

# Florida Office of Insurance Regulation

## Financial Services Commission



### 2007 Report on Life Insurance Limitations on Freedom to Travel

March 1, 2007

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# **Life Insurance Limitations on Freedom to Travel**

## **Executive Summary**

Subsection 626.9541(1)(dd), Florida Statutes, enacted in 2006, defines the conditions under which the refusal or limiting of life insurance or the refusal to continue existing life insurance based on past or future lawful travel constitutes an unfair trade practice. Chapter Law 2006-277 requires the Office of Insurance Regulation (Office) to report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2007, and on the same date annually thereafter, on the implementation of this paragraph. The report is to include, but not be limited to, the number of applications under which life insurance was denied, continuance was refused, or coverage was limited based on future travel plans; the number of insurers taking such action; and the reason for taking each such action.

This report satisfies the requirement of the statute. Moreover, this report reviews actions undertaken in other regulatory and legislative jurisdictions regarding life insurance and travel plans. The report finds:

- Of 516 life and health insurance companies with active Certificates of Authority in Florida, an Office survey revealed that 127 included travel related questions in their application materials and/or underwriting guidelines.
- 7 of these 127 companies attested to 15 instances where the company had refused or denied extension of coverage based on responses to these questions.
- Separately, 11 companies, identified by the Office based on company knowledge, were selected for review. On-site sampling of the application records of these companies revealed 4 instances where travel related questions had been used as a reason for refusal.
- Based on the sample findings, on-site examinations are currently in process to review approximately 8,500 relevant policies to determine which were denied, refused, or limited due to past or future lawful travel.
- As of the date of this report, 3,346 policies have been reviewed in 3 companies uncovering 8 additional instances where past or future lawful travel had been used as a reason to refuse, deny, or limit coverage in violation of Florida law.
- The National Association of Insurance Commissioners (NAIC) is developing a revision to its Unfair Trade Practices Model Act to specifically identify discrimination in life insurance underwriting based on travel, without actuarial justification, as an unfair trade practice.

# Life Insurance Limitations on Freedom to Travel

## Purpose and Scope

Subsection 626.9541(1)(dd), Florida Statutes, enacted in 2006, defines the conditions under which the refusal or limiting of life insurance or the refusal to continue existing life insurance based on past or future lawful travel constitutes an unfair trade practice.

Specifically:

*(dd) Life insurance limitations based on past foreign travel experiences or future foreign travel plans.--*

1. An insurer may not refuse life insurance to; refuse to continue the life insurance of; or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's past lawful foreign travel experiences.
2. An insurer may not refuse life insurance to; refuse to continue the life insurance of; or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's future lawful travel plans unless the insurer can demonstrate and the Office of Insurance Regulation determines that:
  - a. Individuals who travel are a separate actuarially supportable class whose risk of loss is different from those individuals who do not travel; and
  - b. Such risk classification is based upon sound actuarial principles and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination.
3. The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to implement this paragraph and may provide for limited exceptions that are based upon national or international emergency conditions that affect the public health, safety, and welfare and that are consistent with public policy.
4. Each market conduct examination of a life insurer conducted pursuant to s. 624.3161 shall include a review of every application under which such insurer refused to issue life insurance; refused to continue life insurance; or limited the amount, extent, or kind of life insurance issued, based upon future lawful travel plans.
5. The administrative fines provided in s. 624.4211(2) and (3) shall be trebled for violations of this paragraph.
6. The Office of Insurance Regulation shall report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2007, and on the same date annually thereafter, on the implementation of this paragraph. The report shall include, but

not be limited to, the number of applications under which life insurance was denied, continuance was refused, or coverage was limited based on future travel plans; the number of insurers taking such action; and the reason for taking each such action.

This report satisfies the requirement of 6. above regarding current market practice in this area.

## **Background**

In the Spring of 2005, U.S. Representative Debbie Wasserman Schultz was denied life insurance coverage by American General, an AIG company, for the sole reason that she indicated that she might travel to Israel at some point in the future (see letter dated March 28, 2005 in Appendix 1. Appendix 1 contains all of the correspondence referenced in this section). Upon receiving the denial, Rep. Wasserman Schultz notified the NAIC and the Office, asking if an insurance company could deny coverage based on the possibility of future legal travel plans (see letter dated August 17, 2005). At the same time, Rep. Wasserman Schultz began her own investigation of the breadth of this practice in the industry.

State insurance regulators, through the NAIC, along with industry representatives agreed at the outset that the issue could be resolved within the state regulatory framework (see letter dated September 1, 2005). In Florida, immediately upon receiving the complaint, the Office reviewed the facts and determined that denying life insurance for possible future legal travel constituted an unfair trade practice under existing statute (Section 626 (951-99), F.S.), unless an actuarial justification could be provided (see letter dated September 7, 2005). The Office began the rulemaking process to explicitly enforce this finding.

Prior to the enactment of the law, the Financial Services Commission (FSC) began adoption of a rule, based on the then current Unfair Trade Practices Act. That rule, 69O-125.003 Unfair Discrimination Because of Travel Plans, was enacted on July 6, 2006 and announced via the Office's informational memorandum, OIR-06-13M (see Appendix 2), on the same day. The Unfair Discrimination Because of Travel Plans rule reads:

### **69O-125.003 Unfair Discrimination Because of Travel Plans.**

(1) No insurer nor person authorized to engage in the business of insurance in the State of Florida shall refuse to issue any policy, contract or certificate of life insurance, annuity contract, accident, disability or health insurance, because of the intent of the applicant to engage in future lawful foreign travel or based upon past lawful foreign travel, unless the insurer can demonstrate that insureds who have traveled or intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who have not traveled and do not intend to travel.

(2) No insurer nor person authorized to engage in the business of insurance in the State of Florida, shall, in determining the rates charged an applicant for coverage under any policy, contract or certificate of life insurance, annuity contract, accident, disability or health insurance, issued or to be issued to be delivered to any resident of this state, consider the intent of the applicant to engage in future lawful foreign travel or past lawful travel of the applicant, unless the insurer can demonstrate that insureds who have traveled or intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who have not traveled and do not intend to travel.

(3) Violation of this rule constitutes unfair discrimination prohibited by Section 626.9541(1)(g), F.S.

*Specific Authority 626.9611 FS. Law Implemented 626.951, 626.9521, 626.9541(1)(g) FS. History–New 7-6-06.*

As the rule making process for the above was in process, the Florida Legislature acted upon the issue and passed reinforcing legislation that ultimately became Subsection 626.9451(1)(dd), Florida Statutes, strengthening the unfair trade practice legislation to explicitly include denial of coverage based on future possible legal travel as an unfair trade practice and to completely prohibit the use of past travel as an underwriting consideration.

Following the enactment of the new statute numerous informal discussions were held with representatives from industry to identify possible exemptions that could be provided by rule, as provided in the statute. Subsequently the FSC re-opened the rule and changes to reflect the new statute are in the process of promulgation. The revised rule will provide direction to companies about the actuarial support that will be required to justify the use of travel as an underwriting criteria as well as providing that carriers can petition the Office for limited exemptions, such as travel to Afghanistan and Iraq.

### **Examination of Market Practices**

With the enactment of the rule, the Office began an investigation of market practice designed to identify the breadth and frequency of the practice as well as to ensure compliance with the new legislation.

Five hundred and sixteen life and health insurance companies, i.e. all those companies with an active Certificate of Authority in Florida, were sent a survey asking the following questions:

- Does your company use life insurance applications in Florida that include questions related to an applicant's past lawful foreign travel and/or future lawful foreign travel?
- Does your company have a policy or underwriting guideline in place to refuse, cancel or deny coverage for a life insurance policy if the Company learns of past

lawful foreign travel and/or future lawful foreign travel plans for Florida insured's?

- Does your company have a policy or underwriting guideline in place that limits the amount, extent, or kind of life insurance coverage available to a Florida consumer based on past lawful foreign travel and/or future lawful foreign travel plans?

Of the 516 companies surveyed, 127 responded "Yes" to one or more of the above mentioned questions.

A second inquiry was sent to each of the 127 companies. The inquiry asked the company to identify each application for life insurance the company received from a Florida consumer from July 1, 2006 through December 15, 2006, where based on the applicant's past or future lawful foreign travel plans coverage was denied, delayed, limited or continuance of coverage was refused.

The survey revealed that seven companies either denied a life insurance policy, refused the continuance of or limited coverage of a policy to an applicant based on their responses to these questions. These seven companies reported a combined total of fifteen instances where denied policy applications that had a disposition based on the applicant's past or future lawful foreign travel plans.

The remaining companies, via attestation from the President or Chief Executive Officer of the company, had not violated the statute.

At the same time, the Office identified a group of eleven companies, based on company knowledge, for a target examination to determine the breadth of this practice. On-site sampling of the application records of these companies revealed 12 instances where denied policy applications had a disposition based on the applicant's past or future lawful foreign travel plans. Based on these sample findings, a complete examination of the approximately 8,500 combined relevant policy applications of these eleven companies is in process.

As of the date of this report, 3,346 policies have been reviewed in 3 companies uncovering 8 additional instances where past or future lawful travel had been used as a reason to refuse, deny, or limit coverage in violation of Florida law.

Finally, while the law prohibits using lawful foreign travel information as a basis for denying insurance, it does not absolutely prohibit companies, upon approval from the Office from asking travel related questions. To that end, the Office maintains a current listing of every company that is authorized to continue to ask questions related to foreign travel. The list of the 33 companies currently authorized to ask these questions is in Appendix 3.

## **Other Legislative and Regulatory Changes**

As the Florida Legislature and the Office worked to resolve this issue, other states were addressing it legislatively as well. Additionally, this issue became a focus of insurance regulation at the national level through the NAIC. As well, legislative activity at the federal level was initiated in the U.S. House of Representatives.

Florida was not the only state to consider the future travel issue in life insurance. A number of states, including California, Connecticut, Illinois, Maryland, Massachusetts, and New York enacted legislation designed to restrict the practice of denying life insurance based on legal travel plans. The language of the legislation varied from state to state with some laws restricting the practice more rigorously than others. Notice that in the case of the Florida Statute, the restriction applies to life, health and liability lines of insurance, not just life insurance.

At the same time, coordinated regulatory activity also occurred through the NAIC. In March 2006, the NAIC Life and Annuity Insurance (A) Committee formed the Travel to Foreign Countries Working Group. Chaired by Commissioner Jim Poolman (ND), the working group initially consisted of representatives from Alabama, California, Florida, Iowa, New Mexico, New York, Ohio, Pennsylvania, and Texas. The A Committee charge to the Working Group was to:

Analyze issues related to underwriting practices and/or policy exclusions in life insurance policies relating to lawful travel to foreign countries and draft guidelines for interpretation of the Unfair Trade Practices Act or model legislation to address the issues, as necessary.

The working group on September 9, 2006, held a public hearing on the issue in St Louis, Missouri. In addition to testimony provided by the American Academy of Actuaries, the Anti-Defamation League, the Center for Economic Justice, and the American Council of Life Insurers, the working group also received testimony from Congresswoman Wasserman Schultz and Florida Insurance Commissioner Kevin McCarty.

The working group finished its work in 2006 by recommending a draft revision to the NAIC Unfair Trade Practices Act (Model 880) on December 20, 2006 to its parent committee, the Life (A) Committee. The draft model is in Appendix 4.

A planned meeting of the A Committee for late January was delayed due to a change in the leadership of the committee. The A Committee is scheduled to meet on Monday, March 5, 2007, to consider action on the draft.

## **Federal Legislative Activity**

Congresswoman Wasserman Schultz, along with fifty three co-sponsors, introduced legislation in the 109<sup>th</sup> Congress designed to stop the practice of denying coverage based on future travel plans. H.R. 3639, the Life Insurance Fairness for Travelers (LIFT) (see



Appendix 5) would have provided a prohibition against discrimination in life insurance policies based on future foreign travel plans. After referral to the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, the LIFT bill, was offered as an amendment to the Terrorism Risk Insurance Act of 2002 that was being considered for renewal. Ultimately, the bill language was not included in the TRIA extension bill.

## **Summary**

It is clear that denying life insurance coverage to individuals based solely on past or future legal travel plans is an unacceptable practice in Florida unless actuarially justified or otherwise permitted by law. In addition, other states have reached the same conclusion and a model law for all states is being developed by the NAIC. This report has outlined the actions taken by the Office and the Legislature to ensure that unlawful discrimination based on legal travel will not continue. The report has also reviewed the regulatory review and examination of the practice. While unlawful discrimination is a serious concern, the evidence to date does not suggest that it is a pervasive problem across the industry in Florida. The Office will remain vigilant to ensure that Floridians are protected from any unlawful discrimination.