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: Banking and Insurance Committee

BILL: SB 1598

INTRODUCER: Senator Baker

SUBJECT: Life Insurance Policies

DATE: April 13, 2006 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Deffenbaugh	BI	**Pre-meeting**
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

Senate Bill 1598 permits insurers to sell life insurance policies that require the use of mandatory binding arbitration for settling disputes if the life insurance policy has a death benefit of $50,000 or less. The arbitration provision must be disclosed to the consumer in writing and inform the consumer that he or she waives all rights to a trial by jury. The bill contains requirements for the conduct of the arbitration.

The bill also states that the new section of law does not prohibit the use of mandatory binding arbitration in insurance policies not described in this section.

This bill creates the following sections of the Florida Statutes: 627.4141

II. Present Situation:

Arbitration

Arbitration is a method of alternative dispute resolution in which a neutral third party (the arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard.[1] Arbitration is utilized instead of taking a matter to the judicial courts. Supporters of arbitration state that it avoids the delay, expense, and other difficulties associated with the court system. However, some have worried that arbitration can be an unfair means of resolving a dispute, particularly when there is unequal bargaining power or expertise between the two parties.

[1] Deluxe Black's Law Dictionary pg. 105 (6th Ed. 1990).

The Florida Supreme Court has stated that, "arbitration is a favored means of dispute resolution and courts indulge every reasonable presumption to uphold proceedings resulting in an award."[2] Chapter 682, F.S., the Florida Arbitration Code (FAC), allows parties to agree in writing to arbitrate disputes between the parties, or arising from a contract. Under the FAC, the arbitrator must appoint a time and place for the hearing and each party must receive notice at least 5 days before the hearing date.[3] Either one arbitrator/umpire or a panel of arbitrators may hear and decide the controversy[4] and has the power to subpoena witnesses and evidence as well as take depositions.[5] The parties may present evidence to the arbitrator.[6] Each party has the right to be represented by an attorney at an arbitration proceeding, a right that cannot be waived.[7] The arbitrator's award (decision) must be in writing and rendered within the time specified in the arbitration agreement.[8]

Currently, the Office of Insurance Regulation (OIR) has not approved any life insurance policy forms that contain provisions providing for arbitration as the sole means of remedying a dispute arising under the policy. Representatives from the OIR have indicated to staff that such clauses have not been approved for multiple reasons, including:

- Arbitration clauses directly contradict the civil remedy statute in s. 627.155, F.S., which allows any person to bring a civil action against an insurer for not settling claims in good faith, not stating the coverage under which claims payments to an insured are being made, or failing to promptly settle claims in order to force a settlement. Additionally, unfair claims settlement practices, illegal refusals to insure (on the basis of race, religion; etc), and other violations can be litigated under the statute. An arbitration clause, if accepted by an insured, would result in the insured agreeing to waive this statutory right.
- Each life insurance contract states within its terms that it is incontestable[9] once it has been in force for 2 years pursuant to s. 627.455, F.S. Arguably, such clauses are contrary to this statute because they provide a convenient, inexpensive means by which an insurer can contest the payment of benefits or defend against a denial of benefits under a life insurance policy.
- Arbitration clauses often will not permit the policyholder to recover attorney's fees pursuant to s. 627.428, F.S.

Thus, though Florida statutory law is silent arbitration clauses in insurance policies, they are not included in policies sold in the state.

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[2] *Roe v. Amica Mutual Insurance Co*., 533 So.2d 279, 281 (Fla. 1988); See also *Alexander v. Minton*, 855 So.2d 94, 96 (Fla. 2nd DCA 2003).
[3] Section 682.06(1)(a), F.S.
[4] Section 682.05, F.S., and s. 682.06(1)(b), F.S.
[5] Section 682.08, F.S
[6] Section 682.06(2), F.S.
[7] Section 682.07, F.S.
[8] Section 682.09, F.S.
[9] The policy can only be contested for nonpayment of premiums and regarding whether benefits rendered in the event of disability and regarding provisions granting additional benefits in the event of an accidental death.

III. Effect of Proposed Changes:

Section 1. Creates s. 627.4141, F.S. The new section allows insurers to sell a life insurance policy (including group life and certificates of coverage) that requires the use of mandatory binding arbitration to resolve disputes involving the policy. The arbitration provision must be set forth in the policy or a separate endorsement. The arbitration provision in the policy must provide:

- A description of the arbitration process;
- A reasonable method for the selection of an impartial arbitrator. Initially, the parties have 30 days to agree upon an arbitrator. If they cannot agree, the appointment must be made of an impartial arbitrator by the American Arbitration Association or similar organization;
- The insurer pay all fees and expenses of the arbitrator and the administrative expenses of arbitration;
- For commencement of the arbitration hearing within 90 days after commencement of the arbitration process;
- That the arbitrator render a decision within 30 days of the arbitration hearing, unless waived by the person initiating the arbitration;
- That the arbitration hearing be held in the county of residence of the person demanding arbitration unless the parties agree to move to a different location;
- That the arbitrator apply the arbitration rules, applicable policy provisions, and applicable law;
- That the insurer provide to the policyholder a free means of obtaining the rules governing an arbitration.

Separate disclosure must be made by the insurer to the consumer at the time of application for a policy or endorsement that mandates binding arbitration, which the applicant is required to sign. The disclosure statement must be in 12-point, bold, and capitalized type and include the following information when applicable to the arbitration provision:

- That the policy contains mandates binding arbitration for the settlement of all disputes related to the policy;
- The results of arbitration are binding on the insured and the insurer;
- An independent and neutral arbitrator will render a decision after listening to the positions of the parties;
- That courts generally are unwilling to review and change decisions arising from binding arbitration;
- By accepting the insurance policy, the insured agrees to resolve all disputes related to the policy via arbitration rather than a court;
- That the insured waives all rights to a trial by jury.

The bill allows the arbitration provision to contain other reasonable provisions that are consistent with the goal of providing the fair, prompt, economical, and efficient resolution of disputes.

The bill also states that the new section of law does not prohibit the use of mandatory binding arbitration in insurance policies not described in this section. This provision may allow for arbitration clauses to be included in other insurance contracts. This would be contrary to the

current practice of the OIR of not approving policy forms that contain binding arbitration provisions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Despite the fact that arbitration is considered a favored means of dispute resolution by the Florida Supreme Court, it has invalidated some statutory arbitration provisions relating to insurance. Article I, Section 21 of the Florida Constitution guarantees that all Floridians will have access to the courts "for redress of any injury, and justice shall be administered without sale, denial, or delay." Generally, the Legislature is without power to abolish a right of access to court that has become part of the common law of the state.[10] If the Legislature does abolish such right, it must provide a reasonable alternative to the court system, or show an overpowering public necessity and that no alternative method of meeting that necessity can be shown. In 2000, the Florida Supreme Court declared unconstitutional a statutory provision mandating binding arbitration of disputes between medical providers and insurers regarding personal injury protection (PIP) benefits under Florida's Motor Vehicle No-Fault Law.[11] The provision was found to violate the constitutional right to access to courts because the Florida Arbitration Code allows appeal of a decision only under limited circumstances, and because courts attach a high degree of conclusiveness to the arbitrator's award. However, that some differences exist between SB 1598 and the arbitration provisions in these cases. First, the bill involves an agreement to arbitrate, rather than a statute compelling arbitration. The right of access to court may generally be relinquished unless the agreement is void pursuant to public policy, unconscionable, or due to a lack of consideration.[12]

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

[10] *Kluger v. White*, 281 So.2d 1 (Fla. 1973).
[11] *Nationwide Mutual Fire Insurance Co. v. Pinnacle Medical, Inc.*, 753 So2d 55 (Fla. 2000)
[12] *Global Marketing, Inc. v. Shea*, 908 So.2d 392 (Fla. 2005).

B. Private Sector Impact:

Proponents of the legislation assert that it will benefit consumers by allowing them to purchase policies that require disputes to be resolved using arbitration. The proponents assert this will be a benefit to insureds, as the amount in dispute in such policies is often fairly low, and such policyholders often would have difficulty finding an attorney to represent them, regardless. Additionally, proponents argue that the arbitration clause must be disclosed in large print in the insurance contract, thus policyholders will not be unaware that they are relinquishing their right of access to courts. Also, arbitration may result in a cost savings which can be passed on to consumers in the form of lower premiums. As a practical matter, the bill's primary impact would be to prevent class action lawsuits.

Opponents of the Legislation state that the arbitration provision will harm consumers by denying access to courts. According to the opponents, the bargaining position between the consumer and the insurer will be unequal. The insurer will know exactly what the arbitration clause will involve as insurers may bypass the Florida Arbitration Code and set up their own procedures, while the consumer (often not being an expert or even conversant in such matters) will be put at a disadvantage in selecting the arbitrator or understanding the proceedings. The bill does not state the insured may recover for the cost of hiring an attorney, so the consumer will have even less ability to hire legal representation to recover benefits than he or she does currently. Finally, opponents of the legislation assert that most insurers offering these types of policies will exclusively offer insurance contracts mandating arbitration, removing meaningful choice from the marketplace.

C. Government Sector Impact:

The OIR has indicated that the bill will increase the workload of the Life and Health Forms/Rates unit. The OIR anticipates a significant influx of policy form filings, and has indicated that it will request $250,000 in OPS funding for consultant services in order to timely process the form and rate filings associated with the new statutory provision.

To the extent disputes regarding such policies are resolved in arbitration, rather than the court system, the legislation may have a small, positive effect on the caseloads of the state courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.