

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

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| BILL #: | CS/CS/HB 335 | FINAL HOUSE FLOOR ACTION: | |
| SPONSOR(S): | Regulatory Affairs Committee; Insurance & Banking Subcommittee; Boyd and others | 89 Y's | 26 N's |
| COMPANION BILLS: | (CS/CS/SB 468) | GOVERNOR'S ACTION: | Approved |

SUMMARY ANALYSIS

CS/CS/HB 335 passed the House on April 30, 2013 as CS/CS/SB 468. The bill includes portions of CS/CS/HB 1107, CS/CS/HB 635, CS/SB 1770, CS/CS/HB 909, and CS/CS/SB 1046. Part of the bill also passed the House and Senate in CS/SB 1770. The bill exempts certain types of commercial lines insurance (commercial insurance) from the rate filing and approval process, exempts medical malpractice insurance from assessments levied by the Florida Hurricane Catastrophe Fund (FHCF), and exempts certain property and casualty forms from the form filing and approval process.

Commercial insurance is insurance designed for, and bought by, a business to cover losses. The Office of Insurance Regulation (OIR) reviews and approves or disapproves rates charged by insurers and the insurance forms used by them. However, insurers writing certain types of commercial insurance are exempt from this process. The bill exempts two additional types of commercial insurance relating to medical malpractice from the rate filing and approval process:

- 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, osteopathic physician, chiropractic physician, podiatric physician, pharmacist, or pharmacy technician.

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

The bill extends the current exemption for medical malpractice insurance policyholders from assessments levied by the FHCF for another three years, until May 31, 2016.

With limited exceptions, current law requires every insurance policy form to be filed with, and approved by, the OIR before the form can be used by the insurer. The bill exempts all property and casualty forms, except workers' compensation and personal lines forms, from the filing and approval process as long as the insurer files the form with the OIR in an informational filing containing a certification that the form complies with all state laws and rules. If the OIR finds the form does not comply with state laws and rules, the OIR can require the form be submitted for review and approval by the OIR before the insurer uses the form.

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 as rates for the types of commercial insurance covered by the bill still cannot be excessive, inadequate, or unfairly discriminatory. Insurers selling the types of commercial insurance listed in the bill will be able 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 was approved by the Governor on May 30, 2013, ch. 2013-66, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

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

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DATE: June 11, 2013

A. EFFECT OF 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 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, a physician licensed under chapter 458, an osteopathic physician, a chiropractic physician, a podiatric physician, a pharmacist, or a pharmacy technician.

Examples of facilities that are not hospitals, nursing homes, or assisted living facilities, but 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 the rate filing and approval process.

Examples of health care practitioners who are not the type of health care practitioners listed in the bill, but that are covered by medical malpractice insurance include: occupational and physical therapists, nurses, audiologists, social workers, counselors, physician assistants, medical testing technicians, and medical lab technicians. The bill exempts medical malpractice insurance for these types of medical professionals from the 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.⁶ 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.⁷

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 See preface to the Florida Statutes.

⁷ 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.

Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers.⁸ The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF (s. 215.555(4)(a), F.S. and s. 215.555(2)(c), F.S.). The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage (45, 75, or 90%) of hurricane losses to residential property above the insurer's retention (deductible).⁹

The FHCF must offer two options for reinsurance coverage for all residential property insurers. One of the two options is mandatory and thus must be purchased by all insurers on their residential property exposure. The voluntary coverage option, Temporary Increase In Coverage Limit Options (TICL), offers reinsurance to insurers above the mandatory coverage.

For the mandatory coverage, the FHCF charges insurers the “actuarially indicated” premium for the coverage provided by the FHCF, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. The premium for mandatory coverage also includes a cash build-up factor which is charged on top of the actuarially indicated premium. For the 2012-2013 contract year, the cash build-up factor is 20%, meaning an insurer's premium is 20% greater than the actuarially indicated premium. The cash build-up factor increases by 5% each year until it is 25% (2013-2014 contract year).

Florida law sets the maximum amount the FHCF reimburses insurers each year for the mandatory coverage.¹⁰ This is the FHCF's capacity. Under current law, the FHCF's capacity is \$17 billion for each contract year. The capacity does not increase until the FHCF's cash and bonding ability exceeds \$34 billion. Because this condition for an increase in capacity is not yet met, for the current contract year, the insurance industry as a whole is covered for losses up to \$17 billion by the mandatory coverage.

Before FHCF monies are available to pay claims each insurer must meet a retention/deductible. The retention amount for each insurer is different because the amount is based on the amount of premium the insurer pays to the FHCF. For the 2012-2013 contract year, the insurance industry as a whole has an aggregate retention of \$7.389 billion for mandatory coverage, meaning the total of all individual insurer retentions/deductibles will total \$7.389 billion per hurricane event if all participating insurers reached their retention. Although the insurance industry's aggregate deductible/retention totals \$7.389 billion, insurers can obtain reimbursement from the FHCF before the insurance industry losses total \$7.389 billion because loss recovery from the FHCF is based on an individual insurer meeting its own retention for mandatory coverage prior to losses being reimbursed.

⁸ s. 215.555, F.S. The FHCF was created after Hurricane Andrew in 1992.

⁹ Retention is defined to mean the amount of losses below which an insurer is not entitled to reimbursement from the Fund. A retention is calculated for each insurer based on its proportionate share of Fund premiums.

¹⁰ s. 215.555(4)(c)1., F.S.

Revenue bonds are issued by the FHCF to pay claims when the FHCF's funds are inadequate. These bonds are funded by emergency assessments levied by the FHCF against property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health, federal flood and, until May 31, 2013, medical malpractice), including surplus lines policyholders.¹¹ The FHCF assessment base is over \$34.6 billion.¹² Annual assessments are capped at 6% of premium with respect to losses from any one year and a maximum of 10% of premium to fund hurricane losses from multiple years.¹³

Effect of Changes Relating to Assessments Levied by the FHCF

The bill allows medical malpractice insurance policyholders to be exempt from FHCF assessments until May 31, 2016. The exemption has been in place since 2005.¹⁴ These policyholders are currently exempt from the assessment base, but under current law they will be added to the base starting June 1, 2013 because their exemption expires on May 31, 2013. Thus, the bill extends the exemption for these policyholders three more years.

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.

¹¹ s. 215.555(6)(b)1., F.S.; s. 215.555(6)(b)(10), F.S.

¹² Assessment base total is as of the end of 2011. See Report Prepared for the Florida Hurricane Catastrophe Fund on Claims-Paying Capacity Estimates by Raymond James Public Finance Department, dated October 9, 2012, available at <http://www.sbafla.com/fhcf/AdvisoryCouncil/2012MeetingMaterials/tabid/1311/Default.aspx> (last viewed February 27, 2013).

¹³ s. 215.555(6)(b)2., F.S.

¹⁴ Ch. 2005-2, L.O.F.

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.¹⁵ Out of the qualifying filings, 939 filings actually opted to be exempt from the filing and approval process.¹⁶ Thus, to date, approximately 20% of the form filings that could have utilized the filing and approval exemption did so.

Effect of Changes Relating to Form Filing and Approval

The bill generally codifies the last OIR Order on form filing and approval exemptions and thus specifies the bill supersedes the OIR Order. On a permanent basis, the bill exempts all property and casualty forms, except workers' compensation and personal lines 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 laws and rules. If OIR finds the form does not comply with state laws and rules, the OIR can require the form be submitted for review and approval by the OIR before the insurer uses the form. 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.

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.

¹⁵ Information received from the OIR on file with the Insurance & Banking Subcommittee.

¹⁶ 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.

Extending the exemption for policyholders of medical malpractice insurance from the FHCF assessments causes policyholders of the other types of property and casualty insurance included in the assessment base to pay higher assessments than they would be had the exemption expired. Although medical malpractice is not currently in the FHCF assessment base, it was to be added as of June 1, 2013. Adding additional types of insurance to the assessment base grows the base and lowers the assessment for all types of insurance in the base. As of December 31, 2011, medical malpractice premiums totaled almost \$555 million.¹⁷ Thus, the bill precludes the FHCF assessment base of \$34.6 billion¹⁸ to increase by \$555 million.

If the FHCF has to issue revenue bonds to pay claims, it is likely to obtain more favorable bonding terms with a larger the assessment base. Thus, extending the exemption for medical malpractice from being added to the assessment base may result in the FHCF receiving less favorable bonding terms than it would receive had medical malpractice been added to the base on June 1, 2013.

Policyholders of medical malpractice insurance will not have to pay FHCF assessments on their medical malpractice insurance for another three years. Under current law, these policyholders would have had to start paying FHCF assessments levied due to hurricanes occurring on or after June 1, 2013.

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 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.

¹⁷ This total includes premiums from surplus lines insurance and risk retention groups. Information obtained from the OIR on February 27, 2013, on file with the Insurance & Banking Subcommittee.

¹⁸ Assessment base total is as of the end of 2011. See Report Prepared for the Florida Hurricane Catastrophe Fund on Claims-Paying Capacity Estimates by Raymond James Public Finance Department, dated October 9, 2012, available at <http://www.sbafla.com/fhcf/AdvisoryCouncil/2012MeetingMaterials/tabid/1311/Default.aspx> (last viewed February 27, 2013).