

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1303 Insurance Agents

SPONSOR(S): Regulatory Affairs Committee; Insurance & Banking Subcommittee; Jones, S.

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1386

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Yaffe	Luczynski
2) Regulatory Affairs Committee	12 Y, 0 N, As CS	Yaffe	Hamon

SUMMARY ANALYSIS

A health insurance agent may charge a fee, pursuant to a written contract, in lieu of a commission, for examining any group health insurance or benefit plan for the purpose of giving or offering advice, counsel, recommendation, or information in respect to the terms, conditions, benefits, coverage, or premium of any such policy. The bill amends current law to permit a health insurance agent, pursuant to a written contract, to charge a fee in lieu of a commission, to any group or individual health insurance or benefit plan, for the purpose of giving or offering advice, counsel, recommendation, or information in respect to the terms, conditions, benefits, coverage, or premium of any such policy.

The bill clarifies that the qualifications for licensure as a life agent require an individual not to be found by the Department of Financial Services (DFS) as untrustworthy or incompetent and that the individual also meet a series of enumerated qualifications.

The bill raises the maximum amount of life insurance coverage that can be sold by a funeral director, a direct disposer, an employee of a funeral establishment, or a funeral establishment contracting with a life insurance agent, for a life insurance policy limited to funding a preneed contract. The coverage limit is raised from \$12,500 to \$21,000, plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for 2016.

The bill renames a "certificate of authority" to a "preneed contract."

The bill does not appear to have a fiscal impact on state or local governments. The bill impacts the private sector.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation – Health Insurance Agents

Health insurance policies are generally issued as group or individual plans. Group plans are offered by employers and cover several people or groups under one policy, and may include provisions to cover family members. Individual plans cover one person or all members of a family under one policy.

Insurers are prohibited from issuing a health insurance policy unless the application or contract for such policy is taken by, and the delivery of such policy or contract is made through, a licensed insurance agent of the insurer who receives the “usual commission” due to an agent from such insurer.¹ In order to solicit applications for, or to negotiate and effectuate contracts of health insurance on behalf of an insurer, a person must be licensed as a health insurance agent.² The vast majority of health insurance agents earn compensation solely in the form of the “usual commission,” the rate of which is filed with and approved by the Office of Insurance Regulation (OIR). In some cases, the “usual commission” rate is 0 percent. It is illegal for an insurance agent to collect a premium or fee in excess of the applicable rate filed with and approved by the OIR.³

The exception to this prohibition states that in lieu of a commission, a health insurance agent may charge a fee or any other thing of value pursuant to a written contract, in addition to the rates filed with the OIR, for examining any group health insurance or benefit plan for the purpose of giving or offering advice, counsel, recommendation, or information in respect to the terms, conditions, benefits, coverage, or premium of any such policy.⁴ The contract must be signed by the party to be charged, specify the amount of such compensation, and inform the party to be charged that any commission received from an insurer will be rebated to the party.⁵

Effect of Proposed Changes – Health Insurance Agents

The bill amends current law to permit a health insurance agent, pursuant to a written contract, to charge a fee in lieu of a commission, to any group or individual health insurance or benefit plan, rather than only a group plan, for the purpose of providing advice, counsel, recommendation, or information in respect to the terms, conditions, benefits, coverage, or premium of a health insurance policy. The written contract must be signed by the party to be charged, specify the amount of such compensation, and inform the party to be charged that any commission received from an insurer will be rebated to the party.

Current Situation – Life Insurance Agents

A preneed insurance policy, also referred to as a “preneed contract,”⁶ covers the expense of a prearrangement for a funeral service and funeral merchandise. A “funeral service” generally consists of the ceremonies held to commemorate the life of the deceased.⁷ “Funeral merchandise” is personal property offered or sold for use in the final disposition, such as caskets, urns, monuments, and register books.⁸ To sell a preneed contract, an individual must have a valid preneed license.⁹

¹ s. 624.428(1), F.S.

² s. 626.829(1), F.S.

³ s. 626.9541(1)(o), F.S.

⁴ s. 626.593(1), F.S.

⁵ *Id.*

⁶ A “‘preneed contract’ means any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future.” s. 497.005(56), F.S.

⁷ s. 497.005(33), F.S.

⁸ s. 497.005(6), F.S.

⁹ s. 497.452, F.S.

A preneed contract can be funded through a trust agreement or a life insurance policy. To sell a preneed contract funded through a trust agreement, an individual must be licensed as a preneed sales agent.¹⁰ To sell a preneed contract funded by a life insurance policy, an individual must be licensed as a life agent.¹¹ Coverage is not limited to a specific dollar amount for a preneed contract funded by a trust agreement, but a preneed contract funded by a life insurance policy may not exceed \$12,500 in coverage, plus an annual percentage increase based on the Annual Consumer Price Index for 2003.

Chapter 626, F.S., Part III, regulates life agents and licensure, including the licensure of agents authorized to sell life insurance policies as funding-vehicles for preneed contracts. To qualify for licensure as a life agent, an individual must not be found by the DFS to be untrustworthy or incompetent, or meet a series of enumerated qualifications.¹² A life agent is defined as an individual that represents an insurer as to life insurance contracts.¹³ Funeral establishments¹⁴ are authorized to contract with a life agent to sell life insurance policies limited to funding a preneed contract. Additionally, a funeral director, a director disposer, or an employee of a funeral establishment may be licensed to sell life insurance policies limited to funding a preneed contract if they hold a “certificate of authority” pursuant to s. 497.451, F.S.¹⁵ These life insurance policies are limited to coverage not exceeding \$12,500, plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for 2003.

Effect of Proposed Changes – Life Insurance Agents

The bill clarifies that the qualifications for licensure as a life agent require an individual not to be found by the DFS as untrustworthy or incompetent and that the individual also meet a series of enumerated qualifications.

The bill raises the maximum amount of coverage that can be sold by a funeral director, a direct disposer, an employee of a funeral establishment, or a funeral establishment contracting with a life agent, for a life insurance policy limited to funding a preneed contract. The coverage limit is raised from \$12,500 to \$21,000, plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for 2016.¹⁶ The changes are intended to provide the consumer with more flexibility when utilizing a life insurance-funded preneed contract and to accommodate for unforeseen needs and expenses that may arise as it relates to funeral expenses and merchandise.

The bill renames a “certificate of authority” to a “preneed contract” in order to match its statutory counterpart, s. 497.452, F.S., which had previously made such change.

B. SECTION DIRECTORY:

Section 1: amends s. 626.593, F.S., relating to insurance agents; written contracts for compensation.

Section 2: amends s. 626.785, F.S., relating to qualifications for licensure.

Section 3: provides an effective date.

¹⁰ The only exception to this requirement is individuals licensed as funeral directors may engage in preneed sales for the preneed licensee with whom they are affiliated without preneed sales agent licensure, pursuant to s. 497.466(1), F.S.

¹¹ s. 626.785, F.S.

¹² *Id.*

¹³ s. 626.015(10), F.S.

¹⁴ A “funeral establishment” is a facility licensed under ch. 497, F.S., where a funeral director or embalmer practices funeral directing or embalming. s. 497.005(35), F.S.

¹⁵ A “certificate of authority” is a “preneed license.”

¹⁶ Email from Lisa Coney, Compliance/Quality Assurance, Service Corporation International, RE: Florida Insurance & Banking Subcommittee -- House Bill 1303 Inquiry (Jan. 26, 2016).

II. 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:

The public may be charged a fee by a health agent to receive certain services specified in the bill.

The public will be able to purchase a larger limited life insurance policy to fund a preneed contract that covers the costs of funeral services.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Insurance & Banking Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS clarified language related to the qualifications for licensure as a life agent, added applicability to a funeral establishment contracting with a life insurance agent, changed the coverage limit for a life insurance policy limited to funding a preneed contract from \$22,500 to \$21,000, and renamed a "certificate of authority" to a "preneed contract."

On February 17, 2016, the Regulatory Affairs Committee considered and adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised fee and commission limitations for health insurance agents.

The staff analysis has been updated to reflect the committee substitute.