

**STORAGE NAME:** h0743a.fs

**DATE:** April 9, 1997

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

**BILL #:** HB 743

**RELATING TO:** Insurance

**SPONSOR(S):** Representative Bainter

**STATUTE(S) AFFECTED:** Sections 624.424, 627.311, and 627.351, F.S.

**COMPANION BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) FINANCIAL SERVICES YEAS 12 NAYS 0
- (2) CIVIL JUSTICE & CLAIMS
- (3)
- (4)
- (5)

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**I. SUMMARY:**

Since 1991, all insurance companies licensed to do business in Florida have been required to file independently audited financial statements with the Department of Insurance (DOI) once a year. Under current law, an insurance company may not use the same accountant or the same partner in an accounting firm to prepare the independent audit for more than 5 consecutive years. The audit requirement is based on a National Association of Insurance Commissioners Model Rule, but the Model Rule allows an insurance company to use the same accountant for up to 7 consecutive years. The bill would conform this provision of Florida law to the Model Rule.

Joint underwriting associations are insurers of last resort created under state law, but they are not state agencies. Several joint underwriting associations and their officers, directors, employees, agents, and member insurers enjoy limited immunity from civil liability, but not the Florida [Automobile] Joint Underwriting Association (FJUA) or the Florida Windstorm Underwriting Association (FWUA). The bill would provide limited immunity from civil liability for: the FJUA and FWUA; their directors, agents, and employees; member insurers and their agents and employees; and the DOI and its employees. The immunity would apply to any actions taken in administering the FJUA and FWUA laws, but would not apply to any willful torts or breach of an insurance contract.

There are amendments traveling with the bill (See Section VI.).

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Audited financial reports

Since 1991, all insurance companies licensed to do business in Florida have been required to file audited financial statements with the Department of Insurance (DOI) once a year. The requirement was based on the Model Rule Requiring Annual Audited Financial Reports of the National Association of Insurance Commissioners (NAIC).

Currently, an insurance company may not use the same accountant or the same partner in an accounting firm to prepare the independent audit for more than 5 consecutive years. This restriction was adopted for the purpose of limiting any undue influence an insurance company might have over the independence of the audit. Under the NAIC model rule, an insurance company would be able to use the same accountant for 7 consecutive years to prepare its independent audit.

Limited civil immunity for joint underwriting associations

Joint underwriting associations are insurers of last resort created under state law, but they are not state agencies. Typically, they are organized as associations of insurance companies under a statutory requirement that all companies writing the type of insurance written by the association must be members of the association. Several joint underwriting associations and their officers, directors, employees, agents, and member insurers enjoy limited immunity from civil liability. The laws creating the Residential Property and Casualty Joint Underwriting Association, the Florida Workers' Compensation Joint Underwriting Association, and the Florida Medical Malpractice Joint Underwriting Association all provide some form of limited civil immunity, but the laws creating the Florida [Automobile] Joint Underwriting Association (FJUA) and the Florida Windstorm Underwriting Association (FWUA) do not provide such immunity.

In general, these provisions immunize the joint underwriting associations and their officers, directors, employees, agents, and member insurers from civil liability arising out of the performance of their powers or duties under the law creating the joint underwriting association, but do not provide immunity for willful torts or for breach of an insurance contract. The immunity provided to participants in these state-created entities is comparable to the immunity that would apply to these participants if the joint underwriting associations were state agencies. In addition, in the case of joint underwriting associations that engage in complicated financing arrangements, they assure that board members and member insurers will not be directly liable to bondholders and other creditors.

B. EFFECT OF PROPOSED CHANGES:

Audited financial reports

An insurance company would be allowed to use the same accountant or the same partner in an accounting firm to prepare the insurance company's annual independent audited financial statements for 7 consecutive years, rather than the 5 consecutive years currently allowed by law. Florida law on the subject would then conform to the Model

Rule Requiring Annual Audited Financial Reports of the National Association of Insurance Commissioners.

Limited civil immunity for joint underwriting associations

The FJUA and FWUA would have limited immunity from civil liability for any actions taken in administering the FJUA and FWUA laws, but not for any willful torts or breach of an insurance contract. The immunity would apply to: the FJUA and FWUA; their directors, agents, and employees; member insurers and their agents and employees; and the DOI and its employees.

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?

No.

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

Yes. The bill would provide limited civil immunity for the Florida [Automobile] Joint Underwriting Association and the Florida Windstorm Underwriting Association.

(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?

Not applicable.

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

Not applicable.

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

Not applicable.

2. Lower Taxes:

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?

No.

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

Not applicable.

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 insurance company to use the same accountant to prepare its annual independent audited financial statements for 7 consecutive years, rather than the 5 consecutive years currently allowed by law.

- 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?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

- 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?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

**D. SECTION-BY-SECTION RESEARCH:**

**Section 1** amends s. 624.424, F.S., relating to annual statements of insurers. The bill would extend from 5 years to 7 years the period during which an insurer may use the same accountant to prepare its annual independent audited financial statements.

**Section 2** amends s. 627.311, F.S., relating to the Florida [Automobile] Joint Underwriting Association (FJUA), to provide the limited civil immunity described in "Effects of Proposed Changes," above.

**Section 3** amends s. 627.351, F.S., relating to the Florida Windstorm Underwriting Association (FWUA), to provide the limited civil immunity described in "Effects of Proposed Changes," above.

**Section 4** provides that the bill would take effect July 1, 1997.

**III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Section 1 of the bill, which adds 2 years to the period in which an insurer may use the same accountant for preparation of its annual independent audit, may reduce insurers' costs of compliance with the independent audit requirements.

Sections 2 and 3, which provide the same limited immunity for the FJUA and FWUA that now protects most joint underwriting associations, may facilitate financial arrangements or reduce the likelihood of lawsuits against persons or firms acting in their joint underwriting association capacity, but will not affect a person's right to sue for breach of an insurance contract or for a willful tort.

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

See above.

**D. FISCAL COMMENTS:**

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

**A. APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

**V. COMMENTS:**

Section 3 of the bill provides limited immunity from civil liability for the Florida Windstorm Underwriting Association (FWUA). A similar, but not identically drafted, immunity is provided for the FWUA in both the House and the Senate property insurance bills, HB 1815 and CS/SB 794.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

On April 8, 1997, the Committee on Financial Services adopted the following amendments:

Amendment #1 revises provisions dealing with the insolvency of an alien (i.e., non-U.S.) insurer or reinsurer. The amendment requires that if the alien insurer or reinsurer maintains a trust fund for its U.S. obligations, then, upon insolvency, the trust will continue 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. The amendment also allows an insurer 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 trustee account in an amount equal to the reinsurer's U.S. reinsurance liabilities and a trustee 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.

Amendment #2 removes from the bill the provision on immunity for the Florida Windstorm Underwriting Association and adds a provision on credit property insurance. Currently, a limited license to sell credit property insurance (which covers personal property used as collateral for a loan) is available only to individuals, while entities can be licensed to sell credit life and disability insurance. The amendment would allow an entity that holds a credit life and disability license, other than a lending institution or financial institution, to also sell credit property insurance. The amendment also changes the effective date of the bill from July 1, 1997, to upon becoming a law.

Amendment #3 revises the FJUA immunity language to conform to immunity provisions in CS/SB 794 and HB 1815.



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VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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