

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Banking and Insurance Committee

BILL: CS/SB 264

INTRODUCER: Banking and Insurance Committee and Senator Geller

SUBJECT: Insurance Regulation (Transferring Insurance Regulation to the Department of Financial Services)

DATE: March 20, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Fav/CS
2.	_____	_____	GO	_____
3.	_____	_____	GA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 264 expands the powers and authority of the Department of Financial Services (“department”), which is headed by the Chief Financial Officer, to regulate all insurance matters including licensure of insurers, approval of insurance rates and policy forms. Specifically, the bill abolishes the Office of Insurance Regulation (OIR), currently under the Financial Services Commission (headed by the Governor and Cabinet), and creates a Division of Insurance Regulation under the department. The new division will be responsible for all activities concerning insurers and other risk-bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing and administrative supervision, as provided under the Insurance Code or chapter 636.

To effect the changes envisioned in this bill, the statutory duties and organizational structure of the department, the commission, and the OIR would have to be realigned. Programs and employees would have to be transferred to the department and conforming changes made to the Florida Statutes and agency rules. The bill does not make these transfers or conforming changes.

This bill amends the following section of the Florida Statutes: 20.121, F.S.

II. Present Situation:

In November 1998, the voters of Florida approved the amendment to the State Constitution abolishing the offices of the Treasurer and the Comptroller and merging their duties into the office of the Chief Financial Officer (CFO), effective January 7, 2003. Under the Constitution, the CFO serves as the chief fiscal officer of the state, responsible for settling and approving all accounts against the state and keeping all state funds and securities.¹

Prior to the passage of this amendment, the Treasurer and Comptroller were elected cabinet officers under the Constitution. In addition to their constitutional duties, the Legislature had statutorily designed the Comptroller as head of the Department of Banking and Finance and had designated the Treasurer as head of the Department of Insurance, as well as State Fire Marshal. The statutory duties of the Comptroller and Treasurer needed to be reassigned after the passage of the constitutional amendment and legislation enacted in 2002 delegated these duties to the newly created Department of Financial Services (DFS), headed by the CFO, and to the Financial Services Commission, whose members are the Governor and Cabinet.² The act created s. 20.121, F.S., which prescribes the organizational structure and regulatory duties of the DFS and commission.

Department of Financial Services

The following divisions were created by the 2002 legislation within the Department of Financial Services (DFS) which is headed by the CFO:

- Accounting and Auditing (which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity)
- State Fire Marshal
- Risk Management
- Treasury (which includes the Bureau of Deferred Compensation)
- Insurance Fraud
- Rehabilitation and Liquidation
- Insurance Agents and Agency Services
- Consumer Services
- Workers' Compensation
- Administration
- Legal Services
- Information Systems
- Office of Insurance Consumer Advocate
- Funeral, Cemetery, and Consumer Services.³

¹ Section 4, Article IV, of the State Constitution.

² Chapter 2002-404, F.S. This act transferred the programs, employees, and trust funds of the Department of Insurance and the Department of Banking and Finance to the DFS and commission. These changes became effective January 7, 2003. In 2003, legislation passed which provided all state fiscal powers to the CFO or DFS which were previously assigned to the Treasurer and Comptroller. Ch. 2003-261, L.O.F.

³ The Division of Funeral, Cemetery, and Consumer Services was placed within the DFS in 2004 (Ch. 2004-301, L.O.F.)

Financial Services Commission

The 2002 legislation also created the Financial Services Commission (“commission”) within DFS. The commission consists of the Governor, the Attorney General, the CFO, and the Commissioner of Agriculture, i.e., the Governor and Cabinet, as constituted on January 7, 2003. Three votes are required for any commission action. The commission is a separate budget entity and is not subject to the control of the DFS. There are two “offices” created under the commission:

- The Office of Insurance Regulation
- The Office of Financial Regulation

Each office is headed by a director who is appointed by, and serves at the pleasure of, the commission, with a requirement that both the Governor and the CFO must concur in appointment and removal. The Office of Insurance Regulation (OIR) is responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, adjusters, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision of insurers, as provided in the Florida Insurance Code or ch. 636.⁴

The Office of Financial Regulation (OFR) is responsible for the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.⁵

The commission and the directors of each office (OIR and OFR) share responsibility for final agency action. The commission acts as agency head for purposes of rulemaking under ss. 120.536-120.565, F.S., while the directors are each agency head for (other) final agency actions under ch. 120, F.S., for all areas within the regulatory authority of their office.

III. Effect of Proposed Changes:

Section 1. Amends s. 20.121, F.S., to expand the powers and authority of the Department of Financial Services (“department”), which is headed by the Chief Financial Officer (CFO), to regulate all insurance matters. Specifically, the bill abolishes the Office of Insurance Regulation (OIR), currently under the Financial Services Commission (headed by the Governor and Cabinet), and creates a Division of Insurance Regulation (“division”) under the department. The new division will be responsible for all activities concerning insurers and other risk-bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing and administrative supervision, as provided under the Insurance Code or chapter 636.

To effect the changes envisioned in this bill, the statutory duties and organizational structure of the department, the commission, and the OIR would have to be realigned. Programs and

⁴ Section 20.121(3)(a)1, F.S.

⁵ Section 20.121(3)(a)2, F.S. The OFR duties encompass all of the statutory responsibilities previously delegated to the Department of Banking and Finance, except for the constitutional duties of the Comptroller (accounting and auditing state funds), the Unclaimed Property Program, and the regulation of funeral and cemetery services, which were all assigned to the Department of Financial Services.

employees would have to be transferred to the department and conforming changes made to the Florida Statutes and agency rules. The bill does not make these transfers or conforming changes.

If the necessary conforming changes were made, all aspects of insurance regulation will be administered under the newly created division within the department, headed by the elected CFO. Currently, this regulation is provided by a director appointed by the Governor and Cabinet sitting as the Financial Services Commission.

Section 2. Provides that the act shall take effect on January 1, 2008.

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:

All aspects of insurance regulation (notably, licensure of insurance companies and approval of insurance rates and policy forms) will be under the Department of Financial Services, headed by the elected Chief Financial Officer. Currently, this regulation is provided by a director of the Office of Insurance Regulation appointed by the Governor and Cabinet sitting as the Financial Services Commission. Opinions differ as to what impact, if any, such a change would have on the regulatory decisions that are made. Proponents of an elected insurance regulator argue that the regulator is more closely accountable to the voters and will make regulatory decisions that are more beneficial to the general public. Opponents of an elected insurance official argue that regulatory decisions made by an appointed official are more likely to be guided by professional analysis rather than political considerations, which is more beneficial to the general public.

C. Government Sector Impact:

The creation of the Division of Insurance Regulation within DFS has the effect of eliminating all insurance functions now performed by the Office of Insurance Regulation

(under the Financial Services Commission), including all personnel and related funding. Under the bill, all insurance responsibilities would be placed under the authority of the department. The bill does not affect the functions of the Office of Financial Regulation, which regulates banking and securities, under the Financial Services Commission. This legislation does not make any of the necessary budgetary transfers.

VI. Technical Deficiencies:

The bill does not make the conforming changes in the Insurance Code and elsewhere in the Florida Statutes that are necessary to assign all insurance regulation to the Department of Financial Services.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
