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 Committee on Banking and Insurance

BILL: CS/SB 454

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Regulation of Insurance Companies

DATE: March 7, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**FAV/CS**
2.			AGG	
3.			AP	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 454 makes several changes relating to the regulation of insurance companies.
The bill:

- Deletes the future repeal of the exemption of medical malpractice insurance from the Florida Hurricane Catastrophe Fund assessments. Under current law, the exemption will be repealed May 31, 2019.
- Allows Florida Workers' Compensation Insurance Guaranty Association surcharges to be counted as insurer assets.
- Allows insurers writing certain lines of medical malpractice insurance the option to certify their rates with the Office of Insurance Regulation (OIR).
- Allows electronic checks and drafts as acceptable methods of payment for specified lines of insurance and allows insurers to charge a $15 insufficient funds fee.
- Specifies display requirements for the electronic delivery of documents.

The changes in the bill take effect upon becoming law.

II. Present Situation:

The Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (Cat Fund) is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. The Cat Fund is administered by the State Board of Administration and is a tax-exempt source of reimbursement to property insurers for a selected percentage of hurricane losses above the insurer's retention. Admitted property insurers in the state are required to purchase $17 billion in coverage from the Cat Fund. Each insurer's mandatory amount purchased is based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. The Cat Fund must charge insurers the actuarially indicated premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

Cat Fund Assessments

Reimbursements to insurers for losses above the current moneys in the Cat Fund are financed through bonding. When the moneys in the Cat Fund are insufficient to cover losses, the law authorizes the Cat Fund to issue revenue bonds funded by emergency assessments on property and casualty policyholders. Bonds would be funded by an emergency assessment of up to 6 percent of premium on most lines of property and casualty insurance for funding losses from a single year, and up to 10 percent of premium for funding losses from multiple years. All lines of property and casualty insurance, including surplus lines insurance, are subject to emergency assessment except for workers' compensation and medical malpractice liability insurance. The exemption for medical malpractice insurance being subject to Cat Fund assessments is to sunset on May 31, 2019.

Florida Insurance Guaranty Association (FIGA)

When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders who have paid premiums for insurance are not left with valid yet unpaid claims. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

FIGA Assessments

In order to pay claims and to maintain the operations of an insolvent insurer, FIGA has several potential funding sources. FIGA's primary funding source is from the liquidation of assets of insolvent insurance companies domiciled in Florida. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida. In the event the insolvent insurer's assets are insufficient to pay all claims, FIGA can issue two types of post-insolvency assessments against property and casualty insurance companies to raise funds to pay claims. FIGA's assessments are computed and billed based on FIGA's immediate needs to pay claims. Currently, assessments may not exceed 2 percent of net direct-written premium in 1 year for regular assessments, and an additional emergency assessment of 2 percent of direct-written premium for hurricane-related insolvencies.

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)

As a condition of their authority to offer workers' compensation insurance coverage in Florida, all insurers and self-insurance funds are required to be members of the Florida Workers' Compensation Insurance Guaranty Association, Inc. (FWCIGA).[1] The FWCIGA is a not-for-profit corporation established pursuant to part V of ch. 631, F.S., adjunct to the Department of Financial Services (DFS). The FWCIGA assists in the detection and prevention of insurer insolvencies and provides for the payment of workers' compensation covered claims.[2] The FWCIGA evaluates workers' compensation claims made by insureds against insolvent member companies or funds, and determines if such claims are covered claims subject to payment by FWCIGA. The FWCIGA is funded by distributions from the estates of insolvent insurers, investment income, and assessments of member insurers.[3]

FWCIGA Assessments

The FWCIGA determines whether an assessment against member insurers is necessary to pay covered claims of an insolvent insurer or to reimburse the FWCIGA for expenses associated with administering its statutory functions. The assessments are levied by the Department of Financial Services on each insurer based upon the proportion of the insurer's net direct written premium in Florida to the total of all such insurers writing workers' compensation coverages in Florida for the preceding calendar year. The maximum assessment rate is 2 percent for insurers and 1.5 percent for self-insurance funds. If these assessments are insufficient to satisfy claims and administration costs, an additional assessment of 1.5 percent can be levied.[4]

Insurer Assets

When determining the financial condition of an insurer, statutory accounting principles allow insurers to include as an asset, assessment surcharges that have yet to be collected from policyholders. Under current law assessments levied by the Florida Insurance Guaranty Association, resulting in surcharges to policyholders yet to be collected by insurers, can be counted as assets if there is a reasonable expectation by the insurer that such surcharges will be paid.[5]

Medical Malpractice Insurance

Medical malpractice insurance is a professional liability coverage obtained by health care providers to indemnify them from damages arising out of an act of medical negligence. Florida requires licensed physicians and licensed osteopathic physicians to meet financial responsibility requirements as a condition of obtaining and maintaining state licensure to practice medicine.

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[1] s. 631.911, F.S. Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. In Florida, the Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for rehabilitating or liquidating insurance companies.

[2] s. 631.902, F.S. The term "covered claim" is defined in s. 631.904(2), F.S.

[3] *See* FWCIGA, *Frequently Asked Questions*, available at http://fwciga.org/faq (last visited March 7, 2017).

[4] s. 631.914, F.S.

[5] s. 625.012(15)(a), F.S.

Insurers that issue medical malpractice insurance are required to complete a full rate filing with the OIR once every calendar year.[6]

Insufficient Funds Fee

Current law allows up to a $15 insufficient funds fee to be charged to a policyholder of a motor vehicle insurance contract when the policyholders payment by debit card, credit card, electronic funds transfer, or electronic check is returned or declined.[7]

Delivery of Insurance Policies

Part II of s. 627, F.S., generally applies to most lines of insurance written in this state.[8] Under this part, every insurance policy must be mailed, delivered or electronically transmitted to the policyholder within 60 days after the insurance takes effect. An insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy for commercial risks constitutes delivery to the insured or to the person entitled to delivery, unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. Electronic transmission shall include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request. [9]

Effect of Proposed Changes:

Section 1 deletes the sunset date for the exemption from the Florida Hurricane Catastrophe Fund assessments for medical malpractice insurance. The exemption is due to sunset on June 1, 2019.[10]

Section 2 allows expected surcharges, which are the result of assessments levied by the Florida Workers' Compensation Insurance Guaranty Association, to be counted as assets when determining the financial condition of an insurer. This is currently allowed for expected surcharges which are the result of assessments levied by the Florida Insurance Guaranty Association.

[6] s. 627.062(7)(e), F.S.
[7] s. 627.7295(9), F.S.
[8] s. 627.401, F.S.
[9] s. 627.421(1), F.S.
[10] s. 215.555(6)(b)10., F.S.

Sections 3 and 4 allows insurers when filing rates on certain lines[11]of medical malpractice insurance the option of making a full rate filing or, when no rate change is needed, certifying to the OIR that their rates are actuarially sound and not inadequate.

Section 5 allows the use of electronic checks and drafts as acceptable methods of payment for most insurance policies.[12] It also allows insurers to charge a $15 insufficient funds fee should an electronic check or funds transfer be declined. These changes are currently allowed for automobile insurance policies and is being expanded.

Section 6 specifies that with regards to any font, size, color, spacing, or other formatting requirement for printed documents, an electronically delivered document satisfies these requirements if it has reasonably similar proportions or emphasis of the characters relative to the rest of the electronic document, or is otherwise displayed in a reasonably conspicuous manner.

Section 7 makes technical changes to conform to the changes made in Section 5.

Section 8 provides the changes in the bill take effect upon becoming law.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[11] The bill allows insurers to certify rates for medical malpractice insurance policies that are subject to "file and use" or "use and file" rate review under s. 627.062(2)(a) and (f), F.S. Medical malpractice insurance is subject to these requirements if it covers a facility that is not a hospital licensed under chapter 395 F.S., a nursing home licensed under part II of chapter 400 F.S., or an assisted living facility licensed under part I of chapter 429 F.S., a health care practitioner who is not a dentist licensed under chapter 466 F.S., a physician licensed under chapter 458 F.S., an osteopathic physician licensed under chapter 459 F.S., chiropractic physician licensed under chapter 460 F.S., a podiatric physician licensed under chapter 461 F.S., a pharmacist licensed under chapter 465 F.S., or a pharmacy technician registered under chapter 465 F.S. Accordingly, it is these types of medical malpractice insurance that are affected by the bill. Medical malpractice insurance covering other entities or practitioners are not subject to paragraphs (a) and (f) of s. 627.062(2), F.S., pursuant to sub-subparagraphs o. and p. of s. 627.062(3)(d)1, F.S., and thus are not affected by the bill.

[12] s. 627.401, F.S.

B. Private Sector Impact:

Medical malpractice insurance will no longer be subject to Cat Fund Assessments. Such policies are currently exempt from assessment until June 1, 2019.
Insurers will be allowed to count as assets expected surcharges due to assessments from the Florida Workers' Compensation Insurance Guaranty Association.Insurers will have the option of certifying their rates on certain lines of medical malpractice insurance.

Policyholders on most lines of insurance can use electronic checks and drafts as acceptable methods of payment, but will be subject to a $15 insufficient funds fee.

C. Government Sector Impact:

The OIR staff will save time not having to complete a full rate review, when insurers certify their rates on certain lines of medical malpractice insurance.[13]

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.555, 625.012, 627.062, 627.0645, 627.4035, 627.421, and 627.7295

VIII. 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 March 6, 2017:
The CS made a technical change clarifying monthly installments on surcharges from the Florida Workers' Compensation Insurance Guaranty Association assessments can be included in the calculation on an insurers assets. The CS also removed the section of the bill pertaining to excluded named driver.

B. Amendments:

None.

[13] See footnote 11.