

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 659 Automobile Insurance
SPONSOR(S): Regulatory Affairs Committee; Insurance & Banking Subcommittee; Santiago
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 1 N, As CS	Lloyd	Luczynski
2) Regulatory Affairs Committee	12 Y, 2 N, As CS	Lloyd	Hamon

SUMMARY ANALYSIS

Private passenger motor vehicle insurance (automobile insurance) is written to individuals, and family members in the same household, for coverage of automobiles that are not used for commercial purposes. The bill makes the following changes regarding automobile insurance:

- **Motor vehicle insurance rating** – the use of a single zip code as a rating territory for motor vehicle insurance rates is currently prohibited. The bill allows single zip code rating territories if they are actuarially sound and the rate is not excessive, inadequate or unfairly discriminatory.
- **The Florida Automobile Joint Underwriting Association (Auto JUA)** – an insurer, including the Auto JUA, may not cancel a policy within 60 days of the effective date of the policy, except for non-payment of premium. The bill authorizes the Auto JUA to cancel policies within the first 60 days for non-payment and prohibits insureds from cancelling coverage in the first 90 days, except in certain circumstances.
- **Return of unearned premium** – when a motor vehicle insurance policy is cancelled, either by the insurer or policyholder, the insurer is required to return any unearned portion of the premium. The bill allows the insured to apply the unearned premium to any other policies issued by the insurer or the insurer's group.
- **Prepayment of premium** – Subject to certain exceptions, insurers are required to collect two months of premium prior to issuing a private passenger motor vehicle policy or binder for personal injury protection (PIP) and property damage liability coverage. The bill allows an exception to this requirement if the insured has agreed to recurring credit or debit card payments with the insurer.
- **Methods of payment** – Florida law requires payment of premiums by certain methods. The bill adds payments by a "draft" to the list of acceptable payment methods for motor vehicle insurance contracts.
- **Insufficient funds fee** – in certain instances, a property, casualty, or surety insurer or a premium finance company may charge a fee to the insured if their payment fails due to insufficient funds (this is in addition to any fees charged by their financial provider). The bill authorizes motor vehicle insurers to charge \$15, pursuant to policy terms, if an electronic premium payment fails due to insufficient funds.
- **Medical diagnosis coding manuals** – Florida law requires PIP medical providers to code their diagnoses using the International Classification of Diseases, 9th Revision (ICD-9). The bill ends the use of the ICD-9 and begins use of the International Classification of Diseases, 10th Revision (ICD-10).
- **PIP Eligible Health Care Clinics** – Florida law limits which medical providers may receive PIP reimbursement. A health care clinic is only eligible if they are either licensed under ch. 400, F.S., or specifically exempted from the requirement by the PIP law. The bill exempts clinics that are managed by a licensed health care practitioner (who has certain specified responsibilities) and owned, directly or indirectly, by a publicly traded corporation that has \$250 million or more in total annual sales of health care services. This allows them to receive reimbursement from insurers for PIP medical services.

The bill has no fiscal impact on state or local government expenditures. The bill has both positive and negative impacts on the private sector.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Private passenger motor vehicle insurance¹ is casualty coverage² within the personal lines³ segment of insurance business. Insurers issue it to individuals, or related individuals in the same household, for coverage of private passenger automobiles that are not used as public conveyances, for rental to others, or in the occupation, profession, or business of the insured (excluding farm business use).⁴ Commercial motor vehicles are those that are not private passenger motor vehicles.⁵ Motor vehicle⁶ owners in the state are required to maintain proof of coverage for Personal Injury Protection (PIP)⁷ under the Florida Motor Vehicle No-Fault Law⁸ and financial responsibility, under the Financial Responsibility Law,⁹ for damages arising due to the operation of a motor vehicle.

Zip Codes and Rating Territories for Motor Vehicle Insurance

Section 627.062, F.S., is Florida's Rating Law. Among other requirements, it provides that insurance rates cannot be excessive, inadequate, or unfairly discriminatory. Insurer rate filings that comply with the law and that are adequately supported by actuarial justification must be accepted by the Office of Insurance Regulation (OIR).

Pursuant to s. 627.0651, F.S., the use of a single zip code as a rating territory for motor vehicle insurance rates is deemed unfairly discriminatory and is prohibited. The OIR has previously stated that this provision was most likely enacted as an anti-redlining measure, and at that time it was probably considered unlikely that defining a territory consisting of less than two zip codes had a legitimate purpose. However, the OIR noted that given the increasing role of "big data" in rating insurance, it may become more common for models to include demographic data and insurance data to be used in the determination of rating territory boundaries.¹⁰

The bill amends s. 627.0651, F.S., deeming motor vehicle rating territories that are based on a single zip code to be unfairly discriminatory, unless submitted to OIR for review prior to use and the proposed rating territory has sufficient actual or expected loss and loss adjustment expense experience to be actuarially sound. It also mandates the OIR to require that rate filings using single zip code rating territories to only contain rates that meet the ratemaking standard, i.e., that the rate is not excessive, inadequate, or unfairly discriminatory.

Cancellation of Florida Automobile Joint Underwriting Association Policies

Insurers¹¹ that offer motor vehicle insurance in the state must participate in the Florida Automobile Joint Underwriting Association (Auto JUA).¹² The Auto JUA exists to provide motor vehicle insurance to individuals who cannot obtain such coverage in the voluntary insurance market. The Auto JUA distributes this risk among its members. It is subject to various limitations regarding issuance and cancellation of coverage, provision of premium credits/discounts to protect its solvency, the coverage of its insureds, and to avoid Auto JUA policies being competitive with the voluntary market.

¹ s. 627.041(8), F.S.

² s. 627.021(3), F.S.

³ Personal lines insurance is property and casualty insurance sold to individuals and families for non-commercial purposes. s. 626.015(15), F.S.

⁴ ss. 627.041(8) and 627.728(1)(a), F.S.

⁵ s. 627.732(3)(a), F.S.

⁶ s. 627.732(3), F.S.

⁷ s. 627.736, F.S.

⁸ ss. 627.730-627.7405, F.S.

⁹ ch. 324, F.S.

¹⁰ FLORIDA HOUSE OF REPRESENTATIVES, *Staff Analysis of 2014 CS/CS/HB 565*, p. 14.

¹¹ s. 624.03, F.S.

¹² s. 627.311, F.S.

Motor vehicle insurers, including the Auto JUA, are limited regarding the cancellation of insurance policies.¹³ An insurer may not cancel a policy within 60 days of the effective date of the policy, except for non-payment of premium.¹⁴ The bill gives the Auto JUA the specific authority to cancel private passenger and commercial motor vehicle policies within the first 60 days of coverage for non-payment, if the reason is the check is dishonored for any reason or if any other payment type is rejected or deemed invalid (e.g., credit or debit card transactions). The bill also prohibits someone covered by the Auto JUA from cancelling their coverage in the first 90 days of the policy period, unless the vehicle is destroyed, they transfer ownership of the insured vehicle, or they purchase a voluntary market policy for the insured vehicle.¹⁵ This provision guarantees the Auto JUA a minimum of three months of premium revenue on each policy, while allowing the cancellation of policies for non-payment.

Cancellation of Motor Vehicle Insurance and Return of Unearned Premium

When a motor vehicle insurance policy is cancelled, either by the insurer or policyholder, the insurer is required to return any unearned portion of the premium to the policyholder.¹⁶ The bill allows the insured to choose to apply the unearned premium to any other policies issued by the insurer or the insurer's group.

Motor Vehicle Insurance Contract Payments

Florida law requires cash payment of insurance premiums.¹⁷ Acceptable forms of payment are coins, currency, checks, or money orders or by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction. The bill allows consumers to also use a draft¹⁸ to pay motor vehicle insurance premiums.

In certain instances, an insurer may charge a fee to the insured if their payment fails due to insufficient funds (this is in addition to any fees charged by their financial provider). If a check or draft for payment to a property, casualty, or surety insurer, including a workers' compensation insurer, is returned due to insufficient funds, the insurer may charge a fee of \$20.00 or 5 percent of the payment, whichever is greater.¹⁹ Also, a premium finance company²⁰ may charge a fee of \$15.00 for checks or drafts that are returned due to insufficient funds.²¹ The bill authorizes motor vehicle insurers to charge \$15.00, pursuant to policy terms, if a premium payment fails due to insufficient funds and that payment was made by debit card, credit card, or automatic funds transfer.

Insurers are required to collect two months of premium from the insured prior to issuing a private passenger motor vehicle policy or binder for PIP and property damage liability coverage.²² This required prepayment must be made from the insured's own funds, as opposed to being paid on their behalf by an insurer, agent, or premium finance company or via an insurer's or agent's periodic payment plan. However, this prepayment requirement does not apply if:

- The insured is active or former military personnel or one of their dependents;

¹³ ss. 627.7295 and 627.728, F.S.

¹⁴ s. 627.7295(4), F.S.

¹⁵ Proof of such coverage is required by statute. s. 627.311(3)(l), F.S.

¹⁶ s. 627.7283, F.S.

¹⁷ s. 627.4035, F.S.

¹⁸ A draft is a negotiable instrument that orders the payment of a fixed amount of money. s. 673.1041, F.S. Examples of drafts include checks, cashier's checks, teller's checks, and documentary drafts.

¹⁹ s. 627.162, F.S.

²⁰ s. 627.826, F.S.

²¹ s. 627.841(4), F.S.

²² s. 627.7295, F.S. Such policies must be issued for a minimum coverage period of six months, unless the policy shares a common expiration date with an existing policy or to complete the unexpired portion of a previous policy period. The insured may not cancel the policy within the first two months, unless the insured vehicle is destroyed, ownership of the vehicle is transferred, or after a replacement policy covering the vehicle is purchased.

- The insured or a member of their family is renewing or replacing such a policy with the insurer or a member of the insurer's group;
- All policy payments are being made under a:
 - Payroll deduction plan or an automatic funds transfer payment plan from the policyholder; or
 - An automatic funds transfer payment plan from an agent, managing general agent, or premium finance company, if the policy provides:
 - PIP;
 - Property damage liability coverage (minimum \$10,000); and
 - Bodily injury or death liability coverage (minimum \$10,000, per accident, for one person, and \$20,000, per accident, for two or more persons);
- The insured has had such a policy in effect for 6 months, the insured's agent was terminated by the insurer and the insured obtains replacement coverage with a different insurer through that agent; or
- The insured or a family member has a current policy in effect with the insurer or the insurer's group and is obtaining additional coverage for the same or a new vehicle.

The bill allows an exception to the two-month prepayment requirement if the insured has agreed to recurring credit or debit card payments with the insurer.

Personal Injury Protection Insurance

Florida's Motor Vehicle No-Fault Law (No-Fault Law)²³ requires motorists to carry at least \$10,000 of no-fault insurance, known as personal injury protection (PIP) coverage. The purpose of PIP insurance under the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to who is responsible for a motor vehicle accident. 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. Florida motorists are required to carry a minimum of \$10,000 of PIP insurance.²⁴

PIP insurance benefits are payable as follows:

- Up to a limit of \$10,000, 80 percent of reasonable medical expenses for:
 - 1) Initial services and care lawfully provided, supervised, ordered or prescribed by a medical doctor, osteopathic physician, chiropractic physician or that are provided in a hospital or in a facility that owns, or is wholly owned by a hospital. Initial services and care may also be provided for emergency transport and treatment.
 - 2) Upon referral by any of the above-listed providers, follow-up services and care consistent with the underlying medical diagnosis, which may be provided, supervised, ordered, or prescribed only by a medical doctor, osteopathic physician, chiropractic physician, or dentist, or, to the extent permitted under applicable law and under the supervision of such provider, by a physician assistant or advanced registered nurse practitioner. Follow-up services and care may also be provided by:
 - a) A licensed hospital or ambulatory surgical center;
 - b) An entity wholly owned by a medical doctor, osteopathic physician, chiropractic physician, or by such practitioner(s) and specified family members;

²³ ss. 627.730-627.7405, F.S.

²⁴ s. 627.7275, F.S. Under Florida's Financial Responsibility Law (ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for bodily injury and property damage liability at the time of motor vehicle accidents or when serious traffic violations occur. The Financial Responsibility Law requires \$10,000, per person, and \$20,000, per incident, of bodily injury coverage, and \$10,000 of property damage liability coverage.

- c) An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals;
 - d) A licensed physical therapist, based upon a referral by a provider listed in 2); or
 - e) A licensed health care clinic that meets specified criteria.
- 3) Reimbursement for services and care pursuant to 1) or 2) of up to \$10,000 if a medical doctor, osteopathic physician, dentist, physician assistant, or an advanced registered nurse practitioner determines that the injured person had an emergency medical condition.
- Up to a limit of \$2,500, 80 percent of reasonable medical expenses when a provider listed in 1) or 2) determines that the injured person did not have an emergency medical condition.

Medical Billing and Diagnosis Coding – Materials Incorporated by Reference

Section 627.736, F.S., requires PIP medical providers to bill their services and code their diagnoses using the *Physicians' Current Procedural Terminology (CPT)*, the *Healthcare Correct Procedural Coding System (HCPCS)*,²⁵ or the *International Classification of Diseases, 9th Revision (ICD-9)*,²⁶ in effect for the year that the medical service is rendered and to comply with the CMS-1500 medical billing form instructions of the Centers for Medicare & Medicaid Services (CMS), the American Medical Services CPT Editorial Panel, and the HCPCS. Effective October 1, 2015, the CMS ended the use of the ICD-9 for federal reimbursement purposes and began requiring the use of the *International Classification of Diseases, 10th Revision (ICD-10)*. Providers are burdened by having to code their bills differently for different payors. Maintaining consistency with the federal CMS bill coding requirements will avoid this impact.

The bill requires the use of the applicable *International Classification of Diseases* manual adopted by the federal Department of Health and Human Services. This limits the use of the *International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM)*²⁷ to services provided prior to October 2015 and requires the use of the *International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM)* for all medical services rendered on or after October 1, 2015.

Eligible Medical Providers – Health Care Clinics

Health care clinics are regulated under the Health Care Clinic Act.²⁸ The purpose of the Act is to “provide for the licensure, establishment, and enforcement of basic standards for health care clinics and to provide administrative oversight by the Agency for Health Care Administration.”²⁹ A “clinic” under the act is defined as “an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider.”³⁰ However, there is an extensive list of entities that are exempt from the definition and licensure requirements established by the act.³¹ According to the AHCA web site,³² there are 1,871

²⁵ The CPT and the HCPCS are produced by the American Medical Association. They are available at <https://commerce.ama-assn.org/store/> under the Coding & Reimbursement section (last visited Jan. 14, 2016).

²⁶ The International Classification of Diseases (ICD) manuals are developed by the World Health Organization. Information about the ICD manuals can be obtained at <http://www.who.int/classifications/icd/en/> (last visited Jan. 14, 2016).

²⁷ The “clinical modification” of the ICD-9 and ICD-10, which are referred to as the ICD-9-CM and ICD-10-CM, respectively, are developed by the federal National Center for Health Statistics. The clinical modifications manuals allow health care providers to code their diagnoses consistent with the applicable ICD standard. Information about the ICD-9-CM and ICD-10-CM is available from the federal Centers for Disease Control and Prevention (CDC) at <http://www.cdc.gov/nchs/icd/icd10cm.htm> (last visited Jan. 14, 2016).

²⁸ Part X, chapter 400, F.S.

²⁹ s. 400.990(2), F.S.

³⁰ s. 400.9905(4), F.S.

³¹ s. 400.9905(4)(a)–(n), F.S.

³² AGENCY FOR HEALTH CARE ADMINISTRATION, *Facility/Provider Location*, <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Jan. 19, 2016).

licensed Health Care Clinics and 10,063 clinics that have voluntarily received a certificate of exemption from Health Care Clinic licensure.^{33, 34}

Despite the availability of an exemption to clinic licensure, “an entity shall be deemed a clinic and must be licensed under [the Health Care Clinic Act] in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h).”³⁵ The list of exempt clinics under the No-Fault Law is much shorter and includes clinics owned, operated by, or affiliated with separately licensed facilities or providers. The following entities do not have to be licensed as a health care clinic to make charges or receive reimbursement under the No-Fault Law:

- An entity wholly owned by a physician licensed under ch. 458, F.S., or ch. 459, F.S., or by the physician and the spouse, parent, child, or sibling of the physician;
- An entity wholly owned by a dentist licensed under ch. 466, F.S., or by the dentist and the spouse, parent, child, or sibling of the dentist;
- An entity wholly owned by a chiropractic physician licensed under ch. 460, F.S., or by the chiropractic physician and the spouse, parent, child, or sibling of the chiropractic physician;
- A hospital or ambulatory surgical center licensed under ch. 395, F.S.;
- An entity that wholly owns or is wholly owned, directly or indirectly, by a hospital or hospitals licensed under ch. 395, F.S.; or
- An entity that is a clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

The bill creates an exemption from a licensure requirement under the No-Fault Law for clinics that are owned by a publicly traded corporation, either directly or through a subsidiary, if the entity has \$250 million or more in total annual sales of health care services. The eligible health care clinic also must have a Florida licensed health care practitioner that is responsible for supervising the entity and ensuring compliance with the No-Fault Law. This is very similar to an existing licensing exemption within the Health Care Clinic Act that exempts a corporation, if the entity has \$250 million or more in total annual sales of health care services and is supervised by a Florida licensed health care practitioner that is responsible for supervising the entity and ensuring compliance with the Health Care Clinic Act. The difference between the two is that the bill requires the exempt entity to be owned by a publicly traded corporation or subsidiary of such a corporation.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.0651, F.S., relating to making and use of rates for motor vehicle insurance.

Section 2: Amends s. 627.311, F.S., relating to joint underwriters and joint reinsurers; public records and public meetings exemptions.

Section 3: Amends s. 627.7283, F.S., relating to cancellation; return of premium.

Section 4: Amends s. 627.7295, F.S., relating to motor vehicle insurance contracts.

Section 5: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 6: Provides an effective date of July 1, 2016.

³³ Data obtained from <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx>, with search limited to Facility/Provider Type - “Health Care Clinic” or “Health Care Clinic Exemption.”

³⁴ A Health Care Clinic that is exempt from the licensure requirements of 400.9905, F.S., may choose to obtain a certificate of exemption from the AHCA. Rule 59A-33.006, F.A.C.

³⁵ s. 400.9905(4), F.S.

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:

The bill has positive and negative impacts on the private sector. Positive impacts include: increased insurer efficiencies that may result in premium savings being passed on to consumers; increased flexibility paying premiums and reallocation of unearned premiums; and reduction of premium prepayments in certain circumstances. Negative impacts include: authorization of a new insufficient funds fee for failed payments, which is in addition to fees levied by a financial institution and a new limitation when an Auto JUA policy may be cancelled by the insured.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Insurance & Banking Subcommittee considered the bill, adopted five amendments, and reported the bill favorably with a committee substitute. The amendments made multiple changes, as follows:

- Removed the portion of the bill amending the acceptable forms of payment applicable to insurance contracts. The substance of this provision is retained in the bill by the amendment. It is made

applicable to motor vehicle insurance contracts, rather than insurance contracts, generally. It adds drafts to the acceptable forms of premium payment and authorizes motor vehicle insurers to collect a fee up to \$15.00 for premium payments that fail due to insufficient funds;

- Conformed the bill to the Senate companion in regard to the medical coding and billing standards for Personal Injury Protection (PIP) medical services;
- Made health care entities that have \$250 million or more in annual sales that are owned by a publicly owned corporation, or a subsidiary of one, eligible to receive PIP insurance reimbursements without having to be licensed as a health care clinic under Part X of ch. 400, F.S., provided that the entity has a Florida licensed health care practitioner that is responsible for the entity's business activities and compliance with the No-Fault Law;
- Removed the portions of the bill affecting PIP insurance deductibles; and
- Deleted the portion of the bill relating to preinsurance inspections of automobiles.

On February 17, 2016, the Regulatory Affairs Committee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment provides that the use of a single zip code rating territory is not unfairly discriminatory if it is actuarially sound and meets the ratemaking standard.

The staff analysis has been updated to reflect the committee substitute.