HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATIONAL SERVICES
FINAL ANALYSIS

BILL #: HB 897, 1st Engrossed (Chapter 99-388, Laws of Florida)

RELATING TO: Insurance anti-affiliation

SPONSOR(S): Representative Sublette

COMPANION BILL(S): CS/CS/SB 2402 (I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) INSURANCE YEAS 12 NAYS 0
(2) FINANCIAL SERVICES (W/D)
(3)
(4)
(5)

I. FINAL ACTION STATUS:

On April 21, 1999, the House adopted the "remove everything" amendment traveling with HB 897. The House then approved the bill on Third Reading by a vote of 117-0. The Senate subsequently substituted the House bill for CS/CS/SB 2402 on Second Reading on April 26, 1999, and approved the bill by a vote of 40-0 on Third Reading on April 27, 1999. On June 18, 1999, HB 897 was approved by the Governor, and became Chapter 99-388, Laws of Florida.

II. SUMMARY:

Florida's anti-affiliation law remains as it has since the Legislature extended parity to state-chartered banks in 1996 following the United States Supreme Court decision in Barnett Bank N.A. v. Nelson. Licensed insurance agents may not engage in "insurance agency activities" through a financial institution except in the case of a bank located in a city with a population of less than 5,000. The activities include the negotiation or sale of insurance policies or the servicing of an insurance policy. For purposes of this prohibition, "financial institution" includes "any bank, bank holding company, savings and loan association, . . . or any subsidiary, affiliate, or foundation of the foregoing."

The anti-affiliation law would be repealed under the bill. Repealing the law would have the effect of permitting insurance agents associated with or employed by a financial institution to engage in insurance agency activities regardless of the population of the town in which the financial institution is located. Also, the authority would not be limited to just banks but to other financial institutions such as savings and loans. These activities would include the negotiation or sale of insurance products or the servicing of insurance policies. The bill would make no distinction between nationally-chartered (national banks) or federally-chartered (savings and loans) and state-chartered financial institutions. However, national banks would remain subject to the limitation on sales of insurance products in towns with populations of 5,000 or more contained in the National Bank Act. State-chartered banks would not be since they are not limited in this regard by the federal act.

The bill would also include a set of regulatory requirements for the sale of insurance products in connection with other financial transactions.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Historical perspective

With the bank failures during the Great Depression, Congress enacted the Glass-Steagall Act. The act erected ‘’firewalls” within the financial services industry. Congress wanted to protect the financial system by insulating commercial banking from other forms of risk.

As competitive pressures among the industries and overseas competitors has intensified over time, the traditional lines of separation have eroded and become more artificial. Each industry has attempted to attract more customers with “cross-over” products. For instance, the securities industry offer money market mutual funds to provide an investment opportunity for funds held in bank accounts by consumers; banks offer loan syndications and private placements of securities to business clients as an alternative to services offered by securities firms; and, life insurance companies offer single premium annuities to compete with bank certificates of deposit.

Consolidation is occurring within the financial services industry within existing laws. Perhaps the best example of this trend is the formation of Citigroup, a financial services bank holding company, born from the affiliation of Citicorp and Travelers Insurance Company. Another example would be the frequently rumored acquisition of Merrill Lynch by Chase Manhattan Bank.

Regulators of the financial services industry

Banking. The banking system is a dual system: there are nationally-chartered institutions and state-chartered institutions. Primary responsibility for regulating nationally-chartered (i.e., national) banks rests with the Office of the Comptroller of the Currency (OCC) within the Department of the Treasury. The OCC charters all national banks. However, the Federal Reserve Board (FRB) supervises all bank holding companies.[1]

State-chartered banks are regulated principally by the particular state in which they are chartered. All state-chartered banks in Florida must be insured by the Federal Deposit Insurance Corporation. The FRB-member banks are also subject to regulation by the FRB.

Insurance. Insurance, unlike banking or securities activities, is wholly governed by the regulatory apparatus established by each state--an arrangement confirmed by Congress in the McCarran-Ferguson Act. Under the McCarran-Ferguson Act, state insurance laws are not preempted by a federal law unless the federal law “specifically relates to the business of insurance.”[2]

Securities. The securities industry is regulated at the federal level principally by the Securities and Exchange Commission (SEC). The SEC administers laws governing the registration, offering and sale of securities. In Florida, the Department of Banking and Finance exercises limited regulatory authority for securities offerings and sales.

[1]"Bank holding companies” are generally companies that own or control a bank or other subsidiaries closely related to the business of banking.

[2]15 U.S.C. §1012(b). “No act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance . . . . “

Insurance sales by agents affiliated with financial institutions

Prior to 1996, Florida's anti-affiliation law prohibited insurance agents from affiliating with financial institutions except in the case of a bank located in a city with a population of less than 5,000 which was not a subsidiary or affiliate of a bank holding company.[3]

In 1996, in Barnett Bank of Marion County, N.A. v. Nelson,[4] the United State Supreme Court struck down Florida's anti-affiliation law as applied to nationally-chartered banks. Barnett Bank of Marion County had purchased an insurance agency through which to sell insurance. The Department of Insurance ordered Barnett to stop selling insurance citing the state anti-affiliation law. The Supreme Court held that the National Bank Act preempted Florida's anti-affiliation law. Section 92 of the National Bank Act provides in relevant part:

> "In addition to the powers vested by law in national (banks) organized under the laws of the United States any such (bank) located and doing business in any place (with a population) . . . (of not more than) five thousand . . . may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any . . . insurance company authorized by the authorities of the State . . . to do business (there), . . . by soliciting and selling insurance . . . ."

As a result of the Barnett decision, national banks located in any place with a population of less than 5,000 were and are authorized to sell insurance in Florida regardless of whether or not they were owned, associated with, or controlled by a bank that is a subsidiary or affiliate of a bank holding company.[5]

In the aftermath of these developments, the Legislature in 1996 enacted SB 900, to permit *state-chartered* banks in cities with a population of less than 5,000 to sell insurance whether or not, like nationally-chartered banks after the Barnett decision, they were affiliated or not affiliated with a bank holding company. At the same time, the Legislature authorized the Department of Insurance to promulgate rules to assure the "parity of regulation" between an insurance agency "owned by or an agent associated with a federally chartered financial institution, . . . state-chartered financial institution, . . . or entity that is not a financial institution."[6]

Florida's anti-affiliation law remains as it has since the Legislature extended parity to state-chartered banks in 1996 following Barnett. Licensed insurance agents may not engage in "insurance agency activities" through a financial institution except in the case of a bank located in a city with a population of less than 5,000. The activities include the negotiation or sale of insurance policies or the servicing of an insurance policy. For purposes of this prohibition, "financial institution" includes "any bank, bank holding company, savings and loan association, . . . or any subsidiary, affiliate, or foundation of the foregoing."

Insurance sales under the proposed Financial Services Act of 1999

For the past several years, Congress has made several unsuccessful attempts to enact legislation designed to modernize laws governing the financial services industry. Congress is again considering a major reform package: in the House of Representatives, the bill is H.R. 10, the Financial Services Act of 1999. According to the report of the Committee on Banking and Financial Services, the purpose of the bill is:

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[3]Fla. Stat. §626.988 (1996 Supp.).

[4]116 S.Ct. 1103 (1996) [hereinafter referred to as Barnett]

[5]In a subsequent interpretative letter, the OCC ruled that the insurance agents of a federally-chartered bank with a "bona fide" insurance agency subsidiary based and operating in a "place of 5,000" may market and sell insurance outside of the "place of 5,000" with "the same marketing range and . . . the use [of] the same marketing tools and facilities as generally available for licensed insurance agencies in the state(s) in which the bank agency operates."

[6]Chapter 96-168, s. 5, Laws of Florida.

> "to modernize the laws governing our nation's financial system by establishing a comprehensive framework to permit affiliations between and among commercial banks, securities firms, insurance companies, and other financial services providers. The primary objective . . . is to enhance consumer choice in the financial services marketplace, level the playing field among providers of financial services, and increase competition."[7]

H.R. 10 would repeal the restrictions contained in the 1933 Glass-Steagall Act prohibiting bank affiliations with securities firms and repeal provisions in the 1956 Bank Holding Company Act to permit bank holding companies to "underwrite and broker any type of insurance product."[8] With respect to insurance sales activities, the bill would prohibit states from preventing or significantly interfering with the sale of insurance products by depository institutions (i.e., banks generally, savings and loans, credit unions).

> "In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in Barnett Bank N.A. v. Nelson, . . . , no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with a subsidiary, affiliate, or any other party, in any insurance sales, solicitation, or cross-marketing activity."[9]

As a result, banks would be permitted to sell any type of insurance product from any location, in contrast to the increasingly artificial construction of the "place of 5,000" requirement.

Congress would preserve certain state laws, however. Through these so-called "safe harbor" protections,[10] states could:

- prohibit a depository institution from rejecting an insurance policy solely because it has been issued by a person not related to the depository institution when such insurance is required by a loan or credit extension;

- prohibit a depository institution from requiring a debtor, agent, or insurer from paying a separate handling charge for insurance required in connection with a loan or credit extension unless such a charge would also be required if the depository institution or agent were providing the insurance;

- prohibit an institution from using advertisements suggesting the federal or state government stands behind the credit of the institution or guarantees any return on insurance products;

- prohibit the payment of any commission or brokerage fee for services as an insurance agent or broker unless the person holds the appropriate state license;

- prohibit payment of compensation to an individual not licensed to sell insurance for the referral of a customer to a person that is licensed to sell insurance;

- prohibit the release of the insurance information of a customer to any person or entity for the purpose of soliciting or selling insurance without the express consent of the customer;

- prohibit the use of health information of a customer for any purpose other than for its activities as a licensed agent or broker without the customer's express consent;

- prohibit conditioning the extension of credit on the requirement that a customer obtain insurance from the depository institution;

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[7] H.R. Rep. No. 106-74, 106th Cong., 1st Sess., pt. 1, at 1.

[8] Id. at 20.

[9] H.R. 10, 106th Cong., 1st Sess. §104(b)(2)(A) (1999).

[10] H.R. 10, 106 th Cong., 1st Sess. §104(b)(2)(B)(I.-xiii.) (1999).

‣require disclosures indicating that the customer's choice of an insurance provider will not affect the credit decision or terms in any way other than reasonable requirements concerning the creditworthiness of the insurance provider;

‣require certain clear and conspicuous disclosures regarding risk of loss and that the policy is not a deposit and is not insured by the FDIC;
‣require the insurance and credit transactions to be completed through separate documents;

‣prohibit inclusion of the insurance expense in the credit transaction without the express consent of the customer; and,

‣require the depository institution to keep separate and distinct books and records and make them available to the state insurance regulator for inspection.

B. EFFECT OF PROPOSED CHANGES:

The anti-affiliation law would be repealed under the bill. Repealing the law would have the effect of permitting insurance agents associated with or employed by a financial institution to engage in insurance agency activities regardless of the population of the town in which the financial institution is located. Also, the authority would not be limited to just banks but to other financial institutions such as savings and loans. These activities would include the negotiation or sale of insurance products or the servicing of insurance policies. The bill would make no distinction between nationally-chartered (national banks) or federally-chartered (savings and loans) and state-chartered financial institutions. However, national banks would remain subject to the limitation on sales of insurance products in towns with populations of 5,000 or more contained in the National Bank Act. State-chartered banks would not be since they are not limited in this regard by the federal act.

The bill would also include a set of regulatory requirements for the sale of insurance products in connection with other financial transactions.

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?

N/A

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

N/A

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

N/A

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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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 would permit insurance agents to market insurance products through financial institutions without regard to the size of the town in which the financial institution is located.

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

N/A

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:

Amending sections 626.9541, 626.9551, 626.592, 626.321, 626.730, and 629.401, F.S.; creating section 626.9885, F.S.; repealing section 626.988, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1, amending s.626.9541(1), would include the use of any advertisement that would cause a person to believe mistakenly that the federal or state government guarantees any returns on insurance products, stands behind any person's credit, or is responsible for the insurance sales of any person. "Person" in this context refers to individuals, corporations, associations, partnerships, business trusts, reciprocal exchange, interinsurer, Lloyds insurer, or fraternal benefit society.

Section 2, amending s. 626.9551, F.S., relating to coercion of debtors, would include additional prohibitions. These would include:

a. prohibiting a financial institution from rejecting an insurance policy solely because it has been issued by a person not related to the financial institution when such insurance is required by a loan or credit extension;

b. prohibiting the use of customer insurance information required to be disclosed to a financial institution in connection with a loan to solicit the sale of insurance without the express consent of the customer;

c. requiring disclosures indicating that the customer's choice of an insurance provider will not affect the credit decision or terms in any way other than reasonable requirements concerning the extent of coverage provided by the insurer and the financial soundness of the insurer;

d. requiring certain clear and conspicuous disclosures regarding risk of loss and that the policy is not a deposit and is not insured by the FDIC;

e. requiring the insurance and credit transactions to be completed through separate documents;

f. prohibiting, except in a narrow circumstance, a loan officer involved in a loan transaction from selling insurance in connection with the same loan, but permitting that officer to refer a loan customer to another insurance agent not involved in the loan transaction; and,

g. prohibiting the conditioning of the extension of credit on the requirement that a customer obtain insurance from the depository institution;

These regulations are very similar to many of the thirteen "safe harbor" provisions now existing in H.R. 10 in the U.S. House of Representatives, the "Financial Services Act of 1999."

The restrictions in c.-f., above, would not be made applicable to the sale of credit life and disability insurance, premium finance insurance, single interest insurance placed by financial institutions, and private mortgage insurance.

Section 3, amending 626.592, F.S., 1998 Supplement, would provide that an agent conducting insurance transactions at two or more locations need not be designated at each location if no insurance transactions occur at the location where the agent is not present.

Section 4, creating 626.9885, F.S., would require financial institutions (defined to include state and federal financial institutions, covering banks, associations, savings banks, trust companies, international bank agencies or their representative offices, or credit unions) to use Florida-licensed insurance agents representing Florida-authorized insurers or Florida-eligible surplus lines insurers.

Section 5, amending s. 626.321(1), F.S., 1998 Supplement, would reference the definition of financial institution in Section 4 in provisions relating to limited licenses for credit life or disability insurance and credit property insurance.

Section 6, amending 626.730(4), F.S., 1998 Supplement, would reference the definition of financial institution in Section 4 in provisions relating to the purpose of limited licenses.

Section 7, amending s. 629.401(6), F.S., would delete a reference to a section of Florida Statutes repealed by the amendment.

Section 8 repeals the anti-affiliation law, s. 626.988, F.S.

Section 9 contains an effective date of July 1, 1999.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   None

2. Recurring Effects:

   None

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:

   None

2. Recurring Effects:

   None

3. Long Run Effects Other Than Normal Growth:

   N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   N/A

2. Direct Private Sector Benefits:

   N/A

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

   Insurance agents will be able to affiliate with financial institutions without regard to the population of the town in which the financial institution is located. This may increase competition between insurance companies and financial institutions and provide additional employment opportunities for agents. Smaller community-type banks may be in a better position to compete for the sale of insurance products since they would not need a branch office in a small city to sell insurance products.

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:

N/A

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The engrossed version of HB 897 does not differ from the bill as amended by the Committee on Insurance on April 7, 1999. Therefore, by describing the engrossed version of HB 897, this bill analysis describes the bill as amended by the Committee on Insurance. That amendment replaced the entire substance of HB 897 as introduced.

VIII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:	Staff Director:
Stephen Hogge	Stephen Hogge

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON INSURANCE:

Prepared by:	Staff Director:
Stephen Hogge	Stephen Hogge