

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 900

SPONSOR: Banking and Insurance Committee and Senator Rossin

SUBJECT: Definition of Insurance Agency

DATE: April 19, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Woodham</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 900 would prohibit a foreign (out-of-state) insurance agency, firm, corporation, partnership, or association, owned or controlled by a Florida resident or business entity, that uses or employs a nonresident agent, and that furnishes insurance advertising or solicitation materials, which are distributed in this state, or uses unlicensed personnel to initiate contact with a nonresident agent, from being defined as an “insurance agency” for purposes of sharing commissions as described in s. 626.753, F.S.

A current situation, which appears to be legal, but arguably skirts the requirements of Florida law, has led to the filing of this bill. Certain auto dealerships in Florida provide insurance information that may be considered “advertisements” to persons who buy vehicles, and non-licensed persons in the dealership direct customers to a telephone number to call, if the purchaser of the vehicle would like to obtain an insurance quote. The insurance is sold by a nonresident agent located in another state. The insurance agency in the other state is partially owned by the auto dealerships in Florida which then share in the commissions. All this appears to be legal, based on Department of Insurance investigations, assuming the materials provided to and by the dealership do not constitute “solicitation” materials, and the individuals at the dealership are not engaging in activities for which an agent’s license is required, all of which appear to be fine lines. As owners of the insurance agency, the dealers may share in the commissions and profits, as permitted under current law.

The bill is drafted to prohibit a very specific circumstance, where a Florida resident or business entity forms a foreign insurance agency corporation, for the primary purpose of using a nonresident agent’s license through the corporation to market property and casualty insurance and share in the nonresident agent and non-agency’s commissions.

The bill also amends s. 284.33, F.S., authorizing the Department of Insurance to directly purchase annuities by using a structured settlement insurance consulting firm, to assist in the settlement of claims handled by the Division of Risk Management. The consulting firm will be an agent of

record for the department in procuring annuity products for the structured settlement of claims. The consulting firm will be chosen by the competitive sealed bid and proposal process; however, once the consulting firm is selected, the annuity products will not be subject to the competitive bid process.

The bill also changes the edition of the buyer's guide to be used for solicitation of life insurance in Florida. An insurer soliciting life insurance in Florida will now use the edition adopted by the National Association of Insurance Commissioners on October 1, 1996. The previous version was adopted in 1976, and since that time, new products and language are used in the life insurance arena. The new edition addresses these changes.

The bill creates s. 627.478, F.S., to allow the Department of Insurance to adopt, by rule, the valuation of life insurance policies model regulation as approved by the National Association of Insurance Commissioners in March 1999. The model regulation also includes tables of select mortality factors.

This bill amends the following sections of the Florida Statutes: 284.33, 626.094, and 626.99. The bill creates section 627.478 of the Florida Statutes.

II. Present Situation:

Definition of Insurance Agency

Florida 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. (See, s. 626.041(1), F.S.) The three primary classifications of agent licensure include general lines agents who sell all types of property and casualty insurance (part II of ch. 626), life insurance agents (part III of ch. 626), and health insurance agents (part IV of ch. 626), in addition to other classifications. Certain requirements apply to all types of insurance agents (part I of ch. 626).

Persons who are nonresidents of Florida, who sell or solicit insurance in Florida, may obtain a nonresident agent license. Nonresident agent licenses are available for each of the three categories of general lines, life, and health insurance agents. Persons who have a nonresident license as a general lines agent may not directly or indirectly solicit, negotiate, or effect insurance contracts in this state unless accompanied by a countersigning resident agent. Nor may a nonresident general lines agent have an office or place of business in Florida or have any direct or indirect pecuniary interest in any insurance agent or agency in Florida. Persons who have a nonresident's agent license will typically solicit sales in Florida through advertising media, such as newspapers, magazines, and the Internet, or by providing advertising materials to persons in Florida who make such materials available to prospective buyers of insurance. The furnishing of supplies to unlicensed persons is considered a violation of Florida law under certain circumstances, but some situations appear to be unclear, particularly when the facts involve the sharing of commissions.

Section 626.342, F.S. prohibits an agent (resident or nonresident) from furnishing to any agent any blank forms, applications, stationery, or other supplies to be used in soliciting, negotiating, or effecting contracts of insurance on its behalf, unless such materials relate to a class of business with respect to which the agent is licensed and appointed. This section does not specifically address the provision of such materials to a person who is not licensed as an agent. However, the

department interprets this law as prohibiting the provision of solicitation materials to an unlicensed person who shares in the commissions, in conjunction with the law that prohibits the sharing or commissions with unlicensed persons.

Section 626.753, 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 their 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 as to the kinds of insurance for which both are appointed and licensed. Under s. 626.753(2), F.S., a licensee is prohibited from sharing commissions with any corporation unless the corporation is an insurance agency.

Thus, (non-licensed) owners of insurance agencies are permitted to share in the commissions of the insurance agency, which appears to be a practical recognition of the need for owners of insurance agencies to share in the profits. An insurance agency, as a business entity, is not subject to licensure, except under the limited circumstances of when a majority owner, partner, officer, or director has been found guilty of a felony or has had a license relating to the business of insurance or any regulated profession denied, revoked, or suspended. (s. 626.172, F.S.)

The current situation that has led to the filing of this bill, appears to be legal, but arguably skirts the requirements of the laws discussed above. Certain auto dealerships in Florida provide certain insurance information that may be considered “advertisements” to persons who buy vehicles, and non-licensed persons in the dealership direct them to a telephone number to call, if the purchaser of the vehicle would like to obtain an insurance quote. The insurance is sold by a nonresident agent located in another state. The insurance agency in the other state is partially owned by the auto dealerships in Florida which share in the commissions. All of this appears to be legal, based on department investigations, assuming the materials provided to and by the dealership do not constitute “solicitation” materials, and the individuals at the dealership are not engaging in activities for which an agent’s license is required, all of which appear to be fine lines. As owners of the insurance agency, the dealers may share in the commissions and profits, as permitted under current law.

Purchase of Insurance Services

Section 284.30, F.S., provides for the Department of Insurance to create a state self-insurance trust fund, designated as the “Florida Casualty Insurance Trust Fund.” It is administered together with the risk management program, and the fund provides insurance for state agencies for workers' compensation, general liability, fleet automotive liability, and federal civil rights actions.

Currently, the Department of Insurance is authorized under s. 284.33, F.S., to provide insurance, specific excess insurance, and aggregate excess insurance through the Department of Management Services, as is necessary to provide insurance coverages. The Department of Insurance is also authorized to purchase risk management services, including risk and claims control, safety management and legal, investigative and adjustment services, as may be required. The department is authorized to pay claims, and may contract with a service organization for deposit in a special checking account for paying claims made against the state.

Presently, the department does not utilize the option of a structured settlement in disposing of litigation. Traditionally, a structured settlement is set up, whereby an annuity is paid yearly to the plaintiff, allowing the plaintiff to reap the tax benefits of an annuity, and spreading out the proceeds of the settlement over an extended period of time. Currently, the Division of Risk Management at the department has been unable to make structured settlements responsive to the needs of the litigants, since the department must go through a lengthy proposal and bidding process. The time constraint of this process discourages structured settlements by the department.

Adoption of Buyer's Guide

Pursuant to s. 626.99, F.S., insurers must deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for his or her needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration, and improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance. The insurer must provide to each prospective purchaser a buyer's guide and a policy summary prior to accepting any applicant's initial premium, unless the policy contains a provision for an unconditional refund for a period of at least 10 days.

Section 626.99(6), F.S., provides that any insurer soliciting life insurance in Florida, on or after October 1, 1980, must adopt and use a buyer's guide. An insurer is in compliance with this section if the insurer uses the buyer's guide adopted May 4, 1976, by the National Association of Insurance Commissioners. Failure to provide or deliver a buyer's guide or policy summary shall constitute an omission which misrepresents the benefits, advantages, conditions, or terms of an insurance policy.

Valuation of Life Insurance Policies

Section 625.121, F.S., the Standard Valuation Law for life insurance, provides that the Department of Insurance must annually value the reserve liabilities, or reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in Florida. The department may certify the amount of any reserves, specifying the mortality table or tables, rate or rates of interest, and methods, net-level premium method or others, used in the calculation of such reserves. Currently, all companies selling life insurance and other long term care products must hold reserves for the payment of future claims. The reserving practices of companies for "term-like" insurance products currently vary.

Insurance industry representatives assert that under the current Standard Valuation Law for life insurance enables some insurers to hold reserves on term products and universal life plans with secondary guarantees at inadequate levels.

The National Association of Insurance Commissioners (NAIC) has recently adopted a model rule, V830-1, for the valuation of life insurance policies, including tables of select mortality factors.

III. Effect of Proposed Changes:

Section 1. The bill would prohibit a foreign (out-of-state) insurance agency, firm, corporation, partnership, or association, owned or controlled by a Florida resident or business entity, that uses or employs a nonresident agent, and that furnishes insurance advertising or solicitation materials, which are distributed in this state, or uses unlicensed personnel to initiate contact with a

nonresident agent, from being defined as an “insurance agency” for purposes of sharing commissions as described in s. 626.753, F.S.

The bill is drafted to prohibit a very specific circumstance, where a Florida resident or business entity forms a foreign insurance agency corporation, for the primary purpose of using a nonresident agent’s license through the corporation to market property and casualty insurance and share in the nonresident agent and non-agency’s commissions.

The bill would not prohibit a Florida resident from establishing a Florida insurance agency, use a Florida resident’s insurance license, and sharing in the agent’s commission in the form of salaries or bonuses, without the need to comply with the countersignature law described in s. 626.741, F.S.

Section 2. Amends s. 284.33(1), F.S., to allow the Department of Insurance to directly purchase annuities from an insurer without being subject to the competitive bidding requirements of part I of chapter 287, F.S., by using a structured settlement insurance consulting firm, which would be required to be chosen by competitive bid proposals. This consulting firm will assist the Division of Risk Management in the settlement of claims, and will serve as an agent of record for the department in procuring the best annuity products available to facilitate structured settlements. The consulting firm will consider the price, insurer financial strength and the best interests of the state risk management program. The actual purchase of annuities by the department will be excepted from the competitive sealed bidding or proposal requirements.

The bill would make the use of structured settlements more feasible for the Division of Risk Management. By excepting the actual purchase of annuities from the competitive sealed bidding requirements, the chosen consulting firm would be able to more expeditiously purchase annuities to facilitate more structured settlement agreements by the division.

Section 3. Amends s. 626.99(6), F.S., to change the 1976 edition to the 1996 edition of the buyer's guide of the National Association of Insurance Commissioners, which may be used by insurers soliciting life insurance in Florida to comply with the solicitation requirements of Florida law. The March 1996 edition of the buyer's guide adopted by the National Association of Insurance Commissioners in the NAIC Life Insurance Solicitation Model Regulation addresses the new products and language used in the life insurance industry, which have changed since the 1976 edition.

Section 4. Creates s. 627.478, F.S., to address the valuation of life insurance policies. The bill provides that the department may adopt, by rule, the valuation of life insurance policies model regulation, which was approved by the National Association of Insurance Commissioners in March 1999. The model rule also includes tables of select mortality factors.

This model rule affects long term life insurance products. The model rule, if adopted by the department, would increase the reserves insurers are required to hold to pay future claims. The probable effect of increasing the reserves required, would be a lowering of the cash surrender and other guaranteed values under the policy, as well as an increase in premiums.

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:

Definition of Insurance Agency

Constitutional issues of equal protection and interstate commerce may be raised, as the bill attempts to restrict the business activities of a foreign (out-of-state) corporation and a duly licensed nonresident agent, where the same business activities and sharing of commissions with unlicensed owners of a Florida corporation (agency) would still be permitted. To be constitutional under an equal protection analysis, there must be a rational basis for making a distinction between the resident and nonresident agent for this purpose.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Definition of Insurance Agency

The bill may inhibit competition in the marketing of insurance by Florida residents who have set up a foreign corporation or insurance agency, and use a nonresident agent to sell insurance for the foreign corporation or insurance agency. Insurers and agents who sell insurance by more traditional methods would benefit.

Valuation of Life Insurance Policies

If the department adopts the NAIC model rule on the valuation of life insurance policies, insurers would be required to increase their reserves on long term life insurance products to hold for payment of future claims. This could cause an increase in premiums and lower the cash surrender and other guaranteed values under the policy.

The National Association of Insurance Commissioners (NAIC) has recently adopted a model rule, V830-1, for the valuation of life insurance policies, including tables of select mortality factors. Proponents of the bill assert that the adoption of the model rule will establish

consistency in reserving practices for term products and universal life plans. They suggest that it will create a nationwide reserving requirement. Proponents hope that all states will adopt the model rule, to develop a regulation that would apply to all companies, with a common effective date of January 1, 2000.

C. Government Sector Impact:

Purchase of Insurance Services

The bill would allow the Department of Insurance to directly purchase annuities by using a structured settlement insurance consulting firm, which will assist the Division of Risk Management in the settlement of claims, and will help procure the annuity products available to facilitate structured settlements. Industry representatives have indicated that the annuity products and prices involved in structured settlements are basically the same. It is the choice of the consulting firm which effects the utilization of structured settlements.

The bill would make the use of structured settlements more feasible for the Division of Risk Management, as they have not used them in the past, due to the time constraints imposed by the competitive bidding process. By excepting the actual purchase of annuities from the competitive sealed bidding requirements, the chosen consulting firm would be able to more expeditiously purchase annuities to facilitate more structured settlement agreements by the division.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.