

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Banking and Insurance Committee

BILL: CS/SB 2498

INTRODUCER: Banking and Insurance Committee and Senator Garcia

SUBJECT: Property Insurance

DATE: April 9, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Fav/CS
2.			JU	
3.			GA	
4.				
5.				
6.				

I. Summary:

Senate Bill 2498 makes changes to the Citizens Property Insurance Corporation (“Citizens”) law, prohibits the formation of new Florida domestic residential property insurance subsidiaries (“pup” companies”) and requires rate filings for all insurance subsidiaries to include parent company profit information. Specifically, the bill:

- Revises Citizens’ legislative intent language by emphasizing the need for affordable property insurance to be provided by Citizens;
- Provides that if a *new applicant* to Citizens is offered coverage from an insurer at its approved rate, the applicant is not eligible for a Citizens policy unless the insurer’s premium is more than 15 percent greater than the premium for comparable Citizens’ coverage (current law has a 25 percent limitation);
- Provides that effective January 1, 2008, these provisions shall apply to “pup” companies:
 - A new certificate of authority (COA) may not be issued to a Florida domestic residential property insurer that is a wholly owned subsidiary of an insurer authorized to conduct business in another state; and,
 - The rate filings of any Florida domestic insurer that is a wholly owned subsidiary of an insurer authorized to do business in another state shall include information relating to the profits of the parent company of the Florida domestic insurer.

This bill amends the following section of the Florida Statutes: 627.351.

The bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Citizens Property Insurance Corporation (“Citizens”)

In 2002, the Florida Legislature created Citizens by combining the state’s two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).¹ The merger allowed Citizens to become exempt from federal income taxes, resulting in millions of dollars in annual savings, as well as additional administrative and economic efficiencies.

Since that time, Citizens has become the largest property insurer in the state. As of February 28, 2007, Citizens provided coverage to over 1.3 million policyholders with \$432 billion in exposure and a market share of approximately 22 percent based on the number of policies in force.

Citizens’ offers three types of property and casualty insurance in three separate accounts:

- Personal Lines Account (PLA) which offers multiperil policies covering homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
- Commercial Lines Account (CLA) which offers multiperil policies covering commercial residential (condominium associations, apartment buildings, homeowners associations) and commercial nonresidential (business); and
- High-Risk Account (HRA) which covers multiperil policies or wind-only policies, or both, for personal residential and commercial (residential and non-residential) policyholders.²

The number of policyholders in the three accounts are: PLA = 807,399; CLA = 10,029, and HRA = 404,887.³

Expanded Eligibility for Residential Coverage from Citizens

During the January 2007 Special Session, legislation was enacted (Committee Substitute for House Bill 1A (HB 1A)) which expanded the eligibility for coverage in Citizens by placing Citizens in more direct competition with the voluntary market by substantially revising the law that made a property ineligible for coverage from Citizens if an offer of coverage was made by an authorized insurer at the authorized insurers’ approved rates.

Under HB 1A, if a *new applicant* to Citizens is offered coverage from an insurer at its approved rate, the applicant is *not eligible* for a Citizens’ policy, unless the insurer’s premium is more than 25 percent greater than the premium for comparable coverage from Citizens. However, a *policyholder* of Citizens remains eligible for coverage regardless of any offer of coverage from a private market insurer. This allows a policyholder to choose to stay in Citizens and to reject any “take-out” offers from the voluntary market. But, the voluntary market may continue to “keep out” policies from Citizens, provided the premium is no more than 25 percent greater than

¹ Chapter 2002-240, L.O.F.

² Legislation enacted during the 2007 Special Session (ch. 2007-1, L.O.F.) authorized Citizens to offer multiperil coverage in its HRA.

³ http://www.citizensfla.org/Exposure_Prem_Reports.asp (last viewed April 3, 2007).

Citizens' premium. As a result of this change and the rating law provisions related to Citizens contained in HB 1-A, Citizens is now in a more competitive role with the private market, with increasing numbers of policyholders potentially eligible for coverage with Citizens. These changes make it likely to increase its policy growth at an even greater pace, at least for the near future.

Certificate of Authority/"Pup" Companies

Insurance companies transacting insurance in Florida or from offices located in Florida are, with limited exceptions, required to have a certificate of authority (COA) issued by the Office of Insurance Regulation (OIR).⁴ To qualify for a COA, a prospective insurer⁵ must meet specified financial criteria including maintaining reserves⁶ applicable to the kind of insurance transacted by the insurer, as well as maintaining specified assets, deposits, capital, and surplus. Insurers must provide the OIR with specified background information and meet trustworthiness, fitness, and criminal history requirements.

A COA may continue in force as long as the insurer meets the statutory requirements⁷ of paying its annual license tax,⁸ filing its annual statement,⁹ and paying applicable taxes under the Insurance Code. The law does allow OIR to suspend or revoke an insurer's COA based on numerous criteria including being in unsound financial condition, committing practices which render its insurance transactions hazardous or injurious to its policyholders and violating lawful orders or rules of the OIR or FSC.

Current law does not forbid the formation of Florida domestic subsidiaries of national insurance companies ("pup companies"). According to the OIR, there may be as many as 27 Florida property and casualty domestic insurers that are wholly owned subsidiaries of insurers authorized to do business in another state. One such example is State Farm Florida Insurance Company¹⁰ which was formed as a wholly owned property insurance subsidiary (offering personal and commercial property insurance coverage) of State Farm Mutual Automobile Insurance Company which is domiciled in Illinois. State Farm Florida received its Florida COA in 1998 from the Department of Insurance.¹¹ The insurer currently has over one million policies and has a 20.6 percent market share in Florida. State Farm Mutual has always sold property insurance via wholly owned subsidiaries for the past fifty years, according to a State Farm representative.

⁴ Section 624.401, F.S.

⁵ Insurers are divided into three categories under the Insurance Code: *domestic insurers* are formed under the laws of Florida; *foreign insurers* are formed under the laws of any state, district, or territory or commonwealth of the United States, other than Florida; and *alien insurers* are defined as insurers other than domestic or foreign insurers. Foreign and alien insurers must also meet certain capital, surplus, and operational requirements.

⁶ Part I of ch. 625, F.S.

⁷ Section 624.416, F.S.

⁸ Section 624.501(3), F.S.

⁹ Section 624.424, F.S.

¹⁰ DOI Case Nos. 26914-98-CO and 26390-98-C.

¹¹ In 2002, the programs, employees and trust funds of the Department of Insurance were transferred to the Department of Financial Services and the Financial Services Commission (Office of Insurance Regulation). (ch.2002-404, F.S.)

Although HB 1A did not address the formation of new “pup companies” in Florida, it increased the minimum surplus requirements for residential property insurance “pup companies” from \$5 million to \$50 million.¹²

Also, current law does not require and the OIR does not review the profits of national parent companies of wholly owned Florida subsidiaries when considering a rate filing.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.351, F.S., relating to the Citizens Property Insurance Corporation (“Citizens”) law. The bill modifies the original Legislative “intent” language in the law which authorized the creation of Citizens in 2002.¹³

The bill provides that the public purpose of Citizens is to ensure the existence of an orderly market for property insurance for Floridians and Florida businesses. The proposed Legislative findings emphasize the importance of affordable property insurance; that private insurers are unwilling or unable to provide such insurance coverage to the extent needed which threatens the public health, safety and welfare and the economic health of Florida; that the State has a compelling public interest to assure that property is insured at affordable rates to facilitate reconstruction of damaged or destroyed property in order to reduce the negative effects which impact the public’s health, safety and welfare; that it’s necessary for Citizens, a government entity and not a private insurer, to provide such affordable property insurance to applicants who are unable to obtain coverage through the voluntary market; that Citizens strive to increase the availability of such insurance, while achieving efficiencies and economies and to provide service to policyholders, applicants, and agents which is no less than the quality provided in the voluntary market; and that because it’s essential for Citizens to have maximum financial resources to pay hurricane claims, it is the Legislature’s intent that Citizens continue to be an integral part of the state and that its income be exempt from federal income taxation and that interest on debt be likewise exempt from federal income taxation.

The bill revises the provision adopted in HB 1A as to *new applicants* for Citizens coverage. The proposal states that if a new applicant is offered coverage from an insurer at its approved rate, the applicant is not eligible for a Citizens’ policy, unless the insurer’s premium is more than *15 percent* greater than the premium for comparable coverage from Citizens. Under HB 1A, the provision was 25 percent greater. By expanding Citizens’ eligibility criteria and thereby increasing its policy growth, this proposal has the effect of placing Citizens in more direct competition with the voluntary market. However, the voluntary market may continue to “keep out” policies from Citizens, provided the premium is no more than 15 percent greater than Citizens’ premium.

This provision may also raise the issue of Citizens federal tax exempt status.¹⁴ The proposal places Citizens more into the role of a private insurer competing for insurance business in the

¹² Section 624.407, F.S.

¹³ Chapter 2002-240, L.O.F.

¹⁴ On February 20, 2002, the Internal Revenue Service (IRS) in a private letter ruling to the Department of Insurance and after reviewing the provisions of the act creating Citizens determined that Citizens would be exempt from federal taxes. This allowed Citizens to collect revenues tax-free and issue tax-free bonds. (IRS Index Number: PLR-163640-01.)

voluntary market and less of a government controlled insurer of last resort that serves to augment the private insurance market.

Section 2. The bill creates an undesignated section of law. The bill provides for the following: Effective January 1, 2008, and notwithstanding any other provision of law:

1. A new certificate of authority (COA) for the transaction of residential property insurance may not be issued to any insurer domiciled in Florida that is a wholly owned subsidiary of an insurer authorized to do business in any other state; and
2. The rate filings of any insurer domiciled in this state that is a wholly owned subsidiary of an insurer authorized to do business in any other state must include information relating to the profits of the partner company of the insurer domiciled in this state.

As to provision #1, current law does not preclude the formation of Florida domestic subsidiaries of national insurance companies (“pup companies”). House Bill 1A increased the minimum surplus requirements for “pup companies” from \$5 million to \$50 million. As noted above under the Present Situation Section, as many as 27 “pup” insurers currently offer residential property insurance in Florida. One large domestic subsidiary, State Farm Florida which was formed in 1998, has more than 1 million policyholders. The overall effect of provision #1 could limit the availability of residential property insurance in Florida by not allowing wholly owned residential property subsidiaries to offer insurance coverage in the state.

Provision # 2 could be interpreted to allow OIR to consider the profitability of an insurer’s parent company during rate reviews. However, according to OIR, such considerations are outside the bounds of the historical rate review process in virtually every state. The profit of the parent is not relevant to the losses and expenses that support the rate filing of an insurer doing business in Florida. Normally, an insurance regulator reviews premiums, claims costs, loss adjustment expenses and other related expenses in its review of an insurer.

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:

Citizens' applicants may economically benefit by being able to obtain Citizens coverage, unless an authorized insurer's premium is more than 15 percent greater than the premium for comparable coverage from Citizens. However, by increasing the potential growth in policies and exposure insured by Citizens, this also increases the potential losses that would need to be funded by deficit assessments on most property and casualty insurance policyholders. It also makes it more difficult for authorized insurers to compete and may negatively impact such insurers.

Insurance companies desiring to offer residential property insurance in Florida would be precluded from doing business in the state if they are formed as a wholly owned subsidiary of an insurer operating in another state. By restricting new entries into the Florida property insurance market, this may negatively impact the availability of property insurance coverage.

C. Government Sector Impact:

OIR could review the profits of national parent companies of wholly owned Florida subsidiaries when considering a rate filing depending on how this bill is interpreted. The agency would be prohibited from issuing a new COA to a Florida domestic residential property insurance subsidiary ("pup" company).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
