

CHAMBER ACTION

1 The Commerce Council recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to hurricane deductibles; providing
7 legislative findings and intent; providing a definition;
8 providing for the Department of Financial Services to
9 reimburse policyholders of residential property insurance
10 for multiple deductibles applied by insurers for two or
11 more hurricanes; establishing criteria for policyholders
12 to be eligible for reimbursements; requiring applications
13 to be submitted to the department, including certain
14 information; limiting the maximum amount of
15 reimbursements; limiting total reimbursements to the
16 amount appropriated for this purpose; providing
17 reimbursement criteria for the department under certain
18 circumstances; requiring insurers to provide certain
19 information to the department relating to claims for
20 reimbursement, subject to policyholders' authorization;
21 authorizing the department to contract with third parties
22 for investigation or adjustment of claims for
23 reimbursement; requiring insurers to mail notices to

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24 | certain policyholders of the reimbursement procedures;
25 | authorizing the department to adopt certain rules;
26 | providing legislative intent; providing that applications
27 | for reimbursements shall be insurance claims for purposes
28 | of determining insurance fraud; prohibiting insurers from
29 | changing methods of waiving or applying deductibles due to
30 | the provisions of law providing for reimbursement to
31 | policyholders; requiring the Office of Insurance
32 | Regulation to collect data from insurers regarding the
33 | application of multiple deductibles; amending s. 627.701,
34 | F.S.; requiring that hurricane deductibles of residential
35 | property insurance policies be applied on an annual basis
36 | to all hurricane losses that occur during the calendar
37 | year; allowing insurers to apply an alternative deductible
38 | to subsequent hurricane losses after the annual deductible
39 | is met; providing for calculations of hurricane
40 | deductibles for new or renewed policies; allowing insurers
41 | to require policyholders to report hurricane losses or to
42 | maintain receipts or records in order to apply hurricane
43 | losses to subsequent hurricane claims; providing
44 | applicability; providing appropriations for certain
45 | purposes; providing for reversion of certain unexpended
46 | moneys; requiring the Chief Financial Officer to report to
47 | certain entities certain multiple hurricane deductible
48 | reimbursement information; requiring the State Board of
49 | Administration to increase future premiums to the Florida
50 | Hurricane Catastrophe Fund; providing construction;
51 | providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Legislative findings and intent.--The Legislature finds that the four hurricanes striking Florida in 2004 resulted in at least 30,000 residential property insurance policyholders experiencing damage from two or more hurricanes for which insurers have applied the hurricane deductible to each hurricane claim. The fact that policyholders have separate hurricane deductibles can result in significant out-of-pocket expense and financial hardship to policyholders. Although insurers are required by law to notify policyholders that the hurricane deductible can result in a large out-of-pocket expense, it was not anticipated that a policyholder would have damage from two or more hurricanes in the same year and be forced to meet two or more deductibles in this circumstance. The Legislature further finds that the public health, safety, and welfare demand that residential structures damaged or destroyed in a catastrophe be repaired or reconstructed as soon as possible and that application of multiple deductibles delays or prevents such reconstruction, hinders the economic recovery of the state and its citizens, and endangers the public health, safety, and welfare. Therefore, state action to establish a program to reimburse policyholders for the financial loss suffered due to the application of multiple hurricane deductibles constitutes a valid and necessary public and governmental purpose. The Legislature intends to establish a

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79 program to reimburse policyholders for such losses, up to
80 specified limits.

81 Section 2. Reimbursement for multiple hurricane
82 deductibles.--

83 (1) For the purposes of this section, "residential
84 property insurance" means residential coverage as described in
85 s. 627.4025(1), Florida Statutes.

86 (2) The Department of Financial Services shall reimburse
87 policyholders of residential property insurance whose property
88 was damaged by two or more hurricanes in 2004 and whose insurer
89 applied more than one hurricane deductible to the insurance
90 claims. The reimbursement shall be the amount of the claim that
91 was not paid due to application of the second or subsequent
92 deductible, as further limited by this section.

93 (3) To be eligible for reimbursement, a policyholder must
94 meet the criteria of subsection (2) and must:

95 (a) Apply to the department by March 1, 2005, on a form
96 provided by the department. The form shall identify the amount
97 of the claims paid by the insurer, per hurricane, the amount of
98 the deductible that was applied to each claim, and such
99 additional information as the department may require to verify
100 the claim for reimbursement, including documentation from the
101 insurer. The applicant must submit documentation from the
102 insurer that the insurance claim was not paid, in full or in
103 part, due to application of the deductible.

104 (b) Have incurred damages in excess of the full amount of
105 a single hurricane deductible.

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106 (c) Meet a \$100 deductible for a second and each
107 subsequent hurricane claim in addition to the amount of the
108 deductible which must be met under paragraph (b).

109 (d) Provide written authorization for the department to
110 obtain information from the policyholder's insurer related to
111 the claim for reimbursement.

112 (4)(a) Reimbursement may be provided only for damages that
113 would have been paid under the policy but for application of the
114 deductible. The maximum reimbursement shall be limited to the
115 amount of the policyholder's loss in excess of one full
116 deductible, but not more than \$10,000 per policy for damage
117 caused by two hurricanes, not more than \$20,000 per policy for
118 damage caused by three or more hurricanes, except as otherwise
119 provided in this subsection.

120 (b) For a policy issued to a condominium association, the
121 maximum reimbursement shall be limited to an amount equal to
122 \$3,000 multiplied by the number of condominium units, or the
123 maximum amount specified in paragraph (a) or paragraph (c),
124 whichever is greater.

125 (c) If more than one residential structure is insured
126 under the policy and a separate hurricane deductible applies to
127 each residential structure, the maximum reimbursement shall be
128 limited to \$10,000 per structure for multiple hurricane claims
129 for that structure.

130 (d) Reimbursement may not be paid for loss amounts for
131 which the policyholder has received a grant from the Federal
132 Emergency Management Agency or any other federal, state, county,
133 or municipal agency or program. Reimbursement may not be paid to

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134 a condominium association for loss amounts for which the
135 condominium association has assessed unit owners and for which
136 the unit owners have insurance coverage for the assessment.

137 (5) The total amount of funds paid to policyholders
138 pursuant to this section is limited to the amount appropriated
139 for this purpose. Payments shall be made to eligible applicants
140 in the following order of priority:

141 (a) The department shall first reimburse policyholders who
142 received claims payments from their insurer for two or more
143 hurricanes for which each payment was reduced by the full amount
144 of the deductible.

145 (b) After reimbursing all policyholders who meet the
146 criteria of paragraph (a), the department shall reimburse all
147 other eligible policyholders. If the amount appropriated for
148 this purpose is not adequate to pay all other eligible
149 policyholders up to the maximum reimbursement amounts, the
150 department shall provide reimbursement on a pro rata basis so
151 that each policyholder receives an equal percentage of the
152 amount of the reimbursement claim that is approved.

153 (6) The insurer issuing the policy to the applicant for
154 reimbursement shall provide to the department, upon request,
155 such information in the applicant's claim file that would assist
156 the department in determining the validity and reasonableness of
157 the claim, subject to the policyholder's authorization to
158 release such information. The department may further investigate
159 or adjust the claim as the department determines is necessary
160 and may contract with third parties for this purpose.

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161 (7) Insurers shall mail notice to those residential
162 property insurance policyholders who filed claims with the
163 insurer for two or more hurricanes in 2004 and to whom the
164 insurer applied more than one hurricane deductible, whether
165 there was a claims payment or not. The notice shall be on a form
166 provided by the department informing the policyholder of the
167 reimbursement program established by this section and the
168 procedures for seeking reimbursement, including the application
169 form provided by the department. The notice shall be mailed in
170 such manner and within such time as specified by the department.
171 For subsequent claims, the insurer shall provide the notice at
172 the time that the insurer notifies the policyholder of the
173 application of the second deductible.

174 (8) The department may adopt rules to implement this
175 section. It is the Legislature's intent that the department
176 implement this section as soon as possible in order to provide
177 immediate relief to affected policyholders. Therefore, the
178 department may adopt such rules pursuant to the emergency rule
179 procedures of s. 120.54(4), Florida Statutes.

180 (9) Applications for reimbursement shall be considered
181 submitting an insurance claim for purposes of determining
182 whether a person has committed insurance fraud pursuant to s.
183 817.234, Florida Statutes. The Department of Financial Services
184 and the department's Division of Insurance Fraud shall have such
185 powers to investigate and enforce such actions as provided in s.
186 626.989, Florida Statutes.

187 (10) It is a violation of the Insurance Code for an
188 insurer to change its method of determining whether to waive or

189 apply multiple hurricane deductibles to multiple claims due to
 190 the provisions of this section.

191 (11) The Office of Insurance Regulation shall collect data
 192 from residential property insurers regarding the number of
 193 claims that were filed by policyholders for two or more
 194 hurricanes for the 2004 hurricane season, the number of those
 195 claims for which the insurer applied two or more deductibles,
 196 including the dollar amount of those claims, and such additional
 197 related information as the department may require.

198 Section 3. Subsections (5), (6), (7), and (8) of section
 199 627.701, Florida Statutes, are renumbered as subsections (6),
 200 (7), (8), and (9), respectively, and a new subsection (5) is
 201 added to said section to read:

202 627.701 Liability of insureds; coinsurance; deductibles.--

203 (5) The hurricane deductible of any residential property
 204 insurance policy shall be applied as follows:

205 (a) The hurricane deductible shall apply on an annual
 206 basis to all covered hurricane losses that occur during the
 207 calendar year for losses that are covered under one or more
 208 policies issued by the same insurer or an insurer in the same
 209 insurer group.

210 (b) If a hurricane deductible applies separately to each
 211 of one or more structures insured under a single policy, the
 212 requirements of this subsection apply with respect to the
 213 deductible for each structure.

214 (c) If there was a hurricane loss for a prior hurricane or
 215 hurricanes during the calendar year, the insurer may apply a
 216 deductible to a subsequent hurricane that is the greater of the

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217 remaining amount of the hurricane deductible or the amount of
 218 the deductible that applies to perils other than a hurricane.
 219 Insurers may require policyholders to report hurricane losses
 220 that are below the hurricane deductible or to maintain receipts
 221 or other records of such hurricane losses in order to apply such
 222 losses to subsequent hurricane claims.

223 (d) If there are hurricane losses in a calendar year on
 224 more than one policy issued by the same insurer or an insurer in
 225 the same insurer group, the hurricane deductible shall be the
 226 highest amount stated in any one of the policies. If a
 227 policyholder who had a hurricane loss under the prior policy is
 228 provided or offered a lower hurricane deductible under the new
 229 or renewal policy, the insurer must notify the policyholder, in
 230 writing, at the time the lower hurricane deductible is provided
 231 or offered, that the lower hurricane deductible will not apply
 232 until January 1 of the following calendar year.

233 Section 4. The amendment of s. 627.701, Florida Statutes,
 234 by section 3 applies only to policies issued or renewed on or
 235 after May 1, 2005.

236 Section 5. (1) Notwithstanding s. 215.555, Florida
 237 Statutes, the State Board of Administration is directed to
 238 transfer, no later than January 15, 2005, \$20 million from the
 239 Florida Hurricane Catastrophe Fund's cash balance to the
 240 Insurance Regulatory Trust Fund within the Department of
 241 Financial Services to provide funding for the reimbursements
 242 authorized in subsection (3).

243 (2) Notwithstanding s. 215.555, Florida Statutes, the
 244 State Board of Administration is directed to transfer up to \$130

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245 million from the Florida Hurricane Catastrophe Fund's cash
246 balance to the Insurance Regulatory Trust Fund in the Department
247 of Financial Services to provide funding for the reimbursements
248 authorized in subsection (3). The Chief Financial Officer shall
249 periodically certify to the State Board of Administration an
250 amount to be transferred from the funds appropriated in this
251 subsection based on the documented expenditure need for
252 reimbursement payments submitted to the Department of Financial
253 Services. The amount of each transfer may not exceed the
254 documented need. The Chief Financial Officer shall provide a
255 copy of each certification to the Executive Office of the
256 Governor and the chair and vice chair of the Legislative Budget
257 Commission. The State Board of Administration shall provide
258 notice of each transfer to the Executive Office of the Governor
259 and the chair and vice chair of the Legislative Budget
260 Commission at least 3 working days before such transfer.

261 (3) The sum of \$150 million is appropriated for the period
262 from the effective date of this act through September 30, 2005,
263 from the Insurance Regulatory Trust Fund in the Department of
264 Financial Services in a special appropriation category
265 "Hurricane Multiple Deductible Reimbursements" for reimbursement
266 to residential property insurance policyholders for the expense
267 of multiple hurricane deductibles, as provided in sections 1 and
268 2. Up to 1 percent of this appropriation may be used by the
269 department for the administration of payments to such
270 policyholders.

271 (4) All Florida Hurricane Catastrophe Fund moneys
272 transferred to the Insurance Regulatory Trust Fund under this

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273 act which remain unexpended on December 31, 2005, shall revert
 274 to the Florida Hurricane Catastrophe Fund.

275 (5) Beginning January 15, 2005, and monthly thereafter,
 276 the Chief Financial Officer shall provide a report to the
 277 Executive Office of the Governor and the chair and vice chair of
 278 the Legislative Budget Commission containing information
 279 regarding the reimbursement for multiple hurricane deductibles.
 280 The report shall include, but is not limited to, cumulative and
 281 monthly information on the number of reimbursement claims
 282 submitted, the total amount requested for reimbursement, the
 283 number of claims paid, and the amount paid for reimbursement.

284 (6) In order to maintain actuarially indicated premiums as
 285 required by s. 215.555, Florida Statutes, the State Board of
 286 Administration shall increase future premiums by the amount
 287 appropriated and transferred from the Florida Hurricane
 288 Catastrophe Fund under this section, plus additional amounts
 289 necessary to recover lost investment income, less any refunds of
 290 unused cash to the Florida Hurricane Catastrophe Fund. The
 291 increase in future premiums shall be spread over 5 years, in
 292 equal or approximately equal amounts, beginning with the June 1,
 293 2006, contract year.

294 (7) All appropriations authorized by this act are
 295 nonrecurring and are intended to address needs caused by
 296 Hurricanes Charley, Frances, Ivan, and Jeanne.

297 Section 6. This act shall take effect upon becoming a law.