

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 591 Insurance Agents and Agencies
SPONSOR(S): Rivera and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1912

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee		Tinney	Cooper
2) State Administration Appropriations Committee			
3) Commerce Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

HB 591 makes the following regulatory changes regarding insurance agencies and agents under the Florida Insurance Code:

- Requires the Department of Financial Services (DFS) to license insurance agencies in a manner similar to the licensure of insurance agents by October 1, 2006, with exceptions;
- Authorizes DFS to require specified information of applicants seeking licensure as an agency; obtain fingerprints of specified owners, partners, officers, and directors; and require additional information to ascertain the trustworthiness and competence of insurance agency applicants;
- Prohibits the use of deceptive agency names;
- Repeals the requirement that a primary agent be designated for each agency location; and
- Makes other conforming changes.

There is a fiscal impact resulting from the bill; for FY 2004-05, DFS estimates receiving more than \$1.6 million from applicants seeking registration or licensure as an insurance agency. This money is the cost to DFS for processing fingerprints. The funds will "pass through" DFS to the Florida Department of Law Enforcement (FDLE), the FBI, or to a private vendor who gathers fingerprints electronically. The bill does not require a fee for agency license applicants. The department also estimates an expense of \$62,000 in FY 2004-05 and another expenditure of \$45,000 in FY 2007-08 to upgrade the computer system that handles licensing for agents and agencies. The computer system does not currently license or register insurance agencies except in a few cases.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—The bill requires insurance agencies to be licensed by DFS. Under current law, an agency is not required to be licensed unless the owner or another principal in the agency is convicted of a specific crime. Presently, Florida is the only state that does not require insurance agencies to be licensed. If an agency owner is not currently licensed by DFS and has not submitted his or her fingerprints to DFS within the past 10 years, the applicant will be required to submit fingerprints and a fee to be paid to a law enforcement agency for verification that the fingerprints are not in any criminal databases.

Safeguard Individual Liberty and Promote Personal Responsibility—Under the bill, an insurance agency now will be required to be licensed in Florida; currently, only agents are licensed. The department reports that licensing agencies will facilitate the ability of DFS to investigate and deter unlicensed activity. Florida law does not require an insurance agency to be owned by a licensed agent; this means that sometimes, when DFS investigates a consumer complaint, an agency owner may have closed the agency or relocated it so that the owner can continue conducting unauthorized or fraudulent business. Once DFS has information regarding agency ownership, including how to contact an owner, the department anticipates that it will be easier to halt illegal and unlicensed insurance transactions, thus affording greater protection to insurance consumers.

B. EFFECT OF PROPOSED CHANGES:

Background

In Florida, regulation of the insurance industry is shared by the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR). The state's Chief Financial Officer (CFO) heads DFS while the head of OIR is the Governor and Cabinet members sitting as the Financial Services Commission. Generally, OIR is responsible for granting a certificate of authority or license to an insurer; a domestic insurer, i.e., an insurer based in Florida, must possess a certificate of authority in order to conduct business in Florida. Similarly, many insurers are required by law to seek OIR approval for their rates, or the prices they charge for coverage, and approval of the insurance forms they use for issuing policies. The Office of Insurance Regulation investigates allegations of fraud against insurers and administers state laws governing the financial reserve requirements imposed on insurers. The regulation and licensure of insurance agents and agencies is the purview of DFS. Staff of DFS also provides consumer information and assistance through the Division of Consumer Services.

Although requirements vary by line of authority, general requirements for agent licensure include being 18 years of age; 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. Applicants for a resident agent license must be Florida residents.

The Division of Agent and Agency Services in DFS

The division administers the insurance laws and rules relating to the licensing qualifications and eligibility of insurance agents, including examination, continuing education, and pre-licensing schools and courses. The division also issues licenses and appointments for all classes of insurance representatives, including maintenance of an internet-based computer application for licensure. Allegations of fraud, misappropriation of funds, and other similar activities are investigated by the division with the support of other DFS staff. Similarly, the division investigates complaints received from various sources alleging violations of the Florida Insurance Code by licensees as well as unlicensed

persons. As a result of those complaints and investigations, the division may take administrative action against a licensee resulting in fines and probation, license revocation, or a permanent suspension for participation in the insurance industry.

Insurance Agencies

Under the Insurance Code, an insurance agency is defined as a business location at which an individual, firm, partnership, corporation, association, or other entity engages in any activity or employs individuals to engage in any activity which by law may be performed only by a licensed insurance agent. According to the National Association of Insurance Commissioners (NAIC), Florida is the only state that currently does not require licensure of insurance agencies and their owners. Currently, DFS licenses insurance companies and individual agents who sell insurance policies; however, insurance agencies, which employ agents, and their owners are not licensed.

In each of the past 3 years, DFS reports that it has investigated an average of 400 complaints involving misappropriation of funds for insurance sold by an agency. Under current law, DFS is not authorized to track, monitor, or perform background checks on insurance agencies and their owners; this means that DFS does not know whether agency owners have a history of fiduciary-related crimes. In addition, DFS asserts that it is unable to take administrative action against an owner who participates in fraud or in a misappropriation scheme because only a licensed agent may be held responsible for the purposes of regulatory action by the department.

Misleading/Deceptive Insurance Agency Names

Staff of the Division of Agent and Agency Services asserts that, in addition to having little statutory authority over the owner/operators of insurance agencies, DFS is not granted specific authority to prohibit an agency from using a deceptive or misleading word in the name of an insurance agency. Consumers have reported to DFS that because of a misleading business name, they were led to believe the agency offered financial advice or counseling when, in fact, the agency offered long-term care insurance, annuities, or other insurance products.

Primary Agents

In current law, s. 626.592, F.S., governs primary agents. By law, a person operating an insurance agency in each location of a multi-office firm must be designated as the primary agent for each insurance agency. The primary agent is responsible for the hiring and supervision of all individuals within an insurance agency. Under the provisions of the bill, the current requirements pertaining to primary agents are no longer necessary.

Current Situation and Changes Proposed by the Bill

Chapter 626, F.S., of the Insurance Code relates to insurance field representatives, i.e., agents, and to their operations. Section 626.022, F.S., which specifies the scope of the law, currently applies to insurance agents, field representatives, adjusters, and agencies. The law is amended to add personal lines applicants and licensees to the scope of the law.

Section 627.317, F.S., is amended by the bill to authorize DFS to investigate agencies, along with agents, adjusters, and other licensees of the department as necessary. Currently if the license of an agent or other agency employee is suspended or revoked, the unlicensed owner of the insurance agency has the ability to hire or contract with another licensee to continue as agent. This situation may allow fraudulent or harmful activities to continue because DFS currently does not regulate agencies.

Section 624.501, F.S., relates to fees associated with licenses, filing, and agent appointments by an insurer. The law is amended by the bill to delete the term "insurance agency" and to clarify that the 3-year license fee is due for an original or renewed license.

Some of the powers of DFS, the Financial Services Commission, and OIR regarding the regulation of the insurance industry are enumerated in s. 626.016, F.S. The bill amends the law to add agencies to the entities that are regulated by DFS and the CFO.

Section 626.025, F.S., relates to consumer protections; the law covers such subjects as agent licensure, continuing education, fingerprints required for submission with agent applications, and other similar topics. The bill amends the law to delete an obsolete provision and to clarify that an agency is required either to seek licensure or registration.

Section 626.112, F.S., relates to the license and appointment of agents, customer service representatives, adjusters, agencies, service representatives, and managing general agents. The law is amended by the bill to require enumerated agencies in business before January 1, 2001, to seek licensure or registration as an agency before October 1, 2006. Similarly, an agency in business before October 1, 2006 also is required to seek licensure or registration by the same date.

If an agency has been in business in Florida since January 1, 2001, and the agency is wholly owned by licensed agents, the agency is authorized by the bill to request registration, rather than licensure by DFS. The application for agency licensure is substantially similar to the application for a licensed agent. As a result, an agency owned only by licensed agents is not required to submit fingerprints and other specified information for agency applicants because DFS already has that information on file. Similarly, the bill allows an incorporated agency which shares are traded publicly and each agency whose primary function is offering insurance to members of a nonprofit corporation to submit applications for registration rather than licensure.

The bill specifies administrative penalties for an agency that fails to seek licensure (up to \$10,000) or registration (up to \$5,000). The bill deletes provisions that currently require agency licensure following disciplinary actions imposed by DFS. The department reports that licensing agencies will facilitate the actions of DFS in holding an unlicensed owner accountable for the acts of his or her agency.

Section 626.171, F.S., governs the application for licensure by DFS as an agent, customer representative, adjuster, and other similar licenses. The law is amended by the bill to delete obsolete dates and to delete references to an agency license. Requirements for agency licensure are added by amending s. 626.172, F.S.

Under current law, an insurance agency is required to seek licensure only if a majority owner, partner, officer, or director of the agency has been found guilty or has pleaded guilty or no contest to a felony relating to the insurance business in a state or federal court. The application requirements for agency licensure following such a conviction or guilty plea are specified in s. 626.172, F.S. The bill amends the provisions relating to agency licensure to require an agency owner or owners to sign the license application. If an agency is incorporated, the bill requires the corporate president and secretary to sign the licensure application.

Section 624.501, F.S., authorizes DFS to charge various fees for the services, including licensure, performed by the department. Under current law, an agency that is licensed due to the conviction or a plea of guilty or no contest to a crime involving insurance by an owner or other principal of the agency is required to pay a \$60 fee for a 3-year license. References to the \$60 fee for agency licensure are deleted because there is no fee for the agency license required by the bill.

The bill requires all insurance agencies to become licensed or registered by October 1, 2006, by submitting an application and fingerprints for each owner, partner, and other specified persons. The department may require other information from applicants, as well. However, the department may not require that credit or character reports be submitted for persons required to be listed on the application.

An agency that is denied *registration* by DFS is required to submit an application for agency *licensure* within 30 days of denial of an application for registration. If all or partial ownership of an agency is purchased or transferred to a person who is not a licensed insurance agent, a registered agency must submit an application for agency licensure within 30 days of the change in ownership. An agency is required to display its agency license or registration so that it is clearly visible to the public.

Also, beginning October 1, 2005, the bill requires DFS to accept the uniform application for nonresident agency licensure. The bill grants rulemaking authority to DFS to adopt any revised versions of the uniform application.

The bill explicitly states that ss. 626.6115 and 626.6215, F.S., do not apply to agencies registered under the subsection. The former law provides grounds for compulsory refusal, suspension, and revocation of an agency license. The latter, s. 626.6215, F.S., authorizes DFS to revoke, suspend, or refuse an agency license for discretionary reasons outlined in law.

Both laws also are amended by the bill. Under the bill, s. 626.6115, F.S., is amended to *require* DFS to deny, suspend, or revoke an agency license if the agency has been denied a license to transact insurance by any state, nation, U.S. possession or territory, or by a court or other judicial agency. The bill also amends s. 626.6215, F.S., to *authorize* DGS to revoke, suspend, or refuse to grant an agency license if the agency fails to take corrective action or report to DFS any violation of the Insurance Code by a licensee.

Section 626.382, F.S., specifies that an agency license is issued by DFS for a 3-year period, subject to the fees required by law. Fees collected by DFS for its licensure and other activities are enumerated in s. 624.501, F.S. The law specifies at s. 624.501(20), F.S., the fee for an agency or adjusting firm is \$60. Although the bill requires an agency to be licensed or registered with DFS, there is no charge associated with the licensure or registration, other than the cost to process an applicant's fingerprints.

Section 626.342, F.S., prohibits an insurer, a managing general agent, and an agent from furnishing supplies such as insurance forms, applications, stationery, and other similar materials to an unlicensed agent. The bill amends the law to prohibit agencies from furnishing such materials to unlicensed agents, as well.

Section 626.536, F.S., currently requires an agent to report to DFS within 30 days after the final disposition of an administrative action taken against the agent by a governmental agency in Florida or any other state if the administrative action relates to the transaction of insurance, the sale of securities, and any activity involving dishonesty, fraud, a breach of fiduciary duties, or similar activity. The law is amended by the bill to require an agency involved in such an administrative action also to report the disposition of the action to DFS.

Section 626.561, F.S., specifies that all premiums, return premiums, and other funds collected by an agent and belonging to a customer or other person are trust funds. The law outlines the fiduciary responsibilities of an agent, customer representative, and adjuster regarding a customer's money. For example, the law requires all such funds to be kept in a separate account that is subject to audit by DFS. An agent is required to keep records of the funds for 3 years. The law also specifies penalties for misuse of the specified monies by an agent. The bill amends the law to clarify that an agency has the same responsibilities to account for and safeguard customer monies.

Section 626.572, F.S., authorizes an agent to rebate a portion of his or her commission under the conditions specified. For example, the law requires an agent to make a rebate available to all policyholders in the same actuarial class. An agent is required to file a rebate schedule with the insurer issuing the policy to which the rebate applies and the agent is further required to apply the rebate uniformly among all policyholders who purchase the same policy. The bill amends the law to require an agency to comply with the same law governing rebates.

Section 626.601, F.S., authorizes DFS to investigate an agent upon the department's motion or upon a written complaint signed by an affected person. The law outlines the steps DFS may take in its investigation, including examination of records and funds. The bill amends the law to authorize DFS to investigate an agency in the same manner as it investigates other licensees.

Section 626.602, F.S., is created by the bill to authorize DFS to disapprove the use of certain words and names in the name of an agency. For example, the bill prohibits an agency from using a name that could mislead the public. The department may refuse to license an agency if its name interferes with or is too similar to a name used by another agency or insurer. An agency name may not state or imply that the agency is an entity primarily providing advice or counsel rather than an entity selling insurance. Similarly, an agency may not imply by its name that the agency is an underwriter since only a natural person may be an underwriter.

Section 626.8411, F.S., specifies the provisions of the Insurance Code that relate to title insurance agents and agencies. The bill amends the law to delete a reference to primary agents.

C. SECTION DIRECTORY:

Section 1 amends s. 624.317, F.S., to authorize DFS to investigate insurance agencies, among the other entities it may investigate.

Section 2 amends s. 624.501, F.S., to remove insurance agency from the list of entities required to pay a licensing fee.

Section 3 amends s. 626.016(1), F.S., relating to the powers and duties of DFS, the Financial Services Commission, and OIR to include insurance agencies.

Section 4 amends s. 626.022, F.S., to specify that the provisions of the law applicable to general lines agents also apply to personal lines applicants and agents.

Section 5 amends s. 626.025, F.S., relating to consumer protections to include licensure and registration of insurance agencies under s. 626.112, F.S.

Section 6 amends s. 626.112(7)(a), F.S., relating to insurance agencies to specify license and registration requirements and dates.

Section 7 amends s. 626.171, F.S., to make conforming changes and to delete obsolete dates.

Section 8 amends s.626.172, F.S., to specify the requirements for licensure or registration of an insurance agency.

Section 9 amends s, 626.292, relating to transfer of a license from another state to correct a statutory reference.

Section 10 amends s. 626.321, relating to limited licenses to correct a statutory reference.

Section 11 amends s. 626.342, F.S., to specify that an insurance agency is prohibited from furnishing supplies to unlicensed agents.

Section 12 amends s. 626.382, F.S., relating to the continuation and expiration of an agency license.

Section 13 amends s. 626.536, F.S., to include an insurance agency in the requirement to report within 30 days any administrative actions taken against the agency.

Section 14 amends s. 626.561, F.S., to include an insurance agency in the requirements for reporting and accounting for funds and punishment that may be given for failure to report such funds.

Section 15 amends s. 626.572, F.S., to include an insurance agency in the regulations governing rebates.

Section 16 amends s. 626.601, F.S., to authorize DFS to investigate an agency in the same manner and under the same circumstances the department investigates an agent.

Section 17 creates s. 626.602, F.S., to authorize DFS to disapprove the use of certain words or names by an insurance agency.

Section 18 amends 626.6115, F.S., to specify additional reasons DFS may revoke, suspend, or refuse to license an agency.

Section 19 amends 626.6215, F.S., regarding the discretion of DFS to revoke, suspend, or refuse to license an agency.

Section 20 amends s. 626.7355, F.S., relating to temporary licenses issued to a customer representative to delete a reference to the Primary Agent Law.

Section 21 amends s. 626.747, F.S., regarding branch agencies to include life and health agents.

Section 22 amends s. 626.8411, F.S., to delete a reference to primary agents.

Section 23 repeals s. 626.592, F.S., the Primary Agent Law.

Section 24 provides an effective date of October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

FISCAL IMPACT ON STATE AGENCIES: DFS, Div. of Agent & Agency Services			
	(FY 05-06) Amount	(FY 06-07) Amount	(FY 07-08) Amount
A. Revenues			
1. Recurring Insurance Regulatory TF Fingerprint Fee	\$1,615,616*	Unknown	Unknown
2. Non-Recurring: Agency Licensing Insurance Regulatory TF			
Total Non-Recurring Revenue		\$1,615,616*	

* DFS estimates that of the estimated 12,622 business entities selling insurance products, approximately half, or 6,311 firms will seek licensure as an agency with original applications filed for an average of four agents per firm. A charge of \$64 will be collected with each application to process fingerprints (6,311x4 agentsx\$64=\$1,615,616). These funds will "pass through" DFS to FDLE, the FBI, or to the Live Scan provider.

2. Expenditures:

FISCAL IMPACT ON STATE AGENCIES: DFS, Div. of Agent & Agency Services			
	(FY 05-06) Amount	(FY 06-07) Amount	(FY 07-08) Amount
B. Expenditures			
1. Recurring			

Insurance Regulatory TF Fingerprint Processing Charge Payments to FDLE/Live Scan/FBI	\$1,615,616*		
2. Non-Recurring Computer System Upgrade	\$62,000**	- 0 -	\$45,000**

** DFS reports that, as a result of HB 591, its current computer application for agent and agency licensure will require modifications before it can accommodate online applications for insurance agency licensure. The estimated cost to upgrade the system in FY 2004-05 is \$62,000. Agency license renewals will begin in FY 2007-08, at which time the computer system will require additional changes at an estimated cost of \$45,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to information provided by the Division of Agent and Agency Services of DFS, it used as a guide The Florida Research & Economic Database, and estimated that approximately 12,715 firms are currently operating in Florida as insurance agencies. These firms are required by the bill to seek licensure as an agency, however, the bill does not require a fee for a person or entity seeking licensure as an agency. If officers of the insurance agency are licensed agents, and have filed fingerprints with DFS within the last 10 years, a fingerprint processing fee will not be required. In cases in which agency officers are not licensed agents, a \$64 fee will be required if the officer submits a paper fingerprint card for with his or her application. If the officer uses the Live Scan process now available in Florida, the cost will be \$60 in most locations to submit his or her fingerprints electronically. The fingerprint charge is a one-time charge to applicants unless an agency changes ownership or officers.

D. FISCAL COMMENTS:

The Division of Agent and Agency Services of DFS received its total FY 2004-05 appropriation of approximately \$12 million wholly from the Insurance Regulatory Trust Fund. As part of its budget, the division also received authority for 160 FTEs. The division anticipates an expenditure of \$62,000 this fiscal year and another \$45,000 in FY 2007-08 as a result of the bill. The funds will be used to update the division's internet-based computer program for licensure. Other than costs to update its computer applications, DFS does not expect to incur additional expenses to implement HB 591.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.