

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 636

SPONSOR: Senator Clary

SUBJECT: Insurance

DATE: April 22, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 636 repeals the provision allowing property and casualty insurers to utilize binding arbitration as to rate filing disputes with the Office of Insurance Regulation (OIR). Under current law, all such insurers authorized to do business in Florida are required to file their premium rates charged for property insurance with the OIR. When the OIR issues a notice of intent to disapprove a rate filing, the insurer may request binding arbitration of the rate filing under the Insurance Code, or alternatively, an administrative hearing under the Administrative Procedures Act. The effect of this bill is that disputes between the insurer and the OIR over a rate filing dispute would be conducted only through administrative litigation.

The revises the membership of the Florida Commission on Hurricane Loss Projection Methodology to allow certain members to name a designee, and removes an obsolete arbitration provision relating to the Florida Windstorm Underwriting Association.

This bill amends the following sections of the Florida Statutes: 627.351 and 627.0628.

This bill repeals the following section of the Florida Statutes: 627.062(6).

II. Present Situation:

Rate Filings and Arbitration

Florida’s insurance laws require insurers to file property and casualty insurance rates for approval with the Office of Insurance Regulation either 90 days before the proposed effective

date, or 30 days after the rate filing is implemented.¹ Under the latter option, however, the OIR may order the insurer to refund that portion of the rate determined to be excessive.

If the OIR disapproves a rate filing, the insurer may either request an administrative hearing under the Administrative Procedures Act (ch. 120, F.S., APA), or seek binding arbitration (s. 627.062(6), F.S.). Under the APA, a formal adversarial hearing is held before a State Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH). Once the hearing is completed, the ALJ has 30 days to issue a decision, termed a Recommended Order, to the head of OIR for final review. Representatives with DOAH state that the average time it takes for a case (which is referred by an agency to DOAH until the issuance for a Recommended Order) is estimated to be 3 ½ months.

The Recommended Order contains findings of fact and conclusions of law as found by the ALJ. In turn, the OIR has 90 days to issue a Final Order, and that order may adopt or reject the ALJ's Recommended Order, or modify the conclusions of law contained in the Recommended Order. However, in the Final Order the OIR may not substitute findings of fact contained in the Recommended Order, which were supported by competent substantial evidence. A party may then appeal the OIR's Final Order to the First District Court of Appeal, which may take a year or more to render its final decision.

In 1996, the Legislature amended the property insurance law to allow an insurance company to elect binding arbitration of a rate filing in lieu of filing for review under the Administrative Procedure Act (APA) pursuant to chapter 120, F.S., (Ch. 96-194, Laws of Florida, amending s. 627.062(6), F.S.). Under the arbitration provision, after the OIR issues a notice of intent to disapprove a rate filing, the insurer may, instead of demanding an administrative hearing, request arbitration before a panel of three arbitrators. The panel is chosen as follows: one is selected by the insurer, one by the OIR, and the third is 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. The procedures outlined in the Arbitration Code (chapter 682, F.S.) are applied to rate arbitration and the costs of arbitration are paid by the insurer. The decision of the panel constitutes the final approval of a rate filing.

Either party to the arbitration proceeding may apply to the circuit court to vacate or modify the panel's 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 OIR under the APA or any other law;

¹ Effective January 7, 2003, the Department of Insurance was transferred to the Dept. of Financial Services and to the Office of Insurance Regulation (ch. 2002.404, L.O.F. ("the 2002 act"). CS/CS/SB 1712 makes changes to the Insurance Code to conform to the Act.

Under s. 627.062, F.S., a filing is considered a "file and use" filing if it is made at least 90 days before the proposed effective date. It is termed a "use and file" filing if rates are filed no later than 30 days after the effective date. The OIR may disapprove a rate filing if it determines such rates to be "excessive, inadequate, or unfairly discriminatory." In making its decision, the OIR 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. Prior to approving or disapproving a rate filing, the OIR may request additional supporting information for the filing from the insurer.

however, these rights are restored to the insurer if the arbitrators fail to act within 90 days after initiation of arbitration.

Since the inception of the arbitration provision, thirteen insurance companies, including the Florida Windstorm Underwriting Assn. (FWUA) have requested arbitration.² The Table below features the requested rate change and the final decision by the arbitration panel from May 1997 through April 21, 2003.

ARBITRATED RATE FILINGS

<u>COMPANY NAMES</u>	<u>FILING RECEIVED</u>	<u>REQUESTED RATE CHANGE</u>	<u>ARBITRATION DECISION</u>	<u>RATE RANGE</u> <u>+++</u> <u>(High / Low)</u>	<u>COUNTY</u> <u>(High - Low)</u>
State Farm Fire & Casualty	5-May-97	25.60%	25.60%	31.1% / -1.6%	Monroe - Santa Rosa
Continental Ins. Group (CNA)	14-Aug-97	28.10%	Remand filing to Department	N/A	N/A
USAA	2-Sep-97	19.40%	14.80%	23.2% / 1.7%	Palm Bch - Bradford
FWUA	25-Aug-97	61%*	12.00%	30.6% / -37.6%	Dade - Nassau
Nationwide Ins. Co. of Florida	17-Dec-98	29%	18%	23.3% / -1.9%	Dade - Glades
First Floridian	21-Jun-99	17.20%	11.80%	23.4% / 0.2%	Glades - Alachua
FWUA	3-May-99	95.9%**	95.9%**	241.8% / -22.4%	St. Lucie - Levy
USAA	1-Nov-99	16.60%	7.70%	32.7% / -9.2%	Monroe - Flagler
State Farm Florida Cypress(Homeowners Program)	7-Oct-99	7% ++	7% ++	19.9% / -2.6%	St. Lucie - Monroe
Cypress(Dwelling)	8-Feb-00	12.02%	0%	N/A	N/A
Cypress(Dwelling)	8-Feb-00	14.03%	0%	N/A	N/A
State Farm Florida	9-Apr-02	22.3%	22.3% +	49.9% / -5.0%	Martin - Lafayette Palm Bch - Madison
Liberty American	25-May-02	24.4%	12.5%	25.1% / 0.0%	

Source: Office of Insurance Regulation (Data as of 4/21/03)

* This rate change was to be implemented over three years.

** Rate filing to be implemented with caps of 20% and 30% for years 1-2. Citizens was later restricted to no more than 10% increase above 2001 rates. Changes shown are for homeowners (HO3) only.

+ Arbitration ruled in State Farm's favor, decision establishes annual caps for individual policyholders at 42% increase per year.

++ Arbitration ruled in State Farm's favor, State Farm replaced this filing with FCP 01-1745, which was not contested and was approved.

+++ Average Rate Change by County

According to representatives with the OIR, it reviews and takes action on over 3,000 property and casualty filings annually. Of that number, the OIR has disapproved 103 filings which have a rate impact. Of the 103 disapprovals, 13 cases have gone to arbitration and although that is a small number, those companies represent the largest insurers in terms of market share in the state.

² Four of the nine entities have requested arbitration more than once.

Insurance companies often prefer arbitration over administrative hearings because it takes much less time for a rate decision to be rendered by the panel, is more efficient and cost-effective. Industry representatives claim that with arbitration, they can expect a resolution of a rate dispute within 90 days, as opposed to many months to a year or more (if there is an appeal), in administrative litigation. Also, an insurer choosing arbitration has the opportunity to appoint an arbitrator familiar with rate-making and the insurance industry, generally. By contrast, an administrative law judge hear a variety of cases and often have no background in insurance.

Proponents of the bill argue that the final rate decision should rest with the head of the OIR, who can take into account the interests of consumers when making rating decisions.

The Florida Commission on Hurricane Loss Methodology

In 1995, the Florida Legislature created the Florida Commission on Hurricane Loss Methodology which, according to the Legislative intent language, is to be comprised of a “panel of experts to provide the most actuarially sophisticated guidelines and standards for projection of hurricane losses possible, given the current state of actuarial science.³ Currently, the Commission is composed of 11 members representing a wide range of experts in the field of hurricane loss methodologies.

The Citizens Property Insurance Corporation

Last year, the Legislature changed the structure of the two state-created residual market associations which provided property insurance to persons unable to obtain coverage and merged them into a single entity named the “Citizens Property Insurance Corporation” (corporation), effective July 1, 2002.⁴ In effect, the policies, obligations and liabilities of the Florida Residential Property and Casualty Joint Underwriting Association (JUA) became those of the corporation and the policies, obligations, and liabilities of the Florida Windstorm Underwriting Association (FWUA) were transferred to the corporation. It currently operates under a 7-member Board of Governors and issues personal residential and commercial residential full coverage, all perils policies on a statewide basis (excluding FWUA eligible areas) and offers wind-only coverage for personal residential, commercial residential, and commercial nonresidential risks in current FWUA-eligible areas.

The legislation creating the corporation also removed the arbitration provision so that the corporation must administratively litigate rate disputes with the OIR. However, an arbitration provision under the windstorm insurance risk apportionment provision s. 627.351(2), F.S.) was not repealed.

³ S. 627.0628, F.S. (ch. 1995-276, L.O.F.)

⁴ Ch. 2002-240, L.O.F.

III. Effect of Proposed Changes:

Section 1. Repeals subsection (6) of s. 627.062, F.S., which allows insurers to submit rate-filing disputes with the OIR to binding arbitration. The effect of this provision is that insurers would have to pursue administrative litigation to settle such disputes.

Section 2. Amends s. 627.351(2), relating to the former Windstorm Underwriting Association to delete the arbitration provision. This provision is now obsolete since the windstorm risk apportionment plan became part of the Florida Citizens Property Insurance Corporation during last legislative session.

Section 3. Amends s. 627.0628, F.S., to clarify appointments and provide for designees to the Florida Commission on Hurricane Loss Projection Methodology. It provides that the insurance consumer advocate, “or the consumer advocate’s designee” shall be a member of the commission; clarifies that the executive director of Citizens Property Insurance Corporation shall be a member, as opposed to the director of the Residential Property and Casualty Joint Underwriting Commission; and that the Director of the Division of Emergency Management of the Department of Community Affairs, or the “director’s designee” shall be a member of the commission.

Section 4. Provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Based on the assumption that an arbitration panel is more likely to grant a rate increase, or that such a rate increase would be approved more quickly, the bill would have the effect of reducing the impact of rate increases for property and casualty policyholders. Conversely, insurers would be less likely or able to obtain what they consider to be adequate rates or to obtain a quick resolution of a rate filing. This could have a

detrimental impact on consumers by reducing the availability of coverage if insurers are less willing or able to write new policies.

C. Government Sector Impact:

The Division of Administrative Hearings would possibly hear more rate filings disputes should this bill be enacted into law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
