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DATE: June 2, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 4047, 1st Engrossed
RELATING TO: International health insurance policies sold at airports
SPONSOR(S): Committee on Financial Services and Representative Ziebarth
COMPANION BILL(S): SB 1416 (s)

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

- (1) FINANCIAL SERVICES YEAS 9 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

CS/HB 4047, 1st Engrossed, passed the Senate 38-0 on May 1, 1998, and passed the House 118-0 on May 1, 1998. It became law without the Governor's signature on May 31, 1998: Chapter 98-399, Laws of Florida. The substance of Section 1 of the bill also passed the Legislature as part of CS/SB 1372, 3rd Engrossed, which became Chapter 98-199, Laws of Florida.

II. SUMMARY:

Currently, the Department of Insurance regulates the rates and terms of health insurance policies delivered or issued for delivery in Florida and several specific coverages are statutorily required to be included in all health insurance policies.

Under this bill, "international health insurance policies" could be delivered or issued for delivery in Florida to residents of foreign countries without being subject to rate or form regulation or to any coverage mandates. An international health insurance policy could be sold only at an international airport and only by an agent who was licensed by the Department of Insurance and appointed by the insurer.

The bill also repeals the requirement that a commercial self-insurance fund use agents licensed by the Department of Insurance and the authorization for commercial self-insurance funds to appoint agents to perform any functions within the scope of an agent's license. The effect of the repeal is that commercial self-insurance funds would not be required to use appointed agents. A commercial self-insurance fund would still be required to use a Department of Insurance-licensed agent, but the agent would operate as a broker.

The bill has no fiscal impact.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Sale of health insurance policies

The forms (contract terms) and rates for health insurance policies delivered or issued for delivery in Florida are regulated by the Department of Insurance under ss. 627.410 and 627.411, F.S. Section 627.410, F.S., generally requires that forms be filed with and approved by the department before they are used, and s. 627.411, F.S. sets out the grounds for disapproval. The department is required to disapprove a form for health insurance if the benefits provided by the policy are unreasonable in relation to the premium charged.¹

When a form is used by a domestic (i.e., Florida-domiciled) insurer for delivery outside of Florida, the form is subject to regulation under ss. 627.410 and 627.411, F.S., if the insurance regulator of the jurisdiction in which the form is delivered notifies the Florida Department of Insurance that the form is not subject to approval or disapproval in that jurisdiction.²

Parts VI and VII of Chapter 627, F.S., set out the language of several mandatory policy provisions for individual and group health insurance policies,³ and require health insurance policies to contain certain mandatory benefits.⁴

Use of agents by self-insurance funds

Section 624.478, F.S., requires a *commercial self-insurance fund* to use a DOI-licensed agent to perform duties within the scope of an agent's license. The section does not impose similar requirements for *group self-insurance funds*.⁵ The section also authorizes commercial self-insurance funds to "license" agents. This use of the term "license" apparently refers to *appointment* by the fund, rather than licensure by the state. Under current law, an agent is "licensed" only by the state to transact insurance, and is

¹ Paragraph 627.411(1)(e), F.S.

² Subsection 627.410(5), F.S.

³ See, e.g., s. 627.607, F.S., relating to time limits on certain defenses, s. 627.608, F.S., relating to grace periods, or s. 627.610, F.S., relating to notice of claims.

⁴ See, e.g., s. 627.6056, F.S., relating to coverage for ambulatory surgical center services, s. 627.6408, F.S., relating to diabetes treatment services, s. 627.6409, F.S., relating to osteoporosis, or s. 627.6418, F.S., relating to mammograms.

⁵ A *commercial self-insurance fund* is created by a trade association or similar entity (or by a nonprofit group of condominium associations) to provide property, casualty, or surety coverage through pooling of liabilities. See s. 624.462, F.S. A *group self-insurance fund* is created by two or more employers to provide workers' compensation coverage. See s. 624.4621, F.S.

“appointed” by an insurer to transact insurance on its behalf.⁶ Before the 1990 Sunset review of agent regulation, an agent was “licensed,” rather than “appointed,” by an insurer to act on the insurer’s behalf. Numerous statutory references were not updated to reflect the appointment concept after the 1990 Sunset review of agent regulation; see the Bill Research on CS/SB 1372, 3rd Engrossed, for more information on the licensure/appointment issue.

An agent who is not appointed by an insurer is essentially a broker rather than a person acting on behalf of the insurer.

An insurer must pay a biennial appointment fee of \$60 to the Department of Insurance for each agent it appoints.⁷

B. EFFECT OF PROPOSED CHANGES:

Sale of health insurance policies

Health insurance policies delivered or issued for delivery in Florida to residents of foreign countries would not be subject to rate or form regulation under s. 627.410, F.S. or to any coverage mandates. The policy could be sold only at an international airport and only by an agent who was licensed by the Department of Insurance and appointed by the insurer.

An “international health insurance policy” is defined as an individual health insurance policy that covers only residents of foreign countries and is sold on an annual basis. A “resident of a foreign country” does not include any person who is a U.S. citizen, maintains a residence in the U.S., or stays in Florida for more than 120 consecutive days. The sale of international health insurance policies to residents of foreign countries could occur only in an airport that enplanes more than 1 million persons a year and is served by U.S. Customs (Miami, Orlando, Tampa, Ft. Lauderdale, Palm Beach, Ft. Myers, and Jacksonville).

Each international policy would carry a disclaimer stating that the policy may not be sold to a U.S. resident; does not comply with coverage, underwriting, and other provisions of the Florida Insurance Code; and must comply with insurance regulatory provisions of the insured’s country of residence.

The policy would not be subject to any form approval, rate approval, underwriting restrictions, guaranteed availability, or coverage mandates of the Insurance Code. The policy would be exempt from all provisions of the Insurance Code, except for the following provisions:

Section 624.155, F.S. (Civil remedy).

Section 624.316, F.S. (Examination of insurers).

⁶ See ss. 626.103, 626.104, and 626.112, F.S.

⁷ See s. 624.501, F.S.

Section 624.3161, F.S. (Market conduct examinations).

Sections 626.951-626.9601, F.S. (Unfair insurance trade practices).

Section 627.413, F.S. (Content of policies: forms must specify names of parties, the subject of the insurance, perils, term, premium, etc.).

Section 627.4145, F.S. (Readable language).

Section 627.428, F.S. (Attorney's fees).

Section 627.6043, F.S. (Notice of cancellation, nonrenewal, or rate change).

Use of agents by self-insurance funds

The bill repeals s. 624.478, F.S., which requires commercial self-insurance funds to use licensed agents and authorizes commercial self-insurance funds to appoint agents to act on their behalf. The effect of the repeal is that commercial self-insurance funds would not be required to use appointed agents, since they would no longer have the power to appoint agents. A commercial self-insurance fund would still be required to use a Department of Insurance-licensed agent, but the agent would operate as a broker, as is currently the case with respect to group self-insurance funds. The repeal might also be construed to allow a fund to transact insurance through an unlicensed agent; however, this result is not certain. Subsection 626.112(1), F.S., prohibits a person from performing the functions of an insurance agent without being licensed by the Department of Insurance.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Department of Insurance would no longer regulate the forms or rates of certain health insurance policies delivered or issued for delivery in Florida to residents of foreign countries.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill provides circumstances under which an insurer may deliver or issue for delivery in Florida an unregulated health insurance policy covering a resident of a foreign country.

The bill repeals a requirement that commercial self-insurance funds use appointed insurance agents to perform duties within the scope of an agent's license; however, commercial self-insurance funds would still be required to use agents licensed by the Department of Insurance.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 624.123, F.S. (created)

E. SECTION-BY-SECTION RESEARCH:

Section 1 creates s. 624.123, F.S., relating to international health insurance policies, as described in "Effects of Proposed Changes," above.

Section 2 repeals s. 624.478, F.S., relating to use of agents by self-insurance funds, as described in "Effects of Proposed Changes," above.

Section 3 provides that the bill will take effect upon becoming a law.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Persons who are technically residents of another country but who spend substantial amounts of time in Florida could be put at a disadvantage relative to Florida residents by the provision authorizing the sale in Florida of unregulated health insurance policies to foreign residents, in that they could be charged more than would otherwise be allowed for a policy providing less coverage than would otherwise be allowed.

2. Direct Private Sector Benefits:

A Florida-domiciled health insurer would have additional opportunities to market products to foreign residents. Currently, a Florida-domiciled health insurer may sell an unregulated policy to a foreign resident only if the policy is delivered or issued for delivery outside of Florida; the bill would allow the insurer to deliver such a policy to a foreign resident at any of seven Florida airports.

A commercial self-insurance fund would not be required to use agents appointed by it to transact insurance, and would not be required to pay appointment fees for its agents.

3. Effects on Competition, Private Enterprise and Employment Markets:

See above.

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

VI. COMMENTS:

Section 1 of the bill is identical to Section 82 of CS/SB 1372, 3rd Engrossed, which passed both the House and the Senate on May 1, 1998.

The bill may violate Article III, Section 6 of the State Constitution, which requires, in part, "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." The title of the bill describes it as "An act relating to international health insurance policies sold at airports," but includes a reference to the repeal of s. 624.478, F.S., relating to the use of licensed agents by self-insurance funds. It is possible that the bill embraces more than one subject (sale of health insurance policies at airports and the use of agents by self-insurance funds) or fails to express the subject of the bill.

Section 624.478, F.S., which is repealed by this bill, is amended by Section 3 of CS/SB 1372, 3rd Engrossed. The amendment in CS/SB 1372 requires all self-insurance funds to use appointed agents, and retains the requirement that agents be licensed by the Department of Insurance.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

CS/HB 4047, 1st Engrossed, is the same as CS/HB 4047 as passed by the Committee on Financial Services and as passed by the full House on April 16, 1998, except for the following matters, which were added by floor amendment in the Senate on May 1, 1998:

The list of Insurance Code provisions that apply to international health insurance policies was expanded to include ss. 624.155 and 627.428, F.S. (civil remedy and attorney's fees).

The repeal of s. 624.478, F.S. (use of agents by self-insurance funds) was added.

VIII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

Leonard Schulte

Stephen Hogge

FINAL RESEARCH PREPARED BY COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

Leonard Schulte

Stephen Hogge