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HB 9A, Engrossed 1

2004 Legislature

1 A bill to be entitled
2 An act relating to hurricane deductibles; providing
3 legislative findings and intent; providing a definition;
4 providing for the Department of Financial Services to
5 reimburse policyholders of residential property insurance
6 for multiple deductibles applied by insurers for two or
7 more hurricanes; establishing criteria for policyholders
8 to be eligible for reimbursements; requiring applications
9 to be submitted to the department, including certain
10 information; limiting the maximum amount of
11 reimbursements; limiting total reimbursements to the
12 amount appropriated for this purpose; providing
13 reimbursement criteria for the department under certain
14 circumstances; requiring insurers to provide certain
15 information to the department relating to claims for
16 reimbursement, subject to policyholders' authorization;
17 authorizing the department to contract with third parties
18 for investigation or adjustment of claims for
19 reimbursement; requiring insurers to mail notices to
20 certain policyholders of the reimbursement procedures;
21 authorizing the department to adopt certain rules;
22 providing legislative intent; providing that applications
23 for reimbursements shall be insurance claims for purposes
24 of determining insurance fraud; prohibiting insurers from
25 changing methods of waiving or applying deductibles due to
26 the provisions of law providing for reimbursement to
27 policyholders; requiring the Office of Insurance
28 Regulation to collect data from insurers regarding the

ENROLLED

HB 9A, Engrossed 1

2004 Legislature

29 application of multiple deductibles; providing legislative
30 intent; amending s. 627.701, F.S.; requiring that
31 hurricane deductibles of residential property insurance
32 policies be applied on an annual basis to all hurricane
33 losses that occur during the calendar year; allowing
34 insurers to apply an alternative deductible to subsequent
35 hurricane losses after the annual deductible is met;
36 providing for calculations of hurricane deductibles for
37 new or renewed policies; allowing insurers to require
38 policyholders to report hurricane losses or to maintain
39 receipts or records in order to apply hurricane losses to
40 subsequent hurricane claims; providing applicability;
41 providing appropriations for certain purposes; providing
42 for reversion of certain unexpended moneys; requiring the
43 Chief Financial Officer to report to certain entities
44 certain multiple hurricane deductible reimbursement
45 information; requiring the State Board of Administration
46 to increase future premiums to the Florida Hurricane
47 Catastrophe Fund; providing construction; providing an
48 effective date.

49
50 Be It Enacted by the Legislature of the State of Florida:

51
52 Section 1. Legislative findings and intent.--The
53 Legislature finds that the four hurricanes striking Florida in
54 2004 resulted in at least 30,000 residential property insurance
55 policyholders experiencing damage from two or more hurricanes
56 for which insurers have applied the hurricane deductible to each

ENROLLED

HB 9A, Engrossed 1

2004 Legislature

57 | hurricane claim. The fact that policyholders have separate
58 | hurricane deductibles can result in significant out-of-pocket
59 | expense and financial hardship to policyholders. Although
60 | insurers are required by law to notify policyholders that the
61 | hurricane deductible can result in a large out-of-pocket
62 | expense, it was not anticipated that a policyholder would have
63 | damage from two or more hurricanes in the same year and be
64 | forced to meet two or more deductibles in this circumstance. The
65 | Legislature further finds that the public health, safety, and
66 | welfare demand that residential structures damaged or destroyed
67 | in a catastrophe be repaired or reconstructed as soon as
68 | possible and that application of multiple deductibles delays or
69 | prevents such reconstruction, hinders the economic recovery of
70 | the state and its citizens, and endangers the public health,
71 | safety, and welfare. Therefore, state action to establish a
72 | program to reimburse policyholders for the financial loss
73 | suffered due to the application of multiple hurricane
74 | deductibles constitutes a valid and necessary public and
75 | governmental purpose. The Legislature intends to establish a
76 | program to reimburse policyholders for such losses, up to
77 | specified limits.

78 | Section 2. Reimbursement for multiple hurricane
79 | deductibles.--

80 | (1) For the purposes of this section, "residential
81 | property insurance" means residential coverage as described in
82 | s. 627.4025(1), Florida Statutes.

83 | (2) The Department of Financial Services shall reimburse
84 | policyholders of residential property insurance whose property

85 was damaged by two or more hurricanes in 2004 and whose insurer
 86 applied more than one hurricane deductible to the insurance
 87 claims. The reimbursement shall be the amount of the claim that
 88 was not paid due to application of the second or subsequent
 89 deductible, as further limited by this section.

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

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

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

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

106 (d) Provide written authorization for the department to
 107 obtain information from the policyholder's insurer related to
 108 the claim for reimbursement.

109 (4) (a) Reimbursement may be provided only for damages that
 110 would have been paid under the policy but for application of the
 111 deductible. The maximum reimbursement shall be limited to the
 112 amount of the policyholder's loss in excess of one full

ENROLLED
 HB 9A, Engrossed 1

2004 Legislature

113 deductible, but not more than \$10,000 per policy for damage
 114 caused by two hurricanes, not more than \$20,000 per policy for
 115 damage caused by three or more hurricanes, except as otherwise
 116 provided in this subsection.

117 (b) For a policy issued to a condominium association, the
 118 maximum reimbursement shall be limited to an amount equal to
 119 \$3,000 multiplied by the number of condominium units, or the
 120 maximum amount specified in paragraph (a) or paragraph (c),
 121 whichever is greater.

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

127 (d) Reimbursement may not be paid for loss amounts for
 128 which the policyholder has received a grant from the Federal
 129 Emergency Management Agency or any other federal, state, county,
 130 or municipal agency or program. Reimbursement may not be paid to
 131 a condominium association for loss amounts for which the
 132 condominium association has assessed unit owners and for which
 133 the unit owners have insurance coverage for the assessment.

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

138 (a) The department shall first reimburse policyholders who
 139 received claims payments from their insurer for two or more

ENROLLED

HB 9A, Engrossed 1

2004 Legislature

140 hurricanes for which each payment was reduced by the full amount
141 of the deductible.

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

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

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

ENROLLED

HB 9A, Engrossed 1

2004 Legislature

168 For subsequent claims, the insurer shall provide the notice at
169 the time that the insurer notifies the policyholder of the
170 application of the second deductible.

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

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

184 (10) It is a violation of the Insurance Code for an
185 insurer to change its method of determining whether to waive or
186 apply multiple hurricane deductibles to multiple claims due to
187 the provisions of this section.

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

ENROLLED
 HB 9A, Engrossed 1

2004 Legislature

195 Section 3. It is the intent of the Legislature that
 196 payments made to policyholders under this act shall be
 197 considered disaster relief assistance within the meaning of s.
 198 139 of the Internal Revenue Code.

199 Section 4. Subsections (5), (6), (7), and (8) of section
 200 627.701, Florida Statutes, are renumbered as subsections (6),
 201 (7), (8), and (9), respectively, and a new subsection (5) is
 202 added to said section to read:

203 627.701 Liability of insureds; coinsurance; deductibles.--

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

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

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

215 (c) If there was a hurricane loss for a prior hurricane or
 216 hurricanes during the calendar year, the insurer may apply a
 217 deductible to a subsequent hurricane that is the greater of the
 218 remaining amount of the hurricane deductible or the amount of
 219 the deductible that applies to perils other than a hurricane.
 220 Insurers may require policyholders to report hurricane losses
 221 that are below the hurricane deductible or to maintain receipts

ENROLLED
 HB 9A, Engrossed 1

2004 Legislature

222 or other records of such hurricane losses in order to apply such
 223 losses to subsequent hurricane claims.

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

234 Section 5. The amendment of s. 627.701, Florida Statutes,
 235 by section 3 applies only to policies issued or renewed on or
 236 after May 1, 2005.

237 Section 6. (1) Notwithstanding s. 215.555, Florida
 238 Statutes, the State Board of Administration is directed to
 239 transfer, no later than January 15, 2005, \$20 million from the
 240 Florida Hurricane Catastrophe Fund's cash balance to the
 241 Insurance Regulatory Trust Fund within the Department of
 242 Financial Services to provide funding for the reimbursements
 243 authorized in subsection (3).

244 (2) Notwithstanding s. 215.555, Florida Statutes, the
 245 State Board of Administration is directed to transfer up to \$130
 246 million from the Florida Hurricane Catastrophe Fund's cash
 247 balance to the Insurance Regulatory Trust Fund in the Department
 248 of Financial Services to provide funding for the reimbursements
 249 authorized in subsection (3). The Chief Financial Officer shall

ENROLLED

HB 9A, Engrossed 1

2004 Legislature

250 periodically certify to the State Board of Administration an
251 amount to be transferred from the funds appropriated in this
252 subsection based on the documented expenditure need for
253 reimbursement payments submitted to the Department of Financial
254 Services. The amount of each transfer may not exceed the
255 documented need. The Chief Financial Officer shall provide a
256 copy of each certification to the Executive Office of the
257 Governor and the chair and vice chair of the Legislative Budget
258 Commission. The State Board of Administration shall provide
259 notice of each transfer to the Executive Office of the Governor
260 and the chair and vice chair of the Legislative Budget
261 Commission at least 3 working days before such transfer.

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

272 (4) All Florida Hurricane Catastrophe Fund moneys
273 transferred to the Insurance Regulatory Trust Fund under this
274 act which remain unexpended on December 31, 2005, shall revert
275 to the Florida Hurricane Catastrophe Fund.

276 (5) Beginning January 15, 2005, and monthly thereafter,
277 the Chief Financial Officer shall provide a report to the

ENROLLED

HB 9A, Engrossed 1

2004 Legislature

278 Executive Office of the Governor and the chair and vice chair of
279 the Legislative Budget Commission containing information
280 regarding the reimbursement for multiple hurricane deductibles.
281 The report shall include, but is not limited to, cumulative and
282 monthly information on the number of reimbursement claims
283 submitted, the total amount requested for reimbursement, the
284 number of claims paid, and the amount paid for reimbursement.

285 (6) In order to maintain actuarially indicated premiums as
286 required by s. 215.555, Florida Statutes, the State Board of
287 Administration shall increase future premiums by the amount
288 appropriated and transferred from the Florida Hurricane
289 Catastrophe Fund under this section, plus additional amounts
290 necessary to recover lost investment income, less any refunds of
291 unused cash to the Florida Hurricane Catastrophe Fund. The
292 increase in future premiums shall be spread over 5 years, in
293 equal or approximately equal amounts, beginning with the June 1,
294 2006, contract year.

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

298 Section 7. This act shall take effect upon becoming a law.