

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.)

BILL: CS/SB 1308

SPONSOR: Banking and Insurance Committee and Senator Alexander

SUBJECT: Insurance Ratemaking

DATE: April 24, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	<u> </u>	<u> </u>	<u>AGG</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The Committee Substitute for Senate Bill 1308 addresses two related issues: (1) allows property and casualty, and automobile insurance companies to implement a specified rate change without approval by the Office of Insurance Regulation (OIR); and (2) requires the Citizens Property Insurance Corporation (“Citizens”) to implement specified property insurance rate changes and methodologies. In summary, the bill provides for the following:

- Provides for deregulation of property and casualty and motor vehicle insurance rate filings of 15 percent or less, except for rate inadequacy. It further repeals the law allowing property and casualty insurers to submit a rate filing dispute with the OIR to an arbitration panel.
- Establishes procedures intended to provide greater assurance that the rates for Citizens not be competitive with rates charged in the admitted voluntary market and that in each county, be no less than the average rate of the insurer with the highest average rates in that county, from among the 20 insurers with the greatest statewide market share.

This bill amends the following sections of the Florida Statutes: 627.062, 627.0651, and 627.351.

II. Present Situation:

Insurance rate regulation and Arbitration

Florida’s insurance laws require insurers (including homeowners’ insurance, liability insurance, and motor vehicle insurance) to file property and casualty insurance rates for approval with the Office of Insurance Regulation (OIR) either 90 days before the proposed effective date, or 30

days after the rate filing is implemented.¹ Under the latter option, known as “use and file,” the OIR may order the insurer to refund that portion of the rate determined to be excessive. This option, however, is not frequently used.

If the OIR disapproves a rate filing, a property and casualty insurer may either request an administrative hearing under the Administrative Procedures Act (ch. 120, F.S., APA), or seek binding arbitration (s. 627.062(6), F.S.). Under the APA, a formal adversarial hearing is held before a State Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH). Once the hearing is completed, the ALJ has 30 days to issue a decision, termed a Recommended Order, to the head of OIR for final review. Representatives with DOAH state that the average time it takes for a case (which is referred by an agency to DOAH until the issuance for a Recommended Order) is estimated to be 3 ½ months.

The Recommended Order contains findings of fact and conclusions of law as found by the ALJ. In turn, the OIR has 90 days to issue a Final Order, and that order may adopt or reject the ALJ’s Recommended Order, or modify the conclusions of law contained in the Recommended Order. However, in the Final Order the OIR may not substitute findings of fact contained in the Recommended Order, which were supported by competent substantial evidence. A party may then appeal the OIR’s Final Order to the First District Court of Appeal, which may take a year or more to render its final decision.

In 1996, the Legislature amended the property insurance law to allow an insurance company to elect binding arbitration of a rate filing in lieu of filing for review under the Administrative Procedure Act (APA) pursuant to chapter 120, F.S., (Ch. 96-194, Laws of Florida, amending s. 627.062(6), F.S.). Under the arbitration provision, after the OIR issues a notice of intent to disapprove a rate filing, the insurer may, instead of demanding an administrative hearing, request arbitration before a panel of three arbitrators. The panel is chosen as follows: one is selected by the insurer, one by the OIR, and the third is chosen by the other two arbitrators. An arbitrator must be certified by the American Arbitration Association and may not be the employee of any insurance company or insurance regulator. The procedures outlined in the Arbitration Code (chapter 682, F.S.) are applied to rate arbitration and the costs of arbitration are paid by the insurer. The decision of the panel constitutes the final approval of a rate filing.

Either party to the arbitration proceeding may apply to the circuit court to vacate or modify the panel’s decision as provided in ss. 682.13 and 682.14, F.S. In general, grounds for vacation include corruption or fraud, evident partiality by a neutral arbitrator, and action beyond the arbitrators’ powers or jurisdiction. Grounds for modification include miscalculations, errors as to form, and actions on matters not submitted for arbitration. Upon initiation of arbitration, the insurer waives all rights to challenge the action of the OIR under the APA or any other law; however, these rights are restored to the insurer if the arbitrators fail to act within 90 days after initiation of arbitration.

¹ Sections 627.062 and 627.0651, F.S. Effective January 7, 2003, the Department of Insurance was transferred to the Dept. of Financial Services and to the Office of Insurance Regulation (ch. 2002-404, L.O.F. (“the 2002 act”). CS/CS/SB 1712 makes changes to the Insurance Code to conform to the 2002 act.

Since the inception of the arbitration provision, thirteen insurance companies, including the Florida Windstorm Underwriting Association. (FWUA) have requested arbitration.² According to representatives with the OIR, it reviews and takes action on over 3,000 property and casualty filings annually. Of that number, the OIR has disapproved 103 filings which have a rate impact. Of the 103 disapprovals, 13 cases have gone to arbitration and although that is a small number, those companies represent the largest insurers in terms of market share in the state.

Insurance companies often prefer arbitration over administrative hearings because it takes much less time for a rate decision to be rendered by the panel, is more efficient and cost-effective. Industry representatives claim that with arbitration, they can expect a resolution of a rate dispute within 90 days, as opposed to many months to a year or more (if there is an appeal), in administrative litigation. Also, an insurer choosing arbitration has the opportunity to appoint an arbitrator familiar with rate-making and the insurance industry, generally. By contrast, an administrative law judge hear a variety of cases and often have no background in insurance. Proponents of the bill argue that the final rate decision should rest with the head of the OIR, who can take into account the interests of consumers when making rating decisions.

As to the provisions of this bill allowing insurers to increase rates up to 15 percent, insurers point out that this will create increased competition and thus lower prices for a large majority of insurance consumers. Proponents assert that the bill further provides for proper regulation as to markets which are determined to be not competitive. Representatives with OIR assert that state oversight of insurer rate increases protects consumers against excessive rates and the unfairly discriminatory application of those rates.

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) was created by the 2002 Legislature as the successor to the Florida Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association.³ As with other residual insurance markets, it is intended to be an insurer of last resort and not to compete with the “voluntary” market (i.e., licensed insurance companies that write comparable coverage).

The premiums charged by Citizens for policies other than wind-only policies are determined according to a formula that, in general, requires the average Citizens rates in a particular county to be no less than the average rates of the voluntary market insurer with the highest average rates in that county, from among the 20 insurers with the greatest statewide market share. Some insurers argue that the current formula might not, in practice, achieve the legislative intent that premiums charged by Citizens not compete with premiums charged in the voluntary market.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.062, F.S., to provide an exception to the current requirements for insurance rate filings for property and casualty insurers which includes homeowners, commercial property, commercial multiperil, and commercial and professional liability coverages. It allows

² Four of the nine entities have requested arbitration more than once.

³ Ch. 2002-240, L.O.F.

an insurer to make a base rate filing reflecting an overall statewide average increase or decrease of no more than 15 percent, above or below the insurer's rates then in effect, which would not be subject to a determination by the Office of Insurance Regulation (OIR) that the rate is excessive or unfairly discriminatory, provided that the filing does not result in a premium increase to any policyholder of more than 40 percent, before taking into account changes in coverage or insured value.

Provides that the "insurer's rates then in effect" include only rates that have been approved under this provision or rates that have been determined to be lawful through administrative proceedings, judicial proceedings, or prior to July 1, 2003, through arbitration. This would prohibit an insurer from using this provision while a previous rate filing was still under review by the office. An insurer could not make more than one filing under this provision with respect to any one class of insurance in any calendar year and provides that the OIR may disapprove a rate filing under this provision as inadequate. It excludes medical malpractice rate filings from this provision.

The bill further provides an exception to the 15 percent rate provision for insurers noted above, by stating that it does not apply to a rate filing of a type or line of insurance for which the OIR determines that a competitive market *does not exist*. It authorizes the Financial Services Commission to adopt rules establishing standards as to whether or not a competitive market exists for particular lines of insurance and provides a presumption that a competitive market exists unless the OIR establishes that such market does not exist.

The bill repeals the current arbitration provision that allows an insurer to submit a rate filing that has been disapproved by the OIR to an arbitration panel. This would apply to a base rate filing of greater than 15 percent, or a filing less than 15 percent that increased any policyholder's rates by more than 40 percent. For such filings, an administrative proceeding under ch. 120, F.S., would be the only option for an insurer to contest a disapproval by OIR.

Section 2. Amends s. 627.0561, F.S., to provide the same provisions for private passenger motor vehicle insurance rate filings, as provided in section 1 for property and casualty insurance rate filings. However, the current arbitration provisions repealed in Section 1 do not currently apply to private passenger motor vehicle insurance rate filings.

Section 3. Amends s. 627.351, F.S., to require that personal lines residential wind-only rates for the Citizens Property Insurance Corporation (Citizens) be no greater than 20 percent of the premium for that policy in effect on June 20, 2003, as adjusted for coverage changes and seasonal occupancy surcharges. (Current law is 10 percent.) It provides that the corporation, in conjunction with the OIR, develop a wind-only ratemaking methodology which must be used in the corporation rate filing prior to January 1, 2004. However, if the OIR determines that such wind-only rates fail to comply with the wind-only ratemaking methodology, it must notify Citizens and require it to amend its rates in its next rate filing. Requires the OIR to report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2004, of the new wind-only ratemaking methodology.

Requires Citizens to certify to OIR twice annually that its rates for homeowners (multi-peril) policies and similar coverages are not competitive with approved rates charged by insurers (in

the admitted voluntary market) and that its rates in a particular county be no less than the average rate of an insurer with the highest average rates in that county, from among the 20 insurers with the greatest statewide market share. (This rate standard is the current law, as it was for the Florida Residential Property and Casualty Joint Underwriting Association.)

It requires that Citizens revise its rates to comply with the rating provisions (summarized above) and the OIR, if it determines that the revised rates fail to comply, shall require Citizens to further adjust its rates in conjunction with its next rate filing. It further requires Citizens to appoint a Rate Methodology Panel to develop additional rate making methods; it specifies appointments; requires that by January 1, 2004, the Panel provide a report to Citizens of its findings and recommendations for the use of additional rate making methods, including the use of a rate equalization surcharge in an amount sufficient to assure that the total cost of coverage for Citizen's policyholders comply the rating provisions in s. 627.351(6)(d)1, F.S.

It mandates that Citizens present a plan for implementing the additional rate making methods to the Legislature, and other specified parties, within 30 days of the Panel's report. Provides that the plan include a provision that producer commissions paid by Citizens must not be calculated to include any rate equalization surcharges, and makes permanent the amount and method of compensation (producer commissions) in effect on January 1, 2003. Provides that a notice be attached to all Citizens policies, applications, and renewal premium notices stating that Citizens premiums are intended to be higher than the rates of any admitted carrier and other specified information.

Section 4. Provides for an effective date of July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides insurers with greater flexibility in ratemaking for specified property/casualty and motor vehicle coverages. This bill may further attract insurers to the Florida marketplace and promote greater competition and choice for consumers.

The bill may result in consumers paying higher premiums since the OIR may not disapprove specified rate increases as excessive or unfairly discriminatory, but only disapprove a rate as being inadequate.

C. Government Sector Impact:

The provisions of the bill relating to the Citizens Property Insurance Corporation is intended to assure that its policies do not compete with licensed private sector insurers.

Citizens will have responsibilities under this bill including developing a wind-only ratemaking methodology, complying with more frequent and stringent rate filing requirements, and providing a ratemaking report to the Legislature. According to officials with Citizens, these requirements can be completed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.