Committee on Banking and Insurance

CS/CS/HB 1611 — Insurance

by Commerce Committee; Insurance & Banking Subcommittee; and Rep. Stevenson and others (CS/CS/SB 1622 by Fiscal Policy Committee; Banking and Insurance Committee; and Senators Trumbull and Perry)

The bill revises various provisions relating to the Office of Insurance Regulation (OIR).

Residential Property Insurance Reporting

The bill requires each insurer and insurer group, beginning January 1, 2025, to file the required personal and commercial lines residential property insurance supplemental reports to the annual report monthly, rather than quarterly, and to provide such information broken down by zip code rather than by county.

The bill provides the Financial Services Commission authority to adopt rules to administer provisions that require any insurer planning to nonrenew more than 10,000 residential property insurance policies in this state within a 12-month period to give the OIR at least 90 days written notice before issuing notices of nonrenewal.

Public Housing Self-Insurance Funds

Regarding public housing self-insurance funds, the bill specifies that reinsurance may be used as part of its program to protect the financial stability of the fund. The bill provides that a continuing program of excess insurance coverage and reinsurance must:

- Include a net retention in an amount and manner selected by the administrator, ratified by the governing body, and certified by a qualified actuary;
- Include reinsurance or excess insurance from authorized insurance carriers or eligible surplus lines insurers; and
- Be certified by a qualified and independent actuary as to the program's adequacy.

The bill eliminates a requirement that the program retain a per-loss occurrence that does not exceed $350,000.

Cancellation or Nonrenewal of Surplus Lines Residential Property Insurance Policies

Regarding notices of cancellation or nonrenewal by surplus lines insurers, the bill provides:

- Upon a declaration of an emergency pursuant to s. 252.36, F.S., and the filing of an order by the Commissioner of Insurance Regulation, a surplus lines insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property which has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency for a period of 90 days after the dwelling or residential property has been repaired. A dwelling or residential property is deemed to be repaired when substantially completed and restored

to the extent that the dwelling or residential property is insurable by another insurer that is writing policies in the area;

- Exceptions allowing the surplus lines insurer to cancel the policy:
  - Upon 10 days notice for nonpayment of premium.
  - Upon 45 days notice:
    - For a material misstatement or fraud;
    - If the insurer determines the insured has unreasonably caused a delay in repairs;
    - If the insurer or its agent makes a reasonable written inquiry to the insured as to the status of repairs, and the insured fails within 30 calendar days to provide a response; or
    - If the insurer has paid policy limits;
- If the insurer elects to nonrenew a policy covering a property that has been damaged, the insurer must provide at least 90 day notice to the insured that the insurer intends to nonrenew the policy 90 days after the dwelling or residential property has been repaired;
- Other than the specified limitations proscribed within this section, the insurer may cancel or nonrenew the policy 90 days after the repair is completed for the same reasons the insurer would have otherwise canceled or nonrenewed the policy; and
- The Financial Services Commission may adopt rules, and the Commissioner of the Office of Insurance Regulation may issue orders, necessary to implement this requirement.

Residential Property Insurance Ratemaking

Regarding rate standards for residential property insurance, the bill provides that if an averaged model is used in ratemaking, the same averaged model must be used throughout this state. If a weighted average is used, the insurer must provide the OIR with an actuarial justification for using the weighted average which shows that the weighted average results in a rate that is reasonable, adequate, and fair.

Regarding coverage under the Citizens Property Insurance Corporation (Citizens), the bill repeals provisions that allow Citizens to apply a different rate methodology to policies which, immediately prior to being insured by Citizens, were insured by an insurer determined by the OIR to be unsound or that was placed in receivership. Rates for such policies, if they cover a primary residence, will be subject to the Citizens rate "glidepath" which will restrict rate increases to 13 percent for 2024, rather than a prohibition on rate decreases and a limit of 50 percent on rate increases at issuance at renewal. If such policies do not cover a primary residence, the prohibition on rate decreases and the 50 percent limit on rate increases will apply.

Roof Inspections

The bill provides that a licensed roofing contractor is considered an "authorized inspector" for purposes of s. 672.7011(5), F.S, to provide roof inspections to determine if an insurer may require the replacement of a roof that is at least 15 years old as a condition of continuing to provide homeowner's property insurance for a risk.

Insurance Holding Company System Model Regulation

The bill amends s. 628.801, F.S., to provide that the Financial Services Commission may adopt rules for the filing of the annual enterprise risk report by an authorized insurer that is a member of an insurance holding company in accordance with the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the National Association of Insurance Commissioners (NAIC), as adopted in December 2020.

Reciprocal Insurers

Regarding the regulation of reciprocal insurers, the bill substantially rewrites provisions regulating reciprocal insurers.

Investigations and Examinations – The bill specifies that for any proposed reciprocal insurer the OIR may investigate various aspects of the reciprocal insurer's attorney in fact, members of its subscribers' advisory committee or officers of its attorney in fact, and stockholders and directors of any attorney in fact of the reciprocal insurer. The OIR may also conduct market conduct examinations of the attorney in fact of each reciprocal insurer.

Fiduciary Duty – The bill provides that an attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer.

Definitions – The bill defines the terms "affiliated person," "attorney in fact," "controlling company," and "reciprocal insurer."

Permit Applications – The bill requires that a reciprocal insurer application must include certain information, including the name of the proposed reciprocal insurer and location of its principal office, the kinds of insurance it proposes to transact, the names and addresses of the original subscribers, certain information about the proposed attorney in fact, the articles of incorporation and bylaws, certain information about the subscribers' advisory committee, a copy of the proposed subscribers' agreement, and a copy of each form the insurer proposes to use.

A permit application as a domestic reciprocal insurer must include certain information, including required documents and a copy of the required bond, statements affirming that all moneys not payable to the attorney in fact will be held in the name of the insurer and for the purposes specified in the subscribers' agreement, and a statement that each original subscriber has in good faith applied for insurance and the insurer received the full premium or premium deposit for such coverage for at least a six month term.

To maintain its eligibility for a certificate of authority, a domestic reciprocal insurer must continue to meet all conditions required under the chapter and the rules for the initial applications for a permit and certificate of authority.

Fiduciary Duty – The bill provides that the attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer.

Acquisitions – The bill provides the following requirements regarding the acquisition of 10 percent or more of a reciprocal insurer:

- A person may not acquire 10 percent or more of the outstanding voting securities of an attorney in fact unless the OIR approves the acquisition after notice of the acquisition is provided to the OIR, the attorney in fact, the subscribers' advisory committee (which must then notify the subscribers regarding how to object to the acquisition), and the domestic reciprocal insurer.
- The requirements do not apply to any acquisition of voting securities or ownership interest of an attorney in fact or of a controlling company by any person who is the owner of a majority of the voting securities or ownership interest with the approval of the OIR.
- The OIR may waive, or the person filing the notice may request that the OIR waive, the requirement that the subscribers' advisory committee provide notice to subscribers of the proposed acquisition, if there is no change in ultimate controlling shareholders and their ownership percentages and no unaffiliated parties acquire any interest in the attorney in fact.
- The application must contain certain information the OIR deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person seeking to make the acquisition so that the OIR can protect the reciprocal insurer's subscribers and the public.
- An amendment to the application must be filed with the OIR detailing any changes in facts or the background information detailed in the application.
- The applicant has the burden of proof.
- During the application review period, any person or affiliated person complying with the filing requirements may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon approval by the OIR. A material change in the operation or management of the attorney in fact or controlling company, unless specifically approved by the OIR, is prohibited;
  - "Material change in the operation of the attorney in fact" is defined to mean a transaction that disposes of or obligates five percent or more of the domestic reciprocal insurer.
  - "Material change in the management of the attorney in fact" is defined to mean any change in management involving officers or directors of the attorney in fact or any person of the attorney or controlling company having authority to dispose of or obligate five percent or more of the attorney in fact's capital or surplus.
- The proceeding must conducted within 60 days after the date of the written request is received by the OIR and the OIR will issue a recommended order within 20 days after the date of the close of the proceedings. A final order will be issued within 20 days after the date of the recommended order or, if exceptions are filed, within 20 days after the date exceptions are filed.
- If at any time, the OIR finds an immediate danger to the public health, safety, and welfare of the reciprocal insurer's subscribers exists, the OIR shall immediately order the

proposed acquisition disapproved and any further steps to conclude the acquisition ceased. The OIR may disapprove any acquisition by any person or affiliated person who willfully violates these acquisition requirements or violates the OIR orders related to divestiture or the acquisition of specified additional stock or ownership interest without complying with this section.

- The OIR generally must approve an acquisition if the OIR finds that the acquisition will not jeopardize the financial stability of the attorney in fact or prejudice the interests of the reciprocal insurer's subscribers or harm the public. OIR approval of an offer or acquisition does not constitute a recommendation by the OIR. Any acquisition contrary to this section is void, as is any vote by a stockholder of record or any other person of any security so acquired.
- A presumption of control may be rebutted by filing a valid disclaimer of control.
- The OIR may order divesture by a person who acquires 10 percent or more of voting securities of an attorney in fact or a controlling company without complying with this section. The OIR may suspend or revoke the certificate of authority of the reciprocal insurer whose attorney in fact or controlling company is acquired in violation of this section.
- A person who violates these provisions commits a third degree felony, punishable as provided in ss. 775.082, 775.083, and 775.084, F.S.

Background Information – The bill requires that persons required to provide information on their background and identity must file a sworn biographical statement on a form adopted by the commission and fingerprints. The sworn biographical statement must include certain details regarding the person's business and employment history for the past 20 years.

Attorneys in Fact, Officers, and Directors of Insolvent Reciprocal Insurers – The bill provides that any person who served as an attorney in fact, or as an officer, director, or manager of an attorney in fact, any member of a subscribers' advisory committee of a reciprocal insurer doing business in this state, or an officer or director of any other insurer doing business in this state, and who served in that capacity within the two-year period before the date the insurer or reciprocal insurer became insolvent, for any insolvency that occurs on or after July 1, 2024, may not, unless the individual demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency:

- Serve as an attorney in fact, or as an officer, director, or manager of an attorney in fact, or a member of a subscribers advisory committee of a reciprocal insurer doing business in this state, or an officer or director of any other insurer doing business in this state; or
- Have direct or indirect control over the selection or appointment of an attorney in fact, or of an officer, director, or manager of an attorney in fact, or a member of the subscribers' committee of a reciprocal insurer doing business in this state, or an officer or director of any insurer doing business in this state, through contract, trust, or by operation of law, unless the individual demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Impairment of Surplus – The bill provides that upon impairment of the surplus of a nonassessable reciprocal insurer, the OIR must revoke its authorization. Such revocation does not subject existing policies to assessments for the remainder of the period for which the premium has been paid. After revocation, no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber. Upon revocation of the authority to issue nonassessable policies, the reciprocal insurer may not issue or renew nonassessable policies or convert assessable policies to nonassessable policies, and the provisions of s. 629.301, F.S., apply to such insurer.

Merger or Conversion – Provides requirements for mergers and conversions. A domestic stock insurer may not be converted to a reciprocal insurer. Any plan to merge a reciprocal insurer with another reciprocal insurer or for conversion of the reciprocal insurer to a stock or mutual insurer must be filed with the OIR on forms adopted by the Financial Services Commission and must contain such information as the OIR reasonably requires to evaluate the transaction. An assessable reciprocal insurer may be converted to a nonassessable reciprocal insurer if the subscriber's advisory committee approves, the attorney in fact submits the required application, and the OIR approves.

Rulemaking – Provides rulemaking authority to the Financial Services Commission to adopt, amend, or repeal rules necessary to implement the chapter.

Florida Birth-Related Neurological Injury Compensation Association

Regarding the Florida Birth-Related Neurological Injury Compensation Association (NICA), the bill:

- Removes an exclusion providing that the award of family residential or custodial care is not to be included in current estimates for purposes of assessments;
- Provides that if the total of all current estimates of claims equals or exceeds 100 percent (presently, it is 80 percent) of the funds on hand and the funds that will become available within the next 12 months, the association may not accept any new claims without express authority from the Legislature; and
- Requires NICA, in consultation with the Office of Insurance Regulation and the Agency for Health Care Administration, to provide a report to the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives by September 1, 2024. The report must include recommendations for:
  - Defining actuarial soundness for the association, including options for phase-in, if appropriate;
  - Timing of reporting actuarial soundness and to whom it should be reported; and
  - Ensuring a revenue level to maintain actuarial soundness, including options for phase-in, if appropriate.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2024.
Vote: Senate 40-0; House 112-0