

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 165 Property and Casualty Insurance

SPONSOR(S): Regulatory Affairs Committee; Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Santiago

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 258

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 1 N, As CS	Lloyd	Cooper
2) Government Operations Appropriations Subcommittee	10 Y, 2 N, As CS	Keith	Topp
3) Regulatory Affairs Committee	17 Y, 0 N, As CS	Lloyd	Hamon

SUMMARY ANALYSIS

The bill contains changes for various types of property and casualty insurance. Issues addressed include:

- **Certification in lieu of Rate Filing and Exemptions from Annual Base Rate Filings** – currently, insurers are required to make certain certifications as part of a rate filing; the bill eliminates rate certifications where a rate filing is not also required; law requires an annual base rate filing for commercial non-residential insurance despite this line being subject to informational rate filings, only; the bill removes commercial non-residential multiperil insurance from required annual base rate filings;
- **Nonrenewal Notice for Property Insurance** – presently, personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the action, except, for such actions during hurricane season (Jun 1-Nov1), notice must be given by June 1, also insureds who have been covered by the insurer for five years must receive 120 days' notice; the bill changes and makes uniform the due date for a notice of cancellation, nonrenewal, or termination – all will get at least a 120-day notice, however, with this change, some may receive such notice during hurricane season, instead of by June 1;
- **Neutral Evaluation in Sinkhole Claims** – currently, a notice of right to participate in the neutral evaluation program must be issued by the insurer upon receipt of the sinkhole testing report or when a claim denial is issued; the bill requires such notices to be issued only if there is sinkhole coverage under the policy and if the sinkhole claim was submitted timely;
- **Personal Injury Protection (PIP) Insurance** – reimbursements for medical services are currently made consistent with the Medicare fee schedule in effect on March 1 of the year the service is rendered and the schedule in effect on March 1 applies for the remainder of that year; it is unclear what period “remainder of that year” describes; the bill aligns the period in which services were rendered with the year the applicable fee schedule is in effect and states precisely the beginning and end of the year (March 1 through the end of the following February); and
- **Preinsurance Inspection of Private Passenger Motor Vehicles** – under current law, there are exemptions from required preinsurance inspections for “purchased” cars, if certain documents are provided; the bill adds leased vehicles to the exemptions; allows insurers to elect to receive the documents; revises the types of documents that insurers may require; and, limits claim reimbursement and property damage coverage suspension based on the timing of document delivery.

The bill has no fiscal impact on state or local government revenues or expenditures. The bill is expected to have a positive impact on the private sector.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Certification in lieu of Rate Filing and Exemptions from Annual Base Rate Filings

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 businesses;² however, most commercial insurance is purchased by businesses on a voluntary basis. The type of commercial insurance bought by a business also depends, in part, on the business type and industry.

The rating requirements for property, casualty, and surety insurance are set forth in part I of ch. 627, F.S., which is entitled the "Rating Law" and applies to all property, casualty, and surety insurance. The law states that rates "shall not be excessive, inadequate, or unfairly discriminatory."³ The Office of Insurance Regulation (OIR) has responsibility to review and approve or disapprove rates charged by insurance companies to ensure compliance with the rate standards.

The following types of commercial insurance are exempt from the rate filing and review requirements:⁴

- Excess or umbrella,
- Surety and fidelity,
- Boiler and machinery and leakage and fire extinguishing equipment,
- Errors and omissions,
- Directors and officers, employment practices, fiduciary liability, 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,⁵
- Nonresidential multiperil,
- Excess property,
- Burglary and theft,
- Medical malpractice for certain health care facilities and health care providers, and
- Other types of commercial lines insurance as determined by the OIR.

These types of insurance remain subject to the requirement that rates must not be excessive, inadequate, or unfairly discriminatory. An insurer or rating organization covered by the exemption must notify the OIR within 30 days after the effective date of a rate change. Notice is limited to the name of the insurer, the type of kind of insurance, and the statewide percentage change in rates. The OIR, at its discretion, may review the rates for compliance with the statutory requirements.⁶

¹ INSURANCE INFORMATION INSTITUTE, *Glossary* (defining commercial lines), <http://www.iii.org/services/glossary/uc?> (last viewed April 15, 2015).

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

³ Section 627.062(1), F.S.

⁴ Section 627.062(3)(d)1., F.S.

⁵ "Collateral protection insurance" means commercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Section 624.6085, F.S.

⁶ Section 627.062(3)(d)1., F.S.

Currently, the law requires the chief executive officer or chief financial officer and the chief actuary of a property insurer to certify, under oath, that they have reviewed a rate filing and that it is accurate; fairly represents the basis for the filing; reflects all premium savings reasonably expected to result from legislative enactments; and is compliant with generally accepted and reasonable actuarial techniques.⁷ However, the law does not require a rate filing for most commercial property insurance. The bill requires the certification only when a rate filing is required of a property insurer.

Subsection 627.0645(1), F.S., requires an annual base rate filing for certain lines of insurance. Under this provision, insurers must make an annual base rate filing for commercial non-residential multiperil insurance, even though they are not required to file rates for this line subject to OIR approval.⁸ The bill revises this provision to correct this anomaly. This relieves insurers from having to make annual base rate filings for commercial non-residential multiperil insurance.

Nonrenewal Notice for Property Insurance

Under current law,⁹ personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the cancellation, nonrenewal, or termination.¹⁰ Further, for any cancellation, nonrenewal, or termination that takes effect between June 1st and November 30th, an insurer must provide at least 100 days written notice, or notice by June 1st, whichever is earlier. The June 1st notice deadline ensures policyholders whose property insurance policies will be cancelled, nonrenewed, or terminated during hurricane season (June 1st – November 30th) will receive notice of the cancellation, nonrenewal, or termination by the start of hurricane season.

The bill repeals the required notice deadline of June 1st for policies being cancelled, nonrenewed, or terminated between June 1st and November 30th. The bill also lengthens the notice time period under current law from 100 days to 120 days. Under the bill, policyholders with a policy renewal date from June 1st to November 30th will receive 120 days' notice before the policy's cancellation, nonrenewal, or termination date. This change means some property insurance policyholders will receive notice of cancellation, nonrenewal, or termination during hurricane season (June 1st–November 30th). Under the bill, policies renewing September 28th–November 30th that are being nonrenewed, cancelled or terminated by the insurer will receive notice of nonrenewal, cancellation or termination during hurricane season.

Policyholders with property insured by the same insurer for five years or more receive 120 days' notice of cancellation, nonrenewal, or termination and the bill does not change the notice period for these policyholders.

Neutral Evaluation in Sinkhole Claims

Since 1981, insurers offering property coverage in Florida have been required by law to provide coverage for property damage from sinkholes.¹¹ Beginning in 2007, catastrophic ground cover collapse became the mandatory coverage under basic policies and sinkhole loss became a mandatory offering that may be elected by the insured.¹² A sinkhole is defined as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.¹³ Catastrophic ground cover collapse is also defined in the law.¹⁴ It describes a more severe circumstance than sinkhole loss, primarily in that it renders the structure uninhabitable.

⁷ Section 627.062(8)(a), F.S.

⁸ Commercial non-residential risks are subject to “informational” filings under the Rating Law.

⁹ Section 627.4133(2), F.S.

¹⁰ A 45-day notice of cancellation or nonrenewal, rather than the 100-day or 120-day notice is allowed if the OIR determines early cancellation of some or all of an insurer's property insurance policies is necessary to protect the best interest of the public or the policyholders. (s. 627.4133(2)(b)5., F.S.)

¹¹ Chapter 1981-280, L.O.F.

¹² Section 30, Ch. 2007-001, L.O.F.

¹³ Section 627.706(2)(h), F.S.

¹⁴ Catastrophic ground cover collapse is an abrupt ground cover collapse resulting in a depression that is clearly visible to the eye, with structural damage to building that is covered by the insurance, including the foundation, and the building is condemned and ordered vacated. S. 627.706(2)(a), F.S.

Sinkholes occur in certain parts of Florida due to the unique geological structure of the land. Sinkholes are geographic features formed by movement of rock or sediment into voids created by the dissolution of water-soluble rock. Sinkhole formation may be aggravated and accelerated by urbanization and suburbanization, by sub-surface water usage, and changes in weather patterns.

Insurers must offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.¹⁵ At a minimum, sinkhole loss coverage includes repairing the covered building, repairing the foundation, and stabilizing the underlying land. All property insurers can restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's principal building.¹⁶ Furthermore, insurers can require an inspection of the property before providing sinkhole loss coverage.

Pursuant to s. 627.707, F.S., upon receipt of a claim for sinkhole loss to a covered building, the insurer must inspect the property to determine if sinkhole activity has caused structural damage. If such damage exists and the insurer is unable to identify a valid cause of the damage or identifies damage consistent with sinkhole loss, the insurer is required to conduct testing to determine the cause. However, the testing is only required if the policy covers sinkhole loss. The testing must meet statutory standards and a report must be issued that contains required information. The Department of Financial Services (Department) states that testing under s. 627.707, F.S., is necessary to proceed with the neutral evaluation program operated by the Department, but that the Department does not determine when the testing must be performed.¹⁷

Under s. 627.7074(3), F.S., following the report or a denial of the claim, the insurer must inform the policyholder, in writing, of their right to participate in the neutral evaluation program and must include an informational brochure prepared by the Department.¹⁸ In the context of that subsection, it is not readily apparent whether the term "denial of the claim" means all denials, denials involving the existence of a sinkhole, or something else.

The neutral evaluation program is mandatory once requested by either party.¹⁹ The Department has received requests for neutral evaluation from individuals in cases where the insurer alleges that there is no sinkhole coverage or that the sinkhole claim is untimely filed. Since the testing, and the appurtenant report, is unlikely to be done until contests over coverage and timeliness are resolved, the insureds may receive notice of the right to neutral evaluation at a point in the process that neutral evaluation cannot be done. So, notices may be going out to policyholders where the denial is based upon a lack of coverage, rather than only where the circumstances allow the Department to render an effective outcome on a neutral evaluation request.

The bill requires an insurer to notify a policyholder of the right to participate in neutral evaluation of a sinkhole claim only if there is sinkhole coverage on the damaged property and if the sinkhole claim was submitted within the statute of limitations period,²⁰ which is two years after the policyholder knew or reasonably should have known about the sinkhole loss.

Personal Injury Protection Insurance

House Bill 119, the personal injury protection insurance (PIP) reform bill enacted in 2012,²¹ amended s. 627.736(5)(a)2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The legislation provides in part that:

¹⁵ Section 627.706, F.S.

¹⁶ By law, sinkhole loss coverage by Citizens Property Insurance Corporation (Citizens) does not cover sinkhole losses to appurtenant structures, driveways, sidewalks, decks, or patios. Citizens Property Insurance Corporation is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

¹⁷ Department of Financial Services, Division of Consumer Services, letter dated February 13, 2015, on file with the Insurance and Banking Subcommittee.

¹⁸ Section 627.7074(3)(d), F.S., and Rule 69J-8.006, F.A.C. The Department's sinkhole pamphlet is posted on the web at <http://www.myfloridacfo.com/division/Consumers/Mediation/documents/SettlingSinkholeClaim.pdf> (last accessed: February 12, 2015).

¹⁹ Section 627.7074(4), F.S., and Rule 69J-8.007(3), F.A.C.

²⁰ Section 627.706(5), F.S.

²¹ Ch. 2012-151, L.O.F.

[T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered...*and the applicable fee schedule or payment limitation applies throughout the remainder of that year* [italics added for emphasis]....”

The above-emphasized language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied through the calendar year (through December 31st) or whether it applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,²² stating that the plain language of the section requires the fee schedule in place on March 1st to apply throughout the following 365 days, or until the following March 1st.

The bill amends s. 627.736(5)(a)2., F.S., to define a “service year” for rendered services, supplies, or care. For this purpose, a “service year” is from March 1 through the end of the following February. The period for the applicable Medicare fee schedule is then applied to this same period. This should provide certainty that reimbursement for any medical services, supplies, or care under PIP will be reimbursed based on the applicable Medicare fee schedule in effect on the preceding March 1.

Preinsurance Inspection of Private Passenger Motor Vehicles

Section 627.744, F.S., requires preinsurance inspections of private passenger motor vehicles, but lists various exemptions, including for new, unused motor vehicles “purchased” from a licensed motor vehicle dealer or leasing company when the insurer is provided with the bill of sale, buyer’s order, or copy of the title and certain other documentation. Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Physical damage coverage may not be suspended during the policy period due to the applicant’s failure to provide the required documents. However, claim payments are conditioned upon and are not payable until the required documents are received by the insurer. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed five dollars.

The bill adds an exemption from preinsurance inspection for new, unused “leased” motor vehicles to the existing exemption for “purchased” vehicles, if the vehicle is leased from a licensed motor vehicle dealer or leasing company. If the insurer waives its right to a preinsurance inspection, it also provides an insurer the discretion to require persons who purchase or lease a new, unused motor vehicle to submit certain documents. Currently, such documents are required to be provided whenever the exemption is utilized. Persons who do not submit the required documentation, upon request, at the time the policy is issued are required to submit the document before any physical damage loss is payable under the policy. The bill amends the list of documents that an insurer may require to include the vehicle registration in addition to the existing option of providing the vehicle title along with the window sticker and deletes from the list of documents the detailed dealer’s invoice. Failure of the insurer to request the documentation is added to the prohibition on suspending coverage due to the insured’s failure to provide documentation. Finally, the condition on claim payment pending receipt of documentation is revised to apply only if the carrier exercised its option to require the documentation.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.062, F.S., relating to rate standards.

Section 2: Amends s. 627.0645, F.S., relating to annual filings.

Section 3: Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program to correct a cross reference.

Section 4: Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

²² Available at <http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx> (last accessed: January 23, 2015).

Section 5: Amends s. 627.7074, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims.

Section 6: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 7: Amends s. 627.744, F.S., relating to required preinsurance inspection of private passenger motor vehicles.

Section 8: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Consolidating the notice of nonrenewal, cancellation, or termination into a uniform 120 day notice requirement would likely benefit insurers. Administering multiple conditions that set the notice period (currently the earlier of 100 days or June 1st, if the date falls between June 1 and November 30, or 120 days if the policyholder has been with the insurer for five or more years) would no longer be required. The extent of this benefit has not been calculated. However, any savings realized by insurers should be passed through to policyholders.

Limiting the issuance of notices of right to participate in the sinkhole neutral evaluation program would likely benefit insurers by requiring the notice in fewer instances. The extent of this benefit has not been calculated. However, any savings realized by insurers should be passed through to policyholders.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have

to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 17, 2015, the Insurance & Banking Subcommittee considered a proposed committee substitute (PCS) and one amendment to the PCS, and reported the bill favorably as a committee substitute. The committee substitute reflects multiple changes, as follows:

- Removed a provision from the bill that allowed the use of a straight average of hurricane loss projection models in a rate filing.
- Removed a provision from the bill that allowed the use of hurricane loss projection models for 180 days following the Florida Commission on Hurricane Loss Projection Methodology finding that a subsequent model is accurate or reliable.
- Restructured a provision to reflect that a policyholder has 90 days following the effectuation of the policy to comply with underwriting criteria of the insurer.
- Clarified a provision by moving the proposed conditions precedent to the issuance of the required notice of right to participate in the neutral evaluation program for sinkhole loss claims to the beginning of the sentence.
- Revised a provision to provide that the applicable Medicare schedule in effect on March 1 would apply to PIP medical services, supplies, and care rendered from March 1 through the end of February of the following year and to provide a definition of “service year” to facilitate reimbursements.

On March 31, 2015, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides that the language amended in s. 627.0651(8), F.S., shall sunset on July 1, 2018 and revert to the text of that section in existence on June 30, 2015.

On April 14, 2015, the Regulatory Affairs Committee considered a PCS and one amendment to the PCS, and reported the bill favorably as a committee substitute. The committee substitute reflects multiple changes, as follows:

- Removed a provision that would have allowed single zip code rating territories on a “file and use” basis, rather than deeming them unfairly discriminatory in all instances and related language that would sunset the subject language on July 1, 2018, with a reversion to the statute in existence on June 30, 2015.
- Deleted a provision that would have permitted electronic delivery of personal lines policies in lieu of delivery by mail upon the affirmative election of the policyholder.

- Added provisions that eliminate unnecessary rate certifications and removes commercial non-residential multiperil insurance from required annual base rate filings.

The staff analysis is drafted to reflect the committee substitute.