

STORAGE NAME: h1003s1a.bdt

DATE: April 7, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
ANALYSIS**

BILL #: CS/HB 1003

RELATING TO: Insurance agencies

SPONSOR(S): Committee on Business Development & International Trade and Representative Wiles

COMPANION BILL(S): SB 900 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 9 NAYS 0
 - (2) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE YEAS 6 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The CS/HB 1003 bill would prohibit a nonresident agent from forming a foreign insurance agency corporation with a Florida business for the purpose of placing the nonresident agent's license with the foreign insurance agency corporation and, presumably, circumventing the law prohibiting the sharing of commissions with non-agents and non-agencies.

This bill is not expected to have a fiscal impact on state or local government.

The bill would take effect July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Insurance Agents

Under Florida law, an insurance agent is defined as a "general lines agent, title agent, life agent, or health agent" as defined in Chapter 626, F.S. General lines agents are agents who transact one or more of the following types of insurance: property insurance; casualty insurance; surety insurance; health insurance, when transacted by an insurer also represented by the same agent as to property or casualty or surety insurance; or marine insurance.

Regarding these types of insurance, the law requires persons who solicit insurance, procure applications, or directly or indirectly represent themselves as agents of an insurer, to be licensed by the Department of Insurance. Section 626.041(1), F.S.

Insurance Agency

Under Florida law, an insurance agency is a business location at which an individual, firm, partnership, corporation, association, or other entity (except for an employee of the individual, firm, partnership, corporation, association, or other entity, and other than an insurer or insurance adjuster) engages in any activity or employs individuals to engage in any activity which by law may be performed only by a licensed insurance agent or solicitor. Section 626.094, F.S.

Licensure of General Lines Agents

To receive a license as a resident general lines agent from the Department of Insurance, a person must reside in Florida, pay the appropriate fees, file an application, pass an examination, and meet continuing education requirements. Persons who are otherwise qualified to be a general lines agent, but who are not residents of Florida, may apply to be a "nonresident" general lines agent. Nonresident agents must pay a fee, file an application with, and receive approval from, the Department of Insurance in order to do business in Florida. Only agents residing in a state providing reciprocal authority for Florida agents, may conduct business as a nonresident agent in Florida. See Section 626.741, F.S.

Sharing of Commissions

Section 627.753, F.S., sets forth the circumstances under which commissions may be shared by insurance agents. The law provides that agents may only share commissions with his or her own employed solicitors and with other agents appointed and licensed to write the same kinds of insurance. Likewise, the law allows resident agents to share commissions with nonresident agents with regard to the kinds of insurance for which both are appointed and licensed; however, the law specifically prohibits licensees from sharing commissions "with any corporation unless such corporation is an insurance agency." General lines agents, therefore, may not share commissions with any person who is not an agent or with any corporation that is not an insurance agency. Section 626.753(2), F.S.

Despite these prohibitions, current law does not address all situations involving the sharing of commissions with non-agents and non-agencies. One situation may occur where a nonresident agent assists a Florida business, which is neither a Florida insurance agent nor a Florida insurance agency, in forming an insurance agency under the laws of a foreign state for the purpose of circumventing Florida's laws prohibiting the sharing of commissions with non-agents and non-agencies.

An example of this arrangement is as follows:

Insurance agent "X" is licensed as an insurance agent in a foreign state and is also licensed as a nonresident agent in Florida. Agent X assists Florida business "Y," which is not an insurance agency and which sells a product for which insurance is typically procured, in establishing an insurance agency corporation in the foreign state for the purpose of circumventing Florida's laws prohibiting the sharing of commissions with non-agents and non-agencies. Agent X is listed as the insurance agent for the foreign insurance agency, which is sometimes nothing more than a

post office box. Agent X provides business Y with informational literature promoting the insurance services of the foreign insurance agency to business Y's customers. When a customer of business Y procures insurance as a result of this informational literature, the commission received by the foreign insurance agency is split between agent X and business Y.

According to the Department of Insurance this activity, in and of itself, neither violates the definition of "insurance agency" nor violates Florida's prohibition against unlawful sharing of commissions. Nevertheless, resident general lines insurance agents believe this activity places them at a competitive disadvantage as compared to nonresident agents.

B. EFFECT OF PROPOSED CHANGES:

This bill would address the situation where a nonresident agent forms separate foreign insurance agency corporations jointly with Florida businesses for the purpose of circumventing Florida laws prohibiting the sharing of commissions with non-agents and non-agencies.

Nonresident agents would not be allowed to share commissions with a foreign corporation set up by a resident of Florida for the purpose of placing the nonresident agent's license and, presumably, circumventing Florida law precluding the sharing of commissions with non-agents and non-agencies.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Department of Insurance would be required to monitor the commissions received by nonresident agents to ensure that the nonresident agent is not improperly sharing commissions with a foreign corporation set up by a resident of Florida.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The bill would prohibit Florida businesses from forming foreign corporations/insurance agencies with nonresident agents for the purpose of circumventing Florida laws prohibiting the sharing of commissions with non-agents and non-agencies.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 626.094, F.S.

E. SECTION-BY-SECTION ANALYSIS:

See Effects of Proposed Changes, section II.B.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

The Department of Insurance would be required to monitor the commissions received by nonresident agents to ensure that the nonresident agent is not improperly sharing commissions with a foreign corporation set up by a resident of Florida. The bill does not specify how the Department of Insurance would determine whether the foreign corporation is a bona fide insurance agency or merely a corporation set up to circumvent Florida law prohibiting the sharing of commissions with non-agents and non-agencies.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 29, 1999, the Committee on Business Development and International Trade adopted one amendment and the committee voted to make the bill a committee substitute. The amendment added firm, partnership, and association to the definition of a business entity. The amendment also added advertising or solicitation materials which are distributed to be included in the definition of what is not to be deemed as an insurance agency.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

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