

CS/CS/SB 2044 — Insurance

By General Government Appropriations Committee; Banking and Insurance Committee and Senators Richter and Gaetz

This bill makes numerous changes to the laws related to insurance, primarily residential property insurance. The bill addresses the following issues:

Insurer Solvency

- Requires new residential property insurers, meaning those insurers who do not have a certificate of authority before July 1, 2010, to have a minimum surplus as to policyholders of \$15 million.
- For residential property insurers having a certificate of authority prior to July 1, 2010, the minimum surplus requirement will be \$5 million until July 1, 2015, \$10 million after July 1, 2015, and \$15 million after July 1, 2020. The bill allows the Office of Insurance Regulation (OIR) to reduce this surplus requirement if the insurer is not writing new business, has premiums in force of less than \$1 million per year in residential property insurance, or is a mutual insurance company.
- Allows an insurer to file a plan with the OIR to cancel or nonrenew property insurance policies in 45 days upon a finding by the OIR that the insurer needs to reduce exposure for solvency purposes.

Insurer Affiliates and Managing General Agents

- Provides the OIR with additional authority to monitor residential property insurer funds going to affiliates when an insurer's surplus falls below certain levels.
- If the insurer's risk based capital level drops below 200 or when an insurer loses 15 percent of its surplus, the OIR may require the insurer to file a detailed report identifying financial information, including remunerations paid to its affiliates.
- Allows the OIR to examine a managing general agent (MGA) even though the entity represents only one insurer.
- Requires an insurer to notify the OIR of its intention to enter into contracts with its affiliates within 30 days of such contracts being executed.

Public Adjusters (Certain provisions become effective January 1, 2011)

- Prohibits public adjusters from making certain statements in advertisements or solicitations.
- Institutes a 3 year claims filing deadline for new, supplemental, or reopened claims under a personal lines residential insurance policy from the date of a hurricane or windstorm.

- Caps public adjusters' fees in supplemental or reopened cases at 20 percent of the reopened or supplemental claim payment.
- Clarifies that after one year of a declaration of emergency, the compensation cap that applies to non-emergencies goes into effect.
- Requires persons acting on behalf of an insurer to provide at least 48 hours' notice to an insured or claimant, public adjuster, or legal representative prior to scheduling a meeting with the claimant or an onsite inspection of the insured property.
- Requires a public adjuster to ensure prompt notice of property loss claims to the insurer.
- Prohibits an insurer from excluding the public adjuster from in-person meetings with the insured.
- Prohibits a public adjuster from restricting or preventing an insurer, or other person acting on behalf of the insurer, from having reasonable access at reasonable times to any insured or claimant or to the insured property that is the subject of the claim.
- Prohibits a public adjuster from acting or failing to reasonably act in a manner that would obstruct or prevent an insurer or insurer's adjuster from timely gaining access to conduct an inspection of the insured property.
- Provides restrictions for licensed contractors and subcontractors.
- Mandates that certain information be included in all public adjuster contracts.
- Requires public adjuster apprentices to complete additional hours of continuing education.

Rate Standards

- Prohibits the OIR from, directly or indirectly, impeding an insurer's right to acquire policyholders, advertise, or appoint agents, including the amount of agent commissions.
- Under current law, property insurers are prohibited from using the "use and file" option for filing rate increases with the OIR until December 31, 2010. The bill extends the prohibition to December 31, 2011.
- Allow insurers, under the expedited rate filing procedure which was implemented last year, to include a rate adjustment for reinsurance costs, financing products used to replace reinsurance, and applicable inflation trend factors published annually by the OIR. Specifies that the increases from this filing and any other rate filing combined cannot exceed 10 percent for any individual policyholder, excluding coverage changes and surcharges, within the same policy year.

- Allows the OIR to develop or contract for development of a website that will allow consumers to compare prices, complaints, financial information and other useful data regarding insurers and includes a \$310,700 appropriation.
- During the rate filing procedure, an insurer may provide the OIR with additional information, upon request by the OIR, without having its initial certification rendered false.

Mitigation Discounts

- Allows insurers to apply “debits” as well as the currently allowed credits to base rates for the purposes of reflecting mitigated and non-mitigated features in rates.
- Establishes Legislative intent to provide that implementation of mitigation discounts not result in a loss of income to the insurers granting the discounts, so that the aggregate of mitigation discounts should not exceed the aggregate of the expected reduction in loss that is attributable to the mitigation efforts for which the discounts are granted.

Correlation of Mitigation Discounts to the Home Grading Scale

- Repeals the requirement that the OIR develop the method, by February 1, 2011, for insurance companies to establish mitigation discounts, credits, or other rate differentials for hurricane mitigation measures that correlate to the home’s rating calculated by the uniform home grading scale.

Mitigation Verification Inspectors

- Eliminates mitigation inspectors certified by the My Safe Florida Home program from the list of persons who can sign a mitigation verification form (form). Adds a “home inspector,” licensed under s. 468.8314, F.S., to the list of persons who can sign such forms.
- Provides that an insurer may accept a form from any other person possessing qualifications and experience acceptable to the insurer.
- Requires that the person signing the form must inspect the structure personally and not through an employee or another person; however, an exception is allowed for general building contractors who do not have to personally inspect the structure, but may have a “direct employee” conduct the mitigation verification inspection.
- Defines “misconduct” as to when a mitigation inspector signs a uniform mitigation verification form and provides penalties for same.
- Provides that persons obtaining evidence of mitigation inspection fraud must report such incidences to the Division of Insurance Fraud. Such persons receive immunity from liability for any statements made to the Division.
- Requires the Division to issue an investigative report if it finds probable cause that mitigation inspectors made intentionally false or fraudulent statements in the inspection

form. Mandates that the Division send its report to the OIR and the agency responsible for the professional licensure of the mitigation inspector.

- Allows insurers to have mitigation verification forms verified by quality assurance providers.

Citizens Property Insurance Corporation

- Changes the name of the Citizens' "high risk" account to the "coastal account" and directs the Division of Statutory Revision to prepare a reviser's bill for introduction next regular session to change the term to conform the Florida Statutes to this requirement.
- Provides a date of attachment of Citizens' surcharges to ensure that assessments are fully collected from Citizens' policyholders.
- Clarifies that board members of Citizens, who are appointed for having expertise in insurance, are within the scope of the code of ethics. Clarifies conditions for board members to abstain from voting when an issue "would inure to his or her special private gain or loss."
- Extends by two years, to December 1, 2012, the requirement that the Citizens' board reduce the boundaries of the high risk account (wind-only coverages) if the 100-year probable maximum loss is not reduced by at least 25 percent from the benchmark provided under law.
- Provides that insurers offering Citizens' policyholders replacement coverage must give notice of nonrenewal to such policyholders at least 45 days prior to the effective date of the nonrenewal.

Notice of Change in Policy Terms

- Allows an insurer offering personal lines property insurance to provide policyholders with a "notice" of change in coverages as opposed to having to non-renew and re-write a policy if the coverages change.
- Provides that the intent of the provision is to allow an insurer to make a change in policy terms without nonrenewing policyholders that the insurer wishes to continue insuring. Also provides that this provision is intended to alleviate the confusion to the policyholder caused under current law by the required policy nonrenewal in the limited instance when an insurer intends to renew the policy, but the new policy contains a change in policy terms.

Replacement Costs for Dwellings

- Provides that in the event of a loss for which a dwelling is insured for replacement costs:
 - The insurer must initially pay the insured the actual cash value of the insured loss, less any deductible, and the insured must subsequently enter into a contract for building and structural repairs. The insurer must pay any remaining amounts as

repairs are done. With the exception of incidental expenses to mitigate damages, the insurer, contractor, or subcontractor may not require the insured to advance payment for other repairs or expenses. The insurer may waive the requirement for the insured to enter into a contract.

- Allows the insured to have a period of 1 year after the date the insurer pays the actual cash value to make a claim for replacement costs.
- If a total loss occurs, the insurer must pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702, F.S., the valued policy law.

Property Insurance Claims

- Clarifies that the same time frame in which an insurer must pay or deny a claim applies to both the initial or the supplemental claim.

Insurer Report Card by the Consumer Advocate

- Specifies that the Consumer Advocate's annual report card, which grades personal residential property insurers, must be prepared by June 1, 2012, and each June 1 thereafter, and must "objectively" grade such insurers.
- Clarifies that the report card include only "valid" consumer complaints and other "measurable and objective" factors, and defines the term "valid consumer complaint."

Medical Malpractice Insurance

- Continues the exemption of medical malpractice insurance premiums from Florida Hurricane Catastrophe Fund emergency assessments for three years, from May 31, 2010, to May 31, 2013.

Federal Crop Insurance

- Provides that gross written premiums for federal multiple-peril crop insurance ceded to the Federal Crop Insurance Corporation or authorized reinsurers may not be included in the calculation of an insurer's gross writing ratio. The bill requires insurers that write other insurance products, along with federal multiple-peril crop insurance, to provide disclosures in the notes to its annual and quarterly financial statements, or in a supplement, the gross written premiums for federal multiple-peril crop insurance.

Audited Financial Reports

- Provides that an accountant for an insurer cannot prepare audited financial reports for more than 5 consecutive years. Current law is 7 years.

Customer Representatives

- Exempts applicants who have earned the designation of Certified Insurance Representative from the National Association of Christian Catastrophe Insurance Adjusters, from examination for customer representative licensure.

Except as otherwise provided in this act, this act shall take effect July 1, 2010.

Vote: Senate 32-6; House 83-34