

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: SB 2782

INTRODUCER: Senator Posey

SUBJECT: Examination of Insurers

DATE: March 22, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable
2.			RI	
3.			GA	
4.				
5.				
6.				

I. Summary:

Currently, an insurer is generally subject to a financial examination by the Office of Insurance Regulation (OIR) of its affairs, transactions, accounts, records, and assets, no less frequently than once every 3 years. This bill changes the frequency of the required examination to at least once every 5 years, with the exception of domestic insurers that have held a certificate of authority for less than 3 years. These domestic insurers would continue to be subject to an examination on annual basis.

The bill expands the specialists that qualify to conduct independent examinations. The current list comprised of independent certified public accountants, actuaries, and reinsurance specialists is expanded to also include investment specialists and information technology specialists.

The bill allows the OIR to unilaterally select the independent examining firm by removing the requirement that the insurer and the OIR must agree to an independent examination, the rates and terms of the examination, and the selection of such an independent examiner. The bill also provides additional criteria for the selection of an independent examiner. Rates charged by such firms must be consistent with rates charged by other firms in similar professions, and the firm selected by the OIR to conduct an examination cannot have a conflict of interest that would preclude an independent examination. The bill eliminates the \$25,000 cap on the fee for the annual examination of a domestic insurer that has held a certificate of authority for less than 3 years.

This bill substantially amends the following sections of the Florida Statutes: 624.316.

II. Present Situation:

The OIR is responsible for all activities concerning insurers and other risk-bearing entities such as licensing, solvency, rates, and policy forms.¹ Sections 624.361 and 624.3161, F.S. require the OIR to conduct financial examinations and market conduct examinations, respectively, of insurers. The scope of the financial examination includes a review of the affairs, records, transactions, accounting procedures and financial condition of an insurer.² Generally, domestic insurers are subject to financial examinations not less frequently than once every 3 years and, under certain specified circumstances, once every year, if the insurer has held a certificate for less than 3 years. The OIR is also required to examine each insurer applying for an initial certificate of authority prior to issuing the certificate of authority. Examination fees for domestic insurers that have held a certificate of authority for less than 3 years are capped at \$25,000.

An additional exception exists where an insurer has continuously held a certificate of authority without a change in ownership (subject to ss. 624.4245 or 628.461, F.S.), for more than 15 years.³ That insurer is subject to an examination no less than once every 5 years. Section 624.361(2)(f), F.S., also provides that these provisions do not limit the ability of the OIR to conduct more frequent examinations. Currently, an independent certified public accountant's audit report prepared in accordance with the statutory requirements may substitute for the OIR's own examination of an insurer.

In lieu of conducting its own examination, the OIR may accept a full report of the most recent examination of a foreign insurer, certified to by the insurance regulator of another state. When conducting an examination of an alien insurer, unless otherwise required by the OIR, the OIR must limit its examination to the insurer's insurance transactions and affairs in the United States.⁴

The OIR is authorized to contract with an independent firm to conduct the financial examination if the insurer concurs. The OIR must provide the insurer with a list of three firms approved by OIR to complete the examination and the insurer must select one firm from the list to complete the examination.⁵ The OIR and insurer must agree on the rates and terms of the examination. However, the concurrence of the insurer for such an examination is not required if the OIR reasonably suspects criminal misconduct on the part of the insurer. Such examinations may be conducted by independent certified public accountants, actuaries, and reinsurance specialists. The insurer that is the subject of the examination is required to pay the examining firm directly for the costs of the examination.

The OIR currently has the authority under s. 624.3161, F.S., to outsource market conduct examinations. The reasonable cost of the examination is paid by the insurer being examined. The OIR and the contract examiner negotiate the rates and terms of the examination.

¹ Sections 20.121(3)(a)1. and 626.016, F.S.

² Section 624.316, F.S.

³ Section 624.316(2)(f)2., F.S.

⁴ Section 624.316(2)(d), F.S.

⁵ Section 624.316(2)(e)2., F.S.

The National Association of Insurance Commissioners (NAIC) adopted the *Model Law on Examinations* in 1991. As of July 2006, 40 states or territories have adopted the model law or similar legislation. An additional 12 states have adopted related legislation or regulations. The Florida law codifies many of the provisions of the model law. The NAIC recommended that states be allowed to employ specialists as part of the examination process to perform portions of the examination when the expertise is not available within the regulator's office, and to bill the insurer directly. Further, any funding mechanism for the examination should assure that the manner in which the examinations are funded does not influence the scheduling, scope, or conduct of the examination.

III. Effect of Proposed Changes:

Section 1 amends s. 624.316(2)(a), F.S., to revise financial examination requirements to adopt additional provisions within the NAIC model law. The bill revises the examination cycle by requiring the OIR to conduct an exam once every 5 years rather once every 3 years with the exception of a domestic insurers that have held a certificate of authority for less than 3 years, which are required to be examined on annual basis. This change would standardize and streamline the examination process and the selection of independent examiners.

The bill also revises provisions relating to the selection and payment of independent examiners and the rulemaking authority related to the process. The bill allows the OIR to unilaterally determine which independent examiner conducts the examiner and the rates and terms of such an examination. Currently, the OIR and the insurer must agree upon the entity that conducts the examination and the rates and terms. This section is also amended to expand the types of entities that may conduct examinations to include investment specialists and information technology specialists. The rules must provide that the rates charged to the insurer by the examining firm are consistent with rates charged by other firms in a similar profession. The provision stating that the insurer's agreement is not required if OIR reasonably suspects criminal conduct, is removed. Any firm selected by the OIR to conduct the examination is required to be free of any conflicts of interest that might impair its independence. The rules must provide that the insurer's payment for the examination is determined in accordance with rates and terms established by the OIR and the examining firm.

The bill eliminates the \$25,000 cap on the fee for the annual examination of a domestic insurer that has held a certificate of authority for less than 3 years. As noted above, the rates charged to an insurer must be consistent with rates charged by other firms in a similar profession. The section removes the language that permits an independent certified public accountant's audit report to substitute for the OIR's examination.

The provision requiring an insurer that has continuously held a certificate of authority for more than 15 years, without a change in ownership, to have an examination no less frequently than once every 5 years is removed to be consistent with the amended language that subjects all insurers (with the exception noted above) to an examination no less than once every 5 years.

Section 2 provides that the act takes effect on July 1, 2007.

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:

Insurers should realize a savings due to changing the frequency of examination for once every 3 years to once every 5 years. However, domestic insurers who have continuously held a certificate of authority for less than 3 years may see increased expenses due to the removal of the \$25,000 cap on examination fees. This increase due to the removal of fee cap might be mitigated by the language which requires the adoption of rules that provide that examination rates must be consistent with rates charged by other firms in a similar profession.

C. Government Sector Impact:

According to the OIR, there are currently 13 full-time life and health field examiner staff and 23 property and casualty examiner staff in the financial examination area. Staff was unable to determine the funding associated with these positions, which are included in the Compliance and Enforcement budget entity. Since the bill authorizes the OIR to outsource all or some of the financial examinations function, it would be anticipated that some or all of the positions and funding for this function would no longer be necessary. However, the OIR has indicated that do not anticipate reducing their current staffing.

VI. Technical Deficiencies:

None.

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.
