

STORAGE NAME: h2075s1.brc

DATE: April 13, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: CS/HB 2075

RELATING TO: Insurance

SPONSOR(S): Committee on Business Regulation and Consumer Affairs and Rep. Bitner

COMPANION BILL(S): SB 2404 (c)

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

(1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 6 NAYS 0

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I. SUMMARY:

This bill would allow certified public accountants to provide limited insurance services while acting within the scope of the practice of accounting. A CPA would be authorized to advise clients as to the need for obtaining insurance, the amount of insurance recommended and the type of insurance recommended to be purchased. The bill prohibits a CPA from receiving any insurance commission or fee.

The bill does not appear to have a significant fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 473, F.S., provides for the regulation of certified public accountants (CPA) under the jurisdiction of the Board of Accountancy within the Department of Business and Professional Regulation, Division of Certified Public Accountants. The practice of public accounting is defined in s. 473.302, F.S., to include offering or performing services using accounting skills, as well as, services related to financial statements, and "...tax, management advisory, and consulting services..." A CPA is licensed under s. 473.306, F.S. Qualifications include meeting the requirements for good moral character, formal education, and successful completion of the licensure examination.

This chapter further provides standards for operating as a CPA, such as, limitations on commissions or referral fees, contingent fees, client privileged communications, and prohibited activities, generally. Disciplinary proceedings and penalties are also provided. With exceptions, an accountant is limited to conducting accounting services under the license issued by the Board.

Chapter 517, F.S., addresses securities transactions and provides for the regulation of securities dealers and investment advisors by the Department of Banking and Finance. "Investment advisor" is defined as a person who for compensation engages in the business of advising others regarding buying, selling or investing in securities. Exemptions from the definition of "investment advisor" are provided for various entities including "any licensed certified public accountant whose performance of such [investment advisory] services is solely incidental to the practice of his profession".

Real estate brokers and salespersons are licensed and regulated pursuant to chapter 475, F.S., part I. Regulation is administered by the Florida Real Estate Commission and the Division of Real Estate under the Department of Business and Professional Regulation. Several exemptions from the regulatory scheme of this chapter are provided, including for "any person acting...as a certified public accountant, as defined in chapter 473, within the scope of her or his duties as such..."

In general, only a licensed insurance agent can lawfully transact insurance on behalf of an insurance company. Part I of chapter 626, F.S., with exceptions, "applies as to insurance agents, solicitors, service representatives, adjusters, and insurance agencies; as to any and all kinds of insurance; and as to stock insurers, mutual insurers, reciprocal insurers, and all other types of insurers..." This part excludes reinsurance, fraternal benefit societies, or bail bond agents.

Under Florida law, an insurance agent is defined as a "general lines agent, title agent, life agent, or health agent" as defined in chapter 626, F.S. Each of these areas of agent qualifications and expertise, except title agent, are also defined in the chapter to further identify each area of responsibility. In order to conduct the business of an insurance agent, a license must be obtained from the Department of Insurance.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 626.022, F.S., to exclude CPA's from the licensing and regulatory provisions for insurance agents, customer representatives, solicitors, adjusters, insurance agencies, service representatives and claims investigators. This exclusion would allow a CPA to provide various insurance services, to the extent that the services are within the scope of practice of a CPA pursuant to the regulatory provisions of chapter 473, F.S.

These exclusions are designed to allow a CPA to conduct limited insurance services which are incidental to the practice of accounting without having to obtain the particular insurance license. The changes would allow a CPA to advise a client regarding insurance coverage which is authorized to be sold under each of the agent license categories. A CPA would be prohibited from receiving a commission or fee for these insurance services.

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?

No.

(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?

The bill is designed to allow CPA's to provide limited insurance related advisory services without meeting the requirements for licensure and regulation under part I of chapter 626, F.S..

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

None.

(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?

No.

4. Individual Freedom:

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

The bill allows a CPA to expand services which may be offered to clients without the burdens associated with qualification and licensure under portions of the insurance code.

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

No.

5. Family Empowerment: **Not Applicable**

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

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

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

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

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

- 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?

(2) service providers?

(3) government employees/agencies?

D. STATUTE(S) AFFECTED:

Amends s. 626.022, F.S.

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments in D. below.

2. Recurring Effects:

Not anticipated to be a significant.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

Not anticipated to be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

See D. below.

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

See fiscal comments below.

D. FISCAL COMMENTS:

Currently, a CPA is prohibited from providing insurance services without first obtaining an appropriate insurance license. In response to the provisions of the bill, accountants who are currently certified and also hold an insurance license may chose not to renew the insurance license. The CPA would be allowed to continue to provide limited insurance advisory services under the exemptions provided in the bill. The possible effects and fiscal impact of these potential changes is indeterminate.

Many advisory services currently provided by CPA's as a part of their normal business practices do not come under the umbrella of insurance regulation. However, it has been recognized that some services provided by a CPA could be considered providing insurance services under certain circumstances. The bill is designed to allow CPA's to provide certain insurance related services without meeting the requirements for licensure and regulation under part I of chapter 626, F.S.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties and municipalities have to raise revenue in the aggregate.

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

The bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute continues to allow CPA's to provide advisory services relating to insurance within their scope of accounting practice.

The committee substitute narrows the bill by: 1) limiting the CPA's activities to advising clients as to the need for obtaining insurance, the amount of insurance, and type of insurance; and 2) prohibiting the CPA from receiving any insurance commission or fee.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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