

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 105 CS Life Insurance and Annuity Contracts; Exemption from Requirement for Certificate of Authority from OIR
SPONSOR(S): Llorente and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1508

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	20 Y, 0 N, w/CS	Tinney	Cooper
2) Finance & Tax Committee	7 Y, 0 N	Diez-Arguelles	Diez-Arguelles
3) Commerce Council	9 Y, 0 N	Tinney	Bohannon
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Section 624.401, F.S., prohibits insurance transactions emanating from Florida unless the insurer holds a certificate of authority issued by the Office of Insurance Regulation (OIR). Section 624.402, F.S., provides exceptions to the certificate of authority requirement.

The bill exempts an insurer domiciled outside of the United States from the requirement that the insurer obtain a certificate of authority to operate from offices within Florida for transactions involving life and annuity contracts sold to nonresidents of the United States. If the insurer domiciled outside of the United States maintains an office in Florida for the purpose of selling or servicing its outstanding insurance policies, staff of the office who act as insurance agents are required by the bill to be licensed under Florida law as insurance agents.

The bill requires that an insurer domiciled outside of the U.S. provide the following to an applicant:

- A copy of the insurer's most recent quarterly financial statement;
- 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 OIR; and
- Provide the identity and address of the regulatory authority exercising oversight of the insurer.

In addition, the insurer is also subject to the Unfair Insurance Trade Practices section of chapter 626, F.S. Policies written under the bill are exempt from the premium tax required by s. 624.509, F.S. 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 is not covered by the Florida Life and Health Guaranty Association. 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, chapter 896, F.S., to single-premium life insurance policies and single annuity contracts issued to persons who are non-residents. The Office of Insurance Regulation is authorized by the bill to examine or investigate a foreign insurer in the same manner as the Office would examine or investigate a domestic insurer and to charge the foreign insurer for the costs of the examination or investigation. The Office also may rescind the ability of the foreign insurer to offer policies to nonresidents of the U.S. if the investigation warrants such action.

The costs associated with implementing the bill will be absorbed within the current resources of OIR.

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—Under the bill, an insurer based outside of the U.S. is eligible for an exemption from the requirement to obtain a certificate of authority required of insurers based in Florida. The exception is offered so that a foreign-based insurer is authorized to sell life insurance and annuities to nonresidents of Florida.

Promote Personal Responsibility—Under the bill, foreign-based insurers offering life insurance and annuities are eligible to offer their products to nonresidents living in Florida. The foreign insurers are able to offer their products to specified individuals without obtaining a certificate of authority from OIR, although their policies must state clearly that the insurer is not regulated by OIR and thus the consumer is not afforded the safeguards available under Florida law. If a nonresident consumer purchases a policy or annuity from such an insurer, the consumer accepts the responsibility of collecting the benefits from the insurer without the safety net offered by a state-issued certificate of authority.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 624.401, F.S., prohibits insurance transactions in Florida unless the insurer holds a certificate of authority from this state. The Office of Insurance Regulation (OIR) of the Department of Financial Services is designated by law to regulate insurers and to grant certificates of authority for insurance transactions in Florida. Section 624.402, F.S., provides exceptions to the requirement that an insurer possess a certificate of authority. 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), if such transactions result from the insurer's former authorized operations in Florida.
- Transactions involving a policy, subsequent to its issuance, 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 policies 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 for Florida residents when the insurer has withdrawn from the state and is not transacting new insurance here.
- 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 Florida laws 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 law; the captive insurance company has insured no more than three hospitals in Florida; the captive insurance company has been in existence for at least three 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 exempts from the requirement to obtain a certificate of authority those transactions involving life insurance and annuity contracts sold to nonresidents of the United States by an insurer domiciled outside of the United States, provided the insurer meets specified 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. The bill specifies that such an insurer must have and maintain a policyholder surplus of \$15 million.

The insurer must be currently authorized and authorized for the previous three years in its country of domicile to offer the kind of insurance it offers to nonresidents of the United States. The Office of Insurance Regulation may waive the 3-year requirement if the insurer has operated successfully for at least 1 year and has capital and surplus of at least \$25 million. An insurer must provide OIR with an authenticated copy of its current annual financial statement, in English, with monetary values expressed in U.S. dollars, based on current exchange rates.

The Office of Insurance Regulation is authorized by the bill to examine or investigate a foreign insurer in the same manner as OIR would examine or investigate a domestic insurer and to charge the foreign insurer for the costs of the examination or investigation. The Office also may rescind the ability of the foreign insurer to offer policies to nonresidents of the U.S. if the investigation warrants such action.

Many provisions of the bill are similar, though not identical, to the requirements governing eligible surplus lines insurers specified in s. 626.918(2), F.S. The financial requirement specified in the bill is that the insurer maintain a policyholder surplus of at least \$15 million.

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

- A copy of its most recent quarterly financial statement;
- The date the insurer was organized;
- 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
- 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 Insurance Trade Practices section of chapter 626, F.S. Policies written under the bill are exempt from the premium tax required by s. 624.509, F.S.

The bill requires disclosure in the application and on the policy that the policy is not governed by the laws of Florida and a statement that the Florida Life and Health Guaranty Association does 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 and other similar provisions of chapter 896, F.S., to all single premium life insurance policies and single annuity contracts issued to persons who are not residents of the United States.

B. SECTION DIRECTORY:

Section 1: Amends s. 624.402, F.S, to provide an exception to the requirement for a certificate of authority under specified conditions.

Section 2: Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill grants an exemption from the Insurance Premium Tax for policies sold under the provisions of the bill. The Revenue Estimating Conference has estimated that the impact of this exemption on state revenues is insignificant.

2. Expenditures:

The Office of Insurance Regulation reports that the additional review and monitoring responsibilities can be absorbed within current resources of OIR. The bill specifies that the costs of an investigation or audit of a foreign-based insurer by OIR must be paid by the insurer.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in companies that are not domiciled in the United States establishing offices in Florida 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:

The Beacon Council of Miami-Dade County, a public-private partnership to encourage economic development opportunities, states on its web site (www.beaconcouncil.com) that it is “charged with bringing new, job-generating investments to the community, while assisting existing businesses in their efforts to expand.” In 2003, the Beacon Council studied the probable impact to South Florida if foreign-based insurers were authorized by Florida to sell life insurance and annuity policies to nonresidents of the United States. According to materials provided by the Beacon Council, “[t]he potential economic impact of the change [proposed by HB 105] could reach \$2.7 billion, spurring growth in a high value-added Financial Services industry . . . “targeted for growth in Miami-Dade County.

The Beacon Council study includes data provided by the U.S. Department of Commerce’s October 2002 Survey of Current Business stating that \$8.6 billion in insurance premiums were collected from foreigners in 2001. There is no data regarding such insurance premiums because insurers who are not authorized to transact business in Florida do not report to OIR the number of policies sold or premiums collected.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its February 22, 2005 meeting, the Insurance Committee adopted an amendment to authorize OIR to examine or investigate a foreign insurer in the same manner as OIR would examine or investigate a domestic insurer and to charge the foreign insurer for the costs of the examination or investigation. The amendment also authorizes OIR to rescind the ability of the foreign insurer to offer policies to nonresidents of the U.S. if the investigation warrants such action.