

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1643 w/CS Life Insurance and Annuity Contracts

SPONSOR(S): Llorente & others

TIED BILLS: None

IDEN./SIM. BILLS: CS/SB 2442

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (sub)	10 Y, 0 N	Cheek	Cooper
2) Insurance	21 Y, 0 N w/CS	Cheek	Cooper
3) Finance & Taxation			
4)			
5)			

SUMMARY ANALYSIS

Section 624.401, F.S., prohibits insurance transactions emanating from Florida unless the insurer holds a certificate of authority from this state. Section 624.402, F.S., provides exceptions to the certificate of authority requirement. The bill exempts transactions involving life insurance and annuity contracts sold to nonresidents of the United States by an insurer domiciled outside of the United States from the certificate of authority requirements, provided the insurer meets defined requirements of financial condition and contract disclosure.

The bill provides the popular name of the "Isabella Llorente Non-resident Life Insurance and Annuity Contract Act of 2004." Specifically, the bill exempts an insurer domiciled outside of the United States from the requirement that it must have a certificate of authority to operate from offices within Florida for transactions involving life and annuity contracts sold to nonresidents of the United States. To be eligible, the insurer must meet the same requirements as an eligible surplus lines insurer as specified in s. 626.918(2), F.S. The financial requirement this section is that the insurer must have and maintain a policyholder surplus of \$15 million.

The bill provides that an insurer must make available to the applicant a copy of its financial statement showing its financial condition current within 120 days; the date of the organization of the insurer; the rating or non-rating of the company; a statement that the company does not hold a certificate of authority from Florida and is not regulated by the Office of Insurance Regulation; and the identity and address of the regulatory authority exercising oversight of the insurer.

The bill also provides that the insurer is not exempt from agent licensure requirements of chapter 626, F.S., and must appoint agents used to sell such policies. In addition, the insurer is also subject to the Unfair Trade Practices section of chapter 626, F.S. Policies written under this section are exempted from premium tax. The bill provides specific requirements for non-United States domiciled insurers to provide life and annuity policies to non-United States residents.

The bill requires disclosure in the application and on the policy that the policy is not governed by the laws of Florida and the Florida Life and Health Guaranty Association do not cover such policies. The disclosures are similar to the disclosures required for out-of-state group policies that are issued in another state and are necessary for policies written by insurers that are not authorized to do business in the United States. The bill applies the Florida Money Laundering act to a single premium life insurance policies and single annuity contracts issued to persons who are non-residents.

Finally, the bill expands the definition of "insurable interest" under s. 627.404, F.S., to include any organization meeting the requirements of section 501(c)3 of the Internal Revenue Code of 1986; as amended; any organization to whom a charitable donation could be made under section 170(c)1 of the Internal Revenue Code of 1986; or any trust, partnership, corporation, limited liability company, or similar entity designated in writing by a charitable organization.

There does not appear to be a fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1643b.in.doc

DATE: April 19, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Background

Section 624.401, F.S., prohibits insurance transactions emanating from Florida unless the insurer holds a certificate of authority from this state. Section 624.402, F.S., provides exceptions to the certificate of authority requirement. Specifically, a certificate of authority is not required of an insurer with respect to the following:

- Investigation, settlement, or litigation of claims under its policies lawfully written in this state, or liquidation of assets and liabilities of the insurer (other than collection of new premiums), all as resulting from its former authorized operations in this state.
- Transactions involving a policy, subsequent to issuance thereof, covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and lawfully solicited, written, or delivered outside this state.
- Transactions pursuant to surplus lines coverages lawfully written under part VIII of chapter 626, F.S.
- Reinsurance, when transacted as authorized under s. 624.610, F.S.
- Continuation and servicing of life insurance or health insurance policies or annuity contracts remaining in force as to residents of this state when the insurer has withdrawn from the state and is not transacting new insurance therein.
- Investment by a foreign insurer of its funds in real estate in this state or in securities secured thereby, if the foreign insurer complies with the laws of this state relating generally to foreign business corporations.
- Transactions involving hospital professional, hospital liability, and hospital general liability insurance issued to a resident of this state by a captive insurance company, provided the captive insurance company is domiciled in a United States jurisdiction, the insurance regulatory body of which has been accredited by the National Association of Insurance Commissioners; the insured owns or controls, or holds with the power to vote, a percentage of the voting securities of such captive insurance company that is equal to or greater than the greatest percentage of voting securities owned or controlled by any other person; the captive insurance company files an insurance premium tax return in this state and pays the tax on such insurance premiums imposed by s. 624.509(1) or s. 624.5091, whichever is greater; the captive insurance company has insured no

more than three hospitals in Florida; the captive insurance company has been in existence for at least 3 years as of July 1, 1992; and the captive insurance company maintains a surplus of at least \$1.5 million in accordance with the laws of its state of domicile.

Major Changes to Current Law

The bill provides the popular name of the “Isabella Llorente Non-resident Life Insurance and Annuity Contract Act of 2004.” The bill exempts transactions involving life insurance and annuity contracts sold to nonresidents of the United States by an insurer domiciled outside of the United States from the certificate of authority requirements, provided the insurer meets defined requirements of financial condition and contract disclosure.

Specifically, the bill exempts an insurer domiciled outside of the United States from the requirement that it must have a certificate of authority to operate from offices within Florida for transactions involving life and annuity contracts sold to nonresidents of the United States. To be eligible, the insurer must meet the same requirements as an eligible surplus lines insurer as specified in s. 626.918(2), F.S. Pursuant to the financial requirement of this section, the insurer must have and maintain a policyholder surplus of \$15 million.

The bill provides that the insurer must provide to the applicant:

- A copy of its financial statement showing its financial condition current within 120 days;
- The date of the organization of the insurer;
- The rating or non-rating of the company;
- A statement that the company does not hold a certificate of authority from Florida and is not regulated by the Office of Insurance Regulation (OIR); and
- Provide the identity and address of the regulatory authority exercising oversight of the insurer.

The insurer is not exempt from agent licensure requirements of chapter 626, F.S., and must use agents licensed to sell such policies. In addition, the insurer is also subject to the Unfair Trade Practices section of chapter 626, F.S. Policies written under this section are exempted from premium tax.

The bill provides specific requirements for a non-United States domiciled insurers to provide life and annuity policies to non-United States resident.

The bill requires disclosure in the application and on the policy that the policy is not governed by the laws of Florida and the Florida Life and Health Guaranty Association do not cover such policies. The disclosures are similar to the disclosures required for out-of-state group policies that are issues in another state and are necessary for policies written by insurers that are not authorized to do business in the United States.

The bill applies the Florida Money Laundering Act to all single premium life insurance policies and single annuity contracts issued to persons who are not residents of the United States.

Finally, the bill expands the definition of “insurable interest” under s. 627.404, F.S., to include any organization meeting the requirements of section 501(c)3 of the Internal Revenue Code of 1986, as amended; any organization to whom a charitable donation could be made under section 170(c)1 of the Internal Revenue Code of 1986; or any trust, partnership, corporation, limited liability company, or similar entity designated in writing by a charitable organization.

C. SECTION DIRECTORY:

Section 1: Provides the popular name of "The Isabella Llorente Non-resident Life Insurance and Annuity Contract Act of 2004."

Section 2: Adds s. 624.402, F.S., - *Exceptions, certificate of authority required.*

Section 3: Amends s. 627.404, F.S., relating to *Insurable interest; personal; insurance.*

Section 4: Provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Additional review and monitoring responsibilities can be absorbed within current resources within OIR.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The change may result in non- United States domiciled companies establishing offices in the state to serve non-United States residents. Authorized carriers currently serving non-resident citizens may find increased competition for sales to non-United States residents.

D. FISCAL COMMENTS:

According to OIR, additional reviews and monitoring responsibilities can be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None. The bill should include rulemaking authority for the commission.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Newly created s. 624.402(8)(a)1., F.S., of the bill exempts non-United States domiciled insurers from licensure, provided the OIR determines that the insurer meets the same requirements as an eligible surplus lines insurer as set forth in s. 626.918(1), F.S. According to the OIR, applying the requirements of surplus lines insurers to non-United States domiciled insurers may not be appropriate, since surplus lines insurers are domestic insurers rather than non-domestic insurers.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 13, 2004, the Committee on Insurance adopted five amendments to create a CS amendment. The amendments are summarized as follows:

- Provides that financial statements provided by the insurer must be the most recent quarterly financial statements, rather than current within 120 days.
- Provides specific requirements for a non-United States domiciled insurers to provide life and annuity policies to non-United States resident.
- Requires disclosure in the application and on the policy that the policy is not governed by the laws of Florida and the Florida Life and Health Guaranty Association do not cover such policies. The disclosures are similar to the disclosures required for out-of-state group policies that are issued in another state and are necessary for policies written by insurers that are not authorized to do business in the United States.
- Applies the Floira Money Laundering Act to all single premium life insurance policies and single annuity contracts issued to persons who are not residents of the United States.
- Expands the definition of "insurable interest" under 2. 627.404, F.S., to include any organization meeting the requirements of section 501(c)3 of the Internal Revenue Code of 1986, as amended; any organization to whom a charitable donation could be made under section 170(c)1 of the Internal Revenue Code of 1986; or any trust, partnership, corporation, limited liability company, or similar entity designated in writing by a charitable organization.
- Provides the popular name of "The Isabella Llorente Non-resident Life Insurance and Annuity Contract Act of 2004."