

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/SB 1252

INTRODUCER: Budget Committee and Senator Smith

SUBJECT: Insurance

DATE: April 18, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Favorable
2.	Frederick	Meyer, C.	BC	Fav/CS
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill provides for circumstances under which an injured worker can receive workers' compensation benefits through the use of a prepaid card. The bill requires insurance carriers to keep records of all payments made under these circumstances and to submit those records to the Division of Insurance Fraud and the Division of Workers' Compensation within the Department of Financial Services (department) upon request.

The bill provides an exemption from certificate of authority requirements for life and health insurers domiciled outside of the U.S., that cover only persons who, at the time of issuance or renewal, are nonresidents of the U.S., but are residing legally in the U.S., under certain conditions.

The bill revises the requirements for disqualification of applicants convicted of certain crimes from licensure for financial services activities regulated by the department, the Office of Insurance Regulation (OIR), or the Office of Financial Regulation (OFR). The bill revises provisions relating to disqualifying periods for persons convicted of other crimes. The bill also grants the Division of Administrative Hearings (DOAH) the final authority of appeals with respect to licensure determinations by the department for certain applicants.

The bill revises the policyholder notification requirements for an insurer in transactions involving the nonrenewal, renewal, or cancellation of workers compensation, employer liability, commercial liability, motor vehicle, or other property and casualty insurance coverage. The bill changes the designated person or persons an insurer is required to notify from the "named insured" to the "first-named insured" in transactions involving the nonrenewal, renewal, or cancellation of such personal and commercial property and casualty insurance (i.e., workers'

compensation, employer liability, motor vehicle, or specified property and casualty insurance coverage).

The bill requires that a request for disclosure of liability insurance information from a self-insured corporation be sent by certified mail to the registered agent of the disclosing entity.

The bill permits workers' compensation insurers to perform premium audits only as required in the policy, as ordered by the OIR, or once every two years if requested by the insured.

The bill permits consumers to negotiate the price of a motor vehicle service agreement and provides an exemption from certificate of authority requirements for service warranty companies that meet certain requirements.

This bill substantially amends following sections of the Florida Statutes: 120.80, 440.12, 440.20, 624.402, 626.207, 627.4133, 627.4137, 627.442, 627.7277, 627.728, 627.7281, and 634.403.

The bill creates section 634.1711, Florida Statutes.

II. Present Situation:

Workers' Compensation

Workers' compensation is a form of insurance designed to provide wage replacement and medical benefits for employees who are injured in the course of employment, in exchange for giving up the right to sue the employer for negligence. Workers' compensation insurance was established to address the costs of lawsuits filed by employees against employers for work-related injuries. Through the Florida workers' compensation law, employers must provide medical benefits and indemnity (wage replacement) benefits to their employees who are injured in the course of their employment.

In Florida, the workers' compensation process is governed by ch. 440, F.S., titled the "Workers' Compensation Law." Section 440.015, F.S., expresses the legislative intent that the Workers' Compensation Law "be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer." Further the Legislature has expressed:

It is the intent of the Legislature to ensure the prompt delivery of benefits to the injured worker. Therefore, an efficient and self-executing system must be created which is not an economic or administrative burden. The department (Department of Financial Services), agency (Agency for Health Care Administration), the Office of Insurance Regulation, the Department of Education, and the Division of Administrative Hearings shall administer the Workers' Compensation Law in a manner which

facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.¹

Chapter 440, F.S., provides a detailed framework for coverage and benefit issues, as well as the process for resolving disputes. These laws provide predictability for employees, employers, and workers' compensation insurance carriers. A greater degree of predictability helps the National Council of Compensation Insurance (NCCI), the rating organization that files annual workers' compensation rates in Florida, to more accurately evaluate the risks being covered and to seek the appropriate premium levels. Further, a greater degree of predictability helps the OIR to evaluate the annual rate filing and establish the most appropriate premium levels for Florida businesses.

Currently, all weekly compensation payments to an injured worker, except for the first payment, are paid by check or, if authorized by the employee, deposited directly into the employee's account at a financial institution.

Licensure and Regulation of Insurers and other Risk Bearing Entities that do Business in Florida

The OIR regulates and licenses insurers and other risk-bearing entities that do business in Florida. Regulatory oversight includes licensure, approval of rates and policy forms, market conduct and financial examinations, solvency oversight, administrative supervision, and licensure of viatical settlement and premium finance companies, as provided in the Florida Insurance Code (ch. 636, F.S.).

The Florida Insurance Code contains provisions designed to prevent insurers from becoming insolvent and to protect and provide recovery for policy holders in the event of insolvency. These provisions include minimum capital and surplus requirements and financial reporting requirements. In addition, five guaranty funds are established under ch. 631, F.S., to ensure that policy holders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding covered claims, up to limits provided by law. Generally, entities subject to regulation under the insurance code are subject to assessments of the applicable guaranty association.

Certificate of Authority Exemptions

Section 624.401, F.S., requires insurers and other risk-bearing entities to obtain a certificate of authority prior to engaging in insurance transactions unless specifically exempted. Section 624.402, F.S., exempts various insurers from obtaining a certificate of authority if certain conditions are met. For example, life insurance policies or annuity contracts issued by an insurer domiciled outside of the U.S., covering only persons who, at the time of issuance, are not residents of the U.S., are exempt from the certificate of authority requirements if certain requirements are met.

¹ Section 440.015, F.S.

Consumer Protection Agent and Adjuster Licensing

Section 626.207, F.S., requires the department to establish waiting periods for applicants to become eligible for licensure as an insurance agent or adjuster following denial, suspension, or revocation. The waiting periods are based on the type of conduct, length of time since the conduct occurred, and the propensity to reoffend. The waiting periods may be adjusted based on aggravating and mitigation factors. The department is required to refuse to issue a license based on enumerated factors in s. 626.611, F.S., such as a demonstrated lack of fitness or trustworthiness to engage in the business of insurance, and is given discretionary authority to refuse to issue a license pursuant to s. 626.621, F.S.

The department currently utilizes a “fit and trustworthiness” prong to deny licenses for applicants with specific criminal backgrounds that make them unsuitable for such a position, especially for those positions that the Legislature believes makes one unfit to be an agent or adjuster. The Division of Administrative Hearings has determined, however, that the current statute must be clarified to specifically list the crimes and offenses which makes one unfit for licensure in the financial services industry and the time periods to be used in the waiting period process. An applicant who is denied a license by the department may challenge the department’s decision through the DOAH.

Notice of Cancellation and Policy Changes Policy Changes

Generally, the “named insured” is the person or persons listed by name on the insurance policy’s declaration page. Although the named insured is commonly one person, for a partnership, corporation, or other entity with insurable interests, multiple named insureds may be included. In regards to personal property or motor vehicle coverage, the named insured is commonly one or more individuals (husband and wife, parent and child, etc).

The “first-named insured” is the first named insured listed on the policy declarations. This insured acts as the legal agent for all named insureds in initiating cancellation, requesting policy changes, reporting notices of loss, accepting any return premiums, or other administrative functions. The first-named insured may also be responsible for payment of the premiums.

For purposes of commercial coverage, generally all named insureds on a policy are related by common ownership or a common business venture. Therefore, multiple named insureds may exist and would be included on the policy. Often, the named insureds are located at the same address, resulting in the insurer mailing multiple copies of the same notice to the same address.

Usually, lenders are added as loss payees with the attached endorsement rather than as named insureds. Status as a loss payee under the attached endorsement entitles the lender to receive notice from the insurer as a loss payee.

The insurance code contains specific policyholder notification requirements for cancellations, renewals, and nonrenewals. These provisions require notification to the named insured or the policyholder. According to the insurance industry, until recently, the OIR had interpreted the “named insured” to be “first-named insured” for purpose of notice requirements for most lines of commercial insurance. Because of this change of notification to the named insured, the OIR

approved revisions to standard forms used in the commercial market related to notification requirements. As a result, all named insureds of personal and commercial policies will receive cancellation and nonrenewal notices.

Warranty Associations and Service Agreements

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreements companies, home warranty associations, and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

Although a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the OIR. The OIR's regulatory authority includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

Under current law, a motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended. It also includes agreements that provide for the coverage or protection which is issued or provided in conjunction with an additive product applied to the motor vehicle, payment of the vehicle protection expenses, and the payment for paintless dent removal services.

To offer motor vehicle service agreements in Florida, one must be licensed and pay an annual nonrefundable license fee to the OIR. All applicants for licensure must meet certain solvency requirements and, once licensed, must report to the OIR certain financial and statistical information on a quarterly basis. Companies are also required to file with the OIR the rates, rating schedules, or rating manuals used, including all modifications of rates and premiums, to be paid by the service agreement holder. Currently, motor vehicle sales persons are not authorized to negotiate the price of motor vehicle service agreements. The OIR does not have authority to approve rates but they are required to review and approve the forms used in the state.

III. Effect of Proposed Changes:

Section 1 amends s. 120.80, F.S., to provide that, notwithstanding ss. 120.569, 120.57, and 120.60, F.S., the Division of Administrative Hearings has final order authority on appeals relating to the Department of Financial Services' determinations on applications for licensure as an insurance agent or adjuster, under specific circumstances. Currently, the DOAH submits a recommended order to the department and the department issues a final order, pursuant to s. 120.57, F.S.

Sections 2 and 3 amends s. 440.12, F.S., allowing a workers' compensation carrier, if authorized by the employee, to make its weekly payment to the employee by means of a prepaid card if the employee is:

- Provided with at least one means of accessing the entire compensation payment each week without incurring fees.
- Provided with the terms and conditions of the program, including a description of any fees.
- Given the option of receiving compensation payments by direct deposit into a personal account at a financial institution.

The bill further requires a carrier to keep a record of all payments and the time and manner of the payments and to furnish the records, if requested, to the Division of Insurance Fraud and the Division of Workers' Compensation within the department.

Section 4 amends s. 624.402, F.S., to provide an exemption from certificate of authority requirements for life and health 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., but residing legally in the U.S., if the insurer meets the following conditions:

- The insurer does not solicit business from U.S. residents.
- The insurer registers with the OIR.
- The insurer provides the following information to the OIR on an annual basis:
 - Names of the owners, officers and directors and number of employees.
 - 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 insurer is also required to include a disclosure in all certificates issued in Florida indicating that the policy has not been approved by the OIR.
- The insurer is required to provide written notice to the OIR within 30 days after ceasing the operations.

Currently, life insurance policies or annuity contracts issued by an insurer domiciled outside of the U.S., covering only persons who, at the time of issuance, are not residents of the U.S., are exempt from the certificate of authority requirements if certain conditions are met. The bill substantially reduces the requirements that these life insurance policies or annuity contracts must meet to be exempt from regulation by the OIR.

Finally, the section defines a "nonresident" as a person who has not: had his or her principal place of domicile in the U.S. for 180 days during the 365 days prior to purchasing or renewing the policy; registered to vote in any state; made a statement of domicile in any state; or filed for homestead tax exemption on property in any state.

Sections 5 amends s. 626.207, F.S., to specify that individual applicants who have committed a first degree felony, capital felony, a felony involving fraud, or a felony directly related to the financial services business are disqualified from obtaining licensure in the profession. The bill

defines the term “financial services business” to mean, any financial activity regulated by the department, the OIR, or the OFR.

Further, money laundering, fraud, embezzlement, and other felonies directly related to the financial services business, such as submitting false or fraudulent insurance claims or applications, theft of premiums or claims money and the sale of unregistered securities, also disqualifies an applicant from licensure.

In accordance with the provisions of the bill, felonies involving moral turpitude, while not permanently disqualifying, are subject to a waiting period, to give the applicant time to demonstrate a clean record of conduct prior to licensure. The bill requires the department to adopt rules establishing a process and application of the disqualifying periods for all other felony and misdemeanor crimes directly related to the financial services business.

Sections 6, 9, 10 and 11 amends s. 627.4133, F.S., relating to workers’ compensation and employer’s liability insurance, property, casualty, except for mortgage guaranty, surety, marine insurance, and motor vehicle, to require the “first-named insured” rather than the “named insured” to receive notice of nonrenewal or renewal premium, as well as cancellation or termination of coverage.

The bill also requires an insurer to provide notice to the “first-named insured” rather than the “named insured” with respect to the nonrenewal or renewal, as well as cancellation or termination of any personal lines or commercial property insurance policy. The bill amend ss. 627.7277, 627.728, and 627.7281, F.S., relating to motor vehicle insurance coverage, to require an insurer to provide notice of the nonrenewal, renewal, and cancellation to the “first-named insured” instead of the “named insured” or policyholder.

Section 7 amends s. 627.4137, F.S., to require that a request for disclosure of liability insurance information from a self-insured corporation be sent by certified mail to the registered agent of the corporation.

Section 8 amends s. 627.442, F.S., to allow workers’ compensation insurers to perform premium audits only as required in the policy, as ordered by the OIR or once every two years, if requested by the insured. Currently, the Financial Services Commission is authorized by rule, in consultation with the department, to require more frequent audits of employers in specified classifications under certain circumstances.

Section 12 creates s. 634.11711, F.S., to allow consumers to purchase a motor vehicle service agreement for a premium amount negotiated with a salesperson under certain conditions. The service agreement company is responsible for establishing minimum premium rates to ensure its solvency under the bill’s provisions. Other than the premium rates, no other terms or conditions of the service agreement may be revised, amended, or changed by the salesperson.

Section 13 amends s. 634.403, F. S., to provide an exemption of certain persons in service warranty companies from licensure requirements under the following conditions.

- The service warranties are sold only to persons who are nonresidents of this state and the person does not issue, market, or cause to be marketed service warranties to residents of this state and does not administer service warranties that were originally issued to residents of this state.
- The person provides the following information to the OIR on an annual basis:
 - The type of products offered.
 - A statement certifying that the products are not regulated in the state in which it is transacting business or that the person is licensed in the state in which it is transacting business.
 - The name of the person; the state of domicile; the home address of the person; the name of the owners and their percentage of ownership; the names of the officers and directors; the name, e-mail and telephone number of a contact person; the states in which it is transacting business; and how many individuals are employed in this state.
- The person is required to provide written notice to the OIR within 30 days after ceasing its operations in this state.

This section of the bill is effective upon becoming a law.

Section 14 provides an effective date of July 1, 2011, except as expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

According to the office, out of state service warranty companies exempted from licensure requirements as provided by the bill, will not result in any reductions in revenues currently collected in this area, as these companies do not currently maintain businesses in Florida.

B. Private Sector Impact:

The bill will reduce administrative costs associated with notifications by providing notice only to the “first-named insured” rather than all “named insureds.” This change is

anticipated to reduce administrative costs associated with mailing multiple notices to all named insureds of a policy.

According to the Division of Workers' Compensation, limiting the number of workers' compensation premium audits to those required by the policy or once every two years, if requested by the insured, will reduce the costs of such audits borne by private employers.

C. Government Sector Impact:

The Office of Insurance Regulation, will be required to approve any revised forms or notices needed to implement the bill. However, according to the office, the costs can be absorbed within existing resources. No additional funding is needed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Budget Committee on April 15, 2011

The committee substitute makes the following changes.

- Grants the Division of Administrative Hearings final order authority on appeals in connection with certain licensure determinations by the Department of Financial Services.
- Permits weekly workers' compensation payments to be paid by an insurer using a prepaid card without the recipient incurring any fees, if certain conditions are met.
- Provides an exemption from certificate of authority requirements for life and health 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., but residing legally in the U.S., if the insurer meets certain conditions.
- Revises the requirements for the disqualification of applicants for licensure of financial services activities regulated by department, the Office of Financial Regulation, or the Office of Insurance Regulation, due to certain felony convictions. The committee substitute requires the department to adopt rules establishing the process and application of disqualifying periods for all other crimes not related to a first-degree felony; capital felony; a felony involving money laundering, fraud, or embezzlement; or a felony directly related to a financial services business.
- Requires that a request for disclosure of liability insurance information from a self-insured corporation be sent by certified mail to the registered agent of the corporation.

- Permits workers' compensation insurers to perform premium audits only as required in the policy, as ordered by the Office of Insurance Regulation, or once every two years, if requested by the insured.
- Permits the consumer to negotiate the price of a motor vehicle service agreement with a salesperson under certain conditions.
- Provides persons in a service warranty company an exemption from licensure requirements if certain requirements are met.

B. Amendments:

None.