

The Florida Senate
HOUSE MESSAGE SUMMARY

Prepared By: The Professional Staff of the Banking and Insurance Committee

[2008s2860.hms]

BILL: CS/CS/SB's 2860 and 1196, 2nd Eng.
INTRODUCER: GA, BI and Senators Atwater, Geller, and others
SUBJECT: Insurance
DATE: May 1, 2008

I. Amendments Contained in Message:

House Amendment 1 - 625745 (Delete-All) to CS/CS/SB's 2860 and 1196 (with title)

II. Summary of Amendments Contained in Message:

House Amendment 1 includes the following provisions:

Section 1. Names the act the "Homeowner's Bill of Rights Act."

Section 2. Insurance Capital Build-Up Incentive Program (s. 215.5595, F.S.)

- Revises the requirements for the Program, which provides for surplus note loans to insurers of up to \$25 million, repayable over 20 years at the 10-year Treasury bond rate, as approved by the State Board of Administration (SBA).
- Insurers must apply by September 1, 2008 for a surplus note loan equal to the amount of new capital that an insurer contributes. Insurers that apply after September 1, but before June 1, 2009, may apply for a surplus note equal to one-half of the amount of new capital that the insurer contributes.
- The bill revises the minimum premiums that the insurer must commit to write, by adding a minimum *gross* premium to surplus ratio requirement, as an alternative to the current *net* premium to surplus writing ratio requirement. The distinction is that net premiums deduct the reinsurance premiums that the insurer pays (cedes) to a reinsurer.
- Adds a requirement for the insurer to write at least 15 percent of its premiums for new policies for policies taken out of Citizens, for each of the first 3 years of the surplus note.
- Requires the SBA to make annual reports to the Legislature on the results of the program and each insurer's compliance with the terms of its surplus note.
- Requires the SBA to transfer to Citizens on January 15, 2009 uncommitted or unreserved funds, that were funded by transfers from Citizens. However, Section 16 of the bill requires the SBA to do this on July 1, 2009. Since insurers are allowed to apply for a surplus note until June 1, 2009, all of the funds would be "reserved" so that Citizens would not transfer any funds on January 15, 2009, unless hurricane losses exceed the threshold specified in Section 15.

- See Section 15 for the requirement for Citizens to transfer \$250 million to the SBA for this Program. The appropriation of \$250 million from General Revenue to the SBA for the Program is contained in the Conference Report for the General Appropriations Act.

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Section 3. Market Conduct Examinations; Required Filing of Claims-Handling Procedures (s. 624.3161, F.S.)

- Authorizes the Office of Insurance Regulation (OIR) to order an insurer to file its claims handling practices and procedures as a public record based on findings of a market conduct examination.
- The OIR findings must be that the insurer had a pattern or practice of willful violations of an unfair insurance trade practice related to claims-handling causing harm to policyholders, as prohibited by s. 626.9541(1)(i), F.S.
- The requirement applies to the claims-handling procedures for the line of insurance that was the subject of the market conduct exam. The filings must be held by the office for a 36-month period.

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Section 4. Increased Administrative Fines for Violations (s. 624.4211, F.S.)

- Doubles all current fines that may be imposed upon an insurer for violation of the Insurance Code or any rule or order, or any person who violates an unfair insurance trade practice:
 - \$40,000 (rather than \$20,000) for a willful violation, not to exceed an amount equal to \$200,000 (rather than \$100,000), for all willful violations arising out of the same action.
 - \$5,000 (rather than \$2,500) for a nonwillful violation, not to exceed an amount of \$20,000 (rather than \$10,000) for all nonwillful violations arising out of the same action.
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Section 5. Requirements for Trade Secret Documents (creating s. 624.4213, F.S.)

- Specifies requirements for submission of a document to OIR or the Department of Financial Services (DFS) in order for a person to claim that the document is a trade secret.
- Requires each page or portion to be labeled as a trade secret and be separated from non-trade secret material.
- Requires the submitting party to include an affidavit certifying certain information as to the trade secret status of the documents.
- Authorizes OIR to release a document marked as trade secret to a requestor if OIR provides the insurer with 30-days notice and opportunity to obtain a court order barring disclosure.
- Allows OIR or DFS to disclose a trade secret to an employee or officer of another governmental agency whose use of the trade secret is within the scope of their employment.

Section 6. Notice to OIR of Nonrenewal (creating s. 624.4305, F.S.)

Requires an insurer planning to nonrenew more than 10,000 policies within a 12-month period to notify OIR 90 days before issuing any notices of nonrenewal.

Section 7. Increased Administrative Fines for Unfair Insurance Trade Practices (s. 626.9521, F.S.)

- Doubles the maximum fines that may be imposed by OIR or DFS for a violation by any person of any unfair or deceptive act or practice related to insurance:
 - \$40,000 (rather than \$20,000) for a willful violation, not to exceed an amount equal to \$200,000 (rather than \$100,000), for all willful violations arising out of the same action.

- \$5,000 (rather than \$2,500) for a nonwillful violation, not to exceed an amount of \$20,000 (rather than \$10,000) for all non-willful violations arising out of the same action.

Section 8. Unfair Insurance Trace Practices; Payment of Undisputed Claim Amount (s. 626.9541, F.S.)

- Prohibits an insurer from failing to pay undisputed amounts of partial or full benefits owed under first-party property insurance policies within 90 days after determining the amount and agreeing to coverage, unless payment of the undisputed benefits is prevented by an act of God, prevented by the impossibility of performance, or due to actions by the insured or claimant that constitute fraud, lack of cooperation, or intentional misrepresentation regarding the claim for which benefits are owed.
- Violations of this provision would be grounds for a private civil remedy action, due to the cross-reference in current s. 624.155, F.S.

Section 9. Administrative Proceedings in Rating Determinations (s. 627.0612, F.S.)

- Specifies that an administrative law judge may make the following findings of fact in an administrative hearing on a property insurance rate filing:
 - Whether factors used in a rate filing or applied by the office are consistent with standard actuarial techniques or practices or are otherwise based on reasonable actuarial judgment.
 - Whether a factor for underwriting profit and contingencies is reasonable or excessive.
 - Whether the cost of reinsurance is reasonable or excessive.
- Allows an administrative law judge to enter a recommended order that approves, modifies or rejects the requested change, as supported by the record.

Section 10. Rating Law for Property and Casualty Insurance (s. 627.062, F.S.)

Repeal of Arbitration - Repeals the option for an insurer, for any property and casualty insurance rate filing (or any other filing), to appeal a rate filing disapproved by OIR to an arbitration panel in lieu of an administrative hearing. Current law prohibits use of arbitration until January 1, 2009.

Extension of Prohibition on "Use and File"- Extends for one additional year, until December 31, 2009, the current prohibition on insurers using the "use and file" option for property insurance rate increases. This would continue to require that an insurer make a "file and use" filing that prohibits an insurer from increasing its rates prior to approval by OIR, unless deemed approved by failure of OIR to issue a notice of intent to disapprove within 90 days. Current law prohibits "use and file" rate increases until December 31, 2008.

Use of Approved Hurricane Loss Models - Requires that projected hurricane losses must be estimated using a model or method found to be accurate or reliable by the Florida Commission on Hurricane Loss Projection Methodology (as further provided in s. 627.0628, F.S., as amended in Section 11).

Profit Factor - Deletes the requirement that OIR approve a profit factor in a rate filing for an insurer that is commensurate with the risk, for that portion of the rate covering hurricane losses for which the insurer has not purchased reinsurance. By striking this language, the law would

return to its pre-2006 version, to require OIR to consider “a reasonable margin for profit and contingencies.”

Expedited Hearings on Rate Filings - Provides for an expedited hearing process for rate filings by:

- Requiring Division of Administrative Hearings to hold the hearing within 30 days after the request for the hearing.
- Requiring the hearing officer to issue the recommended order within 30 days after the hearing (or after receipt of the transcripts).
- Requiring parties to submit written exceptions within 10 days.
- Requiring OIR to enter a final order within 30 days after the entry of the recommended order.
- Timeframes may be waived upon agreement of all parties.
- Allowing an insurer to request an expedited appellate review of a final OIR rate order and providing legislative intent that the 1st DCA grant the insurer’s request.

See Transparency in Rate Regulation in Section 21, below.

Section 11. Required Use of Models Approved by Florida Commission on Hurricane Loss Projection Methodology (s. 627.0628, F.S.)

- Requires that for purposes of a rate filing insurers must use, and may not modify or adjust, a model or method found to be accurate or reliable by the Commission on Hurricane Loss Projection Methodology.
- Deletes the current law that in order for an approved model to be admissible and relevant, OIR must have access to all of the assumptions and factors used in developing the model.
- Requires the commission to adopt findings related to the private model’s probable maximum loss calculations. An insurer must use and may not modify or adjust models found by the commission to be accurate or reliable in determining probable maximum loss levels for rate filings made more than 60 days after the commission has made such findings.
- Provides that the processes, standards, and guidelines of the Commission do not constitute final agency action or statements of general applicability that implement, interpret, or prescribe law and are exempt from chapter 120, F.S.

Section 12. Hurricane Mitigation Premium Credits Tied to Uniform Home Rating Scale (s. 627.0629, F.S.)

- Requires OIR to develop, by February 1, 2011, a proposed method for insurers to establish windstorm mitigation premium credits (discounts) that correlate to the numerical rating of a structure pursuant to the uniform home rating scale.
- Requires the Financial Services Commission to adopt rules by October 1, 2011, requiring insurers to make rate filings which revise their credits pursuant to this method, consistent with generally accepted actuarial principles and wind loss mitigation studies.
- Requires that the rules must allow a period of at least two years after the effective date of the revised credits for a property owner to obtain an inspection or otherwise qualify for the revised credit, during which time the insurer must continue to apply the old mitigation credit.

Section 13. Citizens Property Insurance Corporation (s. 627.351, F.S.)

Extension of Rate Freeze - Extends the freeze on rate increases in Citizens from January 1, 2009 to January 1, 2010. Requires Citizens to make an annual, actuarially sound rate filing beginning July 15, 2009, to be effective no earlier than January 1, 2010.

Assessments for Citizens Deficits - Revises the required assessments to fund a deficit in *each* of Citizens' three accounts (high risk, personal lines, or commercial lines) to:

- Require up to a 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal;
- If this is insufficient, a regular assessment against insurers which may be recouped from their policyholders, of up to 6 percent (rather than 10 percent) of premium for most lines of property and casualty insurance or 6 percent of the deficit, whichever is greater;
- Any remaining deficit is funded by a bond issue, funded by multi-year emergency assessments on policyholders on most types of property and casualty insurance, of up to 10 percent of premium for most lines of property and casualty insurance, or 10 percent of the deficit, whichever is greater.

The bill *deletes* replaces the *current law* on assessments for funding a deficit in each of Citizens' three accounts (high risk, personal lines, or commercial lines), that currently requires:

- 1) An immediate assessment of up to 10 percent of premium against all Citizens' nonhomestead policyholders (as defined);
 - 2) If this is insufficient, an additional assessment of up to 10 percent of premium against all Citizens' policyholders (including nonhomestead), collected upon issuance or renewal of a policy;
 - 3) If this is insufficient, a regular assessment against insurers which may be recouped from their policyholders, of up to 10 percent of premium for most lines of property and casualty insurance, or 10 percent of the deficit, whichever is greater.
 - 4) Any remaining deficit is funded by a bond issue, funded by multi-year emergency assessments on policyholders of most types of property and casualty insurance, of up to 10 percent of premium, or 10 percent of the deficit, whichever is greater.
 - 5) If a regular assessment is imposed under 3), above, Citizens must make a rate filing to impose a surcharge on Citizens policyholders equal to the average percentage regular assessment imposed on insurers (and recouped from non-Citizens policyholders).
- Deletes the definition of "homestead property" and the requirement for Citizens to account separately for homestead property since it would no longer be relevant to determining assessments or any other purpose.
 - Allows the board of Citizens the discretion to apply the amount of any assessment or surcharge which exceeds the amount of the deficit to various business purposes.

Eligibility for Higher Value Homes - Provides that homes with a dwelling replacement cost of \$2 million or more, rather than \$1 million or more, are ineligible for coverage, effective January 1, 2009, with limited exceptions for current policyholders who obtain rejections from three surplus lines insurers and one authorized insurer.

Eligibility for Properties Within 2,500 Feet of the Coast - Deletes the current law requiring that new properties constructed after January 1, 2009, within 2,500 feet of the coast must meet "Code Plus" requirements in order to be eligible for Citizens. By repealing this provision, the law would still require that any new home meet the Florida Building Code.

Forced Purchase of Bonds - Deletes current law requiring insurers to purchase bonds that remain unsold for 60 days.

Access to Claims and Underwriting Files - Provides that a policyholder who has filed suit against Citizens has the right to discover the contents of his claims file to the same extent that discovery would be available from a private insurer. Allows Citizens to release confidential underwriting and claims file information under certain circumstances.

Required Disclosure of Windstorm Mitigation Rating Upon Sale of Home (Citizens)
Effective January 1, 2010, requires disclosure of a home's windstorm mitigation rating, for a home insured by Citizens in the wind-borne debris region with an insured value of \$500,000 or more. (Also see section 15, below.)

Section 14. Increased Notice of Nonrenewal (s. 627.4133, F.S.)

Increases the required notice of nonrenewal of a personal or commercial residential insurance policy from 100 days to 180 days if the policy has been written for 5 years or more.

Section 15. Required Disclosure of Windstorm Mitigation Rating Upon Sale of Home (creating s. 689.262, F.S.)

- Provides that the potential purchaser of a residential property with an insured value of \$500,000 or more, insured by Citizens, and located in the wind-borne debris region be informed of the structure's windstorm mitigation rating.
- Effective January 1, 2011, requires that a purchaser of residential property located in wind-borne debris region be informed of the windstorm mitigation rating of the structure, either in the contract for sale or as a separate document attached to the contract.
- Authorizes the Financial Services Commission to adopt rules, including the form of the disclosure and the requirements for the inspection or report that is required.

Section 16. Transfer of \$250 million from Citizens to General Revenue

- Requires Citizens to transfer \$250 million from its personal lines account and commercial lines account to the General Revenue Fund on December 15, 2008, unless the estimated year-end surplus in the Personal Lines Account and the Commercial Lines Account is less than \$1 billion. (Citizens currently estimates that its year-end surplus in these two accounts combined will be about \$2.6 billion, if there are no hurricane losses.) The appropriation of \$250 million from General Revenue to the SBA for the Insurance Capital Build-Up Program is contained in the Conference Report for the General Appropriations Act.
- Requires the "board" (apparently referring to the SBA), beginning July 1, 2009, to make quarterly transfers to Citizens of interest and principal payments for surplus notes, that were funded by appropriations from Citizens in FY 2008-09.

Section 17. Citizens May Not Increase Rates due to Transfer

Prohibits Citizens from using any of the amendments to the Insurance Capital Build-Up Program or any transfer of funds as justification or cause in seeking any rate or assessment increase. However, this provision could not be read to limit the amount of an assessment that may be greater due to the transfer of these funds.

Section 18. Use of Public Hurricane Loss Model

Allows insurance companies to use the Public Hurricane Loss Model to determine rate requests in advance of filing, but requires the insurer to pay for use of the public model. Requires OIR (the "office" which would actually be the Financial Services Commission that has rulemaking authority for OIR) to establish by rule, by January 1, 2009, a fee schedule for access and use of the model, reasonably calculated to cover only the actual costs.

Section 19. Multi-Policy Discount

Allows insurers to offer a multi-policy discount if the policyholder has wind-only coverage with Citizens or an insurer that has removed a policy from Citizens, provided that the same insurance agent services both policies.

Section 20. Citizens Property Insurance Corporation Mission Review Task Force

- Creates the Citizens Mission Review Task Force to analyze and report on changes needed to return Citizens to its former role as a state-created, noncompetitive residual market mechanism that provides property insurance coverage to risks that are otherwise entitled but unable to obtain such coverage in the private market.
- Requires the task force to submit reports by January 31, 2009 to the Governor, the President of the Senate, and the Speaker of the House of Representatives.
- The task force is composed of 11 members, as follows:
 - two members appointed by the Speaker of the House, representing insurance companies meeting certain criteria;
 - two members appointed by the President of the Senate, representing insurance companies meeting certain criteria;
 - three members appointed by the Governor who are not affiliated with an insurance company, at least one of whom must be a consumer advocate;
 - two members appointed by the CFO representing insurance agents;
 - one member representing Citizens appointed by its board;
 - the Insurance Commissioner or his designee;
- The task force must be funded by Citizens and the members do not receive any compensation, but are entitled to travel and per diem. The task force shall employ consultants and staff.

Section 21. Annual Report by CFO

Requires the CFO to annually report to the Governor and Legislative presiding officers regarding the economic impact on Florida from a 1-in-100 year hurricane and the premium increase needed to fund such a hurricane.

Section 22. Transparency in Rate Regulation (creating s. 627.0621, F.S.)

For residential property insurance rate filings:

- Requires the OIR to provide information on an Internet website of:

- all assumptions made by any OIR actuary;
 - the overall rate change requested by the insurer;
 - a statement describing any assumptions that deviate for actuarial standards of the Casualty Actuarial Society; and
 - a certification by the office's actuary that based on the actuary's knowledge, that his or her recommendations are consistent with accepted actuarial principles.
- In any administrative or judicial proceeding, work-product and attorney-client privilege exemptions from public disclosure do not apply to communications with office attorneys or records prepared by or at the direction of an OIR attorney except when both of the following conditions are met:
 - the communication or record reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or OIR that was prepared exclusively for civil or criminal litigation or adversarial administrative proceedings;
 - the communication occurred or the record was prepared after the initiation of a court action, after issuance of a notice of intent to deny a rate, or after the filing by an insurer of a request for a hearing.

Section 23. Florida Hurricane Catastrophe Fund; \$10 Million Coverage Option

Requires the FHCF to offer \$10 million of additional coverage to qualified insurers in 2008, as was required in 2006 and 2007. This coverage would again be made available to limited apportionment companies (having \$25 million in surplus or less and writing at least 25 percent of its premiums in Florida), insurers approved to participate in the Insurance Capital Build-Up Incentive Program, and insurers that purchased the supplemental coverage in 2007. This coverage would reimburse the insurer for up to \$10 million in losses, for each of two hurricanes. The coverage will again be priced at a 50 percent rate on line (e.g., \$5 million premium for \$10 million in coverage) with a free reinstatement for a second storm. The insurer's retention for such coverage remains at 30 percent of the company's surplus. The bill would provide that the coverage expires on May 31, 2009.

Section 24. Technical conforming change.

Section 25. Exclusion of Windstorm Coverage (s. 627.712, F.S.)

Provides that if a policyholder is eligible for a wind-only policy from Citizens, the insurer issuing the non-wind policy is not subject to the requirement to obtain a signed rejection of windstorm coverage; but requires notice to the mortgage holder under certain conditions.

Section 26. Provides that this bill controls over any conflicting provisions in HB 5057 (which relates to the Capital Build-Up Incentive Program).

Section 27. Effective Date

Effective date of July 1, 2008, except as otherwise provided.