HOUSE MESSAGE SUMMARY

BILL:	CS/SB 2522	[S2522.HMS]
SPONSOR:	Banking and Insurance Committee and Senator Holzendorf	
SUBJECT:	Insurance	
PREPARED BY:	Senate Committee on Banking and Insurance	
DATE:	April 29, 1999	

I. Amendments Contained in Message

House Amendment 2 -- 741351 (body with title)
House Amendment 3 -- 620241 (body)
House Amendment 5 -- 121637 (body with title)
House Amendment 6 -- 250411 (body with title)

II. Summary of Amendments Contained in Message

House Amendment 2 -- This amendment addresses three different insurance issues: (1) entitling a special purpose homeowner insurance company to advance payment of reimbursement from the Florida Hurricane Catastrophe Fund, (2) authorizing a mutual insurance holding company to merge or consolidate with a foreign mutual insurance company, and (3) prescribing the factors that directors of a domestic insurance company and a domestic mutual insurance holding company may consider in carrying out their duties, as described in more detail below.

Special Purpose Homeowner Insurers / Reimbursement from "Cat Fund" -- The amendment provides that a special purpose homeowner insurance company shall be considered a limited apportionment company for purposes of reimbursement from the Florida Hurricane Catastrophe Fund under s. 215.555(4)(e)3., F.S.

A special purpose homeowner insurance company may be formed under s. 624.4071, F.S. These companies are subject to a streamlined certificate of authority process and limited rate regulation, and are exempt from regular assessments of the Florida Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Such companies are able to write only property insurance coverage, and only with respect to risks taken directly from the RPCJUA or from a non-affiliated insurer. A special purpose insurer must have a surplus of at least $10 million and must be the subsidiary of an insurance company authorized in at least one state with surplus of at least $50 million.

The Florida Hurricane Catastrophe Fund (Cat Fund) 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. Each insurer that writes residential property and casualty insurance must participate. Each such insurer must report to the SBA no later than December 31 of each year, and quarterly thereafter, it losses from hurricanes for the year. The SBA must determine and pay, as soon as practicable after receiving these reports, the initial amount of reimbursement due and adjustments based on later loss information. However, a "limited apportionment company" as defined under s.

627.351(2)(b)3., F.S., may be advanced by the SBA up to the lesser of 90% of the SBA's estimate of the reimbursement due to such company, or 90% of the company's share of the total fund premiums applied to the SBA's currently available liquid assets, if the company demonstrates to the SBA that the immediate receipt of such money is essential to permit it to pay claims for a covered event and if the SBA determines that the fund's assets are sufficient and are sufficiently liquid to permit the SBA to make an advance to the company and at the same time fulfill its reimbursement obligations to other insurers. A limited apportionment company is defined as having a surplus of $20 million or less writing 25% or more of its total countrywide property insurance premiums in Florida.

House Amendment 2 would apply to special purpose homeowner insurance companies the same provision for advance payment from the Cat Fund that applies to limited apportionment companies. There is currently one special purpose homeowner insurance company. According to the SBA, there are currently 27 limited apportionment companies and it is estimated that the Cat Fund could be required to pay between $800 and $900 million in advance payments to such companies. Expanding advance payments to one additional special purpose homeowner insurance company could increase such payments by about $50 million, but if additional special purpose insurers are authorized, this amount could be significantly increased.

Mutual Insurance Holding Company -- Amendment 2 also amends s. 628.715, F.S., to authorize a mutual insurance holding company to merge or consolidate with a foreign mutual insurance company. (This is contained in CS/SB 2048, on the Senate Calendar.) The current law allows a mutual insurance holding company to "acquire the assets" of a foreign or domestic mutual insurance company, but does not authorize a merger or consolidation. Acquiring the assets involves a purchase or buy-out of another insurer, while a merger or consolidation involves shared ownership and restructuring of the ownership interest of the policyholders of the two entities.

In 1997, laws were enacted in Florida to create a new form of domestic insurance corporate organization known as a "mutual insurance holding company." The creation of this corporate form provided an alternative method for a domestic mutual (policyholder-owned) insurance company to convert into a stock (stockholder-owned) insurance company. At this time one former mutual insurance company has converted into a mutual insurance holding company, the FCCI Mutual Insurance Holding Company, which now has a stock insurance company subsidiary, the FCCI Insurance Company. This domestic insurer is the state's leading writer of workers' compensation insurance. There are currently 11 domestic mutual insurance companies in Florida.

Under the current law in part III of chapter 628 (ss. 628.701-628.733, F.S.), a mutual insurance company may convert into a corporate form of a mutual insurance holding company, with a stock insurance company subsidiary. The policyholders of the former domestic mutual insurance company are not entitled to any distribution of cash or stock upon the conversion of the mutual insurance company into a mutual holding company, but they become owner-members of the mutual holding company and are insured by the subsidiary stock insurer (and are entitled to a distribution of cash or stock upon liquidation of the holding company). Conversion of a domestic mutual insurer into a mutual insurance holding company requires approval of the department.

Under the current law, all mergers require the approval of the department, but the department may disapprove a merger only if it finds that the merger would be inequitable to the policyholders

of any domestic insurance company involved in the merger or to the members of any domestic mutual holding company involved in the merger, or if the merger would substantially reduce the security of and service to be rendered to policyholders of a domestic insurance company. All mergers also require the approval of a majority of the members of the mutual insurance holding company who actually vote. [s. 628.715(2)(b), F.S.] The House amendment would authorize a mutual insurance holding company to merge or consolidate with a foreign mutual insurance company, subject to approval by the department under these standards. The amendment would additionally authorize the department to retain outside consultants to evaluate each merger. The domestic mutual insurance holding company would be required to pay reasonable costs associated with retaining such consultants.

Duties of Directors of Domestic Insurance Companies and Domestic Mutual Insurance Holding Companies -- The amendment prescribes the factors that directors of a domestic insurance company and a domestic mutual insurance holding company may consider in carrying out their duties. (This is contained in CS/SB 2048, on the Senate Calendar.) Some of these factors currently apply to Florida for-profit corporations, generally, allowing directors to consider the social and economic effects of any action on the employees, suppliers, customers, the communities and society in which the corporation operates, and the economy of the state and the nation. Expressly applying such factors to a domestic stock insurance company appears to be a mere clarification of current law. Applying such factors to a domestic, *nonprofit mutual insurance company* may also be a clarification of current law, but this is less certain. It appears to be a substantive change, however, to apply such factors to a *domestic mutual insurance holding company*, a new form of domestic insurance corporate organization created by 1997 legislation as an alternative method for a domestic mutual (policyholder-owned) insurance company to convert into a stock (stockholder-owned) insurance company.

Certain factors that the bill allows directors of domestic insurers and domestic mutual insurance holding companies to consider, are *not* contained in the current Florida corporation laws and, as such, are substantive changes. These factors include “benefits that may accrue to the insurer from its long-term plans, and the possibility that these interests may be best served by the continued independence of the insurer; the resources, intent, and conduct, past, stated, and potential, of any person seeking to acquire control of the insurer.” Since these factors are not in the current Florida corporation laws, they would be unique to directors of domestic insurer and domestic mutual insurance holding companies.

These changes and the broad nature of the factors may enable the directors of domestic insurers to reject (or accept) an offer by an outside party to acquire the insurer, which action may not be in the best interests of the stockholders or, in the case of a mutual insurer, the policyholder-owners. The directors may be less likely to be liable to stockholders (or policyholders) by taking actions that may be in the best interests of the stockholders (or policyholders), based on other factors that the law would allow the directors to consider.

The amendment also corrects an apparent error in s. 628.729, F.S., which currently provides that upon any voluntary dissolution of a domestic mutual insurance holding company, its assets remaining after discharges of its indebtedness, if any, and expenses of administration, shall be distributed to existing persons who were its members at any time within the 3-year period preceding the date such liquidation was authorized or offered, subject to certain exceptions for

which the department may enlarge the "5-year" qualification. The bill changes and corrects the reference of "5-year" to "3-year."

House Amendment 3 amends the provisions of the Senate Bill that allow insurers to charge rates in excess of or below their filed and approved rates for up to 20 percent of their commercial property and casualty insurance policies, with the approval of the policyholder. (Current law allows for excess rates for up to 10 percent of an insurer's commercial policies.) The House amendment exempts workers' compensation and medical malpractice rates from the provisions allowing for reduced rates (but does not exempt such types of insurance from the provisions allowing for excess rates).

House Amendment 5 creates s. 627.6474, F.S., to authorize point of service policies pursuant to agreements between health maintenance organizations (HMOs) and health insurers, by which the insured is provided an option of accessing benefits from health care providers within the network of an HMO or from health care providers outside the network, covered by a health insurer. (These provisions are similar to the provisions in SB 2230 in the Banking and Insurance Committee.) In a separate bill, HB 2071 (companion to SB 2472), as passed by the Senate, HMOs that meet certain financial criteria are authorized to issue point of service products without any affiliation with a health insurer. The House Amendment to this bill (CS/SB 2522) would provide an alternative method for an HMO to provide a point of service product pursuant to an agreement with a health insurer, similar to point of service products that the Department of Insurance has approved under current law, despite lack of clear legislative direction. However, certain requirements would be specified that are not addressed in the current department-approved process.

The amendment would allow an HMO to offer out-of-network benefits on one policy form with the out-of-network benefits being provided by a health insurer through a rider; or allow the HMO and the health insurer to offer the coverage through two separate policies. The amendment would specify the requirements for the filing of rates and forms, require 60 days' notice if the point-of-service arrangement ceases to exist, and require both the HMO and the insurer to offer the insured a similar policy if the point of service arrangement ceases to exist. If the HMO offers the point of service contract under one contract, the agent must only be appointed by the HMO and not the insurer. The Department of Insurance would be authorized to adopted rules to ensure that the policies are offered and provided in a fair and equitable fashion.

House Amendment 6 amends s. 627.6699, F.S., the Employee Health Care Access Act to insert provisions that are contained in CS/HB 903 (on Senate Special Order). The current law entitles small employers with 1 to 50 employees, including sole proprietors and self-employed individuals, to have access to group health insurance coverage on a guaranteed-issue basis, with rates established without regard to the health status of the small employer or its employees. Currently the law limits the factors that an insurer or HMO ("small group carrier") may use in setting rates for small employers to age, gender, geographic location, tobacco usage, and family composition (size). The amendment makes the following changes:

- Eliminates the prohibition that rates not be based on the health status or claims experience of any individual or group and allows limited use of such factors. Small group carriers would be allowed to adjust a small employer's rate by plus or minus 15 percent, based on health status,

claims experience, or duration of coverage. The renewal premium could be adjusted up to 10 percent annually (up to the total 15 percent limit) of the carrier's approved rate, based on these additional factors or due to dependents, but not to exceed 5 percent annually due to health status alone.

- Deletes the guaranty-issue requirements for employers with one employee, sole proprietors, and self-employed individuals and, instead, provides for an annual open enrollment period for such persons, for the month of August each year. Coverage would begin on October 1, unless the insurer and the policyholder agree to a different date. Any one-person small employer getting coverage must not be formed primarily for the purposes of buying health insurance and if an individual hires his or her spouse and dependent children as employees, the entire family unit would be considered a one-person group.

- Prohibits small group carriers from using "composite rating" for employers with fewer than 10 employees, which would prohibit averaging the impact of the rating factors for age and gender.

- Allows small group carriers to provide a credit to reflect the administrative and acquisition expense savings resulting from the size of the group.

- Specifies certain family-size categories that a small group carriers may use.

- Clarifies the applicability of additional rate filing procedure and standards for insurers and HMOs, respectively.