

**STORAGE NAME:** h0609.in

**DATE:** April 19, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
INSURANCE  
ANALYSIS**

**BILL #:** HB 609

**RELATING TO:** Insurance

**SPONSOR(S):** Representative Gottlieb

**COMPANION BILL(S):** SB 2082 (i)

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

(1) INSURANCE (W/D)

(2)

(3)

(4)

(5)

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**I. SUMMARY:**

All property, casualty, and surety insurers authorized to do business in the state are required to file their rates with the Department of Insurance (DOI). The DOI is authorized to review the rate filing under s. 627.062, F.S. The DOI may approve the rates filed by the insurer or determine the rates to be "excessive, inadequate, or unfairly discriminatory." In determining such, the DOI considers a number of factors, including, but not limited to, the insurer's past and prospective loss experience, the insurer's expenses, the insurer's investment income, the cost of reinsurance, and the adequacy of loss reserves.

When an insurer, including the Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association, is notified that the DOI has disapproved its rates, the insurer may request an administrative hearing or, in the alternative, binding arbitration of the rate filing.

HB 609 would repeal the option of binding arbitration. Disputes over an insurer's rate filing would be handled through an administrative hearing.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

All property, casualty, and surety insurers authorized to do business in the state are required to file their rates with the Department of Insurance (DOI). The DOI is authorized to review the rate filing under s. 627.062, F.S. The DOI may approve the rates filed by the insurer or determine the rates to be "excessive, inadequate, or unfairly discriminatory." In determining such, the DOI considers a number of factors, including, but not limited to, the insurer's past and prospective loss experience, the insurer's expenses, the insurer's investment income, the cost of reinsurance, and the adequacy of loss reserves.

When the insurer is notified that the DOI has disapproved its rates, the insurer may request an administrative hearing. Under section 627.062(6), F.S., the insurer may request arbitration of the rate filing as an alternative to a hearing under the Administrative Procedures Act. Arbitration has been an option for insurers, including the Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association, since January 1, 1997.

The arbitration must be conducted by a panel of three arbitrators: one chosen by the insurer, one chosen by the Department of Insurance (DOI), and the third chosen by the other two arbitrators. An arbitrator must be certified by the American Arbitration Association and may not be the employee of any insurance company or insurance regulator. Costs of arbitration must be paid by the insurer.

The procedures specified in the Arbitration Code (Chapter 682) are applied to rate arbitration. Rules adopted by the DOI regulating arbitration may not be inconsistent with the arbitration rules of the American Arbitration Association as of January 1, 1996.

The final decision of the arbitrators must be treated as the approval of a rate filing. In contrast, in the case of an administrative hearing, the DOI may adopt the recommended order of the administrative hearing or it may reject or modify the conclusions of law and the interpretations of administrative rules over which it has jurisdiction.

Under arbitration, either party may apply to the circuit court to vacate or modify the decision as provided in ss. 682.13 and 682.14, F.S. In general, grounds for vacation include corruption or fraud, evident partiality by a neutral arbitrator, and action beyond the arbitrators' powers or jurisdiction. Grounds for modification include miscalculations, errors as to form, and actions on matters not submitted for arbitration.

Upon initiation of arbitration, the insurer waives all rights to challenge the action of the DOI under the APA or any other law; however, these rights are restored to the insurer if the arbitrators fail to act within 90 days after initiation of arbitration.

According to the DOI, arbitration has been utilized by insurers in five rate filings.

B. EFFECT OF PROPOSED CHANGES:

Insurers, including the Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association, would no longer have the option of utilizing voluntary binding arbitration in disputed rate filings.

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. Insurers would no longer be able to choose voluntary binding arbitration of rating filings. Disputes over rate filings would be settled through an administrative hearing.

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

N/A

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

N/A

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. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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?

N/A

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

Yes. Voluntary binding arbitration of rate filings would be repealed.

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:

Amends s. 627.351, F.S. Repeals s. 627.062(6), F.S.

E. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

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:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

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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:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

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Stephen Hogge