

# 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: SJR 2132

INTRODUCER: Senator Klein

SUBJECT: Senate Joint Resolution - Proposing Constitutional Amendment to Provide for an Elected Insurance Commissioner

DATE: April 5, 2006                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	<b>Fav/1 amendment</b>
2.	_____	_____	EE	_____
3.	_____	_____	GO	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see last section for Summary of Amendments**

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

Senate Joint Resolution 2132 amends the following two articles of the Florida Constitution:

- Article IV (Executive Branch), Section 4 is amended to create a new cabinet office of an elected Insurance Commissioner. The Insurance Commissioner would have control and supervision of matters relating to the state fire marshal, risk management, insurance regulation, insurance fraud, rehabilitation and liquidation of insurers, insurance agents and agency services, consumer services, workers' compensation, insurance consumer advocacy, and funeral and cemetery services.
- Article VI (Suffrage and Elections), Section 8 is created to prohibit campaign contributions to Insurance Commissioner candidates from insurers, funeral or cemetery companies, and other business under the control of the Insurance Commissioner.

The legislation provides specific language which will be placed on the ballot for the voters' consideration which states that the proposed constitutional amendment creates the office of Insurance Commissioner, who will be an elected member of the Cabinet and responsible for specified duties. The language of the amendment also prohibits campaign contributions to, or solicitation of campaign contributions by or on behalf of, candidates for the office of Insurance

Commissioner from insurance companies, funeral or cemetery service companies, and other business or companies under the control and supervision of the Insurance Commissioner and their employees and agents.

According to the sponsor there are currently 11 states which have an elected Insurance Commissioner. They are: California, Delaware, Georgia, Kansas, Louisiana, Mississippi, Montana, North Carolina, North Dakota, Oklahoma and Washington.

This bill substantially amends an unspecified section of the Florida Statutes.

## **II. Present Situation:**

Currently the insurance industry in Florida operates under a bifurcated regulatory structure. Both the Financial Services Commission (the Commission) and the Department of Financial Services (DFS) are assigned the powers and duties of the former Department of Insurance related to the regulation of insurers and other similar entities. The Financial Services Commission consists of the Governor and the three Cabinet members [the Attorney General, Chief Financial Officer, and Commissioner of Agriculture]. Although the Commission is administratively housed within DFS, the law is clear that such placement is for administrative purposes only; the Commission is not subject to control or limitation by DFS.

The Financial Services Commission oversees the Office of Insurance Regulation (OIR) and the Office of Financial Regulation (OFR). The Commission and the directors of each Office share responsibility for final agency action. The Commission acts as agency head for purposes of rulemaking under ss. 120.536-120.565, F.S., while the directors act as agency heads for other final agency actions under chapter 120, F.S., the Administrative Procedure Act, for all areas within the regulatory authority of their respective Offices. Under current law in s. 20.121, F.S., OIR is directed to license and regulate insurance companies, including the issuance of a certificate of authority which each insurer transacting business in the state must possess.

The Office of Insurance Regulation also is directed by law to conduct financial and market conduct examinations of insurers; regulate the financial status and solvency of insurers, including administrative supervision of insurers; license and regulate insurance administrators, service companies, and premium finance companies and agreements; approve eligible surplus lines insurers; approve policy forms and rates for insurers; approve plans of operation and regulate joint underwriting associations (not including appointment of board members); approve donor annuity agreements; receive reports of claims information from insurers; and approve local government self-insurance plans for health coverage.

Section 20.121, F.S. also specifies the duties and responsibilities of DFS. It states that the Department of Financial Services shall consist of the following divisions:

- (a) The Division of Accounting and Auditing, which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity.
- (b) The Division of State Fire Marshal.
- (c) The Division of Risk Management.
- (d) The Division of Treasury, which includes the Bureau of Deferred Compensation.

- (e) The Division of Insurance Fraud.
- (f) The Division of Rehabilitation and Liquidation.
- (g) The Division of Insurance Agents and Agency Services.
- (h) The Division of Consumer Services.
- (i) The Division of Workers' Compensation.
- (j) The Division of Administration.
- (k) The Division of Legal Services.
- (l) The Division of Information Systems.
- (m) The Office of Insurance Consumer Advocate.
- (n) The Division of Funeral, Cemetery, and Consumer Services.

In November 1998, voters approved Constitutional Revision 8 that restructured the Florida Cabinet. The revision established a new Cabinet post of Chief Financial Officer and abolished the offices of Treasurer and Comptroller. Those changes applied to the November 2002, General Election and took effect January 7, 2003. Prior to that, the Treasurer also served as Insurance Commissioner and was agency head of the Department of Insurance.

The 2002 Legislature created s. 20.121, F.S., which prescribes the organizational structure and regulatory duties of the Department of Financial Services, headed by the Chief Financial Officer, and the Financial Services Commission ("commission"), consisting of the Governor and Cabinet. Two offices are created under the commission: the Office of Insurance Regulation and the Office of Financial Institutions and Securities Regulation, each headed by a director appointed by the commission, except that the commission is agency head for all rulemaking of each office.

Pursuant to Article XI, section 1 of the State Constitution, amendments to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment shall then be submitted to the electors at the next general election held more than ninety days after the joint resolution is filed with the custodian of state records, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision.

Proponents of this bill argue that the regulation of insurance rates should not be under a person who is appointed, but rather an individual who is elected by the voters of Florida. According to the sponsor there are currently 11 states which have an elected Insurance Commissioner. They are: California, Delaware, Georgia, Kansas, Louisiana, Mississippi, Montana, North Carolina, North Dakota, Oklahoma and Washington. Proponents further assert that the public will be better served by banning all insurance money from the insurance commissioner election.

### **III. Effect of Proposed Changes:**

The Senate Joint Resolution is not divided into separate sections. Article IV (Executive Branch of Government), Section 4 (Cabinet) is amended to create a new cabinet office of an elected Insurance Commissioner. The Insurance Commissioner would have control and supervision of matters relating to the state fire marshal, risk management, insurance regulation, insurance fraud, rehabilitation and liquidation of insurers, insurance agents and agency services, consumer

services, workers' compensation, insurance consumer advocacy, and funeral and cemetery services.

The Senate Joint Resolution creates a new provision under Article VI (Suffrage and Elections) which pertains to Insurance Commissioner candidates and places restrictions on contributions and solicitations regarding political campaigns for that office under Section 8. The legislation provides that an insurance company, a company engaged in the business of funeral or cemetery service, or any other business or company that is under the control and supervision of the Insurance Commissioner, or any employee or agent of such a company or business, is prohibited from making or soliciting a contribution, for any election, to or on behalf of any candidate for the office of Insurance Commissioner. A candidate for the office of Insurance Commissioner, or any employee of the Insurance Commissioner or of any state agency under the control and supervision of the Insurance Commissioner, is forbidden from soliciting or accepting a campaign contribution from any such company, business, employee, or agent. The bill provides that the new restrictions do not prevent any candidate for the office of Insurance Commissioner or member of that candidate's immediate family from contributing to that candidate's campaign as otherwise permitted by law.

The legislation provides specific language which will be placed on the ballot for the voters' consideration which states that the proposed constitutional amendment creates the office of Insurance Commissioner, who will be an elected member of the Cabinet and responsible for specified duties, and that the amendment will also prohibit campaign contributions to, or solicitation of campaign contributions by or on behalf of, candidates for the office of Insurance Commissioner from insurance companies, funeral or cemetery service companies, and other business or companies under the control and supervision of the Insurance Commissioner and their employees and agents.

#### **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:**

Pursuant to Article XI, Section 1 of the State Constitution, amendments to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment shall then be submitted to the electors at the next general election held more than ninety days after the joint resolution is filed with the custodian of state records, unless it is submitted at an earlier special election pursuant to a law enacted by an

affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the voters approve the amendment, the Legislature will have to implement the provisions of the measure including re-structuring the responsibilities of the Department of Financial Services and the Financial Services Commission (including the Office of Insurance Regulation).

C. Government Sector Impact:

Both the Department of Financial Services and the Office of Insurance Regulation state that this Senate joint resolution will have no fiscal impact on their agencies. However, if the voters approve the amendment, the Legislature will have to implement the provisions of the measure including making the necessary fiscal adjustments.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



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## VIII. Summary of Amendments:

### **Barcode 355790 by Banking and Insurance:**

Provides that, by implication, Section 8 of Article VI (prohibited campaign contributions) will take effect on the first Tuesday after the first Monday in January following the general election which is provided for under Section 5(e) of Article 11. The effect of this amendment will allow the campaign contribution provision, if approved by the voters in the November 2006 election, to go into effect on January 2, 2007, which is before the effective date of the office of Insurance Commissioner provision which, if approved by the voters in the November 2006 election, will go into effect on January 6, 2009.

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

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