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DATE: March 29, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 791

RELATING TO: Premium Security Deposits

SPONSOR(S): Representative Dockery

COMPANION BILL(S): SB 2480 (s)

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

- (1) INSURANCE YEAS 13 NAYS 0
 - (2) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 9 NAYS 0
 - (3) FINANCE & TAXATION
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
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I. SUMMARY:

There is one clarifying amendment, by the Insurance Committee, traveling with the bill. There are two clarifying amendments, by the Business Regulation and Consumer Affairs Committee, traveling with the bill. See Section VI. of this analysis for an explanation.

Premium security deposits are neither prohibited nor authorized in statute. Insurers would be expressly authorized by law to accept and hold premium security deposits made by an insured under an insurance contract to provide commercial property and casualty lines coverage. Insurers holding a premium security deposit would be authorized to pay interest of a variable or fixed amount.

Premium security deposits would be treated as a "covered claim" under the Florida Insurance Guaranty Fund and the Florida Workers' Compensation Insurance Guaranty Fund. Therefore, if an insurer became insolvent, the insured could recover the premium security deposit from the applicable guaranty fund.

The Department of Insurance does not project any fiscal impact upon the state.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Insurance contracts

The insurance contract is regulated under part II of ch. 627, F.S. Excluded from this regulation: reinsurance, insurance policies not issued for delivery in this state, wet marine and transportation insurance, and credit life or credit life disability insurance. Premium security deposits are neither prohibited nor authorized in statute. Premium security deposits can be thought of as collateral put up, or monies pledged, for the purpose of paying any additional premium owed an insurer.

The use of premium security deposits

Certain property and casualty insurance policies require insurers to pay a premium security deposit. Insurers use premium security deposits (sometimes referred to as "deposit premium") to secure payment of premium in instances where the actual amount of premium owed may not be known until the end of the policy period. For example, the Florida Workers' Compensation Joint Underwriting Association (FWCJUA) requires an insured to pay a deposit premium "to secure or renew coverage in the FWCJUA."¹ According to the FWCJUA Operations Manual, "at final audit, the deposit (is) applied to any earned premium due. . . ."² The deposit amount is based on the total estimated annual premium.

Premium security deposits are also used in connection with retrospective ("retro") rating plans. Under "retro" plans, the actual premium payable by the insured is not determined until the end of the policy term. This "retrospective premium," calculated based on the insurer's actual loss experience, may differ considerably from the original or "standard" premium. For example, the standard premium may be \$1 million. However, under a "retro" plan, the insurer may require the insured to pay a premium of only \$200,000, subject to payment of additional premium at the end of the policy period and based on the actual loss experience. In exchange, the insurer may require the insured to post a premium security deposit to guarantee payment if the insured is found to owe additional premium.

Premium security deposits are also utilized in commercial general liability insurance. According to the contract of at least one insurer which treats "advance premium" as a "deposit premium," if the sum of the advance premium and audit premium exceeds the amount of earned premium, then the insurer will return the excess to the insured.

The form of premium security deposits

Insurers may require one of several forms of premium security deposit. For example, one domestic insurer requires the insurer to submit a performance or security bond, a certificate of deposit, or a letter of credit (LOC).³ One foreign insurer requires the insured to deliver a letter of credit to the insurer.

Guaranty Funds and "covered claims"

The Legislature has created mechanisms to provide for the payment of "covered claims" under insurance contracts. These are intended "to avoid financial loss to claimants or because of the insolvency of a member insurer." Two of these are the Florida Insurance Guaranty Association and the Florida Workers' Compensation Insurance Guaranty Association.

¹Part Six, D.2., Florida Workers' Compensation Joint Underwriting Association Operations Manual.

²Id.

³In this context, banks refer to this type of letter of credit as a standby S:\ERIC\h0791.brcLOC. A standby LOC is an engagement by a bank or other person made at the request of a customer and of a kind that the issuer will honor drafts or other demands of payment upon compliance with the conditions specified in the LOC. Banks generally charge an issuance fee to the insured. The letter obligates the bank to pay the insurer upon the presentation of the draft drawn in accordance with terms of the credit and documents complying with the specifications in the credit.

To the extent a premium security deposit is not considered "premium," whether earned or unearned, then it would not be a "covered claim" under the Florida Insurance Guaranty Association Act and the Florida Workers' Compensation Insurance Guaranty Association Act. As such, an insured could not recover the amount of his or her deposit. To the extent a premium security deposit is considered unearned premium, an insured could have a covered claim and be able to recover from the guaranty funds. Under both acts, a "covered claim" is essentially an unpaid claim, including one of unearned premiums.⁴

Insurance Premium Tax

Insurers are subject to payment of a premium tax under s. 624.509, F.S. The tax is imposed on insurance premiums *received* during the preceding calendar year. Insurers may be eligible for various credits or deductions against the amount of the tax owed.

B. EFFECT OF PROPOSED CHANGES:

Insurers would be expressly authorized by law to accept and hold premium security deposits made by an insured under an insurance contract to provide commercial property and casualty lines coverage. The insurer would be authorized to pay interest of a variable or fixed amount.

Premium security deposits would be treated as a "covered claim" under the Florida Insurance Guaranty Fund and the Florida Workers' Compensation Insurance Guaranty Fund. Therefore, if an insurer became insolvent, the insured could recover the premium security deposit from the applicable guaranty fund.

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, the Department of Insurance does not project any regulatory changes.

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

No.

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

Yes, in the case of an insolvency, an insured would be entitled to recovery of the premium security deposit as a covered claim.

b. If an agency or program is eliminated or reduced: **Not Applicable**

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

⁴See s. 631.54(3), F.S. and s. 631.904(2), F.S. The definitions essentially are identical; only minor grammatical differences exist for the most part.

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

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

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?

Yes, in the event of an insolvency, an assessment is levied against insurers and those costs are passed along to the insured.

4. Individual Freedom:

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

Yes, insurers would be permitted to provide a premium security deposit directly through the insurer providing coverage, rather than through a third party, such as, a bank in the form of a letter of credit or security bond. Further, individuals and businesses would be able to select insurers based on the interest rate, if any, paid on premium security deposits.

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

No

5. Family Empowerment: **Not Applicable**

- a. If the bill purports to provide services to families or children:
 - (1) Who evaluates the family's needs?
 - (2) Who makes the decisions?
 - (3) Are private alternatives permitted?
 - (4) Are families required to participate in a program?
 - (5) Are families penalized for not participating in a program?
- b. Does the bill directly affect the legal rights and obligations between family members?
- 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?
 - (2) service providers?
 - (3) government employees/agencies?

D. STATUTE(S) AFFECTED:

Section 627.4045, s. 924.509, and ch. 631, F.S.

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & 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:

Under the bill, premium security deposits would not be considered "premium" for purposes of the insurance premium tax until used by the insurer to pay any earned premium obligation of the insured. Consequently, the bill should have no fiscal impact on state premium tax revenues.

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:

Permitting insurers to accept and hold security deposits and pay interest to the insured could have a minimal negative fiscal impact on financial institutions. For instance, if insurers choose to deposit funds with an insurer rather than submit a letter of credit, banks would lose associated fee revenues of an indeterminate amount. Further, to the extent that insurers offer to pay interest on premium security deposits, the insurer and their policy-holders will bear increased costs.

2. Direct Private Sector Benefits:

Insurers could be spared the expense associated with securing a bond or letter of credit in order to satisfy any requirements to post a security deposit. Also, in the case of an insolvency, the insured will benefit from premium security deposits being "covered claims."

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

None

D. **FISCAL COMMENTS:**

The Department of Insurance does not project any fiscal impact upon the state.

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:

The wording of that portion of the bill relating to the application of the insurance premium tax raises a technical drafting issue. Proposed section 627.4045(3) provides that a premium security deposit shall not be considered premium for purposes of the insurance premium tax, s. 624.509, F.S., until the deposit is "used" by the insurer to pay any earned premium obligation of the insurer. Premium taxes are imposed by law based on premium received. To clarify intent, the word "received" should be inserted following the word "premium" on page 1, line 29 of the bill. This would make the premium security deposit taxable as "premium received" under s. 624.509, F.S. when the insurer actually uses the deposit to pay an earned premium obligation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 22, 1999, the Committee on Insurance adopted the following amendment. On page 1, line 23, the amendment defines premium security deposits to apply to insurance contracts or agreements that provide property and casualty insurance, including worker's compensation and employer liability coverage. This amendment is traveling with the bill.

On March 29, 1999, the Business Regulation and Consumer Affairs Committee passed, without objection, two amendments that clarify the intent of the sponsor. The first amendment clarifies when a premium security deposit would become taxable under s. 624.509, F.S. The second amendment clarifies that this legislation would be limited to premium security deposits and will not impact premium financing, under parts XV and XVI of ch. 627, F.S. Both amendments are traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

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