

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1844

INTRODUCER: Banking and Insurance Committee and Senator Latvala

SUBJECT: Alien Insurers

DATE: February 27, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.	Betta	DeLoach	BGA	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The Office of Insurance Regulation (OIR) regulates and licenses insurers and other risk-bearing entities.<sup>1</sup> Regulatory oversight includes licensure, approval of rates and policy forms, market conduct and financial exams, solvency oversight, and administrative supervision, as provided in the insurance code or ch. 636, F.S.<sup>2</sup>

In 2011, the Legislature created an exemption from the requirement to obtain a certificate of authority (COA) for any insurer domiciled outside the U.S. (alien insurer) and insuring only persons who, at the time of issuance or renewal, are nonresidents of the U.S., if the alien insurer met certain conditions. The law also provides that the alien insurer, or any affiliated person, may not solicit, sell, or accept application for any insurance policy or contract to be delivered or issued to any person in the U.S.<sup>3</sup> The bill revises the current exemption provisions relating to such alien insurers in the following manner:

- Deletes the reference to affiliated persons from the prohibition on insurers soliciting or selling policies, or accepting applications for any person in the United States. Thus, an insurer who has an affiliate would not be disqualified from obtaining an exemption.

<sup>1</sup> Risk-bearing entities include, but are not limited to multiple-employer welfare arrangements, commercial self-insurance funds, warranty associations, health maintenance organizations, prepaid limited health service organizations, prepaid health clinics, and continuing care facilities.

<sup>2</sup> Section 20.121(3)(a)2., F.S.

<sup>3</sup> s.4, Ch. 2011-174, L.O.F.

- Expands the definition of nonresident to include a trust or other entity organized and domiciled under the laws of a country other than the United States.

The bill also creates an exemption from the COA requirements for an alien insurer issuing life insurance or annuity contracts covering only persons who are not residents of the U.S., if the insurer meets the following requirements:

- The insurer is an authorized insurer in its domiciliary country in the kinds of insurance proposed to be offered in this state; and:
  - Has been an insurer for at least the last three consecutive years; or
  - Is the wholly owned subsidiary of an authorized insurer; or is the wholly owned subsidiary of an already eligible authorized insurer as to the kind of insurance proposed to be issued in this state for a period of not less than the immediately preceding three years.
- Prior to the OIR granting eligibility to an alien insurer to issue policies and contracts in Florida, the insurer is required to meet the following requirements:
  - Submit a copy of its annual financial statement to the OIR in English and with all monetary values expressed in U.S. dollars.
  - Maintain a surplus of at least \$15 million in eligible investments for like funds of like domestic insurers or by investments permitted by the domiciliary regulator, if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of domestic insurers under part II of ch. 625, F.S.
  - Have a good reputation for providing service and paying claims.
  - Furnish to the OIR with annual and quarterly financial statements.
  - Provide certain disclosures to policy or contract applicants, such as the date the insurer was organized; the identity and rating assigned by each rating organization that has rated the insurer; the insurer does not hold a COA; the OIR does not exercise regulatory oversight over the insurer; the policy or contract is not covered by a guaranty association, and the identity and address of the regulatory authority exercising oversight of the insurer.

This bill substantially amends the following section of the Florida Statutes: 624.402.

## II. Present Situation:

### Regulation of Insurance in Florida

The Florida Insurance Code contains many provisions designed to prevent insurers from becoming insolvent and to protect and provide recovery for policyholders in the event of insolvency. These provisions include minimum capital and surplus requirements<sup>4</sup> and financial reporting requirements.<sup>5</sup> In addition, five guaranty funds are established under ch. 631, F.S., to ensure that policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding covered claims, up to limits provided by law. Generally, entities subject to regulation under the insurance code are subject to assessments of the applicable guaranty association.

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<sup>4</sup> Section 624.4095, F.S.

<sup>5</sup> Section 624.424, F.S.

Section 624.401, F.S., requires insurers and other risk-bearing entities to obtain a certificate of authority from the OIR prior to engaging in insurance transactions unless specifically exempted. Section 624.402(8), F.S., provides an exemption from the requirement to obtain a COA for any insurer domiciled outside the U.S. and insuring only persons who, at the time of issuance or renewal, are nonresidents of the U.S.<sup>6</sup> A “nonresident” is defined as a person who resides in and maintains a physical place of domicile in a country other than the U.S., and intends to maintain such place of domicile as her or his permanent residence. For purposes of this subsection, a U.S. resident is a person who has:

- Had her or his principal place of domicile in the United States for 180 days or more in the 365 days prior to issuance or renewal of the policy;
- Registered to vote in any state;
- Made a statement of domicile in any state; or,
- Filed for homestead tax exemption on property in any state.

To be eligible for the exemption from the COA requirements, the insurer must:

- Not solicit, sell, or accept application for any insurance policy or contract for issue or delivery to U.S. residents. The prohibition also applies to any affiliated person of the insurer. Under current law, if a holding company wants to establish a Florida office for their alien affiliate, they are prohibited if the holding company owns another entity already licensed in Florida.
- Register with the OIR.
- Provide a disclosure on all certificates, contracts, and policies issued in Florida stating that the policy has not been approved by the OIR.
- Provide the following information to the OIR on an annual basis:
  - Name of the insurer and the country of domicile;
  - Names of the owners, officers, and directors and the number of employees;
  - Lines of insurance and types of products offered;
  - A statement from the applicable regulatory body of the insurer’s domicile certifying that the insurer is licensed or registered in that domicile; and
  - A copy of filings required by the insurer’s domicile.

### III. Effect of Proposed Changes:

**Section 1** revises the current exemption from the COA requirements for an insurer domiciled outside the U.S. covering nonresidents of the U.S. at the time of issuance or renewal. Under current law, the alien insurer, or any affiliated person, may not solicit, sell, or accept application for any insurance policy or contract to be delivered or issued to any person in the U.S. The bill makes the following changes:

- Only the alien insurer is prohibited from soliciting, selling, or accepting application for any policy or contract to be delivered or issued for delivery in the U.S. The affiliated person is removed from this restriction.
- The definition of nonresident is revised to include a trust or other entity organized and domiciled under the laws of a country other than the U.S.

<sup>6</sup> Ch. 2011-174, L.O.F.

## **New Exemption from the COA Requirements**

The bill creates s. 624.402(9), F.S., which provides an exemption from the COA requirements for insurers domiciled outside the U.S. selling life and annuity coverage to persons in Florida who, at the time of issuance, are not U.S. residents if the following conditions are met:

- The insurer is an authorized insurer in its domiciliary country in the kinds of insurance proposed to be offered in this state; and:
  - Has been an insurer for at least the last three consecutive years; or
  - Is the wholly owned subsidiary of an authorized insurer; or is the wholly owned subsidiary of an already eligible authorized insurer as to the kind of insurance proposed to be issued in this state for a period of not less than the immediately preceding three years.
  
- Prior to the OIR granting an alien eligibility to issue policies and contracts in Florida, the insurer is required to meet the following requirements:
  - Submit a copy of its annual financial statement to the OIR in English and with all monetary values expressed in U.S. dollars.
  - Maintain a surplus of at least \$15 million in eligible investments for like funds of like domestic insurers or by investments permitted by the domiciliary regulator, if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of domestic insurers under part II of ch. 625, F.S.
  - Have a good reputation for providing service and paying claims.
  - Furnish the OIR with annual and quarterly financial statements.
  - Allow access to the insurer's books and records pertaining to its operations in Florida, at the request of the OIR.
  - Provide certain disclosures to policy or contract applicants, such as the identity and rating assigned by each rating organization that has rated the insurer. Also the insurer must disclose that the OIR does not exercise regulatory oversight over the insurer; the policy or contract is not covered by a guaranty association, and the identity and address of the regulatory authority exercising oversight of the insurer.

The OIR may waive the three year operating requirement if the insurer has “operated successfully” for at least one year prior and has a surplus of at least \$25 million. The bill also provides that these provisions do not impose upon the OIR any duty or responsibility to determine the actual financial condition or claims practices of an unauthorized insurer, and the status of eligibility, if granted, indicates only that the insurer appears to be financially sound and that the OIR has no credible evidence to the contrary. The bill provides that if the OIR has reason to believe that such an insurer is insolvent or is in unsound financial condition, or is no longer eligible to issue policies or contracts subject to the conditions of this subsection, the OIR may conduct an investigation or examination and may withdraw eligibility of the insurer.

The definition of nonresident is provided by a cross-reference to s. 624.402(8), F.S.

Eligible insurers issuing policies or contracts pursuant to this subsection are subject to part IX of ch. 626, F.S., and the OIR may take action against such insurers for violations of the Unfair Trade Practices Act. Insurers violating provisions of this new subsection are also subject to the penalties provided in ss. 624.15 and 626.910, F.S.

All single-premium life insurance policies and single-premium annuity contracts issued to persons who are not residents of the United States and are not nonresidents illegally residing in the United States are subject to ch. 896, F.S., Offenses Related to Financial Transactions.

This subsection does not create an exception to the agent licensure requirements of ch. 626, F.S. An insurer issuing policies or contracts are required to appoint the agents the insurer uses to sell such policies or contracts as provided in ch. 626, F.S.

Policies and contracts issued pursuant to this subsection are not subject to the premium tax specified in s. 624.509, F.S.

**Section 2** provides that this act takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By expanding the exemptions from the COA requirements to insurers domiciled outside of the U.S., and selling life insurance policies and annuity contracts to nonresidents of the U.S., the bill will allow for an increase in the lines and types of insurance offerings. The bill will reduce the regulatory burden for these insurers while preserving regulatory oversight on insurers selling policies and contracts to U.S. residents. Nonresidents could benefit from such coverage.

The definition of “nonresident” is expanded under s. 624.402(8), F.S., to include a trust or other entity organized and domiciled under the laws of a country other than the United States. This will allow life insurance trusts and other entities to obtain coverage under these non-regulated policies.

**C. Government Sector Impact:**

Prior to the repeal of the existing exemption from the COA requirements for alien insurers selling life insurance and annuity contracts to nonresidents in 2011,<sup>7</sup> the OIR reported that there were three insurers that had met the eligibility requirements for an exemption. This number had not changed in recent years and is not expected to be much different moving forward.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 2, 2012:**

The CS provides the following changes:

- Provides that an alien insurer issuing life insurance policies or annuity contracts in Florida is subject to the fines prescribed in s. 626.910, F.S., if the insurer fails to comply with the provisions of s. 624.402(9), F.S.
- Reinstates the prohibition on renewing policies to residents as a requirement for alien insurers subject to the provisions of s. 624.402(8), F.S.
- Revises the effective date of the bill.
- Provides technical and conforming changes.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>7</sup> Ch. 2011-174, L.O.F.