

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 335 Property and Casualty Insurance Rates and Forms

SPONSOR(S): Insurance & Banking Subcommittee and Boyd

TIED BILLS: **IDEN./SIM. BILLS:** SB 468

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|----------|--|
| 1) Insurance & Banking Subcommittee | 13 Y, 0 N, As CS | Callaway | Cooper |
| 2) Government Operations Appropriations Subcommittee | 11 Y, 0 N | Keith | Topp |
| 3) Regulatory Affairs Committee | | | |

SUMMARY ANALYSIS

The bill exempts certain types of commercial insurance from the rate filing process and exempts most property and casualty forms from the filing and approval process.

Commercial lines insurance (commercial insurance) is insurance designed for, and bought by, a business to cover losses sustained by the business. In Florida, the Office of Insurance Regulation (OIR) regulates insurance. The OIR reviews and approves or disapproves rates charged by insurance companies and the insurance forms used by companies. However, insurance companies writing certain types of commercial insurance do not have to file rates with, or obtain approval of, the rates charged from the OIR.

The bill allows two new types of commercial insurance relating to medical malpractice to be exempt from the rate filing and approval process in current law. Thus, insurance companies writing these types of commercial insurance will not have to file with, or obtain approval of, the rates for these types of commercial insurance by the OIR before the insurer can charge the rate. The new types of commercial insurance exempted are:

- Medical malpractice for a facility that is not a hospital, nursing home, or assisted living facility; and
- Medical malpractice for a health care practitioner who is not a dentist, physician, or surgeon.

The bill also makes changes to s. 627.062(3)(d)3., F.S., to codify changes to this statute that were enacted by the 2011 Legislature by one bill, but were allegedly in conflict with changes to the same statute enacted in 2011 in another bill.

With limited exceptions, section 627.410(1), F.S., requires every insurance policy form to be filed with the OIR and approved by the OIR before the form can be used by the insurance company. The bill exempts all property and casualty forms, except workers' compensation forms, from the filing and approval process as long as the insurer files the form with OIR in an informational filing. The informational filing must contain a certification that the form complies with all state laws and rules. If the certification provided with the informational filing is false, then the insurer is subject to regulatory action by the OIR. The informational filing must be made 30 days before the form is used. The bill does not preclude insurers from filing property and casualty forms and obtaining approval of the forms from the OIR prior to use as provided by current law.

The bill has no fiscal impact on local governments or state revenue or expenditures. The bill should result in a reduced workload for the OIR. 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. Additionally, the bill allows insurers selling the types of commercial insurance listed in the bill to make pricing changes for this insurance on a more expedited basis, avoiding some of the expense incurred in a full rate filing and review process.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Commercial Insurance Rate Filings

Commercial lines insurance (commercial insurance) is insurance designed for, and bought by, a business to cover losses sustained by the business.¹ Some commercial insurance, such as workers' compensation, is required to be purchased by businesses;² however, most commercial insurance is purchased by businesses on a voluntary basis. The type of commercial insurance bought by a business also depends, in part, on the business type and industry.

In Florida, the Office of Insurance Regulation (OIR) regulates insurance. The OIR reviews and approves or disapproves rates charged by insurance companies and the insurance forms³ used by companies. However, insurance companies writing the following types of commercial insurance do not have to file rates with, or obtain approval for, the rates charged from the OIR⁴:

- Excess or Umbrella Insurance,
- Surety and Fidelity Insurance,
- Boiler and Machinery Insurance and Leakage and Fire Extinguishing Equipment Insurance,
- Commercial Motor Vehicle Insurance,
- Errors and Omissions Insurance ("E & O"),
- 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,
- Fiduciary Liability,
- General Liability,
- Nonresidential Property,
- Nonresidential Multiperil,
- Excess Property,
- Burglary and Theft, and
- Other types of commercial lines insurance determined by the OIR.

Generally, rates filed with the OIR are disapproved if they are excessive, inadequate or unfairly discriminatory based on standards contained in the law.⁵ Even though insurance companies charge rates for the above listed commercial insurance without the rate being approved by the OIR, the rate charged must not be excessive, inadequate, or unfairly discriminatory, the same requirement for rates filed with and approved by the OIR. The insurance company writing the commercial insurance is responsible for ensuring the rate charged meets this requirement. The OIR can examine a company's documentation supporting a rate to ensure the rate meets the requirement. If the OIR reviews a rate, the OIR uses the rate factors and standards in law that apply to property and casualty and surety insurance rates filed with the OIR to determine whether the rate charged is excessive, inadequate, or unfairly discriminatory. If the OIR determines a rate used violates the rate factors and standards, the insurer must adjust the rate to comply with the factors and standards.

If an insurance company increases or decreases a rate for the types of commercial insurance listed above, the insurer must notify the OIR within 30 days of the effective date of the rate change and the notification must contain certain information.

¹ <http://www2.iii.org/glossary/> (defining commercial lines) (last viewed January 28, 2013).

² 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.

³ With limited exceptions, section 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. This statute applies to all types of commercial insurance.

⁴ s. 627.062(3)(d), F.S.

⁵ s. 627.062(1), F.S.; s. 627.062(2)(e), F.S.

Effect of Proposed Changes Relating to Commercial Insurance

The bill allows two new types of commercial insurance relating to medical malpractice to be exempt from the rate filing and approval process in current law. Thus, insurance companies writing these types of commercial insurance will not have to file with or obtain approval of the rates for these types of commercial insurance by the OIR before the insurer can charge the rate. The new types of commercial insurance exempted are:

- Medical malpractice for a facility that is not a hospital, nursing home, or assisted living facility; and
- Medical malpractice for a health care practitioner who is not a dentist, physician,⁶ or surgeon.

Examples of facilities that are not hospitals, nursing homes, or assisted living facilities that are covered by medical malpractice insurance include: laboratories, imaging facilities, dialysis centers, drug and alcohol rehabilitation facilities and hospice facilities. The bill exempts medical malpractice insurance for these types of medical facilities from rate filing and approval process.

Examples of health care practitioners who are not dentists, physicians, or surgeons that are covered by medical malpractice insurance include: occupational and physical therapists, nurses, audiologists, social workers, counselors, physician assistants, pharmacists, medical testing technicians, and medical lab and pharmacy technicians. The bill exempts medical malpractice insurance for these types of medical professionals from rate filing and approval process.

The bill also makes changes to s. 627.062(3)(d)3., F.S., to codify changes to this statute that were enacted by the 2011 Legislature by one bill, but were allegedly in conflict with changes to the same statute enacted in 2011 in another bill. If two or more bills are enacted in the same session that affect the same provision in the law in conflicting ways, the version of the enactment most strongly supported by legislative intent as determined from the best evidence available (usually the version “last passed” by the Legislature) is placed in the Florida Statutes.⁷ The Office of Legislative Services determines which version is placed in the Florida Statutes.

In 2011, the Legislature passed CS/CS/HB 99 which contained numerous substantive changes to the commercial insurance rate deregulation provisions in s. 627.062(3)(d), F.S. CS/CS/HB 99 passed the Legislature on May 2, 2011 (Ch. 2011-160, L.O.F.). On May 5, 2011, the Legislature passed CS/CS/CS/SB 408 (Ch. 2011-39, L.O.F.), a comprehensive property and casualty insurance reform bill. CS/CS/CS/SB 408 did not substantively change any provisions relating to commercial insurance rate deregulation, but made editorial changes to these provisions. However, the Office of Legislative Services determined the editorial changes made by CS/CS/CS/SB 408 to one provision in the commercial insurance rate deregulation statute (s. 627.062(3)(d)3., F.S.) appeared to be in conflict with the changes made to that same statute in CS/CS/HB 99. Thus, the Office of Legislative Services placed the changes made by CS/CS/CS/SB 408 into the Florida Statutes, instead of those made by CS/CS/HB 99, because CS/CS/CS/SB 408 passed last. Accordingly, the editorial changes made by CS/CS/CS/SB 408 trumped the substantive changes to the same statute made by CS/CS/HB 99 and thus the substantive changes did not take effect.⁸

The bill codifies the following changes made to s. 627.062(3)(d)3., F.S., by CS/CS/HB 99 (Ch. 2011-160, L.O.F.), in lieu of the changes made by CS/CS/CS/SB 408 (Ch. 2011-39, L.O.F.):

- The bill deletes some of the information required on the notice an insurer must give the OIR when the rate changes for commercial insurance exempt from rate filing. Insurers will no longer be required to provide the OIR the amount of insurance premium written during the prior year for the type or kind of insurance subject to the rate change, but will still be required to provide the

⁶ The bill does not define the term “physician.” However, this term is defined in various places in the Insurance Code to include medical doctors licensed under chapter 458, osteopathic physicians licensed under chapter 459, chiropractic physicians licensed under chapter 460, and podiatric physicians licensed under chapter 461 (see s. 440.13, F.S.; s. 627.6482, F.S.; s. 641.60, F.S.).

⁷ See preface to the Florida Statutes.

⁸ See s. 11.2421, F.S., relating to the adoption of the 2012 Florida Statutes as prepared by the Office of Legislative Services. See s. 11.2422, F.S., repealing every statute enacted at or prior to the 2011 regular legislative session not included in the Florida Statutes 2012.

name of the insurer, the type or kind of insurance subject to the rate change, and the average statewide rate change.

- The type of data required to be retained by the insurer to support the rate charged for commercial insurance not subject to a rate filing is changed by the bill. Insurers are required to retain “actuarial data” about the commercial risks, but are no longer required to retain “underwriting files, premiums, losses, and expense statistics.”
- The bill adds a two year retention period for the insurer to retain the actuarial data supporting the rate charged. Current law does not specify a retention period.
- The bill requires the insurer to incur the cost of any examination of the insurer done by OIR relating to rates charged for commercial insurance.

Form Filing and Approval for Property and Casualty Insurance Forms

With limited exceptions, s. 627.410(1), F.S., requires every insurance policy form to be filed with the OIR and approved by the OIR before the form can be used by the insurance company. The OIR, however, is also given authority in section 627.410(4), F.S., to exempt any insurance form from filing and approval if the filing and approval cannot be practicably applied or is not desirable or necessary for the protection of the public.

In 2012, using the authority granted under s. 627.410(4), F.S., the OIR issued three Orders exempting certain insurance forms from being filed and approved prior to use. The first Order, issued on April 9, 2012, applied only to commercial insurance. As findings in the Order, the OIR noted a historically high volume of commercial form filings which taxed its review resources and resulted in a lengthier period of review. The OIR further found consumers of commercial insurance products were sophisticated parties that were more experienced in insurance transactions than consumers of personal lines insurance products. Thus, for one year, the OIR exempted certain categories or kinds of commercial insurance from prior form filing and approval. The OIR Order also conditioned the use of forms not filed and approved. The primary condition required the insurer to submit the form to the OIR in an informational filing 30 days before the form was used. The informational filing was required to have a notarized certification of compliance from the insurer attesting the form complied with all applicable Florida laws.

On June 25, 2012, the OIR issued a second Order exempting forms from the prior filing and approval requirement for one year. This Order expanded the types of insurance exempted from only specified commercial insurance to all property and casualty insurance. This Order was predicated on findings by the OIR that insurers had recently filed a historically high number of property and casualty forms with the OIR due to law changes, that the current volume of form filings had taxed OIR’s review resources and resulted in a lengthier period of review, and that OIR review and approval of forms before use was not practicable where the form had been diligently and thoroughly reviewed by the insurer for quality and legal sufficiency. The second Order still required insurers to submit a form to the OIR in an informational filing 30 days before the form was used with a certification of compliance.

On December 2, 2012, the OIR issued a third Order relating to form filing exemptions. This Order provided a clarification relating to the insurer’s certification of compliance, but otherwise did not change the Order of June 25, 2012.

Since the first Order exempting certain forms from OIR filing and approval, the OIR has received 4,765 form filings that qualify for the exemption.⁹ Out of the qualifying filings, 939 filings actually opted to be exempt from the filing and approval process.¹⁰ Thus, to date, approximately 20% of the form filings that could have utilized the filing and approval exemption did so.

Effect of Proposed Changes Relating to Form Filing and Approval

The bill generally codifies the last OIR Order on form filing and approval exemptions. On a permanent basis, the bill exempts all property and casualty forms, except workers’ compensation forms, from the filing and approval process as long as the insurer files the form with OIR in an informational filing. The informational filing must contain a certification of compliance stating the form complies with all state

⁹ Information received from the OIR on file with the Insurance & Banking Subcommittee.

¹⁰ Insurers made 74 informational filings when OIR’s first Order was in effect, 688 filings when the second Order was in effect, and 183 filings since the third Order took effect.

laws and rules. If the certification provided with the informational filing is false, then the insurer is subject to regulatory action by the OIR. The informational filing must be made 30 days before the form is used. The bill does not preclude insurers from filing property and casualty forms and obtaining approval of the forms from the OIR prior to use as provided by current law.

B. SECTION DIRECTORY:

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

Section 2: Amends s. 627.410, F.S., relating to filing, approval of forms.

Section 3: Creates s. 627.4102, F.S., relating to informational filing of forms.

Section 4: Provides an effective date of upon becoming a 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:

The bill should not impact commercial insurance rates charged to the private sector because rates for the additional types of commercial insurance covered by the bill cannot be excessive, inadequate, or unfairly discriminatory based upon the standards in current law. This is the same requirement contained in current law for these types of commercial insurance.

The bill allows insurers selling the types of commercial insurance listed in the bill to make pricing changes for those types on a more expedited basis, avoiding some of the expense incurred in a rate filing and review process done through the OIR.

The provision in the bill exempting property and casualty forms from the filing and approval process will enable insurers to update and use insurance forms faster than under current law.

D. FISCAL COMMENTS:

The bill has no fiscal impact on state expenditures. The bill should result in a reduced workload for the OIR because the OIR will no longer be required to review every rate filing for the additional types of commercial insurance being exempted from the filing requirement.

Also, the OIR will have a reduced workload if insurers opt to use the form filing exemption allowed by the bill, rather than filing forms with the OIR for approval before use. To date, insurers have used the exemption for 20% of the qualifying form filings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2013, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute. The staff analysis was updated to reflect the committee substitute.