

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 557 Insurance
SPONSOR(S): Rivera & others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2038

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (Sub)	11 Y, 0 N	Cheek	Cooper
2) Insurance			
3) Commerce & Local Affairs Approps. (Sub)			
4) Appropriations			
5)			

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 amends two sections of law relating to Unfair Claim Settlement Practices. First, it prohibits contract language that mandates arbitration in a contract unless the company offers a consumer an opt-out provision. Additionally, the settlement practices are amended to prohibit carriers from refusing to insure personal lines dwelling type policies in situations where the structure was subject to prior water damage and prohibits a non-renewal or cancellation from an "act of God".
- The bill creates law that incorporates all previous motor vehicle claim-handling guidelines provided by rule (repealed). Initially the proposed law change addresses issues such as primacy of coverage involving first- and third-party accidents, company practices regarding designated auto body shops, and specifying the quality of replacement parts (after-market). Additionally, DFS is granted rulemaking authority to establish claim settlement practices applicable to motor vehicle adjusting to include, but not limited to, the following: establishing total loss value, standards for applying betterment and depreciation factors, and standards for settlement in partial losses.
- The bill creates law that incorporates all previous home/dwelling-type, claim-handling guidelines previously provided by rule (repealed).
- The bill amends law pertaining to cancellation and non-renewal of insurance policies. Specifically, the bill provides for reinstatement of a policy in situations wherein a policy is cancelled due to nonpayment by the mortgage company. Additionally, it provides reimbursement for additional costs and fees associated with the reinstatement. It also prohibits cancellation and non-renewal of property policies resulting from water damage.

The bill does not appear to have a fiscal impact on state or local government.

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

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DATE: March 30, 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

The Division of Consumer Services

The Division of Consumer Services of the Department of Financial Services (DFS) has several functions such as receiving inquiries and complaints from customers, disseminating information, and providing assistance. According to DFS, many times consumers are in need of special attention on sinkhole issues related to the offering of coverage, non-renewal of existing coverage, and statutorily required claims procedures.

Unfair Claim Settlement Practices

Many personal lines property contracts (auto/home) offer an “appraisal” provision as an alternative dispute resolution mechanism in the event the insured and company do not agree on the amount of loss. Most of the time this is a cost borne equally by the insured and company. Florida law requires mandatory mediation of all homeowners disputes at no cost to consumers (s. 627.7015, F.S.).

Refusal to Insure

Currently, many carriers do not want to insure structures that were subject to water damage or an “act of God” due to the possibility of a future mold claim. This might not be an issue in the future due to the limited mold coverage in the newer policy forms. [Note: s. 627.4133, F.S., has certain limitations for cancellation, non-renewal of homeowner’s policies. Section 627.707, F.S., prohibits non-renewal for partial sinkhole losses.]

Reporting by Insurers Related to Loss Underwriting

Currently, a company is not required to cite specific underwriting reasons for refusal to an applicant, but there are several reasons making it desirable that they do so. For example, if one insurer rejects a risk on underwriting grounds, other insurers may do so for the same reason. Therefore, it is in the interest of the consumer to know the specific reasons for rejection so that he or she can either make improvements to the property, challenge the findings of the insurer, or determine if he or she needs to approach a specialty insurer for coverage.

Notice of Cancellation

According to DFS, various cases occur of a mortgagor failing to pay insurance out of escrow funds, for whatever reason, resulting in cancellation or non-renewal. Normally the individual who suffers most in these situations is the homeowner, who must find other coverage or else accept forced-placed insurance from the mortgagor at elevated cost.

MAJOR CHANGES TO CURRENT LAW

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

The Division of Consumer Services/Consumer Contact for Sinkholes

The bill creates a designated consumer contact on sinkhole related issues.

Unfair Claim Settlement Practices

The bill adds three additional unfair claims settlement practices: (1) mandating arbitration in a contract unless the company offers a consumer an “opt out” provision; (2) the existence of water damage loss that was subsequently repaired prior to purchasing a residence; and (3) prior claims resulting from an act of God.

Reporting by Insurers Related to Loss Underwriting

The bill creates a new section entitled “Reporting by insurers related to loss underwriting.” The bill provides for certain rights to which policyholders are entitled and indicates that DFS shall exercise its powers and duties to ensure that these rights are maintained.

The bill provides requirements that insurers must follow when refusing to provide insurance to an applicant based on adverse underwriting information. It requires that the insurer provide the applicant with specific information regarding the refusal and copies of any reports the insurer used to reach its conclusion.

Claim Settlement Practices Relating to Motor Vehicle Insurance

The bill creates s. 626.9743, F.S., stipulating claims settlement practices related to automobile insurance. According to DFS, most of the provisions included in this section were part of Administrative Rule 4-166.027. This rule was removed in 2002 since its terms were found to extend beyond the jurisdiction of the then-Department of Insurance. While the terms indicated were outside the scope of an administrative rule, they provided a standard for fair-and-equitable auto claims handling that both consumers and insurance companies could use. The major changes in the bill include:

- An insurance company cannot recommend that a third-party claimant use his or her own policy to avoid having to pay a liability claim on behalf of its own insured.
- If an insurer elects to repair a vehicle (i.e., instead of declaring it a total loss) and designates a specific repair shop, the insurer must ensure the vehicle is restored to its pre-loss condition at no additional cost to a third-party claimant.
- Replacement parts must be of like kind and quality.
- DFS has the right to establish rules regarding the replacement of motor vehicles in the event of a total loss (including charges for betterment and depreciation) and settlement of partial losses based on written estimates.

Claim Settlement Practices relating to Property Insurance

The bill creates s. 626.9744, F.S., which is similar to Section 4 in that it provides claims guidelines, but in this case for homeowner’s insurance. Most of the terms were part of the now-defunct Administrative Rule 4-166.028, which was also removed in 2002. The specific changes include:

- Consequential physical damage or costs due to ordinance code incurred in making repairs will not be charged to the insured, unless it is part of the deductible or if the policy excludes it.
- An insurer will provide extra repairs to adjoining areas of a damaged home in order to achieve a uniform appearance.

Notice of Cancellation, Renewal, or Non-Renewal Premium

The bill amends s. 627.4133, F.S, relating to the cancellation or non-renewal of homeowner’s policies. The bill provides for reinstatement of a policy in situations wherein a policy is cancelled due to nonpayment of the mortgage company. Additionally, it provides reimbursement for additional costs and fees associated with the reinstatement.

The second change to this section is an additional paragraph stating that claims due to water damage cannot be used as a basis for cancellation or non-renewal unless the insurer can show that the insured has failed to take action to prevent their recurrence. Justification: As indicated in Section 2 above, the major concern of insurers in such cases is the increased exposure to mold losses in the future. Without taking away the right of the insurer to cancel or non-renew based on negligence on the part of the insured, the bill seeks to limit the potential for cancellation or non-renewal because of a perceived elevated risk of mold loss.

C. SECTION DIRECTORY:

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

Section 2: Amends s. 626.9542, F.S. - *Unfair methods of competition and unfair or deceptive acts or practices defined.*

Section 3: Creates s. 626.9742, F.S. - *Reporting by insurers related to loss underwriting.*

Section 4: Creates s. 626.9743, F.S. - *Claim settlement practices relating to motor vehicle insurance.*

Section 5: Creates s. 626.9744, F.S. - *Claim settlement practices relating to property insurance.*

Section 6: Amends s. 627.4133, F.S. - *Notice of cancellation, nonrenewal, or renewal premium.*

Section 7: Provides a severability clause.

Section 8: Provides an effective date of July 1, 2004.

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. DFS states that existing staff of the Division of Consumer Services will absorb the responsibility of addressing issues related to sinkholes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

Unknown.

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:

None.

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. The Department and the interested parties are continuing to work on these issues and will offer an amendment at a later time.
- 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.
- 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.
- The amendments to section 626.121, F.S., 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, and
- 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 five 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.