

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1687 w/CS Insurers (Public Adjusters; Division of Rehabilitation and Liquidation)
SPONSOR(S): Bogdanoff
TIED BILLS: None **IDEN./SIM. BILLS:** SB 3024

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (Sub)	11 Y, 0 N	Tinney	Cooper
2) Insurance	13 Y, 0 N w/CS	Tinney	Cooper
3) Judiciary			
4) Finance & Tax			
5) Commerce & Local Affairs Approp. (Sub)			
6) Appropriations			

SUMMARY ANALYSIS

The bill amends provisions of law governing public adjusters. Specifically, a public adjuster is prohibited from representing a third party claimant and may not negotiate or help to settle a claim involving extra-contractual damages, unfair claims violations, tort claims, statutory interests, costs, or attorney fees. A public adjuster is required to provide to the insurer and its representatives reasonable access both to the insured and the insured property. A public adjuster also must ensure that any contractor or other licensed professional that participates in repairs to the insured's property is properly licensed by the Department of Business and Professional Regulation.

Section 626.321, F.S., relating to limited insurer licenses is amended. Under the bill, a car rental company that offers standard optional car rental insurance is authorized to obtain a limited license as a single entity, rather than requiring each branch office to apply for a separate license. The law also is amended to clarify that part-time car rental company employees, in addition to full-time employees, are authorized to offer customers the standard car rental insurance package.

The bill also amends and revises various sections of chapter 631, F.S., relating to insurer insolvency, rehabilitation, and receivership. All receiverships in Florida are required by the bill to be filed in the Second Judicial Circuit in Leon County. Alleged breaches of contract or other disputes arising in receivership cases are subject to arbitration before proceeding to court. Certain liens or transfers occurring between 4 months and 1 year of a company entering receivership will be void if the lien or transfers inures to specified employees or affiliates of the affected insurance company.

Credit disability insurance is exempted by the bill from the pro rata gross unearned premium reserve requirement. The bill authorizes a morbidity reserve for single premium disability insurance in lieu of an unearned premium reserve. The Department of Financial Services (DFS) is authorized to adopt new mortality tables approved by the National Association of Insurance Commissioners (NAIC) to value credit life policies. DFS also is authorized to adopt new mortality tables, approved by NAIC, for ordinary life policies, total and permanent disability policies, accidental death benefits, individual annuity and pure endowment policies, and group annuity and pure endowment policies.

The bill takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1687b.in.doc
DATE: April 13, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Public Adjuster Background

Part III, chapter 624, F.S., a portion of the Florida Insurance Code, contains the general requirements an insurer must follow to receive a certificate of authority to transact business in Florida. The Department of Financial Services (DFS) and the Financial Services Commission regulate the insurance industry in Florida. Chapter 626, F.S., regulates insurance field representatives and operations. Part VI of the chapter governs insurance adjusters.

The law recognizes various types of adjusters, including public adjusters, independent adjusters, company-employee adjusters, and catastrophe or emergency adjusters. Nonresident adjusters of each type also are recognized and regulated by the Office of Insurance Regulation (OIR) of the Financial Services Commission.

The law, in s. 626.854, F.S., defines a public adjuster as any person, except a licensed attorney, who prepares or files an insurance claim for an insured or third-party claimant. Similarly, the law recognizes that a public adjuster represents an insured or third-party claimant in negotiations with the insured's insurance provider with the goal of settling a claim. A public adjuster is hired and paid by the insured to act on his or her behalf.

Changes Proposed by the Bill Relating to Public Adjusters

Limits in addition to those already prescribed by law are imposed by the bill on the activities of public adjusters. A public adjuster is prohibited from representing an injured party regarding issues relating to damages, tort claims, statutory interest, costs, attorney fees, and other matters not covered by the affected person's insurance policy. A public adjuster is required by the bill to provide reasonable access to the insured and his or her property to the insurer and its representatives. The bill also requires a public adjuster to ensure that any professional hired to repair or modify a structure is properly licensed by the Department of Business and Professional Regulation.

Insurer Accounting, Investment, and Deposit Requirements

Chapter 625, F.S., of the Florida Insurance Code governs the accounting methods, investments, and deposits of insurers. Credit disability insurance is exempted by the bill from the pro rata gross unearned premium reserve requirement. Section 625.131, F.S., relating to the special reserve bases for credit life and disability policies is repealed; the provisions of the repealed section are added to s. 625.081, F.S. The bill authorizes a morbidity reserve for single premium disability insurance in lieu of an unearned premium reserve. DFS is authorized to adopt new mortality tables approved by the National Association of Insurance Commissioners (NAIC) to value credit life policies. DFS also is authorized to adopt new mortality tables, approved by NAIC, for ordinary life policies, total and permanent disability policies, accidental death benefits, individual annuity and pure endowment policies, and group annuity and pure endowment policies.

Insurance Field Representatives and Operations

Section 626.321, F.S., relating to limited insurer licenses, is amended. Under the bill, a car rental company that offers standard optional car rental insurance is authorized to obtain a limited license as a single entity, rather than requiring each branch office to apply for a separate license. The law also is amended to clarify that part-time car rental company employees, in addition to full-time employees, are authorized to offer customers the standard car rental insurance package.

Insurance Rehabilitation and Receivership: Background

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. OIR oversees active insurance companies and monitors their financial health. Federal law specifies that insurance companies cannot file for bankruptcy. Instead, they are either "rehabilitated" or "liquidated" by the Division of Rehabilitation and Liquidation (the Division) of DFS.

By law, a delinquency proceeding is initiated by the Division against any insurer believed to be insolvent or experiencing an impairment of its capital reserves or surpluses. A delinquency proceeding may include liquidation, rehabilitation, reorganization, or conservancy. Staff of the Division indicates that rehabilitation and liquidation are the two most common delinquency proceedings. By law, the Division of Rehabilitation and Liquidation files all delinquency proceedings in the Circuit Court in Leon County.

In a rehabilitation, the Division attempts to correct the problems that are threatening the assets and cash reserves of an insurer. If the Division is successful, the affected company will emerge from the process able to continue operating as an insurance company. If the problems facing an insurance company cannot be addressed adequately, the Division orders the company to liquidate its assets in order to settle outstanding claims. At the end of the liquidation process, generally there are no assets remaining with which to operate the insurance company, so it ceases to exist.

The Division administers the receivership estates. By law, for the most part, all receivership expenses are paid for out of the assets of the receivership estates, rather than from state funds. Once the Division is appointed "Receiver" by the court, the Division, in effect, acts as the insurance company. The Receiver takes possession of all of the assets of the company and has the power to hire outside attorneys, accountants, and other experts to audit the accounts and policies of the impaired insurer. The court must approve the use of any company funds to hire professionals to aid in the receivership process.

The law states the primary purposes of insurer rehabilitation and liquidation are to apportion equitably any unavoidable losses and to maximize the recovery of assets for the benefit of policyholders, creditors, the public, and other claimants against the receivership estate.

Once the Division successfully places an insurer into receivership, staff and any contractors hired by the Division spend their time marshalling the assets of the company and paying claims. Marshalling the assets includes selling real property and other assets of the company and prosecuting lawsuits against, for example, negligent actuaries, auditors, and company directors and officers. The Division also collects any reinsurance that is due because such reinsurance generally is one of a company's largest assets.

Staff of the Division indicate that receivership can be a long-term process since it includes sending out "proof of claims," analyzing the claims, litigating objections to the Division's analysis of the claims, among other similar duties. The entire liquidation process can last 10 years or longer.

Changes Proposed by the Bill Relating to Rehabilitation and Receivership

Section 631.021(6), F.S., is amended to specify that all Florida insurance receiverships are to be filed in the Second Judicial Circuit in Leon County. Section 631.041, F.S., is amended to provide for damages, including costs and attorney fees, for injuries caused by any willful violation of an applicable stay or injunction. Currently, the law provides for an automatic stay to protect the insolvent insurance company when it is placed into receivership. In other words, when a company is placed in receivership, all lawsuits against the company are put on hold. According to the Division, occasionally creditors ignore the stay and file actions outside the Second Judicial Circuit in an effort to avoid the stay. The Division, acting as the Receiver, is forced to appear in these actions, thus incurring costs that further deplete receivership assets. Although DFS reports it is generally able to successfully end those cases, costs incurred are paid from receivership assets. The expenditure of receivership assets to appear in actions filed outside of Leon County results in less money available to distribute to the creditors and policyholders. This amendment adds a penalty for those individuals who choose to willfully violate the automatic stay.

Section 631.0515, F.S., is amended to clarify that a managing general agent or holding company with a controlling interest in a Florida domestic insurer is subject to jurisdiction of the court under the provisions of s. 631.025, F.S. DFS explains this change will grant the court jurisdiction over "shell corporations" that are created to shelter the assets of insurance companies. DFS reports the intervention of shell corporations into receivership matters has been an increasing problem over the past several years. The Division indicates that any asset a shell corporation is able to remove from the pool of available assets may lead to a depletion of the assets so that fewer assets are available to settle the legitimate debts and claims outstanding once an insurer is in receivership.

Section 631.141(7)(a), F.S., is amended to clarify that the expenses of the Receiver in connection with a delinquency proceeding are administrative expenses and are recoverable by the Receiver in any action in which the Receiver is authorized to recover its expenses.

Section 631.205, F.S., is amended to specify that an order of conservation, rehabilitation, or receivership may not be considered an anticipatory breach of a reinsurance contract. The Division reports that some reinsurers require provisions in reinsurance contracts stating the placement of an insurance company into receivership violates the contract. The changes proposed by the bill clarify that the entry of an order of conservation, rehabilitation, or liquidation is not sufficient grounds for voiding the contract.

Section 631.206, F.S., is created to limit arbitration clauses relating to insurance companies in rehabilitation or liquidation. The changes govern the rules by which the arbitration process takes place, ensuring that the process is fair to both the insurance company in receivership and the other affected parties.

Section 631.261, F.S., is amended to specify that any transfer of or lien upon an insurer that is made between 4 months and 1 year before the commencement of a delinquency proceeding is void if the transfer or lien benefited a director, officer, employee, stockholder, or other similar affiliate of the affected insurer. The law is further amended to specify that a "transfer" does not actually take place until the insurer or affiliate actually acquires rights in the property that is transferred. DFS reports the timing of a transfer is important in determining whether it may be voided by the Receiver. Other sections of law also are amended to conform to the changes governing a transfer and lien.

C. SECTION DIRECTORY:

Section 1 amends s. 626.321, F.S., to limit the types of business that may be transacted by a personal lines licensee.

Section 2 amends s. 626.854, F.S., relating to the regulation of public adjusters.

Section 3 amends s. 631.021(6), F.S., to give the receivership court exclusive jurisdiction with respect to assets or property of any insurer subject to rehabilitation or liquidation, and of claims against the insurer's assets or property

Section 4 amends s. 631.041, F.S., to provide for damages, including costs and attorneys' fees, for injuries caused by any willful violation of an applicable stay or injunction.

Section 5 amends s. 631.0515, F.S., to clarify that a managing general agent or holding company with a controlling interest in a Florida domestic insurer is subject to jurisdiction of the court under the provisions of s. 631.025, F.S.

Section 6 amends s. 631.141(7)(a), F.S., to clarify that the expenses of the Receiver in connection with a delinquency proceeding are administrative expenses and are recoverable by the Receiver in any action in which the Receiver is authorized to recover its expenses.

Section 7 amends s. 631.205, F.S., to clarify that the entry of an order of conservation, rehabilitation, or liquidation is not sufficient grounds for voiding a reinsurance contract.

Section 8 creates s. 631.206, F.S., to specify the conditions under which arbitration relating to insurance companies in rehabilitation or liquidation may operate.

Section 9 amends s. 631.261, F.S., to remove the "intent" element of the current statute. The amendment states that a "transfer" does not actually take place until the insurer or affiliate actually acquires rights in the property that is transferred.

Section 10 amends s. 631.262(2)(e), F.S., to conform to the changes governing a transfer and determining whether it may be voided.

Section 11 amends s. 631.263(6), F.S., to conform to the changes governing a transfer and determining whether it may be voided.

Section 12 amends s. 625.081, F.S., relating to reserves required for health insurance.

Section 13 amends s. 625.121, F.S., relating to the standard valuation of life insurance.

Section 14 repeals s. 625.131, F.S., specifying the special reserve bases for credit life and disability policies. The provisions of that law are amended into s. 625.121, F.S.

Section 15 provides that the bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The Division reports that the changes made by the bill are primarily administrative and, therefore, can be implemented within current resources.

2. Expenditures:

DFS reports that the proposed amendments to ss. 631.0515, 631.147(7), and 631.205, F.S., are clarifications of existing practice and are not anticipated to have any fiscal impact on state government, local government, or the private sector.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None. DFS reports it has sufficient rulemaking authority under current law to adopt any rules necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 1, 2004, the Committee on Insurance passed the bill with a CS amendment. Provisions in Section 1 of the bill regulating Public Adjusters are changed. Many of the bill's original provisions regulating public adjusters are repealed. Rather, public adjusters now are limited to representing only claimants who have claims against their own insurers. Some activities of public adjusters continue to be limited. As part of the existing prohibition on the practice of law by public adjusters, they are not be able to act on behalf of a claimant with respect to damages outside of the scope of the insurance policy, unfair claims practices violations, tort claims, or statutory interest, costs, or fees. Public adjusters are required to ensure that contractors and other professionals hired for repairs are properly licensed. The former provisions requiring public adjusters to provide information to a client's insurance company are removed. The requirements for a public adjuster to disclose any relationship with a contractor or other service provider recommended by the adjuster also are deleted.

HB 1687 w/CS adds s. 625.081, F.S., relating to accounting, investments, and deposits by insurers to the bill as filed. Credit disability insurance is exempt from the pro rata gross unearned premium reserve requirement. Section 625.131, F.S., relating to the special reserve bases for credit life and disability policies, is repealed. The provisions of that section are added elsewhere in the bill. A morbidity reserve for single premium disability

insurance in lieu of an unearned premium reserve is allowed. DFS is authorized to adopt new mortality tables approved by the National Association of Insurance Commissioners (NAIC) to value credit life policies. DFS also is authorized to adopt new mortality tables, approved by NAIC, for ordinary life policies, total and permanent disability policies, accidental death benefits, individual annuity and pure endowment policies, and for group annuity and pure endowment policies.

Section 626.321, F.S., relating to limited insurer licenses is added to the bill. A car rental company that offers standard optional car rental insurance is allowed to obtain a limited license as a single entity, rather than requiring each branch office to apply for a separate license. Part-time car rental company employees, in addition to full-time employees, are allowed to offer customers the standard car rental insurance package.

Provisions of the bill relating to the rehabilitation and liquidation of insurance companies also are changed. The creation of the Closed Estate Account to be administered by the Division of Rehabilitation and Liquidation of the Department of Financial Services is deleted from HB 1687 w/CS. This means that any monies collected after an insurance company has completed the receivership process still ultimately benefit public schools through transfer into the State Schools Trust Fund.