

STORAGE NAME: h0785s1.in

DATE: March 22, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: CS/HB 785

RELATING TO: Insurance Commission Sharing

SPONSOR(S): Committee on Insurance and Representative Sublette

TIED BILL(S):

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

(1) INSURANCE YEAS 15 NAYS 0

(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 committee substitute would prohibit a recreational vehicle dealer or broker who is not a licensed insurance agent from sharing insurance commissions on recreational vehicle insurance by forming a foreign corporation, partnership, or entity which is controlled by a person who is not licensed as an insurance agent.

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

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 recreational vehicle dealers or brokers by forming a foreign corporation, partnership, or entity which is controlled by a person not licensed as an insurance agent. This prohibition would be enforced by the Department of Insurance and, possibly, the Department of Highway Safety and Motor Vehicles.

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.

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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.

Regulation of Recreational Vehicle Dealers and Brokers

Recreational vehicle dealers and brokers are licensed and regulated by the Department of Highway Safety and Motor Vehicles pursuant to s. 320.771, F.S.

C. EFFECT OF PROPOSED CHANGES:

This committee substitute would address the situation where a recreational dealer or broker who is not a licensed insurance agent forms separate foreign insurance agency corporations jointly with nonresident agents for the purpose of sharing commissions.

Recreational vehicle dealers or brokers who are not licensed as insurance agents would not be allowed to share insurance commissions on the sale of recreational vehicle insurance by creating a foreign corporation, partnership, or other entity which is controlled by a person who is not an insurance 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.).

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 committee substitute 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 committee substitute would prohibit recreational vehicle dealers or brokers who have formed foreign corporations, partnerships, or entities with nonresident agents from sharing insurance commissions on the sale of recreational vehicle insurance.

D. FISCAL COMMENTS:

The Department of Insurance, and possibly the Department of Highway Safety and Motor Vehicles, would be required to ensure that nonresident agents are not improperly sharing commissions with a foreign corporation, partnership, or entity controlled by a recreational vehicle dealer or broker. Since it would be impossible for either agency to monitor every commission received by nonresident agents, it is more likely that enforcement would occur only after the agency received complaints from competing agents or dealers that a violation is occurring. The fiscal impact on the Department of Insurance and the Department of Highway Safety and Motor Vehicles is unknown because it is impossible to predict how many complaints either agency would receive.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This committee substitute 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 committee substitute 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 committee substitute 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 the committee substitute. The committee substitute prohibits the sharing of commissions between a nonresident agent and a foreign corporation, partnership, or entity which is controlled by a recreational vehicle dealer or broker who is not a licensed insurance agent. But, the committee substitute would not change current law which allows the sharing of commissions between a Florida 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 committee substitute 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 committee substitute could be construed as limiting a nonresident agent's activities since it arguably prohibits a nonresident agent from sharing commissions or profits in the same manner as a resident agent.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The committee substitute's prohibition against the sharing of commissions is directed toward foreign corporations, partnerships, or entities "controlled" by recreational vehicle dealers or brokers who are not licensed insurance agents. The committee substitute 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 corporation, partnership, or entity.²

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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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 21, 2000, the Committee on Insurance adopted a strike-everything amendment to the bill and approved it as a committee substitute. The committee substitute differs from the original bill in that:

- it narrows the proposed prohibition on commission sharing so that it applies specifically to recreational vehicle dealers and brokers; and
- removes from the bill the proposed exemption for financial institutions.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Robert E. Wolfe, Jr.

Stephen Hogge