

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/CS/SB 468

INTRODUCER: Health Policy Committee, Banking and Insurance Committee and Senator Hukill

SUBJECT: Property and Casualty Insurance Rates and Forms

DATE: April 2, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u>BI</u>	Fav/CS
2.	<u>Davlantes</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/CS/SB 468 expands the number of commercial lines insurance that are exempt from the rate filing and review requirements of s. 627.062(2)(a) and (f), F.S, to include:

- Medical malpractice for a facility that is not a hospital, nursing home, or assisted living facility.
- Medical malpractice for a health care practitioner that is not a licensed dentist, physician, osteopathic physician, chiropractic physician, or podiatric physician.

The rate filing requirements that these types of medical malpractice insurance are exempt from are:

- The requirement to file with the Office of Insurance Regulation (OIR) rates, rating schedules, or rating manuals via the “file and use” method (at least 90 days prior to the proposed effective date) or the “use and file” method (within 30 days after the effective date of the filing).

- The authority of the OIR to require an insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the rate filing.

The bill also creates an alternative mechanism to the form filing and approval process required by s. 627.410, F.S., for all lines of property and casualty insurance, except workers' compensation and personal lines. Insurers may elect to self-certify that their forms comply with Florida law instead of having to file forms and obtain OIR approval under s. 627.410, F.S., if:

- The form is electronically submitted to the OIR in an informational filing 30 days before delivery of the form within the state; and
- The informational filing includes a certification of compliance.

If the form is not in compliance with state laws and rules, the form filing is subject to the prior approval requirements of s. 627.410, F.S. A Notice of Change in Policy Terms form is also required as a part of the informational filing for any renewal policy that contains a change.

This bill substantially amends the following sections of the Florida Statutes: 627.062 and 627.410.

The bill creates the following section of the Florida Statutes: 627.4102.

II. Present Situation:

Ratemaking Regulation for Property, Casualty, and Surety Insurance

The rating requirements for property, casualty, and surety insurance are located in part I of ch. 627, F.S., which is entitled the "Rating Law," and applies to all property, casualty, and surety insurance. Section 627.062(1), F.S., specifies that the rates for all classes to which part I applies "shall not be excessive, inadequate, or unfairly discriminatory."

Section 627.062(2)(a), F.S., describes the filing process and time frames that must be followed by all insurers subject to its provisions. Generally, insurers may choose to submit their rate to the OIR pursuant to either the "file and use" method or the "use and file" method. Under "file and use," the insurer submits to the OIR their proposed rate at least 90 days before the rate's effective date and shall not implement the rate until it is approved. Under "use and file," the insurer may implement the rate before filing for approval, but must then submit the filing within 30 days of the rate's effective date. Under "use and file," if a portion of the rate is subsequently found to be excessive, the insurer must refund to policyholders the portion of the rate that is excessive.

For those insurers that file under s. 627.062(2)(a), F.S., the OIR applies the following factors in determining whether a rate is excessive, inadequate, or unfairly discriminatory.

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.

- Reasonableness of the judgment reflected in the filing.
- Dividends, saving, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, if applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.
- Other relevant factors impacting frequency and severity of claims or expenses.

Section 627.062(2)(f), F.S., provides that during its review process, the OIR can require an insurer to submit at the insurer's expense all information that the OIR deems necessary to evaluate the condition of the insurer and the reasonableness of the filing.

Types of Insurance Exempt from Filing and Review Requirements

The following types of insurance are exempt from the filing and review requirements of s. 627.062(2)(a) and (f), F.S.

- Excess or umbrella.
- Surety and fidelity.
- Boiler and machinery and leakage and fire-extinguishing equipment.
- Errors and omissions.
- Directors and officers, employment practices and management liability.
- Intellectual property and patent infringement liability.
- Advertising injury and Internet liability.
- Property risks rated under a highly protected risks rating plan.
- General liability.
- Nonresidential property, except for collateral protection insurance as defined in s. 624.6085, F.S.
- Nonresidential multiperil.
- Excess property.
- Burglary and theft.
- Any other commercial lines categories of insurance or commercial lines risks that the OIR determines should not be subject to the filing and review requirements of paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance, similarity of such insurance to other categories or kinds of insurance not subject to filing and review requirements of paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the OIR.

These types of insurance coverages continue to be subject to s. 627.062(1), F.S., which requires that rates shall not be excessive, inadequate, or unfairly discriminatory.

An insurer or rating organization which is exempt under this provision must notify the OIR of any changes for the types of insurance subject to this provision, no later than 30 days after the effective date of the change in rates. The notice to the OIR must include the following:

- The name of the insurer or rating organization.
- The type of insurance.
- The total premium written during the immediately preceding year for that type of insurance (for notice filed by an insurer).
- Loss costs during the immediately preceding year for that type of insurance (for notice filed by a rating organization).
- The average statewide percentage change in rates or loss costs.

Underwriting files, premiums, losses, and expense statistics must be maintained by the insurer and are subject to inspection by the OIR. Loss and exposure statistics must be maintained by the rating organization and are subject to inspection by the OIR. The OIR may require the insurer to provide, at the insurer's expense, all information.

OIR Approval of Forms

Each basic insurance policy form,¹ unless otherwise exempted,² must be approved by the OIR before the form can be used by an insurance company.³ Each form must be filed at least 30 days prior to its use in policies delivered or issued for delivery in this state. The OIR must approve or disapprove the form within 30 days or it is deemed approved.⁴ The OIR, however, under s. 627.410(4), F.S., has the authority to exempt by order an insurance form or type of form from the approval process for as long as it deems proper⁵ if the filing and approval process cannot be practicably applied or is not desirable or necessary for the protection of the public.⁶

In 2012, the OIR issued three orders exempting certain insurance forms from being filed and approved prior to use. The first order, issued on April 9, 2012, exempted specified commercial insurance lines⁷ from the prior approval requirement of s. 627.410, F.S., for one year.⁸ Instead,

¹ Statutorily required forms requiring OIR approval prior to use are basic insurance policies, annuity contracts, application forms where a written application is required and is part of the policy or contract, group certificates issued under a master contract delivered in Florida, and printed riders, endorsement forms, or forms of renewal certificates.

² Statutorily exempted forms are surety bonds or policies, riders, endorsements, or forms of unique character that are designed and used with relation to insurance upon a particular subject (other than health insurance).

³ s. 627.410(1), F.S.

⁴ The Office may extend the form review process 15 days.

⁵ s. 627.410(4), F.S.

⁶ Id.

⁷ The commercial lines exempted by the order from the form review process were those that are exempted from prior rate review by s. 627.062(3)(d), F.S. The categories of commercial risks exempted from prior rate review are (a) Excess or umbrella, (b) surety and fidelity, (3) boiler and machinery and leakage and fire extinguishing equipment, (d) errors and omissions, (e) directors and officers, employment practices, fiduciary liability, and management liability, (f) intellectual property and patent infringement liability, (g) advertising injury and Internet liability insurance, (h) property risks rated under a highly protected risks rating plan, (i) general liability, (j) nonresidential property, except for collateral protection insurance, (k) nonresidential multiperil, (l) excess property, (m) burglary and theft, and (n) any other commercial lines that the OIR determines should not be subject to prior rate review because a competitive market for such existence exists, such insurance is similar to other types of exempt insurance, or if the exemption will improve the general operational efficiency of the office.

such commercial insurers were permitted to make an informational form filing 30 days prior to using the forms, accompanied by a notarized certification that the submitted form filing complies with Florida law and acknowledging that if the forms are not in compliance, the company is subject to appropriate regulatory action. The OIR premised its order on the rate review exemption granted these types of commercial insurance policies, that the consumers of commercial insurance products are sophisticated parties with experience in insurance transactions, and the office's high volume of commercial form filings which had taxed its review resources and resulted in a lengthier review period for many commercial forms.

The second order, issued on June 25, 2012, exempted all property and casualty insurance forms, except workers' compensation, from the prior approval requirements for one year.⁹ Insurers were permitted to make an informational filing accompanied with a notarized certification 30 days prior to using the forms. This order was predicated on findings that insurers had recently filed a historically high number of property and casualty forms with the OIR due to law changes, and that requiring the OIR to review and approve forms before they could be used in the market was not practicable where the form had been diligently and thoroughly reviewed by the insurer for quality and legal sufficiency. The third OIR order issued on December 2, 2012, provided a clarification relating to the insurer's certification of compliance, but otherwise did not change the order of June 25, 2012. To date, approximately 20 percent of form filings eligible for self-certification under the order have utilized the exemption.

Representatives from the OIR indicate that, historically, over 90 percent of all property and casualty insurance form filings contain a violation of Florida law that must be addressed prior to the filing being approved. The lines of business that historically have the highest indices of non-compliant forms are the automobile and property lines of business (both personal and commercial), which OIR representatives opined likely stem from the high number of regulations that apply to these lines, the frequency of regulatory changes, and perhaps a high incidence of litigation.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.062, F.S., to amend the insurance "Rating Law," to expand the number of specified types of commercial lines insurance that are exempt from the rate filing and review requirements of s. 627.062(2)(a) and (f), F.S. The bill adds the following types of insurance to be exempt:

- Medical malpractice for a facility that is not a licensed hospital, nursing home, or assisted living facility. Examples of such facilities: laboratories, imaging facilities, dialysis centers, drug and alcohol rehabilitation facilities and hospice facilities.
- Medical malpractice for a health care practitioner that is not a licensed dentist, physician, osteopathic physician, chiropractic physician, or podiatric physician. Examples of such health care practitioners to whom the exemption would apply include: occupational and

⁸ Office of Insurance Regulation, *Order Exempting Specified Forms From The Requirements of Section 627.410, Florida Statutes*, (April 9, 2012).

⁹ Office of Insurance Regulation, *Order Exempting Specified Forms From The Requirements of Section 627.410, Florida Statutes*, (June 25, 2012).

physical therapists, nurses, audiologists, social workers, counselors, physician assistants, pharmacists, medical testing technicians, and medical lab and pharmacy technicians.

The rate filing requirements that these lines of insurance are exempt from are:

- Section 627.062(2)(a), F.S.: The requirement to file with the OIR rates, rating schedules, or rating manuals that allow the insurer a reasonable rate of return. Such filings must be made via the “file and use” method (at least 90 days prior to the proposed effective date) or the “use and file” method (within 30 days after the effective date of the filing).
- Section 627.062(2)(f), F.S.: Authorizes the OIR to require an insurer to provide, at the insurer’s expense, all information necessary to evaluate the condition of the company and the reasonableness of the rate filing.

The bill also reduces to two years the requirement that insurers retain actuarial data and documents for rates on coverage that is exempt from the rate filing requirements of s. 627.062(2)(a) and (2)(f), F.S. The bill also specifies that the OIR may require an insurer to incur the costs of an examination of the actuarial data.

Section 2. Amends s. 627.410, F.S., making technical changes to conform with the creation of s. 627.4102, F.S. in Section 3 of the bill.

Section 3. Creates s. 627.4102, F.S., which allows an alternative mechanism to the current form filing and approval process required by s. 627.410, F.S. The bill specifies that except for workers’ compensation and personal lines forms, all property and casualty forms are exempt from the requirements of s. 627.410, F.S., if they meet the requirements of s. 627.4102, F.S., which are:

- The form must be electronically submitted to the OIR in an informational filing 30 days before delivery of the form within the state.
- The informational filing must include a certification of compliance signed by the insurer’s president, chief executive officer, general counsel, or an employee of the insurer responsible for the filing on behalf of the insurer. The bill specifies the language that must be included in the certification.
- If the form is not in compliance with state laws and rules, the form filing is subject to the prior approval requirements of s. 627.410, F.S.
- For a renewal policy that contains a change, a Notice of Change in Policy Terms form must be included as a part of the informational filing.

The bill specifies the provisions of Section 3 of the bill supersede the OIR order exempting self-certified property and casualty forms from the prior review and approval requirements of s. 627.410, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Proponents for exempting certain lines of medical malpractice insurance from specified rate filing requirements assert that a competitive market exists for those types of insurance. Although the bill exempts the specified lines from the filing and review requirements, these types of insurance coverage continue to be subject to the requirement that rates shall not be excessive, inadequate, or unfairly discriminatory.

Allowing certain insurers to self-certify their own forms will be more convenient for the industry but potentially hazardous for customers. Since these forms will no longer require pre-approval from the OIR before they may be used, some might not be in compliance with Florida law.

C. Government Sector Impact:

CS/CS/SB 468 relieves the specified types of medical malpractice insurance from rate filing and review requirements; however, those products must still meet the requirement that rates shall not be excessive, inadequate or unfairly discriminatory. The OIR will no longer be required to review rate filings for the types of insurance that are being exempted from that requirement.

Exempting all property and casualty forms, other than workers' compensation and personal lines, to be self-certified by the insurer should reduce the volume of form filings received by the OIR. According to the OIR order dated December 3, 2012, authorizing insurer self-certification of all property and casualty insurance forms until June 24, 2013, "insurers have filed a historically high number of property and casualty insurance forms" that have "taxed the OIR's review resources and resulting in a lengthier period of review for many filings." Allowing property and casualty insurers to certify forms as complying with Florida law in lieu of obtaining prior approval from the OIR will result in a decrease in the office's workload and may reduce its funding needs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 1770 contains similar provisions to those contained in Section 2 and Section 3 of this bill.

Proponents of previously granted exemptions to s. 627.062(3), F.S., often justified their exemptions by asserting that the purchaser would likely be a sophisticated business entity. It is uncertain that health care practitioners such as occupational and physical therapists, nurses, audiologists, social workers, counselors, physician assistants, pharmacists, medical testing technicians, and medical lab and pharmacy technicians are sophisticated purchasers of coverage.

Similarly, the initial OIR order of April 9, 2012, that authorized self-certification for only commercial property and casualty forms cited as justification that the purchasers of commercial lines products “are sophisticated parties, and are more experienced in insurance transactions than consumers.” However, not all small businesses may be so savvy or have such experience, which includes small insurers of automobiles or property, two lines that have historically had the highest incidence of non-compliant forms.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Health Policy on April 2, 2013:

States that forms related to personal lines are not exempt from the OIR approval process.

CS by Banking and Insurance on March 20, 2013:

- Specifies the practice chapters of physicians whose medical malpractice insurance policies may not be exempted from the full rate filing requirements of s. 627.062(2)(a) and (2)(f), F.S.
- Revises the contents of the notarized self-certification an insurer must execute to exempt property and casualty insurance forms from prior review by the OIR, to state that if the certification is not in compliance with Florida law, the form will be disapproved, rather than subjecting the company to appropriate regulatory action.
- Specifies that the provisions of Section 3 of the bill supersede the OIR order exempting self-certified property and casualty forms from the prior review and approval requirements of s. 627.410, F.S.

- B. **Amendments:**

None.