

FLORIDA BEGINS LICENSING AND REGISTERING
INSURANCE AGENCIES
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Introduction

In 2005, the Florida Legislature enacted a law which substantially changed the way insurance agencies are licensed and regulated in Florida. While the law is already one year old, the implementation of it has really just begun. Not surprisingly, given the breadth of the law, and the Florida Department of Financial Services' interpretation of certain of its provisions, many questions remain unanswered. Nonetheless, there is a pending deadline of October 1, 2006, for compliance with the law, with strict penalties for any compliance failures. The key provisions of this law, along with some of the unresolved issues, are discussed below.

Historical Florida Law

Under former Florida law, an insurance agency was required to be licensed by the Florida Department of Financial Services (the "DFS") only if its owner or another principal in the agency was convicted of a specific crime or had committed certain enumerated violations of law.² However, all insurance agencies were required to file a form with the DFS designating a primary agent who is responsible for supervising the agents who work at a particular agency location.³

Florida law was therefore substantially different from the laws of all other jurisdictions. In 2000 the National Association of Insurance Commissioner ("NAIC") amended the Producer Licensing Model Act ("PLMA"). These changes to the PLMA finds their way back to the Federal Gramm-Leach-Bliley Financial Services Modernization Act of 1999 ("GLB") which threatened the states with the creation of the National Association of Registered Agents and Brokers ("NARAB") if a majority of the states did not adopt uniform or reciprocal legislation relating to agent and agency licensing within three years. As a result of this Federal "threat," the NAIC revised the PLMA which has now been adopted in some form in virtually all Jurisdictions.

The PLMA, along with the National Insurance Producer Registry⁴ ("NIPR"), has gone a long way to increasing uniformity and reciprocity in agent and agency licensing. The adoption of uniform producer licensing applications has gone even further in terms of simplifying multi-state licensing of agents and agencies. Florida, however, did not follow the guidance set forth in the PLMA. In fact, it was the sole holdout in not requiring or permitting an agency to obtain a license. One consequence of this is that Florida resident agencies have, historically, run into some difficulty getting licensed in other jurisdictions. This was due to either a requirement of the non-domestic regulator that the applicant provide a certified copy of its resident license (something a Florida resident agency did not have) or a reciprocity concern that an agency domiciled in another jurisdiction could not get licensed in Florida (because no agency could, unless its owners/principals had been convicted of a specific crime or committed other enumerated violations).⁵ Thus, Florida domiciled agencies have had some difficulty expanding into other jurisdictions due to a lack of reciprocity arising from Florida's historically limited licensure of agencies.

Whether the changes to Florida law discussed below will resolve this reciprocity issue is yet to be seen, although this author believes that if an agency opts for the licensing route (as opposed to the registration alternative), then other states should recognize that license for purposes of obtaining a nonresident license in other jurisdictions.

New Florida Law

Senate Bill 1912⁶ was enacted by the Florida Legislature on May 6, 2005 (the "Agency Act"). The Agency Act repealed the requirement to file a form designating a primary agent to supervise each agency location⁷ and instead requires that insurance agencies be licensed or registered with the DFS. Under the Agency Act, effective October 1, 2006, an individual, firm, partnership, or association shall not act in its own name or trade name, directly or indirectly, as an insurance agency unless it files with the DFS an application for licensure or registration for each place of business at which it engages in any insurance activity.⁸ On its face, the Agency Act requires all branch offices transacting Florida business to be licensed separately, which may result in a substantial regulatory compliance burden for large, multi-state agencies. For example, a national insurance agency with several hundred

(or thousand) locations, will have Florida resident agents in its Florida locations and may have Florida licensed nonresident agents in many of its other locations in other states. If insurance is sold to Florida residents by these licensed individuals, then each location will need to be separately licensed (or registered).

The law, which became effective October 1, 2005, gave insurance agencies a 12 month “window” in which to get licensed (or registered). The law required the Department of Financial Services to begin accepting applications on October 1, 2005. However, it has taken the DFS until approximately April, 2006, to create and implement its on-line application for insurance agencies. Thus, all affected agencies have from April, 2006 until October 1, 2006, to complete the licensing or registration process.

Registration

The Agency Act generally requires all insurance agencies to be licensed. However, there are three categories of agencies which may submit a registration application in lieu of a license application:

- (1) an insurance agency engaged in business in Florida before January 1, 2003,⁹ which is wholly owned by licensed and appointed insurance agents;
- (2) an incorporated agency whose voting shares are publicly traded;¹⁰ and
- (3) an agency whose primary function is offering insurance as a service or member benefit to members of a nonprofit corporation.¹¹

The DFS is required to issue an insurance agency registration to any agency that files a written application and qualifies for registration. As with licensure, each agency location must go through the process to be registered. The application for registration requires the insurance agency to provide the same information required for an agency applying for licensure. If an application for registration is denied, the agency must file a license application no later than 30 days after the date the registration is denied. A registered insurance agency must also file an application for licensure no later than 30 days after the date that it ceases to qualify for registration or if an owner or another principal in the agency is convicted of a specific crime or has committed certain enumerated violations of law.¹² This is the same list of crimes and violations that historically required an agency to be licensed.

While the registration process does offer some advantages to an agency (i.e. it does not need to be periodically renewed, and fingerprints of its officers, directors, and owners are not required), there may be a drawback for Florida resident agencies opting for registration. That drawback is that the agency will still not have a “resident license” which can be offered to other jurisdictions to aid in licensure in those other jurisdictions as a nonresident agency. The DFS has acknowledged this dilemma.¹³

Licensure

Beginning October 1, 2005, the DFS is required to accept the uniform application for nonresident agency licensure.¹⁴ However, it is our understanding that when a nonresident agency actually submits the written uniform application, the DFS is returning the same and “urging” the agency to instead complete the DFS’s online version of its application. Existing agencies must submit an application to the DFS no later than October 1, 2006. The DFS has created an online application process which is available at <https://aalf.fldfs.com>. This online application is not available in paper format, and consequently, an agency will have no idea what questions will be asked until they actually begin filling out the online application.

As mentioned above, the definition of an agency which is subject to licensure is “each place of business at which it engages in any activity which may be performed only by a licensed agent.”¹⁵ This obviously includes every branch office of an insurance agency, but also likely includes the homes of insurance agents if they engage in any sales activities from their homes.¹⁶

In a somewhat surprising move, the DFS is not charging or collecting any application or license fee in connection with a license (or registration) application or any renewal thereof. Licenses are good for 3 years before they need to be renewed. As mentioned above, registrations do not have to be renewed.

Fingerprints

Fingerprints will be required of all owners, officers and directors of an insurance agency,¹⁷ although individuals who are currently licensed and appointed do not need to file their fingerprints with the DFS in connection with an application for agency licensure. In addition, publicly traded corporations (whether they are seeking registration or licensure) are exempt from the fingerprint requirements.¹⁸ The DFS is further prohibited from requiring credit or character reports to be submitted for persons required to be listed on the agency application.¹⁹

Primary Agent/Agent in Charge

While the “primary agent” law has been repealed, and the requirement for an agency to file with DFS the primary agent form has ceased, Florida law requiring each agency location to have an “agent in full-time charge” of each agency location remains.²⁰ Because of the phrase “full-time” found in Fla. Stat. Section 626.747, the DFS has interpreted this to prohibit an agent from being the agent in charge of more than one agency location.²¹

This creates a very practical problem, given the “branch office” licensing requirement also imposed by this new law. For example, assume an individual agent has an office location out of which he or she sells insurance 3 days a week. The remainder of the time the agent operates from his or her home. Under the definition of an agency set forth above, each location would be required to be licensed or registered. Perhaps this is burdensome, but the statutory test arguably would be met. Each location would also need an “agent in charge”. Presumably this would have to be the individual agent (since in my hypothetical scenario, there is no one else). Yet the individual agent can not be the agent in charge for each location under the DFS guidance set forth in note 21. Obviously there is a disconnect here between the various statutory requirements.

Agency Names

The Agency Act also gives the DFS the authority to disapprove the use of any true or fictitious name of any insurance agency, other than the bona fide natural name of an individual.²² The DFS has indicated that it will compile and distribute a list of agency names that are considered misleading and which it will use to determine whether a name should be rejected. What is less clear (although there should be only one right answer) is what will happen when an incorporated agency applies numerous (dozens or hundreds) times for each location. Obviously, the corporate name of the agency is the same whether it has an office in Orlando or Miami or New York. Presumably the DFS will issue numerous licenses in the same name, with the only distinguishing characteristic being the location and agent in charge..

Carrier Responsibilities

The DFS has issued several Frequently Asked Questions relating to what duties an insurance carrier has with respect to this new law. Briefly stated, the DFS has concluded that an insurance carrier is not required to obtain a copy of the Agency’s license to pay it commissions. Nonetheless, the carrier is still subject to existing Florida law which prohibits payments to unlicensed agents/agencies.²³

Agencies licensed under the new Agency Act do not need to be appointed, nor are they licensed for any particular line of business (although an agency can only conduct the lines of business for which the individual agents are licensed and appointed.) Individual agents who transact insurance business within the agency do need to obtain an appointment.

Fines/Penalties

The Agency Act specifies mandatory administrative penalties for an agency that fails to obtain licensure (up to \$10,000) or registration (up to \$5,000). As mentioned above, a license must be renewed every three years, but a registration does not expire.

The Agency Act amends various other provisions of the Florida Insurance Code which will result in licensed insurance agencies being subject to roughly the same regulatory requirements currently applicable to individual licensees. The DFS will, in all likelihood, promulgate further regulations to clarify this.

Conclusion

While the Agency Act brings Florida closer to the PLMA, it still differs in several material respects. First, it authorizes registration, which is not something recognized in other jurisdictions. Second, it imposes branch office licensing requirements on agencies, something not contemplated by the PLMA²⁴ and something which will be very burdensome for large multi-state insurance agencies.

There are also some unanswered questions raised by the new legislation and the DFS's interpretation of the same. Perhaps these will be worked out over time or clarified by regulations. In the meantime, agencies should begin the licensing and/or registration process as soon as possible, as it is not without its difficulties.

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² Fla. Stat. § 626.112(7) (2004). This section includes a long list of violations and "hazardous" activities which required the agency to obtain a license under Fla. Stat. § 626.172.

³ Fla. Stat. § 626.592 (2004).

⁴ The National Insurance Producer Registry ("NIPR") is an affiliate of the National Association of Insurance Commissioners that has developed a system of electronic appointments and terminations, a producer database of information relating to insurance producers, and the NIPR Gateway, a communication network between state insurance regulators and regulated entities for electronic exchange of producer information. In conjunction with the Gateway, NIPR has also developed data standards relating to areas of information exchange including: license application, license renewal, appointment and termination.

⁵ See note 2.

⁶ Ch. 2005-257, Laws of Fla.

⁷ See § 32, Ch. 2005-257, Laws of Fla. Each agency location must still be supervised by a licensed and appointed agent but the designation is now made part of the agency license or registration application. See note 21

⁸ Fla. Stat. § 626.112(7)(a) (2005).

⁹ The DFS has a different interpretation of this statutory language, and has, in several of its FAQ's and summaries of the legislation, indicated that the January 1, 2003, "grandfather" date, applies to each of the 3 categories of entities which may seek registration instead of licensure. Thus, under the DFS interpretation, a publicly traded insurance agency (or an entity offering insurance as a service or member benefit to its members) which commenced business after January 1, 2003, would not be eligible for registration.

¹⁰ This requirement would appear not to be met if the agency seeking registration was a subsidiary of a publicly traded company.

¹¹ Fla. Stat. § 626.112(7)(a) (2005).

¹² Fla. Stat. § 626.112(7)(b) (2005).

¹³ See "Important Information Regarding the New Insurance Agency Licensing Law in Florida" found at www.fldfs.com/Agents/AgencyRegLicInfo.htm.

¹⁴ Fla. Stat. § 626.172(2)(h) (2005).

¹⁵ Fla. Stat. § 626.112(7)(a) (2005).

¹⁶ In the "Agency Licensing & Registration Frequently Asked Questions" available on the DFS website, the following question is posed and answered:

Question: If an insurance agent sells insurance from his/her home, is the agent required to obtain an agency registration or license?

Answer: Yes. Each place of business where an individual engages in any activity that may be performed only by a licensed insurance agent must be registered or licensed....

¹⁷ Fla. Stat. § 626.172(2)(f) (2005). It does not appear, however, that officers and directors of corporate shareholders need to be fingerprinted.

¹⁸ *Id.*

¹⁹ Fla. Stat. § 626.112(2)(g) (2005).

²⁰ Fla. Stat. § 626.747 (2005).

²¹ In the “Agency Licensing & Registration Frequently Asked Questions” available on the DFS website, the following question is posed and answered:

Question: Since the primary agent law has been repealed, is it necessary for an agency to have a designated licensed and appointed agent in charge of each location? When the agent in charge changes must the department be notified on the change?

Answer: Yes. Section 626.747 F.S. states each agency must have a licensed and appointed agent in full time charge of each location. It is no longer required for the agency to file the primary agent form with the department. The full-time agent may not be in charge of more than one location. It is not required for the agent in charge to be an officer or director of the agency. Yes, when the agent in charge changes, the department must be notified on the change within 30 days.

²² Fla. Stat. § 626.602 (2005).

²³ *See, e.g.* Fla. Stat. § 626.794 and Fla. Stat. § 626.838.

²⁴ Nonetheless, there are other jurisdictions which have some variation of a “branch” office licensing requirement. These states include Georgia, Maine, Montana, Oregon, Washington, and Wyoming.