

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 223 Insurance
SPONSOR(S): Insurance & Banking Subcommittee; Lee, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 418

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Callaway	Cooper
2) Regulatory Affairs Committee	16 Y, 0 N	Callaway	Hamon

SUMMARY ANALYSIS

Section 627.421, F.S., requires every insurance policy to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect. The bill allows insurers to post certain types of insurance policies on the insurer's website instead of mailing or delivering the policy to the insured. Only policies for property and casualty insurance are allowed to be posted online. Furthermore, the policy posted online cannot contain any personal identifiable information about the policyholder.

If an insurer opts to post an insurance policy online instead of mailing it, the policy must be easily accessible on the insurer's website and posted in a format that allows the policy to be printed by the policyholder free of charge. Insurers posting policies on their website must notify each policyholder of their right to request and obtain a paper or electronic copy of the policy without charge. Insurers must also notify policyholders of this right if the insurer changes a policy. Insurers posting policies online must archive expired policies for five years on their website and archived policies must be available to policyholders to print.

The bill has no fiscal impact on state or local government. Insurers posting policies online will save costs associated with printing and mailing insurance policies to policyholders. Insurers may incur computer reprogramming costs associated with posting policies online and any increased costs will be passed through to policyholders.

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 627.421, F.S., requires every insurance policy¹ to be mailed or delivered to the insured (policyholder) 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 bill allows insurers to post insurance policies not containing policyholder personal identifiable information for certain types of insurance on the insurer's website instead of mailing or delivering the policy to the insured. Only policies for property and casualty insurance are allowed to be posted online. Casualty insurance includes automobile policies, workers' compensation policies, liability policies, and malpractice policies, among others.² Property insurance policies include homeowner's, tenant's, condominium unit owner's, mobile home owner's, condominium association, and commercial business property insurance policies.³ The policy information posted online would be more general in nature. The policy declarations page which contains personal information about the policyholder and the policy would not be posted online and would be provided to the policyholder in another manner, usually by mail.

If an insurer opts to post an insurance policy online instead of mailing it, the policy must be easily accessible on the insurer's website and posted in a format that allows the policy to be printed by the policyholder free of charge. Even for policies posted online, the insurer will deliver a policy declarations page to the policyholder setting out the specific coverage included in the policy. The declarations page must also identify the exact policy form purchased by the policyholder so the policyholder can find the policy on the insurer's website. Insurers posting policies on their website must notify each policyholder of their right to request and obtain a paper or electronic copy of the policy without charge, but policyholder consent is not required for an insurer to post an insurance policy online. Insurers must also notify policyholders of this right if the insurer changes a policy. Insurers posting policies online must archive expired policies for five years on the insurer's website and archived policies must be available to policyholders at their request.

In 2012, Virginia enacted similar legislation allowing insurers to post property and casualty insurance forms on the insurer's website as long as:

- the posting was easily accessible,
- expired policies were archived on the website,
- the policies posted could be downloaded and printed without charge, and
- policyholders were notified of their right to receive paper or electronic copies of the policy and any changes to it.⁴

Applicability of Federal and State Law Relating to Electronic Transactions

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.⁵ Insurance is specifically included in E-SIGN.⁶ 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.

¹ s. 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. (see s. 627.401, F.S.)

² s. 624.605, F.S.

³ See s. 624.604, F.S., defining property insurance and s. 627.4025, F.S., defining residential property insurance.

⁴ Code of Virginia, § 38.2-325; HB 133 <http://leg1.state.va.us/cgi-bin/legp504.exe?121+sum+HB133> (last viewed February 3, 2013).

⁵ 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 effective October 1, 2000.

⁶ *Id.*

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. E-SIGN is not likely implicated by the bill because the bill creates an exception to Florida law requiring insurance policies to be mailed or delivered to policyholders if policies are posted online.

In addition, s. 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. 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 a transaction by electronic means. The bill does not likely implicate UETA because it creates an exception to the policy delivery requirement in current law.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.421, F.S., relating to delivery of policy.

Section 2: Provides an effective date of July 1, 2013.

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:

Insurers posting policies online will save costs associated with printing and mailing insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many insurers will opt to post policies online and how many policyholders will choose to obtain their policies online rather than by mail. However, any savings realized by insurers should be passed through to policyholders.

If insurers incur computer reprogramming costs associated with posting policies online, any increased costs will be passed through to policyholders.

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:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2013, the Insurance & Banking Subcommittee considered the bill, adopted four amendments, and reported the bill favorably with a committee substitute. The amendments adopted made the following changes to the bill:

- Clarified only property and casualty insurance policies can be posted online.
- Removed ambiguity in the bill relating to whether an insurer can post an insurance policy online in lieu of mailing or delivering the policy to the policyholder.
- Clarified insurance policies posted online must be easily accessible on the insurer's website and clarified all expired insurance policies are to be archived on the insurer's website.
- Created grammatical consistency in two places in the bill.

The staff analysis was updated to reflect the Committee Substitute.