



National Association of Insurance and Financial Advisors
Florida

1 Hour of Self-Study CE

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HERE'S HOW IT WORKS: Read the following article and when ready to take the exam, contact Paul S. Brawner at brawner@faifa.org, and request the exam. You'll receive the exam and an affidavit testifying you received no help on the exam. Return the exam and signed affidavit via fax to (850) 422 – 2672. Upon successful completion of the exam (70% or higher), NAIFA–FL will send you a Certificate of Completion within 10 (ten) business days.

“Florida Governance and Regulation of Insurance Industry and Insurance Agents”

Course Reading Assignment

Ever wonder how the state of Florida governs and regulates the insurance industry, and the many thousands of agents working in the industry? Well, if you do you're not alone. Every year, hundreds of people join the ranks of insurance agents conducting business in the state of Florida. Yet many do not know the basic workings of our state government and it's impact on their careers – and the interests of their clients. This course is geared to provide you with an in-depth understanding of the structure and function of the various departments that oversee the insurance industry as it operates in the state of Florida.

Who regulates what: It's not always so clear cut

Which state agency oversees workers' compensation insurance – the Florida Office of Insurance Regulation (OIR) or the Florida Department of Financial Services (Department)?

The answer, actually, is both. The Office of Insurance Regulation regulates workers' compensation insurance carriers in areas such as licensing, forms and rates while the Department oversees areas such as the administration of benefits to workers by carriers and also field compliance of employers and contractors regarding carrying proper coverage for all workers in the workplace and on the jobsite.

Another question - which state agency oversees the conduct of insurers with regard to how they handle their customers - the Florida Office of Insurance Regulation or the Florida Department of Financial Services?

Again, the answer is both. The Department's Division of Consumer Services accepts, monitors and assists consumers with their consumer service requests (complaints) and looks for trends that could identify problem insurance companies. Meanwhile the Office of Insurance Regulation's Bureau of Market Investigations carries out market conduct examinations on companies to identify bad practices and trends, often in response to findings by the Department's Consumer Services Division.

The purposes of these two questions is simply to show that which state entity regulates which area of insurance is often confusing and, we have seen here, may be more than one entity and there could be some overlap. This course is aimed at illustrating which entity regulates which area in the insurance industry and how this matrix came about, as it wasn't long ago that the governance of the insurance industry in Florida was entirely different.

Governance of the insurance industry then and now

Only about a decade ago Florida had a Department of Banking and Finance that was overseen by an official, called the Comptroller, who was elected statewide. There also was what was called the Department of Insurance which was overseen by an elected Insurance Commissioner, who also served as Fire Marshall and Treasurer for the State of Florida.

This had been the case for years, but in the 1990's there was great interest in streamlining government agencies and the number of appointed and elected officials. One outcome of this was an initiative petition in 2000 that was recommended by Florida's Constitution Revision Commission and approved by Florida voters statewide to merge the elected comptroller and insurance commissioner positions into one elected post.

Approving the concept of merging these positions and departments was only the beginning, as the approved measure really didn't provide many details on how this would happen in reality. It would now be up to the Legislature to write the enabling legislation that would detail what, who and how this new governmental entity(s) would be formed, and, most importantly, who would have the authority for oversight.

What had been envisioned by proponents of the initiative petition was a single elected official who would oversee the merged finance, banking and insurance departments along with Treasury and Fire Marshall. The Legislature was moving in this direction but some saw problems with this set up and worked to change it in the final. One of the chief concerns was that to give one elected official sole oversight of such large and well funded industries might be too much and that the final legislation should seek to dilute the political and financial power of what was envisioned as a Chief Financial Officer (CFO) for the state of Florida.

Florida loses a comptroller and insurance commissioner and gains a CFO

Politics certainly enters many things involving government and that was the case with the debate over what the final makeup of the CFO position would be. Some who were concerned with the potential concentration of power of the position threatened political challenges and were able to get some of those powers diluted and rearranged.

The first elected CFO in Florida was Tom Gallagher, who had served as the insurance commissioner on two occasions and was a former state representative from Dade County. Subsequently Alex Sink was elected to the post in 2006 and continues to serve. She boasted a long and successful career in private sector business prior to election as CFO. For the purposes of this course we will certainly discuss the insurance related authority of the CFO that was put into the enabling statutes by the Legislature, but first let us look at the other governmental areas that were designated for control by the CFO.

Non-insurance areas controlled by the CFO

The new agency that would contain all of the divisions overseen by the CFO was designated as the new Florida Department of Financial Services which began operating in 2003. The CFO is a Cabinet level post (more on this later) and therefore is headquartered at the Plaza Level of the Capitol, in Tallahassee, along with the Governor's Office, the Attorney General and the Commissioner of Agriculture and Consumer Services. However many of the divisions of the Department are housed in buildings all over the Capital city and many of these divisions have branch offices in cities all across the state of Florida.

The CFO retained the duties to serve as the state's Fire Marshall and carries that out through the Division of State Fire Marshall. The Division assists local fire departments that request assistance with conducting fire investigations and assists citizens who want to attend the State Fire College, issuing over 3,000 Basic Firefighters Certifications each year. The investigators in the Division are sworn law enforcement with the power to make arrests and they investigate thousands of fires annually with almost half being determined as arson. The Division's forensic

lab examines over 10,000 pieces of evidence each year to aid these investigations. It also examines over 14,000 state buildings and analyzes nearly two million fire and emergency reports annually.

The Division of Accounting and Auditing carries out the important task of watching over the state's money, which is quite a task as the state budget is well over \$60 billion annually. It approves accounts against the state, safeguards public assets and reports on the financial condition of the state.

Another important steward of the state's financial assets falls under the Division of Treasury. It invests and manages the state's financial assets. It performs standard treasury functions such as operating a statewide deposit concentration system, a receipts and payments posting system and operates the deferred compensations system for state employees.

One surprise to many people is that the CFO also regulates cemeteries and funeral establishments through the Division of Funeral and Cemetery. Also, like most state agencies, the Department has offices and divisions that oversee legal services, personnel, information technology and other areas.

Finally, one insurance related area of oversight by the CFO, although it doesn't fall under regulation of the insurance industry, is the Division of Risk Management. This, essentially, is the state's insurer. It ensures that participating State of Florida agencies receive technical assistance in managing risk, workers' compensation, liability, federal civil rights, automobile liability, and property insurance and to procure coverage at reasonable rates by providing self-insurance, purchase of insurance and claims administration.

QUIZ QUESTION 1 (check answer at end of reading assignment)

Which state agency looks for trends that could identify problem insurance companies?

- a. Bureau of Market Investigations
- b. Division of Consumer Services
- c. Department of Banking and Finance
- d. Office of the Attorney General

Insurance related entities administered by Florida's Chief Financial Officer

Division of Consumer Services

In the beginning of this course we discussed how certain areas of insurance regulation are bifurcated as to which agency oversees them and one of the prime examples is that of

consumer services. The Department's Division of Consumer Services is a wide ranging agency that provides a massive amount of services and oversight. The Division helps consumers make insurance and financial decisions through a staff that is trained in 26 different categories of insurance and allows them to also make consumer service requests (these would include complaints about insurers). They publish numerous guides to aid consumers in how to buy many types of insurance, including homeowners, auto, commercial, life and annuities and many more. These are also made available on the Department's website with much more information on insurance for consumers.

One of the most important services offered by the Division is its Verify Before You Buy Program. It allows anyone – be it a consumer or agent or whomever – to call or go online to verify that an agent or insurer is licensed to do business in Florida. This is an effort to counteract the many problems we have experienced with bogus entities operating in the state (we will discuss much more on this subject at the end of course).

When the Division receives inquiries or complaints from consumers it has the authority to report any violations of insurance law or rule to the Department or to OIR for action and for potential punishment. And it is not as if an insurance company can just ignore the Division's request for information to help settle an issue the Division is looking into. Florida Statute states that:

- Any person licensed or issued a certificate of authority by the department or by the Office of Insurance Regulation shall respond, in writing, to the Division of Consumer Services within 20 days after receipt of a written request for information from the division concerning a consumer complaint.
- The division may, in its discretion, impose an administrative penalty for failure to comply with this subparagraph in an amount up to \$2,500 per violation upon any entity licensed by the department or the Office of Insurance Regulation and \$250 for the first violation, \$500 for the second violation, and up to \$1,000 per violation thereafter upon any individual licensed by the department or the Office of Insurance Regulation.

In recent years the Legislature also required the Division to appoint a sinkhole ombudsman to be a point of contact for consumers on issues relating to sinkholes. This was the result of numerous problems relating to alleged and actual property insurance claims for damage due to sinkholes, particularly in the area of west central Florida.

Division of Workers Compensation

The Division of Workers Compensation deals with the areas of Florida's system surrounding the administration of the system for workers. The Division is separated into three primary bureaus to accomplish this mission.

- The Bureau of Compliance actually visits jobsites and businesses to make sure proof of coverage is on hand for all workers on-site. If proof of coverage is not available for a worker(s) an investigation may ensue and the employer could be fined in a multiple amount of how much premium is determined to have been evaded.
- The Bureau of Monitoring and Audit ensures that benefits are paid timely and accurately to injured workers as well as medical bills and required forms are filed timely and accurately to the state.
- The Bureau of Employee Assistance works with injured workers to assure they are being treated and compensated properly under Florida law.

The Office of the Insurance Consumer Advocate

Florida law authorizes the CFO to appoint an Insurance Consumer Advocate. The Insurance Consumer Advocate is tasked to represent consumer interests in regulatory proceedings regarding all insurance activities conducted under jurisdiction of the Department of Financial Services and the Office of Insurance Regulation. The Insurance Consumer Advocate also examines rate and form filings to make sure coverage and rates are fairly apportioned and clear to consumers.

The Insurance Consumer Advocate studies market reports in addition to the approximately 500,000 inquiries made annually to the Department's Consumer Helpline (Division of Consumer Services) to identify market trends and potential problems. The Office uses data to try to identify and resolve adverse business practices that could negatively affect Floridians.

Division of Insurance Fraud

The Division of Insurance Fraud is another of the law enforcement arms of the Department of Financial Services and is responsible for investigating insurance fraud; crimes associated with claim fraud, insurance premium fraud, workers' compensation claim fraud, workers' compensation premium avoidance and diversions, insurer insolvency fraud, unauthorized insurance entity fraud and insurance agent crimes.

During Fiscal Year 2007/2008, investigative efforts resulted in 873 cases presented for prosecution, 816 arrests, and 663 convictions. The Division received and reviewed 9,916 insurance fraud referrals and opened 1,742 cases for investigation. It is estimated that insurance fraud costs the US \$80 billion or more annually.

The Division of Rehabilitation and Liquidation

The Division of Rehabilitation and Liquidation coordinates and directs the conservation, rehabilitation and liquidation of insolvent insurance companies, unlicensed insurance companies and unlicensed insurance entities and attempts to rehabilitate financially troubled insurance companies. If a company is identified as being financially troubled then the CFO can ask a Circuit Court judge to order it into rehabilitation if there is a likelihood of turning the company around or into receivership or liquidation if it is, or becomes, too troubled to save.

Division of Insurance Agents and Agency Services

The Division of Insurance Agents and Agency Services is divided into two bureaus. The Bureau of Licensing administers the insurance laws, rules and regulations relating to license qualification, pre-licensing and continuing education, and licensure and appointment of all agents, customer representatives, adjusters, reinsurance intermediaries, service representatives and insurance agencies. The Bureau receives and answers in excess of 440,000 customer telephone calls annually.

The Bureau of Investigation is responsible for investigating violations of the Florida Insurance Code by licensed and unlicensed persons acting as insurance agents. The bureau has 94 positions in Tallahassee and nine (9) regional field offices. In FY 2005-06 the bureau completed 2,392 investigations. Suspected criminal violations uncovered during the course of investigation are referred to the Department's Division of Insurance Fraud or other law enforcement agencies as appropriate.

Please note that the Division is now requiring all licensees to supply an email address as most communications will no longer be sent by regular mail.

QUIZ QUESTION 2 (check answer at end of reading assignment)

Which of the following departments ensures that benefits are paid timely and accurately to injured workers?

- a. Bureau of Compliance
- b. Bureau of Employee Assistance
- c. Bureau of Monitoring and Audit
- d. Bureau of Licensing

Powers of the Governor and Cabinet re: insurance regulation

To this point we have covered the areas directly overseen by the CFO – and they are quite substantial – but the CFO is also a member of the Florida Cabinet which also has substantial influence over insurance regulation through what is called the Financial Services Commission (FSC). Chapter 20 of the Florida Statutes states:

Effective January 7, 2003, there is created within the Department of Financial Services the Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which shall for purposes of this section be referred to as the commission. Commission members shall serve as agency head of the Financial Services Commission. Commission action shall be by majority vote consisting of at least three affirmative votes. The commission shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.

So this is where the dilution and diversion of powers for the new position of CFO essentially takes place. Much of the authority was divided amongst the Governor and the Cabinet through the new FSC. But how would all the other areas of insurance regulation – and financial regulation for that matter - be overseen. Chapter 20 continues:

Commission action shall be by majority vote consisting of at least three affirmative votes. The commission shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters.

Under the new arrangement two offices were established under the FSC: The Office of Insurance Regulation and the Office of Financial Regulation. The statute establishes OIR this way:

The Office of Insurance Regulation, which shall 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. The head of the Office of Insurance Regulation is the Director of the Office of Insurance Regulation, who may also be known as the Commissioner of Insurance Regulation.

The FSC officially serves as the agency head but each Commissioner effectively serves as agency head on a day-to-day basis under the authority of the FSC. The FSC can appoint or remove each Commissioner by a majority vote consisting of at least three affirmative votes – however – both the Governor and the Chief Financial Officer must be on the prevailing side. As far as the job requirements for a prospective Insurance Commissioner, Florida Statutes state:

Prior to appointment as director, the Director of the Office of Insurance Regulation must have had, within the previous 10 years, at least 5 years of responsible private sector experience working full time in areas within the scope of the subject matter jurisdiction of the Office of Insurance Regulation or at least 5 years of experience as a senior examiner or other senior employee of a state or federal agency having regulatory responsibility over insurers or insurance agencies.

The Insurance Commissioner and the Office of Insurance Regulation

One of the primary focuses of the present Insurance Commissioner, Kevin McCarty, who was the first Insurance Commissioner appointed under this new structure, in 2003, was to create a Business Development unit to attract new insurers to Florida. Its mission is described by OIR as to promote the benefits of expanding or moving lines of business to Florida. The primary role of the unit is to identify solvent companies, communicate the positive aspects of the Florida marketplace, and encourage them to apply for licensure here.

Once an insurance company decides to do business in Florida or to expand the lines it writes, it must apply through the OIR's Company Admissions unit. The Company Admissions unit is responsible for the receipt of all company applications and the coordination of the Office's review of such applications prior to granting approval to a company to sell insurance in the state of Florida.

To obtain a Certificate of Authority, in Florida, an insurer is required to have a minimum surplus as to policyholders of:

- Property and casualty insurers: greater of \$5 million or 10% of total liabilities
- Life insurers: greater of \$2.5 million or 4% of insurer's total liabilities
- Life and health insurers: greater of \$2.5 million or 4% of the insurer's total liabilities

plus six percent of the insurer's liabilities relative to health insurance

Once a company or new line of business is approved the policy forms and rates have to be filed with OIR. Life and health insurers file them with Life and Health Product Review.

This unit is responsible for receiving and processing for approval life, annuity, health, health maintenance organization, discount medical plan, continuing care retirement, health flex plan, and credit life/disability policies and contracts.

Property and Casualty Product Review is responsible for the review of property and casualty forms and rate filings for personal and commercial property and casualty lines of coverage. These include homeowners, mobile homeowners, dwelling fire and allied lines, private passenger automobiles, workers compensation, medical malpractice, personal liability and others.

Once an insurer has its forms and rates approved it can commence business. It is then that its ongoing financial solvency is monitored by either the Life and Health or the Property and Casualty Financial Oversight Bureaus. If a company's reserves and/or surplus fall below statutory minimums or if the OIR has reason to be concerned with its financial performance it can order it into supervision. This is a confidential process not subject to Florida's open records laws to encourage a company's officers to come forward if they spot trouble. If the financials worsen the Commissioner can forward the matter to the CFO to recommend rehabilitation or receivership (see above). At that point the matter becomes a public record.

There are a number of areas that OIR oversees that do not fall under either Life and Health or Property and Casualty. These fall under Specialty Product Administration. This unit is responsible for the regulation and oversight of insurance administrators, continuing care retirement communities, motor vehicle service agreement companies, home warranty associations, services warranty associations, service warranty manufacturers, premium finance companies, donor annuities, legal expense corporations and viatical settlement providers.

Finally the Market Investigations (conduct) unit is the enforcement and compliance unit for the office which monitors the activities of authorized Life & Health and Property & Casualty insurers to assure proper compliance with the Florida Insurance Code. Action by this unit can result from routine examinations or be punitive, resulting from findings outside of an investigation. Action can be a result of findings forwarded by the Department of Financial Services Consumer Services Division (see above).

One area of direct overlap for the Department, OIR and the Office of Financial Regulation is in the area of administration and information support which is generally provided by the Department for all three entities.

QUIZ QUESTION 3 (check answer at end of reading assignment)

If an insurance company is already appointed to conduct business in Florida, but wishes to expand the lines it writes, it must apply through OIR's Company Admissions unit.

- a. True
- b. False

Insurance laws and statutes

So how do the laws governing insurance regulation come about, or even the laws that created this new insurance regulation structure that we have discussed in this course? Are these laws the result of legislation filed by the CFO, the Insurance Commissioner, Gov. Crist or President Obama?

Interestingly, none of these people is allowed to file a bill in the Florida Legislature; only a State Senator or a State Representative can file a bill. So if any of them wants to see language in a bill or file legislation, they must find a legislator to do it. Often, though, the CFO or Commissioner will be asked to weigh in on insurance related legislation.

Once a bill is filed it is referred to one or many committees – the fewer the better, and the greater its likelihood of passage (Legislative Session only runs for two months so things move fast or die). Unless leadership intercedes, the bill has to pass all the committee(s), then goes to the floor (note: It must pass at least one committee even if leadership intercedes). An identical bill must pass both the House and Senate.

If the bill passes both houses of the Legislature it then goes to the Governor for signature. The Governor could choose to not act on (sign) the bill and it becomes law after a number of days. If the Governor chooses, he can veto the bill and it does not become law unless the Legislature votes to override (which is extremely rare).

Once the legislation becomes law it goes to the appropriate agency for implementation. If rulemaking is required the agency staff and lawyers commence the rulemaking process. It is often said that the statute is the skeleton, but the rulemaking process puts the meat on the bones, and this is an important power. Hearings on rules must be held and advertised so stakeholders affected by a rule can weigh in.

Disputes over rules go to an Administrative Law Judge to be settled. Many rules are presented to the FSC or Cabinet for final approval including all OIR rules.

So, as we can see in this course, the agencies, laws, officials and regulators which oversee the insurance industry in Florida can be quite complex. Many lawyers, lobbyists and experts make

their living navigating, or helping others navigate this system. This course has been aimed at giving students a sense of the system, how it came about and operates and how it can be changed.

UNAUTHORIZED ENTITIES

Unauthorized entities engaging in insurance are a serious and growing problem in Florida for consumers and agents. Consumers are substantially harmed with these entities failing to pay claims and defrauding through deception. Agents are unwittingly (sometimes knowingly) representing these entities and placing clients and themselves at risk. Florida law is violated under the guise of these unauthorized entities claiming to be ERISA exempt or some type of association plan that claims to not be insurance or to be exempt from Florida regulation. All of this is simply not true! This is a problem in the state of Florida and other states.

The problem of unauthorized entities selling unauthorized products originated in the health insurance arena, although the problem now seems to be spreading into property-casualty arena as well. These unauthorized entities promised low health insurance premiums, a promise fueled by skyrocketing health insurance premiums with legitimate health insurance carriers. In the current market, low health insurance rates just do not exist. The public and certain agents, apparently, were ripe for the picking by these scam artists. Remember, these are scams and the intent is to collect as much premium as possible without having to pay claims, or very few claims.

Unsuspecting licensed insurance agents are also vulnerable to this type of scam because representatives of the unauthorized entity will contact the licensed agents and send them (or give them in person) printed marketing materials touting the unauthorized entity and their bogus products which, again, gives the impression of legitimacy and credibility.

Maybe the agent is asking too many questions of the representative – is just a little too inquisitive – about who they are, where they're located, how long they've been in business, etc. The agent may even question the legitimacy of the product. Some of the scam artists are telling agents that their products do not have to be authorized by the Department because the plan is an ERISA plan, or that the plan is part of a MEWA (multiple employer welfare arrangement) or it's to be sold to labor unions – all the while stating that under any of these previously-mentioned circumstances, the products do not have to be approved or authorized by the Department.

The representative of the unauthorized entity might say, "It doesn't require approval, because this is an ERISA plan." Or, "It doesn't require approval because this is plan is part of a MEWA plan." Or "This plan doesn't require approval because it's for labor unions." None of this is correct! Any product which contains an insurance component is required, by law, to receive

authorization of that component by the Department before it can be sold in Florida. Any legitimate company representative who approaches you about selling and representing their products should not mind the scrutiny you put them under by verifying their status with the Department.

626.902 Penalty for representing unauthorized insurer.—

(1) In addition to any other penalties provided in the insurance code:

(a) Any insurance agent licensed in this state who in this state represents or aids an unauthorized insurer in violation of s. 626.901 commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person other than an insurance agent licensed in this state who in this state represents or aids an unauthorized insurer in violation of s. 626.901 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.(2) In addition to the penalties provided for in subsection (1), such violator shall be liable, personally, jointly and severally with any other person or persons liable therefore, for payment of taxes payable on account of such insurance under s. 626.938.

Agents or any other persons are prohibited from representing or aiding an unauthorized insurer. If an agent or any other person represents an unauthorized insurer, they are subject to severe penalties, including possible civil and criminal action. Agents are subject to suspension or revocation of their licenses and/or monetary penalties for violation of the unauthorized insurer law. Agents can be held liable for claims and losses not paid by unauthorized insurers. Agents who represent or aid an unauthorized insurer commit a felony of the third degree.

Don't be fooled by phony products that sound too good to be true! Investigate before you sell or buy these plans. Check to see if an entity or plan is an authorized insurer by calling the Department of Financial Services at 877-693-5236 or 850-413-3089.

QUIZ QUESTION 4 (check answer at end of reading assignment)

The problem of unauthorized entities selling unauthorized products originated in which product area?

- a. Workers Compensation insurance
- b. Life insurance
- c. Personal and business insurance
- d. Health insurance

QUIZ ANSWERS:

1. B
2. C
3. A
4. D