

The Florida Senate
PROFESSIONAL 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: General Government Appropriations Committee

BILL: CS/SB 1884

INTRODUCER: Banking and Insurance Committee and Senator Posey

SUBJECT: Insurance Regulation/Consumer Advocate/OIR/DFS

DATE: April 13, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Deffenbaugh	BI	Fav/CS
2.	McKay	Wilson	GO	Favorable
3.	Kynoch	DeLoach	GA	Favorable
4.				
5.				
6.				

I. Summary:

The bill expands the powers of the consumer advocate, appointed by the Chief Financial Officer (CFO) of the state of Florida, by authorizing him or her to:

- Appear in appellate actions resulting out of proceedings or actions before the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR).
- Intervene as a party in proceedings before the Division of Administration Hearings or an arbitration panel pursuant to section 627.062(6), Florida Statutes.
- Have access to and use of any public model for hurricane loss projections developed pursuant to section 627.06281, Florida Statutes.
- Conduct investigations of insurance practices relating to unfair trade practices, unfair claims-handling practices, deceptive or misleading sales practices, or coercion or intimidation of insurance consumers. The bill gives the consumer advocate the power to subpoena witnesses and evidence and other powers set forth in section 624.321, Florida Statutes. Failure to comply with a subpoena is subject to disciplinary action under section 624.418(2), Florida Statutes.
- Refer investigations to the office or department when the consumer advocate believes further regulatory action should be taken. If the office or department determines that no regulatory action is warranted, the consumer advocate must be informed in writing of the basis for that determination.
- Seek review pursuant to chapter 120, Florida Statutes, of any proposed agency action, determination finding, or order of the OIR, DFS, or Financial Services Commission (FSC) in any proceeding in which the consumer advocate has participated as a party.

- Research and analyze insurance issues from the perspective of consumers and prepare and disseminate such information as the consumer advocate considers appropriate to inform or assist consumers, the DFS, the OIR, and the FSC.

This bill substantially amends section 627.0613 of the Florida Statutes.

II. Present Situation:

Insurance Regulation

The OIR and the DFS each have distinct regulatory powers related to insurance. The OIR is responsible for all activities concerning insurers and other risk-bearing entities, such as licensing, solvency, rates, policy forms, and examinations and investigations of insurers. The head of the OIR is the Director, also known as the Commissioner of Insurance Regulation. The OIR is a structural unit of the FSC, which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The FSC appoints or removes the Director of the OIR by a majority vote of at least three affirmative votes, which must include affirmative votes by both the Governor and the Chief Financial Officer. The FSC also serves as agency head of the OIR for purposes of rulemaking.¹

The DFS is responsible, among other duties, for: the regulation of insurance agents and other individuals who are licensed to sell insurance products; the investigation and arrest of insurance fraud crimes; acting as receiver of insolvent insurers; assisting consumers to resolve insurance complaints; and administering the state's risk management (self-insurance) program.² The DFS also includes the Office of the Insurance Consumer Advocate, as described in more detail below. The CFO is the agency head of the DFS.

The current insurance regulatory structure is the result of legislation in 2002 and 2003 following the amendments to the State Constitution that reorganized the Florida Cabinet, effective January 1, 2003.³ Prior to that time, all insurance regulation was conducted under the Department of Insurance, to which the Legislature assigned the Treasurer as agency head, a constitutional officer at that time. Chapter 92-318, L.O.F., was enacted in 1992, creating the Office of the Consumer Advocate within the Department of Insurance. This office has actually been created by the Department of Insurance in 1990, after the Governor vetoed a bill passed by the Legislature in 1989 that would have authorized the legislative Office of the Public Counsel to represent the general public in certain insurance rate hearings before the Department of Insurance.⁴

Insurance Consumer Advocate

Section 627.0613, F.S., requires the Chief Financial Officer (CFO) to appoint a consumer advocate to represent the general public of the state before the DFS and the OIR. The consumer advocate reports directly to the CFO, but is not otherwise under the authority of the DFS or any

¹ Section 20.121(3), F.S.

² Section 20.121(2), F.S.

³ Chapters 2002-404 and 2003-261, L.O.F.

⁴ CS/CS/HB 855 (1989).

DFS employee. The consumer advocate has such powers necessary to perform his or her duties, including, but not limited to, the powers set forth in statute to:

- Recommend to the DFS or the OIR the commencement of any proceeding or action.
- Appear in a proceeding or action before the DFS or the OIR, a proceeding before the Division of Administrative Hearings (DOAH), or arbitration of a rate filing pursuant to s. 627.062(6), F.S.
- Examine rate and form filing submitted to the office, hire consultants as necessary to aid in the review process, and recommend to the DFS or the OIR any position deemed by the consumer advocate to be in the public interest.
- Prepare an annual budget to present to the Legislature that is adequate to carry out the duties of the office of consumer advocate.

The consumer advocate also initiates, supports, or opposes proposed legislation; assists consumers related to unresolved insurance issues; and attempts to increase consumer awareness on insurance-related issues. The consumer advocate represents the general public on a number of statutorily appointed boards, including the Florida Workers' Compensation Joint Underwriting Association, the Florida Workers' Compensation Insurance Guaranty Association, the Florida Workers' Compensation Appeals Board, the Florida Commission on Hurricane Loss Projection Methodology, the Florida Surplus Lines Service Office, and the Subscriber Assistance Panel. Other current activities of the consumer advocate include: reviewing rate filings relating to homeowners insurance, medical malpractice insurance, and title insurance; reviewing the insurance policy forms for property and casualty insurance currently in use; and investigating the rating parameters and assumptions used to establish the premium levels for medical malpractice insurance. Additionally, the consumer advocate was mandated by chapter 2001-1, L.O.F., to prepare an annual report card for each authorized property insurer on a form and using a letter-grade scale developed by the FSC, which grades each property insurer based upon: (1) the number and nature of consumer complaints received by the DFS against the insurer, (2) the disposition of such complaints, (3) the average length of time for claims payment, and (4) other factors the FSC identifies as assisting policyholders in making informed decisions about homeowner's insurance.

Office of Public Counsel

Section 350.0611, F.S., establishes the duties and powers of the Public Counsel, who is under the Legislature and appointed by the Committee on Public Service Commission Oversight.⁵ The Public Counsel provides legal representation for the people of the state in proceedings before the Public Service Commission (PSC), regarding telephone and electric utilities, and in proceedings before counties that regulate water utilities. The section gives the Public Counsel such powers as are necessary to carry out the duties of his or her office, including, but not limited to, the following specific powers:

- To petition the PSC or the counties to commence any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the PSC or the counties and urge therein any position which he or she deems to be in the public interest, and

⁵ Section 350.012, F.S.

to utilize in these actions all forms of discovery available to attorneys in civil actions generally.

- To have access to and use of all files, records, and data of the PSC or the counties available to any other attorney representing parties in a proceeding before the PSC or the counties.
- In any proceeding in which he or she has participated as a party, to seek review of any determination, finding, or order of the PSC or the counties, or of any hearing examiner designated by the PSC or the counties, in the name of the state or its citizens.
- To prepare and issue reports, recommendations, and proposed orders to the PSC, the Governor, and the Legislature on any matter or subject within the jurisdiction of the PSC, and to make such recommendations as he or she deems appropriate for legislation relative to PSC procedures, rules, jurisdiction, personnel, and functions.
- To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the PSC, in the name of the state or its citizens.

III. Effect of Proposed Changes:

Section 1 amends s. 627.06143, F.S., and expands the statutory powers of the consumer advocate by authorizing him or her to:

- Appear in appellate actions resulting out of proceedings or actions before the DFS or the OIR.
- Intervene as a party in proceedings before the Division of Administration Hearings or an arbitration panel pursuant to s. 627.062(6), F.S.⁶
- Have access to and use of any public model for hurricane loss projections developed pursuant to s. 627.06281, F.S.
- Conduct investigations of insurance practices relating to unfair trade practices, unfair claims-handling practices, deceptive or misleading sales practices, or coercion or intimidation of insurance consumers. The bill gives the consumer advocate the power to subpoena witnesses and evidence and other powers set forth in s. 624.321, F.S.,⁷ pursuant to such an investigation. Failure to comply with a subpoena of the consumer advocate is subject to disciplinary action—suspension or revocation of the insurer’s certificate of authority—under s. 624.418(2), F.S.
- Refer investigations to the OIR or the DFS when the consumer advocate believes further regulatory action should be taken. If the OIR or the DFS determines that no regulatory action is warranted, the consumer advocate must be informed in writing of the basis for that determination.
- Seek review pursuant to ch. 120, F.S., of any proposed agency action, determination finding or order of the OIR, the DFS, or the FSC in any proceeding in which the consumer advocate has participated as a party.

⁶ Section 627.062(6), F.S., allows an insurer to require arbitration of a rate filing after agency action is taken pursuant to a rate filing.

⁷ Section 624.321, F.S., authorizes, pursuant to an examination, investigation, or hearing conducted under the insurance code, a person designated by the DFS or OIR to administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and subpoena witnesses and evidence relevant to the inquiry. If a person refuses to comply with a subpoena or to testify, the appropriate circuit court may issue an order requiring compliance with the subpoena.

- Research and analyze insurance issues from the perspective of consumers and prepare and disseminate such information as the consumer advocate considers appropriate, to inform or assist consumers, the DFS, the OIR, and the FSC.

Section 2 provides that the act is effective upon becoming a law.

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 expanded powers of the consumer advocate may impact decisions by the OIR on specific rate filings and could potentially result in lower insurance rates. However, such additional powers may also be perceived by insurance companies as burdensome or detrimental to their operations in Florida, which could result in reduced availability of coverage.

C. Government Sector Impact:

The Senate budget (SB 2800) provides \$270,543 and three positions to support the expanded powers of the Office of the Insurance Consumer Advocate (office) as provided in the bill.

The DFS requested a total of \$474,535 (\$450,905 in recurring funds and \$23,630 in non-recurring funds) and five positions. The positions include: one life and health insurance actuary, one life and health actuarial analyst, one general life and health insurance expert, and two attorneys. The office currently does not have a credentialed life and health insurance actuarial staff and reports that it cannot actively pursue life and health issues. The attorneys are requested to manage litigation issues for the public counsel. \$392,825 of the request is for positions; the remaining \$81,710 is requested for expenses, operating capital outlay, and special categories.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill amends s. 627.0613(1), F.S., to allow the consumer advocate to intervene as a party in an administrative proceeding before the Division of Administrative Hearings. Rule 1.230 of the Florida Rules of Civil Procedure provides that “intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding.” The rights of interveners in administrative proceedings are also subordinate to the propriety of the main proceeding.⁸

The bill also creates a new subsection (7) in s. 627.0613, F.S., which allows the consumer advocate to seek review, pursuant to ch. 120, F.S., of any proposed agency action and any determination, finding, or order of the DFS, the OIR, or the FSC in any proceeding in which the consumer advocate has participated as a party. It is unclear whether this provision is intended to: grant the consumer advocate standing to seek judicial review of orders pursuant to s. 120.68, F.S.; give the consumer advocate rights as a person “substantially affected,” such that the consumer advocate could challenge the validity of a rule under s. 120.56, F.S.; or give the consumer advocate rights under ss. 120.569 and 120.57, F.S., which allow a party whose substantial interests have been affected by an agency action to challenge that action in an administrative proceeding. Further, use of the word “proposed” may be overly broad and may allow the consumer advocate to seek review of agency actions before the agency makes a determination on proposed actions.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁸ *Environmental Confederation of Southwest Florida, Inc. v. Department of Environmental Protection*, 886 So.2d 1013, 1018 (Fla. 1st DCA 2004).

VIII. Summary of Amendments:

None.

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