

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 Appropriations Subcommittee on General Government

BILL: CS/SB 258

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Property and Casualty Insurance

DATE: March 3, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 258 makes various changes to statutes relating to property and casualty insurance. Current law provides that the use of a single United States Postal Service zip code as a rating territory for auto insurance is unfairly discriminatory. This bill allows the use of a single zip code as a rating territory if the territory incorporates sufficient actual or expected loss and loss adjustment expenses experience so as to be actuarially measurable and credible.

Current law requires the Office of Insurance Regulation to consider projected hurricane losses using a model or method found reliable by the Florida Commission on Hurricane Loss Methodology when reviewing a rate filing. This bill increases from 60 days to 180 days the time an insurer is not required to use the newest version of an approved hurricane model.

In addition, this bill:

- Establishes a uniform 120 day advance written notice of nonrenewal, cancellation, or termination for personal and commercial lines residential property insurance policies;
- Allows a personal lines policyholder to elect electronic delivery of documents;
- Provides that an insurer has to notify a policyholder of the availability of neutral evaluation of a sinkhole claim when there is coverage available under the policy and the claim was submitted within the statutory timeframe;
- Amends a provision in the personal injury protection statute to resolve an ambiguity relating to the applicability of medical fee schedules;

- Creates exemptions to preinsurance inspection requirements for private passenger automobiles; and
- Repeals a prohibition against using the existence of the Florida Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase insurance.

This bill takes effect July 1, 2015.

The bill has no fiscal impact.

II. Present Situation:

Insurance Rate Standards

Insurance rates for property and casualty insurance may not be excessive, inadequate, or unfairly discriminatory.¹ Proposed rates must be filed with the Office of Insurance Regulation (OIR) and the OIR must determine whether the rates comply with the law.² When reviewing the rate filing, the OIR must consider loss experience, expenses, competition, investment income, the cost of reinsurance, and other factors.³

Hurricane Loss Projection Models

Section 627.062(2)(b)11, F.S., requires the OIR to consider projected hurricane losses. The losses must be estimated using a model or models found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology (Commission).⁴ The Commission was established by the Legislature to serve as an independent body to provide expert evaluation of computer models that project hurricane losses.⁵ The Commission is assigned to the State Board of Administration.⁶ The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses.⁷ Members of the Commission include:

- The Insurance Consumer Advocate;
- The person responsible for Florida Hurricane Catastrophe Fund operations;
- The Executive Director of Citizens Property Insurance Corporation (Citizens);
- The Director of the Division of Emergency Management;
- An actuary member from the Florida Hurricane Catastrophe Fund Advisory Council;
- An actuary employed by the OIR;
- An appointment by the state Chief Financial Officer who is an actuary employed with a property and casualty insurer;
- An appointment by the state Chief Financial Officer who is an insurance finance expert and who is a full-time faculty member in the State University System;

¹ s. 627.062(1), F.S.

² s. 627.062(2)(b), F.S.

³ s. 627.062(2)(b)

⁴ s. 627.062(2)(b)11., F.S.

⁵ s. 627.0628, F.S.

⁶ s. 627.0628(2)(a), F.S.

⁷ s. 627.0628(3)(a), F.S.

- An appointment by the state Chief Financial Officer who is a statistics expert and who is a full-time faculty member in the State University System;
- An appointment by the state Chief Financial Officer who is a meteorology expert and who is a full-time faculty member in the State University System;
- An appointment by the state Chief Financial Officer who is an expert in computer system design and who is a full-time faculty member in the State University System and
- An appointment by the Governor who is a licensed professional structural engineer and who is a full-time faculty member in the State University System.

The Commission sets standards for loss projection methodology and examines the methods employed in hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards. Only hurricane loss models or methods that the Commission has found to be accurate can be used by insurers to estimate the hurricane losses that are used to set property insurance rates.⁸ After the Commission finds a model to be accurate, an insurer has 60 days to use the model to predict the insurer's probable maximum loss "with respect to a rate filing."⁹

Zip Codes and Rating Territories for Motor Vehicle Insurance

Section 627.0651, F.S., provides that the use of a single zip code as a rating territory for motor vehicle insurance rates is deemed unfairly discriminatory and is thus prohibited.

Notice of Cancellation or Nonrenewal

The requirements for an insurer to give notice of cancelling or nonrenewing a residential property insurance policy are contained in s. 627.4133(2), F.S. The specific notice depends on the particular circumstances of the policy being nonrenewed, as follows:

- Generally, an insurer must give the insured 100 days' written notice of nonrenewal or cancellation;¹⁰
- For any nonrenewal or cancellation effective between June 1 and November 30 (hurricane season), an insurer must give notice by June 1, or 100 days' notice, whichever is earlier;¹¹
- If the nonrenewal or cancellation would be effective between June 1 and November 30 but the reason is a revision in sinkhole coverage, the insurer must give the insured 100 days written notice of nonrenewal;¹²
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the policy is to be nonrenewed by Citizens pursuant to an approved assumption plan by an authorized insurer, Citizens must give the insured 45 days written notice of nonrenewal;¹³
- If the insured structure has been insured by the insurer or an affiliate for at least five years, the insurer must give 120 days' notice of nonrenewal or cancellation;¹⁴

⁸ s. 627.0628(3)(d), F.S.

⁹ s. 627.062(3)(d), F.S.

¹⁰ s. 627.4133(2)(b), F.S.

¹¹ s. 627.4133(2)(b), F.S.

¹² s. 627.4133(2)(b)5.a., F.S.

¹³ s. 627.4133(2)(b)5.b., F.S.

¹⁴ s. 627.4133(2)(b)1., F.S.

- If the cancellation is for nonpayment of premium, the insurer must give 10 days' notice of cancellation accompanied by the reason for the cancellation;¹⁵
- If the OIR finds that the early cancellation is necessary to protect the best interests of the public or policyholders, the insurer must give the insured 45 days' written notice of cancellation or nonrenewal;¹⁶
- If a policy covers both home and motor vehicle, the insurer must give the insured 90 days' written notice of nonrenewal.¹⁷

Electronic Delivery of a Policy

Section 627.421, F.S., requires every insurance policy¹⁸ to be mailed or delivered to the insured within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed. The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.¹⁹ Insurance is specifically included in E-SIGN.²⁰ E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

In addition, s. 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. The UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct the transaction by electronic means.

Neutral Evaluation

Sections 627.707-627.7074, F.S., create requirements for investigation of sinkhole claims and a neutral evaluation program to help resolve sinkhole claims. Section 627.707, F.S., requires an insurer, upon receipt of a sinkhole claim, to inspect the policyholder's premises to determine if there is structural damage that may be the result of sinkhole activity. If the insurer confirms that

¹⁵ s. 627.4133(2)(b)2., F.S.

¹⁶ s. 627.4133(2) (b)6., F.S.

¹⁷ s. 627.4133(2)(b)7., F.S.

¹⁸ Section 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit disability insurance policies do not have to be mailed or delivered. *See* s. 627.401, F.S.

¹⁹ Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000). Many of the provisions of E-SIGN took effect October 1, 2000.

²⁰ *Id.*

structural damage exists but is unable to identify the cause or discovers that such damage is consistent with sinkhole loss, the insurer shall engage a professional engineer or a professional geologist to conduct testing²¹ to determine the cause of the loss if sinkhole loss is covered under the policy.²² If the insurer determines that there is no sinkhole loss, the insurer may deny the claim.²³

Neutral evaluation is available to either party if a sinkhole report has been issued.²⁴ Neutral evaluation must determine causation, all methods of stabilization and repair both above and below ground, and the costs of stabilization and all repairs.²⁵ Following the receipt of the sinkhole report or the denial of a claim for a sinkhole loss, the insurer notifies the policyholder of the right to participate in the neutral evaluation program.²⁶

Neutral evaluation is nonbinding, but mandatory if requested by either the insurer or the insured.²⁷ A request for neutral evaluation is filed with the Department of Financial Services. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request.²⁸ The neutral evaluator receives information from the parties and may have access to the structure. The neutral evaluator evaluates the claim and prepares a report describing whether a sinkhole loss occurred and, if necessary, the costs of repairs or stabilization.²⁹ The report is admissible in subsequent court proceedings.³⁰ Section 627.7074(6), F.S., requires the insurer to pay reasonable costs associated with the neutral evaluation.

Personal Injury Protection Insurance

In 2012, the personal injury protection (PIP) reform bill established the date on which Medicare fee schedule changes are effective.³¹ The amended section 627.736(5)(a)2, F.S., provides, in part:

[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....

It is uncertain whether the Medicare fee schedule in place on March 1 applied to the end of the calendar year or applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M stating that the plain language of

²¹ s. 627.7072, F.S., contains testing standards in sinkhole claims.

²² s. 627.707(2), F.S.

²³ s. 627.707(4)(a), F.S.

²⁴ s. 627.7073, F.S., requires that a report be issued if testing required under s. 627.707-7074, F.S., is performed.

²⁵ s. 627.7074(2), F.S.

²⁶ s. 627.7074(3), F.S.

²⁷ s. 627.7074(4), F.S.

²⁸ s. 627.7074, F.S. The statute also requires the Department of Financial Services to maintain a list of neutral evaluators and provides for disqualification of neutral evaluators in specified circumstances.

²⁹ ss. 627.7074(5), (12), F.S.

³⁰ s. 627.7074(13), F.S.

³¹ Ch. 212-151, L.O.F.

the section requires the fee schedule in place on March 1, to apply throughout the following 365 days, or until March 1, of the following year.

Preinsurance Inspections

Section 627.744, F.S., requires preinsurance inspections of private passenger motor vehicles, but lists various exemptions, including for new, used 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. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed five dollars.

Prohibition on Certain Advertising

When a property and casualty insurance company becomes insolvent, the Florida Insurance Guaranty Association (FIGA) is required by law to take over the claims of the insurer and pay the claims of the company’s policyholders.³² This ensures policyholders that have paid premiums for insurance are not left without valid claims being paid. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others. It is a nonprofit corporation.³³

If a property and casualty insurance company has been declared insolvent, covered claims will be paid by FIGA. The maximum amount FIGA will cover is \$300,000 with special limits applying to: (1) damages to structure and contents on homeowners’ claims; and (2) on condominium and homeowners’ association claims.³⁴ For damages to structure and contents on homeowners’ claims, the FIGA cap is an additional \$200,000, for a total of \$500,000. For condominium and homeowners’ association claims, the cap will be the lesser of policy limits or \$100,000 multiplied by the number of units in the association.³⁵ All claims are subject to a \$100 FIGA deductible in addition to any deductible identified in the insurance policy.

Section 631.65, F.S., prohibits any advertisement for insurance to use the existence of FIGA for the purpose of the sale of insurance. The prohibition was enacted in 1970, and similar prohibitions are contained in s. 631.735, F.S. (relating to the Florida Life and Health Guaranty Association (FLHIGA)), s. 631.827, F.S. (relating to the Florida Health Maintenance Organization Consumer Assistance Plan), and s. 631.919, F.S. (relating to the Florida Workers’ Compensation Insurance Guaranty Association). A number of other states have the prohibition with regard to their life and health guaranty associations³⁶ and the prohibition appears in the National Association of Insurance Commissioners (NAIC) Life and Health Insurance Guaranty Model Act,³⁷ but is not found in the NAIC Property and Casualty Insurance Guaranty

³² s. 631.57, F.S.

³³ s. 631.55, F.S.

³⁴ s. 631.57, F.S.

³⁵ s. 631.57, F.S.

³⁶ See Texas Ins. Code Title 4, s. 463.461 (2013); Cal. Ins. Code s.1037.17 (2012); Ga. Code Ann. s. 33-38.21 (2014).

³⁷ National Association of Insurance Commissioners Life and Health Guaranty Association Model Act MDL-520 (2009) at pg. 520-34. <http://www.naic.org/store/free/MDL-520.pdf> (accessed February 18, 2015).

Association Model Act.³⁸ The proceedings citations for the NAIC Life and Health Insurance Guaranty Model Act indicates that during the original creation of the property and casualty model act in 1970, insurance industry commenters at the time favored the prohibition to prevent agents from indicating to potential customers that the assets of an insurer are unimportant since the assets of other companies in the state would provide protection.³⁹ The prohibition was substantially rewritten in the 1985 NAIC Life and Health Insurance Guaranty Association Model Act, which called for guaranty associations to create a document to deliver to policyholders to explain the availability and limitations of the guaranty fund.⁴⁰ This was done because the breadth of the prohibition had caused confusion to the public regarding the purposes and limitations of the guaranty association.⁴¹ Florida law currently requires FLHIGA to provide documentation regarding the availability of life and health guaranty fund coverage, but does not require FIGA to do so for property and casualty guaranty fund coverage. A document providing such an explanation has been created by FIGA, however, and is available on its Internet page.⁴²

III. Effect of Proposed Changes:

Hurricane Loss Projection Models

Section 1 of this bill amends s. 627.0628, F.S., to increase from 60 days to 180 days the time an insurer may make rate filings with a prior accepted version of a hurricane model.

Zip Codes and Rating Territories for Motor Vehicle Insurance

Section 2 of this bill amends s. 627.0651, F.S., to provide that the use of a single United States Postal Service zip code as a rating territory is not unfairly discriminatory if the territory incorporates sufficient actual or expected loss and loss adjustment expense experience so as to be actuarially measurable and credible. The OIR would determine if the rates for such territories are excessive, inadequate, or unfairly discriminatory.

Notice of Cancellation and Nonrenewal

Section 4 of this bill amends s. 627.4133(2)(b), F.S., to reduce to 120 days the advance written notice of nonrenewal, cancellation, or termination an insurer must give the first-named insured of a personal lines or commercial residential property insurance policy.

Section 3 of this bill changes a citation to conform to the changes made by section 4 of this bill.

³⁸ NAIC Association of Insurance Commissioners Property and Casualty Guaranty Association Model Act MDL-540 (2009). <http://www.naic.org/store/free/MDL-540.pdf> (accessed February 18, 2015).

³⁹ See fn. 37 at pg. PC-520-53.

⁴⁰ See id.

⁴¹ See fn. 37 at pg. PC-520-24

⁴² See Florida Insurance Guaranty Association: How Florida's Insurance Safety Net Protects Consumers (August 2009). <http://www.figafacts.com/media/files/FIGA%20Brouchure%20for%20Website%20pages.pdf> (accessed February 18, 2015).

Electronic Delivery of a Policy

Section 5 of this bill amends s. 627.421, F.S., to provide that an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of policy documents, including policies, endorsements, documents or notices by electronic means.

Notice to Policyholder of Availability of Sinkhole Neutral Evaluations

Section 6 of this bill amends s. 627.7074(3), F.S., to limit the circumstances when an insurer must notify a policyholder of the right to participate in neutral evaluation of a sinkhole claim. The insurer must provide the notice only if there is sinkhole coverage on the damaged property and if the sinkhole claim was submitted within the statute of limitations period which is two years after the policyholder knew or reasonably should have known about the sinkhole loss. There are no parameters under current law about notification of neutral evaluation. Thus, insurers are required under current law to notify a policyholder about neutral evaluation in cases where there is no sinkhole coverage or when the sinkhole claim is untimely filed.

Personal Injury Protection Insurance Medical Fee Schedule

Section 7 of this bill amends s. 627.736(5)(a), F.S., to clarify that the Personal Injury Protection medical fee schedule that is effective on March 1 of each year applies until the last day of the following February.

Preinsurance Motor Vehicle Inspections

Section 8 of this bill amends s. 627.744, F.S., to exempt from preinsurance inspection new, unused motor vehicles that are leased from a licensed motor vehicle dealer or leasing company, if the insurer is provided with a lease agreement that contains a full description of the motor vehicle or a copy of the title or registration and a copy of the window sticker. In addition, this section deletes the preinsurance inspection exemption for new, unused motor vehicles purchased if the following conditions apply:

- If the bill of sale or buyer's order contains a full description of all options and accessories, or
- If the dealer invoice showing the itemized options, equipment, and total retail price is submitted as documentation.

Repeal of Prohibition on Certain Advertising Related to FIGA

Section 9 of this bill repeals the prohibition on advertisements which uses the existence of FIGA for the purpose of sales, solicitation, or inducement to purchase insurance covered by Part II of ch. 631, F.S. Part II applies to all insurance except:

- Life, annuity, health, or disability insurance;
- Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
- Fidelity or surety bonds, or any other bonding obligations;
- Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;

- Warranty, including motor vehicle service, home warranty, or service warranty;
- Ambulance service, health care service, or preneed funeral merchandise or service;
- Optometric service plan, pharmaceutical service plan, or dental service plan;
- Legal expense;
- Health maintenance, prepaid health clinic, or continuing care;
- Ocean marine or wet marine insurance;
- Self-insurance and any kind of self-insurance fund, liability pool, or risk management fund;
- Title insurance;
- Surplus lines;
- Workers' compensation, including claims under employer liability coverage;
- Any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by the transfer of insurance risk; or
- Any insurance provided by or guaranteed by government.

This bill does not remove the prohibitions contained in contained in s. 631.735, F.S. (relating to the Florida Life and Health Guaranty Association), s. 631.827, F.S. (relating to the Florida Health Maintenance Organization Consumer Assistance Plan), and s. 631.919, F.S. (relating to the Florida Workers' Compensation Insurance Guaranty Association).

Section 10 of this bill provides an effective date of July 1, 2015.

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:

The Department of Financial Services bill analysis, dated January 13, 2015 (on file with the Committee), states that the provision in CS/SB 258 that insurers are not required to notify insureds about neutral evaluation in situations where sinkhole coverage is not

available or where the claim was not timely reported should reduce the cost associated with notification and the costs associated with neutral evaluations in those cases.

C. **Government Sector Impact:**

Bill analyses from the OIR, the State Board of Administration Hurricane Catastrophe Fund, and the Department of Financial Services indicate no fiscal impact on those agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.0628, 627.0651, 627.3518, 627.4133, 627.421, 627.7074, 627.736, and 627.744.

This bill repeals section 631.65 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on February 17, 2015:

The Committee adopted four amendments. The amendments removed a provision allowing for the use of a straight average of hurricane models in rate filings, added a provision repealing s. 631.65, F.S., and made technical changes.

B. **Amendments:**

None.