

## House Bill No. 9-A

An act relating to hurricane deductibles; providing legislative findings and intent; providing a definition; providing for the Department of Financial Services to reimburse policyholders of residential property insurance for multiple deductibles applied by insurers for two or more hurricanes; establishing criteria for policyholders to be eligible for reimbursements; requiring applications to be submitted to the department, including certain information; limiting the maximum amount of reimbursements; limiting total reimbursements to the amount appropriated for this purpose; providing reimbursement criteria for the department under certain circumstances; requiring insurers to provide certain information to the department relating to claims for reimbursement, subject to policyholders' authorization; authorizing the department to contract with third parties for investigation or adjustment of claims for reimbursement; requiring insurers to mail notices to certain policyholders of the reimbursement procedures; authorizing the department to adopt certain rules; providing legislative intent; providing that applications for reimbursements shall be insurance claims for purposes of determining insurance fraud; prohibiting insurers from changing methods of waiving or applying deductibles due to the provisions of law providing for reimbursement to policyholders; requiring the Office of Insurance Regulation to collect data from insurers regarding the application of multiple deductibles; providing legislative intent; amending s. 627.701, F.S.; requiring that hurricane deductibles of residential property insurance policies be applied on an annual basis to all hurricane losses that occur during the calendar year; allowing insurers to apply an alternative deductible to subsequent hurricane losses after the annual deductible is met; providing for calculations of hurricane deductibles for new or renewed policies; allowing insurers to require policyholders to report hurricane losses or to maintain receipts or records in order to apply hurricane losses to subsequent hurricane claims; providing applicability; providing appropriations for certain purposes; providing for reversion of certain unexpended moneys; requiring the Chief Financial Officer to report to certain entities certain multiple hurricane deductible reimbursement information; requiring the State Board of Administration to increase future premiums to the Florida Hurricane Catastrophe Fund; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Legislative findings and intent.—The Legislature finds that the four hurricanes striking Florida in 2004 resulted in at least 30,000 residential property insurance policyholders experiencing damage from two or more hurricanes for which insurers have applied the hurricane deductible to each hurricane claim. The fact that policyholders have separate hurricane deductibles can result in significant out-of-pocket expense and financial

hardship to policyholders. Although insurers are required by law to notify policyholders that the hurricane deductible can result in a large out-of-pocket expense, it was not anticipated that a policyholder would have damage from two or more hurricanes in the same year and be forced to meet two or more deductibles in this circumstance. The Legislature further finds that the public health, safety, and welfare demand that residential structures damaged or destroyed in a catastrophe be repaired or reconstructed as soon as possible and that application of multiple deductibles delays or prevents such reconstruction, hinders the economic recovery of the state and its citizens, and endangers the public health, safety, and welfare. Therefore, state action to establish a program to reimburse policyholders for the financial loss suffered due to the application of multiple hurricane deductibles constitutes a valid and necessary public and governmental purpose. The Legislature intends to establish a program to reimburse policyholders for such losses, up to specified limits.

Section 2. Reimbursement for multiple hurricane deductibles.—

(1) For the purposes of this section, “residential property insurance” means residential coverage as described in s. 627.4025(1), Florida Statutes.

(2) The Department of Financial Services shall reimburse policyholders of residential property insurance whose property was damaged by two or more hurricanes in 2004 and whose insurer applied more than one hurricane deductible to the insurance claims. The reimbursement shall be the amount of the claim that was not paid due to application of the second or subsequent deductible, as further limited by this section.

(3) To be eligible for reimbursement, a policyholder must meet the criteria of subsection (2) and must:

(a) Apply to the department by March 1, 2005, on a form provided by the department. The form shall identify the amount of the claims paid by the insurer, per hurricane, the amount of the deductible that was applied to each claim, and such additional information as the department may require to verify the claim for reimbursement, including documentation from the insurer. The applicant must submit documentation from the insurer that the insurance claim was not paid, in full or in part, due to application of the deductible.

(b) Have incurred damages in excess of the full amount of a single hurricane deductible.

(c) Meet a \$100 deductible for a second and each subsequent hurricane claim in addition to the amount of the deductible which must be met under paragraph (b).

(d) Provide written authorization for the department to obtain information from the policyholder’s insurer related to the claim for reimbursement.

(4)(a) Reimbursement may be provided only for damages that would have been paid under the policy but for application of the deductible. The maximum reimbursement shall be limited to the amount of the policyholder’s loss in excess of one full deductible, but not more than \$10,000 per policy

for damage caused by two hurricanes, not more than \$20,000 per policy for damage caused by three or more hurricanes, except as otherwise provided in this subsection.

(b) For a policy issued to a condominium association, the maximum reimbursement shall be limited to an amount equal to \$3,000 multiplied by the number of condominium units, or the maximum amount specified in paragraph (a) or paragraph (c), whichever is greater.

(c) If more than one residential structure is insured under the policy and a separate hurricane deductible applies to each residential structure, the maximum reimbursement shall be limited to \$10,000 per structure for multiple hurricane claims for that structure.

(d) Reimbursement may not be paid for loss amounts for which the policyholder has received a grant from the Federal Emergency Management Agency or any other federal, state, county, or municipal agency or program. Reimbursement may not be paid to a condominium association for loss amounts for which the condominium association has assessed unit owners and for which the unit owners have insurance coverage for the assessment.

(5) The total amount of funds paid to policyholders pursuant to this section is limited to the amount appropriated for this purpose. Payments shall be made to eligible applicants in the following order of priority:

(a) The department shall first reimburse policyholders who received claims payments from their insurer for two or more hurricanes for which each payment was reduced by the full amount of the deductible.

(b) After reimbursing all policyholders who meet the criteria of paragraph (a), the department shall reimburse all other eligible policyholders. If the amount appropriated for this purpose is not adequate to pay all other eligible policyholders up to the maximum reimbursement amounts, the department shall provide reimbursement on a pro rata basis so that each policyholder receives an equal percentage of the amount of the reimbursement claim that is approved.

(6) The insurer issuing the policy to the applicant for reimbursement shall provide to the department, upon request, such information in the applicant's claim file that would assist the department in determining the validity and reasonableness of the claim, subject to the policyholder's authorization to release such information. The department may further investigate or adjust the claim as the department determines is necessary and may contract with third parties for this purpose.

(7) Insurers shall mail notice to those residential property insurance policyholders who filed claims with the insurer for two or more hurricanes in 2004 and to whom the insurer applied more than one hurricane deductible, whether there was a claims payment or not. The notice shall be on a form provided by the department informing the policyholder of the reimbursement program established by this section and the procedures for seeking reimbursement, including the application form provided by the department. The notice shall be mailed in such manner and within such time as

specified by the department. For subsequent claims, the insurer shall provide the notice at the time that the insurer notifies the policyholder of the application of the second deductible.

(8) The department may adopt rules to implement this section. It is the Legislature's intent that the department implement this section as soon as possible in order to provide immediate relief to affected policyholders. Therefore, the department may adopt such rules pursuant to the emergency rule procedures of s. 120.54(4), Florida Statutes.

(9) Applications for reimbursement shall be considered submitting an insurance claim for purposes of determining whether a person has committed insurance fraud pursuant to s. 817.234, Florida Statutes. The Department of Financial Services and the department's Division of Insurance Fraud shall have such powers to investigate and enforce such actions as provided in s. 626.989, Florida Statutes.

(10) It is a violation of the Insurance Code for an insurer to change its method of determining whether to waive or apply multiple hurricane deductibles to multiple claims due to the provisions of this section.

(11) The Office of Insurance Regulation shall collect data from residential property insurers regarding the number of claims that were filed by policyholders for two or more hurricanes for the 2004 hurricane season, the number of those claims for which the insurer applied two or more deductibles, including the dollar amount of those claims, and such additional related information as the department may require.

Section 3. It is the intent of the Legislature that payments made to policyholders under this act shall be considered disaster relief assistance within the meaning of s. 139 of the Internal Revenue Code.

Section 4. Subsections (5), (6), (7), and (8) of section 627.701, Florida Statutes, are renumbered as subsections (6), (7), (8), and (9), respectively, and a new subsection (5) is added to said section to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(5) The hurricane deductible of any residential property insurance policy shall be applied as follows:

(a) The hurricane deductible shall apply on an annual basis to all covered hurricane losses that occur during the calendar year for losses that are covered under one or more policies issued by the same insurer or an insurer in the same insurer group.

(b) If a hurricane deductible applies separately to each of one or more structures insured under a single policy, the requirements of this subsection apply with respect to the deductible for each structure.

(c) If there was a hurricane loss for a prior hurricane or hurricanes during the calendar year, the insurer may apply a deductible to a subsequent hurricane that is the greater of the remaining amount of the hurricane deductible or the amount of the deductible that applies to perils other

than a hurricane. Insurers may require policyholders to report hurricane losses that are below the hurricane deductible or to maintain receipts or other records of such hurricane losses in order to apply such losses to subsequent hurricane claims.

(d) If there are hurricane losses in a calendar year on more than one policy issued by the same insurer or an insurer in the same insurer group, the hurricane deductible shall be the highest amount stated in any one of the policies. If a policyholder who had a hurricane loss under the prior policy is provided or offered a lower hurricane deductible under the new or renewal policy, the insurer must notify the policyholder, in writing, at the time the lower hurricane deductible is provided or offered, that the lower hurricane deductible will not apply until January 1 of the following calendar year.

Section 5. The amendment of s. 627.701, Florida Statutes, by section 3 applies only to policies issued or renewed on or after May 1, 2005.

Section 6. (1) Notwithstanding s. 215.555, Florida Statutes, the State Board of Administration is directed to transfer, no later than January 15, 2005, \$20 million from the Florida Hurricane Catastrophe Fund's cash balance to the Insurance Regulatory Trust Fund within the Department of Financial Services to provide funding for the reimbursements authorized in subsection (3).

(2) Notwithstanding s. 215.555, Florida Statutes, the State Board of Administration is directed to transfer up to \$130 million from the Florida Hurricane Catastrophe Fund's cash balance to the Insurance Regulatory Trust Fund in the Department of Financial Services to provide funding for the reimbursements authorized in subsection (3). The Chief Financial Officer shall periodically certify to the State Board of Administration an amount to be transferred from the funds appropriated in this subsection based on the documented expenditure need for reimbursement payments submitted to the Department of Financial Services. The amount of each transfer may not exceed the documented need. The Chief Financial Officer shall provide a copy of each certification to the Executive Office of the Governor and the chair and vice chair of the Legislative Budget Commission. The State Board of Administration shall provide notice of each transfer to the Executive Office of the Governor and the chair and vice chair of the Legislative Budget Commission at least 3 working days before such transfer.

(3) The sum of \$150 million is appropriated for the period from the effective date of this act through September 30, 2005, from the Insurance Regulatory Trust Fund in the Department of Financial Services in a special appropriation category "Hurricane Multiple Deductible Reimbursements" for reimbursement to residential property insurance policyholders for the expense of multiple hurricane deductibles, as provided in sections 1 and 2. Up to 1 percent of this appropriation may be used by the department for the administration of payments to such policyholders.

(4) All Florida Hurricane Catastrophe Fund moneys transferred to the Insurance Regulatory Trust Fund under this act which remain unexpended on December 31, 2005, shall revert to the Florida Hurricane Catastrophe Fund.

(5) Beginning January 15, 2005, and monthly thereafter, the Chief Financial Officer shall provide a report to the Executive Office of the Governor and the chair and vice chair of the Legislative Budget Commission containing information regarding the reimbursement for multiple hurricane deductibles. The report shall include, but is not limited to, cumulative and monthly information on the number of reimbursement claims submitted, the total amount requested for reimbursement, the number of claims paid, and the amount paid for reimbursement.

(6) In order to maintain actuarially indicated premiums as required by s. 215.555, Florida Statutes, the State Board of Administration shall increase future premiums by the amount appropriated and transferred from the Florida Hurricane Catastrophe Fund under this section, plus additional amounts necessary to recover lost investment income, less any refunds of unused cash to the Florida Hurricane Catastrophe Fund. The increase in future premiums shall be spread over 5 years, in equal or approximately equal amounts, beginning with the June 1, 2006, contract year.

(7) All appropriations authorized by this act are nonrecurring and are intended to address needs caused by Hurricanes Charley, Frances, Ivan, and Jeanne.

Section 7. This act shall take effect upon becoming a law.

Approved by the Governor December 21, 2004.

Filed in Office Secretary of State December 21, 2004.