

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 Rules

BILL: CS/CS/SB 952

INTRODUCER: Rules Committee; Commerce and Tourism Committee; and Senator Simpson

SUBJECT: Workers' Compensation

DATE: April 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	Fav/CS
3.	<u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 952 revises provisions relating to the regulation of workers' compensation retrospective rating plans by the Office of Insurance Regulation (OIR). Currently, under such a plan, the final workers' compensation premium paid by the employer is based on the actual loss experience of the employer during the policy, plus negotiated expenses and charges. If the employer controls the amount of claims, it pays lower premiums. The bill authorizes retrospective rating plans to contain a provision that allows the employer and insurer to negotiate the premium when the employer has multistate exposure, an estimated annual standard premium in Florida of \$100,000 or more, and an annual estimated countrywide standard premium of \$750,000 or more. Only insurers with \$500 million or more in surplus would be eligible to engage in the negotiation of premiums with such eligible employers.

The bill exempts these retrospective rating plans from the provisions of s. 627.072(1), F.S., which specifies the factors used in determining workers' compensation rates. The bill requires such retrospective rating plans and associated forms to be filed by the rating organization, the National Council on Compensation Insurance, and approved by the OIR. However, an individual employer's premium negotiated pursuant to an approved retrospective rating plan is not subject to part I of ch. 627, F.S.

The bill may reduce workers' compensation premiums for employers participating in such plans. The bill has no fiscal impact on the OIR.

II. Present Situation:

Florida law requires every workers' compensation insurer to file its rates and classifications that the insurer proposes to use with the Office of Insurance Regulation (OIR).¹ Section 627.072, F.S., prescribes factors used in the determination of rates.² Every insurer must file every manual of classifications, rules, and rates, and every rating plan that it proposes to use with the OIR.³ Rate filings for workers' compensation are subject to approval by the OIR before they become effective. The standard for approving insurance rates in Florida and most states is that the rate may not be excessive, inadequate, or unfairly discriminatory.⁴

Current Florida law and the rating plans approved by OIR allow insurers to compete in the market by varying or adjusting premiums, including retrospective (retro) rating plans that adjust the premium at the end of the policy period to reflect the actual loss experience of the employer. In a retro rating plan, the insurer and employer agree that the final premium paid will be based upon losses actually incurred during the policy period. The insurer and employer negotiate on certain expenses, charges, taxes, and assessments, based upon minimum and maximum premiums. Retrospective rating has been a component of workers' compensation rating for over 50 years in Florida and nationwide. The National Council on Compensation Insurance (NCCI) has filed actuarially sound rating plans.⁵

In 1991, the NCCI filed the Large Risk Alternative Rating Option (LRARO) in Florida. The LRARO was described as providing greater flexibility of negotiation between an insurer and employer for risks with over \$1,000,000 in standard premium. The Department of Insurance (predecessor of the OIR) disapproved the use of the LRARO on the basis that it did not comply with s. 627.091(1), F.S., and that the LRARO was not a rating plan but an agreement to use any factors acceptable to both parties.⁶ Subsequently, in 1993, an insurer filed its own version of the LRARO and the Department of Insurance disapproved it. The rejection of the plan was primarily on the basis that the use of the LRARO would not allow agency oversight as to the determination of premiums since it proposed to allow the insurer and prospective insureds to agree unilaterally on the components to be used in the rating process.⁷ The insurer appealed the disapproval to the Division of Administrative Hearings (DOAH) and DOAH found that the Department of Insurance was justified in disapproving the plan.

¹ Section 627.091(4), F.S., allows an insurer to satisfy this obligation by becoming a member of a licensed rating organization, which makes such filings on its behalf. The law expressly provides that an insurer is not required to be a member of any rating organization, but all workers' compensation insurers in Florida have chosen to do so. Currently, all workers' compensation insurers are members of the National Council on Compensation Insurance.

² These factors include such considerations as past and prospective loss experience within and outside the state; conflagration and catastrophe hazards; a reasonable margin for underwriting profit and contingencies; and all other relevant factors, including judgment factors, within and outside the state.

³ Section 627.091(1), F.S.

⁴ Section 627.062, F.S.

⁵ OIR, *2014 Agency Legislative Bill Analysis, Senate Bill 952* (Feb. 27, 2014) (on file with the Banking and Insurance Committee and Commerce and Tourism Committee).

⁶ See *Liberty Mutual Insurance Company, et. al., v. State of Florida, Department of Insurance*, Case No. 94-0892 (Fla. DOAH 1994).

⁷ *Id.*

Currently, the LRARO plans are available in a majority of states. However, Alaska, Arkansas, Florida, and Nebraska do not allow its use.⁸ The NCCI retrospective rating plan rule, which does not apply in Florida, provides that an insured is eligible for the LRARO if the estimated standard premium individually, or in any combination with any other commercial casualty lines of insurance, exceeds an annual standard premium eligibility threshold of \$500,000 for the term of a retrospective rating plan. The following table provides examples of states with different annual standard premium eligibility thresholds for LRARO.⁹

LRARO Premium Eligibility Threshold by State	
State	Annual Standard Premium Eligibility Threshold
Arizona	\$250,000
Kansas	\$1,000,000
Minnesota	\$250,000
Nevada	\$250,000
New Hampshire	\$250,000
North Carolina	\$250,000

III. Effect of Proposed Changes:

Section 1 amends s. 627.072, F.S., to allow an insurer and employer to negotiate the retrospective plan rating factors that can be used for calculating the premium when the employer has multistate exposure, an estimated annual standard premium in Florida of \$100,000 or more, and an annual estimated countrywide standard premium of \$750,000 or more for workers’ compensation insurance. These retrospective rating plans are exempt from s. 627.072(1), F.S., which specifies the factors used in determining workers’ compensation rates. The bill requires such retrospective rating plans and associated forms to be filed by the rating organization (NCCI) and approved by the OIR. However, an employer’s premium negotiated pursuant to an approved retrospective rating plan is not subject to part I of ch. 627, F.S. Only insurers with \$500 million or more in surplus would be eligible to engage in the negotiation of premiums with such eligible employers.

Section 2 provides legislative intent regarding the enactment of legislation adding a new subsection to s. 627.072, F.S. The bill provides that, if this act and CS/CS/HB 565, 1st Eng., or similar legislation are adopted in the same legislative session or an extension thereof, and become law and the respective provisions of such acts adding a new subsection (2) to s. 627.072, F.S., differ, it is the intent of the Legislature that the amendments to s. 627.072, F.S., in this act will control over the language in CS/CS/HB 565, 1st Eng., or similar legislation, regardless of the order in which the legislation is enacted.

Section 3 amends s. 627.281, F.S., to conform a cross reference.

⁸ E-mail from Lori Lovgren, NCCI (Mar. 4, 2014) (on file with Senate Committee on Banking and Insurance).

⁹ *Id.*

Section 4 provides that the act is effective July 1, 2014.

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 bill would allow insurers and larger employers greater flexibility in negotiating retrospective rating plans by allowing the parties to determine the rating factors used to calculate premiums. This change may result in a reduction in premiums for such employers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.072 and 627.281.

IX. Additional Information:

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

CS/CS by Rules Committee on April 21, 2014:

- Revises the eligibility requirements for participating employers and insurers by requiring such employers with multistate exposure to have an estimated annual standard premium in Florida of \$100,000 or more rather than \$175,000 or more, and an estimated annual countrywide standard premium of \$750,000 or more rather than \$1 million or more. Only insurers having \$500 million or more in surplus may engage in the negotiation of premiums with such eligible employers.
- Provides legislative intent that the provisions of this act control in the event that two or more bills amending s. 627.072, F.S., by adding a new subsection (2) are enacted in the same legislative session or an extension thereof and become law.

CS by Commerce and Tourism Committee on April 7, 2014:

- Clarifies that an employer eligible to participate in a retrospective rating plan must have an estimated annual standard premium of \$175,000 or more in Florida.
- Exempts the provisions within a retrospective rating plan that allow for a negotiated premium from s. 627.072(1), F.S., which specifies factors to be used when determining workers' compensation rates.
- Requires retrospective rating plans and associated forms to be filed by a rating organization and approved by the OIR.
- Provides that an employer's premium negotiated under an approved retrospective rating plan is not subject to Part I of ch. 672, F.S., the "Rating Law."

- B. **Amendments:**

None.