

FINAL BILL ANALYSIS

BILL #: CS/HB 1087

FINAL HOUSE FLOOR ACTION:
111 Y's 4 N's

SPONSOR: Rep. Holder

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/CS/SB 1252

SUMMARY ANALYSIS

CS/HB 1087 passed the House on April 29, 2011, and subsequently passed the Senate on May 2, 2011. The bill was approved by the Governor on June 17, 2011, chapter 2011-174, Laws of Florida, and becomes effective July 1, 2011. The bill makes various changes to insurance-related provisions. Among the changes, the bill:

- Permits workers' compensation benefits to be paid on a prepaid card, if authorized by the injured employee;
- Changes the assessment basis for the Special Disability Trust Fund within the Division of Workers' Compensation from a fiscal year to a calendar year basis;
- Exempts from certificate of authority requirements any insurer domiciled outside of the U.S. and covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S.;
- Changes restrictions on how often insurers may employ the same accountants to complete the audited financial report required by the Office of Insurance Regulation (OIR);
- Bars persons who commit certain felonies from applying for licensure under the Florida Insurance Code and specifies waiting periods for licensure when other offenses have been committed;
- Requires that managing general agent contracts provide that funds collected for an insurer be held in a bank insured by the Federal Deposit Insurance Corporation;
- Allows applicants for a public adjuster apprenticeship license to qualify by two additional adjuster designations, Certified Adjuster and Certified Claims Adjuster;
- Changes recipient of notice from "named insured" to "first named insured" for certain insurance policy notices;
- Provides that when a cancellation request is made by the insured in writing, the effective date of cancellation is the date requested by the insured or the date of the request if no date is specified;
- Provides that requests for insurance-related information from self-insured corporations must be sent by certified mail to the registered agent of the disclosing entity;
- Exempts a service warranty entity from licensure requirements if the service warranties it offers are only offered, marketed, or sold to nonresidents of this state;
- Provides that workers' compensation premium audits are not required for workers' compensation coverage, except as provided for in the insurance policy, when ordered by the OIR, or upon request of the insured;
- Removes the requirement that an agent or carrier collect the first motor vehicle insurance premium payment by cash, check, or money order, even where automatic payroll deduction or electronic funds transfer has been authorized;
- Provides that certain classes of insurance and commercial lines risks are subject only to specific conditions of eligibility for exporting coverage, including issuance by a licensed and statutorily eligible surplus lines agent and signed disclosures from the insured acknowledging the surplus lines coverage is not protected under the Florida Insurance Guaranty Act;
- Designates civil fines for persons who violate s. 817.234, F.S., by making false and fraudulent insurance claims for the purpose of receiving insurance proceeds from motor vehicle insurance contracts.

The bill does not appear to have a fiscal impact on state or local government, and should provide cost savings to the private sector. The bill provides an effective date of July 1, 2011, except as otherwise provided.

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

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Payment of Workers' Compensation Benefits

Currently, workers' compensation benefits are payable by check or, if authorized by the employee, by direct deposit into the employee's account at a financial institution.

The bill permits workers' compensation benefits to also be paid on a prepaid card, if authorized by the injured employee. When payment is made on a prepaid card, the employee must be provided with: at least one means of accessing their entire compensation payment once per week without incurring fees; the ability to make point-of-sale purchases without incurring fees from the financial institution issuing the prepaid card; and the terms and conditions of the prepaid card program. Carriers are required to keep records of all payments made, and the Department of Financial Services (DFS) is provided with rulemaking authority relating to the payment of benefits on a prepaid card. The carrier's obligation to pay compensation is satisfied when it directly deposits compensation onto the prepaid card, and compensation is considered paid on the date the funds become available for withdrawal by the employee.

Special Disability Trust Fund Assessments

The Special Disability Trust Fund (SDTF) within the Division of Workers' Compensation was established to encourage the employment, reemployment, and accommodation of the physically disabled by reducing an employer's insurance premium for reemploying an injured worker and to protect employers from excess liability for compensation and medical expense when an injury to a physically disabled worker aggravates a preexisting permanent physical impairment.¹ Reimbursement under the SDTF is not available for injuries occurring on or after January 1, 1998. Currently, the SDTF is maintained by annual assessments on insurers providing compensation insurance coverage.²

The bill changes the SDTF assessment basis from a fiscal year to a calendar year basis. The new formula will apply on a calendar year basis beginning with workers' compensation rate filings that become effective on or after January 1, 2012. The bill provides that assessments must be paid quarterly.

Alien Insurer Exemptions from Certificate of Authority Requirements

The Office of Insurance Regulation (OIR) is responsible for all activities concerning insurers and other risk bearing entities authorized under the Florida Insurance Code.³ Regulatory oversight includes licensure, approval of rates and policy forms, market conduct and financial exams, solvency oversight, administrative supervision, and licensure of viatical settlement and premium finance companies, as provided in the Florida Insurance Code or chapter 636, F.S.⁴ The OIR's Life and Health Financial Oversight unit monitors financial conditions through the use of internal

¹ FLA. STAT. § 440.49(1).

² FLA. STAT. § 440.49(9)(b)1.

³ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code."

⁴ FLA. STAT. § 20.121(3)(a)2.

financial analysis and on-site examinations.⁵ Periodic financial report submission is part of the monitoring process. The Florida Insurance Code contains provisions designed to prevent insurers from becoming insolvent and to protect policyholders. These provisions include minimum capital and surplus requirements⁶ and financial reporting requirements.⁷

Florida law requires that insurers and other risk-bearing entities obtain a certificate of authority (COA) prior to engaging in insurance transactions^{8,9} unless specifically exempted.¹⁰ Currently, life insurance policies or annuity contracts issued by an insurer domiciled outside of the United States (U.S.) covering only persons who, at the time of issuance are not residents of the U.S., are exempt from the requirement to obtain a COA if certain conditions are met. Even though these insurers are not required to obtain a COA, they must comply with statutory capital and surplus requirements, and submit both annual and quarterly financial statements to the OIR.¹¹

The bill provides an exemption from the requirement to obtain a COA for any insurer domiciled outside of the U.S. and covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. A “nonresident” is defined as a person who resides in and maintains a physical place of domicile in a country other than the U.S., and which (s)he intends to maintain as her or his permanent home.

To be eligible for the exception, the insurer must:

- Register with the OIR.
- Provide the following information to the OIR on an annual basis:
 - Names of the owners, officers and directors and number of employees.
 - Lines of insurance and types of products offered.
 - A statement from the applicable regulatory body of the insurer's domicile certifying that the insurer is licensed or registered in that domicile.
 - A copy of filings required by the insurer's domicile.

The bill requires that the exempt insurer include a disclosure on all certificates issued in Florida reflecting that the policy has not been approved by the OIR. The insurer may not solicit, sell, or accept application for any insurance policy or contract for issue or delivery to any U.S. resident. For purposes of this subsection of statute, a U.S. resident is a person who has:

- Had her or his principal place of domicile in the United States for 180 days or more in the 365 days prior to issuance or renewal of the policy; or,
- Registered to vote in any state; or,
- Made a statement of domicile in any state; or,
- Filed for homestead tax exemption on property in any state.

Expanding the opportunity for exemption from the COA requirement to all insurers domiciled outside of the U.S. and covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. will allow for a variety of insurance offerings. Nonresidents, in their domicile outside the U.S., may be able to purchase health, life, property and casualty,

⁵ http://www.floir.com/lh/oir_LHFO_index.aspx

⁶ FLA. STAT. § 624.4095.

⁷ FLA. STAT. § 624.424.

⁸ FLA. STAT. § 624.10.

⁹ FLA. STAT. § 624.401.

¹⁰ FLA. STAT. § 624.402.

¹¹ FLA. STAT. § 624.402(8).

supplemental, and other types of insurance coverage for the time they are in Florida, and for their property in the state. The nonresidents may also visit Florida to avail themselves of services covered under the policy or contract.

The bill provides for penalties should an alien insurer¹² fail to comply with the provisions of the law.

In replacing existing law, the bill reduces the requirements that insurers offering life insurance policies or annuity contracts must meet to be exempt from the requirement to obtain a COA. The bill provides for no capital or surplus requirements, and does not require submission of financial statements.

Annual Statements of Authorized Insurers

Each authorized insurer is required to file with OIR full and true statements of its financial condition, transactions, and affairs.¹³ Among these statements, authorized insurers are required to file an audited financial report with OIR following an annual audit conducted by an independent certified public accountant.¹⁴ Current law prohibits an authorized insurer from using the same accountant or partner of an accounting firm to prepare the annual audit for more than seven consecutive years.¹⁵ Once the threshold of seven consecutive years is reached, the insurer may not begin to use the same accountant again until a period of two years has passed.¹⁶

The bill revises the limits on the number of years for which the same accountant or partner of an accounting firm may be used in preparing an audited financial report. It reduces the seven year limitation on using the same accountant to a period of five years and increases the two-year waiting period to a period of five years.

Disqualification and Penalties for Financial Services Licensees and Applicants

Section 626.207, F.S., in part, bars persons who have committed certain felonies from obtaining a license (e.g., as an insurance agent) under the Florida Insurance Code. The DFS is required to adopt rules establishing specific waiting periods to apply for licensure when a person has engaged in criminal conduct. The waiting periods are based on the type of conduct, length of time since the conduct occurred, and the propensity to reoffend, and may be adjusted based on aggravating and mitigating factors.

The bill amends s. 626.207, F.S., to bar persons who commit a first degree felony, capital felony, a felony involving money laundering, fraud, or embezzlement, or a felony directly related to the “financial services business” from applying for licensure under the Florida Insurance Code. “Financial services business” is defined to mean any financial activity regulated by the DFS, the OIR, or the Office of Financial Regulation (OFR). Further, the following waiting periods for licensure are specified for other crimes: 15 years for felonies involving moral turpitude; 7 years for all other felonies; and 7 years for misdemeanors related to the financial services business. The DFS is authorized to adopt rules for additional waiting periods, which must

¹² FLA. STAT. § 624.06 – An alien insurer is an insurer other than an insurer formed under the laws of any state, district, territory, or commonwealth of the United States.

¹³ FLA. STAT. § 624.424(1)(a).

¹⁴ FLA. STAT. § 624.424(8)(a).

¹⁵ FLA. STAT. § 624.424(8)(d).

¹⁶ *Id.*

provide for mitigating and aggravating factors. The application of mitigating factors may not reduce a waiting period to less than 7 years. The applicable waiting period begins upon the applicant's final release from supervision or completion of the criminal sentence imposed. Upon conclusion of the waiting period, the applicant bears the burden of demonstrating that he or she has been rehabilitated, does not pose a risk to the insurance-buying public, and is qualified for licensure. The permanent bar and waiting periods are not subject to s. 112.011, F.S., which provides that prior convictions are not a bar to certain employment with the state and that persons whose civil rights have been restored are not barred from engaging in an occupation, profession, or business for which a license, permit, or certificate is required.

Managing General Agents

Current law provides that a managing general agent placing business with an insurer must meet minimum contract specifications.¹⁷ Among these, the managing general agent must maintain a contract provision providing that all funds collected for an account of the insurer will be kept in a bank which is a member of the Federal Reserve System.¹⁸

The bill requires the contract to provide that the managing general agent will keep all funds collected for an account of the insurer in a bank which is insured by the Federal Deposit Insurance Corporation.

Public Adjusters

Chapter 626, F.S., regulates insurance field representatives and operations. Part VI of the chapter governs insurance adjusters. The law recognizes various types of adjusters, including public adjusters, independent adjusters, company employee adjusters, and catastrophe or emergency adjusters. Adjusters can be further classified as resident or nonresident. Resident adjusters are those who reside in Florida and are licensed in Florida, whereas nonresident adjusters reside outside of Florida and are licensed by their home state.

The DFS regulates all types of adjusters. The DFS reports that as of January 31, 2011, Florida licenses almost 32,500 resident adjusters and almost 45,000 non-resident adjusters.¹⁹ Of these, 2,086 are resident public adjusters, and 380 are non-resident public adjusters.²⁰

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies.

Generally, public adjusters are paid a percentage of the claim payment. The fee percentage is usually negotiated between the public adjuster and the policyholder, except in residential property and condominium association property claims. For these claims, public adjuster fees are limited by law.²¹ Independent and company employee adjusters do not charge policyholders a fee for adjusting the claim.

¹⁷ FLA. STAT. § 626.7451.

¹⁸ FLA. STAT. § 626.7451(3).

¹⁹ Information obtained from the DFS dated 2/25/11, on file with staff of the Insurance & Banking Subcommittee.

²⁰ According to DFS, there are 15,010 licensed resident independent adjusters (13,847 non-resident independent adjusters); 15,399 licensed resident company employee adjusters (30,675 non-resident company employee adjusters).

²¹ FLA. STAT. § 626.854(11).

Public adjusters are licensed by the DFS if they meet the statutory qualifications for licensure found in s. 626.865, F.S. Qualifications include age, residency, testing, experience, and trustworthiness.²² Public adjusters must also present a \$50,000 bond to the DFS in order to be licensed.²³ No bond is required of company employees or independent adjusters.

Administrative rules relating to public adjusters, in part, address public adjuster contract cancellation, public adjuster actions relating to business referrals, and public adjuster actions relating to the hiring of other professionals to help with the claim.²⁴ Administrative rules also govern the solicitation of business and advertising by public adjusters and the contract used by public adjusters.²⁵ Public adjusters must also abide by general ethical rules applicable to all types of adjusters.²⁶

In 2008, the Legislature enacted numerous changes to laws relating to public adjusters. Changes included fee restrictions, restrictions on solicitation and other business practices of public adjusters, and restrictions relating to advertising or inducement of business by public adjusters. The 2008 legislation also created a public adjuster apprenticeship license and specified licensing requirements in s. 626.8651, F.S.²⁷

In 2009, the Legislature enacted further changes related to the activity of public adjuster and public adjuster apprentices.²⁸ This legislation also required an applicant for a public adjuster apprentice license to obtain a certain claims adjuster designation, an Accredited Claims Adjuster (ACA), in order to qualify for a license as a public adjuster apprentice. The coursework required for an ACA designation is offered at Florida accredited postsecondary institutions (many Florida community colleges and the University of Central Florida).

The bill allows applicants for a public adjuster apprenticeship license to have two additional adjuster designations, Certified Adjuster (CA) and Certified Claims Adjuster (CCA), in order to qualify for a license as a public adjuster apprentice. The coursework for the CA designation is offered by All-Lines Training and the coursework for the CCA designation is offered by the Association of Property and Casualty Claims Adjusters. The coursework is approved by the DFS.

Current Florida law recognizes the CA and CCA designations in the field of insurance adjusting. For example, independent or company employee adjusters having the designation of CA or CCA (or other designations set forth in statutes, including the ACA designation) are exempt from the examination requirement for licensure as an independent or company adjuster.²⁹

Persons Designated to Receive Insurer Notifications

Chapter 627, F.S., specifies requirements for notification to a policyholder, or the “named insured,” regarding renewal premium,³⁰ nonrenewal,³¹ cancellation³² or termination under

²² Similar qualifications apply to independent and company adjusters.

²³ FLA. STAT. § 626.865(2).

²⁴ Rule 69B-220.201(4) and (5), F.A.C.

²⁵ Rule 69B-220.051, F.A.C.

²⁶ FLA. STAT. § 626.878.

²⁷ Ch. 2008-220, L.O.F.

²⁸ Ch. 2009-87, L.O.F.

²⁹ FLA. STAT. § 626.221(2)(k).

³⁰ FLA. STAT. § 627.4133(1)(a); FLA. STAT. § 627.4133(2)(a); FLA. STAT. § 627.7277(2).

particular lines of personal and commercial insurance, including workers' compensation and employer's liability, property, casualty, homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, and apartment building insurance. Additionally, specific statutory provisions for motor vehicle insurance require notice to the "named insured" regarding: intent not to renew,³³ intent to transfer a policy,³⁴ and eligibility for insurance through the Automobile Joint Underwriting Association in the event of cancellation or nonrenewal.³⁵

The party designated to receive these notices under current law is the "named insured," the persons or entities listed on the policy declaration page. For personal property or motor vehicle coverage, "named insured" may include one or more individuals. In commercial coverage, particularly in the context of a partnership or corporation, the "named insured(s)" of a policy may often include persons or entities related by common ownership or common enterprise.

A "first named insured" is generally the first named insured included in the policy declaration, the person who assumes the legal authority to act on the policy with regard to cancellation, policy changes, reporting losses, and other administrative functions. Generally, in a policy that covers more than one "named insured," the "first named insured" is designated by the policyholder(s) on an application at the time the policy is adopted.

For example, a company operating multiple retail locations may purchase a workers' compensation policy identifying the company headquarters as the "first named insured" and each retail store location as a "named insured."³⁶ Even if the company's headquarters assumes responsibility for all premium payments, policy changes and other administrative matters as the designated "first named insured," current law requires insurers to deliver certain policy notices to each individual store location listed as a "named insured."

Language for insurance policy provisions is developed and submitted by insurers for approval by the OIR. Many insurance companies, especially domestic insurers, rely on ratemaking organizations like the Insurance Services Office (ISO)³⁷ that have drafted and secured approval for standard form language. In effect, ISO forms generally reflect industry practice. Among the form language provisions drafted by ISO and approved by OIR, requirements for notice to policyholders are included.

Previously, common industry practice for delivery of cancellation and nonrenewal notices included only the "first named insured," reflected in part by the OIR's approval of form language³⁸ submitted by the ISO. In Form CG 02 20 12 07, effective December 2007, and approved by the OIR, common policy conditions provided that notices of cancellation and nonrenewal shall be mailed or delivered to the "first Named Insured."³⁹

³¹ FLA. STAT. § 627.4133(1)(a); FLA. STAT. § 627.4133(2)(b).

³² FLA. STAT. § 627.4133(1)(b); FLA. STAT. § 627.4133(2)(b); FLA. STAT. § 627.7278(3)(a); FLA. STAT. § 627.7281.

³³ FLA. STAT. § 627.728(4)(a).

³⁴ FLA. STAT. § 627.728(4)(d).

³⁵ FLA. STAT. § 627.728(6).

³⁶ Rule 3(D) of the National Council on Compensation Insurance's Experience Rating Plan Manual (2003) requires that in order to combine two or more entities under one policy, the same person, group of persons or corporation must own more than 50% of each entity.

³⁷ For more information, visit www.iso.com.

³⁸ Form language in the ISO forms cited herein is not applicable to all forms of insurance implicated by changes to this bill. Rather, these forms are indicative of the current interpretation of statutory requirements for notice to the "named insured" that is included in other ISO forms approved by OIR for additional lines of insurance. *See also* Form IL 02 55 01 10 (amending Form IL 02 55 09 08).

³⁹ Insurance Services Office, Form CG 02 20 12 07: Florida Changes – Cancellation and Nonrenewal (December 2007).

Subsequently, ISO has instituted Form CG 02 20 04 11, effective April 2011, and approved by the OIR, providing common policy conditions for cancellation and nonrenewal consistent with current statutes requiring delivery of notice to the “Named Insured(s).”⁴⁰ Language in Form CG 02 20 04 11 is consistent with an effort by the OIR to conform review and approval of standard policy language regarding policyholder notice to the current statutory requirement of notice to the “named insured.” Under current law and the OIR interpretations, when notice is delivered to the “named insured(s)” on a policy, multiple copies of each notice must be delivered, even if all “named insured(s)” are located at the same address.

Industry representatives have indicated that insurance policies usually incorporate lending institutions as loss payees by endorsement rather than as a “named insured.”⁴¹ As a loss payee under a policy endorsement, the lending institution qualifies for notice from the insurer notwithstanding the provisions for notices to “named insured(s).”⁴²

The bill adopts the previous industry practice of delivering certain required policy notices to only the party with administrative authority on the policy, the “first named insured.” In effect, the bill requires the following policy notices to be delivered to only the “first named insured” rather than all “named insured(s).”⁴³

- notices of nonrenewal or renewal premium for workers’ compensation, employer’s liability, property, and casualty insurance;
- notices of cancellation or termination for property and casualty insurance;
- notices of renewal premium, nonrenewal, cancellation, or termination for any personal lines or commercial residential property insurance policy, including, but not limited to, homeowner’s, mobile home owner’s, farmowner’s, condominium association, condominium unit owner’s, and apartment building; and
- notices of renewal premium, cancellation, intent not to renew, intent to transfer, and eligibility for insurance through the Automobile Joint Underwriting Association in policies providing motor vehicle insurance.

For example, in the context of a workers’ compensation policy, this bill limits notice of renewal premium or nonrenewal to the “first named insured,”⁴⁴ usually the administrative office or primary center of operations for a business that has included multiple “named insured” entities on a policy.

When cancellation of a workers’ compensation policy is requested by the insured, current law provides that cancellation is effective when the notice of cancellation is sent by the insurer to the insured.⁴⁵ The bill provides that when a cancellation request is made by the insured in writing, a notice of cancellation is not required to be delivered to the insured. Instead, the bill provides that the effective date of cancellation is either the date requested by the insured or otherwise the date of the written request if no date is specified.

⁴⁰ Insurance Services Office, Form CG 02 20 04 11: Florida Changes – Cancellation and Nonrenewal (April 2011).

⁴¹ See, e.g., Insurance Services Office, Form CP 12 18 06 95: Loss Payable Provisions (June 1995); additional industry information provided to Subcommittee staff, on file with Insurance and Banking Subcommittee.

⁴² *Id.*

⁴³ Provisions relating to lines of property and casualty insurance through surplus lines carriers are not impacted by this bill. In effect, notice of cancellation and nonrenewal of property or casualty policies through surplus lines carriers will continue to be required to be delivered to the “named insured(s)” as provided in s. 626.9201, F.S.

⁴⁴ Cancellation notices for workers’ compensation insurance policies are not impacted by this bill. Requirements for cancellation notices in a workers’ compensation policy are provided in s. 440.42(3), F.S.

⁴⁵ FLA. STAT. § 627.4133(4).

Delivery of Information Requested from a Self-Insured Corporation

Section 627.4137, F.S., requires insurance companies and insured entities to provide claimants with certain insurance-related information upon request. The section, however, does not specify the manner in which such requests are to be made.

The bill provides that requests for insurance-related information from self-insured corporations must be sent by certified mail to the registered agent of the disclosing entity.

Licensure of Service Warranty Associations

Service warranty associations are entities, other than insurers, which issue service warranties. A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.⁴⁶ Service warranty entities must meet regulatory requirements for licensure, form submission and approval, quarterly reporting and examination by the OIR⁴⁷. Current law requires any service warranty entity to meet these licensure requirements, regardless to whom the service warranty is offered.⁴⁸

The bill creates new exemptions to the licensure requirements for service warranty entities. A service warranty entity is exempt from the licensure requirements if the service warranties it offers are only offered, marketed, or sold to nonresidents of this state. The bill requires an exempt service warranty entity to file a letter of notification with the OIR stating that it is licensed or otherwise not regulated in the state in which the entity transacts business. Included with this letter, the bill requires the entity to submit home address and contact information as well as additional information about the entity's ownership, employees, and states in which business is transacted. The bill requires that the entity notify the OIR within 30 days of ceasing business in this state. Finally, the bill amends s. 634.403(5), F.S., limiting a misdemeanor of the first degree to those entities offering service warranty agreements to residents of this state without a license.

Insurance Contracts for Workers' Compensation Coverage

The bill creates s. 627.442(2), F.S., to provide that premium audits are not required for workers' compensation coverage, unless required by an insurance policy, by order of the OIR, or by request of the insured.

Motor Vehicle Insurance Contracts

Currently, motor vehicle insurance policies may be issued in Florida if the insurer or agent has collected at least two months' premium from the insured.⁴⁹ However, this requirement is not applicable to policies established to be paid pursuant to payroll deduction plans or an automatic

⁴⁶ FLA. STAT. § 634.401(13).

⁴⁷ FLA. STAT. §§ 634.401-634.444.

⁴⁸ FLA. STAT. § 634.403(1).

⁴⁹ FLA. STAT. § 627.7295(7).

electronic funds transfer payment plan, so long as the first payment is made by cash, cashier's check, check, or money order.⁵⁰

The bill eliminates the requirement that the first payment be received by cash, check, or money order for policies designed to be paid pursuant to a payroll deduction or electronic funds transfer. For policies not designed to be paid by these automatic payment plans, the bill clarifies that two months' premium must be collected *before* the effective date of the policy. The bill also provides that cancellation of the policy or binder for nonpayment of premium may occur within 60 days of the effective date, regardless of the reason for nonpayment.

Eligibility for Exporting Coverage

Insurers can export insurance coverage by placing insurance in an unauthorized insurer under the state's Surplus Lines Law for coverage of a subject of insurance resident, located, or to be performed in Florida.⁵¹ Currently, insurers may export coverage pursuant to conditions established in s. 626.916, F.S.⁵²

The bill exempts certain classes of insurance in s. 627.062(3)(d)⁵³ from the standard conditions for exporting insurance coverage. Instead, the bill imposes new conditions particular to these exempted insurance classes, including:

- insurance must be placed only by or through a surplus lines agent licensed in Florida;
- insurer must be eligible pursuant to s. 626.918, F.S.; and
- insured must sign a disclosure stating agreement to placing coverage in the surplus lines market and acknowledgement that insurance by surplus lines carriers is not protected under the Florida Insurance Guaranty Act.

The bill establishes a presumption that an insured's signature on the required disclosure operates to eliminate liability or causes of action against a retail agent presenting the form with respect to the statute's diligent effort requirement.

False and Fraudulent Insurance Claims

The bill supplements criminal liability with civil penalty fines for any person violating provisions of s. 817.234, F.S., and making false and fraudulent insurance claims for the purpose of receiving insurance proceeds from motor vehicle insurance contracts. The bill delineates the penalty by number of offenses as follows:

- First Offense – fine up to \$5,000;
- Second Offense – fine from \$5,000 to \$10,000;
- Third or Subsequent Offense – fine from \$10,000 to \$15,000.

⁵⁰ *Id.*

⁵¹ FLA. STAT. § 626.914(3).

⁵² FLA. STAT. § 626.916.

⁵³ FLA. STAT. § 627.062(3)(d)(1) includes the following classes of insurance: excess or umbrella, surety and fidelity, boiler and machinery and leakage and fire extinguishing equipment, errors and omissions, directors and officers, employment practices, and management liability, intellectual property and patent infringement liability, advertising injury and Internet liability insurance, property risks rated under a highly protected risks rating plan, and any other commercial lines categories or kinds of insurance or types of commercial lines risks that the office determines should not be subject to paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance, similarity of such insurance to other categories or kinds of insurance not subject to paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the office.

The bill provides that fines collected as civil penalties under this section shall be paid to the Insurance Regulatory Trust Fund within the Department of Financial Services and thereafter used for the investigation and prosecution of insurance fraud. The bill further provides that a state attorney is not prohibited from entering into an agreement whereby a person charged with a violation consents to payment of the civil fine, despite not admitting or denying charges.

Effective Date and Retroactivity of Certain Amendments

The bill expresses legislative intent that the amendments relating to s. 626.207, F.S., do not apply retroactively. Instead, the bill provides that these amendments apply only to applicants whose applications are pending or submitted on or after the date that the amendments to s. 626.207, F.S., become law.

The bill provides an effective date of July 1, 2011, except for amendments to s. 626.207, F.S., which take effect upon becoming law.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Impact of Alien Insurer Exemptions from Certificate of Authority Requirements

The bill will permit nonresident consumers, as defined, to access additional lines of insurance and types of products, if offered. Nonresidents may visit Florida to utilize insurance benefits. The bill may facilitate the establishment of claims or service centers in Florida by exempted insurers.

Impact of Changes to Persons Designated to Receive Insurer Notifications

Insurance industry representatives suggest that limiting notice requirements to include only the “first named insured” will reduce significant administrative costs associated with sending multiple certified mail notices to all named insureds typically located at the same address.⁵⁴

D. FISCAL COMMENTS:

None.

⁵⁴ Industry information provided to Subcommittee staff, on file with Insurance & Banking Subcommittee.