

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 577 Liability Insurance Coverage

**SPONSOR(S):** Insurance & Banking Subcommittee; Lee

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 774

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 0 N, As CS	Lloyd	Luczynski
2) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Liability insurance is a form of casualty insurance covering the legal obligations of the insured for bodily injuries or property damage caused to another person. When a person is injured or their property is damaged by another person or by conditions or by property for which the other person is responsible, the injured person may have a legal claim for their losses. To facilitate ready and timely access to insurance coverage information, Florida law provides a mechanism to obtain insurance information related to the claim. Upon receipt of the relevant coverage information, the injured person can then make an informed decision about how to proceed with their claim, such as filing insurance claims or pursuing litigation.

Section 627.4137, F.S., allows claimants to make written requests for disclosure of specific insurance information regarding liability insurance coverage. Upon receipt of a written request, the insured or their insurance agent are required to forward the request to all affected insurers. The written request may also be filed directly with any insurer that is or may be responsible for covering the insured.

Within 30 days of receipt of the written request, the insurer must disclose the following information regarding every known policy that may be related to the claim:

- The name of the insurer.
- The name of each insured.
- The limits of the liability coverage.
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.
- A copy of the policy.

The information must be provided under oath, subject to penalties for perjury, by a corporate officer, claims manager, or claims superintendent of the insurer. This sworn statement of coverage information must be amended upon the discovery of additional material facts, such as additional policies or defenses that were not initially identified.

The bill adds “company employee adjusters” to the list of individuals that may issue a sworn statement detailing the required coverage information on behalf of the insurer.

The bill has no impact on state and local governments. The bill likely has a positive impact on the private sector.

The bill is effective on July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

Liability insurance is “insurance against legal liability for the death, injury, or disability of any human being, or for damage to property, with provision for medical, hospital, and surgical benefits to the injured persons, irrespective of the legal liability of the insured, when issued as a part of a liability insurance contract.”<sup>1</sup> It is a form of casualty insurance<sup>2</sup> covering the legal obligations of the insured for bodily injuries or property damage caused to another person.

When a person is injured or their property is damaged by another person or by conditions or by property for which the other person is responsible, the injured person may have a legal claim for their losses. However, the injured person usually has no knowledge of or information about the insurance coverage of the person responsible for the loss. To facilitate ready and timely access to insurance coverage information, Florida law provides a mechanism to obtain insurance information related to the claim. Upon receipt of coverage information, the injured person can then make an informed decision about how to proceed with their claim, such as filing insurance claims or pursuing litigation.

Section 627.4137, F.S., allows claimants to make written requests for disclosure of specific insurance information regarding liability insurance coverage. Upon receipt of a written request for disclosure, the insured or their insurance agent are required to forward the request to all affected insurers. The written request may also be filed directly with any insurer that is or may be responsible for liability insurance coverage of the insured.

Within 30 days of receipt of the written request,<sup>3</sup> the insurer must provide the following information regarding every known policy:<sup>4</sup>

- The name of the insurer.
- The name of each insured.
- The limits of the liability coverage.
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.
- A copy of the policy.

The information must be provided under oath by a corporate officer, claims manager, or claims superintendent of the insurer.<sup>5</sup> This sworn statement must be amended upon the discovery of additional material facts, such as additional policies or defenses that were not initially identified. Willful violation of the requirements of s. 627.4137, F.S., is grounds for an administrative penalty against

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<sup>1</sup> s. 624.605(1)(b), F.S.

<sup>2</sup> s. 624.605, F.S. The following forms of insurance are also casualty insurance: vehicle, workers’ compensation and employer’s liability, burglary and theft, personal property floaters, glass, boiler and machinery, leakage and fire extinguishing equipment, credit, credit property, malpractice, animal, elevator, entertainments, failure of certain institutions to record documents, failure to file certain personal property instruments, debt cancellation products, and, when not contrary to law or public policy or within any other line of insurance, any insurance providing coverage against liabilities for loss or damage to person or property. Medical, hospital, surgical, and funeral benefits covered under policies for vehicle, liability, burglary and theft, boiler and machinery, or elevator are deemed to be casualty insurance and is not subject to the provisions of the Insurance Code applicable to life and health insurance. Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the “Florida Insurance Code.” s. 624.01, F.S.

<sup>3</sup> Written requests made of a self-insured corporation must be sent by certified mail to the registered agent of the entity that is obligated to make the disclosures required by statute. s. 627.4137(3), F.S.

<sup>4</sup> This includes policies for excess or umbrella insurance applicable to the insured’s liability coverages. s. 627.4137(1), F.S.

<sup>5</sup> The oath required for verification of the informational response is governed by s. 92.525, F.S. If perjury is committed in executing the oath, it is punishable as a felony of the third degree under s. 775.082, F.S., (up to 5 years imprisonment), s. 775.083, F.S., (up to a \$5,000 fine), or s. 775.084, F.S., (sentencing factors for habitual offenders). Depending upon circumstances of the claim, the claims handling of the insurer, including settlement practices, and the coverages involved, a civil remedy under s. 624.155, F.S., may be available to the claimant for damages related to an alleged failure of the insurer to operate in good faith. This is in addition to a possible civil remedy for bad faith under common-law.

individuals holding one of the various insurance licenses issued by the Department of Financial Services.<sup>6</sup>

In addition to corporate officers, claims managers, and claims superintendents, the bill allows “company employee adjusters” to issue a sworn statement detailing the required coverage information.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 627.4137, F.S., relating to disclosure of certain information required.

**Section 2:** Provides an effective date of July 1, 2016.

**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:**

Liability insurers could experience increased efficiency by allowing the adjuster with direct responsibility for a claim file or policy to perform the required information disclosure consistent with the requirements of the bill, rather than more senior, and possibly remotely located, personnel.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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<sup>6</sup> ss. 626.611 and 626.621, F.S.

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

Section 626.9372, F.S., contains a substantively comparable provision that requires a surplus lines insurer to disclose the same coverage information in the same way as s. 627.4137, F.S. The only substantive difference is that the surplus lines liability insurer must issue its disclosure within 60 days of a written request from the claimant. For purposes of consistency, it may be advisable to amend s. 626.9372, F.S., so that the same information response requirements apply to insurers admitted in the state and surplus lines insurers.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment replaced the term "licensed company adjuster," which is not defined in statute, with the term "company employee adjuster," which is defined in statute.