

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 255 Discriminatory Insurance Practices

**SPONSOR(S):** Civil Justice Subcommittee; Insurance & Banking Subcommittee; Gaetz and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 424

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 1 N, As CS	Salzverg	Cooper
2) Civil Justice Subcommittee	8 Y, 2 N, As CS	Bond	Bond
3) Regulatory Affairs Committee	11 Y, 5 N	Salzverg	Hamon

### SUMMARY ANALYSIS

Current insurance law prohibits certain unfair insurance trade practices, such as misrepresentations and false advertising, false statements, unlawful rebates, or unfair discriminatory practices, and authorizes the state Office of Insurance Regulation with the authority to enforce the prohibition.

Additionally, an insurer may not deny coverage, increase any premium, or otherwise discriminate against any insured or applicant on the basis of the lawful ownership or possession of a firearm or ammunition. This prohibition is not tied to the unfair trade practice provisions in the insurance law and thus lacks specific administrative enforcement authority for the Office of Insurance Regulation.

This bill amends the insurance laws to specify that it is an unfair discriminatory practice for a personal lines property or personal lines automobile insurer to discriminate against an applicant or insured because of the lawful ownership of firearms or ammunition. However, an insurance company may charge a supplemental premium should the value of the firearms exceed the standard policy coverage.

This bill also prohibits an insurance company from disclosing an insured's or applicant's ownership or possession of a firearm or ammunition to a third party or affiliated entity unless the insurer discloses to the insured or applicant a specific need to disclose the information and the insured or applicant expressly consents to the disclosure, or the disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim. Disclosure from the company to the agent is authorized where necessary for the purpose of excess coverage.

This bill does not appear to have a fiscal impact on the state or on local governments.

The bill takes effect July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### *Firearm Ownership and Possession, Generally*

Current law at s. 790.338(7), F.S., prohibits an insurer from denying coverage, increasing any premium, or otherwise discriminating against any insured or applicant on the basis of the lawful ownership or possession of a firearm or ammunition. This provision does not prevent an insurer from considering the fair market value of firearms or ammunition in the setting of premiums for scheduled personal property coverage.<sup>1</sup> Although unrelated parts of the bill creating subsection (7) were struck down in a legal challenge, the subsection relating to firearms still remains valid law today.<sup>2</sup> An issue with the current law is that it seemingly lacks specific administrative enforcement authority to take action against any insurers which violate the proscribed behavior. However, the law appears enforceable in a civil action by an insured or an applicant against an insurance company that violates the prohibition.

##### *Regulation of Insurance Companies by the State*

Currently, the Office of Insurance Regulation (OIR) is tasked with enforcement of Florida laws relating to the operation of insurance companies, including rate-setting proposed by insurers.<sup>3</sup> Additionally, OIR in reviewing rate filings must make sure insurers do not practice unfair methods of competition or unfair or deceptive acts as outlined by current law.<sup>4</sup> Such unfair practices include, but are not limited to: misrepresentations and false advertising, false statements, unlawful rebates, or unfair discriminatory practices.

Current law specifically prohibits insurers from knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class when setting a rate for an insurance policy. For example, insurers may not take into account an insured's or applicant's past claim for abuse or any actions taken for treatment of abuse when underwriting, issuing, reissuing, or terminating a policy or paying a claim.<sup>5</sup>

OIR encounters discriminatory practices in the following ways:<sup>6</sup>

- In proposed rate filings, which OIR will not approve if the rate reflects unfair discrimination in the setting of the rate or issuance of the policy.
- When a complaint is made to OIR via the Division of Consumer Services of the Department of Financial Services. The alleged discriminatory practice is examined by the Bureau of Market Investigations within OIR and corrective action may be pursued.
- From constituent calls to public officials and offices, which are passed along to OIR. In turn, these concerns are referred to the Bureau of Market Investigations.

For personal lines property or personal lines automobile insurance, insurers will provide coverage for liability and for property loss. Inquiring into whether an insured party or applicant lawfully owns or possesses a firearm or ammunition is not common practice within the insurance industry in Florida

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<sup>1</sup> Section 790.338(7), F.S., as created by HB 155, ch. 2011-112, Laws of Florida.

<sup>2</sup> *Wollschlaeger v. Farmer*, 880 F.Supp.2d 1251 (S.D. Fla., 2012).

<sup>3</sup> Section 627.062, F.S.

<sup>4</sup> Section 626.9541, F.S.

<sup>5</sup> Section 626.9541(1)(g)(1), F.S.

<sup>6</sup> Information obtained from the Office of Insurance Regulation, January 15, 2014. On file with the Insurance & Banking Subcommittee staff.

when determining liability coverage in setting rates.<sup>7</sup> Insurers generally provide property loss coverage for firearms in two ways. Firearms and ammunition may be covered as a part of the standard policy or as a “rider.” A rider covers specific property loss in excess of the coverage amount found in usual insurance policies. Disclosure of the insured or applicant’s firearms is necessary to catalog the property being covered by the rider. Often this information is shared with parties within the insurance company structure when issuing and servicing a policy, such as: independent adjusters, insurance agents, managing general agents, and customer service representatives, which could be labeled as third party or affiliated entities.<sup>8</sup>

### **Effect of the Bill**

This bill amends s. 626.9541, F.S., to make it an unfair discriminatory practice for a personal lines property or personal lines automobile insurer to refuse to issue, reissue, or renew a policy, to cancel or otherwise terminate a policy, or to charge a discriminatory rate based on an insured’s or applicant’s or such person’s household member’s lawful use, possession, or ownership of a firearm or ammunition.

The bill does not prevent an insurer from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure a firearm, ammunition, or a firearm collection whose value exceeds the standard policy coverage.

The bill also prohibits a personal lines property or personal lines automobile insurer from disclosing an insured’s or applicant’s or such person’s household member’s ownership or possession of a firearm or ammunition to a third party or affiliated entity unless the insurer discloses to the insured or applicant a specific need to disclose the information and the insured or applicant expressly consents to the disclosure, or the disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.

One effect of the bill is to provide a specific enforcement mechanism pertaining to insurance practices and disclosure of firearms or ammunition, while still allowing insurers to offer property loss coverage of firearms and ammunition through the use of a rider. Additionally, the bill does not prevent the sharing of gun or ammunition ownership information by insurers for purposes of underwriting and issuing a policy containing a rider. By amending the unfair discriminatory practices section of the Florida Statutes, the Office of Insurance Regulation will be able to absorb enforcement of these new provisions into their current regulatory scheme.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts by an insurer.

**Section 2:** Provides an effective date of July 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

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<sup>7</sup> Information obtained from the Office of Insurance Regulation, January 15, 2014. On file with the Insurance & Banking Subcommittee staff.

<sup>8</sup> According to representatives of the Florida insurance industry, as provided to the staff of the Insurance & Banking Subcommittee on January 20, 2014.

This bill does not appear to have any impact on state expenditures. The OIR has stated that enforcement of this bill would be absorbed into their current operations, with only minimal, if any additional workload.<sup>9</sup>

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

This bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

This bill does not appear to have any impact on local government expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Consumers: The bill should not have a substantial economic impact on Florida policyholders. Any consumers that were denied coverage or their coverage was cancelled in the past because of their lawful possession of a firearm or ammunition will now be able to acquire personal lines of property and automobile insurance without their lawful ownership of a firearm or ammunition being unfairly taken into account in the setting of the rate. Additionally, Florida policyholders who were charged a higher rate for their policies because of their lawful ownership of a firearm or ammunition may see a reduction in their policy premiums, reflecting the insurers' inability to charge a higher rate because of a firearm or ammunition. The bill does not impede an individual's ability to obtain a rider with their insurance policy for property loss coverage of a firearm.

Insurance Providers: This bill should have little, if any, impact on the information insurers request when issuing, reissuing, or canceling a policy. Only one insurance company in Florida is known to have inquired whether a specific type of firearm (assault rifles) was owned by the applicant before issuing them a policy.<sup>10</sup> Consequently, since such information is not used in determining liability, restricting the disclosure of such information should not pose a problem to insurers. Additionally, the bill does not impede an insurer's ability to offer a rider for property loss coverage of firearms or ammunition.

This bill may have an indeterminate amount of administrative costs on insurers in revising their notice and disclosure practices to comply with the bill. However, insurers may be able to reduce those costs by not having to obtain specific consent from the applicant or insured to share information regarding ownership or possession of firearms or ammunition, if such disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.

#### 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:

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<sup>9</sup> Information obtained from the Office of Insurance Regulation, January 15, 2014. On file with the Insurance & Banking Subcommittee staff.

<sup>10</sup> Information obtained from the Office of Insurance Regulation, January 15, 2014. On file with the Insurance & Banking Subcommittee staff.

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill uses the limiting terms "personal lines property" insurer and "personal lines automobile insurer" in describing the types of insurance products to which this newly created law applies. While there is no statutory definition or description of the terms "personal lines," "personal lines property insurer," or "personal lines automobile insurer" in the bill or current statute, the terms are apparently commonly used by persons in the insurance industry.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 4, 2014, the Insurance & Banking Subcommittee met and passed HB 255 with a strike all amendment. This amendment included the same or similar provisions that were in the bill relating to rates and disclosure regarding firearms. It also clarified that an insurer is not prevented from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure firearms. It also allowed disclosure of firearm ownership when necessary to quote or bind coverage, continue coverage, or adjust a claim. Finally, for the purposes of providing insurance coverage, it did not prevent the sharing of information between an insurance company and its agent when separate riders have been requested by a policyholder or applicant.

On February 19, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The bill prohibits discrimination related to the ownership or possession of a firearm, the amendment added ammunition. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.