

STORAGE NAME: h0789b.rpp

DATE: March 31, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
COMMITTEE ON REAL PROPERTY AND PROBATE
ANALYSIS**

BILL #: HB 789

RELATING TO: Collateral protection insurance

SPONSOR(S): Representative Dockery

COMPANION BILL(S): SB 1832(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 11 NAYS 0
- (2) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 10 NAYS 0
- (3) COMMITTEE ON REAL PROPERTY AND PROBATE YEAS 8 NAYS 0
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. SUMMARY:

Collateral protection insurance would be defined as a commercial insurance product rather than a residential insurance product. By defining collateral protection insurance as commercial, it would be exempt from regular and emergency deficit assessments levied by the Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). This would narrow the assessment base for the two residual market entities and reduce the amount of statewide premium that is assessed to cover a deficit.

The bill does not appear to have a significant fiscal impact on state or local governments.

The bill is effective upon becoming a law.

Comments by the Committee on Real Property and Probate:

On March 30, 1999, the Committee on Real Property and Probate adopted an amendment to clarify that the definition of "collateral protection insurance" applies only to three sections of the insurance code, rather than the entire insurance code.

See also, "Comments" section of this analysis for additional information provided by the Committee on Real Property and Probate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Collateral protection insurance is sold to lending institutions for the purposes of insuring the lending institution's interest in real property. 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. Collateral protection insurance is sold under a blanket policy to lending institutions. Properties covered under collateral protection insurance are covered under a basic policy, regardless of the location or condition of the property. This type of insurance is more expensive than conventional homeowner's insurance, and it is not marketed or made available to individuals.

Section 627.0625, F.S., defines commercial insurance as insurance that is limited to the coverage of commercial risks. According to s. 624.604, F.S., property insurance is defined as "insurance on real or personal property of every kind and of every interest."

Currently, collateral protection insurance is not defined by law. Section 631.52, F.S., specifically exempts collateral protection insurance from the Florida Insurance Guaranty Association, which is a non-profit corporation which provides for the payment of claims under property and casualty insurance policies and liability policies issued by insurers that have become insolvent.

When premium revenues and other resources are insufficient to pay claims, the Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA) boards must levy assessments against property insurers in proportion to their market share. Generally, the assessments must be enough to recoup in one year the entire amount of the deficit. If the deficit is larger than 10 percent of total statewide premium, the board is required to levy assessments equal to the greater of 10 percent of the deficit or 10 percent of the total statewide written premium for property insurance for the prior calendar year. Any remaining deficit is recovered through the levy of emergency assessments. The current assessment base for the RPCJUA is \$3.12 billion for combined personal lines residential property insurance and commercial lines residential property insurance.

Insurers that offer this type of insurance are subject to regular and emergency deficit assessments by the RPCJUA and the FWUA. According to the Department of Insurance, the amount of premium written for collateral protection insurance in Florida is difficult to calculate, as it is not reported to the department separately.

B. EFFECT OF PROPOSED CHANGES:

Collateral protection insurance would be defined as commercial insurance rather than be treated as residential insurance. By defining collateral protection insurance as commercial, it would be exempt from regular and emergency deficit assessments by the RPCJUA and the FWUA. This would reduce the amount of statewide premium that is assessed to cover a deficit.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 624.6085, F.S.

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

By defining collateral protection insurance as commercial insurance, the assessment base of the RPCJUA and the FWUA would be narrowed, thus making other insurers liable for more of the assessment.

2. Direct Private Sector Benefits:

Those with collateral protection insurance policies would no longer be subject to RPCJUA and FWUA assessments under those policies.

3. Effects on Competition, Private Enterprise and Employment Markets:

Unknown

D. FISCAL COMMENTS:

Defining collateral protection insurance as a commercial insurance product will reduce the amount of statewide premium that is assessed to cover a deficit.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Comments by the Committee on Real Property and Probate:

The following analysis is included in the Senate Staff Analysis and Economic Impact Statement as revised on March 23, 1999:

Current Situation:

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."

Effect of Proposed Changes:

The bill will exclude collateral protection insurance policies, as defined, from mandatory participation in the Florida Hurricane Catastrophe Fund. As described in the Present Situation, the current contract (and rules) of the SBA already 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 amendment adopted by the Committee on Business Regulation and Consumer Affairs on March 22, 1999, amended "commercial insurance" to "commercial property insurance.")

Legal Counsel for the Florida Bankers Association asserts that the bill may have unintended consequences for financial institutions in Florida; however, the Florida Bankers Association is not opposed to the general concept of the bill.¹

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 22, 1999, the Business Regulation and Consumer Affairs Committee adopted an amendment, without objection, that would clarify the intent of the bill. The amendment is traveling with the bill.

On March 30, 1999, the Committee on Real Property and Probate adopted an amendment to clarify that the definition of "collateral protection insurance" applies to three specific sections of the insurance code, rather than the entire insurance code. Specifically, the amendment limits applicability of the definition to §§ 255.555, 627.311, and 627.351, F.S. This amendment resolved concerns expressed by the Florida Bankers Association, as discussed above. The amendment is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

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¹ J. Thomas Cardwell, General Counsel, Florida Bankers Association, *Memorandum* (March 25, 1999).

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