



Office of Insurance Regulation

2008 Legislative Priorities

I. Consumer Protection

In order to better serve Florida's insurance consumers, the Office is proposing a series of statutory changes to the insurance code. Taken together, these proposals will allow the Office to better enforce Florida law, and ensure that consumers are well represented in the marketplace.

Fines and Enforcement – SB 2362 by Senator Gaetz and SB 2860 by Senator Atwater

Currently, the Office may impose an administrative fine, in lieu of revocation or suspension, for violations of the insurance code. For nonwillful violations, the fine is \$2,500 per violation with an aggregate amount capped at \$10,000. For willful violations of the insurance code, the fine is \$20,000 per violation with an aggregate amount capped at \$100,000. The Office has found that these fines are inadequate to encourage compliance and prevent further violations by the same company.

This proposal increases the fines that may be imposed on insurers to a maximum of \$25,000 per violation, per day and removes the aggregate limits. The Office, in determining the appropriate fine will consider: the degree of 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 violation by the insurer; 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 insurance code.

Strengthening the Office's ability to fine insurers that cause harm to Florida's consumers will increase compliance with the Insurance Code and allow for a greater degree of service.

Unfair Competition Enforcement

Often, insurers who engage in unfair methods of competition will pay a small fine and continue to operate in ways that are harmful to Floridians. With the small fines (\$2,500 for nonwillful violations, \$10,000 for willful violations – both with aggregate limits) some insurers find it is more profitable to continue operating outside of Florida law. This proposal attempts to remove the financial incentive to engage in unfair methods of competition.

This proposal will increase the fine for nonwillful violations to \$25,000 and increase the fine for willful violations to \$100,000. In addition, the amendment removes the aggregate limits for the fines, thus removing the profit motive for companies to avoid complying with the law.

Additional Consumer Protections – SB 1196 by Senator Geller and SB 1564 by Senator Atwater

Permanent suspension of "use and file" filings for rate increases. After the 2007 Special Session on property insurance, insurers could no longer make "use and file" filings

seeking a rate for property insurance that was greater than the rate most recently approved by the Office. This practice was only halted until December 31, 2008. Insurers may still operate on a “use and file” basis so long as the new rate for property insurance is not greater than the last approved rate. In addition, the insurer may still charge a greater rate, so long as it is approved by the Office first.

Permanent prohibition on the use of arbitration to challenge a rate filing:

In 1996, Florida law¹ was amended to allow insurance companies to challenge decisions of the Department of Insurance (now the Office of Insurance Regulation) on property and casualty rate filings and appeal to a three-member arbitration panel. The insurance company and the department each appoint one arbitrator and then mutually agree on a third arbitrator, who all must be certified by the American Arbitration Association.

Since the law passed, arbitration panels have usurped regulators’ ability in several cases to approve homeowner’s insurance rates that are actuarially sound and fairly applied. Insurers often use this process to bypass state regulators.

The insurance industry has argued that the arbitration panel process is necessary in order to implement rates quickly because appealing the Office’s disapproval of a rate increase in a Florida courtroom takes too long. Florida’s “use and file” rate law allows insurance companies to implement a rate increase, even during the course of an appeal if the Office subsequently disapproves the “file and use” rate change. Furthermore, insurance companies have been responsible for arbitrations exceeding the 90 days contemplated by the Legislature.

Prior to the passage of this law, insurance companies worked with the department and rates were approved if fair and necessary, and were rejected if excessive. Arbitrators are taking the place of trained department actuaries.

Furthermore, Florida law states that the arbitration panel’s decisions are final and binding, leaving state regulators with no chance to successfully appeal. Consumers should be protected from this end-run around state regulators.

II. Cover Florida Health Access Program - SB 2534 by Senator Peaden

Florida currently ranks 4th in the nation for the highest number of uninsured residents with 3.8 million people, or 21.2 percent. Specific segments of Florida’s population are particularly likely to be uninsured. These include young adults, low income individuals, and those who are self employed or employees of small businesses. The Cover Florida Health Access Program (Program) does not raise or require tax dollars and does not place any mandates on individuals or employers to participate. The state of Florida will contract with competitively-selected private sector insurance companies to offer unique,

¹ At s. 627.062(6), Florida Statutes.

low-cost consumer choice insurance products to all uninsured Floridians. There will be no mandate for insurers to participate.

The plans will be guaranteed issue to all uninsured Floridians who are between the ages of 19-64, which means coverage will not be denied for people with preexisting medical conditions. The consumer choice plans will include, at the very least, coverage for: 1) Preventive health services, including screenings and immunizations; 2) office visits and office surgery, including anesthesia; 3) inpatient hospital stay, urgent care, and hospital emergency care services; 4) outpatient services and outpatient surgery; and 5) prescription drugs, diabetic supplies and durable medical equipment. Uninsured Floridians will be able to choose an insurance product from among statewide or regional access networks, and will be able to choose coverage levels and benefits that best suit their unique needs. The Executive Office of the Governor, the Agency for Health Care Administration (AHCA), and the Office of Insurance Regulation (OIR) will announce a competitive bidding process wherein private insurance companies can bid to offer these unique insurance products. No later than July 1, 2008, AHCA and OIR will announce an Invitation to Negotiate (ITN) for Cover Florida plan entities to design a Cover Florida coverage proposal in which benefits and premiums are defined. \$500,000 is allocated for marketing of the Program to boost awareness among Floridians for affordable, consumer choice coverage.

III. Suitability of Sales of Annuities to Seniors – SB 2082 by Senator Bennett and HB 1003 by Representative Ford

Florida Statutes presently contain a section regarding suitability of sales of annuities to seniors. Annuities are complex financial instruments, and easily misunderstood by purchasers. Annuities are meant to provide a lifetime source of income. Many annuities, however, defer that income stream for a number of years, or subject the return on the investment to outside factors not always easily determinable in the contract. Suitability refers to not just a purchaser's age, but the investment goals and strategies, debt, assets and liabilities, health status, and any need for liquidity, and a host of other factors.

The present suitability law was enacted in 2004. As the Office has pursued enforcement of the law, problems with the law became apparent. The most glaring problem is that the law is very vague on what criteria should be taken into account to determine suitability. In addition to lack of clarity or standardization of the information the agent obtains from the consumer in making the recommendation, there is no required verification that the consumer has in fact been asked for the information and either provided it or refused to do so. Another issue is that the statute appears to place the responsibility of compliance on either the agent or the insurer without a clear distinction as to where the ultimate responsibility for addressing suitability lies. And in the situation of an exchange of one annuity contract for another, the consumer is often not informed fully of the disadvantages that might occur, such as steep surrender charges. Last, all annuity consumers should have the opportunity to review the issued contract to assure

it is suitable after the sale. Florida statutes provide for a minimum 10-day “free look” provision for fixed annuities and none for variable annuity products.

This proposal corrects these deficiencies by doing the following: sets out a more thorough listing of the information the agent must obtain from the consumer; requires verification that the agent tried to obtain the information but the consumer refused to provide it, if that is the case; clarifies that the responsibility for suitability lies with both the insurer and the agent; provides for additional disclosures to the consumer in the case of an exchange; and provides for a minimum “free look” period for all senior annuity consumers. Ultimately, this proposal strengthens the protection for senior purchasers of these complex products.

IV. Open Government Sunset Review of Credit Scoring Methodologies – PCB 7042 by the Senate Committee on Banking and Insurance

In 2003, the Florida Legislature provided a public record exemption for credit scoring methodologies. At the time the exemption was provided, the impact credit scores would have on insurance rates was uncertain and no data existed to illustrate to what extent its use would impact consumers with little or no credit. After five years, however, the Federal Trade Commission, State Governments, universities, and insurance consumer advocates have published multiple reports indicating that credit scoring has a disproportionate and adverse impact on certain ethnic and religious groups.

The Office believes that the public records exemption is not a necessity for the greater good of the public, but rather serves as a private interest. As a result, credit scoring methodologies, which have been proven to disproportionately and adversely impact the minority population, should not remain trade secret.

V. Education and Occupation as Underwriting Factors – SB 2650 by Senator Gaetz

The Office of Insurance Regulation (Office) held a public hearing on February 9, 2007 to review the use of occupation and education as underwriting or rating factors for private passenger auto insurance and its potential impact on Floridians. From information received relating to the public hearing, the Office revealed that there is a demonstrable correlation between occupation, education and income-level and ethnicity.

For example, in one online quote, with all other factors remaining equal, except for changes to the applicant’s occupation and education, the results demonstrated a 300% higher rate for the less educated and less skilled applicant.

Subsequent to the hearing, the Office published a report, “The Use of Occupation and Education as Underwriting/Rating Factors for Private Passenger Automobile Insurance,” which, among other things, exposed the need for legislative action on this issue. This

amendment to the Unfair Trade Practices Act in the Insurance Code, s. 626.9541, F.S., is intended to prohibit the use of an insured's occupation, education, and income level information in determining the rates charged for insurance unless an insurer can prove that using these factors does not create a disproportionate impact.

VI. Title Insurance – SB 2540 by Senator Fasano

This legislation requires title insurance companies to submit a rate filing to be approved by the Office in accordance with Florida Laws governing property and casualty insurance company rate filings. Title insurance companies will be required to provide actuarial justification for the entire premium charged to the consumer for the service provided.

Although title insurance is more closely related to a warranty certificate, title insurance companies have persuaded legislatures to associate Title insurance with property and casualty insurance products that are more creditable and typically contain higher loss cost risks. Title insurance is however dissimilar from property and casualty insurance, in that title insurance has a low loss ratio of approximately five percent, equating to profits of 95 cents on the dollar.

The Financial Services Commission (FSC) is authorized to establish an actuarially sound premium for title insurance; however rule promulgation to establish an actuarially sound premium has been halted due to rule challenges by the title insurance industry.

The Office projects that consumers will see significant savings on their title insurance rates as a result of title insurance companies providing actuarial justification for the premium charged to consumers.