The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL:	SB 2362
INTRODUCER:	Senator Gaetz
SUBJECT:	Administrative fines for Violations of the Florida Insurance Code
DATE:	March 20, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	**Pre-meeting**
2.			GA	
3.				
4.				
5.				
6.				

I. Summary:

The bill allows the Office of Insurance Regulation (office) to impose an administrative fine, not to exceed $25,000 per violation for each day an insurer does not comply with the Florida Insurance Code. The office is required to consider certain factors in determining the amount of such fines. The bill also provides that each day that an insurer is not in compliance with any provision of the Insurance Code would constitute a separate violation, subject to the administrative fines under s. 624.4211, F.S.

This bill substantially amends the following sections of the Florida Statutes: 624.4211 and 627.381.

II. Present Situation:

In January 2008, Senate President Pruitt created the Select Committee on Property Insurance Accountability. The committee received testimony and information from the Office of Insurance Regulation, insurance companies, and other stakeholders through the hearing process. In a letter to the Senate President, dated March 12, 2008, the co-chairs, Senators Atwater and Geller, provided a list of proposals that should be given further consideration by the appropriate standing committees.[1] These proposals included revising the current administrative fines and criminal violations for violation of the code, as summarized below:

[1] Letter from Senators Jeff Atwater and Steve Geller, Co-Chairs of the Select Committee on Property Insurance Accountability to President Pruitt, dated March 12, 2008.

- Increasing maximum fines for an insurer that violates the insurance code, in order to provide meaningful sanctions that can be imposed by the office as an alternative to suspension or revocation of the insurer's authorization to sell insurance.
- Providing that a company's refusal to comply with a subpoena is a violation of health, safety, and welfare that allows the office to issue an immediate final order to suspend or revoke the insurer's certificate of authority.
- Providing criminal penalties for insurance officials who knowingly, with intent to deceive, make false material statements or reports to the office.
- Providing criminal penalties for insurance officials, employees, or agents who corruptly obstruct or impede the proper administration of any investigation or proceeding by the office, its contract examiner, or the Department of Financial Services.

Office of Insurance Regulation

The office is responsible for regulating all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, examinations, issuance of certificates of authority, and solvency.[2] The office, through its ongoing oversight and examination process, determines whether insurance companies are operating in compliance with the code. This includes regulating the insurance rates to ensure that the rates are not excessive, inadequate, or unfairly discriminatory.[3]

Section 624.418(1), F.S., requires the office to suspend or revoke an insurer's certificate of authority if it finds that the insurer "is using such methods and practices in the conduct of its business as to render its further transaction of insurance in this state hazardous or injurious to its policyholder or to the public."

Section 624.418(2)(a), F.S., gives the office the discretion to suspend or revoke an insurer's certificate of authority when an insurer has violated any order or rule of the office or commission or any provision of the code.

The office is authorized under s. 624.4211, F.S., to impose administrative fines in lieu of suspension or revocation if the office finds that one or more grounds exist for the discretionary revocation or suspension of the certificate of authority. The office may impose an administrative fine, not to exceed $2,500, per nonwillful violation, with a limit of $10,000 for all nonwillful violations arising out of the same action. With respect to any willful violation, the office is authorized to assess a fine, not to exceed $20,000 per violation and $100,000 in aggregate for all willful violations arising out of the same action.

The office also has the authority, under s. 627.381, F.S., to impose an administrative fine, pursuant to s. 624.4211, F.S., if an insurer has violated any provision of part I of ch. 627, F.S. Part I regulates property, casualty, and surety insurance rates and rating organizations.

Section 624.15(1), F.S., provides that each willful violation of the code or rule of the department, office, or commission as to which a greater penalty is not provided by another provision of the

[2] Section 20.121(3)(a), F.S.
[3] Section 627.031, F.S.

code, rule, or by other applicable laws is a misdemeanor of the second degree, and is in addition to any denial, suspension, or revocation of a certificate of authority, license, or permit, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Each instance of such violation is considered a separate offense. These sections provide, that for a misdemeanor of the second degree, a term of imprisonment may not exceed 60 days and a fine may not exceed $500.

Unfair Insurance Trade Practices Act

Part IX of ch. 626, the "Unfair Insurance Trade Practices Act," provides the office and the Department of Financial Services (department) with enforcement actions against persons that engage in unfair methods of competition or unfair or deceptive practices involving insurance. For example, the office may impose these penalties against an insurer and the department may impose these penalties against an insurance agent, since the department licenses and regulate insurance agents pursuant to chapter 626, F.S. (See, also, s. 11.121, F.S.)

Unfair methods of competition and unfair or deceptive acts or practices are defined in s. 626.9541, F.S. Section 626.9521, F.S., establishes penalties on any person engaging in these prohibited acts. The office or department may impose an administrative fine, not to exceed $2,500, per nonwillful violation, with a limit of $10,000 for all nonwillful violations arising out of the same action. With respect to any willful violation, the maximum fines is $20,000 per violation, not to exceed $100,000 for all willful violations arising out of the same action. These fines may be imposed in addition to any other applicable penalty.

III. Effect of Proposed Changes:

Section 1 amends s. 624.4211, F.S., to allow the office to impose an administrative fine, not to exceed $25,000 per violation per day if an insurer does not comply with the Insurance Code. In determining the amount of the fine, the office is required to consider the following factors:

- The degree of consumer harm caused or potentially caused by the violation;
- Whether the violation constitutes an immediate danger to the public;
- Whether the violation is a repeat violation or similar to past violations by the insurers;
- The effect of the fine or violation on the solvency of the insurer;
- The premium volume of the company; and
- The effect of the fine on the insurer's ability to comply with the code.

Section 2 amends s. 627.381, F.S. to provide that every day an insurer violates a provision of the Insurance Code, would be considered a separate violation, subject to administrative fines under s. 624.4211, F.S.

Since these provision applies to an insurer violating any provision of the Insurance Code, it appears that this provision would be more appropriately placed in s. 624.4211, F.S., rather than the section that currently refers only to violations of part I of ch. 627, F.S., related to insurance rates and rating organizations.

Section 3 provides that this act takes effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Increasing the maximum fines against insurers that violate the Insurance Code may prevent harm to Florida's insurance consumers and increase compliance with the Insurance Code.

Insurers would be subject to additional administrative fines for violations of the Insurance Code.

The bill could create more litigation due to the increased amount of these fines.

C. Government Sector Impact:

The bill would provide the office with enhanced enforcement ability through the imposition of these additional administrative fines.

The increases in the dollar amounts of fines may result in increased revenues to the Regulatory Trust Fund. The amount is indeterminate.

VI. Technical Deficiencies:

Since the increased penalties in Section 2 of the bill apply to an insurer violating any provision of the Insurance Code, it appears that this would be more appropriately placed in s. 624.4211, F.S., rather than s. 627.381, F.S., which currently refers only to violations of part I of ch. 627, F.S., related to insurance rates and rating organizations.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.