

Summary of House Strike All to CS/CS/SB's 2860 & 1196, 2nd Engrossed Insurance

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

- Revises the requirements for the Insurance Capital Build-Up Incentive Program
- Current law requirements maintained: 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), to an insurer that contributes an equal amount of new capital and commits to meeting a specified minimum premium-to-surplus writing ratio for residential policies covering windstorm. Insurer must have at least \$50 million surplus after receiving funds.
- Revises legislative findings upon entering the 2008 hurricane season.
- Requires insurers to apply to SBA by September 1, 2008, for funds to be provided no earlier than January 1, 2009.
- Revises the minimum 2 to 1 net written premium to surplus writing ratio (with surplus defined as the state funds plus the matching new capital) to require:
 - *Net* written premium to surplus ratio of 1 to 1 for the first year, 1.5 to 1 for the second year, and 2 to 1 for the remainder of the 20-year term; or
 - *Gross* premium to surplus ratio of 3 to 1 for the first year, 4.5 to 1 for the second year, and 6 to 1 for the remainder of the 20-year term.
- 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. Also requires a reduction in the probable maximum loss in the Citizens' account from which the policies are removed.
- Adds requirement that insurer must maintain surplus and reinsurance to cover at least its estimated 100 year probable maximum loss.
- As in current law, if the required ratio (or required take-outs from Citizens) is not met, the SBA may increase the interest rate, accelerate repayment of interest and principal, or shorten the term of the surplus note, subject to approval of the Insurance Commissioner.
- Allows the SBA to charge a late fee for repayments.
- 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.
- Provides that amendments made by the act do not affect the terms of surplus notes approved prior to January 1, 2008, but authorizes the SBA and an insurer to renegotiate such terms consistent with such amendments.
- Requires SBA to transfer to Citizens uncommitted funds, interest and principal payments for surplus notes, that were funded by appropriations from Citizens.

Required Filing of Claims Handling Procedures (s. 624.3161, F.S.)

- Authorizes OIR to require an insurer to file its claims handling practices and procedures as a public record based on findings of a market conduct examination.
- Allows the insurer a hearing under chapter 120 if required to file its claims handling practices and procedures.

- 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).
- 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.

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

- Doubles the maximum fines that may be imposed by OIR upon an insurer for violation of the Insurance Code or any lawful rule or order:
 - from \$2,500 to \$5,000 for a nonwillful violation for all non-willful violations arising out of the same action;
 - from \$20,000 to \$40,000 for a willful violation for all willful violations arising out of the same action.

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.
- Authorize 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.

**Notice to OIR of Nonrenewal
(creating s. 624.4305)**

- Requires an insurer to notify of the Office of Insurance Regulation 90 days before nonrenewing more than 10,000 policies within a one-year period.

**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:
 - from \$2,500 to \$5,000 for a nonwillful violation for all non-willful violations arising out of the same action;
 - from \$20,000 to \$40,000 for a willful violation for all willful violations arising out of the same action.

Changes to Insurance Rating Law (s. 627.062, F.S.)

- ***Repeal of "Use and File"***- For 1 year, extends the repeal of the "use and file" option for property insurance rate increases, thereby requiring that an insurer make a "file and use" filing that prohibits an insurer from increasing its rates prior to approval by OIR (or 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 January 1, 2009.
- ***Repeal of Arbitration*** – Repeals the option for an insurer, for any property and casualty insurance rate 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.
- ***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. Clarifies determinations by the Commission are not final agency action.
- ***Profit Factor*** - Deletes requirement that the 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."
- ***OIR May Not Find Rate Excessive Due to Covering 250-Year PML*** - Prohibits OIR from disapproving a rate as excessive solely because the insurer obtained reinsurance to cover its estimated 250-year probable maximum loss or any lower level of loss.
- ***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 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.
 - Making certain findings by the ALJ findings of fact.
 - 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.

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 and in determining probable maximum loss levels used in 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.
- Allows private insurance companies to use the public hurricane model for a fee.
- Requires the commission to adopt findings related to the private models' probable maximum loss calculations.

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.

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

- ***Extension of Rate Freeze***
 - Extends the current rate freeze for Citizens to January 1, 2010. The rates are now frozen until January 1, 2009.
- ***Assessments for Deficits***
 - **Deletes** the assessment requirements that begin in 2008, 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).
- **Revises the required assessments** to fund a deficit in *each* of Citizens' three accounts (high risk, personal lines, or commercial lines) to:
 - 1) Require up to a 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal;
 - 2) 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 8 percent of the deficit, whichever is greater;
 - 3) 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.
 - 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 Properties Within 2,500 Feet of the Coast*** - Strikes 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 current law would still require that any new home meet the Florida Building Code, including the windborne debris protection requirements that apply in the windborne debris region.
 - ***Eligibility for Homes Valued Over \$1 Million*** – Provides that homes (personal lines residential structures) with a dwelling replacement cost of \$2 million or more or condo units with a content replacement cost of \$2 million or more are ineligible for coverage, effective January 1, 2009 (current law is \$1 million or more).
 - ***Deletes 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.
- ***Task Force Study of Citizens*** – Creates the Mission Review Task Force to study how to return Citizens to an insurer of last resort and to report to legislative presiding officers by January 31, 2009.

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.

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 structures 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.

Appropriation from Citizens for Capital Build-Up Program

- Requires Citizens to transfer \$250 million to the General Revenue Fund for transfer to the SBA for the Capital Build-Up Incentive Program.
- The funds must be transferred on December 15, 2008, *unless* Citizens has less than \$1.5 billion in surplus in the PLA and CLA combined.
- Citizens is prohibited from raising rates or increasing assessments as a result of the transfer for the Capital Build-Up Incentive Program.

Multiline Discount

- Allows insurers to offer a multiline discount if the policyholder has wind-only coverage with Citizens or a take-out insurer provided that the same insurance agent service both policies.

CAT Fund Limited Apportionment Companies

- For one year, extends current law allowing limited apportionment companies to purchase CAT Fund coverage below the statutory retention.

Transparency in Ratemaking

- Requires the OIR to provide rate making information for residential property insurance on the Internet.
- Requires the OIR's actuaries to certify that their recommendations for a residential property insurance rate filing are consistent with accepted actuarial principles.
- Exempts application of work-product and attorney-client privilege exemptions to specified communications with and records of OIR attorneys, with limited exceptions for residential property insurance.

Exclusion of Windstorm Coverage

- Requires insurance companies to notify a property's mortgage holder if the homeowner excludes windstorm coverage but is eligible for a wind-only policy in Citizens.

Report on Hurricane Economic Impact

- 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.

Cause of Action for 90 Day Payment of Claims

- Provides that it is an unfair trade practice if an insurance company receives notice of a residential property claim, determines the benefits due on the claim, and agrees to coverage of the claim and does not pay the undisputed amounts of the claim within 90 days, with limited exceptions.

Effective date - Upon becoming law, except as otherwise provided.