SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Government Efficiency Appropriations Committee

BILL: CS/SB 1508

SPONSOR: Banking and Insurance Committee and Senators Garcia and Margolis

SUBJECT: Life Insurance and Annuity Contracts Sold to Non-residents of the United States

DATE: March 14, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	**Fav/CS**
2.	Keating	Johansen	GE	**Favorable**
3.				
4.				
5.				
6.				

I. Summary:

Insurance companies transacting insurance in Florida or from offices located in the state are required to obtain a certificate of authority (COA) issued by the Office of Insurance Regulation (OIR).[1] However, there are exceptions in law to the requirement to obtain a COA which apply to insurers with respect to certain transactions. Committee Substitute for Senate Bill 1508 would add another exception to the COA requirement by allowing an insurer domiciled outside of the United States to operate from offices within Florida for transactions involving life insurance policies and annuity contracts sold to non-residents of the United States (who are also not nonresidents illegally residing in the U.S.), provided the insurer meets specified financial and disclosure requirements. The bill:

- requires such insurers to be authorized insurers in their country of domicile for the prior 3 years, or a wholly owned subsidiary thereof, and to have offered the types of insurance it proposes to offer in Florida;
- allows the OIR to waive the above 3-year requirement if the insurer has operated successfully for the past year and has capital and surplus of at least $25 million;
- provides specific disclosures to the applicant of a policy or contract, including:
  - a copy of the insurer's most recent quarterly financial statement;
  - the date of organization of the insurer;
  - the identity of and the rating or non-rating of the insurer;
  - a statement that the insurer does not hold a COA from Florida and is not regulated by the OIR; and
  - the identity and address of the regulatory authority exercising oversight of the insurer;

[1] Section 624.401, F.S.

- requires insurers to provide the OIR with annual and quarterly financial statements in English; to maintain a surplus as to policyholders of at least $15 million; to have a 'good reputation' as to providing service to insureds and the payment of losses and claims; and to submit financial statements and allow access to the OIR for books/records;
- provides that the OIR has no responsibility to determine the actual financial condition or claims practices of any unauthorized insurer;
- provides that if, at any time, the OIR has reason to believe an insurer is insolvent, in unsound financial condition, does not make reasonable prompt payments, or is no longer eligible under specified conditions, that agency may conduct an examination or investigation (which would be done at the expense of the insurer) and, if the findings warrant, may withdraw the eligibility of the insurer to issue policies or contracts;
- provides that the insurer is not exempt from the agent licensure requirements under the Insurance Code; provides that the insurer is subject to the Unfair Trade Practices provisions under ch. 626, F.S., and that the policies written under this provision are exempt from the Florida premium tax requirements;
- requires the provisions of the Florida Money Laundering Act (ch. 896, F.S.) to apply to all single premium life insurance policies and annuity contracts issued to persons who are not residents of the United States and who are not nonresidents illegally residing in the U.S.; and
- provides in the application a disclosure that the policy is primarily governed by the laws of a foreign country and, if the insurer becomes insolvent, the policy is not covered by the Florida Life and Health Insurance Guaranty Association.

This bill substantially amends the following section of the Florida Statutes: 624.402.

II. Present Situation:

Background - Certificates of Authority to Transact Insurance

Insurance companies transacting insurance in Florida or from offices located in Florida are, with limited exceptions, required to have a certificate of authority (COA) issued by the Office of Insurance Regulation (OIR). These insurers are known as authorized insurers.[2] To qualify for a COA, a prospective insurer[3] must meet specified financial criteria including maintaining reserves[4] applicable to the kind of insurance transacted by the insurer, as well as maintaining specified assets, deposits, capital, and surplus. Insurers must provide the OIR with specified background information and meet trustworthiness, fitness, and criminal history requirements.

Representatives with OIR state that it takes the agency approximately 50 to 60 days to process a COA application from an insurer.[5] If a filing takes more time, it is primarily due to insufficient

[2] Section 624.09, F.S. An unauthorized insurer does not have a certificate of authority issued by the OIR.
[3] Insurers are divided into three categories under the Insurance Code: *domestic insurers* are formed under the laws of Florida; *foreign insurers* are formed under the laws of any state, district, or territory or commonwealth of the United States, other than Florida; and *alien insurers* are defined as insurers other than domestic or foreign insurers. Foreign and alien insurers must also meet certain capital, surplus, and operational requirements.
[4] Part I of ch. 625, F.S.
[5] For example, in 2004, OIR averaged 52 days to process 375 COA applications from insurers, while in 2003, the agency averaged 63 days to process 366 COA applications. These figures include insurers representing all lines of insurance.

information from the applicant, according to these representatives. Often the company will withdraw its application until such time that it can comply with the COA requirements. The COA application fee is approximately $1,500. Under current law, there are several exceptions to the requirement to obtain a COA which apply to insurers with respect to specified transactions ranging from surplus lines coverages and reinsurance to captive insurers.[6]

Insurance companies domiciled outside of the United States that do not possess a COA are referred to non-authorized alien insurers. The insurance products offered by these alien insurers may *not* be sold from offices in Florida, even to non-U.S. residents, without the company obtaining a COA. Currently, there are eleven alien insurers who are licensed in Florida (have certificates of authority), which are domiciled outside of the U.S., and market to non-U.S. residents from offices in Florida.[7] Six of these companies offer life and health insurance.

According to proponents of the bill, obtaining a certificate of authority by alien insurers that want to market products in Florida to non-U.S. residents is both a time-consuming[8] and expensive process. These proponents state that by allowing alien insurers to establish offices in this state to serve non-U.S. residents, it would be an economic boon to the economy of South Florida. They point to a recent study by the Beacon Council (a public-private economic development consortium in Dade County) which estimates that annual premium income from sales of insurance products to Latin Americans is in the billions of dollars and that, if such products could be sold and serviced from Florida, Florida's economy would experience a substantial economic benefit.

There are federal tax consequences in offering types of life insurance and variable annuity products to non-residents by authorized Florida insurers because these products contain investment elements which would be subject to U.S. withholding tax, according to the proponents. However, such products offered to non-residents by alien insurers are not subject to U.S. withholding tax since these insurers are not subject to the U.S. tax laws. Therefore, there is no incentive for the non-resident consumers to buy these products from authorized Florida insurers.

---

[6] These exemptions pertain to transactions involving surplus lines coverages; specified reinsurance; captive insurance companies; investments by foreign insurers; servicing life or health insurance policies or annuity contracts pertaining to insurers that have withdrawn from Florida; policies covering only subjects of insurance not resident or expressly performed in this state at the time of issuance and lawfully solicited or delivered outside this state; and, investigation or litigation of specified claims under policies written in this state, or liquidation of assets and liabilities of the insurer, all as resulting from its former authorized operations in Florida. "Captive insurers" are created and owned by one or more non-insurers, for the primary purpose of providing their owners with coverage, usually at rates lower than those of other insurers.

[7] Since 1985, only two alien life and health insurers have applied for COAs: International Health Insurance Danmark (IHID) A/S, Copenhagen, Denmark, market's accident and health insurance policies; and Citicorp International Insurance Company, Ltd., in Bermuda, offers annuity products.

[8] Proponents assert that it took up to 3 years for IHID to obtain a COA from OIR. However, representatives with the OIR counter that it took approximately 2 years for IHID to be licensed because of the difficulty of completing criminal and other background screenings on the non-resident officers, directors, and owners. (It took nine months in the case of Citicorp International.) Any large expense is attributable to costs associated with lawyers hired to represent the company throughout the COA process, state these representatives.

Proponents also assert that the proposed legislation contains numerous prudential safeguards which will afford the OIR with the opportunity to regulate those selling these life insurance and annuity products.[9]

Examination and Investigation of Insurers

The OIR has authority to examine the records, accounts and assets of an insurer as often as may be warranted for the protection of the policyholders and in the public interest, but must examine each domestic insurer once every 3 years.[10] The agency may conduct a 'market conduct' examination of an insurer to ascertain compliance by the insurer with the applicable provisions of the Insurance Code as often at it deems necessary.[11] Each insurer so examined must pay to the OIR the expenses of the examination at the rates adopted by the agency.[12] The OIR may also conduct investigations of insurers if it has reason to believe that any person has violated the Insurance Code.

Surplus lines Requirements

The Florida Insurance Code contains specific financial and other requirements that unauthorized insurers must comply with in order to become eligible surplus lines insurers.[13] Generally, surplus lines insurance is insurance coverage provided by a company that is not licensed in Florida, but that is allowed to do business in the state, as an "eligible" insurer, because the particular coverage offered is not available from insurers authorized to sell insurance in Florida.

The law establishes requirements for approval of eligible surplus lines insurers and licensure of surplus lines agents by the OIR, including the provision that the surplus lines insurer maintain a surplus as to policyholders of $15 million, have been licensed in its state or country of domicile for a least three years, and furnish annual and quarterly financial statements to the OIR.[14] The law also specifies the conditions that must be met before insurance coverage may be exported to an eligible surplus lines insurer, also referred to as a nonadmitted insurer. Surplus lines insurance is not subject to Florida regulation of rates or forms and there is no insurance guaranty fund protection if the insurer becomes insolvent.

Unfair Trade Practices

Under current law, insurers are prohibited from committing various activities defined under the unfair methods of competition and unfair or deceptive practices acts (s. 626.9541, F.S.). Such activities range from misrepresentations in advertising of insurance policies and making false statements to defamation and illegal dealings in premiums. Insurers may be subject to suspension or revocation of their certificates of authority or fines for violations of the unfair trade practice provisions. The OIR may suspend or revoke the certificate of authority of an insurer for a

[9] Life insurance policies and annuity contracts are regulated under part III of ch. 627, F.S.
[10] S. 624.316., F.S. An examination must be conducted once every year with respect to a domestic insurer that has continuously held a COA for less than 3 years.
[11] Section 624.3161, F.S.
[12] Section 624.320, F.S.
[13] Section 626.918, F.S.
[14] Section 626.918, F.S.

violation of any provision of the Insurance Code (s. 624.418, F.S.). The OIR may impose an administrative fine on an insurer that violates any unfair trade practice of up to $2,500 for each nonwillful violation, not to exceed $10,000 for all nonwillful violations arising out of the same action. For willful violations, the maximum fine is $20,000 for each violation, not to exceed $100,000 for all willful violations arising out of the same action (s. 626.9521, F.S.).

Further, the unfair trade practice laws authorize the OIR to issue cease and desist orders against insurers that violate those provisions (s. 626.9581, F.S.). If an insurer violates the OIR's cease and desist order, the OIR may impose a penalty not to exceed $50,000 (s. 626.9601, F.S.). Also, insurers may be subject to criminal prosecution (e.g., a second degree misdemeanor) for willfully violating the unfair trade practice acts (s. 624.15, F.S.). An insurance agent that violates this section is subject to suspension or revocation of his or her license and an administrative penalty of up to $500 or, for willful violations, up to $3,500, under the authority of the Department of Financial Services (s. 626.681, F.S.).

Premium Tax

Under current law, each insurer must annually on or before March 1, pay to the Department of Revenue a tax on insurance premiums, premiums on title insurance, assessments, and on annuity premiums received during the preceding calendar year.[15] These taxes are in the amount of 1.75 percent of the gross amount of receipts or specified policies and contracts (minus reinsurance and return premiums). However, for annuity policies and contracts, the tax is 1 percent of gross receipts. Further, insurers are allowed to take specified credits and deductions against the premium tax.

Annuities

Background - An annuity is generally defined as an insurance contract that provides a stipulated sum payable at certain regular intervals during the lifetime of a person or payable for a specified period. Annuities are regulated under part III, ch. 627, F.S., by two agencies, the Department of Financial Services (DFS), which exercises authority over insurance agents selling annuity products, and the Office of Insurance Regulation (OIR), which has regulatory jurisdiction over insurance companies. According to representatives with the DFS and the OIR, annuities can be an effective investment tool for many Floridians wanting to ensure a steady stream of income for retirement and achieve certain tax benefits.

Current consumer protections pertaining to annuities - Under s. 626.99(4)(a) and (b), F.S., insurers must provide to each prospective purchaser of a fixed annuity,[16] a buyer's guide to annuities and a contract summary as provided in the NAIC's Model Annuity and Deposit Fund Regulation, and the policy must contain a provision for an unconditional refund for a period of at least 10 days. The buyer's guide and policy summery must be provided by the insurer at the request of the prospective purchaser.

---

[15] Section 624.509, F.S. There are exceptions to the payment of such taxes for wet marine and transportation insurance under s. 624.510, F.S.

[16] A fixed annuity provides a guaranteed fixed benefit amount, payable for the life of the annuitant.

Under the unfair trade practices provisions of the Insurance Code,[17] it is a violation to knowingly misrepresent the benefits, advantages, conditions, or terms of any insurance policy.[18] Pursuant to s. 624.418, F.S., an insurance company may have its certificate of authority suspended or revoked if it has violated a lawful order of the OIR as to any provision of the Insurance Code or has engaged in practices in the conduct of its business as to render further transactions injurious to policyholders. Under s. 626.611(5), F.S., an agent's license may be suspended or revoked if such agent makes willful misrepresentations as to an annuity contract or willful deception with regard to such contract, done either in person or by any form of dissemination of information or advertising.[19]

III. Effect of Proposed Changes:

Section 1. Amends s. 624.402, F.S., pertaining to certificates of authority (COA) exceptions, to insert a new subsection (8). The bill provides that transactions involving life insurance policies or annuity contracts issued by an insurer domiciled outside the United States covering only persons who are not U.S. residents, and are not nonresidents illegally residing in the U.S., at the time of issuance, are exempt from the requirement to obtain a COA, provided the insurer meets specified financial and disclosure requirements. These requirements are similar to the provisions in current law that unauthorized insurers must meet to become eligible surplus lines insurers under s. 626.918, F.S. (*See*, discussion above under Present Situation.) The insurer must comply with the following requirements:

- be an authorized insurer in its country of domicile as to the kinds of insurance proposed to be offered and must have been an insurer for not less than the 3 preceding years, or a wholly owned subsidiary of an authorized insurer or, must be the wholly owned subsidiary of an already eligible authorized insurer as to the kind or kinds of insurance proposed for not less than the 3 preceding years. However, the OIR may waive the 3-year requirement if the insurer has operated successfully for a period of at least the immediately preceding year and has capital and surplus of at least $25 million.
- furnish the OIR with its current annual financial statement in English, and with such additional information the OIR requests.
- maintain a surplus to policyholders of at least $15 million consisting of eligible investments for like funds of like domestic insurers under part II of ch. 625;[20] however, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of ch. 625.
- have a "good reputation" as to providing services to policyholders and paying losses and claims.
- furnish the OIR with authenticated copies of its current annual and quarterly financial statements in English within the time period specified in s. 624.424(1)(a), F.S.[21]

[17] Section 626.9541, F.S. The Insurance Code includes chapters 624-632, 634-636, 641, 642, 648, and 651, F.S.
[18] Fines may be imposed for willful and non-willful violations (s. 626.9521, F.S.)
[19] Section 626.611(5), F.S.
[20] Part II of ch. 625, F.S., provides for investment requirements for domestic insurers and commercially domiciled insurers.
[21] An annual statement covering the preceding calendar year must be filed by March 1, and quarterly statements are filed within 45 days of the end of each quarter.

- agree to make its books and records available for OIR inspection during normal business hours.
- provide the applicant for a policy or contract a copy of the insurer's most recent quarterly financial statements as well as its date of organization; the identity of and rating assigned by each rating organization that has rated the insurer or, if applicable, that the insurer is unrated; that the insurer does not hold a certificate of authority issued in Florida and that the OIR does not exercise regulatory oversight over the insurer; and the identity and address of the regulatory authority exercising oversight of the insurer.

The bill further provides that the OIR has no responsibility to determine the actual financial condition or claims practices of any unauthorized insurer; and the status of eligibility, if granted by the OIR, indicates only that the insurer appears to be sound financially and to have a satisfactory claims practices and that the OIR has no credible evidence to the contrary. However, if the OIR at any time has reason to believe that the insurer is insolvent or in unsound financial condition, does not make prompt payment of benefits, or is no longer eligible, the OIR may conduct an examination or investigation (which would be done at the expense of the insurer) and, if the findings warrant, may withdraw the eligibility of the insurer to issue policies or contracts.

The legislation provides that the insurer is not exempt from agent licensure requirements of ch. 626, F.S., and must appoint agents used to sell such policies or contracts as provided by that chapter. The insurer is also subject to the Unfair Trade Practices provisions under part IX of ch. 626, F.S. The measure provides that policies and contracts written under this section are exempt from the premium tax specified in s. 624.509, F.S.

Applications for life insurance coverage must contain in contrasting color and in at least 12-point type, a statement to the effect that the policy is governed by the laws of a foreign country and, as a result, the rating and underwriting laws of the OIR do not apply to this coverage and that, if the insurer becomes insolvent, the policy is not covered by the Florida Life and Health Insurance Guaranty Association. All life insurance policies and annuity contracts must contain a disclosure on the first page of the policy or contract in contrasting color and at least 10-point type, that the benefits of the policy are governed primarily by the law of a country other than the United States. Finally, this legislation applies the Florida Money Laundering Act (ch. 896, F.S.) to all single premium life insurance policies and annuity contracts issued to persons who are not residents of the United States, and are not nonresidents illegally residing in the U.S.[22]

Section 2. Provides that this act shall take effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

---

[22] It is a felony under the Act for a person to conduct a financial transaction, knowing that the property involved in the transaction represents the proceeds of some form of unlawful activity, with the intent to promote the carrying on of the unlawful activity.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Life insurance policies and annuity contracts sold to non-U.S. residents by an unauthorized alien insurer meeting the criteria of this bill would be exempt from the premium tax. The Revenue Estimating Conference has estimated that the loss of revenue to the state under this legislation would be insignificant.

B. Private Sector Impact:

The bill would benefit qualified alien insurance companies that establish offices in Florida to serve non-U.S. residents, without having to obtain a certificate of authority. Existing companies (domestic, foreign, and alien) that are currently operating from Florida with a COA and serving non-resident markets of Central and South America could face increased competition for sales under the bill. These licensed companies operating with COAs have expenses such as audited financial statements, actuarial determination of reserves, filing fees, cash deposits, and state examinations that entities operating under the bill will not be required to have.

Proponents of this legislation state that most variable annuity and life insurance products sold in the international market now contain investment elements. Often these products are customized. Non-U.S. residents generally will be subject to U.S. withholding tax with respect to returns related to the investment elements of these products. The same variable annuity and life insurance products issued by alien or offshore insurers are not subject to the U.S. withholding tax. Consequently, products issued by U.S. insurers are not generally tax efficient for non-resident purchasers.

These proponents also assert that the bill will benefit the economy of South Florida. A recent study by the Beacon Council estimates that annual premium income from sales of insurance products to Latin Americans is in the billions of dollars and that, if such products could be sold and serviced from Florida, Florida’s economy would experience substantial economic benefit in terms of jobs created and other benefits.

C. Government Sector Impact:

Representatives with the OIR state that there is no fiscal impact to the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.