STORAGE NAME: h4251s1.fs
DATE: April 15, 1998

HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 4251

RELATING TO: Insurance

SPONSOR(S): Committee on Financial Services and Representative Tamargo

COMPANION BILL(S): SB 994 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCIAL SERVICES YEAS 9 NAYS 0
(2) CIVIL JUSTICE & CLAIMS
(3) GENERAL GOVERNMENT APPROPRIATIONS
(4)
(5)

I. SUMMARY:

The bill would affect several provisions of law relating to insurance. The bill would:

Increase the amount that the Florida Hurricane Catastrophe Fund may advance to certain small insurers after a hurricane.

Allow the Department of Insurance to limit the scope of a financial examination of an insurer, and allow the department to examine certain insurers once every 5 years instead of once every 3 years.

Provide circumstances under which an insured may receive a credit for premiums paid on a noncancellable motor vehicle policy.

Provide that the requirement that policies be issued and countersigned by a resident agent would not apply when a policy is moved from one insurer to another insurer within the same insurer group.

Replace certain annual liability insurance experience reporting requirements with a requirement that insurers provide the information when requested by the Department of Insurance.

The bill appears to have no fiscal impact

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Aspects of the present situation addressed by the bill are described in the "Section-by-Section Research," below.

B. EFFECT OF PROPOSED CHANGES:

The bill would affect several provisions of law relating to insurance. As described in detail in the "Section-by-Section Research," below, the bill would:

Increase the amount that the Florida Hurricane Catastrophe Fund may advance to certain small insurers after a hurricane.

Allow the Department of Insurance to limit the scope of a financial examination of an insurer, and allow the department to examine certain insurers once every 5 years instead of once every 3 years.

Provide circumstances under which an insured may receive a credit for premiums paid on a noncancellable motor vehicle policy.

Provide that the requirement that policies be issued and countersigned by a resident agent would not apply when a policy is moved from one insurer to another insurer within the same insurer group.

Replace certain annual liability insurance experience reporting requirements with a requirement that insurers provide the information when requested by the Department of Insurance.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill removes provisions requiring the Department of Insurance to adopt rules for determining when an insurer is in "substantial compliance" with the Insurance Code.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The bill replaces requirements that liability insurers annually report certain information to the Department of Insurance with a requirement that insurers provide the information to the department upon request of the department.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

   a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

      N/A

   b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

      N/A

4. Individual Freedom:

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      Yes. The bill allows an insurer group to transfer a policy from one member of the group to another without the new policy being countersigned by a resident agent.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      No.

5. Family Empowerment:

   a. If the bill purports to provide services to families or children:

      (1) Who evaluates the family's needs?

          N/A

      (2) Who makes the decisions?

          N/A

      (3) Are private alternatives permitted?

          N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapters 215, 624, and 627, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund. Currently, reimbursement payments from the Catastrophe Fund are structured so that all payments to insurers are made after the end of a hurricane season (as distinguished from traditional reinsurance, which pays insurers immediately after a covered event). The delayed payment structure enables the Catastrophe Fund to calculate the total losses for a hurricane season and determine whether it will have the resources to pay all reimbursements in full or will have to prorate payments to insurers.

The delayed payment structure created the possibility that insurers with limited resources, such as the Residential Property and Casualty Joint Underwriting Association (RPCJUA) and Florida Windstorm Underwriting Association (FWUA) and small domestic insurers, might not be able to pay all claims until they received their Catastrophe Fund reimbursements several months after the end of the hurricane season, resulting in possible insolvency for the small companies and deficits for the residual market. In 1995,[1] the Legislature provided that companies designated as *"limited apportionment companies"* for purposes of the FWUA law[2] would be the first to be paid by the fund, but this provision expired when the cash balance of the fund went over $2 billion.

In 1996, the current Catastrophe Fund provision on limited apportionment companies was adopted.[3] Under the current provision, the Catastrophe Fund may advance to any insurer a portion of that reinsurer's projected reimbursement. For the RPCJUA, the FWUA, and limited apportionment companies, the amount of the advance is:

The greater of:

90% of the State Board of Administration's estimate of the amount of reimbursement that will be payable to the insurer; or

90% of the current liquid assets of the fund, multiplied by the insurer's share of the fund's total premium revenues for the year.

The power of the Catastrophe Fund to make advances is subject to these limitations:

1. The advance must be a loan at market interest rates.

2. The party applying for the advance must demonstrate that receipt of the advance is essential in order for it to pay claims.

3. The final reimbursement paid to the insurer must be reduced by the amount of the advance and any interest.

Under this bill, the Catastrophe Fund would be allowed to advance to a limited apportionment company the full amount of its projected reimbursement.[4] The "advance" would still be a loan, subject to interest at market rates, and subject to an offset against the insurer's final reimbursement (i.e., if the advance exceeds the final determination of the insurer's reimbursement, the insurer would not be required to pay back the excess). No demonstration of necessity would be required. The fund's authority to make advances to the RPCJUA and FWUA and other insurers would not be changed by the bill.

---

[1] See Ch. 95-276, Laws of Florida.

[2] A "limited apportionment company" is an insurer that has surplus of $20 million or less and that writes at least 25% of its countrywide property insurance business in Florida. See s. 627.351(2)(b)3., F.S. The FWUA reports that in 1997, there were 28 limited apportionment companies.

[3] See Ch. 96-194, Laws of Florida.

[4] Calculated pursuant to s. 215.555(4)(d), F.S., as the lesser of $10 million or 10 times the reimbursement premium paid by the insurer to the Cat Fund for the current year.

Section 2 amends s. 624.316, F.S., relating to financial examination of insurers. The Department of Insurance is required to conduct financial examinations of insurers; the examination is one of the means for monitoring an insurer's solvency and compliance with the Insurance Code. Current law generally requires the department to conduct a financial examination of an insurer at least once every 3 years, except that the department must conduct a financial examination at least once a year with respect to an insurer that has continuously held a certificate of authority for less than 3 years. The department must conduct a financial examination at least once every 5 years, instead of once every 3 years, if the insurer that has continuously held a certificate of authority for more than 15 years and if the insurer has "demonstrated sufficient compliance" as determined under s. 624.316(2)(f)3., F.S. The department is authorized to limit the scope of these examinations if the insurer has "demonstrated sufficient compliance" as determined under s. 624.316(2)(f)3., F.S. That provision requires the department to adopt procedures and criteria for determining whether an insurer has demonstrated sufficient compliance with the Insurance Code and cooperation with the department. The department has never adopted the required procedures and criteria for determining whether an insurer has demonstrated sufficient compliance.

The bill would allow the department to limit the scope of the examination without regard to whether the insurer has demonstrated "sufficient compliance," would provide for 5-year examinations of insurers that have held a certificate for at least 15 years without regard to whether the insurer has demonstrated "sufficient compliance," and would repeal s. 624.316(2)(f)3., F.S., which provides for adoption of rules for determination of sufficient compliance.

Section 3 amends s. 624.426, F.S., relating to resident agent countersignature requirements. Currently, a property, casualty, or surety insurance policy may not be issued in Florida unless the policy is issued through or by a Florida-resident agent and unless the policy is countersigned by the resident agent.[5] Currently, the only policies that are exempt from this requirement are reinsurance contracts, policies covering railroad rolling stock, and U.S. Customs surety bonds.[6]

The bill would create another exemption to the countersignature requirement. When an insurer's agents represent only that insurer and other members of an insurer group under common ownership, the insurer could transfer a policy from one member of the insurer group to another member of the insurer group without the new policy being countersigned by a resident agent. The exemption would not apply if there was also a change in the agent of record. The exemption, as created by the bill, would remove an obstacle to the creation of new, Florida-only companies by insurers that currently have a substantial number of Florida policies in force.

Section 4 amends s. 624.610, F.S., relating to reinsurance. In 1997, the Legislature addressed problems arising from the insolvency of non-U.S. insurers and reinsurers.[7]

---

[5] See s. 624.425, F.S.

[6] See s. 624.426, F.S.

[7] See Ch. 97-214, Laws of Florida. Under that law, if the alien (non-U.S.) insurer or reinsurer maintains a trust fund for its U.S. obligations, then, upon insolvency, the trust will continue

The 1997 legislation contained several technical flaws. It placed a statement of purpose, purporting to describe the purpose of Chapter 624, F.S., but in fact describing only the purpose of provisions relating to the insolvency of non-U.S. insurers and reinsurers, in a new s. 624.22, F.S. The 1997 law also contained erroneous cross-references to insurers' credits for reinsurance and referred to insurance regulators of other states as "superintendents" rather than "commissioners."

This section of the bill places the purpose language from the 1997 law in s. 624.610, F.S., which relates to reinsurance. The bill also corrects the cross references and changes the term "superintendent" to "commissioner."

Section 5 amends s. 627.7275, relating to motor vehicle insurance policies. Currently, when a person obtains a private passenger motor vehicle policy in order to reinstate driving privileges that had been suspended or revoked for failure to maintain required insurance, the policy must be for a term of at least 6 months and may not be canceled by the insured for any reason. Premiums on the noncancellable policy are "fully earned"[8] (i.e., nonrefundable) at the inception of the policy. If, while the 2-year proof of insurance requirements apply to the insured,[9] the insured obtains additional coverage or coverage for an additional risk, the insured must obtain a new 6-month noncancellable policy.

The bill would require the insured also to obtain a new 6-month noncancellable policy if the insured moves from one rating territory to another.[10] If the insured obtained the new 6-month noncancellable policy from the same insurer as issued the previous 6-month noncancellable policy, the insured would be required to receive a credit for any premium paid on the previous policy. The bill would also provide that the premium on the noncancellable policy is "nonrefundable," rather than "fully earned" (see footnote 4, above).

---

to be maintained in the U.S., claims will be filed with and valued by the state insurance commissioner having regulatory oversight, and the assets will be distributed under the insurance laws of the state where the trust is maintained. An insurer is allowed to receive credit on financial statements for reinsurance ceded to a non-approved reinsurer if the reinsurer maintains a trust fund in the U.S. to cover U.S. claims. The trust must include a trusteed account in an amount equal to the reinsurer's U.S. reinsurance liabilities and a trusteed surplus of at least $20 million. In the event of insolvency, the trustee must deliver the assets to the U.S. receiver, to be distributed in the same way as assets of an insolvent domestic insurer are distributed.

[8] A premium is "fully earned" when the full amount belongs to the insurer. Usually, a premium is not fully earned until the end of the policy period, and an early cancellation will entitle the insured to a refund of the "unearned" portion of the premium. The effect of declaring a premium to be "fully earned" at the inception of the policy is to make the premium nonrefundable.

[9] See s. 627.733(7), F.S.

[10] Usually, moving from one territory to another will change the premium applicable to a motor vehicle policy.

Section 6 amends s. 627.9126, F.S., relating to reports by liability insurers. Since 1986,[11] liability insurers have been required by s. 627.9126, F.S., to maintain information on judgments, settlements, and final dispositions of cases not resulting in payments on behalf of insureds, and the department has been required to conduct annual samplings of this information. The annual sampling requirement, in effect, requires insurers to report the information to the department annually. Insurers are also required by that section to provide the department with more detailed information upon request.

According to the Department of Insurance, the department retains these reports and reports under s. 627.913, F.S.,[12] but does not do anything with them, the reports are rarely requested by the public, and the usefulness of the information has not been demonstrated.

This section of the bill would remove the requirement that the department conduct annual samplings of the information in the liability insurers' reports; the result is that insurers would be required to maintain the records, and would be required to furnish information upon request of the department, as under current law, but annual reporting would no longer be required.

Section 7 amends s. 627.913, F.S., relating to reports of information by products liability insurers. Since 1978,[13] products liability insurers have been required by s. 627.913, F.S., to provide the department with annual reports of products liability premiums, claims, reserves, income, losses, and judgments. The department is required to provide a summary of the information in its annual report.

This section of the bill would replace the annual reporting requirement with a requirement that the insurer provide the information upon request of the department. The department would no longer be required to provide a summary of the annually-reported information in the department's annual report.

Section 8 repeals s. 624.22, F.S., relating to the purpose of provisions relating to the insolvency of a non-U.S. insurer or reinsurer. Section 4 of the bill places the substance of this repealed provision in s. 624.610, F.S., relating to reinsurance.

Section 9 provides that the bill will take effect on October 1 of the year in which it was enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

[11] See Ch. 86-160, Laws of Florida.

[12] See the summary of Section 7, below.

[13] See Ch. 78-224, Laws of Florida.

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   N/A

2. Recurring Effects:

   N/A

3. Long Run Effects Other Than Normal Growth:

   N/A

4. Total Revenues and Expenditures:

   N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   N/A

2. Recurring Effects:

   N/A

3. Long Run Effects Other Than Normal Growth:

   N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   A person who has a noncancellable motor vehicle policy and who moves from one rating territory to another would be required to obtain a new policy and pay a new premium; such a person would be entitled to a credit for the earlier premium only if the new policy is issued by the same insurer as the old policy.

2. Direct Private Sector Benefits:

   The bill increases the amount that the Catastrophe Fund may advance to certain small insurers after a hurricane. A larger advance should improve these insurers' ability to pay claims quickly without jeopardizing solvency.

   The bill authorizes the department to conduct financial examinations of certain insurers at least once every 5 years, instead of at least once every 3 years; this provision may reduce insurers' costs of compliance.

The bill exempts transfers of policies from one company to another within the same insurer group from resident agent countersignature requirements. This exemption should reduce the costs involved in establishing a Florida-only subsidiary or other large transfers of policies from one insurer to another affiliated insurer.

The replacement of liability insurer annual reporting requirements with requirements that information be furnished upon request of the department could reduce insurers' costs of compliance.

3. Effects on Competition, Private Enterprise and Employment Markets:

   See above.

D. FISCAL COMMENTS:

   N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

   N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

   N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

   N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

As filed, HB 4251 provided that a notice of a suit under the civil remedy law is not a "complaint" for purposes of required record-keeping; expanded the geographic area within which a no-fault (personal injury protection) insurer could require an injured party to submit to an independent medical examination; repealed a requirement that a medical payments policy also cover the required personal injury protection copayment; and created a statutory interpleader procedure under which a liability insurer could fulfill its obligations to all claimants by paying the maximum liability coverage into a court registry. The Committee Substitute does not address any of these issues.

As filed, HB 4251 repealed certain liability insurer reporting requirements; the Committee Substitute revises these requirements to provide for reports only on request of the Department of Insurance.

As filed, HB 4251 did not address the issue of advances from the Florida Hurricane Catastrophe Fund; the Committee Substitute increases the amount that may be advanced to certain small insurers.

The Committee Substitute's provisions on examination of insurers and noncancellable auto policies are identical to the original bill's provisions on these issues.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:	Legislative Research Director:
Leonard Schulte	Stephen Hogge