

FINAL BILL ANALYSIS

BILL #: CS/CS/HB 99

FINAL HOUSE FLOOR ACTION:

116 Y's 0 N's

SPONSOR: Rep. Drake

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/SB 178

SUMMARY ANALYSIS

CS/CS/HB 99 passed the House on March 31, 2011, and subsequently passed the Senate on May 2, 2011. The bill was approved by the Governor on June 17, 2011, chapter 2011-160, Laws of Florida, and becomes effective October 1, 2011.

The bill allows five new types of commercial insurance to be exempt from the rate filing and approval process. Thus, insurance companies writing these types of commercial insurance will not have to file with or obtain approval of the rates for these types of commercial insurance by the Office of Insurance Regulation (OIR) before the insurer can charge the rate. The new types of commercial insurance exempted are:

- Fiduciary Liability;
- General Liability;
- Nonresidential Property, but not collateral protection insurance;
- Nonresidential Multiperil;
- Excess Property; and
- Burglary and Theft.

The bill expands the current rate filing and approval exemption for commercial motor vehicle insurance. Under the bill, all commercial motor vehicle insurance is exempt from the rate filing and approval process, rather than only commercial motor vehicle insurance covering a fleet of 20 or more vehicles.

The bill deletes some of the information required on the notice an insurer must give the OIR when the rate changes for commercial insurance exempt from rate filing. The type of data required to be retained by the insurer or rating organization to support the rate charged for commercial insurance not subject to a rate filing is changed by the bill. Although the bill deletes current law allowing the OIR to obtain information about a commercial insurance rate not subject to the rate filing and approval process at the insurer's or rating organization's expense, the bill requires the insurer or rating organization to incur the cost of any examination of the rate charged by the OIR.

The bill has no fiscal impact on state expenditures. The bill should result in a reduced workload for the OIR because the OIR will no longer be required to review every rate filing for the types of commercial insurance being exempted from the filing requirement. The bill should not have a rate impact on the private sector as rates for the types of commercial insurance covered by the bill still cannot be excessive, inadequate, or unfairly discriminatory as determined by current law. Additionally, the bill will allow insurers selling the types of coverages listed in the bill to make pricing changes for those coverages on a more expedited basis and avoid some of the expense incurred in a full rate filing and review process.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover losses sustained by the business.¹ Some commercial insurance, such as workers' compensation, is required to be purchased by businesses²; however, most commercial insurance is purchased by businesses on a voluntary basis. The commercial insurance a business purchases also depends, in part, on the business type and industry.

In Florida, the Office of Insurance Regulation (OIR) regulates insurance. The OIR reviews and approves or disapproves rates charged by insurance companies and the insurance forms³ used by companies. However, insurance companies writing the following types of commercial insurance do not have to file rates with or obtain approval for the rates charged from the OIR:⁴

- Excess or Umbrella Insurance,
- Surety and Fidelity Insurance,
- Boiler and Machinery Insurance and Leakage and Fire Extinguishing Equipment Insurance,
- Fleet Commercial Motor Vehicle Insurance for a fleet of 20 or more self-propelled vehicles,
- Errors and Omissions Insurance ("E & O"),
- Directors' and Officers', Employment Practices, and Management Liability Insurance,
- Intellectual Property and Patent Infringement Insurance,
- Advertising Injury and Internet Liability Insurance,
- Property risks rated under a highly protected risks rating plan, and
- Other types of commercial lines insurance determined by the OIR.

Generally, rates filed with the OIR are disapproved if they are excessive, inadequate or unfairly discriminatory based on standards contained in the law.⁵ Even though insurance companies charge rates for the above listed commercial insurance without the rate being approved by the OIR, the rate charged must not be excessive, inadequate, or unfairly discriminatory, the same requirement for rates filed with and approved by the OIR. The insurance company writing the commercial insurance is responsible for ensuring the rate charged meets this requirement. The OIR can examine a company's documentation supporting a rate to ensure the rate meets the requirement and the company incurs the expense of providing the documentation to the OIR. If the OIR reviews a rate, the OIR uses the rate factors and standards in law that apply to property and casualty and surety insurance rates filed with the OIR to determine whether the rate charged is excessive, inadequate, or unfairly discriminatory.

¹ <http://www2.iii.org/glossary/> (defining commercial lines) (last viewed January 20, 2011).

² Generally, non-construction businesses employing four or more employees have to buy workers' compensation insurance. Construction businesses must buy workers' compensation insurance if the business has one or more employees.

³ With limited exceptions, section 627.410, F.S., requires every insurance policy, application, endorsement, or rider to be filed with and approved by the OIR prior to use by the insurance company. This statute applies to all types of commercial insurance.

⁴ s. 627.062(3)(d), F.S.

⁵ s. 627.062(1), F.S.; s. 627.062(2)(e), F.S.

If an insurance company increases or decreases a rate for the types of commercial insurance listed above, the insurer must notify the OIR within 30 days of the effective date of the rate change and the notification must contain certain information.

Effect of the Bill:

The bill allows five new types of commercial insurance to be exempt from the rate filing and approval process in current law. Thus, insurance companies writing these types of commercial insurance will not have to file with or obtain approval of the rates for these types of commercial insurance by the OIR before the insurer can charge the rate. The new types of commercial insurance exempted are:

- **Fiduciary Liability:** Liability protection against the theft or misuse of funds for an entity involved in the management, investment and distributions of funds.⁶
- **General Liability:** Covers the legal liability for the death, injury, or disability of any human being, or for damage to property, irrespective of the legal liability of the insured.⁷
- **Nonresidential Property:** Covers a building, business personal property, and other surrounding property not used for residential purposes for loss or damage from a variety of perils, including but not limited to, fire, lightning, glass breakage, tornado, windstorm, hail, water damage, explosion, riot, civil commotion, rain or damage from aircraft or vehicles.⁸ The exemption for nonresidential property does not include collateral protection insurance.⁹ Collateral protection insurance is still subject to rate regulation by the OIR.
- **Nonresidential Multiperil:** Packages two or more insurance coverages protecting an enterprise from various property and liability risk exposures.¹⁰
- **Excess Property:** Covers damage from property insurance perils above the policy limit of the primary property insurance policy.
- **Burglary and Theft:** Covers property taken or destroyed by break-in and entering the policyholder's premises; burglary or theft; forgery or counterfeiting, fraud; and off-premises exposure.¹¹

The bill changes the rate filing and approval exemption for commercial motor vehicle insurance. Under current law, only commercial motor vehicle insurance covering a fleet of 20 or more vehicles is exempt from the rate filing and approval process. The bill exempts all commercial motor vehicle insurance from the rate filing and approval process, regardless of the number of vehicles the insurance covers, thus expanding the current exemption for commercial motor vehicle insurance.

The bill deletes some of the information required on the notice an insurer must give the OIR when the rate changes for commercial insurance exempt from rate filing. Insurers will no longer be required to provide the OIR the amount of insurance premium written during the prior year for the type or kind of insurance subject to the rate change, but will still be required to provide the name of the insurer, the type or kind of insurance subject to the rate change, and the average statewide rate change.

⁶ OIR Property and Casualty Product Review Line of Business Mapping (on file with staff of the Insurance & Banking Subcommittee).

⁷ s. 624.605(1)(b), F.S.

⁸ OIR Property and Casualty Product Review Line of Business Mapping (on file with staff of the Insurance & Banking Subcommittee).

⁹ Collateral protection insurance is defined in s. 624.6085, F.S.

¹⁰ Id.

¹¹ Id.

The type of data required to be retained by the insurer or rating organization to support the rate charged for commercial insurance not subject to a rate filing is changed by the bill. Insurers are required to retain “actuarial data” about the commercial risks, but are no longer required to retain “underwriting files, premiums, losses, and expense statistics.” Additionally, the bill adds a two year retention period for the insurer or rating organization to retain the actuarial data supporting the rate charged. Current law does not specify a retention period.

Although the bill deletes current law allowing the OIR to obtain information about a commercial insurance rate not subject to the rate filing and approval process at the insurer’s or rating organization’s expense, the bill requires the insurer or rating organization to incur the cost of any examination of the rate charged by the OIR.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has no fiscal impact on state expenditures. Additionally, the bill should result in a reduced workload for the OIR because the OIR will no longer be required to review every rate filing for the additional types of commercial insurance being exempted from the filing requirement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill should not impact commercial insurance rates charged to the private sector because rates for the additional types of commercial insurance covered by the bill cannot be excessive, inadequate, or unfairly discriminatory based upon the standards in current law. This is the same requirement contained in current law for these types of commercial insurance.

The bill will allow insurers selling the types of commercial insurance listed in the bill to make pricing changes for those types on a more expedited basis and avoid some of the expense incurred in a rate filing and review process done through the OIR.

D. FISCAL COMMENTS:

None.