

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 557 w/CS Insurance

**SPONSOR(S):** Rivera & others

**TIED BILLS:** None

**IDEN./SIM. BILLS:** CS/CS/SB 2038

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Insurance Regulation (Sub)</u>	<u>11 Y, 0 N</u>	<u>Cheek</u>	<u>Cooper</u>
2) <u>Insurance</u>	<u>19 Y, 0 N w/CS</u>	<u>Cheek</u>	<u>Cooper</u>
3) <u>Commerce &amp; Local Affairs Apps. (Sub)</u>	<u></u>	<u>Rayman</u>	<u>Belcher</u>
4) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

The bill is known as “The Consumer’s Rights Bill.” Major changes from current Insurance law are as follows:

- The bill creates, within the Department of Financial Services (DFS), a designated consumer contact on sinkhole related issues.
- The bill moves language regarding the responsibility of mortgage lenders for failure to pay homeowners premiums for their borrowers to a more appropriate section of law and otherwise clarifies the language in the bill to coincide with existing law.
- The bill requires that the creation of local government self-insurance trusts comply with the provisions of a group or commercial self-insurance fund for the first 5 years of its existence. Additionally, the bill imposes a requirement that existing local government self-insurance funds maintain a positive surplus.
- The bill provides certain investments in trust funds for reinsurers.
- The bill updates the minimum standard for valuation of life insurance policies and contracts issued on or after the operative date of the standard nonforfeiture law.
- The bill requires a business entity, rather than individual branch offices, which offer motor vehicles for rent or lease to offer personal accident, baggage, and motor vehicle excess liability insurance providing that the entity submits an application for a license; obtains a license of each individual branch office (short for license); and pays applicable fees.
- The bill requires life insurers to adhere to the minimum reserve requirements for single-premium credit disability insurance, monthly premium credit life insurance, and monthly premium credit disability insurance established by the National Association of Insurance Commissioners.
- The bill requires the Florida State University (FSU) Department of Risk Management and Insurance to conduct a feasibility and cost-benefit study of a potential Florida Sinkhole Insurance Facility and of other matters related to affordability and availability of sinkhole insurance, as well as an analysis of factors affecting premium levels and availability of personal lines property and casualty to consumers in Florida.
- The bill deletes a filing fee paid by insurance companies when filing forms and service charges associated with premium finance plans.

The bill does not have a fiscal impact on local government. There is a \$1,000 fiscal impact with the removal of the filing fee. The two FSU studies will be financed with assessments on property insurers and personal lines property and casualty insurers, up to a total study budget of \$300,000 (sinkholes study) and \$250,000 (personal lines study). No appropriation has been provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0557c.ap.doc

**DATE:** April 14, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### **BACKGROUND**

###### Consumer Services

The Division of Consumer Services within the Department of Financial Services has several functions, such as receiving inquiries and complaints from consumers, disseminating information, and providing assistance. These functions are prescribed in s. 20.121(2)(h), F.S.

###### Mortgage Lenders

Section 501.137, F.S., provides that if a mortgage lender receives funds for the payment of property taxes or hazard insurance premiums, when the funds are held in escrow, the lender must promptly pay the taxes and premiums when they are due, provided that adequate escrow funds are on deposit. If the escrow funds are insufficient, the mortgage lender must notify the property owner within 15 days of receiving the tax notice or insurance premium notice.

If the lender, through negligence, fails to pay the tax or insurance premium when the tax or premium is due and there are sufficient escrow funds on deposit, and if the property owner suffers a loss as a result of such failure, the lender will be liable for such loss; except, however, that with respect to any loss which would otherwise have been insured, the extent of such liability shall not exceed the coverage limits of any insurance policy which has lapsed.

###### Local Government Self-Insurance Funds

Two or more local governments may by interlocal agreement create a local government self-insurance fund for the purpose of securing payment for benefits under the state's workers' compensation law (s. 624.4622(1), F.S.).

###### Unfair Trade Practices

Part IX of ch. 626, F.S., contains the Unfair Insurance Trade Practices Act, ss. 626.951-626.99, F.S. The act defines and provides for the determination of all unfair methods of competition as well as what acts constitute unfair or deceptive trade practices. Violators of the act are subject to a maximum fine of \$2,500 for an unwillful violation, not to exceed \$10,000 for all unwillful violations arising out of the same action, and a maximum fine of \$20,000 for a willful violation, not to exceed \$100,000 for all willful violations arising out of the same action.

Multiple unfair trade practices or unfair modes of competition are identified in the act, including, for example, making misrepresentations regarding an insurance policy; engaging in unfair claim settlement practices such as denying claims without conducting a reasonable investigation; and engaging in unfair discrimination. The act also contains a "policyholder's bill of rights," which mandates that policyholders

have the right to competitive pricing practices by insurers, to obtain comprehensive coverage, and to an insurance company that is financially stable, as well as other rights.

### Insurance Contracts

Chapter 627, F.S., governs insurance rates and contracts. Part II of this chapter contains the statutory regulations for what may be included in an insurance contract, defines certain types of coverage, provides the requirements for filing of insurance policies with the Office of Insurance Regulation for approval, and requires an insurer to provide a notice of cancellation, nonrenewal, or of the renewal premium, along with a variety of other provisions.

### Mortality and Disability Tables for Life Insurance and Annuities

Currently, new mortality and disability tables for life insurance and annuities are required to be adopted by statute under s. 625.121, F.S. Every state except Florida permits its insurance department to adopt these mortality and disability tables by rule rather than enacting a law every time the tables are updated. The National Association of Insurance Commissioners (NAIC) adopts and updates periodically the mortality and disability tables pertaining to life insurance and annuities. According to representatives with the Office of Insurance Regulation, allowing the office to adopt the NAIC tables by rule would facilitate the adoption of such tables and aid insurers in complying with Florida's regulations.

### Motor Vehicle Consumer Protections

According to representatives of the Division of Consumer Services within the Department of Financial Services, in 1992 the then-Department of Insurance promulgated Rule 4-166.027, F.A.C., which provided protections for motor vehicle consumers by establishing broad standards for the prompt, fair, and equitable settlement of first-party and third-party personal and commercial motor vehicle insurance claims. This rule established:

- Guidelines for insurers to follow in adjusting and settling claims;
- Prohibitions for insurers as to actions regarding third-party claimants, e.g., urging such claimants to use their own policy (even though the claimant's vehicle was damaged by the negligent actions of the company's insured), thus avoiding paying the claim under the policy issued by that insurer;
- Standards for vehicle repairs;
- Provisions as to partial and total loss value; and
- Provisions for replacement parts.

In 2002, this rule was removed because its terms were found to extend beyond the jurisdiction of the department. According to department officials, the rule provisions provided a standard for fair and equitable auto claims handling that both consumers and insurance companies could use. In 2003, the division received approximately 500,000 phone calls from consumers and 40,000 written complaints. Division representatives state that 30 to 40 percent of these complaints involve motor vehicle insurance. Many times consumers are in need of special attention as to motor vehicle claims procedures, according to these representatives.

Consumers are currently afforded protection under the unfair and deceptive claims practices provisions in the Insurance Code. These practice provisions prohibit insurers from engaging in specified unfair claim settlement practices as to their insureds and in specified cases, third-parties. These provisions prohibit the making of material misrepresentations in order to effect a settlement; making misrepresentations as to pertinent facts or insurance policy provisions relating to coverage; failing to act promptly with respect to claims; and failing to affirm or deny full or partial coverage of claims, among other provisions.

Officials with the Department of Financial Services state that it is important to codify the provisions of Rule 4-166.027, F.A.C., into law in order to establish uniform standards in the adjustment of auto losses. While most insurers adhere to this rule, its incorporation into state law will help maintain consumer protections as well as avoid potential disputes and litigation in the future.

### Motor Vehicle Crash Parts

Motor vehicle crash parts, sometimes referred to as cosmetic parts, are the sheet metal components of vehicles. These are the most frequently damaged parts in auto accidents, such as the fenders, hoods, and doors panels. There are two sources for these parts: auto manufacturers, who sell these parts under their own names, also known as original-equipment manufacturers (OEMs), and generic or aftermarket crash parts suppliers. Before generic parts existed, creating competition in the marketplace, OEMs were able to sell their parts at much higher prices than they can today. According to the Insurance Institute for Highway Safety (IIHS), the introduction of aftermarket parts forced the price of OEM parts down by an average of 30 percent.

In the continuing debate about whether generic parts are as good as parts from OEMs, the issue of safety is in the forefront. Critics claim that using parts from sources other than OEMs could compromise safety. However, the IIHS says that with the possible exception of hoods, there are no safety implications of using cosmetic crash parts from any source. This position has been demonstrated by crash tests conducted at the IIHS. In addition, an independent, third-party nonprofit organization, Certified Automotive Parts Association (CAPA), inspects generic automotive parts and guarantees the quality of those that meet its high standards. Generic crash parts do not interfere with a vehicle's existing warranty and are often manufactured by the same supplier and in the same manner as OEM parts.

Many states have enacted laws that dictate to insurers and auto body shops when and how they must disclose the use of aftermarket parts to their customers. The majority of these states, including Florida, require repair estimates to identify non-OEM parts and specify that warranties on such parts are the responsibility of the part manufacturer, not the manufacturer of the vehicle itself. Under part III of ch. 501, F.S., an insurer or repair facility must clearly identify in the written estimate for repairs, in 10-point type, each such part in all instances where nonoriginal equipment manufacturer aftermarket crash parts are used. A violation of part III constitutes a violation of the unfair insurance trade practices act under part IX of ch. 626, F.S.

Some insurers restricted their use of generic crash parts or stopped using them altogether after litigation involving State Farm Mutual Auto Insurance Company. In October 1999, in the case of *Avery vs. State Farm*, a southern Illinois jury found State Farm Mutual Auto Insurance Co. liable for \$456 million in damages and an additional \$730 million in punitive damages in a class action lawsuit involving the use of generic auto parts. The total award was reduced to \$1.05 billion. The plaintiffs argued that the company had failed to tell its policyholders about the use of aftermarket parts in auto repairs, violating the state's consumer fraud laws, and that their use did not restore the automobile to its original condition, which was a breach of contract. In its April 5, 2001, decision, the appellate court left standing nearly all of the trial court's findings, and affirmed the judgment. State Farm has appealed the judgment, which has the potential to affect policyholders everywhere, to the state's high court. If it is allowed to stand, the verdict could allow automakers to arguably charge more for replacement parts. According to IIHS representatives, this change has contributed to the increase in the cost of repairing cars after collisions.

### Diminished Value

During the past several years, litigation has occurred involving diminished market value, which is the value of a vehicle above the repair value. According to representatives with IIHS, trends in recent court decisions nationwide have deemed that diminished value is not recoverable under policies, limiting insurer liability to the cost of repairs. State supreme and appellate courts in Maine, Delaware, Florida, Alabama, Louisiana, Missouri, and Wisconsin have recently addressed the issue and ruled that diminished value is not recoverable.

In March 2003, the South Carolina Supreme Court ruled that insurance companies are not obligated to pay for the diminished value of a vehicle that was damaged in a crash, and are only required to pay for the cost of repairs. It ruled unanimously that State Farm does not have to make up the difference in diminished value of a wrecked car as well as pay for repairs.

### Reinsurance

Section 624.610, F.S., governs reinsurance. The purpose of the section “is to protect the interests of insureds, claimants, ceding insurers, assuming insurers, and the public.” Under paragraph (3)(c), credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified financial institution for the payment of the valid claims of its U.S. ceding insurers. Under current law, the trust fund consists of funds in trust in an amount not less than the assuming insurer’s liabilities related to reinsurance ceded by United States ceding insurers. Further, the assuming insurer must maintain a trustee surplus of at least \$20 million. The funds in the trust and trustee surplus consist of assets of a quality substantially similar to that required under the provisions of the Florida Statutes relating to investments by insurers (part II of ch. 625, F.S.).

### Residential Property Insurance Rate Filings

A rate filing for residential property insurance must include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques that reduce windstorm loss have been installed or implemented (s. 627.0629(1), F.S.).

### Florida Automobile Joint Underwriting Association

The Office of Insurance Regulation is authorized to approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance. (See s. 627.311(3), F.S.) The Florida Automobile Joint Underwriting Association (FAJUA) is created under the plan. Section 624.155, F.S., governs civil actions against an insurer. As a condition precedent to bringing an action, the Department of Financial Services and the authorized insurer must be given 60 days’ written notice of the violation that is the basis for the action.

## **MAJOR CHANGES TO CURRENT LAW**

The bill is known as “The Consumer’s Rights Bill.” Major changes from current law are as follows:

### Property and Casualty Insurance

- Requires the Division of Consumer Services of the Department of Financial Services to designate an employee as a primary contact for consumers on sinkhole issues.
- Forbids an insurer from canceling or non-renewing a policy because of a single claim on a property insurance policy resulting from water damage, unless the insurer can demonstrate that the insured policyholder failed to take action to prevent a recurrence of damages as reasonably requested by the insurance company.
- Mandates that when an insurer refuses to provide coverage due to adverse underwriting information, the insurer must provide the applicant specific information on the reasons for the refusal to insure and inform the applicant how to obtain the loss underwriting if it is a basis for a refusal to insure.
- Requires a lender to reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy, if a lender fails to timely pay a premium. If the payment is not over 90 days overdue, the insurer must reinstate the insurance policy retroactive to the day of cancellation. If the premium payment is more than 90 days overdue, or if the insurer refuses to reinstate the policy, the lender must pay the difference between the cost of the previous insurance policy and a comparable, new policy for 2 years.
- Requires the insurer to pay for any consequential physical damage that is the result of repairs undertaken to repair or replace damage that was covered under the policy, unless the insurance policy says otherwise.
- Provides that, when a portion of a home must be repaired or replaced, the repair or replacement must include adjoining areas as necessary.
- Provides that industrial fire insurance policies are exempt from the requirement that a residential property insurance rate filing must include actuarially reasonable discounts, credits, or other rate

differentials for properties on which fixtures or construction techniques that reduce windstorm loss have been installed or implemented.

- Requires the Florida State University Department of Risk Management and Insurance to conduct a feasibility and cost-benefit study for a potential Florida Sinkhole Insurance Facility and other matters related to the affordability and availability of sinkhole insurance.
- Requires the Florida State University Department of Risk Management and Insurance to conduct an analysis of factors affecting premium levels and availability of personal lines property and casualty to consumers in Florida.

#### Auto Insurance

- Allows businesses that sell personal accident and motor vehicle excess liability insurance to submit one application to the Department of Financial Services in order to obtain licenses for each location of the business.
- Establishes guidelines to apply to the adjustment and settlement of personal and commercial motor vehicle insurance claims.
- Provides specified consumer protections pertaining to: third-party claimants; motor vehicle repairs; replacement parts; adjustment and settlement of first-party motor vehicle total losses; settlements; partial losses; storage charges; and sales taxes.
- Specifies that, before an action may be brought against the Florida Automobile Joint Underwriting Association (FAJUA), the department and the FAJUA must have been given 90 days' written notice of the violation, and provides that the FAJUA may require from the insured proof that he or she has obtained the mandatory types and amounts of insurance from another admitted carrier prior to the cancellation of a policy the insured obtained from the joint underwriting plan. The 90-day notice represents a 30-day increase over current law.

#### Personal Lines Property and Casualty Insurance

- Provides for a study by the Florida State University Department of Risk Management and Insurance on factors affecting costs and potential assessments on consumers of personal lines property and casualty insurance in this state and, in particular, in areas in which coverage is underwritten by the Citizens Property and Casualty Insurance Company.

#### Credit Life and Disability Insurance

- Allows credit life and disability insurers to use newly adopted disability and mortality tables to set reserves, and repeals the previous requirement that the minimum reserve for credit life and disability policies be the unearned gross premium.

#### Premium Finance Companies

- Eliminates the filing fee specified in s. 627.849, F.S., for submission of premium finance forms.
- Requires that, when a financed insurance contract is canceled, an insurer must return the unpaid balance due under the finance contract to the premium finance company and any remaining unearned premium to the agent or insured, within 30 days of the cancellation date. In turn, the committee substitute places a time requirement on the premium finance company to refund to the insured any refund due on the account within 15 days of the account being overpaid or, if the refund is sent or credited to the agent, return or credit the amount of the overpayment and notify the insured of the refunded amount.

#### Reinsurance

- Provides that a single assuming insurer may use letters of credit to fund up to half of the trust fund and trusteed surplus required to be maintained under current law.

### Adoption of Mortality Tables

- Allows the Financial Services Commission to adopt the latest revisions to the minimum standards for valuation of life insurance policies, produced by the National Association of Insurance Commissioners, by rule rather than having the standards adopted through legislation.

### Local Government Self-Insurance Funds

- Provides that a local government self-insurance fund providing for workers' compensation benefit coverage must file a full statement of its financial condition, transactions, and affairs.

## C. SECTION DIRECTORY:

Section 1: Amends s. 20.121, F.S. - *Department of Financial Services.*

Section 2: Amends s. 501.137, F.S., - *Mortgage Lenders; tax and insurance payments from escrow accounts; duties.*

Section 3: Amends s. 624.4622, F.S., - *Local government self-insurance funds.*

Section 4: Amends s. 624.610, F.S., - *Reinsurance.*

Section 5: Amends s. 625.081, F.S., - *Reserve of health insurance .*

Section 6: Amends s. 625.121, F.S., - *Standard Valuation Law; life insurance.*

Section 7: Amends s. 626.321, F.S., - *Limited Licenses.*

Section 8: Creates s. 626.9743, F.S., - *Claim settlement practices relating to motor vehicle insurance.*

Section 9: Creates s. 626.9744, F.S. - *Claim settlement practices relating to property insurance.*

Section 10: Amends s. 627.351, F.S., - *Insurance risk apportionment plans.*

Section 11: Amends s. 627.4091, F.S., - *Specific reasons for denial, cancellation, or non-renewal.*

Section 12: Amends s. 627.4133, F.S. - *Notice of cancellation, nonrenewal, or renewal premium.*

Section 13: Amends s. 627.476, F.S., - *Standard Nonforfeiture Law for Life Insurance.*

Section 14: Creates s. 627.7077, F.S., - *Florida Sinkhole Insurance Facility; matters related to affordability and availability of sinkhole insurance; feasibility study.*

Section 15: Amends s. 627.848, F.S., - *Cancellation of insurance contract upon default.*

Section 16: *Provides for an analysis of factors affecting premium levels and availability of personal lines property and casualty insurance to consumers in this state.*

Section 17: Amends s. 627.838, F.S., - *Filing and approval of forms; service charges.*

Section 18: Amends s. 627.849, F.S., - *Fees.*

Section 19: Repeals s. 625.131, F.S.

Section 20: Provides a severability clause.

Section 21: Provides an effective date of July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The committee substitute eliminates a \$10 fee required under s. 627.849, F.S., to file forms with the Department of Financial Services regarding insurance premium finance companies. Currently the fee is deposited in the Insurance Regulatory Trust Fund. The department estimates that elimination of the fee will reduce revenues to the trust fund by less than \$1,000 annually.

#### 2. Expenditures:

See "D. Fiscal Comments."

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

**Prohibition on an Insurer Refusing to Insure a Residence Due to One Occurrence of Water Damage that was Incurred and Repaired** – The provision will help homeowners to maintain coverage despite an occurrence of water damage in a home if steps are taken to prevent an additional event as requested by an insurer.

**Requirement for Property Insurance that Consequential Damages Resulting from a Repair or Replacement be Included in the Loss** – This provision would ensure that policyholders do not have to pay to repair damage that is incurred as a result of a repair or replacement that was covered by the insurance policy, and will benefit consumers. However, the committee substitute provides that the provision does not apply if an insurance policy provides otherwise.

**Requirement that Repairs to a Home Create a Reasonably Uniform Appearance** – Consumers will benefit from the repairs done to a home that will restore it aesthetically to the appearance it enjoyed before damage was incurred without further cost to the policyholder. However, the committee substitute provides that this provision does not apply if an insurance policy provides otherwise.

**Requirement that Insurers Reinstate Coverage when a Policy is Cancelled Due to Non-Payment by a Mortgage Company** – Property owners would be afforded greater protections to either reinstate a property insurance policy that has been canceled due to nonpayment of premium by the mortgage lender or to be reimbursed for the additional cost of obtaining replacement coverage. State regulated financial institutions and mortgage lenders would be subject to any policy reinstatement fees or additional costs for replacement coverage for two years. The committee substitute may expose insurers to loss for risks covered under a policy for up to 90 days for which the premium has not yet been paid, but the past due premium would be required to be paid before the coverage is reinstated, retroactive to the date of cancellation.



**Standards and Practices for Auto Claims** – Consumers should benefit from the protections afforded in this committee substitute. Some insurers will have to implement vehicle claims practices required under the committee substitute; however, many insurers have already complied with these provisions because they were contained in Rule 4-166.027, F.A.C., (since repealed), most of which is now codified in this legislation.

**Reinsurance/Trust Fund Requirements for Single Assuming Insurers** – Single assuming insurers would be able to use letters of credit to fund up to half of the trust fund and trusteed surplus required to be maintained under current law.

**Industrial Fire Insurance Policies** – These policies would be exempt from the requirement that a residential property insurance rate filing must include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques that reduce windstorm loss have been installed or implemented.

**Sinkhole Insurance Facility Study/Personal Lines Property and Casualty Insurance** – The two Florida State University studies will be financed with assessments on property insurers and personal lines property and casualty insurers, up to a total study budget of \$300,000 (sinkholes study) and \$250,000 (personal lines study).

D. FISCAL COMMENTS:

The bill deletes a filing fee paid by insurance companies when filing forms and service charges associated with premium finance plans. The impact of deleting the filing fee is minimal (\$1,000).

The bill provides that the Legislative Auditing Committee must enter into a contract with the Florida State University College of Business, Department of Risk Management and Insurance (FSU), to provide, no later than February 1, 2005, an analysis of factors affecting premium levels and availability of personal lines property and casualty to consumers in Florida. The study is to be funded from a budget of no more than \$250,000, which will be funded from by assessments on insurers issuing personal lines property-and-casualty insurance in the state. No appropriation has been provided for the studies.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Yes. The bill proposes rule-making authority to establish claim settlement practices applicable to motor vehicle adjusting to include, but not limited to, establishing total loss value, standards for applying betterment and depreciation factors, and standards for settlement in partial losses.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A technical adjustment is needed on line 37, title language, to correct section reference to 626.9743.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 30, 2004, the Subcommittee on Insurance Regulation adopted a strike-everything amendment by Rep. Brown and three amendments to the strike-all amendment. The changes are summarized as follows:

- Moves language regarding the responsibility of mortgage lenders for failure to pay homeowners premiums for their borrowers to a more appropriate section of law and otherwise clarifies the language in the bill to coincide with existing law.
- Deletes proposed changes to the unfair trade practices law relating to refusal to insure based on past water damage or damage from acts of God.
- Clarifies new language in the bill (and creates a new section) regarding arbitration of property insurance claims to provide that a policy cannot override a policyholder's right to use mediation.
- Deletes a proposed requirement that insurers establish comprehensive insurance coverage for residential property.
- Requires the FSU Department of Risk Management and Insurance to conduct a feasibility and cost-benefit study of a potential Florida Sinkhole Insurance Facility and of other matters related to affordability and availability of sinkhole insurance. The study is funded from a budget of no more than \$300,000 by assessments on insurers issuing property insurance in the state.
- Clarifies new provision regarding how applicants who have been denied coverage based on loss history may obtain the report relied on by the insurer to deny coverage.
- Clarifies new language regarding settlements of auto and homeowner claims. Interested parties will continue to work on adding additional consumer protections to the auto settlement language rather than grant the Department rulemaking authority to adopt additional provisions. The final product will closely adhere to former rules of the Department that were repealed due to lack of statutory authority.
- Amends s. 625.121, F.S., to update the minimum standard for valuation of life insurance policies and contracts issued on or after the operative date of the standard nonforfeiture law to provide for valuation of policies issued after July 1, 2004.
- Requires life insurers to adhere to the minimum reserve requirements for single-premium credit disability insurance, monthly premium credit life insurance and monthly premium credit disability insurance established by the National Association of Insurance Commissioners.
- Amends s. 627.838 and s. 627.849(d) to delete a filing fee paid by insurance companies when filing forms and service charges associated with premium finance plans. The amendment also specifies a time period when the insurer must return an unpaid balance due on a cancelled financed insurance contract; deletes a notice requirement relating to the amount of unearned premium; and specifies when and to whom the refund of an over paid account is to be made.
- Requires that the creation of local government self- insurance trusts comply with the provisions of a group or commercial self-insurance fund for the first 5 years of its existence. Additionally, the bill imposes a requirement that existing local government self-insurance funds maintain a positive surplus.
- Requires a business entity, rather than individual branch offices, which offer motor vehicles for rent or lease to offer personal accident, baggage, and motor vehicle excess liability insurance providing that the entity submits an application for a license; obtains a license of each individual branch office (short for license); and pays applicable fees.

[Note that the strike-all amendment removed language that amended s. 626.9542, F.S. - *Unfair methods of competition and unfair or deceptive acts or practices defined* and s. 626.9742, F.S. - *Reporting by insurers related to loss underwriting* was moved to s. 627.4091, F.S.]

On April 1, 2004, the Committee on Insurance adopted a substitute strike-all amendment that makes all the changes in the amendment adopted in the Subcommittee on Insurance Regulation (strike all amendment) and amends s. 624.610, F.S., to provide certain investments in trust funds for reinsurers; amends s. 627.476, F.S., to provide rulemaking authority for the commission to adopt rules for mortality tables; and amends s. 627.351, F.S., to allow the JUA to require proof that the insurer has obtained insurance from a carrier prior to the JUA canceling its coverage and returning unearned premium and extends the time from 60 to 90 days for the JUA to investigate a bad faith claim (A repeal date of October 1, 2007, is provided for this extension).

In addition to the substitute strike-all amendment, the Committee on Insurance adopted three amendments to the substitute strike-all amendment. The amendments are summarized as follows:

- Provides that the Legislative Auditing Committee must enter into a contract with the Florida State University College of Business, Department of Risk Management and Insurance (FSU), to provide, no later than February 1, 2005, an analysis of factors affecting premium levels and availability of personal lines property and casualty to consumers in Florida. The study is to be funded from a budget of no more than \$250,000, which will be funded from by assessments on insurers issuing personal lines property-and-casualty insurance in the state. The Department of Financial Services, the Office of Insurance Regulation, and insurers are to cooperate with FSU in conducting the analysis.
- Changes the word “equal” to “equivalent” regarding use of replacement parts in the repair of a motor vehicle.
- Removes language relating to alternative dispute resolutions for property insurance claims.