

Committee Substitute for Senate Bill No. 1662

An act relating to insurance; amending s. 626.901, F.S.; revising an exception from the prohibition against representing or aiding unauthorized insurers; providing for immediate cease-and-desist orders for violations of the prohibition; providing legislative findings; authorizing investigations of activities that may constitute violations of the prohibition; amending s. 626.902, F.S.; providing an exception from penalty provisions for a person who cooperates with the office to administer the Unauthorized Insurers Process Law; amending s. 626.908, F.S.; providing conditions on defenses of certain actions against unauthorized insurers and persons representing or aiding them; prescribing a time limit on motions to quash or set aside service of process in actions against such unauthorized insurers and other persons; providing an effective date.

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

Section 1. Subsection (4) of section 626.901, Florida Statutes, is amended, and subsections (5) and (6) are added to that section, to read:

626.901 Representing or aiding unauthorized insurer prohibited.—

(4) This section does not apply to:

(a) Matters authorized to be done by the office under the Unauthorized Insurers Process Law, ss. 626.904-626.912.

(b) Surplus lines insurance when written pursuant to the Surplus Lines Law, ss. 626.913-626.937.

(c) Transactions as to which a certificate of authority is not required of an insurer, as stated in s. 624.402.

(d) Independently procured coverage written pursuant to s. 626.938 which is not solicited, marketed, negotiated, or sold in this state.

(5) The office or department may, pursuant to s. 120.569 and in its discretion, issue an immediate final order to cease and desist to any person or entity that violates this section. The Legislature finds that a violation of this section constitutes an imminent and immediate threat to the health, safety, and welfare of the residents of this state.

(6) The office may investigate the accounts, records, documents, and transactions pertaining to the activities of any unauthorized insurer or person, as defined in s. 624.04, which is or may be aiding or representing an unauthorized insurer.

Section 2. Subsection (3) is added to section 626.902, Florida Statutes, to read:

626.902 Penalty for representing unauthorized insurer.—

(3) This section does not apply to actions of a person who is assisting the office at its direction in the administration of its responsibilities under ss. 626.904-626.912, the Unauthorized Insurers Process Law.

Section 3. Subsections (1) and (3) of section 626.908, Florida Statutes, are amended to read:

626.908 Defense of action by unauthorized insurer or person representing or aiding such insurer; damages and attorney fee.—

(1) Before an unauthorized insurer or person representing or aiding such insurer files or causes to be filed any pleading in any action or proceeding instituted against it under s. ss. 626.906, s. and 626.907, or s. 626.909 or a suit instituted by the office or the department enforcing agency action against unauthorized insurers under s. 120.69, an unauthorized insurer or person representing or aiding such insurer shall:

(a) Procure a certificate of authority to transact insurance in this state, or

(b) Deposit with the clerk of the court in which such action or proceeding is pending cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action. The court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action or proceeding, and that the insurer or person representing or aiding such insurer will pay any final judgment entered therein without requiring suit to be brought on such judgment in the state where such funds or securities are located, and that if, nevertheless, such suit is brought on such final judgment the insurer or person representing or aiding such insurer shall waive all defenses thereto.

(c) Any proof, evidence, or testimony in support of such motion shall be taken in the jurisdiction of the court in which the action or proceeding is pending.

(d) If the unauthorized insurer or person representing or aiding such insurer seeks to take discovery or de bene esse depositions of witnesses beyond the jurisdiction of the court in which the action is pending, upon reasonable application by the plaintiff, the court by appropriate order shall require the unauthorized insurer or person representing or aiding such insurer, before such depositions are taken, to make similar deposit as described in paragraph (b), in sufficient amount to pay the reasonable expenses of the plaintiff and his or her attorney in attending the taking of such depositions, including reasonable attorney's fees to be fixed by the court.

(3) Nothing in subsection (1) is to be construed to prevent an unauthorized insurer or person representing or aiding such insurer from filing,

within 30 days after service, a motion to quash or to set aside the service of any process made in the manner provided in s. 626.907 hereof on the ground either:

(a) That such unauthorized insurer or person representing or aiding such insurer has not done any of the acts enumerated in s. 626.906; or

(b) That the person on whom service was made pursuant to s. 626.907(2) was not doing any of the acts therein enumerated.

Section 4. This act shall take effect July 1, 2005.

Approved by the Governor June 3, 2005.

Filed in Office Secretary of State June 3, 2005.