

STORAGE NAME: h0785.in

DATE: March 7, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 785

RELATING TO: Insurance Commission Sharing

SPONSOR(S): Representative Sublette

TIED BILL(S):

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

(1) INSURANCE

(2)

(3)

(4)

(5)

I. SUMMARY:

Florida law specifically prohibits insurance agents and insurance agencies from sharing commissions "with any corporation unless such corporation is an insurance agency."

The bill would prohibit a nonlicensed person or entity from sharing insurance commissions by forming a foreign insurance agency corporation, which employs or uses a nonresident agent licensed in Florida, and using unlicensed persons to initiate customer contact with the nonresident agent. "Financial institutions," as defined in s. 655.005(1)(h) and (p), F.S., would not be subject to this prohibition.

This bill has no fiscal impact on local government, but could have an indeterminate fiscal impact on state government. See Fiscal Comments.

The bill would take effect October 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" 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 checked="" type="checkbox"/> | N/A <input 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:

The bill would create a prohibition against nonresident agents sharing commissions with foreign corporations set up by unlicensed Florida residents or businesses. This prohibition would be enforced by the Department of Insurance.

B. 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 and 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 to, 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(1) and (2), F.S.

Sharing of Commissions

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 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, Florida 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.

Because Florida law does not require the *owners* of an insurance agency to be licensed as insurance agents, Florida law would not prohibit Florida resident agents sharing commissions with unlicensed Florida residents who own a Florida insurance agency.

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.

A Florida resident agent, on the other hand, would be in violation of Florida law if it attempted to do exactly what is described in the hypothetical above. A Florida resident agent cannot form multiple insurance agency corporations with different Florida businesses because Florida law requires each insurance agency to specify a primary agent for each agency and does not allow one agent to be the primary agent for more than one insurance

agency.¹ Nevertheless, a Florida resident agent could effectively do what is described in the hypothetical above by simply establishing one insurance agency -- with unlicensed Florida businesses as the joint owners -- and naming himself or herself as the primary agent for that insurance agency.

A Florida resident agent could also legally rent space at an automobile dealership for the purpose of selling automobile insurance to customers of the dealership. In this instance, the dealership could not share in the commissions of the insurance agent, but would be paid rent by the insurance agent for the leased space.

C. EFFECT OF PROPOSED CHANGES:

This bill would address the situation where a nonresident agent forms separate foreign insurance agency corporations jointly with unlicensed Florida businesses for the purpose of sharing commissions.

Unlicensed persons or entities within the state would not be allowed to share insurance commissions by creating a foreign corporation which employs a nonresident agent and by using unlicensed personnel to initiate customer contact with the nonresident agent.

However, as long as the requirements of Florida law are met, a Florida resident agent would still be permitted to share commissions with the unlicensed owner of a Florida insurance agency. See Constitutional Issues (V., A.)

The prohibition on commission sharing would not apply to a state or federal association, bank, savings bank, trust company, international bank agency, representative office or international administrative office, or credit union, nor to a parent, subsidiary, or affiliate of such an institution. Therefore, these institutions would presumably be permitted to form insurance agency corporations with nonresident agents and share commissions.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill would have an indeterminate fiscal impact on state government. See Fiscal Comments.

¹ Section 626.592(2), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would prohibit Florida residents and businesses who have formed foreign insurance agencies with nonresident agents from sharing in commissions. This would level the playing field between resident and nonresident agents vis-a-vis the ability to form multiple insurance agency corporations with unlicensed Florida residents and businesses and share commissions.

D. FISCAL COMMENTS:

The Department of Insurance would be required to monitor the commissions received by nonresident agents to ensure the nonresident agent is not improperly sharing commissions with a foreign insurance agency set up by a Florida resident or business. The fiscal impact of this monitoring function on the Department of Insurance is unknown.

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 municipalities or counties 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:

A constitutional issue of equal protection may be raised by this bill. The bill prohibits the sharing of commissions between a nonresident agent and a Florida resident who is the unlicensed owner of a foreign insurance agency employing the nonresident agent. But, the bill would not change current law which allows the sharing of commissions between a

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resident agent and a Florida resident who is the unlicensed owner of a Florida insurance agency employing the resident agent. To pass constitutional muster the distinction made between resident and nonresident agents must bear a rational relationship to a legitimate governmental interest.

Also, this bill raises an issue concerning the recently enacted federal Gramm-Leach-Bliley Act -- also called the Financial Services Modernization Act (Act), which significantly changes federal law regarding the relationship between banking and insurance. One of the provisions of the Act requires a majority of states to adopt within three years uniform laws and regulations governing the licensing of individuals and entities to sell insurance or reciprocal provisions relating to the licensing of nonresident individuals and entities. If uniformity or reciprocity is not achieved within three years, the Act establishes the National Association of Registered Agents and Brokers (NARAB) to provide a mechanism for uniform licensing.

Specifically, the Act states that in order to achieve total reciprocity a majority of states must not "impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations." Title III, Subtitle C, Section 321(c)(3).

This bill could be construed as limiting a nonresident agent's activities since it arguably prohibits a nonresident agent from sharing commissions in the same manner as a resident agent.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The bill's prohibition against the sharing of commissions is directed toward foreign insurance agencies "controlled" by unlicensed Florida residents or entities. The bill does not define the term, "controlled." Presumably, then, one could avoid operation of the statute if it did not have the power to direct the management and policies of the foreign insurance agency.²

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

² See e.g., s. 607.0901(1)(f), F.S. ("Control" means the possession, directly or indirectly, through the ownership of voting shares, by contract, arrangement, understanding, relationship, or otherwise, of the power to direct or cause the direction of the management and policies of a person.").

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VII. SIGNATURES:

COMMITTEE ON INSURANCE:

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