

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1680

SPONSOR: Banking and Insurance Committee and Senators Posey and Fasano

SUBJECT: Unauthorized Sale of Insurance

DATE: April 10, 2003                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	<u>Harkey</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>GO</u>	_____
5.	_____	_____	<u>AGG</u>	_____
6.	_____	_____	<u>AP</u>	_____
7.	_____	_____	<u>RC</u>	_____

## I. Summary:

The Committee Substitute for Senate Bill 1680 makes the following changes to provisions relating to unauthorized insurance companies:

- Allows any party to bring a civil action against an unauthorized insurer if such party is damaged by that insurer.
- Provides that any person who acts as an insurer or otherwise engages in insurance activities in Florida without a obtaining a certificate of authority, commits insurance fraud and is subject to escalating criminal penalties depending upon the amount of premium involved.

This bill substantially amends ss. 624.155 and 624.401, F.S.

## II. Present Situation:

### Civil Remedies

Under the Florida Insurance Code, any person may bring a civil cause of action against insurance companies for violations of certain enumerated sections of the code.<sup>1</sup> These violations include a broad range of actions by insurers which constitute unfair or deceptive business practices, certain acts of discrimination, cancellation of specified policies, and acting in bad faith. As a condition

<sup>1</sup> S. 624.155, F.S.

precedent to bringing an action, the Department of Financial Services<sup>2</sup> and the insurer must be given 60 days' written notice of the violation and the facts and circumstances giving rise to the violation. If the insurer is sued and is unsuccessful at trial or on appeal, it may be liable for damages, costs, and reasonable attorney's fees incurred by the plaintiff. Punitive damages may be awarded against the insurer if the acts giving rise to the violation occur with such frequency as to indicate a general business practice and such acts are willful and malicious, in reckless disregard for the rights of the insured, or in reckless disregard for the rights of a beneficiary under a life insurance contract.

Under the civil remedy provision, persons who have been damaged by the actions of an unauthorized insurer may not currently bring a civil cause of action. By definition, unauthorized insurers are not authorized to transact insurance in this state because such entities have not obtained a certificate of authority issued by the Office of Insurance Regulation. An authorized insurer is an entity duly authorized by a subsisting certificate of authority issued by the office to transact insurance in this state.<sup>3</sup> Currently under s. 624.401, F.S., it is a third-degree felony for any person to act as an insurer, transact insurance, or otherwise engage in insurance activities without a certificate of authority. This criminal penalty would include insurance agents and others who transact insurance as the definition of "transacting" is very broad: to transact insurance is defined to include solicitation or inducement; preliminary negotiations; effectuation of a contract of insurance; and, transaction of matters subsequent to effectuating an insurance contract.<sup>4</sup> During the 2002 session, legislation was enacted to provide that licensed insurance agents who knowingly represented or aided an unauthorized insurer committed a third-degree felony.<sup>5</sup>

### **Unauthorized Insurers**

Part VIII of chapter 626, F.S., prohibits the activities relating to unauthorized insurance. It provides that no person shall act, from Florida, or from another state, on behalf of any insurer which is not authorized to transact insurance in this state.<sup>6</sup> It provides for sanctions, fines and penalties and prohibits the activities of persons who solicit, represent or assist such insurers in the transaction of insurance.<sup>7</sup> According to representatives with the Division of Insurance Fraud within the Department of Financial Services, the problems of unauthorized insurance are pervasive and difficult to investigate. The typical unauthorized insurance company is in fact a criminal enterprise disguised as an insurance company. Their operations are often national and sometimes international in scope, and they may claim to be licensed in a foreign country. These

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<sup>2</sup>As currently provided in s. 624.155, F.S., the Dept. of Insurance receives this notice. Effective January 7, 2003, this department was transferred to the Dept. of Financial Services and to the Office of Insurance Regulation (ch. 2002.404, L.O.F. ("the 2002 act")). CS/SB 1712 makes changes to the Insurance Code to conform to the 2002 act, which include a requirement that civil remedy notices be sent to the Dept. of Financial Services.

<sup>3</sup> S. 624.09, F.S. Under the 2002 act and CS/SB 1712, the Office of Insurance Regulation issues certificates of authority to insurers.

<sup>4</sup> S. 624.10, F.S.

<sup>5</sup> Ch. 2002-206, L.O.F.

<sup>6</sup> S. 624.10, F.S.

<sup>7</sup> Under the 2002 act, the Office of Insurance Regulation issues certificates of authority to insurers, while the Dept. of Financial Services licenses insurance agents. As CS/SB 1712 amends s. 626.909, F.S., relating to the representing or aiding unauthorized insurers, both the department and the office will exercise powers relating to unauthorized entities within their respective jurisdictions.

companies write policies and collect premiums, but do not pay claims. Instead, such enterprises typically take the premiums and other assets of the company and move them offshore where they are difficult to find and even more difficult to retrieve, and ultimately prosecute. These unauthorized insurers defraud thousands of insurance consumers in Florida.

Under s. 624.310, F.S., the Department of Financial Services or the Office of Insurance Regulation may take disciplinary action against an affiliated party or a licensee and such persons may be removed from participating in the affairs of an insurer.<sup>8</sup> Such persons may be removed, prohibited, or their rights and privileges may be suspended or revoked from participating in the insurance industry. An affiliated party who is removed, restricted, or prohibited from participation in the affairs of a licensee may petition the department or office for modification or termination of the removal, restriction, or prohibition.<sup>9</sup>

### III. Effect of Changes:

**Section 1.** Provides that the bill may be cited as the “Pete Orr Insurance Anti-Fraud Act.” According to the sponsor, Mr. Orr purchased a health insurance policy from an out-of-state insurance company that was later determined to be an unauthorized insurer. Unfortunately, Mr. Orr developed cancer and subsequently applied for benefits with his health insurer, but the company did not pay any of his claims. Mr. Orr ultimately died from the disease.

**Section 2.** Amends s. 624.155, F.S., the civil remedy section of the Insurance Code, to allow any party to bring a civil action against an unauthorized insurer if such party is damaged by a violation of s. 624.401, F.S. Section 624.401, F.S., requires persons who transact insurance to obtain a certificate of authority to operate as an insurer and provides that it is a third-degree felony to transact insurance without obtaining such certificate. (Under Section 3, below, the criminal penalties are increased.) It adds the term “authorized” to other provisions of the civil remedy section which has the effect of allowing a person to bring a civil action against an “unauthorized” insurer without being required to give a 60-day written notice to either the department or insurer, prior to bringing a civil action, or comply with the other provisions of that section. This notice would still be required before a person could file a civil remedy action against an authorized insurer.

**Section 3.** Amends s. 624.401, F.S., relating to the requirement to obtain a certificate of authority, to provide that any person who acts as an insurer, transacts insurance, or otherwise engages in insurance activities in Florida without obtaining a certificate of authority, commits insurance fraud as provided for in the following manner. If the amount of insurance premium collected is less than \$20,000, it is a third-degree felony with a minimum term of imprisonment of 1 year. If the amount is \$20,000 or more, but less than \$100,000, it is a second-degree felony with a minimum term of imprisonment of 18 months, and if the amount is \$100,000 or more, it is a first-degree felony with a minimum term of imprisonment of 2 years.

**Section 4.** Provides that this act shall take effect on July 1, 2003.

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<sup>8</sup> An “affiliated party” is defined to mean any person who directs or participates in the affairs of a licensee and who is a director, officer, employee, trustee, committee member, or controlling stockholder of a licensee. A “licensee” means a person issued a license or certificate of authority or approval under the Insurance Code or registered under the Code.

<sup>9</sup> S. 624.310(4)(g), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Persons who have been damaged by the actions of unauthorized insurers will benefit under the provisions of this bill because they may now file a civil law suit against the unauthorized insurer under the civil remedies provisions of the Insurance Code and obtain specified damages as well as costs, reasonable attorney's fees, and in certain instances, punitive damages.<sup>10</sup> The provisions of this bill will impact unauthorized insurers because the bill increases criminal penalties against such illegal enterprises and allows persons injured by such enterprises to sue in civil court.

**C. Government Sector Impact:**

Increased penalties against unauthorized insurers provided for under this bill will aid investigators with the Division of Insurance Fraud and prosecutors in obtaining prison sentences against these illegal enterprises.

**VI. Technical Deficiencies:**

None.

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<sup>10</sup> Punitive damages are discussed above under the Civil Remedies Section (Present Situation) of this analysis.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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