

## **PROPERTY INSURANCE**

**CS/SB 1486 by Senate Banking & Insurance Committee and Senator Garcia.  
Chapter #2005-111, Laws of Florida  
Effective June 1, 2005, except as otherwise provided.**

The bill makes numerous changes to the property insurance law enumerated as follows:

### Florida Hurricane Catastrophe Fund (CAT FUND)

- Lowers the “retention” or amount of residential hurricane losses that insurers must meet to be reimbursed from the CAT FUND, from \$4.96 billion to \$4.5 billion per hurricane, for the 2005 contract year.
- Reduces the retention to one-third of the full retention for the third and each additional hurricane in a year (in order of loss magnitude).
- Effective June 1, 2005.

### Low-interest loan program for hurricane loss mitigation

- Requires the Department of Community Affairs (DCA) to establish a low-interest loan program, by subsidizing or guaranteeing private sector loans, for homeowners to retrofit their homes to reduce hurricane losses, beginning in FY 2006-07. For FY 2005-06, up to \$1 million of the \$10 million annually appropriated to DCA from the CAT FUND could be used for establishing a pilot project in one or more counties.
- Effective July 1, 2005.

### Insurance Rating Law

- Requires a public hearing for property insurance rate filings exceeding 15 percent, (rather than 25 percent) if based on a computer model.
- Provides that hurricane loss models approved by the Florida Commission on Hurricane Loss Projection Methodology are admissible and relevant in a rate proceeding only if the Office of Insurance Regulation (OIR) and the insurance consumer advocate have access to all aspects of the model.
- Requires OIR to propose to the Legislature, by January 15, 2006, a standard territory rating plan for residential property insurance, but not to be implemented unless authorized by further act of the Legislature.
- Prohibits an insurer from recouping more than one year of reimbursement premium paid to the CAT FUND at a time.

### Public Hurricane Loss Model

- Requires insurers to report loss and exposure data for developing and updating the public hurricane loss model.

#### Citizens Property Insurance Corporation ("Citizens")

- Changes appointments to the board of governors from seven members appointed by the Chief Financial Officer (CFO), to two members each appointed by the Governor, CFO, President of the Senate, and Speaker of the House or Representatives (eight total).
- Authorizes a pilot project in Monroe County to require that rates be actuarially sound and not excessive, inadequate, or unfairly discriminatory, rather than the highest average rate in a county compared to the 20 leading insurers in the state, for those areas where OIR determines that a reasonable degree of competition does not exist.
- Requires OIR to submit a report to the Legislature providing an evaluation of the implementation of the pilot project in Monroe County by March 1, 2006.
- Requires Citizens to create a Market Accountability Advisory Committee to report at each board meeting, consisting of members appointed by agent associations, insurers, OIR, the Citizens board, a realtor association, and a bankers association.
- Provides legislative intent that Citizens provide service that is of the highest possible level.
- Clarifies that Citizens may issue bonds to refinance outstanding debt.
- Requires Citizens to make its best efforts to procure reinsurance to cover its projected 100-year probable maximum loss.
- Requires the Auditor General to conduct an operational audit of Citizens.

#### Standard Personal Lines Residential Policies

- Requires the CFO to appoint an advisory committee to develop standard personal lines policies to submit to the Legislature by January 15, 2006, but insurers would not be required to offer a standard policy unless required by further act of the Legislature. The advisory committee will consist of two representatives selling personal lines residential property insurance coverage, two representatives of property and casualty agents, two representatives of consumers, two representatives of the Commissioner of Insurance Regulation, and the Insurance consumer Advocate or his or her designee.

#### Disapproval of Policy Forms

- Authorizes OIR to disapprove a policy form for residential property insurance if it contains provisions that are unfair, inequitable, or that encourage misrepresentation.

#### Checklist of Coverage

- Requires that insurers provide a checklist of coverage for personal lines residential policies, on a form adopted by the Financial Services Commission, including whether certain specified risks are covered, premium discounts, deductibles, replacement cost or actual cash value coverage, etc.
- Effective January 1, 2006.

#### Hurricane Deductibles for Personal Residential Property

- Increases the maximum allowable deductible for personal lines residential policies from 5 percent to 10 percent of the dwelling limits.
- Requires insurers to offer deductibles of 2 percent, 5 percent, and 10 percent of dwelling limits for personal lines residential policies, rather than just 2 percent.

- Requires that the dollar amount of a percentage deductible be specified and provides other disclosure requirements.
- Effective October 1, 2005.

#### Hurricane Deductibles for Commercial Residential Property

- Requires that for condominiums and other commercial residential policies, the insurer must offer both an annual hurricane deductible and a per event deductible, beginning January 1, 2006.
- The mandatory annual hurricane deductible enacted in the December, 2004 Special Session, would be limited to personal lines residential policies.

#### Law and Ordinance Coverage

- Requires insurers to offer coverage in homeowners policies equal to 50 percent of dwelling limits for the additional costs to meet applicable building codes, as an option to the 25 percent coverage that must currently be offered or provided.
- Requires OIR to study the issue of requiring insurers to provide law and ordinance coverage.

#### Replacement Cost Coverage

- Requires that if a loss is insured for replacement cost, the insurer must pay the replacement costs without holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property.
- Effective October 1, 2005.

#### Timely Payment of Claims

- Requires insurers to renew and acknowledge a homeowner's claim within 14 days.
- Requires claim investigation to begin within 10 days after the insurer receives proof of loss statements from the policyholder.
- Provides exceptions for factors beyond the control of the insurer.

#### Mediation Program

- Expands the mediation program for resolving property insurance disputes, administered by the Department of Financial Services (DFS), to commercial residential policies, and provides a penalty for insurers failing to notify claimants of their right to mediation.
- Effective July 1, 2005.

#### Valued Policy Law (Mierzwa)

- In response to a recent district court of appeal opinion, provides legislative intent that the valued policy law is not intended to create new or additional coverage, or to require an insurer to pay for a loss caused by a peril other than the covered peril. If a loss is caused in part by a covered peril and in part by a noncovered peril, the insurer's liability is limited to the amount of the loss caused by the covered peril. However, if the covered perils alone would have caused the total loss, then the valued policy law applies and the insurer must pay policy limits, not exceeding the amounts necessary to repair, rebuild or replace the insured structure.
- These provisions will not be applied retroactively and shall apply only to claims filed after the effective date of this amendment.

Sinkhole claims -- Revises the law on sinkhole claims, as follows:

- Specifies that sinkhole coverage includes the costs to stabilize the land and building and to repair the foundation.
- Allows an insurer to deny a sinkhole claim if the insurer determines there is no sinkhole loss, but the insurer must provide written notice to the policyholder of their right to demand testing.
- If the policyholder demands testing, the insurer must engage an engineer or a geologist to conduct testing.
- Testing must be conducted in compliance with specified standards and a report must be issued as to the cause of the loss, with recommendations for stabilization and repair.
- The findings and recommendations of the engineer and geologist are presumed correct and the insurer must pay the costs of stabilization and repair in accordance with the recommendations.
- The insurer may limit its payment to the actual cash value of the sinkhole loss until such time as expenses related to land and building stabilization and foundation repairs are incurred, including underpinning and grouting. But, the insurer cannot require the policyholder to advance payments. The insurer must pay the expenses after a policyholder enters into a contract for stabilization or foundation repairs, and pay amounts necessary to begin and perform repairs as the work is conducted.
- If repair has begun and the engineer selected or approved by the insurer determines that the repair cannot be completed within the policy limits, the insurer must either complete the engineer's recommended repair or tender the policy limits to the policyholder without a reduction for the repair expenses incurred.
- If an insurer pays a sinkhole claim, it must file a copy of the professional report with the county property appraiser.
- Establishes a sinkhole database within the DFS to track sinkhole insurance claims.
- Requires the seller of real property to disclose to the buyer that a sinkhole claim has been paid and whether or not the insurance proceeds were used to repair the sinkhole damage.

Notice of Premium Discounts for Hurricane Loss Mitigation

- Requires insurers to notify applicants and policyholders of the availability and amount of premium discounts and credits for fixtures and construction techniques that reduce the amount of loss in a windstorm.
- Effective October 1, 2005.

Prohibited Cancellation of Coverage

- Prohibits an insurer from canceling or nonrenewing a residential property insurance policy covering a dwelling damaged by a hurricane until 90 days after the dwelling has been repaired, with certain exceptions.
- Prohibits an insurer from canceling coverage for anyone during the duration of a hurricane, until 72 hours after the last hurricane watch or warning is issued anywhere in the state.

Additional Staffing for Insurance Consumer Advocate

- Appropriates \$350,000 from the Insurance Regulatory Trust Fund and four positions to the Office of the Consumer Advocate appointed by the CFO.

Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market

- Creates the Task Force to consider issues relating to the creation and maintenance of insurance capacity in the private sector and public sector which is sufficient to ensure that all property owners in the state are able to obtain appropriate insurance coverage for hurricane losses.
  - The Task Force is also charged with studying various issues relating to Citizens Property Insurance Corporation.
  - The report and recommendations, including draft legislation, is due by April 1, 2006.
  - The Task Force is administratively housed within the office of the CFO and would have 12 members consisting of three members each appointed by the Governor, CFO, the Senate President, and Speaker of the House.
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