

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 Rules

BILL: CS/CS/SB 1036

INTRODUCER: Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Brandes

SUBJECT: Automobile Insurance

DATE: February 26, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u>Knudson</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1036 makes the following changes relating to automobile insurance:

Use of Rating Territories Contained Within a Single Zip-Code

- Allows motor vehicle insurance rates to be developed using rating territories contained within a single zip code if:
 - The rating territories incorporate sufficient loss and loss adjustment expense data to be actuarially measurable and credible; and
 - The Office of Insurance Regulation (OIR) determines that a rate filing using single-zip code rating territories does not contain a rate or rate change that is excessive, inadequate, or unfairly discriminatory.

Cancellation of Policies Issued by the Florida Automobile Joint Underwriting Association

- Allows the Florida Automobile Joint Underwriting Association (Auto JUA) to cancel personal lines or commercial lines policies issued by the plan for nonpayment of premium if a check is dishonored for any reason or any other form of payment is rejected or deemed invalid. The cancellation may only occur within the first 60 days of the policy or binder.

- Prohibits an insured of the Auto JUA from cancelling a policy or binder within the first 90 days of its effective date unless the insured vehicle is totally destroyed, ownership of the vehicle is transferred, or another policy is purchased covering the vehicle.

Payment of Premium and Return of Unearned Premium

- Allows motor vehicle insurers to apply the unearned portion of premium to unpaid balances of other policies with the same insurer or insurer group instead of returning the premium via mail or electronic transfer.
- Specifies that motor vehicle insurance premiums may be paid in cash in the form of a draft or drafts. Allows the insurer to impose an insufficient funds fee of up to \$15 per occurrence if specified methods of premium payments are declined for insufficient funds.
- Exempts policies paid via a recurring credit card or debit card agreement with the insurer from the requirement that, prior to issuing or binding a motor vehicle insurance policy, the insured must pay at least 2 months' premium.

Personal Injury Protection (PIP)

- Exempts publicly traded corporations with \$250 million or more in total annual sales in health care services from the requirement to obtain health care clinic licensure as a condition of qualifying for reimbursement under PIP coverage.
- Clarifies and updates references to billing requirements under PIP.

The effective date is July 1, 2016.

II. Present Situation:

Automobile Insurance, Generally

The Office of Insurance Regulation (OIR) regulates the provision of automobile insurance. Automobile insurance coverage can include loss or damage to a vehicle; loss, liability, or expense as a result of ownership, maintenance, or use of a vehicle; medical, hospital, and surgical benefits to persons injured by a vehicle; and funeral and death benefits to survivors of someone killed by a vehicle.¹ Generally, automobile insurance covers either private individuals (Private Passenger Auto Insurance), or commercial vehicles and those who use them (Commercial Automobile Liability).

Zip Codes and Rating Territories for Motor Vehicle Insurance

Section 627.062, F.S., Florida's insurance rating law, provides that insurance rates cannot be excessive, inadequate, or unfairly discriminatory based on age, gender, marital status, or scholastic achievement² as determined by the Office of Insurance Regulation (OIR). Additionally, a motor vehicle insurer's use of a single zip code as a rating territory is deemed

¹ The Florida Office of Insurance Regulation, *Automobile Insurance, Definition*, available at: <http://www.floir.com/sections/pandc/automobile/default.aspx> (last visited Feb. 15, 2016).

² Section 626.9541(1)(o)9, F.S.

unfairly discriminatory by s. 627.0651(8), F.S.³ If the OIR finds, using generally accepted and reasonable actuarial techniques, that the insurer's filed rate is neither excessive, inadequate, nor unfairly discriminatory, then the OIR is required to approve the insurer's rates.⁴

Cancellation of Florida Automobile Joint Underwriting Association Policies

Insurers⁵ that offer motor vehicle insurance in Florida must participate in the Auto Joint Underwriting Association (Auto JUA).⁶ The Auto JUA, or "Market of Last Resort," exists to provide motor vehicle insurance to individuals who cannot obtain such coverage in the voluntary insurance market.⁷ The Auto JUA distributes risk among its members, and generally has higher premiums as a result. The Auto JUA is subject to generally the same requirements as other auto insurers under the Florida Insurance Code, but is subject to additional various limitations. For example, the Auto JUA may not provide any inducement designed to retain a policy, and must subject its operation to supervision by a board of governors, members of which are appointed by the CFO and the insurance industry.⁸

Motor vehicle insurers, which include the Auto JUA, may cancel insurance policies in the following situations:⁹

- Nonpayment of premium; however, an insurer may only cancel a policy on the basis of nonpayment after 60 days from the effective date of the policy;
- Where the policy was obtained as a result of a material misrepresentation or fraud; or
- The driver's license or motor vehicle registration of the insured has been suspended or revoked during the policy period, or 180 days immediately prior to the insurance policy's effective date.

An insured may only cancel his or her policy within the first 60 days after its issuance if:¹⁰

- The insured vehicle was totally destroyed;
- The insured vehicle transferred ownership; or
- The insured has purchased another motor vehicle insurance policy.

Return of Unearned Premium upon Cancellation of Motor Vehicle Insurance

Unearned premium is the pro rata share of the overall insurance premium paid in advance for which insurance coverage will not ultimately be provided, generally because of cancellation of the policy. If an insured cancels his or her auto insurance policy prior to its full term, the insurer

³ An insurance rating territory is a geographical area that reflects a difference in risk to the insurance company, and is used in part to actuarially determine the insurance rate for a consumer in that rating territory. Janet Kaminski, *OLR Research Report, Territorial Rating for Auto Insurance* (Sep. 11, 2006), available at: <https://www.cga.ct.gov/2006/rpt/2006-R-0542.htm> (last visited Feb. 15, 2016).

⁴ Section 627.0651, F.S.

⁵ An insurer is every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity. Section 624.03, F.S.

⁶ Section 627.311, F.S.

⁷ Florida Automobile Joint Underwriting Association webpage, available at: <http://www.fajua.org/> (last visited Feb. 15, 2016).

⁸ Section 627.311, F.S.

⁹ Sections 627.7295 (4) and 627.728, F.S.

¹⁰ Section 627.7295(3), F.S.

must return the unearned premium to the insured within 30 days from the policy cancellation or receipt of notice of policy cancellation, whichever is later. If the insurer cancels the policy, the unearned premium must be returned to the insured within 15 days of the effective date of the policy's cancellation. These unearned portions of premiums must be mailed or electronically transferred to the insured by the insurer.¹¹

Requirement to Initially Pay 2 Months' Premium before Issuance of Private Passenger Motor Vehicle Insurance

Before a policy of private passenger motor vehicle insurance may be initially issued or bound, an insurer must collect 2 months' premium from the insured.¹² This requirement does not apply:

- To policy renewals or replacement policies issued by the same insurer group;
- To an insurer that issues private passenger motor vehicle insurance policies primarily to active duty or former personnel, or their dependents;
- If all policy payments are paid pursuant to a payroll deduction plan or an automatic electronic funds transfer payment from the policyholder;
- If all policy payments are paid pursuant to an automatic electronic funds transfer payment plan from an agent, a managing general agent, or a premium finance company if the policy includes Personal Injury Protection (PIP) insurance, property damage liability coverage of at least \$10,000, and bodily injury liability coverage of at least \$10,000 per person and \$20,000 per accident; or
- If the insured had a policy in effect for at least 6 months, then the insured's agent was terminated by his or her insurer, and the insured then obtains coverage on the policy's renewal date with a new company through the terminated agent.

Personal Injury Protection Insurance – Billings for Medical Services

Florida's Motor Vehicle No-Fault Law (the No-Fault Law)¹³ requires motorists to carry personal injury protection (PIP) coverage. PIP coverage provides \$10,000 in medical and disability benefits and a \$5,000 death benefit.¹⁴ Medical benefits are limited to \$2,500 if the injured person is determined to not have an emergency medical condition.¹⁵ The purpose of the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents.¹⁶

Section 627.736(5)(d), F.S., requires all statements and bills for medical services reimbursable by PIP to be submitted according to specified criteria. The billings must be on properly completed Centers for Medicare and Medicaid Services (CMS) 1500 forms, UB 92 forms, or any other standard form approved by the OIR or adopted by the Financial Services Commission. Billings must, to the extent applicable, follow the Physicians' Current Procedural Terminology

¹¹ Section 627.7283, F.S.

¹² Section 627.7295(7), F.S.

¹³ Sections 627.730-627.7405, F.S.

¹⁴ Section 627.736(1), F.S.

¹⁵ Section 627.736(1)(a)4., F.S.

¹⁶ Section 627.737, F.S.

(CPT)¹⁷ or Healthcare Correct Procedural Coding System (HCPCS)¹⁸ or the International Classification of Diseases¹⁹ (ICD-9). Though the No-Fault Law requires use of the ICD-9, the current updated version is the ICD-10.²⁰

Personal Injury Protection Insurance –Health Care Clinic Licensure

The No-Fault Law requires entities that seek reimbursement under PIP coverage to obtain licensure under the Health Care Clinic Act,²¹ unless they are otherwise exempt from this requirement. The Health Care Clinic Act provides for the licensure, establishment, and enforcement of basic standards for health care clinics, and provides for administrative oversight by the Agency for Health Care Administration (AHCA).²²

Entities that are exempt from the Health Care Clinic Act include:

- Hospitals licensed under ch. 395, F.S.
- Ambulatory surgical centers licensed under ch. 395, F.S.
- Entities that wholly own or are wholly owned by a hospital licensed under ch. 395, F.S.
- Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.
- Entities wholly owned by:
 - Physicians licensed under ch. 458, F.S., or ch. 459, F.S.;
 - Dentists licensed under ch. 466, F.S.;
 - Chiropractic physicians licensed under ch. 460;
- Entities certified under 42 C.F.R. part 485, subpart H (entities qualified under Medicare to provide outpatient physical therapy and speech pathology services).

III. Effect of Proposed Changes:

Use of Rating Territories Contained Within a Single Zip-Code

Section 1 amends s. 627.0651, F.S., to allow motor vehicle insurance rates to be developed using rating territories contained within a single zip code if:

- The rating territories incorporate sufficient loss and loss adjustment expense data to be actuarially measurable and credible; and

¹⁷ The American Medical Association CPT codes provide standardized nomenclature used to report medical procedures and services. See American Medical Association, *About CPT®*, <http://www.ama-assn.org/ama/pub/physician-resources/solutions-managing-your-practice/coding-billing-insurance/cpt/about-cpt.page> (last visited Feb. 15, 2016).

¹⁸ The HCPCS contains codes for products, supplies, and services not included in CPT codes such as durable medical equipment, prosthetics, orthotics, and supplies when used outside a physician's office. See Centers for Medicaid & Medicare Services, HCPCS – General Information HCPCS Background Information, <https://www.cms.gov/medicare/coding/medhcpcsgeninfo/index.html> (last visited Feb. 15, 2016).

¹⁹ The ICD classifies diseases and other health problems and is used by health care providers and insurers.

²⁰ World Health Organization, *International Classification of Diseases (ICD)*, <http://www.who.int/classifications/icd/en/> (last visited Feb. 15, 2016).

²¹ Sections 400.990 – 400.995, F.S.

²² Section 400.990, F.S.

- The Office of Insurance Regulation (OIR) determines that a rate filing using such rating territories does not contain a rate or rate change that is excessive, inadequate, or unfairly discriminatory.

Florida Automobile Joint Underwriting Association Policies – Cancellation for Non-Payment of Premium

Section 2 amends s. 627.311(3), F.S., to allow the Florida Auto JUA to cancel personal or commercial lines policies they issue based on a nonpayment of premium if a check is dishonored for any reason, or any other form of payment is rejected or deemed invalid. Such cancellation may only occur within the first 60 days of the policy. The bill prohibits a consumer insured by an Auto JUA from cancelling a policy or binder within the first 90 days of its effective date unless the insured motor vehicle is totally destroyed, ownership of the vehicle is transferred, or after the purchase of another policy or binder covering the motor vehicle.

Motor Vehicle Insurance – Return of Unearned Premium upon Cancellation

Section 3 amends s. 627.7283, F.S., which sets the requirements for insurers to return the unearned premium to policyholders when insurance policies are cancelled by the insured or insurer. The bill allows motor vehicle insurers to apply the unearned portion of premium to unpaid balances of other policies with the same insurer or insurer group instead of returning the premium via mail or electronic transfer to the consumer.

Motor Vehicle Insurance – Methods of Premium Payment

Section 4 amends s. 627.7295, F.S., to exempt policies paid via a recurring credit card or debit card agreement with the insurer from the requirement that, prior to issuing or binding a motor vehicle insurance policy, the insured must pay at least 2 months' premium.

The bill also authorizes premiums to be paid in cash in the form of a draft or drafts. The bill allows the insurer to impose an insufficient funds fee of up to \$15 per occurrence if a payment via draft made by debit card, credit card, or automatic electronic funds transfer is returned, declined, or cannot be processed due to insufficient funds.

Personal Injury Protection

Section 5 amends s. 627.736(5)(d), F.S., to clarify that billings under the Motor Vehicle No-Fault law must follow the Physicians Current Procedural Terminology (CPT), the Healthcare Common Procedure Coding System in effect for the year in which services are rendered, and the International Classification of Diseases (ICD) adopted by the United States Department of Health and Human Services for the year in which services are rendered. Compliance with all three standardizes PIP billings and facilitates the timely adjustment and payment of benefits. The bill will require compliance with the current version of the ICD, the ICD-10.

The bill also exempts publicly traded corporations with \$250 million or more in total annual sales in health care services from the requirement to obtain health care clinic licensure as a condition of qualifying for reimbursement under PIP coverage.

Section 6 provides an effective date of July 1, 2016.

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:

Policyholders of motor vehicle insurance will be subject to an insufficient funds fee of up to \$15 if payment by debit card, credit card, or automatic electronic funds transfer is returned, declined, or cannot be processed because of insufficient funds.

Health clinics that are owned by a publicly traded corporation that has \$250 million or more in sales of annual health care services provided by licensed health care practitioners and that are operated and supervised by one or more Florida-licensed health care practitioners are now exempt from the licensing requirements of part X of ch. 400, F.S., for purposes of reimbursement under ss. 627.730-627.7405, F.S. (the Florida Motor Vehicle No-Fault Law). This may result in a positive economic impact on such clinics.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill authorizes the payment of motor vehicle insurance premiums via cash by draft. However, s. 627.4035, F.S., currently allows payment by cash, check, debit card, credit card and electronic funds transfer. It is unclear what additional methods are captured by the bill. The \$15 insufficient funds fee authorized by the bill only applies to debit card, credit card, or automatic electronic funds transfer, all of which are currently available methods of payment under s. 627.4035, F.S., and thus would not apply to the additional methods of “draft” payment, if any, that are authorized by the bill.

Section 2 of the bill provides that a consumer who is insured by the Auto JUA may cancel his or her policy within the first *90 days* of its issuance for specified causes. However, s. 627.7295(3), F.S., which currently covers insured consumers of both traditional auto insurers and insured consumers of the Auto JUA, allows an insured to cancel his or her policy within the first *60 days* of its issuance for specified causes. This inconsistency may cause confusion.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.0651, 627.311, 627.7283, 627.7295, and 627.736.

IX. 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 Commerce and Tourism on February 16, 2016:

Deletes the provision from the bill that allows car insurance companies to choose whether or not to require a pre-insurance inspection of certain cars that apply for insurance from their company. This amendment maintains the status quo, which requires that certain cars purchased in the seven most populous counties in Florida are subject to a pre-insurance inspection.

CS by Banking and Insurance January 26, 2016:

- Allows motor vehicle insurance rates to be developed using rating territories contained within a single zip code if specified requirements are met;
- Specifies that motor vehicle insurance premiums may be paid in cash in the form of a draft or drafts. Allows the insurer to impose an insufficient funds fee of up to \$15 per occurrence if specified methods of premium payments are declined for insufficient funds; and
- Exempts publicly traded corporations with \$250 million or more in total annual sales in health care services from the requirement to obtain health care clinic licensure as a condition of qualifying for reimbursement under PIP coverage.

B. Amendments:

None.