

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/CS/SB 178

INTRODUCER: Commerce and Tourism Committee, Banking and Insurance Committee, and Senator Oelrich

SUBJECT: Commercial Insurance Rates

DATE: April 25, 2011 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------|----------------|-----------|------------------|
| 1. | Burgess | Burgess | BI | Fav/CS |
| 2. | McCarthy | Cooper | CM | Fav/CS |
| 3. | Frederick | Meyer, C. | BC | Favorable |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill amends the insurance “Rating Law,” to expand the number of specified types of commercial lines insurance that are exempt from the rate filing and review requirements of s. 627.062(2), F.S.¹ An insurer or rating organization that implements a rate change under this exemption must notify the Office of Insurance Regulation (OIR) of any changes to rates for these exempted types of insurance within 30 days after the effective date of the change. The bill removes the current requirement that for insurers, the 30 day notice must include the total premium written on the product during the immediately preceding year. The bill requires that actuarial data with regard to the rates must be maintained by the insurer or rating organization for two years. The bill removes the current specific requirement that: an insurer must keep underwriting files, premiums, losses, and expense statistics; a rating organization must keep loss and exposure statistics applicable to loss costs.

¹ The bill adds the following types of insurance to be exempt: general liability insurance, nonresidential property insurance, nonresidential multiperil insurance, and excess property insurance. The bill also specifies that the current statutory exemption for directors and officers, employment practices and management liability coverage is also to include fiduciary liability coverage.

The bill expands the commercial motor vehicle insurance coverage that is exempt from specified rate filing and review requirements. Currently, commercial motor vehicle insurance covering a fleet of 20 or more vehicles is exempt from: s. 627.0651(1), F.S., requiring certain rate filing information; s. 627.0651(2), F.S., requiring the OIR to review the rate filing; s. 627.0651(9), F.S., allowing the OIR to require information necessary to evaluate the filing; and s. 627.0645, F.S., requiring annual rate filings. The bill expands this exemption to apply to all commercial motor vehicle insurance, regardless of the size of the fleet being covered. An insurer or rating organization that implements a rate change under this exemption must notify the OIR of any changes to rates for these exempted types of insurance within 30 days after the effective date of the change. The bill removes the current requirement that for insurers, the 30 day notice must include the total premium written on the product during the immediately preceding year. The bill requires that actuarial data with regard to the rates must be maintained by the insurer or rating organization for two years. The bill removes the current specific requirement that: an insurer must keep underwriting files, premiums, losses, and expense statistics; a rating organization must keep loss and exposure statistics applicable to loss costs.

Proponents of the bill state that the types of insurance specified for exemption are those for which a competitive market exists and the insured will likely be a sophisticated purchaser. Although the bill exempts the specified lines from the filing and review requirements, these types of insurance coverages continue to be subject to the requirement that rates shall not be excessive, inadequate, or unfairly discriminatory.

This bill substantially amends sections 627.062 and 627.0651, Florida Statutes.

II. Present Situation:

Kinds of Insurance

The Florida Insurance Code specifies that insurance shall be classified into the following “kinds of insurance:”

- Life.
- Health.
- Property.
- Casualty.
- Surety.
- Marine.
- Title.

Certain insurance coverage may come within the definition of more than one kind of insurance, and the inclusion within the definition of one kind does not necessarily exclude coverage from being considered within the definition of another kind. In addition, kinds of insurance are classified into different “lines of insurance.”² Each kind of insurance is defined in a separate

² Sections 624.601 through 624.6012, F.S.

section.³ “Property insurance” is defined as insurance on real or personal property against loss from any hazard.⁴ “Casualty insurance”⁵ is defined as including the following types of insurance.

- Vehicle insurance -- covers damage to land vehicles, aircraft, or riding animal.
- Liability insurance -- covers legal liability.
- Workers’ compensation.
- Burglary and theft.
- Personal property floater -- insurance on personal effects.
- Glass.
- Boiler and machinery -- insurance against liability and loss to property resulting from accidents or explosions of boilers, pipes, etc.
- Leakage and fire extinguishing equipment.
- Credit insurance.
- Credit property insurance -- coverage on personal property used as collateral.
- Malpractice.
- Animal.
- Elevator -- coverage for damage to property resulting from the maintenance or use of elevators.
- Entertainments -- coverage indemnifying the producer of motion pictures, television productions, sporting events, etc., for postponements or cancellations due to the death or illness of the principals.
- Failure to record documents.
- Failure to file personal property instruments.
- Debt cancellation.
- Miscellaneous.

“Surety insurance” is defined to include contract bonds, indemnity bonds, contract performance guarantee bonds, performance bonds for judicial proceedings, fidelity insurance, and residual value insurance.

OIR Line of Business Mapping

In addition to the statutory definitions, OIR has established a line of business mapping matrix which defines and describes all types and lines of property and casualty insurance products. The matrix categorizes each coverage by line of business code, line of business description, type of insurance, type of insurance description, sub-type of insurance category, and sub-type of insurance description.

Ratemaking Regulation for Property, Casualty, and Surety Insurance

The rating requirements for property, casualty, and surety insurance are located in Part I of ch. 627, F.S.,⁶ which is entitled the “Rating Law,” and applies to all property, casualty, and

³ Sections 624.602 through 624.608, F.S.

⁴ Section 624.604, F.S.

⁵ Section 624.605, F.S.

⁶ Sections 627.011, F.S., through 627.381, F.S.

surety insurance. Section 627.062(1), F.S., specifies that the rates for all classes to which Part I applies “shall not be excessive, inadequate, or unfairly discriminatory.”

Section 627.062(2)(a), F.S., describes the filing process and time frames that must be followed by all insurers subject to its provisions. Generally, insurers may choose to submit their rate to the OIR pursuant to either the “file and use” method or the “use and file” method. Under “file and use,” the insurer submits to the OIR their proposed rate at least 90 days before the rate’s effective date and shall not implement the rate until it is approved. Under “use and file,” the insurer may implement the rate before filing for approval, but must then submit the filing within 30 days of the rate’s effective date. If a portion of the rate is subsequently found to be excessive, the insurer must refund to policyholders the portion of the rate that is excessive.

For those insurers that file under 627.062(2)(a), F.S., the OIR applies the following factors in determining whether a rate is excessive, inadequate, or unfairly discriminatory.

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, saving, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, if applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.
- Other relevant factors impacting frequency and severity of claims or expenses.⁷

Section 627.062(f), F.S., provides that during its review process, the OIR can require an insurer to submit at the insurer’s expense all information that the OIR deems necessary to evaluate the condition of the insurer and the reasonableness of the filing.

Types of Insurance Exempt from Filing and Review Requirements

The following types of insurance are exempt from the filing and review requirements of s. 627.062(2)(a) and (f), F.S.

- 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.

⁷ Section 627.062(2)(b), F.S.

- Intellectual property and patent infringement liability.
- Advertising injury and Internet liability.
- Property risks rated under a highly protected risks rating plan.
- Any other commercial lines categories of insurance or commercial lines risks that the OIR determines should not be subject to the filing and review requirements of 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 filing and review requirements of paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the OIR.⁸

These types of insurance coverages continue to be subject to s. 627.062(1), F.S., which requires that rates shall not be excessive, inadequate, or unfairly discriminatory.

An insurer or rating organization which is exempt under this provision must notify the OIR of any changes for the types of insurance subject to this provision, no later than 30 days after the effective date of the change in rates. The notice to the OIR must include the following.

- The name of the insurer or rating organization.
- The type of insurance.
- The total premium written during the immediately preceding year for that type of insurance (for notice filed by an insurer).
- Loss costs during the immediately preceding year for that type of insurance (for notice filed by a rating organization).
- The average statewide percentage change in rates or loss costs.

Underwriting files, premiums, losses, and expense statistics must be maintained by the insurer and are subject to inspection by the OIR. Loss and exposure statistics must be maintained by the rating organization and are subject to inspection by the OIR. The OIR may require the insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the rates.

Motor Vehicle Insurance Rate Setting

Section 627.062(2)(k)3., F.S., exempts motor vehicle insurance and workers' compensation and employer's liability insurance from the requirements of s. 627.062(2), F.S.

Motor vehicle insurance is subject to the rate setting standards established in s. 627.06501, F.S., through s. 627.06535, F.S. Section 627.0651, F.S., establishes the rate filing requirements for motor vehicle insurers and establishes the standards for determining whether a rate is excessive, inadequate, or unfairly discriminatory. Those standards are almost identical to those in s. 627.062, F.S., with the notable addition of the cost of motor repairs as a factor, and the omission of projected hurricane losses.

⁸ Section 627.062(3)(d), F.S.

Section 627.0651(14), F.S., provides that commercial motor vehicle insurance covering a fleet of 20 or more self-propelled vehicles is exempt from the following specified rate filing and review requirements.

- Section 627.0651(1), F.S., which establishes the procedures required for automobile insurers to file rates, rating schedules and rating manuals.
- Section 627.0651(2), F.S., which specifies the factors the OIR must apply to determine whether an automobile insurer's rates are excessive, inadequate, or unfairly discriminatory.
- Section 627.0651(9), F.S., which allows the OIR to require information necessary to evaluate the filing.
- Section 627.0645, F.S., which requires annual rate filings.

Notwithstanding the exemption from the specified rate filing and review requirements, commercial motor vehicle insurance covering a fleet of 20 or more self-propelled vehicles may not be excessive, inadequate, or unfairly discriminatory.

An insurer or rating organization which is exempt under this provision must notify the OIR of any changes for the types of insurance subject to this provision, no later than 30 days after the effective date of the change in rates. The notice to the OIR must include the following information.

- The name of the insurer or rating organization.
- The type of insurance.
- The total premium written during the immediately preceding year for that type of insurance (for notice filed by an insurer).
- Loss costs during the immediately preceding year for that type of insurance (for notice filed by a rating organization).
- The average statewide percentage change in rates or loss costs.

Underwriting files, premiums, losses, and expense statistics must be maintained by the insurer and are subject to inspection by the OIR. Loss and exposure statistics must be maintained by the rating organization and are subject to inspection by the OIR. The OIR may require the insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the rates.

III. Effect of Proposed Changes:

Section 1 amends s. 627.062, F.S., relating to the categories or kinds of insurance that are not subject to the filing and review requirements of s. 627.062(a) and (f), F.S. The bill expands and clarifies the list of categories that are not subject to the filing and review requirements, as follows.

- Current law identifies directors and officers, employment practices, and management liability as exempt from filing and review requirements. The bill specifies this exemption to also include fiduciary liability. The line of business mapping defines fiduciary liability coverage as "protection against the theft or misuse of funds for an entity involved in the management, investment and distribution of funds."

- The bill adds general liability to the list of exempted coverages. Liability insurance is defined in s. 624.605(1)(b), F.S.
- The bill adds nonresidential property to the list of exempted coverages, except for collateral protection insurance, as defined in s. 624.6085 F.S.
- The bill adds nonresidential multiperil to the list of exempted coverages. Nonresidential multiperil is specifically identified in the line of business mapping as a sub-category of commercial multi-peril.
- The bill adds excess property to the list of exempted coverages.
- The bill adds burglary and theft to the list of exempted coverages.

The bill removes the current requirement that for insurers, the 30 day notice must include the total premium written on the product during the immediately preceding year. The bill removes the current specific requirement that: an insurer must keep underwriting files, premiums, losses, and expense statistics; a rating organization must keep loss and exposure statistics applicable to loss costs. Instead, the bill requires that an insurer or a rating organization must keep “actuarial data” for 2 years after the effective date of the rate change.

The bill adds the provision that the office may require the insurer or rating organization pay the costs associated with an examination.

The bill also removes the current provision that the OIR may require the insurer to provide, at the insurer’s expense, all information necessary to evaluate the condition of the company and the reasonableness of the rates.

Section 2 amends s. 627.0651, F.S., relating to the rate filing and review requirements for motor vehicle insurance. Current law provides an exemption from specified rate filing and review requirements for commercial motor vehicle insurance covering a fleet of 20 or more self-propelled vehicles. The bill expands that exemption to all commercial motor vehicle insurance, regardless of the size of the fleet being insured.

The bill removes the current requirement that for insurers, the 30 day notice must include the total premium written on the product during the immediately preceding year. The bill removes the current specific requirement that: an insurer must keep underwriting files, premiums, losses, and expense statistics; a rating organization must keep loss and exposure statistics applicable to loss costs. Instead, the bill requires that an insurer or a rating organization must keep “actuarial data” for two years after the effective date of the rate change.

The bill adds the provision that the office may require the insurer or rating organization pay the costs associated with an examination.

The bill also removes the current provision that the OIR may require the insurer to provide, at the insurer’s expense, all information necessary to evaluate the condition of the company and the reasonableness of the rates.

Section 3 provides an effective date of July 1, 2011.

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:

None.

B. Private Sector Impact:

The bill will allow insurers that sell the types of coverage that are being exempted from certain provisions of ss. 627.062(2), F.S., and 627.0651, F.S., to make pricing changes on a more expedited basis and avoid some of the expense incurred in a full rate review process.

C. Government Sector Impact:

The bill relieves the specified types of insurance from filing and review requirements; however, those products must still meet the requirement that rates shall not be excessive, inadequate or unfairly discriminatory. The OIR will no longer be required to review rate filings for the types of insurance that are being exempted from that requirement. The OIR reports that many of the rate filings that will no longer be required under the bill are currently being filed as part of a larger comprehensive filing (e.g., product review, form review) that will likely continue to require OIR review.

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/CS by Commerce and Tourism on March 16, 2011:

The bill clarifies that commercial lines insurance for *burglary and theft* is exempt from these rate filing and review requirements and clarifies that the category of nonresidential property exempted from the rate filing and review does not include *nonresidential property for which collateral protection insurance has been purchased by the creditor*.

This bill authorizes OIR to require the insurer – or rating organization, if applicable – pay the costs associated with an examination of data related to rates for risks and changes to loss cost for risks.

CS by Banking and Insurance on February 7, 2011:

The bill reverted to current law on the exemption for errors and omissions by deleting a reference to professional liability. The bill also reverted to current law on the exemption for management liability by removing the original bill’s reference to “other.”

- B. **Amendments:**

None.