope of license.—

(2) Except with respect ~~as~~ to a limited license as a credit ~~life or disability~~ insurance agent, the license of a life agent covers ~~shall cover~~ all classes of life insurance business.

(3) Except with respect ~~as~~ to a limited license as a travel ~~personal accident~~ insurance agent, the license of a health agent covers ~~shall cover~~ all kinds of health insurance~~;~~ and such ~~no~~ license may not ~~shall~~ be ~~issued~~ limited to a particular class of health insurance.

Section 16. Subsections (1) and (4) of section 626.321, Florida Statutes, are amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified applicant ~~individual, or a qualified individual or entity under paragraphs (c), (d), (e), and (i),~~ a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(a) *Motor vehicle physical damage and mechanical breakdown insurance.*—License covering insurance against only the loss of or damage to a ~~any~~ motor vehicle that ~~which~~ is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles. Such license also covers insurance against the failure of an original or replacement part to perform any function for which it was designed. ~~The applicant for such a license shall pass a written examination covering~~

~~motor vehicle physical damage insurance and mechanical breakdown insurance.~~ A licensee under this paragraph may not ~~No individual while so licensed shall~~ hold a license as an agent for ~~as to~~ any other or additional kind or class of insurance coverage except ~~as to~~ a limited license for credit insurance ~~life and disability insurances~~ as provided in paragraph (e). Effective October 1, 2012, all licensees holding such limited license and appointment may renew the license and appointment, but no new or additional licenses may be issued pursuant to this paragraph, and a licensee whose limited license under this paragraph has been terminated, suspended, or revoked may not have such license reinstated.

(b) *Industrial fire insurance or burglary insurance.*—License covering only industrial fire insurance or burglary insurance. The applicant for such a license must ~~shall~~ pass a written examination covering such insurance. A licensee under this paragraph may not ~~No individual while so licensed shall~~ hold a license as an agent for ~~as to~~ any other or additional kind or class of insurance coverage except for ~~as to~~ life insurance and health insurance ~~insurances~~.

(c) *Travel insurance.*—License covering only policies and certificates of travel insurance~~,~~ which are subject to review by the office under s. 624.605(1)(q). Policies and certificates of travel insurance may provide coverage for risks incidental to travel, planned travel, or accommodations while traveling, including, but not limited to, accidental death and 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. ~~Any~~ Such policy or certificate may be issued for terms longer than 60 days, but ~~each policy or certificate~~, other than a policy or certificate providing coverage for air ambulatory services only, each policy or certificate must be limited to coverage for travel or use of accommodations of no longer than 60 days. The license may be issued only:

1. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency and may authorize the sale of such ticket policies only in connection with the sale of transportation tickets, or to the full-time salaried employee of such an agent. ~~No~~ Such policy may not ~~shall~~ be for ~~a duration of~~ more than 48 hours or more than ~~for~~ the duration of a specified one-way trip or round trip.

2. To an entity or individual that is:

a. The developer of a timeshare plan that is the subject of an approved public offering statement under chapter 721;

b. An exchange company operating an exchange program approved under chapter 721;

c. A managing entity operating a timeshare plan approved under chapter 721;

d. A seller of travel as defined in chapter 559; or

e. A subsidiary or affiliate of any of the entities described in sub-subparagraphs a.-d.

A licensee shall require each employee who offers policies or certificates under this subparagraph to receive initial training from a general lines agent or an insurer authorized under chapter 624 to transact insurance within this state. For an entity applying for a license as a travel insurance agent, the fingerprinting requirement of this section applies only to the president, secretary, and treasurer and to any other officer or person who directs or controls the travel insurance operations of the entity.

(d) *Motor vehicle rental insurance.*—

1. License covering only insurance of the risks set forth in this paragraph when offered, sold, or solicited with and incidental to the rental or lease of a motor vehicle and which applies only to the motor vehicle that is the subject of the lease or rental agreement and the occupants of the motor vehicle:

a. Excess motor vehicle liability insurance providing coverage in excess of the standard liability limits provided by the lessor in the lessor's lease to a person renting or leasing a motor vehicle from the licensee's employer for liability arising in connection with the negligent operation of the leased or rented motor vehicle.

b. Insurance covering the liability of the lessee to the lessor for damage to the leased or rented motor vehicle.

c. Insurance covering the loss of or damage to baggage, personal effects, or travel documents of a person renting or leasing a motor vehicle.

d. Insurance covering accidental personal injury or death

of the lessee and any passenger who is riding or driving with the covered lessee in the leased or rented motor vehicle.

2. Insurance under a motor vehicle rental insurance license may be issued only if the lease or rental agreement is for no more than 60 days, the lessee is not provided coverage for more than 60 consecutive days per lease period, and the lessee is given written notice that his or her personal insurance policy providing coverage on an owned motor vehicle may provide coverage of such risks and that the purchase of the insurance is not required in connection with the lease or rental of a motor vehicle. If the lease is extended beyond 60 days, the coverage may be extended one time only for a period not to exceed an additional 60 days. Insurance may be provided to the lessee as an additional insured on a policy issued to the licensee's employer.

3. The license may be issued only to the full-time salaried employee of a licensed general lines agent or to a business entity that offers motor vehicles for rent or lease if insurance sales activities authorized by the license are in connection with and incidental to the rental or lease of a motor vehicle.

a. A license issued to a business entity that offers motor vehicles for rent or lease encompasses ~~shall encompass~~ each office, branch office, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to this paragraph.

b. The application for licensure must list the name, address, and phone number for each office, branch office, or

place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee must ~~shall~~ notify the department within 30 days after closing or terminating an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.

c. A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees.

(e) *Credit ~~life or disability~~ insurance.*—License covering ~~only~~ credit life, credit ~~or~~ disability ~~insurance~~, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (GAP) insurance, and any other form of insurance offered in connection with an extension of credit which is limited to partially or wholly extinguishing a credit obligation that the department determines should be designated a form of limited line credit insurance. Effective October 1, 2012, all valid licenses held by persons for any of the lines of insurance listed in this paragraph shall be converted to a credit insurance license. Licensees who wish to obtain a new license reflecting such change must request a duplicate license and pay a $5 fee as specified in s. 624.501(15). The license may be issued only to an individual employed by a life or health insurer as an officer or other

salaried or commissioned representative, to an individual employed by or associated with a lending or financial institution or creditor, or to a lending or financial institution or creditor, and may authorize the sale of such insurance only with respect to borrowers or debtors of such lending or financing institution or creditor. However, only the individual or entity whose tax identification number is used in receiving or is credited with receiving the commission from the sale of such insurance shall be the licensed agent of the insurer. No individual while so licensed shall hold a license as an agent as to any other or additional kind or class of life or health insurance coverage. ~~An entity holding a limited license under this paragraph is also authorized to sell credit insurance and credit property insurance.~~

~~(f) *Credit insurance.*—License covering only credit insurance, as such insurance is defined in s. 624.605(1)(i), and no individual or entity so licensed shall, during the same period, hold a license as an agent as to any other or additional kind of life or health insurance with the exception of credit life or disability insurance as defined in paragraph (c). The same licensing provisions as outlined in paragraph (c) apply to entities licensed as credit insurance agents under this paragraph.~~

~~(g) *Credit property insurance.*—A license covering only credit property insurance may be issued to any individual except an individual employed by or associated with a financial institution as defined in s. 655.005 and authorized to sell such insurance only with respect to a borrower or debtor, not to~~

~~exceed the amount of the loan.~~

(f) ~~(h)~~ *Crop hail and multiple-peril crop insurance.*— License for insurance covering crops subject to unfavorable weather conditions, fire or lightening, flood, hail, insect infestation, disease, or other yield-reducing conditions or perils which is provided by the private insurance market, or which is subsidized by the Federal Group Insurance Corporation including multi-peril crop insurance ~~only crop hail and multiple-peril crop insurance~~. Notwithstanding any other provision of law, the limited license may be issued to a bona fide salaried employee of an association chartered under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001 et seq., who satisfactorily completes the examination prescribed by the department pursuant to s. 626.241(5). The ~~limited~~ agent must be appointed by, and his or her limited license requested by, a licensed general lines agent. All business transacted by the ~~limited~~ agent must be on ~~shall be in~~ behalf of, in the name of, and countersigned by the agent by whom he or she is appointed. Sections 626.561 and 626.748, relating to records, apply to all business written pursuant to this section. The ~~limited~~ licensee may be appointed by and licensed for only one general lines agent or agency.

(g) ~~(i)~~ *In-transit and storage personal property insurance~~, communications equipment property insurance, communications equipment inland marine insurance, and communications equipment service warranty agreement sales~~.*—

~~1. A~~ License for insurance covering only ~~the insurance of~~ personal property not held for resale, covering the risks of

transportation or storage in rented or leased motor vehicles, trailers, or self-service storage facilities~~,~~ as ~~the latter are~~ defined in s. 83.803. Such license~~,~~ may be issued, without examination, only to employees or authorized representatives of lessors who rent or lease motor vehicles, trailers, or self-service storage facilities and who are authorized by an insurer to issue certificates or other evidences of insurance to lessees of such motor vehicles, trailers, or self-service storage facilities under an insurance policy issued to the lessor. A person licensed under this paragraph must ~~shall~~ give a prospective purchaser of in-transit or storage personal property insurance written notice that his or her homeowner's policy may provide coverage for the loss of personal property and that the purchase of such insurance is not required under the lease terms.

~~2. A license covering only communications equipment, for the loss, theft, mechanical failure, malfunction of or damage to, communications equipment. The license may be issued only to:~~

~~a. Employees or authorized representatives of a licensed general lines agent;~~

~~b. The lead business location of a retail vendor of communications equipment and its branch locations; or~~

~~c. Employees, agents, or authorized representatives of a retail vendor of communications equipment.~~

~~The license authorizes the sale of such policies, or certificates under a group master policy, only with respect to the sale of, or provision of communications service for,~~

~~communications equipment. A general lines agent is not required to obtain a license under this subparagraph to offer or sell communications equipment property insurance or communication equipment inland marine insurance. The license also authorizes sales of service warranty agreements covering only communications equipment to the same extent as if licensed under s. 634.419 or s. 634.420. The provisions of this chapter requiring submission of fingerprints do not apply to communications equipment licenses issued to qualified entities under this subparagraph. Licensees offering policies under this subparagraph must receive initial training from, and have a contractual relationship with, a general lines agent. For the purposes of this subparagraph, the term "communications equipment" means handsets, pagers, personal digital assistants, portable computers, automatic answering devices, and other devices or accessories used to originate or receive communications signals or service, and includes services related to the use of such devices, such as consumer access to a wireless network; however, the term does not include telecommunications switching equipment, transmission wires, cell site transceiver equipment, or other equipment and systems used by telecommunications companies to provide telecommunications service to consumers. A branch location of a retail vendor of communications equipment licensed pursuant to paragraph (2)(b) may, in lieu of obtaining an appointment from an insurer or warranty association as provided in paragraph (2)(c), obtain a single appointment from the associated lead business location licensee licensed under paragraph (2)(a) and pay the prescribed~~

~~appointment fee under s. 624.501 provided the lead business location has a single appointment from each insurer or warranty association represented and such appointment provides that it applies to the lead business location and all of its branch locations. Any branch location individually appointed by an insurer under paragraph (2)(c) prior to January 1, 2006, may replace its appointments with an appointment from its lead location at no charge. Branch location appointments shall be renewed on the first annual anniversary of licensure of the lead business location occurring more than 24 months after the initial appointment date and every 24 months thereafter. Notwithstanding s. 624.501, after July 1, 2006, the renewal fee applicable to such branch location appointments shall be $30 per appointment.~~

(h) *Portable electronics insurance.*—License for property insurance or inland marine insurance that covers only loss, theft, mechanical failure, malfunction, or damage for portable electronics.

1. The license may be issued only to:

a. Employees or authorized representatives of a licensed general lines agent; or

b. The lead business location of a retail vendor that sells portable electronics insurance. The lead business location must have a contractual relationship with a general lines agent.

2. Employees or authorized representatives of a licensee under subparagraph 1. may sell or offer for sale portable electronics coverage without being subject to licensure as an insurance agent if:

a. Such insurance is sold or offered for sale at a licensed location or at one of the licensee's branch locations if the branch location is appointed by the licensed lead business location or its appointing insurers;

b. The insurer issuing the insurance directly supervises or appoints a general lines agent to supervise the sale of such insurance, including the development of a training program for the employees and authorized representatives of vendors that are directly engaged in the activity of selling or offering the insurance; and

c. At each location where the insurance is offered, brochures or other written materials that provide the information required by this subparagraph are made available to all prospective customers. The brochures or written materials may include information regarding portable electronics insurance, service warranty agreements, or other incidental services or benefits offered by a licensee.

3. Individuals not licensed to sell portable electronics insurance may not be paid commissions based on the sale of such coverage. However, a licensee who uses a compensation plan for employees and authorized representatives which includes supplemental compensation for the sale of noninsurance products, in addition to a regular salary or hourly wages, may include incidental compensation for the sale of portable electronics insurance as a component of the overall compensation plan.

4. Brochures or other written materials related to portable electronics insurance must:

a. Disclose that such insurance may duplicate coverage

already provided by a customer's homeowners' insurance policy, renters' insurance policy, or other source of coverage;

b. State that enrollment in insurance coverage is not required in order to purchase or lease portable electronics or services;

c. Summarize the material terms of the insurance coverage, including the identity of the insurer, the identity of the supervising entity, the amount of any applicable deductible and how it is to be paid, the benefits of coverage, and key terms and conditions of coverage, such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

d. Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable if the customer fails to comply with equipment return requirements; and

e. State that an enrolled customer may cancel coverage at any time and that the person paying the premium will receive a refund of any unearned premium.

5. A licensed and appointed general lines agent is not required to obtain a portable electronics insurance license to offer or sell portable electronics insurance at locations already licensed as an insurance agency, but may apply for a portable electronics insurance license for branch locations not otherwise licensed to sell insurance.

6. A portable electronics license authorizes the sale of individual policies or certificates under a group or master insurance policy. The license also authorizes the sale of

service warranty agreements covering only portable electronics to the same extent as if licensed under s. 634.419 or s. 634.420.

7. A licensee may bill and collect the premium for the purchase of portable electronics insurance provided that:

a. If the insurance is included with the purchase or lease of portable electronics or related services, the licensee clearly and conspicuously discloses that insurance coverage is included with the purchase. Disclosure of the dollar amount of the premium for the insurance must be made on the customer's bill and in any marketing materials made available at the point of sale. If the insurance is not included, the charge to the customer for the insurance must be separately itemized on the customer's bill.

b. Premiums are incidental to other fees collected, are maintained in a manner that is readily identifiable, and are accounted for and remitted to the insurer or supervising entity within 60 days of receipt. Licensees are not required to maintain such funds in a segregated account.

c. All funds received by a licensee from an enrolled customer for the sale of the insurance are considered funds held in trust by the licensee in a fiduciary capacity for the benefit of the insurer. Licensees may receive compensation for billing and collection services.

8. Notwithstanding any other provision of law, the terms for the termination or modification of coverage under a policy of portable electronics insurance are those set forth in the policy.

9. Notice or correspondence required by the policy, or otherwise required by law, may be provided by electronic means if the insurer or licensee maintains proof that the notice or correspondence was sent. Such notice or correspondence may be sent on behalf of the insurer or licensee by the general lines agent appointed by the insurer to supervise the administration of the program. For purposes of this subparagraph, an enrolled customer's provision of an electronic mail address to the insurer or licensee is deemed to be consent to receive notices and correspondence by electronic means if a conspicuously located disclosure is provided to the customer indicating the same.

10. The provisions of this chapter requiring submission of fingerprints do not apply to licenses issued to qualified entities under this paragraph.

11. A branch location that sells portable electronics insurance may, in lieu of obtaining an appointment from an insurer or warranty association, obtain a single appointment from the associated lead business location licensee and pay the prescribed appointment fee under s. 624.501 if the lead business location has a single appointment from each insurer or warranty association represented and such appointment applies to the lead business location and all of its branch locations. Branch location appointments shall be renewed 24 months after the initial appointment date of the lead business location and every 24 months thereafter. Notwithstanding s. 624.501, the renewal fee applicable to such branch location appointments is $30 per appointment.

12. For purposes of this paragraph:

a. "Branch location" means any physical location in this state at which a licensee offers its products or services for sale.

b. "Portable electronics" means personal, self-contained, easily carried by an individual, battery-operated electronic communication, viewing, listening, recording, gaming, computing or global positioning devices, including cell or satellite phones, pagers, personal global positioning satellite units, portable computers, portable audio listening, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations, automatic answering devices, and other similar devices and their accessories, and service related to the use of such devices.

c. "Portable electronics transaction" means the sale or lease of portable electronics or a related service, including portable electronics insurance.

(4) Except as otherwise expressly provided, a person applying for or holding a limited license is ~~shall be~~ subject to the same applicable requirements and responsibilities that ~~as~~ apply to general lines agents in general~~,~~ if licensed as to motor vehicle physical damage and mechanical breakdown insurance, ~~credit property insurance,~~ industrial fire insurance or burglary insurance, motor vehicle rental insurance, credit insurance, crop hail and multiple-peril crop insurance, in-transit and storage personal property insurance, or portable electronics insurance ~~communications equipment property insurance or communications equipment inland marine insurance,~~

~~baggage and motor vehicle excess liability insurance, or credit insurance~~; or as apply to life agents or health agents in general, as applicable ~~the case may be~~, if licensed as to travel ~~personal accident insurance or credit life or credit disability~~ insurance.

Section 17. Section 626.342, Florida Statutes, is amended to read:

626.342 Furnishing supplies to unlicensed ~~life, health, or general lines~~ agent prohibited; civil liability.—

(1) An insurer, a managing general agent, an insurance agency, or an agent, directly or through a ~~any~~ representative, may not furnish to an ~~any~~ agent any blank forms, applications, stationery, or other supplies to be used in soliciting, negotiating, or effecting contracts of insurance on its behalf unless such blank forms, applications, stationery, or other supplies relate to a class of business for ~~with respect to~~ which the agent is licensed and appointed, whether for that insurer or another insurer.

(2) An ~~Any~~ insurer, general agent, insurance agency, or agent who furnishes any of the supplies specified in subsection (1) to an ~~any~~ agent or prospective agent not appointed to represent the insurer and who accepts from or writes any insurance business for such agent or agency is subject to civil liability to an ~~any~~ insured of such insurer to the same extent and ~~in the same~~ manner as if such agent or prospective agent had been appointed or authorized by the insurer or such agent to act on ~~in~~ its or his or her behalf. The provisions of this subsection do not apply to insurance risk apportionment plans

under s. 627.351.

(3) This section does not apply to the placing of surplus lines business under the provisions of ss. 626.913-626.937.

Section 18. Subsection (1) of section 626.381, Florida Statutes, is amended to read:

626.381 Renewal, continuation, reinstatement, or termination of appointment.—

(1) The appointment of an appointee continues ~~shall continue~~ in force until suspended, revoked, or otherwise terminated, but is subject to a renewal request filed by the appointing entity in the appointee's birth month as to natural persons or the month the original appointment was issued ~~license date~~ as to entities and every 24 months thereafter, accompanied by payment of the renewal appointment fee and taxes as prescribed in s. 624.501.

Section 19. Section 626.536, Florida Statutes, is amended to read:

626.536 Reporting of administrative actions. ~~Each agent and insurance agency shall submit to the department,~~ Within 30 days after the final disposition of an ~~any~~ administrative action taken against a licensee ~~the agent~~ or insurance agency by a governmental agency or other regulatory agency in this or any other state or jurisdiction relating to the business of insurance, the sale of securities, or activity involving fraud, dishonesty, trustworthiness, or breach of a fiduciary duty, the licensee or insurance agency must submit a copy of the order, consent to order, or other relevant legal documents to the department. The department may adopt rules to administer

~~implementing the provisions of~~ this section.

Section 20. Section 626.551, Florida Statutes, is amended to read:

626.551 Notice of change of address, name.—A ~~Every~~ licensee must ~~shall~~ notify the department, in writing, within 30 ~~60~~ days after a change of name, residence address, principal business street address, mailing address, contact telephone numbers, including a business telephone number, or e-mail address. A licensee ~~licensed agent~~ who has moved his or her residence from this state shall have his or her license and all appointments immediately terminated by the department. Failure to notify the department within the required time ~~period~~ shall result in a fine not to exceed $250 for the first offense and~~,~~ ~~for subsequent offenses,~~ a fine of at least $500 or suspension or revocation of the license pursuant to s. 626.611, s. 626.6115, ~~or~~ s. 626.621, or s. 626.6215 for a subsequent offense. The department may adopt rules to administer and enforce this section.

Section 21. Subsection (14) is added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to

hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(14) Failure to comply with any civil, criminal, or administrative action taken by the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. ss. 651 et seq., to determine paternity or to establish, modify, enforce, or collect support.

Section 22. Subsection (4) of section 626.641, Florida Statutes, is amended to read:

626.641 Duration of suspension or revocation.—

(4) During the period of suspension or revocation of a ~~the~~ license or appointment, and until the license is reinstated or, if revoked, a new license issued, the former licensee or appointee may ~~shall~~ not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under this code or directly or indirectly own, control, or be employed in any manner by an ~~any insurance~~ agent, ~~or~~ agency, ~~or~~ adjuster, or adjusting firm.

Section 23. Subsection (1) of section 626.651, Florida Statutes, is amended to read:

626.651 Effect of suspension, revocation upon associated licenses and appointments and licensees and appointees.—

(1) Upon suspension, revocation, or refusal to renew or continue any one license of a licensee ~~an agent or customer representative~~, or upon suspension or revocation of eligibility

to hold a license or appointment, the department shall at the same time likewise suspend or revoke all other licenses, appointments, or status of eligibility held by the licensee or appointee under this code.

Section 24. Subsection (4) of section 626.730, Florida Statutes, is amended, and subsection (5) of that section is created, to read:

626.730 Purpose of license.—

(4) This section does not prohibit ~~the licensing under~~ a licensee holding a limited license for credit insurance or ~~as to~~ motor vehicle physical damage and mechanical breakdown insurance from being ~~or credit property insurance of any person~~ employed by or associated with a motor vehicle sales or financing agency, a retail sales establishment, or a consumer loan office for the purpose of insuring~~, other than a consumer loan office owned by or affiliated with a financial institution as defined in s. 655.005, with respect to insurance of~~ the interest of such entity ~~agency~~ in a motor vehicle sold or financed by it or in personal property if used as collateral for a loan.

(5) This section does not apply ~~with respect~~ to the interest of a real estate mortgagee in or as to insurance covering such interest or in the real estate subject to such mortgage.

Section 25. Section 626.732, Florida Statutes, is amended to read:

626.732 Requirement as to knowledge, experience, or instruction.—

(1) Except as provided in subsection (4) ~~(3)~~, an ~~no~~

applicant for a license as a general lines agent ~~or personal lines agent~~, except for a chartered property and casualty underwriter (CPCU), may not ~~other than as to a limited license as to baggage and motor vehicle excess liability insurance, credit property insurance, credit insurance, in-transit and storage personal property insurance, or communications equipment property insurance or communication equipment inland marine insurance, shall~~ be qualified or licensed unless, within the 4 years immediately preceding the date the application for license is filed with the department, the applicant has:

(a) Taught or successfully completed classroom courses in insurance, 3 hours of which must ~~shall~~ be on the subject matter of ethics, ~~satisfactory to the department~~ at a school, college, or extension division thereof, approved by the department~~. To qualify for licensure as a personal lines agent, the applicant must complete a total of 52 hours of classroom courses in insurance~~;

(b) Completed a correspondence course in insurance, 3 hours of which must ~~shall~~ be on the subject matter of ethics, satisfactory to the department and regularly offered by accredited institutions of higher learning in this state, and have~~, except if he or she is applying for a limited license under s. 626.321, for licensure as a general lines agent, has had~~ at least 6 months of responsible insurance duties as a substantially full-time bona fide employee in all lines of property and casualty insurance set forth in the definition of general lines agent under s. 626.015 ~~or, for licensure as a personal lines agent, has completed at least 3 months in~~

~~responsible insurance duties as a substantially full-time employee in property and casualty insurance sold to individuals and families for noncommercial purposes~~;

(c) ~~For licensure as a general lines agent,~~ Completed at least 1 year in responsible insurance duties as a substantially full-time bona fide employee in all lines of property and casualty insurance~~, exclusive of aviation and wet marine and transportation insurances but not exclusive of boats of less than 36 feet in length or aircraft not held out for hire,~~ as set forth in the definition of a general lines agent under s. 626.015, but without the education requirement described ~~mentioned~~ in paragraph (a) or paragraph (b) ~~or, for licensure as a personal lines agent, has completed at least 6 months in responsible insurance duties as a substantially full-time employee in property and casualty insurance sold to individuals and families for noncommercial purposes without the education requirement in paragraph (a) or paragraph (b)~~;

(d)~~1.~~ ~~For licensure as a general lines agent,~~ Completed at least 1 year of responsible insurance duties as a licensed and appointed customer representative or limited customer representative in commercial or personal lines of property and casualty insurance and 40 hours of classroom courses approved by the department covering the areas of property, casualty, surety, health, and marine insurance; or

~~2. For licensure as a personal lines agent, completed at least 6 months of responsible duties as a licensed and appointed customer representative or limited customer representative in property and casualty insurance sold to individuals and families~~

~~for noncommercial purposes and 20 hours of classroom courses approved by the department which are related to property and casualty insurance sold to individuals and families for noncommercial purposes;~~

(e)~~1.~~ ~~For licensure as a general lines agent,~~ Completed at least 1 year of responsible insurance duties as a licensed and appointed service representative in ~~either~~ commercial or personal lines of property and casualty insurance and 80 hours of classroom courses approved by the department covering the areas of property, casualty, surety, health, and marine insurance.~~; or~~

~~2. For licensure as a personal lines agent, completed at least 6 months of responsible insurance duties as a licensed and appointed service representative in property and casualty insurance sold to individuals and families for noncommercial purposes and 40 hours of classroom courses approved by the department related to property and casualty insurance sold to individuals and families for noncommercial purposes; or~~

(2) Except as provided under subsection (4), an applicant for a license as a personal lines agent, except for a chartered property and casualty underwriter (CPCU), may not be qualified or licensed unless, within the 4 years immediately preceding the date the application for license is filed with the department, the applicant has:

(a) Taught or successfully completed classroom courses in insurance, 3 hours of which must be on the subject matter of ethics, at a school, college, or extension division thereof, approved by the department. To qualify for licensure, the

applicant must complete a total of 52 hours of classroom courses in insurance;

(b) Completed a correspondence course in insurance, 3 hours of which must be on the subject matter of ethics, satisfactory to the department and regularly offered by accredited institutions of higher learning in this state, and completed at least 3 months of responsible insurance duties as a substantially full-time employee in the area of property and casualty insurance sold to individuals and families for noncommercial purposes;

(c) Completed at least 6 months of responsible insurance duties as a substantially full-time employee in the area of property and casualty insurance sold to individuals and families for noncommercial purposes, but without the education requirement described in paragraph (a) or paragraph (b);

(d) Completed at least 6 months of responsible duties as a licensed and appointed customer representative or limited customer representative in property and casualty insurance sold to individuals and families for noncommercial purposes and 20 hours of classroom courses approved by the department which are related to property and casualty insurance sold to individuals and families for noncommercial purposes;

(e) Completed at least 6 months of responsible insurance duties as a licensed and appointed service representative in property and casualty insurance sold to individuals and families for noncommercial purposes and 40 hours of classroom courses approved by the department related to property and casualty insurance sold to individuals and families for noncommercial

purposes; or

(f) ~~For licensure as a personal lines agent,~~ Completed at least 3 years of responsible duties as a licensed and appointed customer representative in property and casualty insurance sold to individuals and families for noncommercial purposes.

(3)~~(2)~~ If ~~Where~~ an applicant's qualifications as required under subsection (1) or subsection (2) ~~in paragraph (1)(b) or paragraph (1)(c)~~ are based in part upon ~~the~~ periods of employment in ~~at~~ responsible insurance duties ~~prescribed therein~~, the applicant shall submit with the license application ~~for license~~, on a form prescribed by the department, an ~~the~~ affidavit of his or her employer setting forth the period of such employment, that the employment ~~same~~ was substantially full-time, and giving a brief abstract of the nature of the duties performed by the applicant.

(4)~~(3)~~ An individual who was or became qualified to sit for an agent's, customer representative's, or adjuster's examination at or during the time he or she was employed by the department or office and who, while so employed, was employed in responsible insurance duties as a full-time bona fide employee may ~~shall be permitted to~~ take an examination if application for such examination is made within 90 days after the date of termination of ~~his or her~~ employment with the department or office.

(5)~~(4)~~ Classroom and correspondence courses under subsections (1) and (2) ~~subsection (1)~~ must include instruction on the subject matter of unauthorized entities engaging in the business of insurance. The scope of the topic of unauthorized

entities must ~~shall~~ include 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 of health insurance by employers and the regulation thereof.

(6) This section does not apply to an individual holding only a limited license for travel insurance, motor vehicle rental insurance, credit insurance, in-transit and storage personal property insurance, or portable electronics insurance.

Section 26. Section 626.8411, Florida Statutes, is amended to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(1) The following provisions of part II~~, as~~ applicable to general lines agents or agencies~~,~~ also apply to title insurance agents or agencies:

(a) Section 626.734, relating to liability of certain agents.

~~(b) Section 626.175, relating to temporary licenses.~~

(b)~~(c)~~ Section 626.747, relating to branch agencies.

(c) Section 626.749, relating to place of business in residence.

(d) Section 626.753, relating to sharing of commissions.

(e) Section 626.754, relating to rights of agent following termination of appointment.

(2) The following provisions of part I do not apply to title insurance agents or title insurance agencies:

(a) Section 626.112(7), relating to licensing of insurance

agencies.

(b) Section 626.231, relating to eligibility for examination.

(c) Section 626.572, relating to rebating, when allowed.

(d) Section 626.172, relating to agent in full-time charge.

Section 27. Section 626.8548, Florida Statutes, is created to read:

626.8548 "All-lines adjuster" defined.—An "all-lines adjuster" is a person who is self-employed or employed by an insurer, a wholly owned subsidiary of an insurer, or an independent adjusting firm or other independent adjuster, and who undertakes on behalf of an insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage. The term does not apply to life insurance or annuity contracts.

Section 28. Section 626.855, Florida Statutes, is amended to read:

626.855 "Independent adjuster" defined.—An "independent adjuster" means a ~~is any~~ person licensed as an all-lines adjuster who is self-appointed ~~self-employed~~ or appointed and ~~is associated with or~~ employed by an independent adjusting firm or other independent adjuster, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage.

Section 29. Section 626.856, Florida Statutes, is amended to read:

626.856 "Company employee adjuster" defined.—A "company employee adjuster" means ~~is~~ a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters or a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage.

Section 30. Section 626.858, Florida Statutes, is repealed.

Section 31. Section 626.8584, Florida Statutes, is amended to read:

626.8584 "Nonresident all-lines ~~independent~~ adjuster" defined.—A "nonresident all-lines ~~independent~~ adjuster" means ~~is~~ a person who:

(1) Is not a resident of this state;

(2) Is ~~a~~ currently licensed as an ~~independent~~ adjuster in his or her state of residence for all lines of insurance except life and annuities ~~the type or kinds of insurance for which the licensee intends to adjust claims in this state~~ or, if a resident of a state that does not license such ~~independent~~ adjusters, meets the qualifications ~~has passed the department's adjuster examination as~~ prescribed in s. 626.8734~~(1)(b)~~; and

(3) Is licensed as an all-lines adjuster and self-appointed or appointed and ~~a self-employed independent adjuster~~

~~or associated with or~~ employed by an independent adjusting firm or other independent adjuster, by an insurer admitted to do business in this state or a wholly-owned subsidiary of an insurer admitted to do business in this state, or by other insurers under the common control or ownership of such insurer.

Section 32. Section 626.863, Florida Statutes, is amended to read:

626.863 Claims referrals to ~~Licensed~~ independent adjusters ~~required; insurers' responsibility~~.—

(1) An insurer may ~~shall~~ not knowingly refer any claim or loss for adjustment in this state to any person purporting to be or acting as an independent adjuster unless the person is currently licensed as an all-lines adjuster and appointed as an independent adjuster under this code.

(2) Before referring any claim or loss, the insurer shall ascertain from the department whether the proposed independent adjuster is currently licensed as an all-lines adjuster and appointed as an independent adjuster ~~such~~. Having ~~once~~ ascertained that a particular person is so licensed and appointed, the insurer may assume that he or she will continue to be so licensed and appointed until the insurer has knowledge, or receives information from the department, to the contrary.

(3) This section does not apply to catastrophe or emergency adjusters as provided ~~for~~ in this part.

Section 33. Section 626.864, Florida Statutes, is amended to read:

626.864 Adjuster license types.—

(1) A qualified individual may be licensed ~~and appointed~~

as ~~either~~:

(a) A public adjuster; or

(b) An all-lines ~~independent~~ adjuster~~; or~~

~~(c) A company employee adjuster~~.

(2) The same individual may ~~shall~~ not be concurrently licensed ~~appointed~~ as a public adjuster and an all-lines adjuster ~~to more than one of the adjuster types referred to in subsection (1)~~.

(3) An all-lines adjuster may be appointed as an independent adjuster or company employee adjuster, but not both concurrently.

Section 34. Paragraph (e) is added to subsection (1) of section 626.865, Florida Statutes, to read:

626.865 Public adjuster's qualifications, bond.—

(1) The department shall issue a license to an applicant for a public adjuster's license upon determining that the applicant has paid the applicable fees specified in s. 624.501 and possesses the following qualifications:

(e) Is licensed as a public adjuster apprentice under s. 626.8651 and complies with the requirements of that license throughout the licensure period.

Section 35. Section 626.866, Florida Statutes, is amended to read:

626.866 All-lines adjuster ~~Independent adjuster's~~ qualifications.—The department shall issue ~~a license to an applicant for~~ an all-lines adjuster ~~independent adjuster's~~ license to an applicant upon determining that the applicable license fee specified in s. 624.501 has been paid and that the

applicant possesses the following qualifications:

(1) Is a natural person at least 18 years of age.

(2) Is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services and a bona fide resident of this state.

(3) Is trustworthy and has such business reputation as would reasonably assure that the applicant will conduct his or her business as insurance adjuster fairly and in good faith and without detriment to the public.

(4) Has had sufficient experience, training, or instruction concerning the adjusting of damage or loss under insurance contracts, other than life and annuity contracts, is sufficiently informed as to the terms and the effects of the provisions of such types of contracts, and possesses adequate knowledge of the insurance laws of this state relating to such contracts as to enable and qualify him or her to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom he or she may have relations as an insurance adjuster and to adjust all claims in accordance with the policy or contract and the insurance laws of this state.

(5) Has passed any required written examination or has met one of the exemptions prescribed under s. 626.221.

Section 36. Section 626.867, Florida Statutes, is repealed.

Section 37. Section 626.869, Florida Statutes, is amended to read:

626.869 License, adjusters; continuing education.—

(1) Having ~~An applicant for~~ a license as an all-lines adjuster qualifies the licensee to adjust ~~may qualify and his or her license when issued may cover adjusting in any one of the following classes of insurance:~~

~~(a)~~ all lines of insurance except life and annuities.

~~(b) Motor vehicle physical damage insurance.~~

~~(c) Property and casualty insurance.~~

~~(d) Workers' compensation insurance.~~

~~(e) Health insurance.~~

~~No examination on workers' compensation insurance or health insurance shall be required for public adjusters.~~

(2) All individuals who on October 1, 1990, hold an adjuster's license and appointment limited to fire and allied lines, including marine or casualty or boiler and machinery, may remain licensed and appointed under the limited license and may renew their appointment, but a ~~no~~ license or appointment that ~~which~~ has been terminated, not renewed, suspended, or revoked may not ~~shall~~ be reinstated, and ~~no~~ new or additional licenses or appointments may not ~~shall~~ be issued.

(3) All individuals who on October 1, 2012, hold an adjuster's license and appointment limited to motor vehicle physical damage and mechanical breakdown, property and casualty, workers' compensation, or health insurance may remain licensed and appointed under such limited license and may renew their appointment, but a license that has been terminated, suspended, or revoked may not be reinstated, and new or additional licenses

may not be issued. ~~The applicant's application for license shall specify which of the foregoing classes of business the application for license is to cover.~~

(4)~~(a)~~ An ~~Any~~ individual holding a license as a public adjuster or an all-lines ~~a company employee~~ adjuster must complete all continuing education requirements as specified in s. 626.2815. ~~or independent adjuster for 24 consecutive months or longer must, beginning in his or her birth month and every 2 years thereafter, have completed 24 hours of courses, 2 hours of which relate to ethics, in subjects designed to inform the licensee regarding the current insurance laws of this state, so as to enable him or her to engage in business as an insurance adjuster fairly and without injury to the public and to adjust all claims in accordance with the policy or contract and the laws of this state.~~

~~(b) Any individual holding a license as a public adjuster for 24 consecutive months or longer, beginning in his or her birth month and every 2 years thereafter, must have completed 24 hours of courses, 2 hours of which relate to ethics, in subjects designed to inform the licensee regarding the current laws of this state pertaining to all lines of insurance other than life and annuities, the current laws of this state pertaining to the duties and responsibilities of public adjusters as set forth in this part, and the current rules of the department applicable to public adjusters and standard or representative policy forms used by insurers, other than forms for life insurance and annuities, so as to enable him or her to engage in business as an adjuster fairly and without injury to the public and to~~

~~adjust all claims in accordance with the policy or contract and laws of this state. In order to receive credit for continuing education courses, public adjusters must take courses that are specifically designed for public adjusters and approved by the department, provided, however, no continuing education course shall be required for public adjusters for workers' compensation insurance or health insurance.~~

~~(c) The department shall adopt rules necessary to implement and administer the continuing education requirements of this subsection. For good cause shown, the department may grant an extension of time during which the requirements imposed by this section may be completed, but such extension of time may not exceed 1 year.~~

~~(d) A nonresident public adjuster must complete the continuing education requirements provided by this section; provided, a nonresident public adjuster may meet the requirements of this section if the continuing education requirements of the nonresident public adjuster's home state are determined to be substantially comparable to the requirements of this state's continuing education requirements and if the resident's state recognizes reciprocity with this state's continuing education requirements. A nonresident public adjuster whose home state does not have such continuing education requirements for adjusters, and who is not licensed as a nonresident adjuster in a state that has continuing education requirements and reciprocates with this state, must meet the continuing education requirements of this section.~~

(5) The regulation of continuing education for licensees,

course providers, instructors, school officials, and monitor groups shall be as provided ~~for~~ in s. 626.2816.

Section 38. Paragraph (c) of subsection (2) of section 626.8697, Florida Statutes, is amended to read:

626.8697 Grounds for refusal, suspension, or revocation of adjusting firm license.—

(2) The department may, in its discretion, deny, suspend, revoke, or refuse to continue the license of any adjusting firm if it finds that any of the following applicable grounds exist with respect to the firm or any owner, partner, manager, director, officer, or other person who is otherwise involved in the operation of the firm:

(c) Violation of an ~~any~~ order or rule of the department, office, or commission.

Section 39. Subsections (1) and (5) of section 626.872, Florida Statutes, are amended to read:

626.872 Temporary license.—

(1) The department may~~, in its discretion,~~ issue a temporary license as an all-lines ~~independent~~ adjuster ~~or as a company employee adjuster~~, subject to the following conditions:

(a) The applicant must be an employee of an adjuster currently licensed by the department, ~~an employee of~~ an authorized insurer, or ~~an employee of~~ an established adjusting firm or corporation who ~~which~~ is supervised by a currently licensed all-lines ~~independent~~ adjuster.

~~(b) The application must be accompanied by a certificate of employment and a report as to the applicant's integrity and moral character on a form prescribed by the department and~~

~~executed by the employer.~~

(b) ~~(c)~~ The applicant must be a natural person of at least 18 years of age, ~~must be~~ a bona fide resident of this state, ~~must be~~ trustworthy, and ~~must~~ have a ~~such~~ business reputation that ~~as~~ would reasonably ensure ~~assure~~ that the applicant will conduct his or her business as an adjuster fairly and in good faith and without detriment to the public.

(c) ~~(d)~~ The applicant's employer is responsible for the adjustment acts of the temporary ~~any~~ licensee ~~under this section~~.

(d) ~~(e)~~ The applicable license fee ~~specified~~ must be paid before issuance of the temporary license.

(e) ~~(f)~~ The temporary license is ~~shall be~~ effective for ~~a period of~~ 1 year, but is subject to earlier termination at the request of the employer, ~~or~~ if the licensee fails to take an examination as an all-lines ~~independent~~ adjuster ~~or company employee adjuster~~ within 6 months after issuance of the temporary license, or if the temporary license is suspended or revoked by the department.

(5) The department may ~~shall~~ not issue a temporary license as an all-lines ~~independent~~ adjuster ~~or as a company employee adjuster~~ to an ~~any~~ individual who has ~~ever~~ held such ~~a~~ license in this state.

Section 40. Section 626.873, Florida Statutes, is repealed.

Section 41. Section 626.8734, Florida Statutes, is amended to read:

626.8734 Nonresident all-lines adjuster license

~~independent adjuster's~~ qualifications.—

(1) The department shall~~, upon application therefor,~~ issue a license to an applicant for a nonresident all-lines adjuster ~~independent adjuster's~~ license upon determining that the applicant has paid the applicable license fees required under s. 624.501 and:

(a) Is a natural person at least 18 years of age.

(b) Has passed to the satisfaction of the department a written Florida all-lines adjuster ~~independent adjuster's~~ examination of the scope prescribed in s. 626.241(6); however, the requirement for the examination does not apply to ~~any of the following~~:

1. An applicant who is licensed as an all-lines ~~a resident independent~~ adjuster in his or her home state if ~~of residence when~~ that state has entered into ~~requires the passing of a written examination in order to obtain the license and~~ a reciprocal agreement with the ~~appropriate official of that state has been entered into by the~~ department; or

2. An applicant who is licensed as a nonresident all-lines ~~independent~~ adjuster in a state other than his or her home state ~~of residence when the state of licensure requires the passing of a written examination in order to obtain the license~~ and a reciprocal agreement with the appropriate official of the state of licensure has been entered into with ~~by~~ the department.

(c) Is licensed as an all-lines adjuster and is self-appointed or appointed and employed by an independent adjusting firm or other independent adjuster, or is an employee of an insurer admitted to do business in this state, a wholly-owned

subsidiary of an insurer admitted to do business in this state, or other insurers under the common control or ownership of such insurer ~~self-employed or associated with or employed by an independent adjusting firm or other independent adjuster~~. Applicants licensed as nonresident all-lines ~~independent~~ adjusters under this section must be appointed as an independent adjuster or company employee adjuster ~~such~~ in accordance with ~~the provisions of~~ ss. 626.112 and 626.451. Appointment fees as ~~in the amount~~ specified in s. 624.501 must be paid to the department in advance. The appointment of a nonresident independent adjuster continues ~~shall continue~~ in force until suspended, revoked, or otherwise terminated, but is subject to biennial renewal or continuation by the licensee in accordance with ~~procedures prescribed in~~ s. 626.381 for licensees in general.

(d) Is trustworthy and has such business reputation as would reasonably ensure ~~assure~~ that he or she will conduct his or her business as a nonresident all-lines ~~independent~~ adjuster fairly and in good faith and without detriment to the public.

(e) Has had sufficient experience, training, or instruction concerning the adjusting of damages or losses under insurance contracts, other than life and annuity contracts; is sufficiently informed as to the terms and effects of ~~the provisions of~~ those types of insurance contracts; and possesses adequate knowledge of the laws of this state relating to such contracts as to enable and qualify him or her to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom he or she may have

business as an all-lines ~~independent~~ adjuster.

(2) The applicant must ~~shall~~ furnish the following with his or her application:

(a) A complete set of his or her fingerprints. The applicant's fingerprints must be certified by an authorized law enforcement officer.

(b) If currently licensed as an all-lines ~~a resident independent~~ adjuster in the applicant's home state ~~of residence~~, a certificate or letter of authorization from the licensing authority of the applicant's home state ~~of residence,~~ stating that the applicant holds a current license to act as an all-lines ~~independent~~ adjuster. The ~~Such~~ certificate or letter of authorization must be signed by the insurance commissioner, or his or her deputy or the appropriate licensing official, and must disclose whether the adjuster has ever had a ~~any~~ license or eligibility to hold any license declined, denied, suspended, revoked, or placed on probation or whether an administrative fine or penalty has been levied against the adjuster and, if so, the reason for the action. Such certificate or letter is not required if the nonresident applicant's licensing status can be verified through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

(c) If the applicant's home state ~~of residence~~ does not require licensure as an all-lines ~~independent~~ adjuster and the applicant has been licensed as a resident insurance adjuster, agent, broker, or other insurance representative in his or her home state ~~of residence~~ or any other state within the past 3

years, a certificate or letter of authorization from the licensing authority stating that the applicant holds or has held a license to act as an insurance adjuster, agent, or other insurance representative. The certificate or letter of authorization must be signed by the insurance commissioner, or his or her deputy or the appropriate licensing official, and must disclose whether the adjuster, agent, or other insurance representative has ever had a ~~any~~ license or eligibility to hold any license declined, denied, suspended, revoked, or placed on probation or whether an administrative fine or penalty has been levied against the adjuster and, if so, the reason for the action. Such certificate or letter is not required if the nonresident applicant's licensing status can be verified through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

(3) The usual and customary records pertaining to transactions under the license of a nonresident all-lines ~~independent~~ adjuster must be retained for at least 3 years after completion of the adjustment and ~~must~~ be made available in this state to the department upon request. The failure of a nonresident all-lines ~~independent~~ adjuster to properly maintain records and make them available to the department upon request constitutes grounds for the immediate suspension of the license issued under this section.

(4) ~~After licensure as a nonresident independent adjuster,~~ As a condition of doing business in this state as a nonresident independent adjuster, the appointee must ~~licensee must annually on or before January 1, on a form prescribed by the department,~~

submit an affidavit to the department certifying that the licensee is familiar with and understands the insurance laws and administrative rules of this state and the provisions of the contracts negotiated or to be negotiated. Compliance with this filing requirement is a condition precedent to the issuance, continuation, reinstatement, or renewal of a nonresident independent adjuster's appointment.

Section 42. Section 626.8736, Florida Statutes, is amended to read:

626.8736 Nonresident independent or public adjusters; service of process.—

(1) Each licensed nonresident ~~independent or~~ public adjuster or all-lines adjuster appointed as an independent adjuster shall appoint the Chief Financial Officer and his or her successors in office as his or her attorney to receive service of legal process issued against such ~~the nonresident independent or public~~ adjuster in this state, upon causes of action arising within this state out of transactions under his license and appointment. Service upon the Chief Financial Officer as attorney constitutes ~~shall constitute~~ effective legal service upon the nonresident independent or public adjuster.

(2) The appointment of the Chief Financial Officer for service of process is ~~shall be~~ irrevocable ~~for~~ as long as there could be any cause of action against the nonresident ~~independent or~~ public adjuster or all-lines adjuster appointed as an independent adjuster arising out of his or her insurance transactions in this state.

(3) Duplicate copies of legal process against the

nonresident ~~independent or~~ public adjuster or all-lines adjuster appointed as an independent adjuster shall be served upon the Chief Financial Officer by a person competent to serve a summons.

(4) Upon receiving the service, the Chief Financial Officer shall ~~forthwith~~ send one of the copies of the process, by registered mail with return receipt requested, to the defendant nonresident ~~independent or~~ public adjuster or all-lines adjuster appointed as an independent adjuster at his or her last address of record with the department.

(5) The Chief Financial Officer shall keep a record of the day and hour of service upon him or her of all legal process received under this section.

Section 43. Subsection (1) of section 626.874, Florida Statutes, is amended to read:

626.874 Catastrophe or emergency adjusters.—

(1) In the event of a catastrophe or emergency, the department may issue a license, for the purposes and under the conditions ~~which it shall fix~~ and for the period of emergency as it shall determine, to persons who are residents or nonresidents of this state, who are at least 18 years of age, who are United States citizens or legal aliens who possess work authorization from the United States Bureau of Citizenship and Immigration Services, and who are not licensed adjusters under this part but who have been designated and certified to it as qualified to act as adjusters by all-lines ~~independent~~ resident adjusters, ~~or~~ by an authorized insurer, or by a licensed general lines agent to adjust claims, losses, or damages under policies or contracts of

insurance issued by such insurers. The fee for the license is ~~shall be~~ as provided in s. 624.501(12)(c).

Section 44. Subsection (1) of section 626.875, Florida Statutes, is amended to read:

626.875 Office and records.—

(1) Each appointed ~~Every licensed~~ independent adjuster and ~~every~~ licensed public adjuster must ~~shall have and~~ maintain ~~in this state~~ a place of business in this state which is accessible to the public and keep therein the usual and customary records pertaining to transactions under the license. This provision does ~~shall~~ not ~~be deemed to~~ prohibit maintenance of such an office in the home of the licensee.

Section 45. Section 626.876, Florida Statutes, is amended to read:

626.876 Exclusive employment; public adjusters, independent adjusters.—

(1) An ~~No~~ individual licensed and appointed as a public adjuster may not ~~shall~~ be ~~so~~ employed during the same period by more than one public adjuster or public adjuster firm or corporation.

(2) An ~~No~~ individual licensed as an all-lines adjuster and appointed as an independent adjuster may not ~~shall~~ be ~~so~~ employed during the same period by more than one independent adjuster or independent adjuster firm or corporation.

Section 46. Subsections (5), (6), and (7) of section 626.927, Florida Statutes, are amended to read:

626.927 Licensing of surplus lines agent.—

~~(5) The applicant must file and thereafter maintain the~~

~~bond as required under s. 626.928.~~

(5) ~~(6)~~ Examinations as to surplus lines, as required under subsections (1) and (2), are ~~shall be~~ subject to the provisions of part I as applicable to applicants for licenses in general. ~~No such examination shall be required as to persons who held a Florida surplus lines agent's license as of January 1, 1959, except when examinations subsequent to issuance of an initial license are provided for in general under part I.~~

(6) ~~(7)~~ An ~~Any~~ individual who has been licensed by the department as a surplus lines agent as provided in this section may be subsequently appointed without additional written examination if his or her application for appointment is filed with the department within 48 months after ~~next following~~ the date of cancellation or expiration of the prior appointment. The department may~~, in its discretion,~~ require an ~~any~~ individual to take and successfully pass an examination as for original issuance of license as a condition precedent to the reinstatement or continuation of the licensee's current license or reinstatement or continuation of the licensee's appointment.

Section 47. Section 626.928, Florida Statutes, is repealed.

Section 48. Section 626.933, Florida Statutes, is amended to read:

626.933 Collection of tax and service fee.—If the tax or service fee payable by a surplus lines agent under the ~~this~~ Surplus Lines Law is not so paid within the time prescribed, it ~~the same~~ shall be recoverable in a suit brought by the department against the surplus lines agent ~~and the surety or~~

~~sureties on the bond filed by the surplus lines agent under s. 626.928~~. The department may authorize the Florida Surplus Lines Service Office to file suit on its behalf. All costs and expenses incurred in a suit brought by the office which are not recoverable from the agent or surety shall be borne by the office.

Section 49. Subsection (1) of section 626.935, Florida Statutes, is amended to read:

626.935 Suspension, revocation, or refusal of surplus lines agent's license.—

(1) The department shall deny an application for, suspend, revoke, or refuse to renew the appointment of a surplus lines agent and all other licenses and appointments held by the licensee under this code, on ~~upon~~ any of the following grounds:

(a) Removal of the licensee's office from the licensee's state of residence.

(b) Removal of the accounts and records of his or her surplus lines business from this state or the licensee's state of residence during the period when such accounts and records are required to be maintained under s. 626.930.

(c) Closure of the licensee's office for ~~a period of~~ more than 30 consecutive days.

(d) Failure to make and file his or her affidavit or reports when due as required by s. 626.931.

(e) Failure to pay the tax or service fee on surplus lines premiums, as provided ~~for~~ in the ~~this~~ Surplus Lines Law.

~~(f) Failure to maintain the bond as required by s. 626.928.~~

(f) ~~(g)~~ Suspension, revocation, or refusal to renew or continue the license or appointment as a general lines agent, service representative, or managing general agent.

(g) ~~(h)~~ Lack of qualifications as for an original surplus lines agent's license.

(h) ~~(i)~~ Violation of this Surplus Lines Law.

(i) ~~(j)~~ For any other applicable cause for which the license of a general lines agent could be suspended, revoked, or refused under s. 626.611 or s. 626.621.

Section 50. Paragraph (b) of subsection (1) of section 627.952, Florida Statutes, is amended to read:

627.952 Risk retention and purchasing group agents.—

(1) Any person offering, soliciting, selling, purchasing, administering, or otherwise servicing insurance contracts, certificates, or agreements for any purchasing group or risk retention group to any resident of this state, either directly or indirectly, by the use of mail, advertising, or other means of communication, shall obtain a license and appointment to act as a resident general lines agent, if a resident of this state, or a nonresident general lines agent if not a resident. Any such person shall be subject to all requirements of the Florida Insurance Code.

(b) Any person required to be licensed and appointed under ~~by~~ this subsection, in order to place business through Florida eligible surplus lines carriers, must ~~shall~~, if a resident of this state, be licensed and appointed as a surplus lines agent. ~~Any such person,~~ If not a resident of this state, such person must ~~shall~~ be licensed and appointed as a surplus lines agent in

her or his state of residence and ~~shall~~ file and ~~thereafter~~ maintain a fidelity bond in favor of the people of the State of Florida executed by a surety company admitted in this state and payable to the State of Florida; ~~provided,~~ however, ~~any activities carried out by~~ such nonresident is ~~pursuant to this part shall be~~ limited to the provision of insurance for purchasing groups. The bond must ~~shall~~ be continuous in form and ~~maintained~~ in the amount of not less than $50,000, aggregate liability ~~set out in s. 626.928~~. The bond must ~~shall~~ remain in force and effect until the surety is released from liability by the department or until the bond is canceled by the surety. The surety may cancel the bond and be released from further liability ~~thereunder~~ upon 30 days' prior written notice to the department. The cancellation does ~~shall~~ not affect any liability incurred or accrued ~~thereunder~~ before the termination of the 30-day period. Upon receipt of a notice of cancellation, the department shall immediately notify the agent.

Section 51. Subsections (1) and (2) of section 635.051, Florida Statutes, are amended to read:

635.051 Licensing and appointment of mortgage guaranty insurance agents.—

(1) Effective October 1, 2012, a person may not transact mortgage guaranty insurance unless licensed and appointed as a credit insurance agent in accordance with the applicable provisions of the insurance code. Mortgage guaranty licenses held by persons on October 1, 2012, shall be transferred to a credit insurance agent license. Persons who wish to obtain a new license identification card that reflects this change must

submit the $5 fee as prescribed in s. 624.501(15). ~~Agents of mortgage guaranty insurers shall be licensed and appointed and shall be subject to the same qualifications and requirements applicable to general lines agents under the laws of this state, except that:~~

~~(a) Particular preliminary specialized education or training is not required of an applicant for such an agent's license, and continuing education is not required for renewal of the agent's appointment if, as part of the application for license and appointment, the insurer guarantees that the applicant will receive the necessary training to enable him or her properly to hold himself or herself out to the public as a mortgage guaranty insurance agent and if the department, in its discretion, accepts such guaranty;~~

~~(b) The agent's license and appointment shall be a limited license, limited to the handling of mortgage guaranty insurance only; and~~

~~(c) An examination may be required of an applicant for such a license if the insurer fails to provide the guaranty described in paragraph (a).~~

(2) Any general lines agent licensed under chapter 626 is qualified to represent a mortgage guaranty insurer without additional licensure ~~examination~~.

Section 52. Subsection (1) of section 648.34, Florida Statutes, is amended to read:

648.34 Bail bond agents; qualifications.—

(1) An application for licensure as a bail bond agent must be submitted on forms prescribed by the department. The

application must include the applicant's full name; date of birth; social security number; residence, business, and mailing addresses; contact telephone numbers, including a business telephone number; and e-mail address.

Section 53. Subsection (2) of section 648.38, Florida Statutes, is amended to read:

648.38 Licensure examination for bail bond agents; time; place; fees; scope.—

(2) The department or a person designated by the department shall provide ~~mail written~~ notice of the time and place of the examination to each applicant for licensure required to take an examination who will be eligible to take the examination as of the examination date. The notice shall be e-mailed ~~so mailed, postage prepaid, and addressed~~ to the applicant at the e-mail ~~his or her~~ address shown on his or her application for licensure ~~or at such other address as requested by the applicant in writing filed with the department prior to the mailing of the notice~~. Notice shall be deemed given when so mailed.

Section 54. Section 648.385, Florida Statutes, is amended to read:

648.385 Continuing education required; application; exceptions; requirements; penalties.—

(1) The purpose of this section is to establish requirements and standards for continuing education courses for persons authorized to write bail bonds in this state.

(2) ~~(a)~~ Each person subject to ~~the provisions of~~ this chapter must complete a minimum of 14 hours of continuing

education courses every 2 years as specified in s. 626.2815 ~~in courses approved by the department. Compliance with continuing education requirements is a condition precedent to the issuance, continuation, or renewal of any appointment subject to the provisions of this chapter.~~

~~(b) A person teaching any approved course of instruction or lecturing at any approved seminar and attending the entire course or seminar shall qualify for the same number of classroom hours as would be granted to a person taking and successfully completing such course, seminar, or program. Credit shall be limited to the number of hours actually taught unless a person attends the entire course or seminar.~~

~~(c) For good cause shown, the department may grant an extension of time during which the requirements imposed by this section may be completed, but such extension of time may not exceed 1 year.~~

~~(3)(a) Any bail-related course developed or sponsored by any authorized insurer or recognized bail bond agents' association, or any independent study program of instruction, subject to approval by the department, qualifies for the equivalency of the number of classroom hours assigned to such course by the department. However, unless otherwise provided in this section, continuing education credit may not be credited toward meeting the requirements of this section unless the course is provided by classroom instruction or results in a monitored examination.~~

~~(b) Each person or entity sponsoring a course for continuing education credit must furnish, within 30 days after~~

~~completion of the course, in a form satisfactory to the department or its designee, a written and certified roster showing the name and license number of all persons successfully completing such course and requesting credit, accompanied by the required fee. The department shall refuse to issue, continue, or renew the appointment of any bail bond agent who has not had the continuing education requirements certified unless the agent has been granted an extension by the department.~~

Section 55. Section 648.421, Florida Statutes, is amended to read:

648.421 Notice of change of address or telephone number.—Each licensee under this chapter shall notify in writing the department, insurer, managing general agent, and the clerk of each court in which the licensee is registered within 10 working days after a change in the licensee's principal business address or telephone number. The licensee shall also notify the department within 10 working days after a change of the name, address, or telephone number of each agency or firm for which he or she writes bonds and any change in the licensee's name, home address, e-mail address, or telephone number.

Section 56. Except as otherwise expressly provided in this act, this act shall take effect October 1, 2012.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Hager offered the following:

Amendment (with title amendment)

Remove lines 135-178

T I T L E A M E N D M E N T

Remove lines 3-8 and insert:

amending s. 626.015,

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Hager offered the following:

Amendment

Remove lines 1297-1298 and insert:

included with the purchase. Disclosure of the stand-alone cost of the premium for same or similar insurance must be made on the customer's

CS/HB1011
Warranty Associations

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1011 Warranty Associations
SPONSOR(S): Insurance & Banking Subcommittee and Abruzzo
TIED BILLS: **IDEN./SIM. BILLS:** SB 1262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Cooper	Cooper
2) Government Operations Appropriations Subcommittee		Keith	Topp BDT
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

Although a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, OIR is not required to approve rates for warranties.

Under current law, warranties offered by the three types of warranty associations are cancelable by the purchaser who is entitled to a refund. For motor vehicle service agreements, refunds may be effectuated through the automobile dealer that originally sold the service agreement to the customer, although the service agreement company still remains responsible for the full refund. For home and service warranties, refunds are made by the respective associations.

The bill maintains the authority for automobile dealers to effectuate the refunds but codifies some of the documentation regarding refunds currently required by OIR. For home warranty and service warranty products, the bill specifies that the associations may provide refunds through the issuing sales representatives. Specific to service warranty associations, the bill permits refunds to be made by cash, check, store credit, gift card, or other similar means, but requires refunds by check if requested by the customer.

Currently, OIR is required to conduct periodic examinations regarding the financial and market conduct affairs of warranty associations. The bill eliminates this requirement, but authorizes OIR to examine them at its discretion. The bill continues to allow OIR to use independent examiners and levy the companies for the costs of their services, but limits those costs to no more than ten percent of the companies prior year reported income.

The bill authorizes entities to provide donations and grants to the Department of Financial Services to pursue unauthorized entities operating in violation of the statutory provisions relating to warranty associations. Also, the bill restores motor vehicle service agreement coverage for motor vehicles used for commercial purpose unless those vehicles have a gross weight rating of 10,000 pounds or more.

The bill will have an insignificant fiscal impact on the Office of Insurance Regulation. By removing the required OIR examinations, some associations will no longer have to pay a $2,000 filing fee when seeking an examination exemption. OIR indicates that there are currently 15 entities that filed for the exemption. The provisions of CS/HB 1011 will result in a recurring loss of approximately $30,000 in revenue to be deposited into the Insurance Regulatory Trust Fund.

The bill takes effect on July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, OIR is not required to approve rates for warranties.

Motor Vehicle Service Agreements

Under current law, a motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended. It also includes agreements that provide for: the coverage or protection which is issued or provided in conjunction with an additive product applied to the motor vehicle; payment of vehicle protection expenses; and, the payment for paintless dent-removal services. [1] Exempt from this definition (and therefore exempt from regulation under the Florida Insurance Code) are service agreements that are sold to persons other than consumers and that cover motor vehicles used for commercial purposes.

To offer motor vehicle service agreements in Florida one must be licensed and pay an annual nonrefundable license fee to OIR. All applicants for licensure must meet certain solvency requirements and, once licensed, must report to OIR certain financial and statistical information on a quarterly basis. Companies are also required to file with the office the rates, rating schedules, or rating manuals used, including all modifications of rates and premiums, to be paid by the service agreement holder. The office does not have authority to approve rates but they are required to review and approve forms used in the state. [2]

Cancellation of Service Agreements

The bill makes several changes in the regulatory framework of motor vehicle service agreements, including cancellation provisions. Currently, any service agreement is cancelable by the purchaser within 60 days after purchase. The individual is also entitled to a refund which must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the agreement holder. After the service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement company unless:

1) there has been a material misrepresentation or fraud at the time of sale of the service agreement;
2) the agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;
3) the odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or

[1] s.634.011(8), F.S.
[2] ss. 634.011-634.289, F.S.

4) for nonpayment of premium by the agreement holder.[3]

Additionally, current law states that if the service agreement is canceled by the insurer or service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium, less any claims paid on the agreement. Current law also provides that if, after 60 days, the service agreement is canceled by the service agreement holder, the insurer or service agreement company must return directly to the agreement holder not less than 90 percent of the unearned pro rata premium and may also deduct from the refund the amount of any claims paid on the agreement. Under current law, the service agreement company remains responsible for full refunds to the consumer on canceled service agreements. However, the salesperson and agent are responsible for the refund of the unearned pro rata commission. A service agreement company may effectuate refunds through the issuing salesperson or agent.[4]

The bill provides that if the service agreement company effectuates refunds through the issuing salesperson or agent, the service agreement company must send the unearned pro rata premium refund due, less any unearned pro rata commission, to the salesperson or agent effectuating the refund. Upon receipt, the salesperson or agent must refund the unearned pro rata premium, including any unearned pro rata commission, and the sales tax refund owed to the service agreement holder.

The bill requires the salesperson or agent to maintain copies of certain documents to demonstrate that the refund has occurred and shall provide those copies to the service agreement company within 45 days after a request is made by the department or OIR.[5] If OIR finds that a salesperson or agent exhibits a pattern or practice of failing to properly provide refunds or fails to maintain or remit the specified documentation, the office must then notify the Department of Financial Service (DFS).

Another change in the bill is the restoration of motor vehicle service agreement coverage for certain vehicles used for commercial purposes. The bill eliminates the current exemption from the definition of motor service agreement for such vehicles, however, it would only apply to vehicles having a gross weight rating of less than 10,000 pounds. Vehicles over that weight will continue to not be covered because they do not meet the current definition of a motor vehicle. Thus, with the changes made by the bill, small business owners should once again receive all of the protections now provided to individual consumers.

Examination of Companies

Currently, OIR may periodically examine motor vehicle service agreement companies in the same manner and subject to the same terms and conditions as applies to insurers under part II of chapter 624. Consequently, the office may examine each insurer as often as may be warranted for the protection of the policyholders and in the public interest, but must examine each company not less frequently than once every 5 years.[6] Criteria are provided in statute for OIR to consider in determining whether to conduct examinations. Also, rules are authorized, but not required, to establish provisions for exemptions from examination.

Current law also provides that the examinations may be conducted by independent certified public accountants, actuaries, investment specialists, information technology specialists, and reinsurance specialists with the costs paid for by the companies.[7] A similar provision exists for market conduct examinations.[8]

---

[3] s. 634.121(3)(b), F.S.

[4] s. 634.121, F.S.

[5] The required documentation is based, in part, on guidance provided by OIR in *Informational Memorandum, OIR-11-04M,* issued April 11, 2011.

[6] s. 634.141, F.S. and s. 624.316, F.S.

[7] s. 624.316, F.S.

[8] s. 624.3161, F.S

The bill makes several changes regarding examinations. It maintains the option to use independent examiners but limits those costs to no more than ten percent of the companies prior year reported income. The bill also specifies that OIR is not required to conduct periodic examinations, but may examine a service agreement company at its discretion. Criteria for OIR to use in determining whether to use that discretion are eliminated. It also states that an examination may cover a period of only the most recent 5 years.

Gifts and Grants to Combat Unauthorized Entities

In 2011, the Legislature created s. 626.9894, F.S., which authorizes DFS to accept, for purposes of anti-fraud efforts, any donation or grant of property or moneys from any governmental unit, public agency, institution, person, firm, or corporation. Any such gift or grant is immediately vested in the Division of Insurance Fraud and deposited into the Insurance Regulatory Trust Fund. Donations are separately accounted for and may be used by the division to carry out its duties and responsibilities, or for the subgranting of such funds to state attorneys for the purpose of funding or defraying the costs of dedicated fraud prosecutors. The law also provides that moneys deposited into the Insurance Regulatory Trust Fund may be appropriated by the Legislature for the purpose of enabling the division to carry out its duties and responsibilities, or for the purpose of funding or defraying the costs of dedicated fraud prosecutors.

The bill creates new authority for a governmental unit, public agency, institution, person, firm, or legal entity to provide money to DFS to enable the department to pursue unauthorized entities operating in violation of provisions relating to motor vehicle service agreement companies. The department is also authorized to transfer funds to OIR to take enforcement action against unauthorized entities. Similar to s. 626.9894, F.S., the bill provides that moneys deposited into the Insurance Regulatory Trust Fund may be appropriated by the Legislature for the purpose of enabling the division to carry out its duties and responsibilities, or for the purpose of funding or defraying the costs of dedicated fraud prosecutors.

Home Warranty Associations

Home warranty associations are organizations, other than authorized insurers, that issue home warranties. A home warranty is a contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss.[9]

The regulatory framework of home warranty associations is similar to the oversight of motor vehicle service agreement companies. Regarding cancellations, any home warranty agreement may be canceled by the purchaser within 10 days after purchase. The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the warranty agreement holder. After the home warranty agreement has been in effect for 10 days, if the contract is canceled by the warranty holder, a return of premium must be based upon 90 percent of unearned pro rata premium less any claims that have been paid. If the contract is canceled by the association for any reason other than for fraud or misrepresentation, a return of premium must be based upon 100 percent of unearned pro rata premium, less any claims paid on the agreement.[10]

Unlike the current law for motor vehicle service agreements which allow refunds by the issuing salesperson or agent, the current law for home warranty associations does not explicitly authorize that practice. The bill does, by stating that an association may effectuate a refund through the issuing sales representative. However, unlike the changes for motor vehicle service agreements, the bill does not provide detail or require documentation for home warranty associations regarding the effectuation of their refunds.

[9] s. 634.301, F.S.
[10] s. 634.312, F.S.

Regarding examinations of home warranty associations by OIR, the bill makes the same changes made for motor vehicle service agreements. The only difference is that currently there is no examination exemption process for home warranty associations as there is for motor vehicle service agreements. Hence, there is no rule authorization to repeal.

Also, the bill creates the same process for donating money to DFS to pursue unauthorized entities providing home warranties as provided for motor vehicle service agreement companies.

Service Warranty Associations

Service warranty associations are entities, other than insurers, which issue service warranties. A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification[11] for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.[12]

As with the other two types of warranty associations, service warranty entities must meet certain regulatory requirements to offer their products in Florida. Regarding cancellations, current law provides that each service warranty contract shall contain a cancellation provision. If the contract is canceled by the warranty holder, return of premium must be based upon no less than 90 percent of unearned pro rata premium less any claims that have been paid or less the cost of repairs made on behalf of the warranty holder. If the contract is canceled by the association, return of premium must be based upon 100 percent of unearned pro rata premium, less any claims paid or the cost of repairs made on behalf of the warranty holder.[13]

Like the provision in the bill for home warranty associations, service warranty associations may effectuate refunds through the issuing sales representative. No additional detail or documentation is provided. A provision is added to current law regarding the form of a refund (which now is apparently cash or check). The bill provides that a refund owed to a warranty holder may be in the form of cash, check, store credit, gift card, or other similar means. However, upon request of the service warranty holder the refunds must be remitted by check.

The examination provisions in the bill are the same as with the other two warranty associations. For service warranty associations, current language specific to the rate charged for service warranty providers is deleted, as well as a filing fee of $2,000 which accompanies Form 10-K as filed with the United States Securities and Exchange Commission. Currently, companies may file the Form 10-K with the office to have the examination requirement waived or, at the very least, the costs associated with their examinations, adjusted. However, to utilize this option the associations must pay a filing fee of $2,000 with Form 10-K. Because OIR is not required to examine these companies on a regularly scheduled basis, but rather on an as needed one, businesses that sell service warranties should experience cost savings.

Finally, the bill authorizes entities to provide money to DFS to enable the department to pursue unauthorized parties operating in violation with the provisions relating to service warranty associations in the same manner as the bill did for the other two warranty associations.

---

[11] Pursuant to s. 634.401 (5), F.S.,"Indemnify" means to undertake repair or replacement of a consumer product, or pay compensation for such repair or replacement by cash, check, store credit, gift card, or other similar means, in return for the payment of a segregated premium, when such consumer product suffers operational failure.

[12] s. 634.401(13), F.S.

[13] s. 634.414, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 634.011, F.S., relating to definitions.

Section 2: Amends s. 634.121, F. S., relating to forms, required procedures, and provisions.

Section 3: Amends s. 634.141, F.S., relating to examination of motor vehicle service agreement companies.

Section 4: Creates s. 634.2855, F.S., relating to unauthorized entities; gifts and grants.

Section 5: Amends s. 634.312, F. S., relating to forms, required provisions, and procedures for home warranty associations.

Section 6: Amends s. 634.314, F. S., relating to examination of home warranty associations.

Section 7: Creates s. 634.3385, F.S., relating to unauthorized entities; gifts and grants.

Section 8: Amends s. 634.414, F. S., relating to forms; required provisions, for service warranty associations.

Section9: Amends s. 634.416, F. S., relating to examination of service warranty associations.

Section 10: Creates s. 634.4385, F.S., relating to unauthorized entities; gifts and grants.

Section 11: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will have an insignificant fiscal impact on the Office of Insurance Regulation. OIR indicates that the provisions of CS/HB 1011 will result in a recurring loss of approximately $30,000 in revenue to be deposited into the Insurance Regulatory Trust Fund[14].

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[14] E-mail correspondence from OIR to House Appropriations Staff, February 3, 2012, on file with the House Government Operations Appropriations Staff.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because regularly scheduled examinations by OIR will no longer be required for warranty associations, companies will save costs associated with preparing for and actually undergoing those examinations. Also, companies will no longer, on a regular basis, have to pay for OIR's costs associated with the examinations. Entities that currently apply for examination exemptions will experience a cost reduction of a $2,000 filing fee.

D. FISCAL COMMENTS:

The bill will have an insignificant fiscal impact on the Office of Insurance Regulation. By removing the required OIR examinations, some associations will no longer have to pay a $2,000 filing fee when seeking an examination exemption. OIR indicates that the loss of fees from the 15 entities that filed for the exemption will result in a recurring loss of approximately $30,000 in revenue to be deposited into the Insurance Regulatory Trust Fund.

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:

B. RULE-MAKING AUTHORITY:

The bill removes rulemaking authority for the Financial Services Commission to establish provisions whereby motor vehicle service agreement companies may be exempt from examinations by OIR.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Insurance & Banking Subcommittee unanimously adopted one strike-all amendment to HB 1011 which retained many of the same provisions of the bill as filed and made the following major changes:

- Deleted the provision in current law that provides service agreements that are sold to persons other than consumers and that cover motor vehicles used for commercial purposes are excluded from the definition of motor vehicle service agreement and are exempt from regulation under the Florida Insurance Code.
- Clarified the provisions in the bill which authorize donating money to DFS for the purpose of pursuing unauthorized entities that violate the laws regarding warranty associations.
- Restored current law which the bill removes regarding OIR's use of independent examiners. However, the costs associated with the use of those examiners are capped.
- Made technical changes to correct drafting errors.

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to warranty associations; amending s. 634.011, F.S.; revising the definition of the term "motor vehicle service agreement"; amending s. 634.121, F.S.; providing criteria for a motor vehicle service agreement company to effectuate refunds through the issuing salesperson or agent; requiring the salesperson, agent, or service agreement company to maintain a copy of certain documents; requiring a salesperson or agent to provide a copy of a document to the service agreement company if requested by the Department of Financial Services or the Office of Insurance Regulation; requiring the office to provide to the department findings that a salesperson or agent exhibits a pattern or practice of failing to effectuate refunds or to maintain and remit to the service agreement company the required documentation; amending s. 634.141, F.S.; authorizing rather than requiring the office to examine service agreement companies; limiting the examination period to the most recent 5 years; limiting the cost of certain examinations; removing the requirement that the Financial Services Commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; creating s. 634.2855, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to

pursue unauthorized entities operating as motor vehicle service agreement companies; providing requirements for the deposit of the money; providing that funds remaining at the end of any fiscal year shall be available for carrying out duties and responsibilities of the department or the office; amending s. 634.312, F.S.; authorizing a home warranty association to effectuate a refund through the issuing sales representative; amending s. 634.314, F.S.; authorizing rather than requiring the office to examine home warranty associations; limiting the examination period to the most recent 5 years; limiting the cost of certain examinations; removing the requirement that the commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; creating s. 634.3385, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to pursue unauthorized entities operating as home warranty associations; providing that funds remaining at the end of any fiscal year shall be available for carrying out duties and responsibilities of the department or the office; amending s. 634.414, F.S.; authorizing service warranty associations to effectuate refunds through the issuing sales representative; authorizing a service warranty association to issue refunds by cash, check, store

credit, gift card, or other similar means; amending s. 634.416, F.S.; authorizing rather than requiring the office to examine service warranty associations; limiting the examination period to the most recent 5 years; limiting the costs of certain examinations; removing the requirement that the commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; removing provisions relating to the rates charged a to service warranty association for examinations; removing the provision authorizing the office to waive the examination requirement upon receipt and review of the Form 10-K; creating s. 634.4385, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to pursue unauthorized entities operating as service warranty associations; providing that funds remaining at the end of any fiscal year shall be available for carrying out duties and responsibilities of the department or the office; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) of section 634.011, Florida Statutes, is amended to read:

634.011 Definitions.—As used in this part, the term:

(8) "Motor vehicle service agreement" or "service

agreement" means any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended; however, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles. Transactions exempt under s. 624.125 are expressly excluded from this definition and are exempt from the provisions of this part. ~~Service agreements that are sold to persons other than consumers and that cover motor vehicles used for commercial purposes are excluded from this definition and are exempt from regulation under the Florida Insurance Code.~~ The term "motor vehicle service agreement" includes any contract or agreement that provides:

(a) For the coverage or protection defined in this subsection and which is issued or provided in conjunction with an additive product applied to the motor vehicle that is the subject of such contract or agreement;

(b) For payment of vehicle protection expenses.

1.a. "Vehicle protection expenses" means a preestablished flat amount payable for the loss of or damage to a vehicle or expenses incurred by the service agreement holder for loss or damage to a covered vehicle, including, but not limited to, applicable deductibles under a motor vehicle insurance policy; temporary vehicle rental expenses; expenses for a replacement

vehicle that is at least the same year, make, and model of the stolen motor vehicle; sales taxes or registration fees for a replacement vehicle that is at least the same year, make, and model of the stolen vehicle; or other incidental expenses specified in the agreement.

b. "Vehicle protection product" means a product or system installed or applied to a motor vehicle or designed to prevent the theft of the motor vehicle or assist in the recovery of the stolen motor vehicle.

2. Vehicle protection expenses shall be payable in the event of loss or damage to the vehicle as a result of the failure of the vehicle protection product to prevent the theft of the motor vehicle or to assist in the recovery of the stolen motor vehicle. Vehicle protection expenses covered under the agreement shall be clearly stated in the service agreement form, unless the agreement provides for the payment of a preestablished flat amount, in which case the service agreement form shall clearly identify such amount.

3. Motor vehicle service agreements providing for the payment of vehicle protection expenses shall either:

a. Reimburse a service agreement holder for the following expenses, at a minimum: deductibles applicable to comprehensive coverage under the service agreement holder's motor vehicle insurance policy; temporary vehicle rental expenses; sales taxes and registration fees on a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; and the difference between the benefits paid to the service agreement holder for the stolen vehicle under the service

agreement holder's comprehensive coverage and the actual cost of a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; or

b. Pay a preestablished flat amount to the service agreement holder.

Payments shall not duplicate any benefits or expenses paid to the service agreement holder by the insurer providing comprehensive coverage under a motor vehicle insurance policy covering the stolen motor vehicle; however, the payment of vehicle protection expenses at a preestablished flat amount of $5,000 or less does not duplicate any benefits or expenses payable under any comprehensive motor vehicle insurance policy; or

(c)1. For the payment for paintless dent-removal services provided by a company whose primary business is providing such services.

2. "Paintless dent-removal" means the process of removing dents, dings, and creases, including hail damage, from a vehicle without affecting the existing paint finish, but does not include services that involve the replacement of vehicle body panels or sanding, bonding, or painting.

Section 2. Paragraph (b) of subsection (3) of section 634.121, Florida Statutes, is amended, and paragraphs (c), (d), and (e) are added to that subsection, to read:

634.121 Forms, required procedures, provisions.—

(3)

(b) After the service agreement has been in effect for 60

days, it may not be canceled by the insurer or service agreement company unless:

1. There has been a material misrepresentation or fraud at the time of sale of the service agreement;

2. The agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;

3. The odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or

4. For nonpayment of premium by the agreement holder, in which case the service agreement company shall provide the agreement holder notice of cancellation by certified mail.

If the service agreement is canceled by the insurer or service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium, less any claims paid on the agreement. If, after 60 days, the service agreement is canceled by the service agreement holder, the insurer or service agreement company shall return directly to the agreement holder not less than 90 percent of the unearned pro rata premium, less any claims paid on the agreement. The service agreement company remains responsible for full refunds to the consumer on canceled service agreements. However, the salesperson and agent are responsible for the refund of the unearned pro rata commission. A service agreement company may effectuate refunds through the issuing salesperson or agent in accordance with paragraphs (c) and (d).

(c) If the service agreement company effectuates refunds through the issuing salesperson or agent, the service agreement

company must send the unearned pro rata premium refund due, less any unearned pro rata commission, to the salesperson or agent effectuating the refund. Upon receipt, the salesperson or agent must refund the unearned pro rata premium, including any unearned pro rata commission, and the sales tax refund owed to the service agreement holder.

(d) The salesperson, agent, or service agreement company shall maintain a copy of one of the following documents, as applicable, demonstrating that the refund owed pursuant to paragraph (c) has been refunded:

1. A copy of the front and back of the cancelled check for the applicable refund amount owed to the service agreement holder;

2. A copy of the front of the check for the applicable refund amount owed to the service agreement holder and a copy of the statement from the bank account on which the check was drawn showing that the check was cashed;

3. A copy of the front of the check issued by the service agreement company to the salesperson or agent in the amount of the service agreement company's portion of the refund owed to the service agreement holder and a copy of the statement from the bank account on which the check was drawn showing that the check was cashed;

4. A copy of a completed buyer's order demonstrating that the applicable refund amount owed to the service agreement holder was credited toward the purchase or lease of another vehicle;

5. Any document received from or sent to a lender, finance

company, or creditor demonstrating that a loan or amount financed by the agreement holder was decreased by the amount of the applicable refund amount owed to the service agreement holder; or

6. Any other evidence approved by the office in a written communication to a person licensed pursuant to this part demonstrating that the applicable refund amount due to the service agreement holder was properly made.

A salesperson or agent effectuating a refund shall maintain a copy of the documentation required by this paragraph and shall provide a copy to the service agreement company within 45 days after a request is made by the department or the office to either the service agreement company or the salesperson.

(e) If the office finds that a salesperson or agent exhibits a pattern or practice of failing to properly effectuate refunds owed or to maintain and remit to the service agreement company the documentation required by paragraph (d), the office shall notify the department of its finding.

Section 3. Section 634.141, Florida Statutes, is amended to read:

634.141 Examination of companies.—

~~(1)~~ Motor vehicle service agreement companies licensed under this part may be subject to periodic examination by the office in the same manner and subject to the same terms and conditions as apply ~~applies~~ to insurers under part II of chapter 624. The office is not required to conduct periodic examinations pursuant to this section, but may examine a service agreement

company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years. The costs of examinations conducted pursuant to ss. 624.316(2)(e) and 624.3161(3) may not exceed 10 percent of the companies' reported net income for the prior year. ~~The commission may by rule establish provisions whereby a company may be exempted from examination.~~

~~(2) The office shall determine whether to conduct an examination of a company by considering:~~

~~(a) The amount of time that the company has been continuously licensed and operating under the same management and control.~~

~~(b) The company's history of compliance with applicable law.~~

~~(c) The number of consumer complaints against the company.~~

~~(d) The financial condition of the company, demonstrated by the financial reports submitted pursuant to s. 634.137.~~

Section 4. Section 634.2855, Florida Statutes, is created to read:

634.2855 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide money to the department to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds to the office to investigate, discipline, sanction, and take all action consistent with this part relative to unauthorized entities. All donations or grants of moneys to the department shall be deposited into the Insurance Regulatory Trust Fund and shall be

separately accounted for in accordance with this section. Moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section may be appropriated by the Legislature, pursuant to chapter 216, for the purpose of enabling the department or the office to carry out the provisions of this section. Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance of moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section remaining at the end of any fiscal year shall be available for carrying out the duties and responsibilities of the department or the office.

Section 5. Subsection (5) of section 634.312, Florida Statutes, is amended to read:

634.312 Forms; required provisions and procedures.—

(5) Each home warranty contract shall contain a cancellation provision. Any home warranty agreement may be canceled by the purchaser within 10 days after purchase. The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the warranty agreement holder. After the home warranty agreement has been in effect for 10 days, if the contract is canceled by the warranty holder, a return of premium shall be based upon 90 percent of unearned pro rata premium less any claims that have been paid. If the contract is canceled by the association for any reason other than for fraud or misrepresentation, a return of premium shall be based upon 100 percent of unearned pro rata premium, less any claims paid on the agreement. A home warranty association may effectuate a

refund through the issuing sales representative.

Section 6. Section 634.314, Florida Statutes, is amended to read:

634.314 Examination of associations.—

~~(1)~~ Home warranty associations licensed under this part may be subject to periodic examinations by the office, in the same manner and subject to the same terms and conditions as apply to insurers under part II of chapter 624 of the insurance code. The office is not required to conduct periodic examinations pursuant to this section, but may examine a home warranty company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years. The costs of examinations conducted pursuant to ss. 624.316(2)(e) and 624.3161(3) may not exceed 10 percent of the companies' reported net income for the prior year.

~~(2) The office shall determine whether to conduct an examination of a home warranty association by considering:~~

~~(a) The amount of time that the association has been continuously licensed and operating under the same management and control.~~

~~(b) The association's history of compliance with applicable law.~~

~~(c) The number of consumer complaints against the association.~~

~~(d) The financial condition of the association, demonstrated by the financial reports submitted pursuant to s. 634.313.~~

Section 7. Section 634.3385, Florida Statutes, is created

to read:

634.3385 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide money to the department to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds to the office to investigate, discipline, sanction, and take all action consistent with this part relative to unauthorized entities. All donations or grants of moneys to the department shall be deposited into the Insurance Regulatory Trust Fund and shall be separately accounted for in accordance with this section. Moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section may be appropriated by the Legislature, pursuant to chapter 216, for the purpose of enabling the department or the office to carry out the provisions of this section. Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance of moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section remaining at the end of any fiscal year shall be available for carrying out the duties and responsibilities of the department or the office.

Section 8. Section 634.414, Florida Statutes, is amended to read:

634.414 Forms; required provisions.—

(1) Each service warranty contract shall contain a cancellation provision. If the contract is canceled by the warranty holder, return of premium shall be based upon no less than 90 percent of unearned pro rata premium less any claims that have been paid or less the cost of repairs made on behalf

of the warranty holder. If the contract is canceled by the association, return of premium shall be based upon 100 percent of unearned pro rata premium, less any claims paid or the cost of repairs made on behalf of the warranty holder. Service warranty associations may effectuate refunds through the issuing sales representative.

(2) Refunds owed pursuant to this section may be made by cash, check, store credit, gift card, or other similar means. Upon request of the service warranty holder, the refund shall be remitted by check.

(3) ~~(2)~~ By July 1, 2011, each service warranty contract sold in this state must be accompanied by a written disclosure to the consumer that the rate charged for the contract is not subject to regulation by the office. A service warranty association may comply with this requirement by including such disclosure in its service warranty contract form or in a separate written notice provided to the consumer at the time of sale.

Section 9. Section 634.416, Florida Statutes, is amended to read:

634.416 Examination of associations.—

~~(1)(a)~~ Service warranty associations licensed under this part may be subject to periodic examination by the office, in the same manner and subject to the same terms and conditions that apply to insurers under part II of chapter 624. The office is not required to conduct periodic examinations pursuant to this section, but may examine a service warranty company at its discretion. An examination conducted pursuant to this section

may cover a period of only the most recent 5 years. The costs of examinations conducted pursuant to ss. 624.316(2)(e) and 624.3161(3) may not exceed 10 percent of the companies' reported net income for the prior year.

~~(b) The office shall determine whether to conduct an examination of a service warranty association by considering:~~

~~1. The amount of time that the association has been continuously licensed and operating under the same management and control.~~

~~2. The association's history of compliance with applicable law.~~

~~3. The number of consumer complaints against the association.~~

~~4. The financial condition of the association, demonstrated by the financial reports submitted pursuant to s. 634.313.~~

~~(2) The rate charged a service warranty association by the office for examination may be adjusted to reflect the amount collected for the Form 10-K filing fee as provided in this section.~~

~~(3) On or before May 1 of each year, an association may submit to the office the Form 10-K, as filed with the United States Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended. Upon receipt and review of the most current Form 10-K, the office may waive the examination requirement; if the office determines not to waive the examination, such examination will be limited to that examination necessary to ensure compliance with this part. The~~

~~Form 10-K shall be accompanied by a filing fee of $2,000 to be deposited into the Insurance Regulatory Trust Fund.~~

~~(4) The office is not required to examine an association that has less than $20,000 in gross written premiums as reflected in its most recent annual statement. The office may examine such an association if it has reason to believe that the association may be in violation of this part or is otherwise in an unsound financial condition.~~ If the office examines an association that has less than $20,000 in gross written premiums, the examination fee may not exceed 5 percent of the gross written premiums of the association.

Section 10. Section 634.4385, Florida Statutes, is created to read:

634.4385 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide money to the department to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds to the office to investigate, discipline, sanction, and take all action consistent with this part relative to unauthorized entities. All donations or grants of moneys to the department shall be deposited into the Insurance Regulatory Trust Fund and shall be separately accounted for in accordance with this section. Moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section may be appropriated by the Legislature, pursuant to chapter 216, for the purpose of enabling the department or the office to carry out the provisions of this section. Notwithstanding s. 216.301 and pursuant to s. 216.351, any

balance of moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section remaining at the end of any fiscal year shall be available for carrying out the duties and responsibilities of the department or the office.

Section 11. This act shall take effect July 1, 2012.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Abruzzo offered the following:

Amendment

Remove lines 257-269 and insert:

companies' reported net income for the prior year. The commission may by rule establish provisions whereby a company may be exempted from examination.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1065 Annuities
SPONSOR(S): Insurance & Banking Subcommittee and Broxson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Reilly	Cooper
2) Government Operations Appropriations Subcommittee		Keith	Topp BDT
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Section 627.4554, F.S., provides protections for consumers 65 years of age and older in annuity transactions. The section, enacted in 2004, adopted the National Association of Insurance Commissioners' (NAIC) Senior Protection in Annuity Transactions Model Regulation of 2003. In 2008, the Legislature amended the law to provide additional safeguards for senior consumers that are not in the NAIC's model regulation. In 2010, the Legislature also increased the unconditional refund period for senior consumers to 21 days and required insurers to attach a cover page, with specified information, to any annuity policy sold.

The bill amends s. 627.4554, F.S., to incorporate into Florida law the most current version of the NAIC model regulation on annuity protections (the 2010 NAIC Model), while maintaining most of the provisions adopted by Florida in 2008 and 2010. The 2010 NAIC Model, which has been enacted by 19 states, including California and New York, provides annuity protections for consumers of any age; insurer review of every annuity transaction; and clarifies that insurers are responsible for compliance with annuity protection provisions, even when they contract with third parties.

The Office of Insurance Regulation (OIR) indicates any fiscal impact associated with CS/HB 1065 is insignificant and will be absorbed within current resources.

The bill is effective October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Annuities[1]

An annuity is a contract between a buyer and an insurance company that provides guaranteed payments over a period of time. Annuities are designed to meet retirement and long-range planning goals,[2] and are long-term contracts that typically restrict an investor's ability to access their money.

There are two basic types of annuities, fixed and variable. Fixed annuities guarantee both the rate of return and the amount of payout. Variable annuities do not guarantee the rate of return, which can fluctuate based on the performance of underlying investment options chosen by the purchaser.

Fixed and variable annuities are available as either immediate or deferred annuities. Typically, premiums for immediate annuities are paid in a lump sum amount, and the purchaser receives an immediate and regular stream of payments for a period of time. Variable annuities generally involve an accumulation phase, during which premiums paid experience tax-deferred growth, and the payout phase (annuitization phase) when the annuity provides a regular stream of periodic payments to the purchaser.

Fixed annuities are considered insurance contracts because of the mortality risk associated with payout options, and are regulated by state insurance departments. With a variable annuity, premium dollars are placed into a variety of investment options called subaccounts. Because variable annuities involve risk and provide no guarantee of principal, they are considered investments and fall within the jurisdiction of both securities regulators and state insurance departments. Agents selling variable annuities must hold a variable annuity license from the state and also possess a securities license and hold an active securities registration with a broker dealer. As investments, variable annuities also have accompanying prospectuses with disclosures regarding risk. All sales of variable annuities are subject to suitability standards established by the Financial Industry Regulatory Authority (FINRA).[3]

Equity indexed annuities are considered a hybrid of both fixed and variable annuities. They are classified, defined, and regulated as fixed annuities. In contrast to a traditional fixed annuity, which provides a stated guaranteed rate of interest, equity indexed annuities provide a minimum guaranteed interest rate in combination with an index-linked component. A guaranteed minimum interest rate may still create a loss of principal if the guarantee is based on an amount less than the amount of premium or initial payment. Investors who find it necessary to cancel an annuity to access funds prior to maturity of the contract may also lose principal through detrimental features such as surrender charges, hidden penalties, costs, fees, and massive multi-year surrender charges.

Determining whether an Annuity is a Suitable Investment for a Consumer: Suitability Issues

In 2003, the National Association of Insurance Commissioners (NAIC) adopted the "Senior Protection in Annuity Transactions Model Regulation" (Model Regulation), designed to help protect senior citizens when they purchase or exchange annuity products. In 2004, Florida adopted the Model Regulation by creating s. 627.4554, F.S. This section provides protection for senior citizens in annuity transactions,

---

[1] Background information on annuities derived from "2008 White Paper on Annuities," by Roxanne Rehm, 2008 Assistant General Counsel for the DFS. On file with staff of the Insurance & Banking Subcommittee.

[2] See "Annuities," U.S. Securities and Exchange Commission at hhtp://www.sec.gov/answers/annuity.htm (Last accessed January 27, 2012).

[3] The Financial Industry Regulatory Authority (FINRA) is the largest independent regulator for all securities firms doing business in the United States.

requiring insurance companies and agents offering these products to clearly document the basis for selling the product, including consideration of a senior citizen's financial and tax status, as well as investment objectives. In 2006, the NAIC removed the age restriction from its Model Regulation, extending annuity protections to consumers of any age.

In 2008, Florida amended s. 627.4554, F.S. Although the legislation did not incorporate the 2006 change to the Model Regulation, it provided additional safeguards for senior consumers, including:

- Requiring insurers and agents to have an "objectively" reasonable basis for recommending a particular annuity product.
- Specifying the minimum information that an insurer or agent must obtain and use to determine the suitability of a recommendation before executing a purchase or exchange of a policy.
- Requiring suitability information obtained from a consumer to be recorded on a Department of Financial Services' (DFS) form, which must be completed and signed by the applicant and the agent, with a copy given to the consumer.
- Requiring the insurer or agent, in exchange situations, to provide the consumer with specified information, on a DFS form, concerning differences between the policy being recommended for purchase and an existing policy that would be surrendered or replaced.
- Increasing the "free look" refund period.
- Requiring insurers to establish standards for product training.
- Authorizing the Office of Insurance Regulation to rescind an annuity and provide a full refund of premiums paid or the accumulation value, whichever is greater, when a consumer is harmed by a violation of the suitability statute.

In 2010, the Legislature also increased the unconditional refund period for senior consumers in annuity transactions to 21 days and required insurers to attach a cover page with specified information, including notice of the refund period, contact information, and the name of the issuing company and selling agent, to each annuity sold.[4]

In March 2010, the NAIC revised its Model Regulation to clarify that insurers are responsible for compliance with the model's requirements, even if the insurer contracts with a third party; requiring insurers to review all annuity transactions; and establishing both general and product-specific training requirements for insurance agents.

To date, 19 states, including New York and California, have adopted the 2010 version of the NAIC's Model Regulation.

Effect of the Bill

The bill amends s. 627.4554, F.S., to incorporate into Florida law the most recent version of the NAIC's Model Regulation on protections in annuity transactions. The bill makes the following changes to existing law:

- Extends the protections currently afforded to senior citizens in annuity transactions to consumers of any age and sophistication level.
- Revises definitions; defines additional terms relevant to annuity transactions, including Annuity, FINRA (Financial Regulatory Authority), Recommendation, Replacement, and Suitability Information.
- Requires insurers or agents to have reasonable grounds (as opposed to "objectively" reasonable grounds under current law) for believing that recommendations made to a consumer to purchase, exchange, or replace annuity products are suitable to the consumer's circumstances and that there are reasonable grounds to believe that:
    - The consumer has been reasonably informed of specified information.
    - The consumer would benefit from the product recommended.
    - That the annuity as a whole (or the exchange or replacement of a policy) is suitable for the consumer.

[4] Section 626.99, F.S.

- Prohibits agents from dissuading, or attempting to dissuade a consumer from truthfully responding to an insurer's request for confirmation of suitability information, or from cooperating with the investigation of a complaint.
- Clarifies that compliance with FINRA requirements constitutes compliance with s. 627.4554, F.S.
- Provides that insurers are responsible for ensuring compliance with the law.
- Requires insurers to establish a supervision system that is reasonably designed to achieve insurer and agent compliance with this section, which must include procedures for the review of each recommendation before issuance of an annuity; establishing standards for agent product training; and annual reports to senior managers to determine the effectiveness of the supervision system. Permits insurers to contract with a third party as to any aspect of the supervision system, but provides that insurers remain responsible for compliance.
- Authorizes the OIR to order insurers to take reasonably appropriate corrective action for insurer or agent misconduct that harms a consumer. However, the bill removes from current law, language that specifically authorizes the OIR to rescind an annuity and provide a full refund of premiums paid or the accumulation value, whichever is greater, when a consumer is harmed by a violation of the suitability statute.

The bill also amends s. 626.99, F.S., to increase the unconditional refund period to 21 days for all consumers of annuities.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.4554, F.S., to incorporate the 2010 amendments to NAIC's model regulation on protections in annuity transactions into Florida law.

Section 2. Amends s. 626.99, F.S., to provide a 21 day unconditional refund period for all purchasers of annuities.

Section 3. Provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill provides for enactment of the most recent version of the NAIC model regulation on annuity protections, adopted by the NAIC in 2010 and enacted in 19 states to date, it will bring further uniformity to the sale of annuity products by insurers conducting business in multiple states.

D. FISCAL COMMENTS:

According to the Office of Insurance Regulation, there may be an increase in workload associated with the increased number in form re-filings based on the provisions of this bill. However, OIR indicates any costs associated with CS/HB 1065 are insignificant and can be absorbed within current resources[5].

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:

To the extent that the bill extends the protections of s. 627.4554, F.S., to all purchasers of annuities and establishes additional protections, it will offer enhanced protection to all purchasers of annuities in Florida.

B. RULE-MAKING AUTHORITY:

Authorizes the DFS to adopt rules to administer s. 627.4554, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2012, the Insurance & Banking Subcommittee adopted 11 amendments to HB 1065. The amendments:

- Made technical changes to clarify that: transactions in compliance with FINRA requirements satisfy the requirements of s. 627.4554, F.S; s. 627.4554, F.S., does not apply to direct response solicitations where there is no recommendation by an agent based on information collected from the consumer; and that the insurer has certain duties if there is no agent involved.
- Corrected a drafting error.
- Extended the unconditional refund period to all consumers of annuities to 21 days after the date of purchase.
- Restored current law to require insurers and agents to use the Department of Financial Services' (DFS) form currently in effect to document suitability information obtained from customers in annuity transactions.
- Restored current law to require insurers and agents, in transactions involving the exchange of annuities, to use the DFS form currently in effect to explain to the consumer the differences between products recommended for purchase and those that will be exchanged or surrendered.
- Removed new continuing education requirements for agents that sell annuities.
- Restored current law to require that a cover page be attached to all annuity policies, which contains specified information.
- Restored current law to limit the surrender charges or deferred sales charges for withdrawal of money from an annuity that applies to senior consumers.
- Changed the effective date of the bill to October 1, 2012.

[5] E-mail correspondence from OIR to House Appropriations Staff, February 2, 2012, on file with the House Government Operations Appropriations Staff.

A bill to be entitled

An act relating to annuities; amending s. 627.4554, F.S.; providing that recommendations relating to annuities made by an insurer or its agents apply to all consumers not just to senior consumers; revising and providing definitions; revising the duties of insurers and agents; providing that recommendations must be based on consumer suitability information; revising the information relating to annuities that must be provided by the insurer or its agent to the consumer; revising the requirements for monitoring contractors that are providing certain functions for the insurer relating to the insurer's system for supervising recommendations; revising provisions relating to the relationship between this act and the federal Financial Industry Regulatory Authority; deleting a provision providing a cap on surrender or deferred sales charges; prohibiting specified charges for annuities issued to persons 65 years of age or older; amending s. 626.99, F.S.; increasing the period of time that an unconditional refund must remain available with respect to certain annuity contracts; making such unconditional refunds available to all prospective annuity contract buyers without regard to the buyer's age; revising requirements for cover pages of annuity contracts; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.4554, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 627.4554, F.S., for present text.)

627.4554 Annuity investments.—

(1) PURPOSE.—The purpose of this section is to require insurers to set forth standards and procedures for making recommendations to consumers which result in transactions involving annuity products, and to establish a system for supervising such recommendations in order to ensure that the insurance needs and financial objectives of consumers are appropriately addressed at the time of the transaction.

(2) SCOPE.—This section applies to any recommendation made to a consumer to purchase, exchange, or replace an annuity by an insurer or its agent, and which results in the purchase, exchange, or replacement recommended.

(3) DEFINITIONS.—As used in this section, the term:

(a) "Agent" has the same meaning as provided in s. 626.015.

(b) "Annuity" means an insurance product under state law which is individually solicited, whether classified as an individual or group annuity.

(c) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(d) "Insurer" has the same meaning as provided in s. 624.03.

(e) "Recommendation" means advice provided by an insurer

or its agent to a consumer which results in the purchase, exchange or replacement of an annuity in accordance with that advice.

(f) "Replacement" means a transaction in which a new policy or contract is to be purchased and it is known or should be known to the proposing insurer or its agent that by reason of such transaction an existing policy or contract will be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value due to the use of nonforfeiture benefits or other policy values;

3. Amended so as to effect a reduction in benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid;

4. Reissued with a reduction in cash value; or

5. Used in a financed purchase.

(g) "Suitability information" means information related to the consumer that is reasonably appropriate to determine the suitability of a recommendation made to the consumer, including the following:

1. Age;

2. Annual income;

3. Financial situation and needs, including the financial resources used for funding the annuity;

4. Financial experience;

5. Financial objectives;

6. Intended use of the annuity;

7. Financial time horizon;

8. Existing assets, including investment and life insurance holdings;

9. Liquidity needs;

10. Liquid net worth;

11. Risk tolerance; and

12. Tax status.

(4) EXEMPTIONS.—This section does not apply to transactions involving:

(a) Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to this section;

(b) Contracts used to fund:

1. An employee pension or welfare benefit plan that is covered by the federal Employee Retirement and Income Security Act;

2. A plan described by s. 401(a), s. 401(k), s. 403(b), s. 408(k), or s. 408(p) of the Internal Revenue Code, if established or maintained by an employer;

3. A government or church plan defined in s. 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under s. 457 of the Internal Revenue Code;

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

5. Settlements or assumptions of liabilities associated

with personal injury litigation or any dispute or claim-resolution process; or

6. Formal prepaid funeral contracts.

(5) DUTIES OF INSURERS AND AGENTS.—

(a) When recommending the purchase or exchange of an annuity to a consumer which results in an insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer, based on the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

1. The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity; mortality and expense fees; investment advisory fees; potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk.

2. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or the death or living benefit.

3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable; and, in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer based on his or her suitability information.

4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable after taking into consideration whether the consumer:

a. Will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

b. Would benefit from product enhancements and improvements; and

c. Has had another annuity exchange or replacement, in particular, an exchange or replacement within the preceding 36 months.

(b) Before executing a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurer or its agent must make reasonable efforts to obtain the consumer's suitability information. The information shall be collected on form DFS-H1-1980, which is hereby incorporated by reference, and completed and signed by the applicant and agent. Questions requesting this information must be presented in at least 12-point type and be sufficiently clear so as to be readily understandable by both the agent and the consumer. A true and correct executed copy of the form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and shall be provided to the consumer no later than the date of delivery of the contract or contracts.

(c) Except as provided under paragraph (d), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(d) An insurer's issuance of an annuity must be reasonable based on all the circumstances actually known to the insurer at the time the annuity is issued. However, an insurer or its agent does not have an obligation to a consumer related to an annuity transaction under paragraph (a) or paragraph (c) if:

1. A recommendation has not been made;

2. A recommendation was made and is later found to have been based on materially inaccurate information provided by the consumer;

3. A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of an insurer or its agent.

(e) At the time of sale, the agent or the agent's representative must:

1. Make a record of any recommendation made to the consumer pursuant to paragraph (a);

2. Obtain the consumer's signed statement documenting his or her refusal to provide suitability information, if applicable; and

3. Obtain the consumer's signed statement acknowledging that an annuity transaction is not recommended if he or she decides to enter into an annuity transaction that is not based

on the insurer's or its agent's recommendation, if applicable.

(f) Before executing a replacement or exchange of an annuity contract resulting from a recommendation, the agent must provide on form DFS-H1-1981, which is hereby incorporated by reference, information that compares the differences between the existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer. A true and correct executed copy of this form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and must be provided to the consumer no later than the date of delivery of the contract or contracts.

(g) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its agent's compliance with this section.

1. Such system must include, but is not limited to:

a. Maintaining reasonable procedures to inform its agents of the requirements of this section and incorporating those requirements into relevant agent training manuals;

b. Establishing standards for agent product training;

c. Providing product-specific training and training materials that explain all material features of its annuity products to its agents;

d. Maintaining procedures for the review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis for determining that

a recommendation is suitable. Such review procedures may use a screening system for identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. Such electronic or other system may be designed to require additional review only of those transactions identified for additional review using established selection criteria;

e. Maintaining reasonable procedures to detect recommendations that are not suitable. These may include, but are not limited to, confirmation of consumer suitability information, systematic customer surveys, consumer interviews, confirmation letters, and internal monitoring programs. This sub-subparagraph does not prevent an insurer from using sampling procedures or from confirming suitability information after the issuance or delivery of the annuity; and

f. Annually providing a report to senior managers, including the senior manager who is responsible for audit functions, which details a review, along with appropriate testing, which is reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

2. An insurer is not required to include in its supervision system agent recommendations to consumers of products other than the annuities offered by the insurer.

3. An insurer may contract for performance of a function required under subparagraph 1.

a. If an insurer contracts for the performance of a function, the insurer must include the supervision of

contractual performance as part of those procedures listed in subparagraph 1. These include, but are not limited to:

(I) Monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed; and

(II) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis for representing that the function is being properly performed.

b. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to subsection (8) regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with sub-subparagraph a.

(h) An agent may not dissuade, or attempt to dissuade, a consumer from:

1. Truthfully responding to an insurer's request for confirmation of suitability information;

2. Filing a complaint; or

3. Cooperating with the investigation of a complaint.

(i) Sales made in compliance with FINRA requirements pertaining to the suitability and supervision of annuity transactions shall satisfy the requirements of this section. This paragraph applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, this paragraph does not limit the ability of the office or the department to enforce, including investigate, the provisions of this section. For this paragraph to apply, an insurer must:

1. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

2. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer in maintaining its supervision system.

(6) RECORDKEEPING.—

(a) Insurers and agents must maintain or be able to make available to the office or department records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer may maintain the documentation on behalf of its agent.

(b) Records required to be maintained under this subsection may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the actual document.

(7) COMPLIANCE MITIGATION; PENALTIES.—

(a) An insurer is responsible for compliance with this section. If a violation occurs because of the action or inaction of the insurer or its agent, the office may order an insurer to take reasonably appropriate corrective action for a consumer harmed by the insurer's or by its agent's violation of this section and may impose appropriate penalties and sanctions.

(b) The department may order:

1. An insurance agent to take reasonably appropriate corrective action, including monetary restitution of penalties

or fees incurred by the consumer for any consumer harmed by a violation of this section by the insurance agent and impose appropriate penalties and sanctions.

2. A managing general agency or insurance agency that employs or contracts with an insurance agent to sell or solicit the sale of annuities to consumers must take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the insurance agent.

(c) In addition to any other penalty authorized under chapter 626, the department shall order an insurance agent to pay restitution to a consumer who has been deprived of money by the agent's misappropriation, conversion, or unlawful withholding of moneys belonging to the senior consumer in the course of a transaction involving annuities. The amount of restitution required to be paid may not exceed the amount misappropriated, converted, or unlawfully withheld. This paragraph does not limit or restrict a person's right to seek other remedies as provided by law.

(d) Any applicable penalty under the Florida Insurance Code for a violation of this section shall be reduced or eliminated according to a schedule adopted by the office or the department, as appropriate, if corrective action for the consumer was taken promptly after a violation was discovered.

(e) A violation of this section does not create or imply a private cause of action.

(8) PROHIBITED CHARGES.—An annuity contract issued to a senior consumer age 65 or older may not contain a surrender or deferred sales charge for a withdrawal of money from an annuity

exceeding 10 percent of the amount withdrawn. The charge shall be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the date of each premium payment when multiple premiums are paid, whichever is later. This subsection does not apply to annuities purchased by an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission, or to those annuities specified in paragraph (4)(b).

(9) RULES.—The department may adopt rules to administer this section.

Section 2. Subsection (4) of section 626.99, Florida Statutes, is amended to read:

626.99 Life insurance solicitation.—

(4) DISCLOSURE REQUIREMENTS.—

(a) The insurer shall provide to each prospective purchaser a buyer's guide and a policy summary prior to accepting the applicant's initial premium or premium deposit, unless the policy for which application is made provides an unconditional refund for ~~a period of~~ at least 14 days, or unless the policy summary contains an offer of such an unconditional refund. In these instances, the buyer's guide and policy summary must be delivered with the policy or before ~~prior to~~ delivery of the policy.

(b) With respect to fixed and variable annuities, the policy must provide an unconditional refund for ~~a period of~~ at least 21 ~~14~~ days. For fixed annuities, the buyer's guide must ~~shall~~ be in the form ~~as~~ provided by the National Association of Insurance Commissioners (NAIC) Annuity Disclosure Model

Regulation, until ~~such time as~~ a buyer's guide is developed by the department, at which time the department guide must be used. For variable annuities, a policy summary may be used, which may be contained in a prospectus, until such time as a buyer's guide is developed by NAIC or the department, at which time one of those guides must be used. Unconditional refund means ~~If the prospective owner of an annuity contract is 65 years of age or older~~:

1. An unconditional refund of premiums paid for a fixed annuity contract, including any contract fees or charges, must be available for a period of 21 days; and

2. An unconditional refund for variable or market value annuity contracts must be available for a period of 21 days. The unconditional refund shall be equal to the cash surrender value provided in the annuity contract, plus any fees or charges deducted from the premiums or imposed under the contract, or a refund of all premiums paid. This subparagraph does not apply if the prospective owner is an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission.

(c) The insurer shall attach a cover page to any annuity contract ~~policy~~ informing the purchaser of the unconditional refund period prescribed in paragraph (b). The cover page must also provide contact information for the issuing company and the selling agent, and the department's toll-free help line~~, and any other information required by the department by rule~~. The cover page must also contain the following disclosures in bold print and at least 12-point type, if applicable:

1. "PLEASE BE AWARE THAT THE PURCHASE OF AN ANNUITY CONTRACT IS A LONG-TERM COMMITMENT AND MAY RESTRICT ACCESS TO YOUR FUNDS."

2. "IT IS IMPORTANT THAT YOU UNDERSTAND HOW THE BONUS FEATURE OF YOUR CONTRACT WORKS. PLEASE REFER TO YOUR POLICY FOR FURTHER DETAILS."

3. "INTEREST RATES MAY HAVE CERTAIN LIMITATIONS. PLEASE REFER TO YOUR POLICY FOR FURTHER DETAILS."

4. "A [PROSPECTUS AND POLICY SUMMARY] [BUYERS GUIDE] IS REQUIRED TO BE GIVEN TO YOU."

The cover page is part of the policy and is subject to review by the office pursuant to s. 627.410.

(c) ~~(d)~~ The insurer shall provide a buyer's guide and a policy summary to a ~~any~~ prospective purchaser upon request.

Section 3. This act shall take effect October 1, 2012.

HB 1305
Pub. Rec./Officers-Elect

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1305 Pub. Rec./Officers-Elect
SPONSOR(S): Adkins
TIED BILLS: **IDEN./SIM. BILLS:** SB 1464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N	Williamson	Williamson
2) Government Operations Appropriations Subcommittee		Topp	Topp BDT
3) State Affairs Committee			

SUMMARY ANALYSIS

The State Constitution and the Florida Statutes set forth the state's public policy regarding access to government records and meetings. However, current law does not specifically address if officers-elect are subject to the Public Records Act or the Government in the Sunshine Law. The Third District Court of Appeal has ruled on the issue providing that members-elect of boards, commissions, and agencies are within the scope of the Government in the Sunshine Law. Although the Public Records Act was not addressed by the Third District Court of Appeal, the Department of State has routinely archived transition records for incoming governors.

The bill declares that it is the policy of the state that the Public Records Act (Act) applies to officers-elect upon their election to public office. The bill requires officers-elect to adopt and implement reasonable measures to ensure compliance with the obligations set forth in the Act. It also requires an officer-elect to maintain his or her public records in accordance with the policies and procedures of the public office to which the officer has been elected.

As part of the transition process, if an officer-elect creates or uses an online or electronic communication or recordkeeping system, all public records maintained on such system must be preserved so as not to impair the ability of the public to inspect or copy such records. Upon taking the oath of office, the officer-elect must deliver to the person responsible for records in such public office all public records kept or received in the transaction of official business during the period following election to public office.

Finally, the bill provides that a meeting with or attended by the officer-elect, at which official acts are to be taken, is a public meeting. Reasonable notice of such meeting must be provided.

The Department of State indicates no fiscal impact as a result of HB 1305. The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution: Public Records and Open Meetings
Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of the executive branch and local government be open and noticed to the public.

Florida Statutes: Public Records and Open Meetings
Public policy regarding access to government records and meetings also is addressed in the Florida Statutes.

Public Records Act[1]
Section 119.07(1), F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. "Public record" is defined to mean

> [A]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[2]

"Agency" is defined to mean

> [A]ny state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.[3]

The Public Records Act does not apply to legislative[4] or judicial[5] records.

Government in the Sunshine Law
Section 286.011, F.S., also known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.[6] The board or commission must provide reasonable notice of all public meetings.[7] Public meetings may not be held at any location that discriminates on the basis of

---

[1] *See* chapter 119, F.S.
[2] Section 119.011(12), F.S.
[3] Section 119.011(2), F.S.
[4] *See Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992) (definition of "agency" in the Public Records Act does not include the Legislature or its members).
[5] Relying on separation of powers principles, the courts have consistently held that the judiciary is not an agency for purposes of chapter 119, F.S. *See, e.g., Times Publishing Company v. Ake*, 660 So.2d 255 (Fla. 1995) (the judiciary, as a coequal branch of government, is not an "agency" subject to supervision or control by another coequal branch of government).
[6] Section 286.011(1), F.S.
[7] *Id.*

sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[8] Minutes of a public meeting must be promptly recorded and be open to public inspection.[9]

Officers-elect

Officers-elect have been held subject to public record and public meeting requirements upon certification of their election.[10] Although not specifically addressed in current law, this principle has been adopted through case law. In *Hough v. Stembridge*,[11] the Third District Court of Appeal held that "members-elect of boards, commissions, agencies, etc. are within the scope of the Government in the Sunshine Law."[12] Although the Public Records Act was not addressed in *Hough*, the Department of State has routinely archived transition records for incoming governors.

Effect of Bill

The bill declares that it is the policy of the state that the Public Records Act (Act) applies to officers-elect upon their election to public office.

The bill requires officers-elect to adopt and implement reasonable measures to ensure compliance with the obligations set forth in the Act. It also requires an officer-elect to maintain his or her public records in accordance with the policies and procedures of the public office to which the officer has been elected.

As part of the transition process, if an officer-elect creates or uses an online or electronic communication or recordkeeping system, all public records maintained on such system must be preserved so as not to impair the ability of the public to inspect or copy such records.

Upon taking the oath of office, the officer-elect must deliver to the person responsible for records in such public office all public records kept or received in the transaction of official business during the period following election to public office.

Finally, the bill provides that a meeting with or attended by the officer-elect, at which official acts are to be taken, is a public meeting. Reasonable notice of such meeting must be provided.

B. SECTION DIRECTORY:

Section 1 creates s. 119.035, F.S., relating to officers-elect.

Section 2 amends s. 286.011, F.S., to include officers-elect under the provisions of the Sunshine Law.

Section 3 reenacts s. 112.3215, F.S., for purposes of incorporating changes made to s. 286.011, F.S.

Section 4 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[8] Section 286.011(6), F.S.
[9] Section 286.011(2), F.S.
[10] *See* Attorney General Opinion 74-40.
[11] 278 So.2d 288 (Fla. 3rd DCA 1973).
[12] *Hough* at 289.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of State indicates that there will be no fiscal impact on the department.[13]

The bill could create a minimal fiscal impact on the office of an officer-elect complying with public record requests. The costs would be absorbed, however, as they would be part of the day-to-day responsibilities of the person responsible for responding to records in such office.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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 state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority. It merely requires that an officer-elect comply with the policies and procedures of the public office to which he or she has been elected.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[13] Department of State Bill Analysis on HB 1305, January 30, 2012, on file with the Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to public records; creating s. 119.035, F.S.; declaring that it is the policy of this state that the provisions of ch. 119, F.S., apply to officers-elect upon their election to public office; requiring that such officers-elect adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in ch. 119, F.S.; requiring that the public records of an officer-elect be maintained in accordance with the policies and procedures of the public office to which the officer has been elected; requiring that online and electronic communication and recordkeeping systems preserve the records on such systems so as to not impair the ability of the public to inspect or copy such public records; requiring that the officer-elect, as soon as practicable upon taking the oath of office, deliver to the person or persons responsible for records and information management, all public records kept or received in the transaction of official business during the period following election to public office; amending s. 286.011, F.S.; revising public meeting requirements to apply the requirements to meetings with or attended by officers-elect; reenacting s. 112.3215(8)(b), F.S., relating to lobbying before the executive branch or the Constitution Revision Commission, to incorporate the amendment made to s. 286.011, F.S., in a reference thereto; providing an

effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 119.035, Florida Statutes, is created to read:

119.035 Officers-elect.—

(1) It is the policy of this state that the provisions of this chapter apply to officers-elect upon their election to public office. Such officers-elect shall adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in this chapter.

(2) Public records of an officer-elect shall be maintained in accordance with the policies and procedures of the public office to which the officer has been elected.

(3) If an officer-elect, individually or as part of a transition process, creates or uses an online or electronic communication or recordkeeping system, all public records maintained on such system shall be preserved so as not to impair the ability of the public to inspect or copy such public records.

(4) Upon taking the oath of office, the officer-elect shall, as soon as practicable, deliver to the person or persons responsible for records and information management in such office all public records kept or received in the transaction of official business during the period following election to public office.

Section 2. Subsection (1) of section 286.011, Florida

Statutes, is amended to read:

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, <u>including meetings with or attended by an officer-elect,</u> at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Section 3. For the purpose of incorporating the amendment made by this act to section 286.011, Florida Statutes, in a reference thereto, paragraph (b) of subsection (8) of section 112.3215, Florida Statutes, is reenacted to read:

112.3215 Lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission.—

(8)

(b) All proceedings, the complaint, and other records relating to the investigation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and any meetings held pursuant to an investigation are exempt from the provisions of s. 286.011(1) and s. 24(b), Art. I of the State Constitution either until the alleged violator requests in writing that such investigation and

associated records and meetings be made public or until the commission determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

Section 4. This act shall take effect July 1, 2012.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Adkins offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 119.035, Florida Statutes, is created to read:

119.035 Officers-elect.—

(1) It is the policy of this state that the provisions of this chapter apply to officers-elect upon their election to public office. Such officers-elect shall adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in this chapter.

(2) Public records of an officer-elect shall be maintained in accordance with the policies and procedures of the public office to which the officer has been elected.

(3) If an officer-elect, individually or as part of a transition process, creates or uses an online or electronic

communication or recordkeeping system, all public records maintained on such system shall be preserved so as not to impair the ability of the public to inspect or copy such public records.

(4) Upon taking the oath of office, the officer-elect shall, as soon as practicable, deliver to the person or persons responsible for records and information management in such office all public records kept or received in the transaction of official business during the period following election to public office.

(5) As used in this section, the term "officer-elect" means the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

Section 2. Subsection (1) of section 286.011, Florida Statutes, is amended to read:

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The

board or commission must provide reasonable notice of all such meetings.

Section 3. For the purpose of incorporating the amendment made by this act to section 286.011, Florida Statutes, in a reference thereto, paragraph (b) of subsection (8) of section 112.3215, Florida Statutes, is reenacted to read:

112.3215 Lobbying before the executive branch or the Constitution Revision Commission; registration and reporting; investigation by commission.—

(8)

(b) All proceedings, the complaint, and other records relating to the investigation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and any meetings held pursuant to an investigation are exempt from the provisions of s. 286.011(1) and s. 24(b), Art. I of the State Constitution either until the alleged violator requests in writing that such investigation and associated records and meetings be made public or until the commission determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

Section 4. This act shall take effect July 1, 2012.

T I T L E A M E N D M E N T

Remove the entire title and insert:

A bill to be entitled

Amendment No. 1

An act relating to public records; creating s. 119.035, F.S.; declaring that it is the policy of this state that the provisions of ch. 119, F.S., apply to certain constitutional officers upon their election to public office; requiring that such officers adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in ch. 119, F.S.; requiring that the public records of such officers be maintained in accordance with the policies and procedures of the public offices to which the officers have been elected; requiring that online and electronic communication and recordkeeping systems preserve the records on such systems so as to not impair the ability of the public to inspect or copy such public records; requiring that such officers, as soon as practicable upon taking the oath of office, deliver to the person or persons responsible for records and information management, all public records kept or received in the transaction of official business during the period following election to public office; defining the term "officer-elect" as used in the section; amending s. 286.011, F.S.; revising public meeting requirements to apply the requirements to meetings with or attended by newly elected members of boards and commissions; reenacting s. 112.3215(8)(b), F.S., relating to lobbying before the executive branch or the Constitution Revision Commission, to incorporate the amendment made to s.

286.011, F.S., in a reference thereto; providing an effective date.