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HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS

BILL #: CS/HB 551

RELATING TO: Insurance Policy Holder Protection

SPONSOR(S): Committee on Insurance and Representative Brown & others

TIED BILL(S):

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

(1) INSURANCE YEAS 15 NAYS 0
(2) FISCAL POLICY & RESOURCES
(3) COUNCIL FOR COMPETITIVE COMMERCE
(4)
(5)

I. SUMMARY:

The Florida Windstorm Underwriting Association (FWUA) and the Residential Property and Casualty Joint Underwriting Association (RPCJUA) are property insurers of last resort, one insuring against the peril of wind, the other against "all perils," (except wind in FWUA areas), respectively. As residual market insurers, they must refuse coverage to those with an offer of coverage in the voluntary market and charge rates generally higher than those in the voluntary market.

Eligibility for Coverage in the Residual Market

The bill would create an exception to the current requirement that the FWUA and the RPCJUA deny coverage to a policyholder receiving an offer of coverage in the voluntary market. They would not be allowed to refuse coverage if the policyholder's agent is "unable" or "unwilling" to be appointed by the insurer making the offer of coverage.

Agent Compensation

The bill also would change the way in which agents are compensated when a FWUA and RPCJUA risk is removed before policy issuance, during the first 30 days of coverage, or as part of a take-out plan. If a risk accepts coverage with a voluntary market insurer before policy issuance or during the first 30 days, that insurer would be required to pay the agent of record either the insurer's or the FWUA's usual and customary commission, whichever is greater, for the first year. As is now the case for policies removed from the RPCJUA under a take-out plan, if the policy is removed from the FWUA under a take-out plan, the agents also would be entitled by law to retain any unearned commission on the policy.

For the RPCJUA, the applicable agent commission would no longer be limited to that paid by the take-out insurer, but would be the greater of that rate and the rate paid by the RPCJUA, regardless of whether the policy is removed before policy issuance, during the first 30 days of coverage, or as part of a take-out plan. Agents also would be entitled by law to retain any unearned commission on the policy removed under a take out plan, regardless of whether or not the insurer is paid a bonus.

In addition, the insurer could appoint the agent to continue servicing the policy for one year. For both the FWUA and the RPCJUA, an agent "unwilling" or "unable" to accept the insurer's appointment offer would still be entitled to compensation for the first year based on the commission paid by the insurer or the residual market insurer, whichever is greater.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes [] No [X] N/A []

   Insurers removing policies from the FWUA before or after policy issuance would be required to pay agent commissions at a certain level and for a certain length of time.

2. Lower Taxes Yes [] No [] N/A [X]

3. Individual Freedom Yes [] No [] N/A [X]

4. Personal Responsibility Yes [] No [] N/A [X]

5. Family Empowerment Yes [] No [] N/A [X]

B. PRESENT SITUATION:

RESIDUAL MARKET PROPERTY INSURERS

FLORIDA WINDSTORM UNDERWRITING ASSOCIATION

In 1970, the Legislature created the Florida Windstorm Underwriting Association (FWUA) as an insurer of last resort to insure against the peril of wind. Eligibility is limited to those risks unable to secure coverage through a voluntary market insurer and located within certain designated geographic areas that are.

The typical FWUA policyholder has two property insurance policies: one for the peril of wind and hail issued through the FWUA, a second for “all other perils” (e.g., fire, theft) issued through either a voluntary market insurer or the Residential Property & Casualty Joint Underwriting Association (RPCJUA), and, if located within a flood zone, a third for the peril of flood issued through the federal flood insurance program.

According to the FWUA, as of December 31, 2001, the FWUA had 414,123 policies-in-force, representing nearly $98 billion in exposure (i.e., total insured value), with 65 percent of its policies and 64 percent of its exposure located in Broward, Dade, Monroe, and Palm Beach counties. The average annual expected loss is $294 million. The probable maximum loss for a 100-year event is $4.7 billion.

If premium and other financial resources are insufficient to pay losses, then the FWUA may levy assessments to cover the deficit. This includes “regular” assessments levied against voluntary market insurers on a market share basis (and passed on to all property insurance policyholders) and “emergency” assessments collected by insurers directly from these same policyholders.

The FWUA has implemented depopulation programs in an effort to reduce the number of policies, exposure and, ultimately, potential assessment liability of member insurers and non-FWUA policyholders. This may occur before policy issuance, during the policy term, or at renewal. When removed, the insurer assumes both the wind coverage and the underlying coverage for “all other

perils" issued through another insurer. The underlying coverage is then cancelled or nonrenewed. The insurer writing the underlying coverage loses the business.
In the FWUA's renewal "keep out" program, a voluntary market insurer selects policies for removal from the FWUA by that insurer when the policy comes up for renewal. Approximately 58,000 policies have been tagged for removal at renewal from the FWUA through this method. In a mid-term assumption, a voluntary market insurer selects policies for removal at anytime during the policy period. Nearly 78,000 policies have been removed from the FWUA through midterm assumptions.

Residential Property And Casualty Joint Underwriting Association

In 1993, the Legislature created the RPCJUA as the insurer of last resort for risks unable to obtain residential property insurance in the voluntary market from an authorized insurer at the insurer's approved rate. If offered coverage, the risk is not eligible for coverage through the RPCJUA.

In 1996, the RPCJUA became the second largest property insurer in the state and was seen by the Legislature as an "impediment to the restoration of a stable and competitive residential property insurance market."[1] As of December 31, 2001, the RPCJUA had 101,000 policies, representing exposures of nearly $17 billion, with 98 percent of its policies and 98 percent of its exposure located in Broward, Dade, Monroe, and Palm Beach counties.

Insurers are assessed to cover RPCJUA deficits, subject to the same limitations as insurers assessed to cover FWUA deficits.

The Legislature has authorized the RPCJUA to use financial incentives, including per policy take-out bonuses and credits against FWUA deficit assessments, to encourage voluntary market insurers to remove policies from the RPCJUA. According to the RPCJUA, over 1 million policies have been taken out of the RPCJUA; another 30,000 have been "kept out."

Agent Compensation

Generally

According to the Florida Association of Insurance Agents, the commission paid to agents varies widely among insurers, with the average generally between ten and fifteen percent of the premium amount. In the voluntary market, when an insurer or policyholder cancels a policy in mid-term, the agent retains commission only on the earned premium.[2] The agent must return any commission paid on unearned premium.

FWUA and RPCJUA

The FWUA pays agents a commission of 15 percent for commercial policies and 11 percent for residential policies. Commissions are paid at policy inception for the entire policy period and upon renewal.

Unlike the RPCJUA, the Legislature has made no special provision is made for compensating agents when policies they place into the FWUA are removed before policy issuance or within 30

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[1] Section 627. 3511(1), F.S. After substantial depopulation had occurrred, the Legislature removed this language in Chapter 2000-333.
[2] That part of the premium applicable to the expired portion of the policy term.

days of coverage or removed as a part of a take-out plan. However, FWUA practice has been for agents to retain this commission when a policy is removed mid-term.

The RPCJUA pays a commission of 12.5 percent for commercial policies and 10 percent for residential policies.

When a policy is removed from the RPCJUA as part of a take-out agreement in which the insurer is paid a take-out bonus, the agent of record is entitled by law to retain the unearned commission on the policy. In addition, the insurer is required to pay the agent the insurer's usual and customary commission, if the term of the policy is greater than six months, or 50 percent of that commission, if the term of the policy is six months or less. As an alternative, the insurer may offer to allow the agent to continue servicing the policy for one year and pay the agent the insurer's usual and customary commission. The agent does not have the option of being paid a commission at the RPCJUA rate.

C. EFFECT OF PROPOSED CHANGES:

Eligibility for Coverage in the Residual Market

The bill would create an exception to the current requirement that the FWUA and the RPCJUA deny coverage to a policyholder receiving an offer of coverage in the voluntary market. They would not be allowed to refuse coverage if the policyholder's agent is "unable" or "unwilling" to be appointed by the insurer making the offer of coverage. These terms are not defined in the bill. An agent "unable" to be appointed presumably would be one that has an exclusive relationship with a single insurer.

Agent Compensation

Under the bill, if a policy is removed from the FWUA by a voluntary market insurer other than the appointing insurer of the agent of record, that insurer would be required to pay the agent of record either the insurer's or the FWUA's usual and customary commission, whichever is greater. In addition, the insurer could appoint the agent to continue servicing the policy for one year. If unwilling or unable to accept the insurer's appointment offer, the agent would still be entitled to compensation based on the commission paid by the insurer or the FWUA, whichever is greater. If the policy is removed under a take-out plan, the agents also would be entitled by law to retain any unearned commission on the policy.

For the RPCJUA, the applicable agent commission would no longer be limited to that paid by the take-out insurer but would be the greater of that rate and the rate paid by the RPCJUA. In addition, the insurer could appoint the agent to continue servicing the policy for one year. If unwilling or unable to accept the insurer's appointment offer, the agent would still be entitled to compensation based on the commission paid by the insurer or the RPCJUA, whichever is greater.

Insurer compensation of agents for policies removed from the RPCJUA when the insurer is paid a take-out bonus also would be changed. When a policy placed in the RPCJUA by that agent is removed from the RPCJUA by a voluntary market insurer that is not an appointing insurer, the agent's commission would no longer be limited to that paid by the take-out insurer. Rather, it would be the commission paid by the assuming insurer or the commission paid by the RPCJUA, whichever is greater. In addition, the voluntary market insurer could appoint the agent to continue servicing the policy for one year. If unwilling or unable to accept the insurer's appointment offer, the agent would still be entitled to compensation based on the commission paid by the insurer or the RPCJUA, whichever is greater.

D. 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 GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Agents could be paid additional commission for policies removed from the RPCJUA or FWUA. They would no longer be limited to the commission rate paid by the RPCJUA or FWUA, but could be paid at the rate paid by the take-out insurer if greater than that paid by the RPCJUA or FWUA. This could increase insurer costs.

Policyholders in the FWUA and the RPCJUA could refuse offers of coverage from voluntary market insurers and remain in the FWUA and RPCJUA, if they could not retain their agent. This could inhibit the depopulation of the FWUA and the RPCJUA, to the extent any is now occurring, and maintain the current level of potential assessment liability for non-FWUA and non-RPCJUA policyholders to the extent that policyholders offered coverage by the voluntary market choose to remain based upon the agent retention provision proposed by the bill.

D. FISCAL COMMENTS:

None

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:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The Department would be given the authority to promulgate rules to implement the newly created s. 627.3517, F.S.

C. OTHER COMMENTS:

The timing of the choice provided in section 4 of the bill is not identified. Therefore, it is unclear whether this choice is exercised by policyholders at the time an insurer proposes to remove a policy or at the initial choice of agent when the risk is placed into the FWUA or RPCJUA.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 6, 2002, the Committee on Insurance adopted seven amendments and reported the bill favorably as a committee substitute.

The committee substitute differs from the original bill in that the committee substitute corrects technical and grammatical inconsistencies; restores FWUA and RPCJUA policyholder disqualification statements; limits the application of the agent compensation provisions to “producing” agents, rather than “new or producing” agents; revises the consumer choice provision in section 4 of the bill as follows: replaces the reference to “residual markets” with the more specific “insurance risk apportionment plans,” expressly applies the choice provision to licensed and appointed agents, and limits the agent compensation provisions to the FWUA and RPCJUA (rather than all joint underwriting or risk apportionment plans).

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:	Staff Director:
Stephen T. Hogge	Stephen T. Hogge