

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1563 Commercial Insurance  
**SPONSOR(S):** Insurance, Business & Financial Affairs Policy Committee, Drake  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2176

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Insurance, Business & Financial Affairs Policy Committee	14 Y, 0 N, As CS	Callaway	Cooper
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
4)	_____	_____	_____	_____
5)	_____	_____	_____	_____

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**SUMMARY ANALYSIS**

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover certain types of losses sustained by the business. Under current law, rates for commercial insurance must be filed with, reviewed by, and approved by the Office of Insurance Regulation (OIR). The bill excludes the following types of commercial insurance and risks from having to file a rate with the OIR:

- excess or umbrella insurance,
- surety insurance,
- fidelity insurance,
- boiler and machinery insurance,
- leakage and fire extinguishing equipment insurance,
- fleet commercial motor vehicle insurance covering five or more vehicles,
- errors and omissions insurance,
- directors' and officers', employment practices, and management liability insurance,
- intellectual property and patent infringement insurance,
- advertising injury and internet liability insurance,
- property risks rated under a highly protected risks rating plan, and
- other types of commercial insurance determined by the OIR.

Rates for the types of commercial insurance and risks listed must still not be excessive, inadequate, or unfairly discriminatory as determined by the rate factors and standards in current law. The insurer writing commercial insurance or the rating organization setting the loss cost for commercial insurance covered by the bill must notify the OIR when the company changes a rate or loss cost for the listed commercial insurance. The OIR can examine the insurance company's records relating to the rate charged and request any information it needs to determine if the rate is excessive, inadequate, or unfairly discriminatory.

The bill also exempts commercial motor vehicle insurance covering a fleet of five or more vehicles from current law requiring specific types of insurance to annually file rates with the OIR.

The bill has no fiscal impact on local government. The bill should not have a rate impact on the private sector as rates for the types of commercial insurance covered by the bill still cannot be excessive, inadequate, or unfairly discriminatory as determined by current law. The bill will allow insurers that sell the types of coverages listed in the bill to make pricing changes for those coverages on a more expedited basis and avoid some of the expense incurred in a full rate review process. The OIR notes the fiscal impact on the agency is unknown, but it appears the bill would result in a reduced workload for the OIR because the OIR will no longer be required to review every rate filing for the types of commercial insurance being exempted from the filing requirement.

The bill is effective January 1, 2011.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover certain types of losses sustained by the business.<sup>1</sup> There are numerous types of commercial insurance. Some types of commercial insurance, such as workers' compensation<sup>2</sup>, is required to be purchased by businesses but most other types of commercial insurance is purchased by businesses on a voluntary basis.

The type of commercial insurance a business will purchase will depend, in part, on what type of industry the business is involved in. For example, a technology business will purchase certain types of commercial insurance that a manufacturing business would not need.

The Office of Insurance Regulation (OIR) is responsible for the regulation of the insurance industry, including the rates charged by insurance companies and the insurance forms used by insurance companies. The bill excludes the following types of commercial insurance from current law requiring rates for these types of insurance to be filed with the OIR: (the specifics of OIR rate filing and regulation will be discussed separately in the analysis)

Excess or Umbrella Insurance: This insurance provides additional coverage in the amount of \$300,000 or more in excess of an underlying policy providing \$300,000 liability or equivalent limits of insurance, on a specific insured vehicle, location, business operation, or other specific commercial risk.<sup>3</sup>

Surety Insurance: Surety insurance includes:

- (a) A contract bond, including a bid, payment, or maintenance bond, or a performance bond, which guarantees the execution of a contract other than a contract of indebtedness or other monetary obligation;
- (b) An indemnity bond for the benefit of a public body, railroad, or charitable organization or a lost security or utility payment bond;
- (c) Becoming surety on, or guaranteeing the performance of, any lawful contract where the bond is guaranteeing the execution of a contract other than a contract of indebtedness or other monetary obligation;

<sup>1</sup> <http://www2.iii.org/glossary/> (defining commercial lines) (last viewed March 13, 2010).

<sup>2</sup> Generally, non-construction businesses employing four or more employees have to buy workers' compensation insurance. Construction businesses must buy workers' compensation insurance if the business has one or more employees.

<sup>3</sup> s. 627.0625(1)(c), F.S.

(d) Becoming surety on, or guaranteeing the performance of, bonds and undertakings required or permitted in a judicial proceeding or otherwise allowed by law, including surety bonds accepted by states and municipal authorities in lieu of deposits as security for the performance of insurance contracts;

(e) Fidelity insurance as defined in s. 624.6065, F.S., for the purposes of the Florida Insurance Code other than part XX of chapter 627, F.S.; or

(f) Residual value insurance as defined in s. 624.6081, F.S.<sup>4</sup>

Fidelity Insurance: Fidelity insurance means:

(1) Insurance guaranteeing the fidelity of persons holding positions of public or private trust, or indemnifying banks, thrifts, brokers, or other financial institutions against loss of money, securities, negotiable instruments, other specified valuable papers, or tangible items of personal property caused by larceny, misplacement, destruction, or other stated perils, including loss while being transported in an armored motor vehicle or by messenger and including insurance for loss caused by the forgery of signatures on, or alteration of, specified documents and valuable papers.

(2) Insurance against losses that financial institutions become legally obligated to pay by reason of loss of customers' property from safe-deposit boxes.<sup>5</sup>

Boiler and Machinery Insurance: This insurance covers property loss or liability resulting from the accidental breakdown or explosion of boilers, pipes, pressure containers, machinery, or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured; together with provision for medical, hospital, and surgical benefits to the injured person, irrespective of the legal liability of the insured, when issued as an incidental coverage which is part of a liability insurance contract.<sup>6</sup>

Leakage and Fire Extinguishing Equipment Insurance: This insurance covers property loss or damage caused by the breakage or leakage of sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus.<sup>7</sup>

Fleet Commercial Motor Vehicle Insurance: This insurance covers vehicles used in a business. The coverage will reimburse the business if business vehicles are damaged or stolen or if the driver injures a person or property. The bill only allows commercial motor vehicle insurance covering a fleet of five or more self-propelled vehicles to be excluded from rate filing with the OIR.

Errors and Omissions Insurance ("E & O"): This insurance covers a business for negligent acts and omissions that may harm its clients.<sup>8</sup>

Directors' and Officers', Employment Practices, and Management Liability Insurance: Directors and officers liability insurance (D&O) covers directors and officers of a company for negligent acts or omissions and for misleading statements that result in suits against the company. D&O policies may be broadened to include coverage for employment practices liability.<sup>9</sup>

Intellectual Property and Patent Infringement Insurance: This insurance coverage protects businesses for copyright, trademark or patent infringement claims arising out of the business' operation.<sup>10</sup> Patent infringement liability insurance is professional liability insurance for manufacturers, users and sellers who are accused of infringing a patent holder's rights. Intellectual property insurance is a broadened form of patent enforcement insurance and expands coverage to include trademarks, copyrights and computer software design.

<sup>4</sup> s. 624.606, F.S. Exclusions for surety insurance are also found in this statute.

<sup>5</sup> s. 624.6065, F.S.

<sup>6</sup> s. 624.605(1)(g), F.S.

<sup>7</sup> s. 624.605(1)(h), F.S.

<sup>8</sup> <http://www2.iii.org/glossary/> (defining errors and omissions insurance) (last viewed March 13, 2010).

<sup>9</sup> <http://www2.iii.org/glossary/> (defining directors' and officers' liability insurance) (last viewed March 13, 2010).

<sup>10</sup> [http://www.insurecast.com/html/intellectualproperty\\_insurance.asp](http://www.insurecast.com/html/intellectualproperty_insurance.asp) (defining intellectual property and patent infringement insurance) (last viewed March 13, 2010).

Advertising Injury and Internet Liability Insurance: Advertising injury insurance provides coverage for advertising injuries which are statements made in advertising activities that cause loss to another person or business. Internet liability coverage protects businesses from liabilities that arise from the conducting of business over the Internet, including copyright infringement, defamation, and violation of privacy.<sup>11</sup>

The bill also exempts the following types of commercial risks from rate filing with the OIR:

Property Risks Rated Under a Highly Protected Risks Rating Plan: These risks are properties that are judged to be subject to a much lower than normal probability of loss by virtue of low hazard occupancy or property type, superior construction, special fire protection equipment and procedures, and management commitment to loss prevention.<sup>12</sup>

Other Types of Commercial Insurance Determined By the OIR: The bill allows the OIR to exempt types of commercial lines insurance not specifically enumerated in the bill from rate filing. Types of commercial insurance with a competitive market or that are similar to the types of commercial insurance listed in the bill can be exempt from rate filing by the OIR. The OIR can also exempt commercial insurance from rate filing if the exemption would improve the general operational efficiency of the OIR.

### **Filing and Regulation of Commercial Insurance Rates**

Section 627.062(2), F.S., governs rate filing, review, and approval for the types of commercial insurance enumerated in the bill except fleet commercial motor vehicle insurance. Fleet commercial motor vehicle insurance rate filings, review, and approval are governed by s. 627.0651, F.S. This type of insurance, however, is still subject to the other provisions in s. 627.062, F.S.

Insurance company rates are regulated by the OIR to ensure they are not excessive, inadequate, or unfairly discriminatory. Rates are filed by insurance companies with the OIR for approval or disapproval and are disapproved if they are excessive, inadequate or unfairly discriminatory. The OIR looks at factors listed in statute to determine if a rate is excessive, inadequate, or unfairly discriminatory.<sup>13</sup> The rate factors the OIR must consider in the rate review process for the types of commercial insurance enumerated in the bill, except fleet commercial motor vehicle insurance, are found in s. 627.062(2)(b), F.S. The rate factors for fleet commercial motor vehicle insurance are found in s. 627.0651(2), F.S. After consideration of the rate factors, the OIR uses standards found in s. 627.062(2)(e), F.S., to determine if a rate filed is excessive, inadequate, or unfairly discriminatory. The standards in s. 627.062(2)(e), F.S., apply to all the types of commercial insurance covered by the bill, except fleet commercial motor vehicle insurance. The standards that apply to fleet commercial motor vehicle insurance rates are contained in s. 627.0651(3)-(8), F.S.

### **Effect of the Bill on Filing of Commercial Insurance Rates**

Insurance companies writing the types of commercial insurance listed in the bill will no longer have to file rates for these types of insurance with the OIR. Thus, insurance companies will charge rates for these types of commercial insurance without the rate being approved by the OIR. Current law prohibiting rates from being excessive, inadequate, or unfairly discriminatory still applies to the rates for the types of commercial insurance covered by the bill. Thus, the insurance company writing the commercial policies covered by the bill must ensure the rates charged meet this requirement.

General liability, workers' compensation, and property insurance are the most common types of commercial insurance bought by businesses. These types of commercial insurance are not covered by the bill. Thus, rates these types of insurance will still be filed with, reviewed by, and approved by the OIR.

<sup>11</sup> <http://www2.iii.org/glossary/> (defining internet liability insurance) (last viewed March 13, 2010).

<sup>12</sup> <http://www.irmi.com/online/insurance-glossary/terms/h/highly-protected-risk-hpr-property.aspx> (last viewed March 13, 2010).

<sup>13</sup> s. 627.062(2)(b), F.S.

If an insurance company changes a rate or a rating organization changes the loss cost for the types of insurance listed in the bill, the insurer or rating organization must notify the OIR within 30 days of the effective date of the rate change. The bill specifies the contents of the notification. An insurance company writing insurance or the rating organization calculating the loss cost for the types of insurance covered by the bill must keep specified documentation relating to the insurance. The bill allows the OIR to examine the documentation to determine if the rates being charged by the insurance company are excessive, inadequate, or unfairly discriminatory and the OIR can require the insurance company, at its expense, to provide any information the OIR needs to fully evaluate the company and the rate being charged. The OIR will use the rate factors and standards in current law to make a determination whether the rate charged for the commercial insurance is excessive, inadequate, or unfairly discriminatory.

The bill also exempts commercial motor vehicle insurance covering a fleet of five or more vehicles from s. 627.0645, F.S., which requires specific types of insurance to annually file rates with the OIR. The other types of commercial insurance listed in the bill are already exempt from the annual rate filing statute by current law.

### **Form Filing for Insurance Companies**

With limited exceptions, s. 627.410, F.S., requires every insurance policy, application, endorsement, or rider to be filed with and approved by the OIR prior to use by the insurance company. The bill does not exempt commercial insurance from form regulation by the OIR. Thus, the insurance forms used in the types of commercial insurance delineated in the bill must still be approved by the OIR before use by the insurance company.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 627.062, F.S., relating to rate standards.

**Section 2:** Amends s. 627.0651, F.S., relating to making and use of rates for motor vehicle insurance.

**Section 3:** Provides an effective date of January 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

In the agency analysis on the originally filed version of the bill, the OIR notes the fiscal impact on the agency is unknown. However, it would appear the bill would result in a reduced workload for the OIR because the OIR will no longer be required to review every rate filing for the types of commercial insurance being exempted from the filing requirement.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

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

The bill should not have a rate impact on the private sector as rates for the types of commercial insurance covered by the bill still cannot be excessive, inadequate, or unfairly discriminatory as determined by current law.

The bill will allow insurers that sell the types of coverages listed in the bill to make pricing changes for those coverages on a more expedited basis and avoid some of the expense incurred in a full rate review process.

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:

In its analysis of the original filed version of the bill<sup>14</sup>, the OIR notes:

- The Office's current rule, Section 69O-170.019, Florida Administrative Code - Individually Rated Risks, already allows insurers to address the intent set forth in this bill.
- The Office recommends that the exemption of Commercial Auto from the filing and review requirements of Section 627.062(2), F.S. be limited to large commercial fleets of 20 or more self propelled vehicles.
- The Office recommends that Section 627.0645(1)(b), F.S. be amended to read:

“Commercial property and casualty insurance as defined in s. 627.0625(1), F.S. other than commercial multiple line ~~and commercial motor vehicle~~, shall make an annual base rate filing for each such line with the office no later than 12 months after its previous base rate filing, demonstrating that its rates are not inadequate.”

- The Office has made the aforementioned recommendations to the bill's advocates. The Office does not support the legislation in its current form.

The OIR noted other comments in the analysis of the originally filed bill but these comments have been addressed by the bill. The above comments have not been addressed by the bill and would still be applicable.

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<sup>14</sup> Agency analysis on file with the Insurance, Business, and Financial Affairs Policy Committee.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 25, 2010, the Insurance, Business & Financial Affairs Policy Committee considered a proposed committee substitute (PCS), adopted two amendments to the PCS, and reported the PCS favorably with a committee substitute. The amendments adopted applied the rate change notification requirement to rating organizations that set the loss cost for the types of commercial insurance covered in the PCS and made a corresponding change for rating organizations that set the loss cost for fleet commercial motor vehicle insurance. The staff analysis was updated to reflect the committee substitute.