

STORAGE NAME: s1108s1z.fs  
DATE: June 17, 1998

**\*\*FINAL ACTION\*\***  
**\*\*SEE FINAL ACTION STATUS SECTION\*\***

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
FINANCIAL SERVICES  
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/SB 1108, 1st Engrossed

**RELATING TO:** Insurance

**SPONSOR(S):** Senate Committee on Banking and Insurance and Senator Williams

**COMPANION BILL(S):** CS/HB 3697 (c)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) BANKING AND INSURANCE YEAS 7 NAYS 0
- (2)
- (3)
- (4)
- (5)

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I. FINAL ACTION STATUS:

CS/SB 1108, 1st Engrossed, passed the Senate 36-0 on May 1, 1998, and passed the House 113-0 on May 1, 1998. It was approved by the Governor on May 22, 1998: Chapter 98-173, Laws of Florida. This bill includes parts or all of CS/HB 1127, HB 3665, CS/HB 3697, HB 4489, and HB 4703; see Section VI, COMMENTS, below, for details.

II. SUMMARY:

This bill amends various statutory provisions relating to insurance. The bill:

exempts all commercial inland marine insurance policies, rather than only "specially rated" commercial inland marine insurance policies, from rate and form regulation.

revises the membership of the Workers' Compensation Joint Underwriting Association (WCJUA) board of governors, and prohibits voluntary market insurers from providing workers' compensation coverage to any person who is delinquent in the payment of premiums, assessments, surcharges, or penalties to the WCJUA.

extends for an additional two years the moratorium on hurricane-related cancellations and nonrenewals of personal lines residential insurance policies and the moratorium on hurricane-related cancellations and nonrenewals of condominium association policies.

creates two new exemptions to the 60-day down payment requirement for new automobile insurance policies.

extends indefinitely the freeze on geographical expansion of eligibility for Florida Windstorm Underwriting Association (FWUA) coverage.

requires insurers to investigate claims of Holocaust victims or their beneficiaries, allow the claimant to meet a reasonable standard of proof, permit claims, regardless of any statute of limitations imposed by the policy, and report specified information to the Department of Insurance.

This bill would have a non-recurring fiscal impact on the Insurance Commissioner's Regulatory Trust Fund of (\$508,614) and a recurring fiscal impact of (\$96,379) in FY 1998-1999, attributable to the provisions relating to claims of Holocaust victims.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Aspects of the present situation affected by the bill are discussed in the Section-by-Section Research, below.

B. EFFECT OF PROPOSED CHANGES:

This bill amends various statutory provisions relating to insurance. As is described in detail in the Section-by-Section Research, below, the bill:

Exempts all commercial inland marine insurance policies, rather than only "specially rated" commercial inland marine insurance policies, from rate and form regulation under the Insurance Code.

Revises the membership of the Workers' Compensation Joint Underwriting Association (WCJUA) board of governors, and prohibits voluntary market insurers from providing workers' compensation coverage to any person who is delinquent in the payment of premiums, assessments, surcharges, or penalties to the WCJUA.

Extends for an additional two years the moratorium on hurricane-related cancellations and nonrenewals of personal lines residential insurance policies and the moratorium on hurricane-related cancellations and nonrenewals of condominium association policies.

Creates two new exemptions to the 60-day down payment requirement for new automobile insurance policies. The down payment requirement would not apply to premiums paid through payroll deduction or automatic electronic funds transfer plans.

Extends indefinitely the freeze on geographical expansion of eligibility for Florida Windstorm Underwriting Association (FWUA) coverage.

Requires insurers to investigate claims of Holocaust victims or their beneficiaries, allow the claimant to meet a reasonable standard of proof, and permit claims, regardless of any statute of limitations imposed by the policy; and make a report to the Department of Insurance regarding any legal relationship the insurer might have with an insurer that issued a policy to a Holocaust victim and any claims outstanding.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Yes. Under s. 626.9543, F.S., as created by the bill, the Department of Insurance would be authorized to implement rules to establish procedures and forms for facilitating, monitoring, and verifying compliance with provisions relating to insurance claims of Holocaust survivors.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Department of Insurance would not have to approve forms for any commercial inland marine insurance, rather than only "specially rated" commercial inland marine insurance.

Insurers would not be allowed to provide workers' compensation coverage to an employer who is delinquent in the payment of premiums, assessments, surcharges, or penalties to the Workers' Compensation Joint Underwriting Association.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No. The bill reduces the ability of insurers to restrict their Florida exposures by extending the moratorium on hurricane-related cancellations and nonrenewals of residential property insurance policies for two additional years.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Insurers would not be allowed to provide workers' compensation coverage to an employer who is delinquent in the payment of premiums, assessments, surcharges, or penalties to the Workers' Compensation Joint Underwriting Association.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

Chapters 626 and 627, F.S.

**E. SECTION-BY-SECTION RESEARCH:**

**Section 1** amends s. 627.021, F.S., relating to the scope of Part I, Chapter 627, F.S.

Under s. 627.410, F.S., no insurance policy or annuity contract form may be delivered for use in Florida unless the insurer has filed the policy with the Department of Insurance and it has been approved. Specifically exempt from this provision are "specially rated" inland marine risks.

"Commercial inland marine insurance" covers property of a business that is portable or movable in nature or an instrumentality of transportation or communication. Examples of commercial inland marine risks are cellular towers, bridges, commercial goods in transit, and tunnels.

"Specially rated" inland marine risks are those for which the insurer has not issued an underwriting manual. Each policy is tailored to the particular property covered, and the premium is calculated based on the terms of that policy. It is not clear whether the use of underwriting considerations or guidelines which give the agent discretion to negotiate coverage and premiums would remove a policy from the "specially rated" category. If a policy written with the use of underwriting guidelines, but not an underwriting manual, is not considered "specially rated," the policy form would be subject to approval by the Department of Insurance.

Historically, all commercial inland marine rates and policies have been viewed as "specially rated" and therefore not subject to approval, according to the department.

This section of the bill would provide that commercial inland marine insurance is not subject to regulation under Chapter 627. F.S.

**Section 2** amends s. 627.0651, F.S., relating to rates for motor vehicle insurance. This section of the bill deletes an exemption for commercial inland marine insurance, to conform to the broader exemption created by Section 1 of the bill.

**Section 3** amends s. 627.311, F.S., relating to the Workers' Compensation Joint Underwriting Association (WCJUA).

The Florida Workers' Compensation Joint Underwriting Association (WCJUA) is an insurance pool of last resort, providing workers' compensation coverage to employers unable to obtain coverage through the normal voluntary insurance market. The WCJUA is required to have actuarially sound rates that assure that it is self-funding. However, if the WCJUA is not able to meet its obligations, insureds having assessable policies will be assessed on a pro-rata earned premium basis in order to pay the WCJUA's losses.

WCJUA Board of Governors

The WCJUA, like other joint underwriting associations, is governed by a plan of operation and is overseen by a board of governors. Pursuant to s. 627.311(4)(a), F.S., the board of governors of the WCJUA is made up of:

- 5 domestic insurers;
  - 1 of whom is an assessable mutual insurer or other domestic insurer which has the largest voluntary written premium for workers' compensation and employer's liability insurance as of December 31, 1993;
  - 1 of whom is a commercial self-insurance fund which has the largest voluntary written premium for workers' compensation and employer's liability insurance as of December 31, 1993; and
  - 3 of whom are the 3 of the 5 group self-insurers' funds, which have the largest voluntary written premium for workers' compensation and employer's liability insurance as of December 31, 1993.
- 5 of the 20 foreign insurers with the largest voluntary written premium in this state for workers' compensation and employer's liability, for the latest year for which data are available;
- a chairman, who is appointed by the Insurance Commissioner;
- 1 representative appointed by the largest property and casualty insurance agents' association in this state; and
- the insurance consumer advocate appointed under s. 627.0613, F.S.

In 1993, when the Florida Legislature created the WCJUA, the domestic market was composed of assessable mutual insurers, commercial self-insurance funds, group self-insurance funds, in addition to insurers licensed to write workers' compensation insurance in this state. However, since 1993, most of the assessable mutual insurers, commercial self-insurance funds, and group self-insurance funds have converted into insurance companies. Consequently, the current statutory composition of the board of governors is not an accurate representation of the domestic workers' compensation insurance market. As a result, the WCJUA will encounter difficulty in seating future boards of governors.

This section of the bill amends the composition of the board of governors in order to reflect a more accurate representation of the domestic workers' compensation insurance market. Under this bill, the board of governors will be composed of:

- 5 of the 20 domestic insurers<sup>1</sup> with the largest voluntary written premium for workers' compensation and employer's liability insurance;
- 5 of the 20 largest foreign insurers with the largest voluntary written premium for workers' compensation and employer's liability insurance;
- a chairman appointed by the Insurance Commissioner;
- 1 person appointed by the largest property and casualty insurance agents' association in the state; and
- the consumer advocate appointed pursuant to s. 627.0613, F.S.

The result of this change is that the 5 domestic insurer seats on the board will be available to any of the top 20 carriers, regardless of corporate structure, and the mandate that 4 of the 5 seats be given to self-insurance funds will no longer apply. This may enable the board to reflect carriers' interests more accurately and may facilitate the filling of seats on the board.

#### Refusal of Coverage to Person Owing Money to Voluntary Market Insurer

The WCJUA, pursuant to s. 627.311(4)(b)12., F.S., and its plan of operation, is required to cancel or deny coverage to any employer who at the time of application is delinquent in payments of workers' compensation or employer's liability insurance premiums or surcharges owed to an insurer, commercial self-insurance fund, group self-insurance fund, or mutual insurer.

As the WCJUA is required under its plan of operation to reject coverage of an employer that is delinquent in payments owed to the voluntary market, this bill prohibits insurers from providing workers' compensation or employer's liability insurance to any employer who is delinquent in payment of premiums, assessments, penalties, or surcharges to the WCJUA.

**Section 4** amends s. 627.410, relating to filing and approval of forms, to conform to the changes made by Section 1 of the bill, relating to commercial inland marine insurance.

**Section 5** amends s. 627.7013, F.S., relating to the moratorium on hurricane-related cancellations and nonrenewals of personal lines residential property insurance policies.

Soon after Hurricane Andrew, insurers began to reevaluate their Florida exposures, raising the possibility of a mass exodus from the Florida private sector residential property insurance market. Florida law, since May 1993, has restricted the ability of insurers to use the possibility of hurricane losses as the basis for canceling or nonrenewing personal lines residential policies (i.e., homeowners', mobile home owners', condominium unit owners', and similar policies), and has, since June 1996,

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<sup>1</sup> As it relates to the composition of the WCJUA board of governors, the term "insurer" includes group self-insurance funds, commercial self-insurance funds, assessable mutual insurers, and insurers authorized to write workers' compensation insurance in Florida.

applied similar restrictions on the cancellation or nonrenewal of condominium association policies.

In November 1993, a six-month absolute moratorium on hurricane-related cancellations and nonrenewals of personal lines residential policies was replaced by a three-year "moratorium phaseout," which subsequently was replaced by a "moratorium completion" that expires on June 1, 1999. The condominium association moratorium also expires on that date.

Subject to certain exceptions, the moratorium statutes prohibit an insurer from canceling or nonrenewing the policies it had in force on June 1, 1996, for the purpose of reducing hurricane losses, except that an insurer is allowed to cancel or nonrenew up to 5 percent of the policies statewide, or up to 10 percent in any county, during any 12-month period. The percentages apply separately to homeowners' policies, mobile home policies, all personal lines residential policies combined, and condominium association policies.

One of the exceptions created in the 1996 extension of the moratorium allows an insurer to take three years' worth of nonrenewals in one year, provided that the nonrenewals are limited to properties that are eligible for windstorm coverage from the FWUA, and provided that it does not take any further hurricane-related nonrenewals during the period. The approval of the Department of Insurance is required for these "accelerated exposure reduction plans."

The constitutionality of the current personal lines moratorium was upheld by the U.S. District Court for the Northern District of Florida in the case of Vesta Fire Ins. Co. v. State of Florida, Department of Insurance.<sup>2</sup> The U.S. District Court's decision has been appealed to the U.S. Court of Appeals for the Eleventh Circuit, which has scheduled oral argument for February 13, 1998.

The plaintiffs in Vesta argued that the moratorium was unconstitutional by requiring involuntary servitude in violation of the Thirteenth Amendment, depriving the plaintiffs of substantive due process in violation of the Fourteenth Amendment, impairing obligations of contract in violation of Article I, and taking property without just compensation in violation of the Fifth Amendment.

The District Court upheld the law against each of these charges, as follows:

*Involuntary servitude:* The court relied on long-standing federal case law to hold that the prohibition of involuntary servitude applied only to slavery and similar forms of compulsory labor.

*Substantive due process:* The court found that, under controlling decisions of the U.S. Supreme Court:

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<sup>2</sup>Order granting defendants' motion for summary judgment, slip opinion, case number TCA 95-40138-WS, October 25, 1996.

In the absence of any infringement upon fundamental rights,<sup>3</sup> legislative acts affecting the benefits and burdens of economic life will survive substantive due process scrutiny if such acts are supported by a "legitimate legislative purpose furthered by a rational means." Indeed, economic legislation is *presumed* valid until the one complaining of a due process violation establishes that the legislation effects the deprivation of a constitutionally protected interest by means that are arbitrary, capricious, and without any rational basis.<sup>4</sup>

The court held that "the Legislature acted, not in an arbitrary and capricious manner as Plaintiffs suggest, but in a rational way to ameliorate a significant danger to Florida's welfare."<sup>5</sup>

*Impairment of obligations of contract:* The plaintiffs claimed that the moratorium unconstitutionally impaired their pre-existing contractual right to cancel or nonrenew insurance policies. The District Court relied on a three-part test established by the U.S. Supreme Court in 1983: in order for a state law to be upheld in spite of the prohibition on impairment of contract, the law must in fact operate as a substantial impairment, the legislation must serve a significant and legitimate public purpose, and the "adjustment of the contracting parties' rights [must be] based upon reasonable conditions and [must be] of a character appropriate to the public purpose."<sup>6</sup>

As factors establishing a significant public purpose, the court cited the destruction caused by Hurricane Andrew, the number of insolvencies caused by Andrew, the threats from insurers to nonrenew substantial number of policies or withdraw from the state, and the consequences these actions would have for the state's economy in general. As factors establishing that the conditions were reasonable and of an appropriate character, the court cited the moratorium's limited nature (in that it did not prohibit non-hurricane-related cancellations), the ability of insurers to seek solvency-related waivers of the moratorium or approval of alternative plans, and the time limitation on the burdens imposed.<sup>7</sup> The court noted that the duration of the moratorium had, at that point, been extended to six years, but did not comment on the question of what time limitations might be considered unreasonable conditions of a character inappropriate to the public purpose.

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<sup>3</sup>For example, the rights conferred by the First Amendment have been held to be "fundamental rights," and legislation affecting those rights must meet a higher substantive due process standard.

<sup>4</sup>Slip op. at 12, citations omitted, emphasis in original.

<sup>5</sup>Slip op. at 13.

<sup>6</sup>Slip op. at 15.

<sup>7</sup>Slip op. at 16.

*Taking without just compensation:* The plaintiffs argued that the moratorium was a taking because it forced insurers to commit capital to Florida and because, taken together with the Catastrophe Fund law, the moratorium required insurers to pay money to the Catastrophe Fund. The court found that the intrusion on the plaintiffs' rights did not go so far as to be a taking, because the insurer still received the benefit of its insurance policies, could still cancel them for non-hurricane-related reasons, and could still withdraw completely from the state over time. The court found that the moratorium "constituted a valid exercise of the state's police power -- that is, the power was intended to, did, and still does, address a legitimate state purpose by means rationally related to the desired end."<sup>8</sup> The court also found that the creation of the Catastrophe Fund was neither irrational nor arbitrary, and insurers receive something of value (the functional equivalent of reinsurance) in exchange for the premiums they pay to the Catastrophe Fund.

This section of the bill would extend until June 1, 2001, the current moratorium on hurricane-related cancellations or nonrenewals of personal lines residential policies. The bill would also remove authority for insurers to petition the Department of Insurance for approval of "accelerated exposure reduction plans."

This section would allow the moratorium to be terminated before June 1, 2001, if the market situation improves dramatically. The moratorium would cease to operate once the property exposures of the FWUA and RPCJUA, combined, remained below \$25 billion for three consecutive months.

**Section 6** amends s. 627.7014, F.S., relating to the moratorium on hurricane-related cancellations and nonrenewals of condominium association property insurance policies.

This section of the bill would extend until June 1, 2001, the current moratorium on hurricane-related cancellations or nonrenewals of condominium association policies. The bill would also remove authority for insurers to petition the Department of Insurance for approval of "accelerated exposure reduction plans."

The bill would allow the moratorium to be terminated before June 1, 2001, if the market situation improves dramatically. The moratorium would cease to operate once the property exposures of the FWUA and RPCJUA, combined, remained below \$25 billion for three consecutive months.

**Section 7** amends s. 627.7295, F.S., relating to motor vehicle insurance policies.

Since 1995,<sup>9</sup> an applicant for a new private passenger motor vehicle insurance policy has been required to make a down payment equal to at least 2 months' premium on the policy. Insurers, agents, and premium finance companies are prohibited from advancing the down payment to the applicant or otherwise circumventing the requirement that the down payment come from the applicant.

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<sup>8</sup>Slip op. at 20.

<sup>9</sup> See s. 627.7295(7), Florida Statutes, as created by Chapter 95-424, Laws of Florida.

According to the House Insurance Committee staff summary of the law that created the minimum down payment requirement:

There are at least two distinct purposes served by the minimum down payment requirement. One is enforcement of mandatory auto insurance laws, in order to prevent the sale of insurance with no down payment to someone who may immediately cancel coverage after registering a vehicle. A second purpose is related to insurer solvency, to prevent financial loss to an insurer with a premium payment plan or affiliated with a premium finance company by assuming liability for auto insurance claims upon issuance of a policy without collecting a down payment. One additional impact of the law, if not a purpose, is to eliminate a market advantage of any insurer or premium finance company that would finance premiums without a minimum down payment.<sup>10</sup>

There are several exceptions to the minimum down payment requirement, including exceptions for replacement policies and for policies issued by an insurer that limits its insureds to current and former military personnel.

This section of the bill creates two new exemptions from the minimum down payment requirement. The requirement would not apply when premiums are paid through a payroll deduction plan or through an automatic electronic funds transfer plan.

**Section 8** amends s. 627.351, F.S., relating to the Florida Windstorm Underwriting Association.

The Florida Windstorm Underwriting Association (FWUA) was created in 1970 by subsection 627.351(2), Florida Statutes. The FWUA writes policies that cover only losses caused by windstorm, and writes these policies only in certain limited coastal areas. After Hurricane Andrew, the Insurance Department expanded FWUA eligibility to include Dade and Broward Counties east of I-95. Because of an amendment to FWUA eligibility in the 1996 property insurance law, properties east of I-95 in Palm Beach County and in coastal areas of Pasco County became eligible for the FWUA in 1997.

The FWUA provides personal lines and commercial lines property insurance policies (including both residential and non-residential policies) providing windstorm coverage to applicants who are unable to obtain coverage from an insurance company. In 1997, Chapter 97-55, Laws of Florida, (CS/SB 794) froze any further geographic expansion of the FWUA until October 1, 1998.

The FWUA charges premiums for the coverage it provides, but, as with the RPCJUA, when the premiums and other resources of the FWUA are not sufficient to pay claims, the FWUA has the power to levy assessments on insurance companies and their policyholders to generate the revenues necessary to cover the deficit. The FWUA has the power to issue bonds and other debt instruments, and to pledge its premiums, assessments, and other resources to pay off the debt. One of the purposes of the freeze on geographic expansion of the FWUA is to limit the potential size of future FWUA assessments.

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<sup>10</sup> Final Bill Analysis and Economic Impact Statement, HB 2471, House Committee on Insurance, June 18, 1995.

The FWUA's exposure grew rapidly in 1997. As of the end of year, the FWUA had 417,342 policies in force, representing combined insured values of \$75.4 billion. The year-end 1997 policy count reflects an increase of 134,518 policies since year-end 1996, and the value of insured properties reflects an increase of \$26 billion in insured values since year-end 1996. Dade, Broward, and Palm Beach Counties accounted for 52 percent of the total policies in force and 53 percent of the insured values, and accounted for 59 percent of the FWUA's 1997 increase in policy count and 61 percent of the FWUA's 1997 increase in insured values.

This section of the bill would extend indefinitely the freeze on geographic expansion of the FWUA.

**Section 9** creates s. 626.9543, F.S., relating to insurance claims of Holocaust survivors.

After World War II, some Holocaust survivors filed claims for life insurance policies with the major European insurance companies. In many cases, these claims were left unpaid because the claimant lacked information required by the insurer, such as a claim number, death certificate, or other documentation. In some cases, the insurer did business in eastern Europe, where the company was nationalized by the government and any records were taken from the company by the government.

The National Association of Insurance Commissioners (NAIC) has established the Holocaust Insurance Issues Working Group. This working group held workshops and took public testimony in Washington, D.C.; Skokie, Illinois; Miami, Florida; and Spokane, Washington. The goal of this working group is to look into the role of the states in protecting those individuals who have filed insurance claims. Public forums are tentatively scheduled for 1998 in Pennsylvania and California.

Legislation has been filed in state of New York and California to pursue and enforce the insurance claims filed by the heirs, beneficiaries, and descendants of Holocaust victims.

Legislation is also pending in the U.S. Congress. H.R. 3143 would prohibit a foreign insurance company from doing business in the U.S. unless it disclosed any financial dealings it had with Holocaust victims. H.R. 3121 would require insurance companies to compensate for valid claims filed for life insurance policies issued between 1920 and 1945 to Holocaust victims.

The National Holocaust Memorial Museum estimates that there could be 4,600 Holocaust survivors residing in the state of Florida.<sup>11</sup> The Department of Insurance knows of at least 5 insurance companies doing business in Florida that are affiliated with a European company that wrote life insurance policies between 1920 and 1945. These companies include Generali, an Italian company, and Allianz Insurance Group of Germany. The U.S. subsidiary of Generali is Business Men's Assurance Company, and Allianz's U.S. subsidiaries include the Fireman's Fund Insurance Company. Other companies are Winterthur, AXA, and Zurich. Winterthur does business in Florida as a reinsurer, and AXA is an international conglomerate that does business as Equitable

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<sup>11</sup> This number includes only those Holocaust survivors who have registered with the National Holocaust Memorial Museum and for whom the museum has a valid address.

Life. Zurich also does business as Kemper, Empire Fire and Marine, and Florida Select Insurance Company, which is a Florida domiciled insurance company.

Allianz Insurance Group has set up a toll-free hotline. In the last year, the company has settled 3 claims in the U.S. The average claim was \$5,000 and the average time it took Allianz to settle the claim was 4 to 5 months.

Under this section of the bill, the Department of Insurance would be required to establish a toll-free number to assist individuals seeking to recover proceeds from an insurance policy issued to a Holocaust victim.

An insurance company doing business in the state that receives a claim from a beneficiary, descendant or heir of a Holocaust victim would be required to:

- investigate the claim;
- allow claimants to meet a reasonable standard of proof, pursuant to standards set by the Department of Insurance, to substantiate a claim; and
- permit claims irrespective of any statute of limitations imposed by any insurance policy issued.

Claims would have to be submitted within ten years after the effective date of this act.

Insurers doing business in the state would be required to report the following information to the Department of Insurance within 90 days after the effective date of this act:

- any legal relationship with an international insurer that issued an insurance policy to a Holocaust victim between 1920 and 1945;
- the number and value of such policies;
- any claim filed by a Holocaust victim, his or her beneficiary, heir, or descendant that has been paid, denied, or is pending;
- attempts made by the insurer to locate the beneficiaries of such policies for which no claim has been made; and
- an explanation of any denial or pending payment of a claim.

This report would be required of insurance companies annually because a company could acquire a new subsidiary or affiliate company that did business with victims of the Holocaust between 1920 and 1945.

The Department of Insurance would be required to file a report with the Legislature the year after the effective date of this act. The following information would be included in this report:

- the number of insurers doing business in the state that have a legal relationship with an international insurer that could have issued a life insurance policy to a victim of the Holocaust between 1920 and 1945;

- a list of claims paid, denied or pending to a Holocaust victim, his or her beneficiary, heir, or descendant; and
- a summary of the length of time for processing and disposition of a claim by the insurer.

A person or insurer who violates this section would be assessed a penalty of \$1,000 a day for each day that the violation continues.

Any action to recover damages as a result of damages caused by a violation of this section would have to be commenced within 5 years after accrual of the cause of action. The amount recovered would be limited to three times the actual damages sustained, plus costs not to exceed \$50,000, and attorney's fees. Notice of any civil action would have to be served to the Department of Insurance, also.

The Department of Insurance would be authorized to implement rules to establish procedures and forms for facilitating, monitoring, and verifying compliance with this section.

**Section 10** provides that the bill will take effect July 1, 1998.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

According to the Department of Insurance, the fiscal impact of provision of the bill relating to claims of Holocaust victims would be as follows:

1. Non-recurring Effects:

	<u>FY 98-99</u>
Insurance Commissioner's Regulatory Trust Fund	(\$508,614)

2. Recurring Effects:

	<u>FY 98-99</u>	<u>FY 99-00</u>
Insurance Commissioner's Regulatory Trust Fund	(\$96,379)	(\$96,379)

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

	<u>FY 98-99</u>	<u>FY 99-00</u>
Insurance Commissioner's Regulatory Trust Fund	(\$604,993)	(\$96,379)

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

The bill continues for an additional two years the moratorium on hurricane-related cancellations and nonrenewals of property insurance policies, which imposes on insurers the burden of maintaining some insurance policies that they might otherwise not maintain.

2. Direct Private Sector Benefits:

The bill continues the prohibition on future geographic expansion of the FWUA; curtailing growth of the FWUA prevents unlimited growth of the FWUA's potential for assessments on insurers and policyholders.

The continuation of the moratorium delays until at least 2001 the possibility of massive insurer withdrawals from Florida that could result in significant growth of the FWUA and RPCJUA, and attendant growth in their potential assessments on insurers and policyholders.

The bill exempts auto insurance premiums paid through payroll deduction plans and automatic electronic funds transfer plans from minimum down payment requirements, which may encourage insurers to offer these options.

A Florida resident who is an heir, beneficiary, or descendant of a Holocaust victim would be paid the life insurance claim from the insurance company that does business in the state.

3. Effects on Competition, Private Enterprise and Employment Markets:

See above.

D. FISCAL COMMENTS:

N/A

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

VI. COMMENTS:

This bill incorporates provisions that were included in several other bills, as follows:

The provisions relating to commercial inland marine insurance (sections 1, 2, and 5) are the same as provisions of CS/HB 3697 by the Committee on Financial Services and Rep. Bainter, which passed the House on April 16, 1998.

The provisions relating to the Workers' Compensation Joint Underwriting Association (section 3) are the same as HB 4703 by the Committee on Financial Services, Rep. Safley, and others, which passed the House on April 27, 1998.

The provisions extending the freeze on geographic expansion of the Florida Windstorm Underwriting Association and extending the moratorium on hurricane-related cancellations and nonrenewals of property insurance policies (sections 4, 6, and 7) are the same as provisions of HB 3665, by the Committee on Financial Services, Rep. Safley, and others. These provisions were added to CS/SB 1108 by a House floor amendment adopted on April 20, 1998.

The provision relating to minimum down payments for auto insurance policies (section 8) is the same as a provision of SB 766 as enacted, and is similar to a provision in CS/HB 1127 by the Committee on Financial Services and Rep. Jones. (The provision in CS/HB 1127 created an exemption for payroll deduction plans, but did not address electronic funds transfer plans; the provision in this bill exempts both plans from the minimum down payment requirement.)

The provision relating to claims of Holocaust victims (section 9) is the same as HB 4489 by Reps. Gottlieb and Lippman, which passed the House on April 28, 1998. This provision was added to CS/SB 1108 by a Senate floor amendment adopted on May 1, 1998.

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VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The engrossed version of CS/SB 1108 includes parts or all of CS/HB 1127, HB 3665, CS/HB 3697, HB 4489, and HB 4703.

VIII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

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Leonard Schulte

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Stephen Hogge

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