

Report of Regulatory Subcommittee

Affordable Homeowners Insurance Commission

Governor Robert Bentley

Summary:

The Regulatory Subcommittee met on two occasions by telephone (May 18th and May 31st) to discuss suggestions, or recommendations, that should be considered from a Regulatory standpoint. Discussion was had of what types of Regulatory actions (Insurance, Revenue, Executive Order, etc) would be applicable, and what Regulatory actions could be made without legislative approval. In addition, the Subcommittee went through all of the recommendations made by the full Commission (Legislative and Regulatory suggestions were combined).

Of note, several of the actions suggested by the full Commission were addressed in the 2012 legislative session. Several of these new laws will require regulatory explanation. A few were also difficult to ascertain the intent of the individual who provided the suggestion. However, overall many of the recommendations were discussed in detail and ideas generated from that discussion.

Ultimately, the Subcommittee has a couple of recommendations, but for the most part have concluded that most regulatory action would require legislative action prior to any regulatory enactments, or would require financial resources not currently available. Items that potentially could be handled now through regulatory action may include:

1. Improved building requirements and enforcement
2. Collecting and storing claims information and other data beneficial to consumers in selecting an insurer (complaint ratios, rate data, etc.)
3. Collecting construction type information
4. Continue looking at multi-state compact
5. Land use oversight
6. Looking at revision of consumer affairs division at the Department of Insurance and complaint handling procedures
7. Further education and discussion on proper valuation of homeowners policies
8. If finances become available, actions such as mitigation grants, and

Discussion:

In hindsight, the Legislative and Regulatory subcommittees might have been better served to be combined as many actions taken by the Regulators often require legislative action. A large number of the ideas presented by the full Commission actually were legislative in nature. That said, our Regulatory subcommittee met on two occasions, May 18th and May 31st, to discuss ideas presented by the full Commission and ideas Committee members may have had.

In the second meeting, each of the 25 ideas suggested by the full Commission were discussed and a few additional ideas were addressed. The ideas presented by the full Commission included (the items primarily legislative in nature are **bolded** and the items that were difficult to address are underlined):

1. Defined statewide building codes

2. Premium tax “credit”; and law

3. Tax incentives package/mitigation

4. Captives - A+ ratings – and better

5. Data/transparency/Clarity Package as reflected in education pieces

6. Fraud Bill

7. Enact state oversight of enforcement of a uniform building code

8. Bill to address the licensing of subcontractors

9. Feasibility of having the collect/store data on all construction in each county for better data in the models

10. Pass the clarity bill

11. Explore the feasibility of a regional multistate compact for hurricane exposure including a subcommittee of the Affordable Homeowners Insurance Commission

12. Clear due process for complaints regarding insurance companies

13. Re-building

14. Study land use

15. Provisions for flood and wind

16. Provisions to update and revise maps and include the waterfront

17. Develop provisions from the perspective of legislation

18. Define “consequences” to acts and to deprivation – include costs and criminal

19. Deal with lack of code enforcement

20. Recoupment of losses

21. Valuation and replacement costs

22. AIUA reform necessary (required legislation)

23. Entitle: “Accumulated Loss Data Act” (Clarity)

24. Examine use of credit scores in cost of insurance

25. Disclosure at the time of insurance purchase (Bill of Rights)

A. Recent legislative accomplishments:

Many of the full Commission suggestions were actually accomplished during the 2012 legislative session, including numbers 2, 4, 5, 6, 10, 23 and 25. Those included passage of an insurance fraud bill (HB 323), passage of the insurance clarity law (SB 210), passage of an insurance purchase “bill of rights” (HB 166) and the passage of company and individual incentive bills (SB catastrophe savings accounts and SB insurance company incentive bill for writing in coastal counties). Further, mitigation credits were passed by the legislature in 2009, and a subsequent regulatory bulletin was issued requiring companies to provide mitigation discounts up to 35% for homeowners who mitigated their homes to the 2006 International Residential Code, or the IBHS standards for new homes or retrofits.

<http://www.aldoi.gov/PDF/Legal/2010-03-ModificationAlaBulletin2009-07Premiumdiscounts.pdf>. These discounts were put into effect by companies in 2010, although not yet readily known, or used by the vast majority of the general public.

In the late 2000’s, the Alabama legislature passed into law a provision allowing for Captives insurers to be created, specifically for the lines of private residential homeowners insurance. While few, if any, have been created to this point, they are allowed under current state law and an available tool to groups who might be interested.

Finally, work in recent years to adopt a statewide building code has been undertaken by a committee created in 2010 by the legislature. That committee the Residential and Energy Codes board has recently adopted statewide standards for building codes. These codes are not prescriptive in so much as municipalities and counties do not have to adopt and enforce these codes unless they choose to adopt building codes. However, a copy of what has been adopted by this Board can be found here:

<http://adeca.alabama.gov/C0/Codes/Document%20Library/Summary%20of%20the%20AERC.pdf>

B. Recent Regulatory Accomplishments

There was significant discussion that occurred both at the subcommittee level and in several of the public meetings about valuations of homes and why insurance companies required valuations higher than what homes current market value might be, or higher than what homes

could be sold for. In addition, several members of the Commission questioned why insurers did not allow customers to insure whatever percentage of the homes values that they wished.

In 2010, in addition to enforcing the mitigation discount bulletin discussed above, the Insurance Department issued Regulation 150 addressing some of these concerns as passed along by consumers. This regulation requires companies to adjust valuations on a regular basis, as appropriate, and requires companies to explain to consumers their right to alter or adjust valuations, as appropriate. This regulation did not address more freedom of choice by consumers in selecting valuation (most companies allow private homeowners to insure 80% of the value of their home and above, before coinsurance provisions apply). This committee believes this issue is worthy of more discussion and likely requires more education of the effect of coinsurance provisions so that further ideas could be considered.

In addition, we expect the Department of Insurance to issue Regulations to assist in the implementation of several of the bills passed and signed into law in 2012, including the Insurance Fraud law, the clarity act, HB 405 (residential roofer bill), and the homeowners bill of rights.

C. Recommendations of the Regulatory Subcommittee

1. Improved building requirements and enforcement

Currently two regulatory bodies exercise some control of building codes and enforcement on the state level—State Fire Marshall/Department of Insurance and the Alabama Department of Economic and Community Affairs. In addition, enforcement and adoption of codes also exists (or doesn't exist) at the county and local level in so much as there is currently no statewide prescriptive building code in the State of Alabama.

A recent IBHS study rated Alabama second to last in Coastal states for building code adoption and enforcement, highlighting the need for attention to this matter, both at the state level, as well as the local levels. Based upon testimony to the Commission, as well as publicly available information, the coastal counties of Baldwin and Mobile have adopted codes stronger than most of the rest of the state and appear to be making serious attempts to enforce those codes. However, the perception that Alabama does not require codes effects not only the availability of insurance due to companies concerns about the building levels of homes statewide, but also the affordability of insurance. More and more reinsurance costs are partly driven by building standards required in a state.

While legislative action is likely required to adopt a prescriptive code, clearly more work needs to be done in this area. As ADECA has control of the "Energy and Residential Code Board," this state agency should continue to consider and advocate for stronger codes and the passage of a statewide prescriptive code as nearly every other state adjacent to the Atlantic Ocean, or the Gulf of Mexico, has already done. In addition, funds should be made available through this Agency, or through the State Fire Marshall's office to encourage building code enforcement in those areas where Codes have already been adopted.

Ultimately, stronger building which will improve the safety and welfare of Alabama citizens, the amount and extent of catastrophic loss, and in turn the amount of time Alabama citizens are displaced from their homes, are vital to addressing affordable homeowners insurance in Alabama.

2. Collecting and storing claims information and other data beneficial to consumers in selecting an insurer (complaint ratios, rate data, etc.)

Passage of SB 210 will require the Department of Insurance to collect and store claims data information of insurance companies in Alabama. This information will then be aggregated and made available to the public at the zip code level.

In addition, discussion was had both at the public meetings, as well as at the full Commission meetings, about additional data that could be helpful to the public in helping them select the best coverages and price. Items that were discussed included making rate information available on the Department of Insurance website, as well as providing some data about how companies handle claims.

Other states have undertaken projects with some success in posting rate and claims data on their websites. For example, some states ask insurers to provide sample rates for 15-20 different “types” of homes in certain territories, or zip codes, to give an idea of what rates are available in a consumer’s area. Some states also provide an annual complaint ratio to consumers allowing a comparison of insurers based upon the number of complaints they receive vs. the number of policies they have in a state. Such efforts can be time consuming and at times limited by technology. Further, homeowners rates have become very individualized, so providing useful data to a consumer can be challenging and at times even misleading. That said, this Subcommittee would encourage the Department of Insurance to continue to look for ways to provide such data in a useful and cost effective manner so that customers can more easily comparison shop and obtain the best insurance coverage for their needs.

3. Collecting construction type information and Land Use oversight

Currently, it appears that little information is collected at the statewide level as to the construction quality of homes across the State of Alabama. Weak codes in certain parts of the state, lack of code enforcement, determining the need for a prescriptive statewide code, etc., might be better known and understand if a state agency was responsible for overseeing these activities. Further, recent storm activity (hurricane, tornado, thunderstorm, etc) has highlighted the cost the State of Alabama, and local government entities must incur as a result of poor construction techniques (through the cost of aid, cleanup, etc). Thus, it is the recommendation of this subcommittee that assuming this does not currently exist at the State level, one State agency be given the responsibility for the collection of construction data across the State of Alabama, and that such agency provide information to the Governor concerning the “cost” lack of uniform building techniques impose on Alabama taxpayers.

In addition, land use enforcement at the local level can create a conflict between potential local revenue and positive economic impact vs. building in unsafe, or unhealthy areas. While no Subcommittee members were comfortable with the idea of statewide oversight of local building issues, discussion was had over this conflict and how bad local land use management has created some of the issues driving

the affordability and availability of insurance. Thus, the Subcommittee thought it was relevant to address the issue in this report and raise the issue for discussion among the full Commission.

4. Continue looking at multi-state compact

Several speakers and members of the Commission expressed the possibility of reducing rates, particularly in the markets of last resort (such as the AIUA), by spreading risks across state lines. It is belief of some that such spreading could result in lower aggregate claims costs, lower administrative costs, and lower reinsurance costs, among other things.

Such discussions have been had in the past among public officials in coastal states and have been discussed at regional meetings of both insurance commissioners and governors of southeastern states. In addition, several proposals have been put forth at the national level promoting such a plan. To this point, little progress has been made at consolidating such efforts on a regional level. However, this Subcommittee would encourage Alabama public officials to continue such efforts in hopes of finding economies of scale that might reduce fixed costs in state wind plans, and in turn allow for more affordable wind insurance to consumers in coastal areas.

5. Looking at revision of consumer affairs division at the Department of Insurance and complaint handling procedures

One of the suggestions of the full Commission was to address “a lack of due process” for consumers at the Department of Insurance. The Department has a fairly elaborate consumer affairs division that receives and investigates many types of complaints. In addition, the new Insurance fraud bill that passed this year, will give them additional teeth in their investigative powers. Thus, it is difficult to say that consumers “lack due process” in dealing with the Department of Insurance.

That said, this issue was raised several times during the public meeting in Mobile and the full Commission meetings. Thus, it is the recommendation of this Subcommittee that the Department of Insurance examine their consumer affairs division to determine if additional measures could be made to make consumer interactions more positive moving forward.

6. Further education and discussion on proper valuation of homeowners policies

Discussed in Section B above.

7. If finances become available, actions such as mitigation grants, and

One of the primary limitations on implementation of ideas brought forth by speakers, members of the public at large and Commission members, is the lack of money necessary to implement such programs. For example, retrofitting and mitigating homes to withstand hurricane force winds is an important step to improving the availability and affordability of insurance. Effective programs to assist mitigation activities in surrounding states have generally consisted of a public/private partnership requiring millions of dollars to ensure their success. In addition, ideas have been floated about a public/private captive insurer, subsidization of deductibles through grants or low interest loans, creation of cat bonds

to lower the cost of reinsurance, etc. None of these ideas require legislative action, but would require regulatory action should such funds become available.

Several sources of revenue have been discussed including federal grants, environmental fines or settlements, or local CDBG monies. However, to this point such monies have not surfaced. However, should such funds become available in the future, it is the recommendation of this subcommittee that quick regulatory action be taken to implement one, or more of these programs, prioritizing the importance of affordable and available homeowners insurance not only to the Alabama Gulf coast, but to the State of Alabama and its economic future.