STORAGE NAME: h4251.fs
DATE: April 6, 1998

HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 4251

RELATING TO: Insurance

SPONSOR(S): Rep. Tamargo

COMPANION BILL(S): SB 994 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCIAL SERVICES
(2)
(3)
(4)
(5)

I. SUMMARY:

This bill affects several provisions of law relating to motor vehicle insurance and liability insurance. The bill would:

Allow the Department of Insurance to limit the scope of a financial examination of an insurer, and allow the department to examine certain insurers once every 5 years instead of once every 3 years.

Provide that a notice of a suit under the civil remedy law is not a “complaint” for purposes of required record-keeping.

Provide circumstances under which an insured may receive a credit for premiums paid on a noncancellable motor vehicle policy.

Expand the geographic area within which a no-fault (personal injury protection) insurer may require an injured party to submit to an independent medical examination.

Repeal a requirement that a medical payments policy pay for personal injury protection copayments.

Repeal certain liability insurance experience reporting requirements.

Allow an insurer, when it decides to pay the full coverage limits under a policy to one or more claimants, to pay the entire amount into a court registry, rather than allocate the coverage among the claimants.

The bill appears to have no fiscal impact

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Aspects of the present situation addressed by the bill are described in the "Section-by-Section Research," below.

B. EFFECT OF PROPOSED CHANGES:

The bill would affect several provisions of law relating to motor vehicle insurance and liability insurance. As described in detail in the "Section-by-Section Research," below, the bill would:

Allow the Department of Insurance to limit the scope of a financial examination of an insurer, and allow the department to examine certain insurers once every 5 years instead of once every 3 years.

Provide that a notice of a suit under the civil remedy law is not a "complaint" for purposes of required record-keeping.

Provide circumstances under which an insured may receive a credit for premiums paid on a noncancellable motor vehicle policy.

Expand the geographic area within which a no-fault (personal injury protection) insurer may require an injured party to submit to an independent medical examination.

Repeal a requirement that a medical payments policy pay for personal injury protection copayments.

Repeal certain liability insurance experience reporting requirements.

Allow an insurer, when it decides to pay the full coverage limits under a policy to one or more claimants, to pay the entire amount into a court registry, rather than allocate the coverage among the claimants.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill removes provisions requiring the Department of Insurance to adopt rules for determining when an insurer is in "substantial compliance" with the Insurance Code.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

   a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

      N/A

   b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

      N/A

4. Individual Freedom:

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      Yes. The bill expands an insurer's options with respect to where an independent medical examination may be conducted.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      No.

5. Family Empowerment:

   a. If the bill purports to provide services to families or children:

      (1) Who evaluates the family's needs?

          N/A

      (2) Who makes the decisions?

          N/A

      (3) Are private alternatives permitted?

          N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapters 624 and 627, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 amends s. 624.316, F.S., relating to financial examination of insurers. The Department of Insurance is required to conduct financial examinations of insurers; the examination is one of the means for monitoring an insurer's solvency and compliance with the Insurance Code. Current law generally requires the department to conduct a financial examination of an insurer at least once every 3 years, except that the department must conduct a financial examination at least once a year with respect to an insurer that has continuously held a certificate of authority for less than 3 years. The department must conduct a financial examination at least once every 5 years, instead of once every 3 years, if the insurer that has continuously held a certificate of authority for more than 15 years and if the insurer has "demonstrated sufficient compliance" as determined under s. 624.316(2)(f)3., F.S. The department is authorized to limit the scope of these examinations if the insurer has "demonstrated sufficient compliance" as determined under s. 624.316(2)(f)3., F.S. That provision requires the department to

adopt procedures and criteria for determining whether an insurer has demonstrated sufficient compliance with the Insurance Code and cooperation with the department. The department has never adopted the required procedures and criteria for determining whether an insurer has demonstrated sufficient compliance.

The bill would allow the department to limit the scope of the examination without regard to whether the insurer has demonstrated "sufficient compliance," would provide for 5-year examinations of insurers that have held a certificate for at least 15 years without regard to whether the insurer has demonstrated "sufficient compliance," and would repeal s. 624.316(2)(f)3., F.S., which provides for adoption of rules for determination of sufficient compliance.

Section 2 amends s. 626.9541, F.S., relating to unfair insurance trade practices. An insurer that fails to maintain complaint-handling procedures, including a record of all complaints received since the last Department of Insurance market conduct examination, commits an unfair or deceptive practice and is subject to fines and cease and desist orders. A "complaint" is defined as "any written communication primarily expressing a grievance."[1] The department is required to publish insurers' complaint ratios in its annual report.[2]

The civil remedy statute, s. 624.155, F.S., allows a person to bring a civil action against an insurer for bad faith or specified violations of the Insurance Code. Before a person can bring a suit under the civil remedy statute, the person must give the insurer and the department 60 days' advance notice of the violation. The 60-day notice is an opportunity for the insurer to correct the violation; the suit is not allowed if the insurer pays the damages or corrects the circumstances giving rise to the violation.[3]

According to the Department of Insurance, the department's "informal" policy is to treat civil remedy notices as complaints for purposes of record-keeping and complaint-handling procedures, but to exclude civil remedy notices from consideration in complaint ratios or market conduct examinations.

Section 3 amends s. 627.7275, relating to motor vehicle insurance policies. Currently, when a person obtains a private passenger motor vehicle policy in order to reinstate driving privileges that had been suspended or revoked for failure to maintain required insurance, the policy must be for a term of at least 6 months and may not be canceled by the insured for any reason. Premiums on the noncancellable policy are "fully earned"[4]

---

[1] See s. 626.9541(1)(j), F.S.

[2] A complaint ratio measures the number of complaints received by an insurer against the insurer's market share. See s. 624.313(1)(j), F.S. and 1996 Annual Report, Florida Department of Insurance at xi.

[3] See s. 624.155(2)(d), F.S.

[4] A premium is "fully earned" when the full amount belongs to the insurer. Usually, a premium is not fully earned until the end of the policy period, and an early cancellation will entitle the insured to a refund of the "unearned" portion of the premium. The effect of declaring a premium to be "fully earned" at the inception of the policy is to make the premium nonrefundable.

(i.e., nonrefundable) at the inception of the policy. If, while the 2-year proof of insurance requirements apply to the insured,[5] the insured obtains additional coverage or coverage for an additional risk, the insured must obtain a new 6-month noncancellable policy.

The bill would require the insured also to obtain a new 6-month noncancellable policy if the insured moves from one rating territory to another.[6] If the insured obtained the new 6-month noncancellable policy from the same insurer as issued the previous 6-month noncancellable policy, the insured would be required to receive a credit for any premium paid on the previous policy. The bill would also provide that the premium on the noncancellable policy is "nonrefundable," rather than "fully earned" (see footnote 4, above).

Section 4 amends s. 627.736, F.S., relating to personal injury protection benefits.

Under the no-fault auto insurance law, a personal injury protection (PIP) insurer may refuse to pay for treatment when the treatment is not reasonable, not related to the covered motor vehicle accident, or not necessary. Such a determination is generally based on a medical examination conducted by a physician selected by the insurer, known as an independent medical examination (IME).

The IME must be conducted within the municipality in which the injured party resides or within the municipality in which the injured party is receiving treatment. When there is no qualified physician within the municipality of the injured party's residence, the IME must be conducted "in an area of the closest proximity" to the residence. With respect to an injured party who resides in a small municipality that has few practicing physicians, the requirement of an IME within the municipality may limit the independence of an IME by restricting the choice of physicians to conduct the IME; if there are no qualified physicians in the municipality, the ambiguous term "area of closest proximity" could be read either to give insurers broad discretion or to require insurers to select the one physician who is geographically closest to the injured party's home.

Under the bill, an IME could be conducted either in the municipality where the insured is receiving treatment or in a "location reasonably accessible to the insured." The bill would define that term to mean any location within the municipality in which the insured resides or any location within 15 miles by road of the insured's residence.

Section 5 repeals s. 627.736(4)(f), F.S., relating to automobile medical payments coverage; s. 627.9126, F.S., relating to annual reporting by liability insurers; and s. 627.913, F.S., relating to annual reporting by products liability insurers.

<u>Medical payments; PIP copayment</u>

In general, personal injury protection (PIP) coverage will pay a person injured in a motor vehicle accident 80 percent of medical costs and 60 percent of lost income, up to $10,000. As with some other medical coverages, PIP includes a copayment (the insured

[5] See s. 627.733(7), F.S.

[6] Usually, moving from one territory to another will change the premium applicable to a motor vehicle policy.

must pay 20 percent of medical costs) because copayments are thought to discourage fraud and overutilization. "Medical payments" coverage is an optional coverage that pays the insured's medical costs in excess of the PIP limits. Current law also requires medical payments coverage to cover the PIP copayment; the bill would repeal this requirement.

Liability insurer reporting requirements

Since 1986,[7] liability insurers have been required by s. 627.9126, F.S., to provide the department with annual reports of judgments, settlements, and final dispositions of cases not resulting in payments on behalf of insureds, and the department has been required to conduct annual samplings of these reports. Insurers are also required by that section to provide the department with more detailed information upon request.

Since 1978,[8] products liability insurers have been required by s. 627.913, F.S., to provide the department with annual reports of products liability premiums, claims, reserves, income, losses, and judgments. The department is required to provide a summary of the information in its annual report.

According to the Department of Insurance, the department retains these reports but does not do anything with them, the reports are rarely requested by the public, and the usefulness of the information has not been demonstrated.

The bill would repeal both of these sections.

Section 6 would provide for interpleader in cases involving liability insurance claims. Interpleader is a process by which a party pays the full amount of its liability into a court fund and the various claimants litigate among themselves the question of who is entitled to what portion of the payment.[9] Interpleader is an equitable remedy that has been subsumed by the rules of civil procedure.[10] Statutory interpleader is currently provided with respect to bailments[11] and construction liens.[12]

The bill would provide that when an insurer has determined that it owes the entire amount of coverage under a policy to one or more claimants, the insurer may pay the amount into a court registry, and that when the insurer pays the full amount to the court registry it is relieved of any further obligations to any person having a claim on the proceeds of the insurance policy.

---

[7] See Ch. 86-160, Laws of Florida.

[8] See Ch. 78-224, Laws of Florida.

[9] See Fla. Jur., Interpleader, s. 1.

[10] Florida Rules of Civil Procedure, Rule 1.240.

[11] See s. 677.603, F.S.

[12] See s. 713.27, F.S.

The effect of the statutory interpleader created by this section would be to protect an insurer from being sued for failing to settle claims in good faith on the basis of how the insurer allocated the full amount payable under the policy among various claimants;[13] instead, the court would decide how to apportion the insurance proceeds among the claimants.

Example: Assume that an insured has a motor vehicle bodily injury liability policy with limits of $100,000 per person and $300,000 per accident, and that the insured is at fault in an accident causing damages in the amount of $150,000 to each of four individuals (for a total of $600,000).

Current law: If the insurer paid policy limits of $100,000 to each of the first three claimants, policy limits would be exhausted (a total of $300,000 for the accident), and the insurer would not be able to make any payment to the fourth claimant. The fourth claimant might then file a bad faith suit against the insurer for failure to settle in good faith with the fourth claimant. Alternatively, if the insurer decided to pay each of the four claimants $75,000, each might then be able to file a bad faith suit alleging bad faith in that the insurer failed to pay policy limits when the claim clearly exceeded policy limits.

HB 4251: The insurer, having determined that it is liable to the full extent of policy limits, could pay the full amount ($300,000) into the court registry. The court could then decide how to apportion the $300,000 among the four claimants, and the insurer would be relieved of the prospect of a bad faith suit.

Section 7 provides that the bill will take effect on October 1 of the year in which it was enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

[13] Under Auto-Owners Ins. Co. v. Conquest, 658 So.2d 928 (Fla. 1995), the liability insurer's duty of good faith extends both to its insured and to third parties suing its insured.

4. Total Revenues and Expenditures:

   N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   N/A

2. Recurring Effects:

   N/A

3. Long Run Effects Other Than Normal Growth:

   N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   The bill would remove a requirement that medical payments policies must cover the personal injury protection copayment. As a result, a person who has both a personal injury protection policy and a medical payments policy could become responsible for the personal injury protection copayment, which equals 20 percent of the covered medical costs. The bill would also give an insurer a wider selection of physicians who could conduct an independent medical examination of a personal injury protection claimant. This may increase the likelihood that claims payments will be denied or cut off on the basis that treatments are not reasonable, related to the accident, or necessary.

   A person who has a noncancellable motor vehicle policy and who moves from one rating territory to another would be required to obtain a new policy and pay a new premium; such a person would be entitled to a credit for the earlier premium only if the new policy is issued by the same insurer as the old policy.

2. Direct Private Sector Benefits:

   If medical payments policies do not cover personal injury protection copayments, fraud and overutilization of medical services in connection with personal injury protection claims could decrease. Greater flexibility for insurers in assigning injured parties to physicians for independent medical examinations could also reduce unnecessary or unreasonable treatments. Both of these cost savings could result in lower motor vehicle insurance premiums, or at least reduced pressure for premium increases.

   The removal of liability insurer reporting requirements could reduce insurers' costs of compliance.

3. Effects on Competition, Private Enterprise and Employment Markets:

   See above.

D. FISCAL COMMENTS:

   N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

   N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

   N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

   N/A

V. COMMENTS:

   N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

   N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:	Legislative Research Director:
Leonard Schulte	Stephen Hogge