

STORAGE NAME: h0121z.in
DATE: May 10, 2000

****PASSED AS CS/HB 785****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
INSURANCE
FINAL ANALYSIS**

BILL #: HB 121

RELATING TO: Insurance definition/foreign entity

SPONSOR(S): Representative Wiles

TIED BILL(S):

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

- (1) INSURANCE YEAS 11 NAYS 0
 - (2) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
 - (3) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (4)
 - (5)
-

I. SUMMARY:

Florida law specifically prohibits licensees from sharing commissions "with any corporation unless such corporation is an insurance agency." The bill would prohibit a nonresident agent from forming a foreign insurance agency corporation with a Florida business for the purpose of placing the nonresident agent's license with the foreign insurance agency corporation and, presumably, circumventing the law prohibiting the sharing of commissions with non-agents and non-agencies.

This bill is not expected to have a fiscal impact on state or local government.

The bill would take effect July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill would create a prohibition against non-resident agents sharing commissions with foreign corporations set up by Florida residents. This prohibition would be enforced by the Department of Insurance.

B. PRESENT SITUATION:

Insurance 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. General lines agents are agents who transact one or more of the following types of insurance: property insurance; casualty insurance; surety insurance; health insurance, when transacted by an insurer also represented by the same agent as to property or casualty or surety insurance; or marine insurance.

Regarding these types of insurance, the law requires persons who solicit insurance, procure applications, or directly or indirectly represent themselves as agents of an insurer, to be licensed by the Department of Insurance. Section 626.041(1), F.S.

Insurance Agency

Under Florida law, an insurance agency is a business location at which an individual, firm, partnership, corporation, association, or other entity (except for an employee of the individual, firm, partnership, corporation, association, or other entity, and other than and insurer or insurance adjuster) engages in any activity or employs individuals to engage in any activity which by law may be performed only by a licensed insurance agent or solicitor. Section 626.094, F.S.

Licensure of General Lines Agents

To receive a license as a resident general lines agent from the Department of Insurance, a person must reside in Florida, pay the appropriate fees, file an application, pass an examination, and meet continuing education requirements. Persons who are otherwise qualified to be a general lines agent, but who are not residents of Florida, may apply to be a "nonresident" general lines agent. Nonresident agents must pay a fee, file an application

with, and receive approval from, the Department of Insurance in order to do business in Florida. Only agents residing in a state providing reciprocal authority for Florida agents, may conduct business as a nonresident agent in Florida. See Section 626.741, F.S.

Sharing of Commissions

Section 627.753, F.S., sets forth the circumstances under which commissions may be shared by insurance agents. The law provides that agents may only share commissions with his or her own employed solicitors and with other agents appointed and licensed to write the same kinds of insurance. Likewise, the law allows resident agents to share commissions with nonresident agents with regard to the kinds of insurance for which both are appointed and licensed; however, Florida law specifically prohibits licensees from sharing commissions "with any corporation unless such corporation is an insurance agency." General lines agents, therefore, may not share commissions with any person who is not an agent or with any corporation that is not an insurance agency. Section 626.753(2), F.S.

Despite these prohibitions, current law does not address all situations involving the sharing of commissions with non-agents and non-agencies. One situation may occur where a nonresident agent assists a Florida business, which is neither a Florida insurance agent nor a Florida insurance agency, in forming an insurance agency under the laws of a foreign state for the purpose of circumventing Florida's laws prohibiting the sharing of commissions with non-agents and non-agencies.

An example of this arrangement is as follows:

Insurance agent "X" is licensed as an insurance agent in a foreign state and is also licensed as a nonresident agent in Florida. Agent X assists Florida business "Y," which is not an insurance agency and which sells a product for which insurance is typically procured, in establishing an insurance agency corporation in the foreign state for the purpose of circumventing Florida's laws prohibiting the sharing of commissions with non-agents and non-agencies. Agent X is listed as the insurance agent for the foreign insurance agency, which is sometimes nothing more than a post office box. Agent X provides business Y with informational literature promoting the insurance services of the foreign insurance agency to business Y's customers. When a customer of business Y procures insurance as a result of this informational literature, the commission received by the foreign insurance agency is split between agent X and business Y.

According to the Department of Insurance this activity, in and of itself, neither violates the definition of "insurance agency" nor violates Florida's prohibition against unlawful sharing of commissions. Nevertheless, resident general lines insurance agents believe this activity places them at a competitive disadvantage as compared to nonresident agents.

C. EFFECT OF PROPOSED CHANGES:

This bill would address the situation where a nonresident agent forms separate foreign insurance agency corporations jointly with Florida businesses for the purpose of circumventing Florida laws prohibiting the sharing of commissions with non-agents and non-agencies.

Nonresident agents would not be allowed to share commissions with a foreign corporation set up by a resident of Florida for the purpose of placing the nonresident agent's license

and, presumably, circumventing Florida law precluding the sharing of commissions with non-agents and non-agencies.

D. SECTION-BY-SECTION ANALYSIS:

See Effects of Proposed Changes, section II.C.

III. 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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The Department of Insurance would be required to monitor the commissions received by nonresident agents to ensure that the nonresident agent is not improperly sharing commissions with a foreign corporation set up by a resident of Florida. The bill does not specify how the Department of Insurance would determine whether the foreign corporation is a bona fide insurance agency or merely a corporation set up to circumvent Florida law prohibiting the sharing of commissions with non-agents and non-agencies.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

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Stephen Hogge

AS REVISED BY THE COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

Prepared by:

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