

STORAGE NAME: h0021s1z.in

DATE: May 9, 2000

****FAILED TO PASS THE LEGISLATURE****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
FINAL ANALYSIS**

BILL #: CS/HB 21

RELATING TO: Premium security deposits

SPONSOR(S): Committee on Insurance and Representative Ogles

TIED BILL(S):

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

(1) INSURANCE YEAS 12 NAYS 0

(2)

(3)

(4)

(5)

I. SUMMARY:

Generally speaking, a security deposit is a form of collateral paid to ensure some later performance under an agreement or contract. For example, most landlords require tenants to pay a security deposit which is intended to ensure the tenant will meet the obligations of the lease. Similarly, some insurers require policyholders to pay a premium security deposit in instances where the total premium owed under the policy may not be known until a later date. Currently, Florida law does not expressly prohibit or authorize the use of premium security deposits.

Under this committee substitute, insurers would be expressly authorized by law to accept and hold premium security deposits made by a policyholder under commercial property and casualty insurance contracts, including workers' compensation insurance contracts. Insurers holding a premium security deposit would also be authorized to pay interest to the policyholder on the premium security deposit.

In addition, the committee substitute would require premium security deposits to 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.

According to the Department of Insurance, this committee substitute will have no fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Security Deposits Generally

Generally speaking, a security deposit is a form of collateral paid to ensure some later performance under an agreement or contract. For example, most landlords require tenants to pay a security deposit which is intended to ensure the tenant will meet the obligations of the lease.

Insurance Contracts

Insurance contracts are regulated under Part II of Chapter 627, F.S. Excluded from regulation under this part are the following: reinsurance, insurance policies not issued for delivery in this state, wet marine and transportation insurance, and credit life or credit life disability insurance.

Nothing under this part, or any other part of statute, expressly prohibits or authorizes the use of premium security deposits. 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 insureds 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 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.

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

² Id.

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 insureds 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.

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 an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of the applicable limits of an insurance policy.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

³ In this context, banks refer to this type of letter of credit as a standby LOC. 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.

⁴ The definitions of "covered claim" for the FIGA (s. 631.54(3), F.S.) and for the FWCIGA (s. 631.904(2), F.S.) are almost identical.

may be eligible for various credits or deductions against the amount the amount of the tax owed.

C. EFFECT OF PROPOSED CHANGES:

Insurers would be expressly authorized by law to accept and hold premium security deposits made by an insured under commercial property and casualty insurance contracts, including workers' compensation insurance contracts. The insurer would be authorized to pay interest to the insured on the premium security deposit of a variable or fixed amount.

The premium security deposit would not be considered premium received for purposes of s. 624.509, F.S. (premium tax), until the insurer uses the premium security deposit to pay an earned premium obligation.

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.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Permitting insurers to accept and hold security deposits on commercial property and casualty insurance contracts (including workers' compensation) and pay interest to the insured could have a minimal negative fiscal impact on financial institutions. For instance, if insureds choose to deposit funds with an insured rather than submit a letter of credit, banks would lose associated fee revenues of an indeterminate amount.

However, commercial property and casualty insureds (including workers' compensation insureds) 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.

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 committee substitute 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 committee substitute 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 committee substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

CS/HB 21 is similar to HB 791, 1st Engrossed, by Representative Dockery from the 1999 session, which passed the House. The only difference between CS/HB 21 and HB 791, 1st Engrossed, (1999) is that HB 791, 1st Engrossed, (1999) contained an additional provision which stated that the bill did not apply to Parts XV and XVI of Chapter 627 -- which relate to

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premium financing. In all other respects, CS/HB 21 and HB 791, 1st Engrossed, (1999) are identical.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On October 5, 1999, the Committee on Insurance adopted two amendments to HB 21 and voted to adopt the bill as a committee substitute, which is the basis for this analysis. The committee substitute differs from the original bill in that the committee substitute:

- narrows the bill's application to commercial property and casualty lines of insurance, including workers' compensation; and
- inserts the word "received" to specify that a premium security deposit is not "premium received" for premium tax purposes until the insurer uses the deposit to pay an earned premium obligation of the insured.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Robert E. Wolfe, Jr.

Stephen Hogge

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

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