

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2174

SPONSOR: Banking and Insurance Committee and Senator Holzendorf

SUBJECT: Insurance Agents

DATE: April 16, 2001                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Favorable/CS
2.	_____	_____	FT	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 2174 makes a number of changes relating to the licensure of insurance company representatives. Major changes include:

- Authorizing the Department of Insurance to promulgate rules to govern the use of a consumer’s personal financial and health information;
- Requiring licensed insurance agents marketing other products to maintain separate records relating to insurance products and transactions;
- Allowing the Department of Insurance access to insurance agent records maintained at a third party location;
- Specifying the activities constituting the “solicitation of insurance” and requiring licensure;
- Authorizing employee leasing companies to carry out specified insurance-type activities under limited circumstances;
- Eliminating the collection of certain information by the Department of Insurance;
- Expanding the amount of time specified licensees would have to obtain an appointment after the termination of their appointment, licensure, or the filing of the original license application;
- Mandating the fingerprinting of officers or directors to be filed with the Department of Insurance under certain circumstances;
- Removing the ability of licensees to waive confidentiality as to investigative information;
- Declaring that the requirements of the insurance code would apply equally to all insurance transactions, insurance agents, and insurance agencies, unless otherwise specified in the insurance code; and

- Allowing the Department of Insurance to revoke or suspend the license of a licensee selling securities not registered as required under Chapter 517, F.S.

The bill substantially amends the following sections of the Florida Statutes: 624.318, 626.112, 626.171, 626.181, 626.431, 626.521, 626.541, 626.5715, 626.601, 626.611, 626.741, 626.792, 626.835, 626.8427, 626.856, 626.872, 626.873, 627.927, 648.315, 648.38, and 648.384. The bill repeals the following subsections of the Florida Statutes: 624.501(11) and (23). The bill creates the following sections of the Florida Statutes: 626.202, 626.9531, and 626.9651.

## II. Present Situation:

Insurance representatives are required by Florida law to be licensed by the Department of Insurance prior to conducting business in the state.<sup>1</sup> The department issues over 70 different types of licenses for insurance company representatives, including 32 different types for agents and 30 different types for adjusters. Adjusters who are attorneys in good standing with the Florida Bar are not required to be licensed by the department.

The purpose of a license is to authorize and enable an insurance representative to actively and in good faith engage in the insurance business with respect to the public and to facilitate the public supervision of these activities in the public interest. Generally, applicants for licensure by the department must be at least 18 years old; be a resident of the state; pass a state licensing examination; maintain a place of business in the state; and be fingerprinted. Applicants also must fulfill certain educational requirements and pay a licensing fee. The Department of Insurance also licenses nonresident agents.

Certain applicants for licensure are exempt from the examination requirements. For example, agent applicants holding certain designations, such as a CPCU (Chartered Property and Casualty Underwriter) or CLU (Certified Life Underwriter), may be exempt from taking an examination. Further, the department may deny, suspend, or revoke a license for good cause. Reasons for denial, suspension, or revocation can include lack of qualifications; the use of fraudulent information in the license application; willful misrepresentation of an insurance policy; failure to comply with the insurance code; or a demonstrated lack of trustworthiness to engage in the insurance business. In addition to being licensed, an agent must be appointed by an insurer to act on its behalf within the scope of the agency.

(See the Effect of Proposed Changes for the current law provisions specific to the proposed changes in the bill.)

## III. Effect of Proposed Changes:

**Section 1.** Amends s. 624.318, F.S., to require licensed insurance agents, marketing other products or maintaining customer information which is not related to insurance, to maintain separate records relating to insurance products and transactions. Additionally, the department would be given access to any insurance records of the agent maintained at a third party location.

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<sup>1</sup> Chapter 626, F.S., establishes the licensure provisions for insurance representatives.

*Current law:* Licensed insurance agents marketing other products are not required to maintain separate records for insurance products and insurance transactions. The department does not have express authority to inspect records held in a third party location.

**Section 2.** Amends s. 624.501, F.S, to repeal subsections (11), regarding the appointment fee for vending machines, and subsection (23), relating to appointment fees for health risk managers. Licenses are no longer issued by the Department of Insurance for these classes.

**Section 3.** Amends s. 626.112, F.S., to clarify that a license as an insurance agent, service representative, solicitor, customer representative, or limited customer representative is required in order to engage in the solicitation of insurance and describes activities which constitute soliciting insurance:

- describing the benefits or terms of insurance coverage, including premiums or rates of return;
- distributing an invitation to contract to prospective purchasers;
- making general or specific recommendations as to insurance products;
- completing orders or applications for insurance products; or
- comparing insurance products, advising as to insurance matters, or interpreting policies or coverages.

Provides for an exception for individuals who may solicit without a license who are employed by a life or health insurer so long as such individuals are accompanied by a licensed agent. Allows an employee leasing company licensed under ch. 468, which seeks to enter into a contract with an employer, to carry out specified insurance-type activities as necessary to perform due diligence on the prospective client. Specifies that advertising describing specific insurance coverages and other information must be provided by licensed insurers or agents. Clarifies that no insurance agent, agency or other licensed person may pay a fee to an unlicensed person other than an insurance agency for a referral of a prospective purchaser which is dependent upon whether the referral results in the purchase of an insurance product.

*Current Law:* The insurance code does not specify activities constituting the “solicitation of insurance.”

**Section 4.** Amends s. 626.171, F.S., relating to applications for licensure, to streamline the application process by eliminating the collection of information not relevant to a determination of an applicant’s eligibility for licensure. This section also eliminates a reference to claims investigators because claims investigators are no longer licensed by the department.

*Current Law:* In addition to being fingerprinted, applicants for licensure as agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents, and reinsurance intermediaries also are required to provide the department with the following information in their applications:

- Full name, age, social security number, residence, place of business, and occupation for the 5-year period preceding the date of application.
- Qualifications for the license, which include: the efforts made to become familiar with the insurance laws and with the provisions of the contracts to be negotiated; what

insurance experience they have had; what insurance instruction they have had or expect to receive; what approved insurance courses they have completed or are in the process of completing which may be used to meet any educational requirements.

- Whether they have been refused or have voluntarily surrendered or have had suspended or revoked a license to solicit insurance by the department in this or any other state.
- Whether any insurer or any managing general agent claims the applicant is indebted under any agency contract or otherwise and, if so, the name of the claimant, the nature of the claim, and the applicant's defense thereto, if any.
- Whether the applicant will devote all or part of his or her efforts to acting as an insurance representative and, if in part only, how much time will be devoted to such work and in what other business or businesses he or she is engaged or employed.

**Section 5.** Amends s. 626.181, F.S., to expand from 24 to 48 months the amount of time licensees would have to obtain an appointment after filing the original license application. Also, extends the time period from 4 to 6 years, licensees who are in the military would have to obtain an appointment after filing the original license application.

**Section 6.** Creates s. 626.202, F.S., to require that if there is a change in ownership or control of any entity licensed by the department, or if any new officer, owner, or director of an insurance entity is appointed or employed, a set of fingerprints and a processing fee must be submitted to the department. A change in ownership or control would be defined as acquiring 10 percent or more of voting securities of the licensed entity.

*Current Law:* Persons applying for licensure as an insurance agency are required to be fingerprinted under s. 626.171, F.S.

**Section 7.** Amends s. 626.431, F.S., to expand to 4 years the amount of time licensees would have to obtain an appointment after the termination of their last appointment.

*Current Law:* Licensees have 2 years to obtain an appointment after the termination of their last appointment.

**Section 8.** Amends s. 626.521, F.S., by requiring appointing entities to furnish information to the department on appointees only if requested by the department.

*Current Law:* The appointing entity is required to furnish information regarding the character of the appointee to the department within 60 days after the appointment has been made.

**Section 9.** Amends s. 626.541, F.S., to require that an insurance agent or adjuster transacting insurance under a business name to file notification with the department within 30 days of the initial transaction of insurance. Also, an agency would be required to notify the department within 30 days of any change of information contained in its application. Any change in name, director, owner or personnel associated with the firm would be required to be reported within 30 days.

*Current Law:* Insurance agents doing business under a firm or corporate name or doing business under a name other than their own are required annually, by January 1, to file a statement of the

name being used, the office address, and the name and social security number of each officer, director, and individual association with the firm or corporation. Any change in name, director, owner or personnel associated with the firm is required to be reported within 60 days. Any change in the application information supplied to the department is required to be reported to the department annually, by January 1.

**Section 10.** Amends s. 626.5715, F.S., to specify that the requirements of the insurance code would apply equally to all insurance transactions, insurance agents, and insurance agencies, unless otherwise specified in the insurance code. This provision clarifies that the insurance code applies equally to all insurance transactions regardless of the entity that owns or is associated with an agent or agency.

*Current Law:* The department has the authority to adopt rules to assure parity among the different types of financial institutions authorized to sell insurance.

**Section 11.** Amends s. 626.601, F.S., removes the ability of the licensee to waive the confidentiality of the investigative files of the department. This change would make the information in investigative files confidential until the investigation has been completed or ceases to be active.

*Current Law:* A licensee under investigation could waive the right of confidentiality of the investigative files of the department and thus obtain files prior to the completion of the investigation. The new provision protects consumers and witnesses during the investigative period.

**Section 12.** Amends s. 626.611, F.S., to allow the department to revoke or suspend the license of a licensee selling securities not registered as required under Chapter 517, F.S.

*Current Law:* Currently, the department would have to prove theft, breach of trust or dishonesty as to securities violations. In general, the department may deny, suspend, or revoke a license for good cause. Reasons for denial, suspension, or revocation can include lack of qualifications; the use of fraudulent information in the license application; willful misrepresentation of an insurance policy; failure to comply with the insurance code; or a demonstrated lack of trustworthiness to engage in the insurance business.

**Sections 13, 14 and 15:** Amend ss. 626.741, 626.792, and 626.835, F.S., respectively, to specify that licenses issued by the department to nonresident agents would be limited to the lines of insurance for which they are licensed in their own state of residence and further limited to the specific lines authorized under the nonresident license issued by this state.

*Current Law:* Current practice of the department is to limit the license of nonresident agents to the scope of the license in their state of residence.

**Section 16.** Amends s. 626.8427, F.S., to expand from 2 to 4 years the amount of time title agents would have to obtain an appointment after the termination of their last appointment. Expands the time period insurance licensees, who are in the military, have before their license expires from 4 to 6 years.

*Current Law:* Title agents have 2 years to obtain an appointment after the termination of their last appointment.

**Section 17.** Amends s. 626.856, F.S., the definition of “company employee adjuster,” to specify that a “company employee adjuster” includes employees of wholly-owned subsidiaries of insurers.

*Current Law:* “Company employee adjuster” includes a person on an insurer’s staff of adjusters.

**Section 18.** Amends s. 626.872, F.S., to specify that adjusters issued temporary licenses would be prohibited from adjusting losses after the expiration of their temporary licenses without having been issued a regular adjuster’s license.

*Current Law:* Adjusters issued temporary licenses may adjust claims if their temporary license has expired if they have passed the written exam for a regular adjuster’s license.

**Section 19.** Amends the catch line of s. 626.873, F.S. This is a technical correction.

**Section 20.** Amends s. 626.972, F.S., limiting to 4 years from the date that the application for licensure is filed with the department as to the amount of time in which agents must complete either 1 year of work for a licensed surplus lines agent or 60 hours of class work. Surplus lines agents would be granted 4 years after being licensed by the department to obtain an appointment without having to take an additional written exam.

*Current Law:* Agents are required to complete either 1 year of work for a surplus lines agent or 60 hours of class work prior to becoming a surplus lines agent. Florida law does not limit the amount of time it may take. Surplus lines agents have 2 years after obtaining a license to be appointed by an insurer without having to take an additional written exam.

**Section 21.** Creates s. 626.9531, regarding the identification of insurers, agents and insurance contracts, to clarify that advertising materials and other communications developed by insurers as to insurance products shall clearly indicate that the communication relates to an insurance product. Also provides that an insurance agent must indicate to prospective insureds that they are acting as agents with regard to products and identified insurers.

*Current Law:* Does not specifically address this issue.

**Section 22.** Amends s. 648.315, F.S., to expand from 24 to 48 months the amount of time bail bond agents would have to obtain an appointment after termination of their last appointment and the date an application for a similar appointment is received by the department.

*Current Law:* Provides for a 2 year time period.

**Section 23.** Amends s. 648.38, F.S., to expand the time period from 24 to 48 months between licensure and appointment for bail bonds agents. Also, expands from 4 to 6 years the amount of

time bail bond agents, who are in the military, would have to obtain an appointment after licensure.

*Current Law:* Provides for a 2 year and 4 year time frame as specified.

**Section 24.** Amends s. 648.384, F.S., to provide that if a bail bond agent fails to maintain an appointment with an insurer, or if a runner fails to maintain an appointment with an insurer, managing general agent, or bail bond agent, during any 48 month period, the agent or runner may not be granted a reappointment until he or she qualifies as a first-time applicant.

*Current Law:* The current law provides for a 24 month period.

**Section 25.** Creates s. 626.9651, F.S., which authorizes the Department of Insurance to adopt rules to govern the use of a consumer's nonpublic personal financial and health information. Such rules must be consistent with, and not more restrictive than, the model regulation on consumer personal financial and health information developed by the National Association of Insurance Commissioners (NAIC: *Privacy of Consumer Financial and Health Information Regulation*, adopted September 26, 2000.). Specifically, the rules must permit the use and disclosure of nonpublic personal health information for scientific, medical, or public policy research, in accordance with federal law and be consistent with, and not more restrictive than, the standards contained in Title V of the Gramm-Leach-Bliley Act (GLB) of 1999, Pub. L. No. 106-102. (The GLB is also referred to as the "Financial Services Modernization Act.") If the department determines that a health insurer or health maintenance organization (HMO) is in compliance with the consumer privacy protection rules adopted by the U.S. Dept. of Health and Human Services, in conformance with the Health Insurance Portability and Affordability Act, that health insurer or HMO is in compliance with this section.

*Current Law:* The GLB was signed into law by President Clinton on Nov. 12, 1999, and allows banks, securities firms and insurance companies to merge, affiliate with each other, and engage in new business activities outside their traditional areas. These entities can share certain consumer information which they can ultimately sell or provide to anyone they choose. However, the GLB also authorizes state insurance regulators to issue regulations protecting the privacy of insurance consumers' personal information. In response to the GLB, the NAIC adopted the model regulation noted above to provide specific protection for financial and health information about consumers held by insurers, agents and other entities engaged in insurance activities. The model regulation requires insurers to:

- notify consumers about their privacy policies;
- give consumers the opportunity to prohibit the sharing of their protected *financial information* with non-affiliated third parties (a company that is not affiliated with an insurer); and
- obtain affirmative consent from consumers before sharing protected *health information* with any other parties, affiliated and non-affiliates alike.

The NAIC model is now under consideration by the states and the Florida Department of Insurance needs to secure specific authorization from the Legislature before the department can promulgate consumer protection rules consistent with the NAIC regulation.

**Section 26.** Provides an effective date of July 1, 2001.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Consumers will benefit under the privacy protection provisions of this bill because the department is allowed to promulgate rules, modeled after the NAIC regulations, requiring insurers to obtain affirmative approval from consumers before sharing health information and requiring insurers to give consumers the opportunity to prohibit the sharing of specified financial information.

Licenses would have to file fewer forms with the Department of Insurance under the provisions of the bill. Some reporting requirements would also be reduced. For example, an insurance representative transacting insurance under a business name would be required to report to the department one time, rather than annually as in current law. Further, licensees will benefit because the time period for reappointment is extended.

C. Government Sector Impact:

The provisions of the bill will aid the department in regulating various insurance activities.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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