

MARKET BULLETIN

REF: Y3982

Title	Florida: new legislation – “HB 1A”
Purpose	The law referred to as “HB 1A” contains provisions affecting many aspects of the insurance industry in Florida. This bulletin details new provisions regarding reinsurance and surplus lines insurance and summarises its other provisions
Type	Event
From	James Walmsley, Senior Manager, Lloyd’s International Market Access (extension 5131)
Date	19 March 2007
Deadline	Many of HB 1A’s provisions are effective immediately. Others take effect at the dates specified
Related links	Summary of HB 1A

Purpose of bulletin

To notify the market of the Florida law HB 1A and to draw attention to various requirements that might be imposed on surplus lines insurers.

This bulletin will be of interest to managing agents, underwriters and Lloyd’s brokers underwriting or arranging contracts insuring Florida risks. Many of the detailed provisions affect property insurance, particularly residential property insurance.

HB 1A

HB 1A passed the Florida House of Representatives by 116 votes to 2 and the Florida Senate with a unanimous vote in favour. Charlie Crist, Governor of Florida, signed the bill into law on 25 January 2007. A letter dated 29 January 2007 from the Governor to Kevin McCarty, Insurance Commissioner, says:

“The new law implements major reforms and revisions to the current law that are intended to provide for the reduction and stabilization of rates in Florida’s residential property insurance market and to address the property insurance affordability and availability crisis.”

HB 1A is a lengthy document, containing provisions relating to many different aspects of the Florida insurance industry. A summary of the law is available on Florida Office of Insurance Regulation website at this address: http://www.floir.com/pdf/HB_1A_Summary.pdf

In this market bulletin, requirements directly affecting the arranging and underwriting of Florida insurance contracts are set out in appendix 1. Appendix 2 summarises other provisions of the law.

Further information

In you have any queries about this market bulletin, please contact Lloyd's International Trading Advice:

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New requirements for surplus lines insurance contracts

Most of the changes made by HB 1A primarily impact admitted insurers and reinsurers. However, Florida has a history of applying certain requirements for residential property insurers to surplus lines insurers, particularly in the aftermath of windstorm catastrophes. For this reason, new requirements with regard to residential property insurance contracts are set out below. Lloyd's underwriters are not therefore required to comply with these provisions immediately. However, there is a possibility that the Florida Office of Insurance Regulation will attempt by rule or other means to require surplus lines insurers, including Lloyd's underwriters, to comply with some or all of these provisions at some time in the future, particularly in the event of a natural catastrophe.

Many of these provisions amend the Florida Insurance Code (Chapters 624 to 651 of Florida Statutes). References are provided to the Florida Insurance Code sections being amended. While many of these changes should be subject to the surplus lines exemption from form and rate regulation, a summary thereof is provided for the reasons set out above.

Section 24 - amending 627.4035

Requirement applies to: personal lines residential and commercial property policies.

Requirement: An insurer issuing such a policy must provide a premium plan option to policyholders, allowing for quarterly and semi-annual payments.

Deadline: Insurers must do this by July 1 2007.

Section 25 - amending 627.4133(b)

Notice of cancellation, non-renewal or renewal premium

This provision is not duplicated in the specific provisions in relation to cancellation and non-renewal of surplus lines insurance

Requirement applies to: personal lines or commercial residential property insurance policies. This includes any policy covering a residential structure or its contents.

Requirement: An insurer must give the named insured written notice of non-renewal, cancellation or termination at least 100 days prior to the effective date of the non-renewal, cancellation or termination. [The requirement was previously to give 90 days' notice.]

The insurer must give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any non-renewal, cancellation or termination that would be effective between June 1 and November 30.

The notice must include the reason or reasons for the non-renewal, cancellation or termination.

When cancellation is for non-payment of premium, at least 10 days' written notice of cancellation accompanied by the reasons shall be given.

When cancellation or termination occurs during the first 90 days of the insurance being in force and is for reasons other than non-payment of premium, at least 20 days' written notice must be given, except where there has been a material misstatement or misrepresentation or failure to comply with the insurers' underwriting requirements.

Deadline: Effective immediately.

Section 27 - amending 627.4261 (renumbered as 627.70131)

Requirement applies to: personal lines residential property insurance policies.

Requirement: Within 90 days of receiving notice of a property insurance claim from a policyholder, the insurer must pay or deny a claim unless the failure to pay the claim is caused by factors beyond the insurer's control, which reasonably prevent the payment. The issue of what constitutes "payment" is unclear, and is likely to be clarified by rule.

While this, like many of the other cited changes, applies primarily to the admitted market, underwriters should take note of the requirement, particularly given the punitive damages associated with non-compliance. Because of the potential penalties for non-compliance, and the historical efforts of the Florida Office of Insurance Regulation to impose claims-related requirements on surplus lines insurers, underwriters should make best efforts to settle claims as completely as possible within the 90 day time frame.

Deadline: effective immediately.

Section 28 - amending 627.701

Requirement applies to: personal lines residential property insurance policies.

Requirement: Prior to issuing a policy, the insurer must offer alternative deductible amounts applicable to hurricane losses equal to \$500, 2%, 5% and 10% of the policy dwelling limits, unless the specific percentage deductible is less than \$500.

The written notice of the offer shall specify the hurricane or wind deductible to be applied in the event that the applicant fails affirmatively to choose a hurricane deductible. The insurer must provide the policyholder with notice of the availability of the deductible amounts specified in an approved form.

This section contains other detailed requirements relating to hurricane deductibles, including a prohibition on hurricane deductibles in excess of 10% of the policy dwelling limits for a risk valued at less than \$500,000 unless specified requirements are met.

Deadline: effective immediately

Section 29 - amending 627.706

Requirements apply to: property insurance

Requirement: In determining the risk of providing coverage, an insurer may not deny coverage solely on the basis of the age of a structure and must consider the wind resistance of the structure and measures undertaken by the owner to protect the structure against hurricane loss.

Deadline: effective from April 1, 2007.

Section 31 - amending 627.711

Requirement applies to: personal lines residential property insurance policies.

Requirement: Using a form prescribed by the Florida Office of Insurance Regulation, an insurer must clearly notify the applicant or policyholder, at the time of the issuance of the policy and at each renewal, of the availability and range of each premium discount, credit, other rate differential or reduction in deductibles, and combinations of these, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm can be or have been installed or implemented.

By July 1 2007, the Financial Services Commission will develop by rule a uniform mitigation verification inspection form to be used by all insurers when factoring discounts for wind insurance.

Deadline: effective from March 1, 2007.

Section 32 - introduces a new 627.712

Requirement applies to: residential property insurance policies.

Requirement: An insurer must provide hurricane or windstorm coverage as defined in 627.4025. This does not apply to risks that are eligible for wind-only coverage from Citizens Property Insurance Corporation.

An insurer to whom this applies must make available, at the option of the policyholder, an exclusion of hurricane or windstorm coverage. The coverage can only be excluded if:

- (a) The policyholder provides the insurer with the following statement in his or her own handwriting, which must be signed by every other named insured on the policy and dated: "I do not want the insurance on my (home/ mobile home/ condominium unit) to pay for damage from windstorms or hurricanes. I will pay those costs. My insurance will not."
- (b) If the structure insured by the policy is subject to a mortgage or lien, the policyholder must provide the insurer with a written statement from the mortgage holder or lien holder indicating that they approve the policyholder electing to exclude windstorm coverage or hurricane coverage.

An insurer issuing a residential property insurance policy, except for a condominium unit owner's policy, must make available, at the option of the policyholder, an exclusion of contents coverage. The coverage may be excluded only if the policyholder personally writes and provides to the insurer the following statement in his or her own handwriting and signs

his or her own signature, which must also be signed by every other named insured on the policy and dated: "I do not want the insurance on my (home/ mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not".

An insurer must keep the original copy of a signed statement required by this section and provide a copy to the policyholder providing the signed statement. The exclusions authorised by this section are valid for the term of the contract and for each renewal unless the policyholder elects otherwise.

Deadline: effective July 1, 2007. However the Florida Office of Insurance Regulation may delay application until a date no later than October 1 2007, upon approval by the Financial Services Commission.

Section 33 - introduces a new 627.713

Requirement applies to: property insurers.

Requirement: Property insurers may be required to report specified data regarding hurricane claims and underwriting costs.

Insurers, including Lloyd's, were required to report data following the hurricane losses in 2004 and 2005. Lloyd's handled these reporting requirements on behalf of managing agents, based on centrally-available information.

Summary of HB 1A's other provisions

Florida Hurricane Catastrophe Fund (FHCF)

The FHCF provides reimbursements to Florida authorised insurers for a portion of their catastrophic hurricane losses. It is structured as a state trust fund under the direction and control of the State Board of Administration of Florida (SBA). Its coverage is on a per occurrence basis (subject to an annual aggregate limit) and applies to any storm declared to be a hurricane.

All authorised insurers writing FHCF covered policies (but not reinsurers or unauthorised surplus lines insurers) are required to enter into a Reimbursement Contract with to SBA and to pay an annual reimbursement premium to the FHCF.

The FHCF also has authority to issue revenue bonds in order to pay reimbursable losses to the extent that funds collected as reimbursement premiums are insufficient to meet the SBA's obligations. Emergency assessments may be levied to service outstanding revenue bonds and to reimburse insurers. The maximum assessment is 6% of direct property and casualty premiums. Emergency assessments may include surplus lines insurance.

HB 1A's provisions for the FHCF were:

- Temporary Increase in Coverage Limit options (TICL) for the 2007, 2008 and 2009 hurricane seasons allow an insurer to purchase additional reinsurance of up to \$12bn above the FHCF industry limit of \$16bn estimated for 2007.
- Temporary Emergency Additional Coverage Options (TEACO) offer insurers additional FHCF coverage by selecting their share of an industry retention level of \$3bn, \$4bn or \$5bn.
- An additional amount of FHCF coverage of up to \$10m may be purchased by specified insurers. The coverage includes one reinstatement and the minimum retention layer for the coverage is 30% of the insurer's surplus as of December 31, 2006.
- The 25% rapid cash build up factor for FHCF premiums is abolished.

Mandatory rate filings

Every residential property insurer is required to make a rate filing with the Office of Insurance Regulation, reflecting the savings or reduction in loss exposure to the insurer due to the expanded FHCF coverage provided.

Citizens Property Insurance Corporation (CPIC)

CPIC provides insurance to homeowners in high risk areas and others who cannot obtain cover from the private insurance market.

HB 1A's provisions for CPIC were:

- CPIC's approved rate increase that took effect January 2007 is rescinded and CPIC is required to refund people who have paid this rate. Rates are frozen at their December 31, 2006 level for the remainder of 2007 (they may decrease). A new actuarially sound rate filing is required, effective January 1 2008.
- Requirements that CPIC's rates are non-competitive and no lower than the top 20 insurers, and are sufficient to purchase reinsurance to cover levels of probable maximum loss for each of its three accounts are removed. CPIC's rates must be actuarially sound and subject to standards that generally apply to property insurers.
- Requirements that CPIC impose premium assessments on policyholders if deficits occur are delayed until 2008.
- A provision that, from March 1 2007 made non-homestead policyholders ineligible for CPIC cover unless three surplus lines insurers and one authorized insurer rejected cover is deleted.
- An applicant for cover is not eligible for a CPIC policy if offered cover from an insurer at the insurer's approved rate, unless the insurer's premium is more than 25% greater than the premium for comparable coverage provided by CPIC.
- CPIC is authorised to provide commercial coverage. The Office of Insurance Regulation is required to order the transfer of commercial coverage to CPIC from the Property and Casualty Joint Underwriting Association.
- CPIC is authorised to write multiperil policies, as well as wind-only policies in areas eligible for coverage in the High Risk Account.
- The assessment base of CPIC is expanded to be the same as for FHCF.
- A Task Force on Citizens Property Insurance Claims Handling and Resolution is set up. It has seven members and is to conduct research and hearings and make recommendations as to issues regarding CPIC, including improving customer service and claims handling. It is also to make recommendations for legislative action during the 2006 – 2008 legislative biennium. The task force expires after the 2006 – 2008 biennium.

Insurance rate filings

Authorized insurers writing property insurance in Florida are required to make rate filings. This requirement does not apply to surplus lines insurers. HB 1A contained a number of provisions relating to the rate filings of authorized insurers:

- A property insurer's chief executive officer or chief actuary is required to sign a sworn certification, subject to perjury and administrative penalties, that the information in a rate filing does not contain any untrue statements of a material fact or omit material facts and reflects premium savings that are reasonably expected to result from legislative enactments and are in accordance with accepted actuarial techniques.
- "Rate flex" provisions are deleted. These allowed a residential property insurer to increase or decrease rates by up to 5% on a state-wide average, or 10% for any territory, without being subject to a determination by the Office of Insurance Regulation that the rate was excessive or unfairly discriminatory.
- Until January 1, 2009, property and casualty insurers are prohibited from implementing rate changes prior to filing for approval ("use and file"), unless the insurer files for a rate that is less than the insurer's most recent approved rate. Filings not seeking a lower rate must be made under procedures that require filing at least 90 days prior to the proposed effective date.

Emergency Rule 69OER 07-1

This Rule came into effect shortly after HB 1A was passed. As it deals with rate filing, it does not apply to surplus lines insurance.

It requires rates for residential property insurance coverage to remain at the rates in effect at the date that HB 1AW became law, until a rate filing is made and approved that reflects the provisions of HB 1A and the presumed factor or factors calculated by the Office of Insurance Regulation.

Insurers may make filings for rate reductions and for changes that do not result in increases in policyholder premiums. They may also make form filings, but may not reduce coverage except as required by statute.

Until an insurer makes a rate filing reflecting the effects of HB 1A and the presumed factor calculated by the Office of Insurance Regulation, an insurer may not non-renew a personal residential insurance policy covering property in Florida, nor can an insurer cancel a personal residential policy except for material misrepresentation, fraud or non-payment of premium by the insured.

Some other provisions of HB 1A

- Florida Building Code: the “Panhandle exemption” is removed. Amendments to the Florida Building Code that diminish provisions related to wind resistance or water intrusion are prohibited. The Florida Building Commission is required to eliminate all exceptions in the Florida Building Code related to wind-borne debris protection.
- “Cherry picking”: With effect from 1 January 2008, insurers writing private passenger automobile insurance in Florida that write homeowners policies in other states are required to write homeowners coverage in Florida, unless an affiliate writes homeowners insurance in Florida.
- Sinkholes: Authorised property insurers are required to provide coverage for catastrophic ground cover collapse, as defined, for an appropriate additional premium. The cover includes contents insurance. Insurers offering policies that exclude coverage for sinkhole losses must inform policyholders using a specified notice wording.
- Reinsurance: the Office of Insurance Regulation is authorised to waive or lower the deposit requirements for reinsurers licensed in other countries, based on criteria related to the financial strength of the insurer and the quality of the regulatory jurisdiction.