

Florida Insurance Report

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Sine Die - The annual ceremonial end to the Legislative Session - the dropping of the handkerchiefs

Sine Die in Tallahassee

2008 Legislature Finishes On Time
By: Travis Miller

Winners and losers. Safe bets and long-shots. High stakes and near misses. The Kentucky Derby and the Florida legislative session have more in common than initially meets the eye. In fact, they each have their own clever nicknames, with the Derby being the “fastest two minutes in sports” and the legislature’s two-month session being dubbed Florida’s “second catastrophe season.”

Now that the dust has settled on the 2008 legislative session, it is time to separate the bills that made it to the finish line from the also-rans. And remember, just as race results aren’t final until reviewed by track officials, these bills won’t become law until the Governor acts. To update the status of the bills discussed in this Report and more, please visit the Legislative Updates at our website, www.radeylaw.com.

Tax & Budget Reform Commission Adopts Proposals

By: Travis Miller

While the Florida Legislature attracts considerable attention each year, the Tax & Budget Reform Commission draws equal attention when it is convened every 20 years. The TBRC is widely monitored because it has the authority to adopt proposed constitutional amendments that are presented directly to Florida voters. Having recently concluded its work, the TBRC voted to present the following amendments to Floridians in this November’s election:

Property Tax Exemption for Wind Hardening-- allows the legislature to adopt tax exemptions for improvements made for the purpose of improving a property’s wind resistance

Conservation Property Exemption-- provides a tax exemption for property permanently dedicated to conservation and creates a classified use designation for conservation land similar to the designation for agricultural land; conservation land will be taxed based on its actual use rather than highest and best use

Property Tax Swap-- one of the most debated proposals, this amendment would reduce property taxes, with the lost revenue being replaced by revenue from other sources, in essence swapping property taxes for other forms of taxes

Tax & Budget Reform - Cont.

Working Waterfronts-- provides for taxation of working waterfronts (commercial fishing facilities, marinas, etc.) based on their current use rather than highest and best use

Local Option Taxes for Community Colleges-- provides a mechanism for local referendums on designated taxes for community colleges

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See Page 6 for our Annual Thumbs Down List of Bills that did not make the cut.

2008 Property Bill

Race to the Finish

The day before the end of the regular session, the 2008 Property Bill passed. Here are the highlights of its provisions:

Statute/Issue	Summary of Provisions
215.5595 - Insurance Capital Build-Up Incentive Program	Extends the capital build-up program with another round of funding up to \$250 million
624.3161 - Market conduct exams	Allows OIR to direct an insurer to submit its claims-handling procedures, subject to the insurer's administrative rights.
624.4211 - Fines	Existing penalty amounts are doubled
624.4213 - Trade Secrets	Codifies the procedures for designating and protecting trade secrets
624.4305 - Residential Nonrenewals	Requires an insurer planning to nonrenew more than 10,000 policies in a 12-month period to notify OIR
626.9521 - Unfair Insurance Trade Practices	As with penalty provision, amounts are doubled
626.9541 - Unfair Insurance Trade Practices	Would require an insurer to pay undisputed amounts of partial or full first-party benefits under property policies within 90 days
627.0612 - Administrative Hearing	Establishes that certain issues are findings of fact to be resolved by administrative law judge and allows the ALJ to approve, modify, or reject rates
627.062 - Rate standards	Extends prohibition on use-and-file for one more year Repeals arbitration. Makes specific changes to factors to be considered in rate filings Provides for expedited administrative hearing in rate disputes and requests expedited appellate review
627.0628 - Modeling Commission	Specifies that insurers must use commission-approved models without modification when projecting hurricane losses for rate filings and PML
627.0629 - Residential Property Rate Filings	Requires correlation between mitigation discounts and uniform home grading scale by 2011
627.351 - Citizens	Makes several changes, including <ul style="list-style-type: none"> • Eliminates distinction between homestead and non-homestead property. • Prohibits properties valued over \$2 million as of 1/1/09 • Reduces regular assessments to 6% • Allows Citizens policyholder surcharge; surcharge capped at 15% instead of 10% • Requires Citizens to make an actuarially sound rate filing by July 15, 2009 and each year thereafter (effective no earlier than 1/1/2010) • Repeals outdated provision requiring forced-purchase of bonds
627.4133 - Notices of Cancellation/ Nonrenewal	Requires 180 days' advance notice of nonrenewal, cancellation, or termination of a residential policy if insured for 5 years
689.262 - Sale of Residential Property	Requires disclosure of property's windstorm mitigation rating to the buyer for properties in wind-borne debris region
627.06281 - Public Model	Provides residential insurers access to the public model for use in ratemaking; fee schedule to be promulgated by OIR by 1/1/09
627.0655 - Multi Policy Discounts	Allows multi policy discounts when the residential policy is with Citizens as long as the servicing agent is the same
Citizens Task Force	Creates a task force to study how to restore Citizens to being a residual market
CFO Report	Requires the CFO to prepare an annual report describing the fiscal impact on the State of Florida from a 100-year event
Rate Transparency	For residential property filings after 7/1/08, requires the OIR to maintain a website showing the amount of the insurer's initial request and the amount of the final rate approval Requires the OIR to publish certain aspects of its review process and findings Limits ability of OIR to claim attorney-client or work product exemptions for rate information
FHCF Low Layer 215.555	Extends the low layer of FHCF for certain insurers for one more year
Mortgage Company Notice 627.712	An insurer writing an ex-wind policy must notify the mortgage company that its policy does not include wind coverage

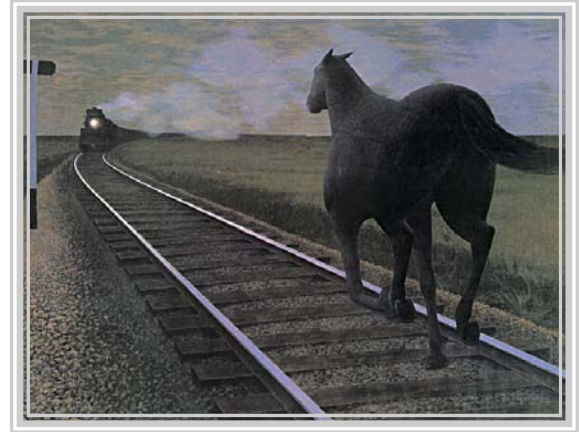
The Iron Horse

Senate Bill 2012 - the 2008 "Insurance Train"

By: David Yon

Senate Bill 2012 has the distinction of being this year's insurance train - a bill that contains a mixture of issues - usually unrelated. Here is a bullet list of the issues contained in the bill:

- Section 1 – Amends Multiple-Employer Welfare Arrangement Act
- Section 2 – Amends section 395 which permits risk pooling by certain hospitals and hospital systems
- Section 3 – Amends section 627.351 pertaining to Citizens
 - Modifies provisions dealing with confidentiality of records
- Section 4 – Amends law pertaining to Public housing authorities self-insurance funds
- Sections 5 – 19 modify licensing requirements for adjusters, contract requirements and generally seem to be attempting to reign in fraud by public adjusters
 - Provides filing fee for reinstatement of suspended agents' licenses
 - Includes public adjuster "apprentice" in definition of adjuster and creates public adjuster apprentice license. Modifies agent and adjuster licensing laws. Specifically provides for licensing of company employee adjusters.
 - Creates new exam and qualifications for PA
 - Prohibits public adjusters from soliciting except for Monday through Saturday 8-8
 - Prohibits adjuster from making misleading statements
 - Prohibits public adjuster from giving loans or gifts in excess of \$25
 - Limits amount and nature PA can charge for services (10% cap for cat losses if emergency has been declared for example)
 - Impose new contract requirements – all PAs must have contracts and contracts must include statement that fraudulent claims are felonies
 - Proof of loss statements must all contain statement that fraudulent claims are felonies
- Section 20 – deals with long term care insurance
- Section 21 – deals with Holocaust claims
- Section 22 – deals with PIP issues
- Section 23 – authorizes title insurers to sell the "Uniform Commercial Code Product" authorized by Chapter 2005-103, Laws of Florida, and may petition for a rate deviation for the product pursuant to 627.783
- Section 24 – Extends lower layer (\$10M) of FHCF coverage for another year
- Sections 25-28 – modifies educational and licensing requirements for appointed agents
- Section 29 – Effective date for bill is July 1, 2008



Take your Gun to Work

By: David Yon

With budget and insurance issues dominating the headlines and much of the 2008 Legislature's time, one of the first major bills to clear both houses and get the Governor's signature is the "Guns in the Workplace" bill (HB 503). The bill allows employees and others who have concealed-weapons licenses to keep their guns in vehicles.

The law is far from secure though as the Florida Chamber of Commerce, the Florida Retail Federation and some other business groups have retained counsel and intend to challenge the bill in court. A similar law was overturned in Oklahoma because the court ruled that it violated federal worker protection laws. A federal court found that the Oklahoma law - which did not include the concealed -weapons-license provision - conflicted with federal Occupational Safety and Health Act rules requiring employers to provide workplaces free of hazards.



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Capital Build-Up Program Seeks New Participants

The 2006 capital build-up program allowed several insurers to significantly increase their surplus. Those insurers have deployed their surplus by writing substantial new business, in some cases ranking among Florida's top ten writers. The 2008 legislature decided to further kick-start new or growing insurers by establishing another round of funding. Significant attributes of the 2008 program include the following:

The legislature has allocated \$250 million to the program. The funding will come from Citizens' personal and commercial residential accounts as long as those accounts have at least a combined \$1 billion in December 2008. Funds allocated to the program in excess of those requested by applications meeting the deadlines below will revert to Citizens.

An insurer can seek up to \$25 million from the program (or 20% of the program's funding, whichever is greater), with the exception of insurers writing manufactured housing policies, which can seek up to \$7 million.

Capital contributed April 1, 2008, or after counts towards the insurer's capital contribution requirement.

An insurer seeking a dollar-for-dollar match from the state must apply by September 1, 2008. After September 1 and before June 1, 2009, an insurer still may apply but must contribute two dollars for each state dollar.

State matching funds are provided to the insurer in the form of a surplus note.

To qualify, the insurer's capital and surplus after receiving the new capital and surplus note proceeds must be at least \$50 million (except for insurers writing manufactured home policies, which must reach \$14 million).

The insurer must put its surplus to work by reaching a 1:1 net writings ratio one year after receiving the proceeds, 1.5:1 by the two-year mark, and 2:1 by the end of the third year. Alternatively, the insurer can reach gross ratios of 3:1, 4.5:1, and 6:1 by those same dates.

For purposes of the ratio calculations, the insurer's surplus includes only its new capital and surplus note proceeds.

The insurer must write at least 15% of its new business premiums from policies formerly with Citizens for each of its first three years.

The insurer must agree to maintain reinsurance protection to the 100-year PML level.

For information about the capital build-up program, please contact Travis Miller.

Citizens and the FHCF: Florida's "Minus Pools"

By: Travis Miller

Minus Pool-- A mutual pool caused when a horse is so heavily played that, after deductions of state tax and commission, there is not enough money left to pay the legally prescribed minimum on each winning bet. The racing association usually makes up the difference.

The storms of 2004 and 2005 indicated that Florida's residual markets and catastrophe financing mechanisms are "minus pools," except unfortunately when there wasn't enough money left over, it was statewide policyholders who made up the difference. So how did Citizens and the FHCF fare in the 2008 session?

The TICL layer adopted in 2007 added \$12 billion in potential reimbursement promises above the traditional FHCF layer. This pushed the FHCF's potential aggregate reimbursement promises to approximately \$28 billion. However, after market conditions last fall reduced the amount of pre-event notes the FHCF could issue, attention turned to whether the FHCF could issue the volume of bonds that would be required to support its full reimbursement obligations. The FHCF advisory council has written that it has reservations about the FHCF's ability to meet the full amount of its obligations. In addition, the FHCF's financial advisor testified before the legislature that the FHCF would have considerable difficulty issuing the bonds. Legislative testimony further indicated that the FHCF's ability to pay in a timely manner also will affect the ability of Citizens to pay its claims.

Throughout the legislative session, the House and Senate considered a proposal championed by CFO Alex Sink that would have reduced the upper limit of the TICL layer from \$12 billion to \$9 billion and would have increased insurers' copayments from 10% to 30%. The goal of the proposal was to reduce the exposure of the FHCF in a year in which reinsurance costs reportedly are softening, and to begin reducing insurers' reliance on the TICL layer a year before it is set to expire. The proposal ultimately did not pass, leaving the TICL layer intact and leaving lingering questions about the FHCF's ability to pay as rapidly as insurers might require. Over the next month, the FHCF will be looking at reinsurance or financial market alternatives to help secure its claims-paying ability. We will update this issue in upcoming editions of this Report and on our website at www.radeylaw.com.

Citizens continues to benefit from significant depopulation activity and the voluntary market efforts of a number of insurers, including a growing domestic market. However, Citizens' frozen rate levels suppresses the number of policies that can viably be written in the private market, and the legislature decided to freeze Citizens' rates through the beginning of 2010. By mid-2009, Citizens will develop actuarially sound rates, if there's no intervening legislation in the meantime. The legislature also decided that Citizens should transfer \$250 million to the state to fund another round of surplus notes in the capital build-up program, but only if the combined balance of the personal lines and commercial lines accounts exceeds \$1 billion at the end of storm season. With participants expected to write at least 15% of their new premiums on policies taken from Citizens, the legislature hopes that putting the additional capital to use in the private market will directly benefit Citizens through takeouts and indirectly benefit Citizens by continuing to grow the private market. For a summary of additional legislative changes affecting Citizens, please see our summary of SB 2860 on page 2 of this Report.

For additional information about legislative changes affecting the FHCF or Citizens, please contact Travis Miller.

Proposals That Did Not Pass

Faded on the Backstretch

By: Travis Miller

TICL Rollback-- In 2007, the legislature expanded the FHCF by creating the \$12 billion TICL layer on top of the traditional FHCF. Amid widespread acknowledgment that the FHCF would have trouble issuing bonds at that level, bills in the House and Senate would have reduced the TICL layer to 70% of \$9 billion. The bills passed committee assignments with no apparent opposition but stalled in the final weeks of session, likely due to an aversion to legislation that would create any upward pressure on rates in advance of property insurers' next rate filings.

Commercial Non-Assessable Policies-- As with the TICL rollback, this proposal charged out of the gate with apparent support. The bills would have allowed consumers to purchase assessable policies subject to rate regulation, or to give up the protections of rate regulation in exchange for the elimination of regular assessment liability by purchasing non-assessable policies. As with the TICL rollback, questions about the impact on rate levels likely doomed this proposal.

Application of Antitrust Laws to Business of Insurance-- The Senate proposal for SB 2860 initially would have subjected the business of insurance to Florida's antitrust statutes. However, due to House opposition, this proposal was not part of the final bill. Concerns over the uncertain and likely adverse impact of what in essence would become a dual regulatory scheme contributed to the elimination of this provision.

Memorials to Congress-- The Senate passed two memorial bills. One would have urged Congress to enact a national catastrophe insurance program. The other supported federal legislation allowing insurers to accumulate catastrophe reserves on a tax-free basis. Both memorial bills died when the House did not take them up.

Reaffirmation of Insurance Commissioner-- A late amendment to the debt cancellation bill in the Senate would have required a reaffirmation vote for the commissioners of insurance and banking every two years. The House did not go along, and the bill ultimately passed without the Senate amendment.

Stumbled at the Gate:

FWIP-- A Florida Windstorm Insurance Program bill moved rapidly through the House but never gained traction in the Senate. The program would have altered the FHCF to allow it to write all of Florida's personal residential risk, leaving the private sector to write only the ex-wind coverages.

Amending the Arbitration Code-- Bills in both chambers would have amended Florida's arbitration code. Among the amendments, arbitration clauses would have been prohibited in insurance contracts issued to individuals and small businesses. The bills drew strong opposition from business groups and stalled in the committee process.

Never Left the Paddock:

Cherry Picking / Tying-- Several early proposals resurrected the idea of preventing insurers from writing other lines of business in Florida if they write homeowners policies elsewhere but not in this state. These proposals never received serious considerations and are not part of any of the final bills.

OIR-Required Notices-- An early bill would have required the OIR to notify homeowners customers of their options when they receive notices of cancellation or nonrenewal. The OIR is not aware of specific instances of nonrenewal, and the program would have been expensive to administer with questionable benefits. It therefore never advanced during the session.

Civil Remedies-- Early bills would have revised the civil remedies statute, including extending the period in which insurers may resolve cases. These bills never received much attention during the session.



2008 Strange Bills

Gelded 4 x 4's....

By: Travis Miller

Every session sees its share of unusual issues, and 2008 was no exception. Here are a few examples:

The legislature amended a bill to impose a fine on drivers who display replicas of certain anatomical features from their vehicles. (Yes, this really happens...a sure sign we live in the South.) Then, in the waning hours of the session, that provision was snipped from the final bill, ensuring that Florida pickups can retain their manhood.

For a state that has approved more than 100 specialty auto license tags over the years, this year's proposal to place a two-year moratorium on new tags seemed out of place. Why the epiphany that

we have too many tags? A proposal for a new "I Believe" tag.

The House and Senate brought back the "toilet paper" bill this year after it went down the drain last year. The bottom line—some legislators believe restaurant restrooms should be adequately stocked with toilet paper so Floridians don't have to ask neighboring stallmates to "spare a square." The bill didn't pass, so Florida restaurants are still BYOTP.

The Senate passed a bill that would have enacted a statewide school dress code requirement prohibiting students from wearing low-riding pants that expose their underwear. Alas, the House stripped that provision from the bill before sending it back to the Senate, arguing that the issue should be one of local control. If the "droopy drawers" fashion trend takes hold among regulatory lawyers, we believe the legislature can (and should) outlaw it.



Life Insurance Settlement Association Challenges Validity of Proposed Viator Disclosure Rule

By: Tom Crabb

A proposed administrative rule of the Financial Services Commission requires viatical settlement providers to make certain disclosures to viators, including the name of each viatical settlement broker who receives or is to receive compensation and the amount of the broker's compensation, as well as a "complete reconciliation" of the gross offer or bid by the provider to the net amount to be received by the viator. On April 4, 2008, the Life Insurance Settlement Association ("LISA") filed a petition challenging this proposed rule as an invalid exercise of delegated legislative authority. LISA argues that no provision of the Florida Viatical Settlement Act requires disclosures by settlement providers when a broker is involved in the life settlement transaction. Further, the "complete reconciliation" required of settlement providers by the proposed rule may require information not known by the settlement provider. LISA states that

providers "are not always in a position to provide a 'complete reconciliation' of all amounts related to the transaction, but can only provide a reconciliation of the amounts paid by the viatical settlement provider" as providers "may not be aware of instances where brokers divide or share their fees with others."

The proposed rule follows recent enforcement actions by the Florida Office of Insurance Regulation and regulators in other states related to a variety of issues surrounding disclosure to viators by settlement providers. Transparency of the entire settlement transaction is the intent of the rule but LISA's challenge will test whether the Commission exceeded its statutory authority in this instance. As of publication of the Insurance Report, the final hearing before the administrative law judge has been continued and the parties have agreed to resolve this rule challenge by opposing motions for summary final order (DOAH Case No. 08-1645RP) to be filed by June 6, 2008. For more information about regulation of the viatical/life settlement industry in Florida, please contact myself or any member of our Insurance Team.



2008 Autism Bill

Photo Finish

By: Travis Miller

The last bill passed in the 2008 legislative session was perhaps one of the most thought-provoking and emotional. Legislators for weeks debated whether health insurance policies should cover autism and other children's developmental concerns. The Senate passed a bill that would require health insurers to reach agreement on how to cover all children's developmental disabilities, or else be faced with a mandate in two years to cover autism.

The House wanted broader coverage and apparently believes that insurers will opt to provide the autism-only coverage in two years. The House therefore rejected the Senate's proposal on the last day of session. Hours later, at the urging of Governor Crist and others, Speaker Marco Rubio convened a meeting near the Speaker's rostrum with his key House negotiators on the bill. Tension filled the air for about 10-15 minutes as observers speculated about the fate of the bill. The Senate, having already concluded its business, looked on hoping that the House would pass the bill. The meeting broke, representatives went back to their desks, and the House passed the Senate's version of the bill with a vote of 117-0.



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OIR Issues Memo on TRIA Reauthorization

What is the effect on Forms and Rates?

On April 22, 2008, the Office of Insurance Regulation issued the first Informational Memorandum of 2008 on the TRIA Reauthorization Act of 2007.

In December of 2007, the National Association of Insurance Commissioners provided two model disclosure notices that were subsequently approved by OIR. The disclosure notices and the Informational Memorandum can be found in the Resources area of our website.

Insurers are advised to review their forms to ensure compliance with the Act. Additionally, rates should be revised to reflect the reauthorization of the act beyond 2007. Changes to both forms and rates can be uploaded through the OIR I-File System.

Transfer of Securities Rules Filed for Adoption

Rules 69O-143.041 and .042 that were modified during the 2007 Regular Legislative Session in Senate Bill 562 have been amended and filed for adoption by the Financial Services Commission with an effective date of May 13, 2008. The Legislature passed and the Governor signed SB 562 which amended Section 628.511, F.S. allowing domestic insurers to own or transfer securities without physical delivery of the certificates. Insurers can keep their securities with their broker/dealers.