

STORAGE NAME: s1226s1z.in  
DATE: June 27, 2000

**\*\*AS PASSED BY THE LEGISLATURE\*\***  
CHAPTER #: 2000-365, Laws of Florida

**HOUSE OF REPRESENTATIVES  
AS FURTHER REVISED BY THE COMMITTEE ON  
INSURANCE  
FINAL ANALYSIS**

**BILL #:** CS/SB 1226, 1st ENG.

**RELATING TO:** Insurance

**SPONSOR(S):** Banking and Insurance and Senator Holzendorf

**TIED BILL(S):**

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

- (1) BANKING AND INSURANCE YEAS 8 NAYS 0
  - (2) GOVERNMENTAL OVERSIGHT AND PRODUCTIVITY YEAS 7 NAYS 0
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

This bill makes several changes to Florida law relating to life insurance, health insurance, and premium financing. The bill:

- authorizes the Division of Risk Management to directly purchase annuities for the purpose of entering into structured settlements;
- modifies the method of calculating the deficiency reserve for renewable term life insurance policies;
- updates the buyer's guide required to be used by insurers selling life insurance;
- authorizes the Department of Insurance to adopt by rule the model rules for the valuation of life insurance policies adopted by the National Association of Insurance Commissioners in March 1999;
- requires a person to have prior *individual* coverage provided in Florida in order to qualify for guaranteed availability of an individual health insurance policy;
- removes the \$1 per-installment limitation on service charges for premium balances greater than \$220 for general lines agents and insurers (but retains the current \$12 per year limitation); and
- establishes the Commission for Health Care for the Employee Leasing industry to study the availability and delivery methods of health care in the employee leasing industry

The bill would have no fiscal impact on local government; however, it would have a fiscal impact on state government of an indeterminate amount. See the "Fiscal Comments" section of this analysis.

The bill takes effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Aspects of the present situation addressed by the bill are described in the "Section-by-Section Analysis" below.

C. EFFECT OF PROPOSED CHANGES:

The bill would affect several provisions of law relating to insurance. For more detail, see the "Section-by-Section Analysis."

- The Division of Risk Management would be authorized to contract, pursuant to Chapter 287, F.S., with an insurance consultant through whom the state could directly purchase annuities for structured settlements. Thus, the Division of Risk Management would no longer be subject to the procurement requirements of Chapter 287, F.S., every time it needed to purchase an annuity for a structured settlement. The insurance consultant would be selected through the competitive bidding or proposal process.
- The deficiency reserves for renewable term life insurance policies would be calculated in accordance with the model NAIC regulations for the valuation of life insurance policies and, as such, would take into account subsequent terms.
- Insurers selling life insurance would be authorized to use the buyer's guide adopted by the NAIC on October 1, 1996.
- The Department of Insurance would be authorized to adopt by rule the model rules for valuation of life insurance policies as adopted by the NAIC in March 1999.
- To qualify for guaranteed availability of individual health insurance under s. 627.6487, F.S., using prior individual coverage (instead of prior group coverage), only individual coverage provided in Florida would count as creditable coverage. See the "Constitutional Issues" section of this analysis.
- Insurance agents and insurers would no longer have the \$1 per-installment limitation on the premium finance charge for premium balances greater than \$220 (but they would still be subject to the current \$12 per year limitation); and

- The Commission for Health Care for the Employee Leasing Industry would be established to study the availability and delivery methods of health care in the employee leasing industry.

D. SECTION-BY-SECTION ANALYSIS:

**Section 1:** Amends s. 284.33, F.S.

**PRESENT SITUATION:**

**Florida Casualty Insurance Risk Management Trust Fund**

Part II of Chapter 284, F.S., creates a trust fund, called the Florida Casualty Insurance Risk Management Trust Fund, for the purpose of providing casualty insurance for the State of Florida. The trust fund covers all departments of the State of Florida and their employees, agents, and volunteers.<sup>1</sup> The Department of Insurance, Division of Risk Management administers this trust fund.

The Florida Casualty Insurance Risk Management Trust Fund provides insurance to the State of Florida for:

- workers' compensation;
- general liability;
- fleet automotive liability;
- federal civil rights actions (42 U.S.C. s. 1983 and similar statutes); and
- attorneys fees in certain other proceedings against the state.

To provide these various coverages, Florida law authorizes the Department of Insurance to purchase insurance and reinsurance through the Department of Management Services, pursuant to state procurement requirements.<sup>2</sup> The law also allows the Department of Insurance to purchase risk management services, including claims control, investigation, claims adjustment, and legal services.<sup>3</sup>

**State Procurement Requirements**

Chapter 287, F.S., sets forth the requirements the state must follow in purchasing commodities and contractual services. Under Florida law, insurance is not considered a commodity, but it is required to be purchased in the same manner as a commodity.<sup>4</sup> When purchasing insurance for the state risk management program, the Department of Management Services must follow the invitation to bid or request for proposal process.<sup>5</sup> According to the Division of Risk Management, this process can take several months to complete.

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<sup>1</sup> Section 284.31, F.S.

<sup>2</sup> Section 284.33(1), F.S.

<sup>3</sup> Id.

<sup>4</sup> See s. 287.022(1), F.S.

<sup>5</sup> See s. 287.057(1) & (2), F.S.

### Structured Settlements

An arrangement to satisfy a legal liability which involves the periodic payment of money through an annuity (or other financial product) is generally referred to as a structured settlement. Under a structured settlement involving an annuity arrangement, one party pays a lump sum premium to an insurance company to purchase an annuity in the name of the claimant. The premium varies depending on the number and length of payments. The insurance company then makes periodic payments to the claimant for the negotiated period of time.

Structured settlements are commonly used as an alternative to simple lump sum settlements. Structured settlements can offer some advantages to both parties involved in the settlement. For claimants, a structured settlement can provide assurance of future income, which may be necessary for claimants with long term medical needs. Also, money paid to a claimant through a structured settlement receives more favorable federal tax treatment. Unlike investment earnings on a lump sum payment, which are taxable, payments made under a structured settlement are not taxable. However, claimants must weigh these advantages against the disadvantage of not having access at any one time to the entire amount of money received in the settlement.

For the paying party, structured settlements can provide a more cost effective means of extinguishing the legal liability. For example, a \$2 million lump sum payment would cost \$2 million. However, \$2 million paid over time through a structured settlement might be accomplished through purchasing an annuity that costs only \$500,000 -- a savings of \$1.5 million.

### EFFECT OF SECTION:

*This section authorizes the Division of Risk Management to contract with a "structured settlement insurance consultant" to act as an agent of record of the state and to assist in the direct purchasing of annuities for structured settlements. Under this section, the Division of Risk Management would be authorized to pay a premium to an insurance company to purchase an annuity. Then, the insurance company would make periodic payments to the claimant.*

*The insurance consultant would be selected in accordance with the state's procurement requirements. This section sets forth the criteria the consultant must consider in procuring annuities, including price, financial strength of the insurer, and the best interest of the state risk management program. Finally, this section exempts from the state procurement requirements the purchase of annuities through the structured settlement insurance consultant.*

**Section 2:** Amends s. 625.121, F.S.

### PRESENT SITUATION:

#### Life Insurance

Life insurance is the insurance of human lives. Life insurance contracts can take four basic forms: term; whole life; endowment; and annuities.

*Term Life Policy* - A policy that furnishes life insurance protection for a limited number of years. The value of the policy is paid only if the death occurs during the contract term, and nothing is paid if the insured survives the term.<sup>6</sup>

*Whole Life Policy* - A policy that provides for the payment of the face value of the policy upon the death of the insured, regardless of when it occurs. The most common whole life policy is the straight life policy, which assumes premiums will be paid throughout the life of the insured.<sup>7</sup>

*Endowment Policy* - A policy that is similar to a term life policy in that it pays a fixed benefit upon the death of the insured during a specified term, but different in that it pays a benefit at the end of the term if the insured is still living.<sup>8</sup>

*Annuity* - A contract where, for cash consideration, one party (the insurer) agrees to pay the other (the annuitant) a stipulated sum of money for a specified period of time, which can be a set number of years or for the life of the annuitant. Annuities are generally referred to as either immediate or deferred. Immediate annuities are purchased with a single premium and immediately begin paying benefits on a regular basis. Deferred annuities are structured so premium payments accumulate interest until a designated date for payments to begin.<sup>9</sup>

### Life Insurance Reserves

#### *Generally*

Life insurance contracts are written on a level-annual-premium basis, that is, the same amount of premium is paid throughout the life of the policy. This means that premiums collected near the beginning of the policy are higher than necessary to pay claims in those years, while premiums paid in the later years of the policy are insufficient to pay claims in those years. As a result, the premiums collected in the early years of the policy, which exceed current-year requirements, must be accounted for and held for payment of future benefits. This money is called the basic policy reserve.

Therefore, if an insurer has reserved correctly:

the policy reserve + future premiums = enough money to pay future benefits.

Florida law establishes a formula which determines how much of the gross premiums collected by the insurer must be held as the basic policy reserve.

Occasionally, insurers will charge premiums which are lower than the premiums that standard mortality tables suggest they should charge. When this occurs, the basic policy reserve held by the insurer may be inadequate. To ensure that there

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<sup>6</sup> ARTHUR ANDERSON & CO., THE INSURANCE INDUSTRY, AN INTRODUCTION, 60 (1991).

<sup>7</sup> *Id.* at 61-62.

<sup>8</sup> *Id.* at 64.

<sup>9</sup> *Id.* at 64-65.

is sufficient money to pay claims, insurers are required to reserve additional premiums. This is called a "deficiency" reserve.

The deficiency reserve equals the difference between the premiums insurers actually charge and the premium the applicable mortality tables suggest they should charge.

Current law directs the insurer to calculate deficiency reserves for renewable term life insurance policies by using the current term period only -- excluding the subsequent terms which could occur after renewal.

*Standard Valuation Law - National Association of Insurance Commissioner's (NAIC) Model Act and Florida*

The NAIC has adopted a model act, called the Standard Valuation Law, for the valuation of life insurance policies and the calculation of basic policy reserves and deficiency reserves. The most recent revision of the NAIC model act was in January 1997. Virtually every state in the country, including Florida, has adopted a variation of the NAIC model act.

Section 625.121, F.S., is Florida's "Standard Valuation Law." Section 625.121(7), F.S., provides the method for calculating the basic policy reserve. Section 625.121(11), F.S., provides the method for calculating the deficiency reserve.

*NAIC Model Regulations for the Valuation of Life Insurance Policies Including Tables of Select Mortality Factors*

To implement the NAIC model act, the NAIC has adopted a set of model rules, which include tables of select mortality factors. The most recent version of these model rules was adopted by the NAIC in March 1999.

The NAIC model rules take into account the subsequent terms of a renewable term life insurance policy when calculating the deficiency reserve. This is different than the approach currently taken under Florida law, which only takes into account the current term period.

**EFFECT OF SECTION:**

*This section would require deficiency reserves for renewable term life insurance policies to be calculated in accordance with the deficiency reserve provisions of the NAIC model rules, which take into account subsequent renewable terms.*

*This section would also authorize the Department of Insurance to adopt by rule the model regulations for the valuation of life insurance policies, including tables of select mortality factors, as approved by the NAIC in March 1999. This section would also authorize the Department of Insurance to make the rules retroactively effective January 1, 2000.*

**Section 3:** Amends s. 626.99, F.S.

**PRESENT SITUATION:**

Florida law regulates insurers' sale of life insurance to purchasers in the state. The purpose of this law is to provide information to purchasers which will improve the buyers

ability to select the most appropriate plan of life insurance, improve the buyer's understanding of the basic features of the policy, and improve the buyer's ability to evaluate the relative costs of similar plans of life insurance.<sup>10</sup> To achieve this purpose, the law requires insurers to adopt and use a buyer's guide. Current law provides that the adoption and use of the buyer's guide adopted May 4, 1976, by the NAIC constitutes compliance with the law.

**EFFECT OF SECTION:**

*This section changes the date of the NAIC-approved buyer's guide that insurers may use when soliciting life insurance business. It replaces the version approved by the NAIC May 4, 1976, with the version approved by the NAIC October 1, 1996. This section also revises the title of the buyer's guide to conform to the revision made by the NAIC.*

**Section 4:** Amends s. 627.6487, F.S.

**PRESENT SITUATION:**

Health Insurance Portability and Accountability Act (HIPAA)

In 1996, Congress enacted the federal Health Insurance Portability and Accountability Act (HIPAA) to provide guaranteed availability and renewability of health insurance coverage for certain employees and individuals, and to increase portability of insurance through the limitation on preexisting condition exclusions. "Portability" in HIPAA means that once you have health coverage, this coverage may be used to reduce or eliminate any preexisting condition exclusion that might be applied to you under a future plan or policy.<sup>11</sup> The concept of portability is one of receiving credit for maintaining health coverage, even though it may be under different health plans or policies.<sup>12</sup>

The HIPAA allowed each state the option of enacting and enforcing the federal provisions or relying on federal enforcement. The HIPAA specifies that the federal provisions pertaining to health insurers in the individual market generally do not preempt state regulation of individual insurers. If the state's statutory provisions prevent the application of a federal requirement, the HIPAA preempts the statutes and the federal requirements prevail. Each state must ensure that its provisions comport with HIPAA and do not diminish the federal requirements. Each state was permitted to adopt provisions that expand or provide more favorable treatment for the individual.

Guaranteed Availability of Individual Health Insurance

In 1997, to comply with the HIPAA, the Florida Legislature enacted a provision which guaranteed the availability of health insurance coverage for eligible individuals.<sup>13</sup> Under Florida law, an "eligible individual" is an individual:

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<sup>10</sup> Section 626.99(1), F.S.

<sup>11</sup> HIPAA Frequently Asked Questions, HIPAA page of the Health Care Financing Administration web site ([www.hcfa.gov/hipaa/hipaahm.htm](http://www.hcfa.gov/hipaa/hipaahm.htm)).

<sup>12</sup> Id.

<sup>13</sup> Chapter law 97-179, s. 4, Laws of Florida.

- (a) 1. who has at least 18 months of prior creditable coverage; and
  2. a. whose most recent prior creditable coverage was under a group plan, governmental plan, or church plan; or
    - b. whose most recent prior creditable coverage was under an individual plan issued by an insurer or HMO, which coverage was terminated because the insurer or HMO became insolvent or because the insured no longer lives in the service area of the network;
- (b) who is not eligible for coverage under a group health plan, a conversion policy, Medicare, or Medicaid, and does not have other coverage;
- (c) whose most recent prior coverage was not terminated based on the nonpayment of premiums or fraud;
- (d) who, having been offered the option of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), elected such coverage; and
- (e) who has exhausted such continuation coverage under COBRA.<sup>14</sup>

Insurers that offer group health insurance coverage are required under the HIPAA (and Florida law) to provide an individual who loses coverage with a certification of the individual's prior creditable coverage. The certificate enables an individual to determine whether they are eligible for individual health insurance coverage guaranteed by the HIPAA and Florida law.

EFFECT OF SECTION:

*This section would limit the portability of individual health insurance coverage since individual coverage provided outside the State of Florida would not count as "creditable coverage" for purposes of Florida's guaranteed availability of individual health insurance coverage. With this section, "creditable coverage" would include:*

- *prior individual coverage provided in the State of Florida; or*
- *prior group coverage regardless of where it was provided.*

*See the "Constitutional Issues" section of the analysis.*

**Sections 5 and 6:** Amends ss. 627.901 and 627.902, F.S.

PRESENT SITUATION:

A premium finance agreement is an agreement under which a company advances money to an insured for the payment of premiums in exchange for the repayment of the money plus a service charge. Premium finance companies are licensed by the Department of Insurance pursuant to s. 627.828, F.S.

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<sup>14</sup> See s. 627.6487(3), F.S. It should be noted that subparagraph 2.b. of s. 627.6487(3)(a), F.S., which allows certain *individual* health insurance coverage to count as creditable coverage, was not required to be enacted under the HIPAA. The federal HIPAA only considers prior *group* coverage as creditable coverage. This provision, which was added in 1998, is more generous than HIPAA in that it expands the types of coverage which would count as creditable coverage.



Insurance agents and insurers may also engage in premium financing. Under s. 627.901, F.S., an insurance agent or insurer may make reasonable service charges for financing insurance premiums on policies issued. The service charge may not exceed \$1 per installment, or a \$6 total per year for any premium balance of \$120 or less. If the premium balance is greater than \$120 and less than \$220, an agent may charge up to \$9 per year. If the premium balance is greater than \$220, an agent is authorized to charge a maximum service charge of \$1 per installment or up to \$12 per year. In the event an insurer or agent service charge is greater than the amount authorized in s. 627.901, F.S., the insurer or agent is subject to regulation applicable to premium finance companies (Part XV of ch. 627, F.S.).

**EFFECT OF SECTIONS:**

*These sections would remove the \$1 per-installment limitation on service charges for premium balances greater than \$220 for general lines agents and insurers. These sections would not effect the current maximum service charge of \$12 per year, regardless of the number of installments.*

**Section 7:** Establishes the Commission for Health Care for the Employee Leasing Industry to study the availability and affordability of health care and the delivery methods for providing health care. The Commission is to be comprised of 12 members, including:

- 2 members of the Senate appointed by the President of the Senate;
- 2 members of the House of Representatives appointed by the Speaker of the House of Representatives;
- 3 members of the employee leasing industry (regulated and licensed under ss. 468.520 - 468.535, F.S.) appointed by the President of the Senate;
- 3 members of the employee leasing industry appointed by the Speaker of the House of Representatives;
- the Treasurer (or designee); and
- the Secretary of the Department of Business and Professional Regulation (or designee).

The Commission is required to submit a report to both houses of the Legislature by January 1, 2001.

III. **FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

A. **FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill could result in reduced expenditures by the state of an indeterminate amount. See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill changes the way the deficiency reserve is calculated for renewable term life insurance policies. Current law requires the insurer to calculate the deficiency reserve on renewable term life insurance policies by using the current term period only. Thus, if an insured is five years into a 10-year renewable term policy, the deficiency reserve would be calculated using the remaining five years of the current term. However, under the NAIC model rules, the deficiency reserve would take into account subsequent terms for which the insured is allowed to renew. Thus, using the example above, if the insured has guaranteed renewability for two additional terms, the remaining 25 years would be taken into account in calculating the deficiency reserve. As a result, the bill could result in insurers having to reserve more money than they are required to under current law.

The cost of reserving more money on renewable term life insurance policies could be outweighed by the benefit of adopting the NAIC regulations which establish a more uniform method of valuation of life insurance policies nationwide.

**D. FISCAL COMMENTS:**

The bill authorizes the Division of Risk Management to purchase annuities through a consultant for the purpose of entering structured settlements. This could enable the Division of Risk Management to settle claims against the state for less money than a traditional lump sum settlement. The amount of these savings is indeterminate. Not all claims are appropriate for structured settlement. Smaller claims may be such that the administrative costs associated with a structured settlement negate any savings achieved through the purchase of an annuity. Additionally, some claimants may refuse to enter into structured settlements. Therefore, it is not possible to provide an accurate projection of savings to the state.

The following example illustrates the potential difference between a lump sum settlement and a structured settlement: Assume a claimant agreed to settle a case for \$2 million. A lump sum settlement would cost the Division of Risk Management \$2 million; however, a \$2 million settlement paid out over time by an insurance company through an annuity might only cost the Division of Risk Management \$500,000 in premium -- a savings of \$1.5 million.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

**Preemption**

The bill states that prior *individual* coverage counts as "creditable coverage" under s. 627.6487, F.S., only if it was *provided in the State of Florida*. Despite such an in-state limitation on creditable coverage, the bill arguably would not be more restrictive than the federal HIPAA and, accordingly, not be preempted.

The HIPAA broadly defines creditable coverage as coverage of the individual under any of the following:

- (A) A group health plan.
- (B) Health insurance coverage.
- (C) Part A or part B of title XVIII of the Social Security Act.
- (D) Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.
- (E) Chapter 55 of title 10, United States Code.
- (F) A medical care program of the Indian Health Service or of a tribal organization.
- (G) A State health benefits risk pool.
- (H) A health plan offered under chapter 89 of title 5, United States Code.
- (I) A public health plan.<sup>15</sup>

The HIPAA does not contain any state-specific limitations on portability. But, the HIPAA only requires that prior *group* coverage be counted as creditable coverage. The HIPAA does not count prior *individual* coverage as creditable coverage, as Florida's more generous law does in s. 627.6487(3)(a)2.b., F.S.

The bill makes no changes to the current provision (modeled after the HIPAA) enabling a person to qualify for guaranteed availability with prior *group* coverage. The bill only limits Florida's more generous provision, which enables a person to qualify for guaranteed

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<sup>15</sup> See 42 U.S.C. Section 300gg(c)(1).

availability with prior *individual* coverage. Thus, it could be argued that section 5, which amends s. 627.6487(3)(a)2.b., F.S., is not more restrictive than HIPAA and, accordingly, would not be preempted.

### Right to Travel

The bill may raise an issue relating to the constitutionally-protected right to travel among the states. Under the bill, individuals with 18 months of prior individual coverage in Florida would be guaranteed availability of coverage, while similar individuals with 18 months of prior individual coverage outside Florida would not. This may raise a question as to whether this provision amounts to an unconstitutional durational residency requirement, similar to the ones struck down by the United States Supreme Court relating to welfare benefits and medical care.<sup>16</sup> Whether this provision passes constitutional muster depends largely on the level of scrutiny a court would apply to the classifications created by this provision. According to Federal and Florida case law, a court would have to determine that the classification created in this bill bears, at a minimum, a rational relationship to a legitimate governmental interest.<sup>17</sup>

#### B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Insurance to adopt by rule the model regulations for valuation of life insurance policies as adopted by the NAIC in March 1999. The bill also specifically authorizes the department to make the regulation retroactive to January 1, 2000.<sup>18</sup>

#### C. OTHER COMMENTS:

##### Structured Settlements

The bill only authorizes the Division of Risk Management to purchase annuities for the purpose of entering into structured settlements. It does not authorize the Division of Risk Management to purchase other financial products through which a structured settlement could be entered.

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<sup>16</sup> See Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969); Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974); Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 903, 106 S.Ct. 2317, 2321, 90 L.Ed.2d 899 (1986) (state law implicates the fundamental right to travel and therefore triggers strict scrutiny: (1) when impeding interstate travel is its primary purpose; (2) when it uses a classification which serves to penalize the right to travel; or (3) where it actually deters such travel); see also Maldonado v. Houstoun, 177 F.R.D. 311, (E.D.Pa. 1997) ("[T]he purpose of preventing the Commonwealth from becoming a welfare magnet is constitutionally impermissible.").

<sup>17</sup> See e.g., Osterndorf v. Turner, 426 So.2d 539, 544 (Fla. 1982) ("We also do not need . . . to consider whether a strict scrutiny or compelling interest test is applicable because the five-year durational residency requirement of section 196.031(3)(e) fails even a minimum rational basis test."); Board of Commissioners of Sarasota County v. Gustafson, 616 So.2d 1165 (Fla. 2d DCA 1993) (applying strict scrutiny to 2-year durational residency requirement for becoming a candidate for county commissioner).

<sup>18</sup> Since the committee substitute expressly authorizes making the rules retroactive to January 1, 2000, the prohibition against retroactive rules does not apply. See s. 120.54(1)(f), F.S.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

**COMMITTEE ON INSURANCE:**

Prepared by:

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Robert E. Wolfe, Jr.

Stephen Hogge

**AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:**

Prepared by:

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Prepared by:

Staff Director:

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