

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2428

SPONSOR: Banking and Insurance Committee and Senator Atwater

SUBJECT: Insurance Claims/Premium Payments

DATE: April 22, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh/Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill makes the following changes regarding insurance claims and premium payments:

- The bill specifies (and arguably clarifies) that premiums for insurance contracts may be paid by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction plan.
- The bill exempts certain types of property insurance claim disputes from the statutory mediation program for the resolution of such disputes, to codify exemptions that are currently in rule and to add an exemption for claims with respect to which the insurer has a reasonable basis to believe that the claimant has intentionally made a material misrepresentation of fact and the claim has been denied for that reason.
- The bill allows insurers and general lines agents to charge an administrative charge, without any specific limit on the amount, under a plan for the periodic payment of premiums, if certain conditions are met.

This bill substantially amends the following sections of the Florida Statutes: 627.4035, 627.7015, and 627.901.

II. Present Situation:

Payment of Insurance Premiums by Credit Card

Section 627.4035, F.S., provides that premiums for insurance contracts issued in Florida must be paid in cash consisting of coins, currency, checks, or money orders. However, s. 626.9541(1)(q), F.S., indicates that insurance premiums may also be paid by credit card or debit card, under certain conditions. This section prohibits the payment of insurance premiums by credit card, except under certain conditions. It provides that a licensed agent or insurer may accept premiums by credit card if: 1) the insurance policy is noncancelable by any person other than the named

insured, the policyholder, or the insurer; 2) any refund of unearned premium is made directly to the credit card holder; and 3) the credit card transaction is authorized by the signature of the credit card holder or other person authorized to sign on the credit card account. However, these conditions do not apply to health insurance or to credit life, credit disability, or credit property insurance. Also, the third condition listed above does not apply to property and casualty insurance so long as the transaction is authorized by the insured.

The statute specifying the mode of payment for insurance premiums also does not refer to automatic electronic funds transfer or payroll deduction plans, even though such methods of payment are currently being utilized by some insurers, particularly for employer group health insurance payments.

Alternative procedure (mediation) for resolution of disputed property insurance claims

Section 627.7015, F.S., provides an alternative procedure for the resolution of disputed property insurance claims. This section was enacted during the Special Legislative Session in November 1993, in response to claims arising from Hurricane Andrew, allowing the policyholder to demand mediation of a property claims under certain conditions. The law authorizes the Department of Insurance to adopt by rule the mediation program and to establish qualifications of mediators, who are deemed to be agents of the department. Subject to such rules, insurers must participate and pay for the mediation, if requested by an insured, but the decision of the mediator is nonbinding on the parties.

Under rules adopted by the Department of Insurance (4-166.031, F.A.C.), certain claims are excluded from the alternative dispute (mediation) requirements. The current rule exempts the following: 1) disputes as to which the insurer has a reasonable basis to suspect fraud; and 2) disputes where based upon agreed facts as to the cause of loss, there is no coverage under the policy. A third "exemption" is effectively provided for claims below \$500, by stating that unless the parties agree to mediate a claim involving a lesser amount, a "claim" involves the insured requesting \$500 or more to settle the dispute, or the difference between the positions of the parties is \$500 or more, notwithstanding any applicable deductible. Requests for mediation of such disputes may be rejected by the insurer.

The Administrative Procedures Act (APA) generally allows rules to be promulgated only where there is direct statutory authority. When the department filed proposed amendments to the rule to exclude from mediation cases involving alleged material misrepresentation of fact, the Joint Administrative Procedures Committee determined that the department lacked statutory authority to do so.

Premium financing by insurers and agents

Insurance companies and insurance agents are permitted to impose service charges for financing insurance premiums, up to \$1 per installment, not to exceed \$12 per year for any premium balance greater than \$220. The service charge may not exceed \$6 per year for any premium balance of \$120 or less, and may not exceed \$9 per year for any premium balance between \$120 and \$220. However, in lieu of such service charges, insurance companies and agents may charge a rate of interest up to 18 percent simple interest per year on the unpaid balance, or on the average unpaid balance as billed over the term of the policy. Such amounts are generally well in excess of the allowable service charges.

The service charge and interest rate limitations outlined above are specified in the section that applies to insurance agents in s. 627.901, F.S. Premium financing by insurers is addressed in s. 627.902, F.S., which cross-references the agent section for the allowable service charges and interest rate. Under both sections, if an insurer or agent charges service charges or interest in excess of these amount, they are subject to the requirements of part XV of ch. 627 that apply to licensed premium finance companies.

III. Effect of Proposed Changes:

Section 1 (Payment of Insurance Premiums by Credit Card)

The bill amends s. 627.4035, F.S., to specify that premiums for insurance contracts may be paid by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction plan. The bill does not amend s. 626.9541(1)(q), F.S., and, therefore, would not affect the requirements for using a credit card to make insurance payments.

Section 2 (Alternative procedure for resolution of disputed property insurance claims)

The bill amends s. 627.7015, F.S., to define the term "claim" for purposes of the mediation program set forth in s. 627.7015, F.S. The section codifies the provisions of the current department rule by exempting the following types of claims from the mandatory mediation provisions: 1) claims for which the insurer has a reasonable basis to suspect fraud; 2) claims for which there is no coverage under the policy, based on agreed-upon facts as to the cause of loss; and 3) if the amount in controversy is less than \$500, unless the parties agree to mediate a dispute involving a lesser amount. In addition to these three exemptions in the current rule, the bill adds a fourth exemption that is not in the current rule, for claims with respect to which the insurer has a reasonable basis to believe that the claimant has intentionally made a material misrepresentation of fact which is relevant to the claim, and the entire request for payment of a loss has been denied on the basis of the material misrepresentation. Advocates for this change argue that there is little to be gained at a mediation hearing for claim disputes for which the insurer has determined that the policyholder has made a material misrepresentation of a material fact and has so informed the policyholder when the insurer denied the claim.

Section 3 (Premium financing by insurers and agents)

The bill amends s. 627.901, F.S., to revise the service charge amounts that a general lines agent or insurer may charge under a periodic payment plan. Under the bill, a general lines agent may impose a service charge not exceeding \$3 per payment installment, with the maximum service charge not to exceed \$36 for an entire year. The bill retains provisions that allow an insurance agent or agency to charge a rate of interest not exceeding 18 percent simple interest per year on the unpaid balance or 18 percent on the average unpaid balance as billed over the term of the policy. Section 3 deletes requirements in s. 627.901, F.S., that mandate different maximum yearly service charges based on the amount of the premium balance.

Section 4 provides that this act will take effect upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

See Private Sector Impact, below, regarding Section 3 of the bill.

B. Private Sector Impact:

Section 3 of the bill allows insurers and general lines agents to charge a service charge for periodic payment of the premium. The amount of the administrative charge is limited to \$3 per installment and \$36 per year. This will result in increased charges to policyholders for those insurers who use the service charge option. However, under current law, insurers may charge a rate of interest of up to 18% on the unpaid balance of a policy, which generally amounts to a greater expense for consumers than the \$3 service charge.

Section 2 of the bill would relieve insurers of the cost of mediation of property insurance claims which an insurer has denied due to the insurer's determination that the policyholder made a material misrepresentation of fact. Policyholders would be denied the opportunity to informally resolve such disputes, but successful mediation may be unlikely in such cases.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
