

Committee Substitute for Senate Bill No. 2174

An act relating to insurance; amending s. 624.318, F.S.; requiring access to records by the department; repealing s. 624.501(11) and (23), F.S.; repealing provisions establishing specified fees; amending s. 626.112, F.S.; prohibiting certain activities that constitute solicitation of insurance by unlicensed persons; amending s. 626.171, F.S.; revising agent application requirements; amending s. 626.181, F.S.; extending a period of eligibility for reappointment; creating s. 626.202, F.S.; requiring fingerprinting of specified persons; amending s. 626.431, F.S.; extending the nonappointment period to 48 months; amending s. 626.521, F.S.; requiring certain information upon demand of the department; amending s. 626.541, F.S.; requiring notification to the department of certain name changes and other information; amending s. 626.5715, F.S.; removing a requirement that the Department of Insurance adopt rules to assure parity of regulation; providing that the Insurance Code applies to all transactions; amending s. 626.601, F.S.; revising a confidentiality provision; amending s. 626.611, F.S.; prohibiting the sale of unregistered securities; amending ss. 626.741, 626.792, 626.835, F.S.; limiting the authority of certain nonresident licenses to that granted by the resident state; amending s. 626.8427, F.S.; revising provisions governing the duration of licenses; amending s. 626.856, F.S.; revising the definition of the term "company employee adjuster"; amending s. 626.872, F.S.; limiting the term of a temporary adjuster's license; amending s. 626.873, F.S.; revising a catchline regarding nonresident company adjusters; amending s. 627.927; limiting an experience requirement for surplus lines agents; extending a renewal grace period; creating s. 626.9531, F.S.; requiring the identification of certain persons in advertisements and other communications; amending ss. 648.315, 648.38, 648.384, F.S.; extending a period of eligibility for reappointment; creating s. 626.9651, F.S.; requiring the Department of Insurance to adopt rules governing the use of a consumer's nonpublic personal financial and health information; providing standards for the rules; providing an effective date.

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

Section 1. Subsection (2) of section 624.318, Florida Statutes, is amended to read:

624.318 Conduct of examination or investigation; access to records; correction of accounts; appraisals.—

(2) Every person being examined or investigated, and its officers, attorneys, employees, agents, and representatives, shall make freely available to the department or its examiners or investigators the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination or investigation. An agent who provides other products or services or maintains customer information

not related to insurance must maintain records relating to insurance products and transactions separately if necessary to give the department access to such records. If records relating to the insurance transactions are maintained by an agent on premises owned or operated by a third party, the agent and the third party must provide access to the records by the department.

Section 2. Subsections (11) and (23) of section 624.501, are repealed.

Section 3. Subsection (1) of section 626.112, Florida Statutes, is amended and subsection (8) is added to that section to read:

626.112 License and appointment required; agents, customer representatives, solicitors, adjusters, insurance agencies, service representatives, managing general agents.—

(1)(a) No person may ~~shall~~ be, act as, or advertise or hold himself or herself out to be an insurance agent, customer representative, solicitor, or adjuster unless he or she is currently licensed and appointed.

(b) Except as provided in subsection (6) or in applicable department rules, and in addition to other conduct described in this chapter with respect to particular types of agents, 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. For purposes of this requirement, as applicable to any of the license types described in this section, the solicitation of insurance is the attempt to persuade any person to purchase an insurance product by:

1. Describing the benefits or terms of insurance coverage, including premiums or rates of return;
2. Distributing an invitation to contract to prospective purchasers;
3. Making general or specific recommendations as to insurance products;
4. Completing orders or applications for insurance products; or
5. Comparing insurance products, advising as to insurance matters, or interpreting policies or coverages.

However, an employee leasing company licensed pursuant to chapter 468 which is seeking to enter into a contract with an employer that identifies products and services offered to employees may deliver proposals for the purchase of employee leasing services to prospective clients of the employee leasing company setting forth the terms and conditions of doing business; classify employees as permitted by s. 468.529; collect information from prospective clients and other sources as necessary to perform due diligence on the prospective client and to prepare a proposal for services; provide and receive enrollment forms, plans, and other documents; and discuss or explain in general terms the conditions, limitations, options, or exclusions of insurance benefit plans available to the client or employees of the employee leasing company were the client to contract with the employee leasing company. Any advertising materials or other documents describing specific in-

insurance coverages must identify and be from a licensed insurer or its licensed agent or a licensed and appointed agent employed by the employee leasing company. The employee leasing company may not advise or inform the prospective business client or individual employees of specific coverage provisions, exclusions, or limitations of particular plans. As to clients for which the employee leasing company is providing services pursuant to s. 468.525(4), the employee leasing company may engage in activities permitted by ss. 626.041, 626.051, and 626.062, subject to the restrictions specified in those sections. If a prospective client requests more specific information concerning the insurance provided by the employee leasing company, the employee leasing company must refer the prospective business client to the insurer or its licensed agent or to a licensed and appointed agent employed by the employee leasing company.

(8) No insurance agent, insurance agency, or other person licensed under the Insurance Code may pay any fee or other consideration to an unlicensed person other than an insurance agency for the referral of prospective purchasers to an insurance agent which is in any way dependent upon whether the referral results in the purchase of an insurance product.

Section 4. Subsections (2) and (5) of section 626.171, Florida Statutes, are amended to read:

626.171 Application for license.—

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

~~(a) His or her full name, age, social security number, residence, and place of business, and occupation for the 5-year period preceding the date of application.~~

~~(b) His or her qualifications for the license, as follows:~~

~~1. What efforts he or she has made or intends to make to become familiar with the insurance laws of this state and with the provisions of the contracts to be negotiated.~~

~~2. What insurance experience he or she has had, if any.~~

~~3. What insurance instruction he or she has had or expects to receive.~~

~~4. What approved insurance courses he or she~~

(b) Proof that he or she has completed or is in the process of completing any required prelicensing course which may be used to meet any educational requirements.

(c) Whether he or she has been refused or has voluntarily surrendered or has had suspended or revoked a license to solicit insurance by the department or by the supervising officials of any state.

(d) 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.

(e) Proof that the applicant meets the requirements for the type of license for which he or she is applying ~~Whether the applicant will devote all or part of his or her efforts to acting as an insurance representative and, if 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.~~

(f) Such other or additional information as the department may deem proper to enable it to determine the character, experience, ability, and other qualifications of the applicant to hold himself or herself out to the public as an insurance representative.

(5) An application for a license as an agent, customer representative, solicitor, adjuster, insurance agency, service representative, managing general agent, or reinsurance intermediary ~~must, or claims investigator shall be accompanied by a set of the individual applicant's fingerprints, or, if the applicant is not an individual, by a set of the fingerprints of the sole proprietor, majority owner, partners, officers, and or directors, on a form adopted by rule of the department and accompanied by the fingerprint processing fee set forth in s. 624.501. The fingerprints shall be certified by a law enforcement officer.~~

Section 5. Section 626.181, Florida Statutes, is amended to read:

626.181 Number of applications for licensure required.—After a license as agent, customer representative, or adjuster has been issued to an individual, the same individual shall not be required to take another examination for a similar license, regardless, in the case of an agent, of the number of insurers to be represented by him or her as agent, unless:

(1) Specifically ordered by the department to complete a new application for license; or

(2) During any period of ~~48~~ 24 months since the filing of the original license application, such individual was not appointed as an agent, customer representative, or adjuster, unless the failure to be so appointed was due to military service, in which event the period within which a new application is not required may, in the discretion of the department, be extended to 12 months following the date of discharge from military service if the military service does not exceed 3 years, but in no event to extend under this clause for a period of more than 6 4 years from the date of filing of the original application for license.

Section 6. Section 626.202, Florida Statutes, is created to read:

626.202 Fingerprinting requirements.—If there is a change in ownership or control of any entity licensed under this chapter, or if a new partner, officer, or director is employed or appointed, a set of fingerprints of the new owner, partner, officer, or director must be filed with the department within 30 days after the change. The acquisition of 10 percent or more of a the voting securities of a licensed entity is considered a change of ownership or

control. The fingerprints must be certified by a law enforcement officer and be accompanied by the fingerprint processing fee in s. 624.501.

Section 7. Subsections (2) and (3) of section 626.431, Florida Statutes, are amended to read:

626.431 Effect of expiration of license and appointment.—

(2) When a licensee's last appointment for a particular class of insurance has been terminated or not renewed, the department must notify the licensee that his or her eligibility for appointment as such an appointee will expire unless he or she is appointed prior to expiration of the 48-month ~~24-month~~ period referred to in subsection (3).

(3) An individual who fails to maintain an appointment with an appointing entity writing the class of business listed on his or her license during any 48-month ~~24-month~~ period shall not be granted an appointment for that class of insurance until he or she qualifies as a first-time applicant.

Section 8. Subsection (2) of section 626.521, Florida Statutes, is amended to read:

626.521 Character, credit reports.—

(2) If requested by the department ~~Within 60 days after such appointment or employment has been made or commenced,~~ the insurer, manager, general agent, general lines agent, or employer, as the case may be, shall furnish to the department on a form furnished by the department, such information as it may reasonably require relative to such individual and investigation.

Section 9. Section 626.541, Florida Statutes, is amended to read:

626.541 Firm, corporate, and business names; officers; associates; notice of changes.—

(1) Any licensed agent or adjuster doing business under a firm or corporate name or under any business name other than his or her own individual name shall, within 30 days after the initial transaction of insurance under such business name, ~~annually on or before January 1~~ file with the department, on forms furnished by it, a written statement of the firm, corporate, or business name being so used, the address of any office or offices or places of business making use of such name, and the name and social security number of each officer and director of the corporation and of each individual associated in such firm or corporation as to the insurance transactions thereof or in the use of such business name.

(2) In the event of any change of such name, or of any of the officers and directors, or of any of such addresses, or in the personnel so associated, written notice of such change must ~~shall~~ be filed with the department within 30 ~~60~~ days by or on behalf of those licensees terminating any such firm, corporate, or business name or continuing to operate thereunder.

(3) Any licensed insurance agency shall, within 30 days after a change, promptly, but in no event later than annually on or before January 1, notify the department of any change in the information contained in the application filed pursuant to s. 626.172.

Section 10. Section 626.5715, Florida Statutes, is amended to read:

626.5715 Parity of regulation of insurance agents and agencies.—~~The Insurance Code requirements apply equally to all department shall adopt rules to assure the parity of regulation in this state of insurance transactions as between an insurance agency owned by or an agent associated with a federally chartered financial institution, an insurance agency owned by or an agent associated with a state-chartered financial institution, and an insurance agency owned by or an agent associated with an entity that is not a financial institution. Except as provided in the code, one~~ Such rules shall be limited to assuring that no insurance agency or agent is not subject to more stringent or less stringent regulation than another insurance agency or agent on the basis of the regulatory status of the entity that owns the agency or is associated with the agent. For the purposes of this section, a person is “associated with” another entity if the person is employed by, retained by, under contract to, or owned or controlled by the entity directly or indirectly. This section does not apply with respect to a financial institution that is prohibited from owning an insurance agency or that is prohibited from being associated with an insurance agent under state or federal law.

Section 11. Subsection (6) of section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; inquiry; fingerprinting.—

(6) The complaint and any information obtained pursuant to the investigation by the department are confidential and are exempt from the provisions of s. 119.07, unless the department files a formal administrative complaint, emergency order, or consent order against the licensee, ~~or unless the licensee waives confidentiality.~~ Nothing in this subsection shall be construed to prevent the department from disclosing the complaint or such information as it deems necessary to conduct the investigation, to update the complainant as to the status and outcome of the complaint, or to share such information with any law enforcement agency.

Section 12. Subsection (16) is added to section 626.611, Florida Statutes, to read:

626.611 Grounds for compulsory refusal, suspension, or revocation of agent's, title agency's, solicitor's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.— The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, solicitor, adjuster, customer representative, service representative, or managing general agent, and it shall 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:

(16) Sale of an unregistered security that was required to be registered, pursuant to chapter 517.

Section 13. Subsection (2) of section 626.741, Florida Statutes, is amended to read:

626.741 Nonresident agents; licensing and restrictions.—

(2) The department shall not, however, issue any license and appointment to any nonresident who has an office or place of business in this state, or who has any direct or indirect pecuniary interest in any insurance agent, insurance agency, or in any solicitor licensed as a resident of this state; nor to any individual who does not, at the time of issuance and throughout the existence of the Florida license, hold a license as agent or broker issued by the state of his or her residence; nor to any individual who is employed by any insurer as a service representative or who is a managing general agent in any state, whether or not also licensed in another state as an agent or broker. The foregoing requirement to hold a similar license in the applicant's state of residence does not apply to customer representatives unless the home state licenses residents of that state in a like manner. The prohibition against having an office or place of business in this state does not apply to customer representatives who are required to conduct business solely within the confines of the office of a licensed and appointed Florida resident general lines agent in this state. The authority of such nonresident license is limited to the specific lines of authority granted in the license issued by the agent's state of residence and further limited to the specific lines authorized under the nonresident license issued by this state. The department shall have discretion to refuse to issue any license or appointment to a nonresident when it has reason to believe that the applicant by ruse or subterfuge is attempting to avoid the intent and prohibitions contained in this subsection or to believe that any of the grounds exist as for suspension or revocation of license as set forth in ss. 626.611 and 626.621.

Section 14. Subsection (6) of section 626.792, Florida Statutes, is amended to read:

626.792 Nonresident agents.—

(6) The licensee shall, throughout the existence of the Florida nonresident life license and appointment, hold a license as a resident life agent in his or her state of residence. The authority of the nonresident license is limited to the specific lines of authority granted in the license issued by the agent's state of residence and further limited to the specific lines authorized under the nonresident license issued by this state.

Section 15. Subsection (6) of section 626.835, Florida Statutes, is amended to read:

626.835 Nonresident agents.—

(6) The licensee shall, throughout the existence of his or her Florida nonresident health license and appointment, hold a license as a resident health agent in his or her state of residence. The authority of the nonresident license is limited to the specific lines of authority granted in the license

issued by the agent's state of residence and further limited to the specific lines authorized under the nonresident license issued by this state.

Section 16. Section 626.8427, Florida Statutes, is amended to read:

626.8427 Number of applications for licensure required; exemption; effect of expiration of license.—

(1) After a license as a title insurance agent has been issued to a title insurance agent, the agent is not required to file another license application for a similar license, irrespective of the number of insurers to be represented by the agent, unless:

(a) The agent is specifically ordered by the department to complete a new application; or

(b) During any period of ~~48~~ 24 months since the filing of the original license application, the agent was not appointed, unless in the case of individuals the failure to be so appointed was due to military service, in which event the period within which a new application is not required may, in the discretion of the Department of Insurance, be extended for 12 months following the date of discharge from military service if the military service does not exceed 3 years, but in no event shall the period be extended under this clause for a period of more than ~~6~~ 4 years from the date of filing the original application.

(2) The department shall not charge a fee for filing an application for license with respect to any applicant for license who is exempted under this section from filing an application.

(3) Upon the expiration or termination of a title insurance agent's appointment, the title insurance agent is without authority conferred by the license and shall not engage or attempt to engage in any activity requiring a title insurance agent's license and appointment. The agent shall not again be granted an appointment until he or she fully qualifies therefor as provided in this chapter. An application shall be required in all cases for qualification of a new title insurance agent's license when application is made after the expiration of ~~4~~ 2 years from the date of the expiration or termination of the last appointment held by a licensee.

Section 17. Section 626.856, Florida Statutes, is amended to read:

626.856 "Company employee adjuster" defined.—A "company employee adjuster" is a person 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 18. Subsection (3) of section 626.872, Florida Statutes, is amended to read:

626.872 Temporary license.—

(3) ~~In no event shall~~ An adjuster licensed under this section may not adjust losses in this state after expiration of the temporary license without having been issued ~~passed the written examination as for~~ a regular adjuster's license.

Section 19. Section 626.873, Florida Statutes, is amended to read:

626.873 Nonresident ~~adjusters and nonresident~~ company employee adjusters.—

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

(a) Is a currently licensed insurance adjuster in his or her home state, if such state requires a license.

(b) Is an employee of an insurer, or a wholly owned subsidiary of an insurer, admitted to do business in this state.

(c) Has filed a certificate or letter of authorization from the insurance department of his or her home state, if such state requires an adjuster to be licensed, stating that he or she holds a current license or authorization to adjust insurance losses. Such certificate or authorization must be signed by the insurance commissioner, or his or her deputy, of the adjuster's home state and must reflect whether or not the adjuster has ever had his or her license or authorization in the adjuster's home state suspended or revoked and, if such is the case, the reason for such action.

(2) Any individual who holds a Florida nonresident adjuster's license, upon becoming a resident of this state may, for a period not to exceed 90 days, continue to adjust claims in this state under his or her nonresident license and appointment. Such individual must make application for resident licensure and must become licensed as a resident adjuster within 90 days of becoming a resident of this state.

(3) Upon becoming a resident of this state, an individual who holds a Florida nonresident adjuster's license is no longer eligible for licensure as a nonresident adjuster if such individual fails to make application for a resident license and become licensed as a resident adjuster within 90 days. Such individual may apply for a resident license pursuant to s. 626.865, s. 626.866, or s. 626.867.

Section 20. Subsections (1) and (7) of section 626.927, Florida Statutes, are amended to read:

626.927 Licensing of surplus lines agent.—

(1) Any individual while licensed and appointed as a resident general lines agent as to property, casualty, and surety insurances, and who is deemed by the department to have had sufficient experience in the insurance business to be competent for the purpose, and who, within the 4 years

immediately preceding the date the application was submitted, has a minimum of 1 year's experience working for a licensed surplus lines agent or who has successfully completed 60 class hours in surplus and excess lines in a course approved by the department, may be licensed as a surplus lines agent, upon taking and successfully passing a written examination as to surplus lines, as given by the department.

(7) 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 24 months next following the date of cancellation or expiration of the prior appointment. The department may, in its discretion, require 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 21. Section 626.9531, Florida Statutes, is created to read:

626.9531 Identification of insurers, agents, and insurance contracts.—Advertising materials and other communications developed by insurers regarding insurance products shall clearly indicate that the communication relates to insurance products. When soliciting or selling insurance products, agents shall clearly indicate to prospective insureds that they are acting as insurance agents with regard to insurance products and identified insurers.

Section 22. Section 648.315, Florida Statutes, is amended to read:

648.315 Number of applications for licensure required.—After a license as a bail bond agent has been issued to an individual, the same individual is not required to file another application for a similar license unless:

(1) Specifically ordered by the department to complete a new application; or

(2) A period of 48 24 months transpires between the time the licensee's last limited surety agent or professional bail bond agent's appointment is terminated and the date an application for a similar appointment is received by the department.

Section 23. Subsection (10) of section 648.38, Florida Statutes, is amended to read:

648.38 Licensure examination for bail bond agents; time; place; fees; scope.—

(10) Any bail bond agent who successfully passes an examination and is subsequently licensed as a bail bond agent must be appointed within 48 24 months after the date of licensure or be subject to another examination unless failure to be so appointed was due to military service, in which case the period of time in which another examination is not required may, in the department's discretion, be extended to 12 months following the date of discharge from military service, if the military service does not exceed 3

years. An extension of more than 6 4 years may not be granted under this subsection.

Section 24. Subsection (2) of section 648.384, Florida Statutes, is amended to read:

648.384 Effect of expiration of appointment; bail bond agents and runners.—

(2) 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 ~~24-month~~ period, the bail bond agent or runner may not be granted a reappointment until he or she qualifies as a first-time applicant.

Section 25. Section 626.9651, Florida Statutes, is created to read:

626.9651 Privacy.—The department shall adopt rules consistent with other provisions of the Florida Insurance Code to govern the use of a consumer's nonpublic personal financial and health information. These rules must be based on, consistent with, and not more restrictive than the Privacy of Consumer Financial and Health Information Regulation, adopted September 26, 2000, by the National Association of Insurance Commissioners; however, 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. In addition, these rules must be consistent with, and not more restrictive than, the standards contained in Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102. If the department determines that a health insurer or health maintenance organization is in compliance with, or is actively undertaking compliance with, the consumer privacy protection rules adopted by the United States Department of Health and Human Services, in conformance with the Health Insurance Portability and Affordability Act, that health insurer or health maintenance organization is in compliance with this section.

Section 26. This act shall take effect July 1, 2001.

Approved by the Governor June 1, 2001.

Filed in Office Secretary of State June 1, 2001.