SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2402

SPONSOR: Banking and Insurance Committee and Senator Rossin

SUBJECT: Banking and Insurance Regulation

DATE: April 5, 1999 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Favorable/CS
2.			AG	
3.				
4.				
5.				

I. Summary:

Committee Substitute for Senate Bill 2402 would repeal Florida's "anti-affiliation statute" which generally limits affiliations between banks and insurance entities by prohibiting certain insurance activities by persons employed or associated with financial institutions such as banks, savings and loan associations or their subsidiaries under s. 626.988, F.S. It would repeal the provision which limits insurance agents engaging in insurance activities through a bank located in a city with a population of less than 5,000. The effect of this repeal would permit insurance agents associated with or employed by a financial institution to engage in insurance agency activities regardless of the population of the city in which the financial institution is located. These activities would include the negotiation or sale of insurance products or the servicing of insurance policies. The bill would make no distinction between nationally-chartered (national banks), federally-chartered (savings and loans) and state-chartered financial institutions.

The committee substitute further provides a broad range of consumer safeguards relating to disclosure and advertising, establishes guidelines for the sale of insurance on the premises of financial institutions, and requires that persons associated with financial institutions who solicit or sell insurance must be to Florida-licensed agents representing Florida-authorized insurers or eligible surplus lines insurers and comply with all applicable state insurance regulations and licensing requirements.

This committee substitute amends s. 626.9541, 626.9551, 626.592, 626.321, 626.730, and 629.401, creates s. 626.9885, and repeals s. 626.988 of the Florida Statutes.

II. Present Situation:

Banking

The Florida Department of Banking and Finance has regulatory authority over state-chartered commercial banks, credit unions, savings associations, and offices of foreign banks operating in

the State of Florida. The Department licenses, examines, and regulates state-chartered financial institutions from potential loss due to failure or insolvency. Nationally or federally chartered financial institutions are chartered and regulated by various agencies of the federal government and the Department does not have regulatory authority over those entities.

As of December 31, 1998, the Department regulated 362 financial institutions with $63.1 billion in assets. The Department's regulatory authority and mission relating to the financial institution industry are contained in chapters 655 - 665, F.S.

The primary responsibility for regulating national banks rests with the Office of the Comptroller of the Currency (O.C.C.) within the Department of the Treasury. The O.C.C. charters all national banks. However, the Federal Reserve Board (FRB) supervises all bank holding companies.[1] The Federal Deposit Insurance Corporation (FDIC) also has regulatory responsibilities for all FDIC-insured banks. State-chartered banks are regulated principally by the particular state in which they are chartered. All state-chartered banks in Florida must be insured by the FDIC. The FRB-member banks are also subject to regulation by the FRB.

Insurance

Insurance, unlike banking or securities activities, is wholly governed by the regulatory apparatus established by each state--an arrangement confirmed by Congress in the McCarran-Ferguson Act in 1945. Under the McCarran-Ferguson Act, state insurance laws are not preempted by a federal law unless the federal law "specifically relates to the business of insurance."

Under Florida law, the Department of Insurance, as established by the Legislature in 1915, has the primary responsibility under the Insurance Code (chapters 624 - 651, F.S.) for regulation, compliance, and enforcement of all laws related to the business of insurance, persons involved in soliciting and selling insurance products, and the monitoring of industry markets and practices.

Roots of the Current Bank - Insurance Regulation

In 1916, Congress passed 12 U.S.C. s. 92 (National Bank Act), which permitted national banks to offer insurance in communities with less than 5,000 inhabitants. In 1974, Florida enacted a similar statute, called the "anti-affiliation" provision, that prohibited banks from selling most kinds of insurance and further prohibited insurance agents from being affiliated with financial institutions (s. 626.988, F.S.).[2] The Florida provision, however, did allow *unaffiliated* small town banks, i.e., banks that were not affiliated with a bank holding company, to sell insurance in a city having a population of less than 5,000.

This past decade two unanimous U.S. Supreme Court cases have impacted the above statutory provisions regarding banks selling or offering insurance. In 1995, in *NationsBank v. Variable*

[1]Bank holding companies are generally companies that own or control a bank or other subsidiaries closely related to the business of banking.

[2]The law specifically prohibited insurance agents from affiliating with financial institutions except in the case of a bank located in a city with a population of less than 5,000 which was *not* a subsidiary or affiliate of a bank holding company.

Annuity Life Ins. Co. (VALIC), 513 U.S. 251 (1995), the Supreme Count upheld the determination of the O.C.C. that annuities are financial products that can be sold by a national bank throughout the country, and are *not* insurance. One year later in a key case impacting Florida's "anti-affiliation" statute, the Supreme Court declared in *Barnett Bank v. Nelson*, 517 U.S. 25 (1996), that Florida's "anti-affiliation" provision was preempted by the federal law which provided express authority for a national bank to acquire and operate an insurance agency in a town of less than 5,000. The Court noted:

> "In addition to the powers vested by law in national (banks) organized under the laws of the United States, any such (bank) located and doing business in any place (with a population) . . . (of not more than) five thousand . . . may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any . . . insurance company authorized by the authorities of the State . . . to do business (there), . . . by soliciting and selling insurance . . . ."

These two cases opened the door to a potentially broad expansion of national bank insurance activities by affirming the federal law authority of national banks to engage in insurance activities.

In response to the *Barnett* decision, the Florida Legislature in 1996 amended s. 626.988, F.S., to grant state-chartered banks parity with national banks by permitting state-chartered banks to sell insurance from towns with a population of fewer than 5,000 residents, whether or not they were affiliated with a bank holding company (ch. 96-168, L.O.F.). It also required insurance sales to be conducted by licensed agents representing authorized insurers or eligible surplus lines insurers. To address concerns by representatives of the banking community about the need for safeguards to ensure that banks selling insurance would be treated the same as insurance companies, the Legislature created s. 626.5715, F.S., which granted the Department of Insurance authority to adopt rules to assure parity between national banks, state-chartered banks, and nonfinancial institutions to sell insurance.

The department drafted rules to apply to financial institution sales of insurance, however, a number of these rules were challenged and ultimately held invalid by an administrative law judge because there was insufficient statutory authority to support them (Florida Bankers Assn. v. Department of Insurance, Case No. 97-2884RP). Ultimately, the department withdrew all its rules related to this issue.

At the federal level, legislation has been introduced in the House of Representatives which would affect bank sales of insurance by permitting bank-insurance and other "financial" affiliations, regardless of the size of a city's population, but would preserve the substance of state regulation of insurance. This legislation (H.R. 10) has evolved due in part to discussions and ultimately compromises between representatives from the insurance and banking industries. These compromises have been forged into the so-called "safe harbor" provisions which are set forth in H.R. 10. The "safe-harbor" issues consist of 13 consumer protection issues which range in scope from prohibiting the tying of insurance to the furnishing of other banking products to disclosure requirements that specify that the sale of insurance will not affect credit decisions.

Proponents for the committee substitute state that many of the "safe harbor" provisions are in the committee substitute, while other provisions are presently incorporated in either the Insurance or

Banking codes. Additionally, they state that the impact of including bank competition in such a significant consumer industry like insurance would lead to increased competition, lower prices, and better services as well as new and innovative products.

III. Effect of Proposed Changes:

Section 1. Amends s. 626.9541, F.S., by creating a new provision under the "Unfair Competition and Deceptive Practices Act" within the Insurance Code which is modeled after a federal "safe harbor" provision. It makes the following an unfair or deceptive act: to use any advertisement that would mislead a reasonable person to believe mistakenly that the state or Federal Government is responsible for the insurance sales activities of any person or stands behind a person's credit or that any person, state or the Federal Government guarantees any returns on insurance products or is the source of payment of any insurance obligation of or sold by any person.

Current Florida law also provides consumer protections pertaining to this issue, such as the prohibition against misrepresentation of insurance policies as being shares of stock or misrepresenting ownership interest in a company (s. 626.9541(1)(a)8, F.S.) and any advertising which is untrue, deceptive, or misleading which relates to the business of insurance (s. 626.9541(1)(b), F.S.). Under Florida Administrative Rule 4-150.114, F.A.C., life and health insurers are prohibited from any advertising that implies any connection with a governmental agency. Additionally, on the federal level, the O.C.C., in its advisory letter to national banks, provides that bank management should disclose that insurance is not guaranteed by the bank or insured by FDIC. (AL 96-8 dated October 8, 1996).

Section 2. Amends s. 626.9551, F.S., to create several new provisions under the "Favored Agent or Insurer" section of the Insurance Code which are similar to the federal "safe harbor" provisions. It does the following:

Section 626.9551(1)(b), F.S., prohibits any person from rejecting an insurance policy solely because the policy has been issued or underwritten by any person not associated with the financial institution, where such insurance is required in connection with a loan or extension of credit.

Section 626.9551(1)(c), F.S., prohibits any person from requiring a borrower, mortgagor, purchaser, insurer, broker, or agent to pay a separate charge in connection with a loan, extension of credit, or another banking product, unless such charge would be required if the person were providing the insurance.

Section 626.9551(1)(d), F.S., prohibits any person from using insurance information required to be disclosed by a customer to a financial institution, in connection with the extension of credit for the purpose of soliciting the sale of insurance, unless the customer has given express written consent or has been given the opportunity to object which must be in writing and must be clearly made. "Insurance information" means information concerning premiums, terms and conditions of insurance coverage, claims, and history provided by the customer.

Section 626.9551(2)(a), F.S., requires persons to provide written disclosure to a customer that choice of insurance will not affect credit decisions.

Section 626.9551(2)(b), F.S., requires federally insured or state insured depository institutions and credit unions to provide in writing, prior to the sale of any insurance policy, that such policy is not a deposit, FDIC insured, not guaranteed by the bank and where appropriate, involves investment risk, including loss of principal.

Section 626.9551(2)(c), F.S., requires all documents constituting policies of insurance to be separate and shall not be combined with other documents. Also, prohibits the expense of insurance premiums from being included in a primary credit transaction without the express written consent of the customer.

Section 626.9551(2)(d), F.S., requires that a loan officer of a financial institution who is involved in the application, solicitation, or closing of a loan transaction may not solicit or sell insurance in connection with the same loan, but such officer may refer the loan customer to another insurance agent who is not involved in the same loan transaction. However, this provision does not apply to an agent located on premises having only a single person with lending authority, or to a broker or dealer registered under the Federal Securities Exchange Act in connection with a margin loan secured by securities. This provision, though not a "safe harbor" provision, has been approved by the O.C.C. as provided in the Illinois statutes.

Section 626.9551(3), F.S., provides that the above noted sections ((2)(a), (b), (c), and (d) of s. 626.9551, F.S.) do *not* apply to the sales of insurance regulated under ss. 627.676-627.6845 (relating to credit life and disability insurance), s. 655.946 (relating to single interest insurance placed by financial institutions), or parts XV-XVI of chapter 627 (relating to premium finance companies and agreements).

Section 626.9551(4), F.S., prohibits extensions of credit or the furnishing of services on the condition the customer obtain insurance from the financial institution.

Section 3. Amends s. 626.592, F.S., 1998 Supplement, to create a new section (9), under the "Primary Agents" law, to provide that when an agent conducts insurance transactions at two or more locations, a separate primary agent need not be designated at each location, provided that no transaction occur at a location when the agent is not present and no unlicensed employee has engaged in insurance activities requiring licensure.

Section 4. Creates s. 626.9885, F.S., to require financial institutions conduct insurance transactions only through Florida-licensed agents representing Florida-authorized insurers or eligible surplus lines insurers. This provision is currently under s. 626.998(9), F.S., which is repealed under CS/SB 2402.

Section 5. Amends s. 626.321, F.S., 1998 Supplement, relating to limited licenses, to provide cross references to s. 655.005, F.S., (relating to financial institutions).

Section 6. Amends s. 626.730, F.S., 1998 Supplement, relating to licenses, to provide cross references to s. 655.005, F.S., (relating to financial institutions).

Section 7. Amends s. 629.401, F.S., relating to insurance exchange, to provide a cross reference to s. 626.973, F.S., (relating to fictitious groups).

Section 8. Repeals s. 626.988, F.S., the "anti-affiliation" provision.

Section 9. Provides for an effective date of July 1, 1999.

In summary, the anti-affiliation law would be repealed under the committee substitute. Repealing the law would have the effect of permitting insurance agents associated with or employed by a financial institution to engage in insurance agency activities regardless of the population of the

town in which the financial institution is located. Also, the authority would not be limited to just banks but to other financial institutions such as savings and loans. These activities would include the negotiation or sale of insurance products or the servicing of insurance policies. The committee substitute would make no distinction between nationally-chartered (national banks) or federally-chartered (savings and loans) and state-chartered financial institutions. However, national banks would remain subject to the limitation on sales of insurance products just to towns with populations of 5,000 or less contained in the National Bank Act. State-chartered banks would not be since they are not limited in this regard by the federal act. Extensive consumer protections are provided as are protections related to the activities of insurance agents so that there is an even playing field of competition among agents.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

See discussion under Present Situation, above.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Consumers would benefit because insurance products would be available within financial institutions and certain protections are provided relating to disclosures and advertising by financial institutions offering or selling insurance. Additionally, competition would increase regarding the sale of insurance products which could possibly result in lower insurance rates. Safeguards are provided for insurance agents who would be employed or associated with financial institutions.

C. Government Sector Impact:

There is no fiscal impact on the Department of Insurance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.