

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1832

SPONSOR: Senator Casas

SUBJECT: Florida Insurance Code (Collateral Protection Insurance)

DATE: March 19, 1999

REVISED: 3/23/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill defines “collateral protection insurance” as commercial insurance and would expressly not be “residential coverage.” The apparent effect is to exempt or not apply any of the laws that apply to residential property insurance to collateral protection insurance, as defined.

The bill further defines collateral protection insurance as commercial insurance of which a creditor (such as a bank) is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor’s failure to maintain insurance coverage as required by the mortgage or other lending document.

The bill will exclude collateral protection insurance policies, as defined, from: (1) mandatory participation in the Florida Hurricane Catastrophe Fund. Such policies are currently excluded by contract and rules of the State Board of Administration, but the bill’s exemption is somewhat broader; and from (2) the assessment base for the personal lines residential property insurance account of the Residential Property and Casualty Joint Underwriting Association (RPCJUA). However, as commercial insurance (presumably, commercial property insurance), such coverage would, instead, be included in the assessment base for the commercial residential risk account (for which all commercial property is assessed).

The bill will have no effect on the FWUA assessment base, since commercial property insurance is currently included, assuming that the bill’s reference to “commercial insurance” is deemed to mean “commercial property insurance.”

The bill will exclude collateral protection insurance from all of the other laws that apply to personal lines residential property insurance.

Amendment #1 by the Banking and Insurance Committee clarifies that collateral protection insurance is commercial *property* insurance.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Banks and other financial institutions typically purchase “collateral protection insurance” to insure their interest in property secured by mortgages they issue. It is typically sold under a blanket policy to lending institutions and when a borrower fails to secure or maintain homeowner’s insurance on a property, even when required to do so by contract, collateral protection insurance automatically insures the lender’s interest in the property.

It appears that the only specific reference to collateral protection insurance in the current law is the current exclusion of such insurance from the types of policies covered by the Florida Insurance Guaranty Association, which covers claims of insolvent insurers. (s. 631.52, F.S.) This statute does not define the term collateral protection insurance.

The classification of collateral protection insurance has been a matter of some confusion and differing interpretations, for purposes of the various laws that apply to “residential property insurance,” particularly with regard to whether such policies are covered by the Florida Hurricane Catastrophe Fund, and whether such policies are subject to the assessment base for the Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA.)

The Florida Hurricane Catastrophe Fund (Cat Fund), created in 1993 following Hurricane Andrew, is a state trust fund administered by the State Board of Administration (SBA) that reimburses insurers for a portion of their hurricane losses in the state (s. 215.555, F.S.) Each insurer that writes residential property insurance in Florida must enter into a contract with the State Board of Administration (SBA) each year to purchase reimbursement coverage from the Cat Fund. The definition of “covered policy” in s. 215.555 (2)(c), F.S., means “any insurance policy covering residential property in the state” and lists the types of policies included, including such commercial residential policies as condominium association and apartment building policies. The contract adopted by the SBA by rule, excludes the following types of policies for Cat Fund coverage and participation:

“Any Policy Contract issued to a creditor financial institution as named insured providing coverage when a borrower fails to maintain required insurance on collateral, if such Policy Contract is issued solely to protect the creditor financial institution’s interest in the residential structure and if such Policy Contract does not include other coverages, such as personal property coverage, coverage for additional living expenses, or liability coverage, which are common components of typical Homeowners policies and which coverages are not necessary to protect the creditor financial institution’s interest in the residential structures. The intent of such policy is not to circumvent the Statute.”

Florida law creates the Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). These two state-created residual market insurers, authorized in s. 627.351, F.S., sell property insurance to persons who are unable to obtain coverage from an authorized insurer in the voluntary market. The

RPCJUA sells standard homeowners coverage and other residential policies statewide, while the FWUA sells only windstorm coverage in geographically limited coastal areas of the state.

The RPCJUA and FWUA both depend upon debt financing supported by potential assessments against all Florida property insurers and their policyholders to fund losses in the event of a deficit. In general, all property insurance policies (including commercial property) provide the assessment base for FWUA deficits, while only residential property insurance policies are assessed for RPCJUA deficits. The RPCJUA law provides for two segregated accounts for assessment purposes, one for the commercial residential risks it insures (condominium associations, apartment buildings, etc.), and one for the personal lines risks it insures (homeowners, mobile homeowners, etc.). The assessment base for the personal lines risks includes personal lines residential policies. The assessment base for the commercial residential risks includes all commercial property (not just commercial residential property) and commercial fire insurance. [s. 627.351(6)(b), F.S.].

The assessment base for the FWUA is not segregated into different accounts. Also, unlike the RPCJUA, the FWUA provides windstorm coverage to commercial properties (businesses) that are not residential risks. The assessment base for FWUA deficits includes all “property insurance” policies as defined in s. 627.351(2)(b), F.S., which includes both commercial and residential property insurance policies.

The RPCJUA and FWUA report that they interpret the current law as including collateral protection insurance within the assessment base for property insurance. For the RPCJUA in particular, it is considered within the assessment base for the personal lines residential policies account. However, there appears to be inconsistencies as to how insurers are reporting their collateral protection insurance premiums to the two residual market insurers, as well as to the department on insurer’s annual statements.

Some of the other provisions of current law that apply to residential property insurance include: (1) the moratorium provisions that limit the number of residential property insurance policies that an insurer may non-renew [ss. 627.7013 and 627.7014, F.S.]; (2) specific rate filing provisions that apply only to residential property insurance, such as requiring certain discounts for fixtures demonstrated to reduce windstorm losses, reflecting strength of building code enforcement, requiring separate identification of the hurricane premium, and prohibiting policies from excluding coverage for windstorm or hurricane coverage (s. 627.0629, F.S.); and (3) the requirements that apply to deductible provisions of residential property insurance (certain provisions of s. 627.701, F.S.).

III. Effect of Proposed Changes:

The bill defines “collateral protection insurance” for purposes of the Insurance Code as “commercial insurance” and not “residential coverage.” The bill further defines collateral protection insurance as “commercial insurance of which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor’s failure to maintain insurance coverage as required by the mortgage or other lending document.”

The bill will exclude collateral protection insurance policies, as defined, from mandatory participation in the Florida Hurricane Catastrophe Fund. As described in Present Situation, the current contract (and rules) of the SBA exclude a type of policy that is very similar to collateral protection insurance as defined in the bill. However, the contractual definition refers to such policy “solely” protecting the interests of the creditor and certain other differences, which indicate that the bill’s exemption is somewhat broader.

The bill will exclude collateral protection insurance policies, as defined, from the assessment base for the personal lines residential property insurance account of the RPCJUA. However, as commercial insurance (presumably, commercial property insurance), such coverage would, instead, be included in the assessment base for the commercial residential risk account (for which all commercial property is assessed). The RPCJUA is obligated by its contracts with the issuer of its line of credit and the issuer of its pre-event notes, to notify the issuers of any law that limits the RPCJUA’s ability to collect assessment at the maximum rates authorized.

The bill will have no effect on the FWUA assessment base, since commercial property insurance is currently included, assuming that the bill’s reference to “commercial insurance” is deemed to mean “commercial property insurance.”

The bill will exclude collateral protection insurance from all of the other laws that apply to personal lines residential property insurance, summarized in Present Situation, above , such as the moratorium on limiting the allowable number of policy nonrenewals, and certain rating law and deductible requirements.

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:

Insurers that write collateral protection insurance, as defined, would not be subject to annual reimbursement premiums paid to the Florida Hurricane Catastrophe Fund and would not be eligible for reimbursement from the fund. As noted above, this is already true for certain types of collateral protection insurance, but the bill's language captures more policies than the current Cat Fund contract (rule) language.

Such insurers would also not be subject to assessment under the personal lines residential property insurance account of the RPCJUA.

It is unlikely that the bill will impair the bonding or credit status of the Cat Fund or the RPCJUA.

C. Government Sector Impact:

The Florida Hurricane Catastrophe Fund will need to amend its contracts to incorporate the broader exclusion for collateral protection insurance. This is not expected to significantly impact the bonding capacity of the Cat Fund.

VI. Technical Deficiencies:

The bill refers to collateral protection insurance as "commercial insurance" and would probably be interpreted as "commercial property insurance." An amendment could clarify this point.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Banking and Insurance:

Clarifies that collateral protection insurance is commercial *property* insurance.(WITH TITLE AMENDMENT)