

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 299 CS Travel-Limited Life Insurance Coverage
SPONSOR(S): Sobel and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 764

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	19 Y, 0 N, w/CS	Cooper	Cooper
2) Tourism Committee	6 Y, 1 N	McDonald	McDonald
3) Transportation & Economic Development Appropriations Committee	15 Y, 0 N, w/CS	McAuliffe	Gordon
4) Commerce Council	13 Y, 0 N, w/CS	Cooper	Randle
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The offering and sale of insurance in Florida, including life insurance, are governed by the provisions of the "Florida Insurance Code." Before insurers deliver a policy or application form in the state they must file the form for approval by the Office of Insurance Regulation. Subsequent to approval, insurers' trade practices relating to the business of insurance are regulated pursuant to Part IX of Chapter 626, F.S. entitled "Unfair Insurance Trade Practices Act." The purpose of this part is to define, or to provide for the determination of, practices which constitute unfair methods of competition or unfair or deceptive acts and prohibiting such practices.

Recently, insurance regulators in several states, including Florida, have expressed concern about some life insurance companies denying life insurance to individuals based on a person's past or future travel plans. Although, according to the Office of Insurance Regulation such practices may be illegal in Florida under existing law, there is currently no express specific statutory prohibition against such acts.

This bill creates a new unfair or deceptive trade practice provision under the Insurance Code (s. 626.9541, F.S.) which would prohibit life insurers from refusing coverage or otherwise discriminating against an individual solely on the basis of that individual's past lawful foreign travel experiences. The bill would further prohibit life insurers from refusing coverage or otherwise discriminating against an individual solely on the basis of that individual's future lawful foreign travel plans, unless life insurers demonstrate, and the Office of Insurance Regulation (OIR) determines, that: 1) insureds who intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who do not intend to travel; and 2) such risk classification is based on sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination.

The bill also provides authority for the Financial Services Commission (Governor and Cabinet) to develop rules to implement these provisions and provides authority to the Commission to allow for limited exceptions based on national or international emergency conditions affecting public health, safety and welfare and that are consistent with public policy.

The bill provides specific enforcement authority to OIR. It requires that each market examination of a life insurer include a review of any action by the insurer regarding travel related limitations and increase fines for violations of the new provisions of the bill. The bill also requires an annual report from OIR concerning the nature and extent of denials or limitations by insurers based upon an insured's future travel plans.

This bill does not have a fiscal impact on state or local government. This bill takes effect on July 1, 2006.

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 – This bill prohibits life insurers from denying or modifying coverage solely for reasons associated with an applicant's or insured's past or future lawful travel experiences.

Safeguard Individual Liberty – This bill will increase lawful foreign travel options for individuals. People of the Christian, Moslem and Jewish faith, among others, may have greater opportunities to travel to lands having cultural and religious importance to them.

Empower Families – With the provisions contained in this bill, families may have more options to engage in lawful travel activities.

B. EFFECT OF PROPOSED CHANGES:

Regulation of Life Insurance/Current Insurance Practices

Section 624.602, F. S. defines "Life insurance" as "insurance of human lives." Life insurance indemnifies against loss due to the death of a particular person upon whose death the insurance company agrees to pay a stated sum or income to the beneficiary. The transaction of life insurance also includes the granting of annuity contracts, including, but not limited to, fixed or variable annuity contracts; the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability; and optional modes of settlement of proceeds of life insurance.

In Florida, the Office of Insurance Regulation (OIR) has primary responsibility for regulation, compliance and enforcement of statutes related to the business of insurance, and the monitoring of industry markets. The office provides regulatory oversight of company solvency, policy forms and rates, market conduct performance and new company entrants to the Florida market

Before any life insurance policy or application form is delivered in Florida the form must be filed with, and approved by, OIR.¹ As each filing is received, it is reviewed to determine compliance with applicable actuarial standards, statutory provisions, and administrative rules. Under current law, OIR is authorized to disapprove any form which, in addition to other reasons, is inconsistent, ambiguous, misleading, or deceptive.²

Once an insurer begins selling policies in the state, it is governed by, among other statutes and rules, the provisions of the "Unfair Insurance Trade Practices Act." The purpose of this part is to define, or to provide for the determination of, practices which constitute unfair methods of competition or unfair or deceptive acts and prohibiting such practices.³

In 2005, OIR became aware that some life insurance companies were denying life insurance coverage based on possible travel plans to certain foreign countries.⁴ In one instance, a policy was not approved

¹ s. 627.410, F.S.

² s. 627.411, F.S.

³ s. 626.9541, F.S.

⁴ Some companies have used the U.S. Department of State's Current Travel Warnings in their determinations. Travel Warnings are issued when the State Department recommends that Americans avoid a certain country. The countries listed below are currently on that list. In addition to this list, the State Department issues Consular Information Sheets for

because of an applicant's "potential travel to Israel."⁵ Upon further investigation, OIR determined that nine insurers had filed questionnaires with their application forms in which they asked about either past travel outside of the United States and/or whether the applicant intended to travel outside the United States in the future. The Office of Insurance Regulation contacted those insurers and those application forms were withdrawn.⁶

To prevent similar application forms from being used in the future, OIR initiated the rulemaking process to enact an administrative rule to specifically define as an unfair trade practice the exercise of unfair discrimination based on a person's future intent to engage in lawful travel. The rule (which also applies to annuity contracts, accident, disability or health insurance) prohibits an insurance company from refusing to issue policies solely because of the intent to engage in future lawful foreign travel or based upon past travel, unless the insurer can demonstrate that insureds are a separately actuarially supportable class whose risk of loss is different from those insureds who have not traveled and do not intend to travel.⁷

The Office of Insurance Regulation relies on s.626.9541(1)(g), F.S., a provision in the "Unfair Insurance Trade Practices Act," as the statutory authority for their proposed rule. The subsection reads:

1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.--

The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(g) Unfair discrimination.—

1. Knowingly making or permitting any unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life, in the rates charged for any life insurance or annuity contract, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

Having gone through the workshop and public hearing process, the proposed rule is now scheduled for final public hearing and adoption by the Financial Services Commission (comprised of the Governor and the Cabinet) on March 16, 2006.

Situation in Other States

Other states have addressed the issue of denying life insurance coverage based on past or future travel plans. States which have enacted laws restricting denials based upon past travel plans include New York, Maryland and Illinois.

every country of the world with information on such matters as the health conditions, crime, unusual currency or entry requirements, any areas of instability, and the location of the nearest U.S. embassy or consulate in the subject country. The following countries are currently on the list: Democratic Republic of the Congo, Nigeria, Colombia, Afghanistan, Kenya, Iran, Iraq, Saudi Arabia, Nepal, Haiti, Indonesia, Zimbabwe, Lebanon, Liberia, Yemen, Burundi, Cote d'Ivoire, Sudan, Bosnia-Herzegovina, Somalia, Algeria, Uzbekistan, Israel, the West Bank and Gaza, Central African Republic, Pakistan, and the Philippines. See Current Travel Warnings, available at

http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html, viewed on January 24, 2006.

⁵ Letter to Congresswoman Debbie Wasserman-Schultz from a representative of American General Life Insurance Company (AIG), March 28, 2005, on file with the Insurance Committee.

⁶ Letter to Congresswoman Debbie Wasserman-Schultz from Kevin M. McCarty, Commissioner, Office of Insurance Regulation, on file with the Insurance Committee.

⁷ Proposed amendments to Rule 690-125.003, Florida Administrative Code, published on November 23, 2005, in Vol.31, No. 47 of the *Florida Administrative Weekly*.

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New York Insurance Law § 2614 provides that no life insurer shall make any distinction or otherwise discriminate between persons, reject an applicant, cancel a policy or demand or require a higher rate of premium for reasons associated with an applicant's or insured's past lawful travel experiences.⁸ Maryland and Illinois both have the same provision prohibiting a life insurance company from refusing to insure, refusing to continue to insure, limiting the amount or extent or kind of coverage available to an individual, or charging an individual a different rate for the same coverage solely for reasons associated with an applicant's or insured's past lawful travel experiences.⁹

States which have passed laws addressing the practice of insurance companies basing their coverage decisions upon applicants' past or future travel plans include Washington and California. In 2005, Washington passed a law which prevents insurance companies from discriminating against travelers for lawful travel by canceling or denying travelers life insurance because of past or future lawful travel. The law does allow a life insurer to exclude or limit coverage of specific lawful travel, or to charge a differential rate for such coverage, when bona fide statistical differences in risk or exposure have been substantiated.¹⁰

The state which has addressed this issue most recently is California. Although California's law is the same as Washington's in what it expressly prohibits, it also clarifies that it does not prohibit an insurer from excluding or limiting coverage under a life insurance policy, or refusing to offer life insurance, based upon lawful travel, or from charging a different rate for that coverage, when that action is based upon sound actuarial principles or is related to actual and reasonably expected experience.¹¹

Changes Proposed by the Bill

This bill amends s. 626.9541, F.S., the Unfair Methods of Competition and Unfair or Deceptive Act, by creating a new unfair or deceptive trade provision ("dd"). The legislation would prohibit life insurers from refusing life insurance to, refusing to continue life insurance of, or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's past lawful foreign travel experiences. The bill would further prohibit life insurers from refusing coverage to, refusing to continue life insurance of, or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's future lawful foreign travel plans, unless the insurers demonstrate, and the Office of Insurance Regulation (OIR) determines, that : 1) insureds who intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who do not intend to travel; and 2) such risk classification is based on sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination.

The bill provides authority for the Financial Services Commission (Governor and Cabinet) to develop rules to implement these provisions and provides authority to the Commission to allow for limited exceptions based on national or international emergency conditions affecting public health, safety and welfare and that are consistent with public policy.

The bill provides specific enforcement authority to OIR. It requires that each market examination of a life insurer include a review of any action by the insurer regarding travel related limitations. It increases fines for violations of the new provisions of the bill by trebling the fines available under s.624.4211 (2) and (3), F. S.¹² The bill also requires a report by March 1, 2007, and annually thereafter, from OIR

⁸State of New York Insurance Department, Opinion issued by the Office of General Counsel Re: Life Insurance Underwriting, filed on May 25, 2005, available at <http://www.ins.state.ny.us/rq050526.htm>, viewed on January 19, 2006.

⁹ House Bill 617(Maryland), 2005 Regular Session bill information for "Life Insurance Freedom to Travel Act," current as of 12/15/05. Illinois law found at 215 IL. CS 5/236 (2005).

¹⁰ "An act relating to prohibiting discrimination in life insurance based on lawful travel destinations," Engrossed House Bill 1561, State of Washington, 59th Legislature (2005).

¹¹ Cal. Ins. Code s. 10111.7 (2005).

¹² A nonwillful violation increases from up to \$2,500 per violation to \$ 7,500 per violation and from \$20,000 to \$60,000 for each willful violation.

concerning the nature and extent of denials or limitations by insurers based upon an insured's future travel plans.

C. SECTION DIRECTORY:

Section 1. States that the act may be cited as "The Freedom to Travel Act."

Section 2. Amends s. 626.9541, F.S., the Unfair Methods of Competition and Unfair or Deceptive Act, by creating a new unfair or deceptive trade provision ("dd").

Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures: None

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unable to be determined.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other: None

B. RULE-MAKING AUTHORITY:

The bill provides authority for the Financial Services Commission (Governor and Cabinet) to develop rules to implement the provisions in the bill and provides authority to the Commission to allow for limited exceptions based on national or international emergency conditions affecting public health, safety and welfare and that are consistent with public policy.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Reaction by the Insurance Industry

The sponsor of the bill submitted a letter for the record from Florida Combined Life Insurance Company, a subsidiary of Blue Cross and Blue Shield of Florida and licensed to conduct business in Florida, Georgia, South Carolina and Alabama, in support of the bill. According to the insurer, the bill promotes good public policy and protects individuals' right to travel.¹³

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 26, 2006, the Insurance Committee adopted one amendment to the bill. The amendment authorized the Financial Services Commission to adopt rules to implement the law and to provide limited exceptions based upon emergencies and consistent with public policy.

As amended, the bill was reported favorably as a committee substitute.

On March 24, 2006 the Transportation and Economic Development Committee adopted one strike-all amendment. The amendment amends s. 626.9541, F.S., the Unfair Methods of Competition and Unfair or Deceptive Act, by creating a new unfair or deceptive trade provision ("dd"). The legislation would prohibit life insurers from refusing life insurance to, refusing to continue life insurance of, or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's past lawful foreign travel experiences.

The bill would further prohibit life insurers from refusing coverage or otherwise discriminating against an individual solely on the basis of that individual's future lawful foreign travel plans, unless life insurers demonstrate, and the Office of Insurance Regulation (OIR) determines, that insureds who intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who do not intend to travel.

On April 11, 2006, the Commerce Council adopted two amendments. The first added criteria that an insurer had to demonstrate for limiting insurance based upon an insured's future travel plans. It required demonstration that any risk classification is based on sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination. The second amendment provided specific enforcement authority to OIR. It required that each market examination of a life insurer include a review of any action by the insurer regarding travel related limitations and increased fines for violations of the bill's new provisions. The amendment also required an annual report from OIR concerning the nature and extent of denials or limitations by insurers based upon an insured's future travel plans.

This staff analysis has been updated to reflect the amendments adopted by the Commerce Council.

¹³ Letter to Representative Eleanor Sobel from Terri Schmidt, President, Florida Combined Life Insurance Company, December 21, 2005, on file with the Insurance Committee.