

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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**BILL:** CS/SB 424

**INTRODUCER:** Criminal Justice Committee and Senators Lee and Latvala

**SUBJECT:** Discriminatory Insurance Practices

**DATE:** February 3, 2014      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/2 amendments</b>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 424 provides that it is an unfair discriminatory practice for a personal lines property or automobile insurer to:

- Refuse to issue, renew, or cancel a policy or charge an unfairly discriminatory rate based on the lawful ownership, possession, or use of a firearm by the applicant, insured, or a household member of the applicant or insured.
- Disclose the lawful ownership or possession of firearms of an applicant, insured, or household member of the applicant or insured to a third party or an affiliated entity of the insurer unless the insurer discloses to the applicant the need for the disclosure, and the applicant or insured expressly consents or “opts in” to the disclosure. This provision would significantly expand a consumer’s ability to protect the privacy of information provided to an insurer. Under current law, a consumer may opt-out on disclosures to nonaffiliated third parties with some exceptions; however, no opt-out applies with respect to affiliates.

The bill provides limited exceptions to the general provision of the bill regarding sharing firearm-related information.

When a separate rider is voluntarily requested by a policyholder or prospective policyholder to insure a firearm or firearm collection the value of which exceeds standard policy coverage, the insurer is not prohibited from charging a supplemental premium so long as it is not unfairly discriminatory.

If an insurer engages in discriminatory practices prohibited under part IX, of ch. 626, F.S., the insurer would be subject to fines and other administrative actions by the Office of Insurance Regulation.

## II. Present Situation:

### Regulation of Property and Automobile Insurance in Florida

Personal residential property (homeowners) insurance generally provides coverage of a dwelling, other structures, contents, loss of use, personal liability (bodily injury or property damage for which the policyholder or others covered by the policy are deemed liable), and medical payments to others. Florida drivers are required to purchase both personal injury protection and property damage liability insurance.<sup>1</sup>

The Office of Insurance Regulation (OIR)<sup>2</sup> is responsible for the regulation and oversight of insurers and other risk-bearing entities. These activities include licensing, rates, policy forms, market conduct examinations, and solvency.<sup>3</sup> Upon receipt of a rate filing, the OIR reviews the filing to determine if a proposed rate is excessive, inadequate, or unfairly discriminatory, which is prohibited pursuant to s. 627.062, F.S. A rate is deemed “unfairly discriminatory” as to a risk or group of risks if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.

Part IX of ch. 626, F.S., entitled Unfair Insurance Trade Practices, defines and prohibits unfair methods of competition and unfair or deceptive acts or practices and provides penalties and enforcement authority to the respective regulator, the Department of Financial Services or the OIR.<sup>4</sup> Section 626.9541, F.S., defines activities that are deemed as unfair methods of competition and unfair or deceptive acts or practices and are prohibited and are subject to penalties under s. 626.9521, F.S. Except as provided in s. 626.9521(3), F.S., any person violating any provision of part IX, is subject to a fine in an amount not greater than \$5,000 for each nonwillful violation and not greater than \$40,000 for each willful violation.<sup>5</sup> Fines imposed against an insurer may not exceed \$20,000 for all nonwillful violations arising out of the same action or an aggregate amount of \$200,000 for all willful violations arising out of the same action.<sup>6</sup>

Professional staff of the Banking and Insurance Committee requested information from the OIR regarding the use of firearm ownership information as an underwriting factor by the top 5 writers

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<sup>1</sup> See sections 324.022 F.S., and 627.733, F.S.

<sup>2</sup> Section 20.121(3), F.S. The Financial Services Commission, composed of the Governor, Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, oversees the OIR, and is the agency head for purposes of rulemaking.

<sup>3</sup> Insurance agents and agencies are regulated by the Department of Financial Services. (Section 20.121, F.S.)

<sup>4</sup> Section 626.9561, F.S. The department regulates insurance agents and agencies under part I, ch. 626, F.S., and are subject to part IX of ch. 626, F.S.

<sup>5</sup> Section 626.9521(2), F.S.

<sup>6</sup> Section 626.9521, F.S., also contains enhanced penalties for specified violations of s. 626.9541, F.S.

of homeowners' insurance.<sup>7</sup> According to the OIR, only one of these companies addressed firearm ownership in the underwriting guidelines.<sup>8</sup> Citizens does not use firearm ownership in the underwriting process<sup>9</sup> and the Citizens Clearinghouse<sup>10</sup> application does not contain questions about firearm ownership.

### **Florida Firearm Regulations**

Chapter 790, F.S., governs the regulation of firearms and weapons. Section 790.25, F.S., prescribes the requirements for the lawful ownership, possession, and use of firearms and other weapons. Section 790.001, F.S., defines the term "firearm" to mean "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime."

### **State and Federal Insurance Information Privacy Laws**

The federal Gramm-Leach-Bliley Act<sup>11</sup> requires a financial institution to provide notice to its customers about its privacy policies and generally prohibits a financial institution from sharing nonpublic personal information<sup>12</sup> about individuals with nonaffiliated third parties without giving customers an opportunity to opt out.<sup>13</sup> Such annual notices provided to consumers disclose the categories of information collected and how the institution shares information with affiliates as well as with nonaffiliated third parties. The Act broadly defines the term, "financial institution," to mean any institution in the business of engaging in financial activities.<sup>14</sup> Examples of activities that are financial in nature include lending, investing, safeguarding money, insuring and acting as principal, agent, or broker. The Act requires insurers and others to comply with regulatory standards to protect the security and confidentiality of consumer information. These federal provisions do not supersede, alter, or affect any state law except to the extent such state law is inconsistent with these provisions. A state law is not considered inconsistent with the

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<sup>7</sup> According to the latest Quasar ranking dated 3rd quarter 2013, the top 5 writers of HO-3 (owners) policies are Citizens, State Farm Florida Insurance Company, Universal Property and Casualty Insurance Company, St. Johns Insurance Company, and United Property and Casualty Insurance Company.

<sup>8</sup> E-mail from K. Kees, Office of Insurance Regulation (January 10, 2013) (on file with the Senate Committee on Banking and Insurance). The manual of the United Property and Casualty Company addresses "dangerous firearms including, but not limited to, assault-type and rapid-fire weapons, except for game hunting rifles or shotguns.

<sup>9</sup> E-mail from C. Bunker of Citizens Property Insurance. (January 6, 2014) (on file with the Senate Committee on Banking and Insurance)

<sup>10</sup> In 2013, the Florida Legislature created a clearinghouse for Citizens to divert insurance from Citizens to the private market. The law requires all new applications and all renewals for personal residential property insurance in Citizens to be submitted to the clearinghouse in order to determine if the policy can be written or renewed by an insurer in the private market within the premium eligibility restrictions. [Ch. 2013-60, L.O.F.]

<sup>11</sup> Pub. Law No. 106-102, H. Rept. 106-434.

<sup>12</sup> This term includes personally identifiable financial information provided by a consumer to a financial institution; resulting from any transaction with the consumer or any service performed for the consumer; or otherwise obtained by the financial institution.

<sup>13</sup> 15 U.S.C. ss. 6801-6809.

<sup>14</sup> 12 U.S.C. 1843(k).

federal provisions if the protection that such state law affords any consumer is greater than the protection provided under the federal Act.<sup>15</sup>

Two provisions of the insurance code address the Act's provisions relating to privacy and disclosure of information. Section 626.025, F.S, requires insurance agents to comply with specified insurance code provisions and any other licensing requirement, restriction, or prohibition designated as a consumer protection by the Chief Financial Officer, but not inconsistent with the requirements of Subtitle C of the federal Gramm-Leach-Bliley Act. Section 626.9651, F.S., requires the Department of Financial Services and the Financial Services Commission (as agency head of the OIR) to adopt rules governing the use of a consumer's nonpublic personal and financial health information.

### **III. Effect of Proposed Changes:**

The bill amends s. 626.9541, F.S., by providing that it is unfair discriminatory practice, and therefore a prohibited act under part IX of chapter 626, F.S., for a personal lines property or personal lines automobile insurer to:

- Refuse to issue, renew, or cancel a policy or charge an unfairly discriminatory rate based on the lawful ownership, possession, or use of a firearm by the applicant, insured, or a household member of the applicant or insured. Under current law, the use of an unfairly discriminatory rate is prohibited.
- Disclose the lawful ownership or possession of firearms of an applicant, insured, or household member of the applicant or insured to a third party or an affiliated entity unless the insurer discloses to the applicant or insured the specific need to disclose the information and the applicant or insured expressly consents to the disclosure. Currently, insurers and other specified entities are allowed to share information with affiliates; however, consumers have the right to "opt-out" of disclosures to nonaffiliated third parties, subject to some exceptions.

The bill provides limited exceptions to the general provision of the bill regarding sharing firearm-related information. These exceptions occur only when it becomes necessary to disclose the information in order to quote or bind coverage, continue coverage, or adjust a claim.

The bill provides an exception when it becomes necessary for an insurer and its licensed insurance agent to share firearm information for purposes of underwriting or issuing coverage on a separate rider, voluntarily requested by a policyholder or prospective policyholder, in order to insure a firearm or firearm collection the value of which exceeds standard policy coverage. When a separate rider is voluntarily requested under these circumstances, the insurer is not prohibited from charging a supplemental premium so long as it is not unfairly discriminatory.

The bill is effective July 1, 2014.

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<sup>15</sup> The Federal Trade Commission on its own motion or upon the petition of any interested party would make this determination. (16 C.F.R. s. 313.17)

**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:

To the extent an applicant or insured who lawfully owns, possesses, or uses a firearm and has had his or her coverage previously denied, nonrenewed, or cancelled due to such lawful firearm ownership, possession, or use, this bill could provide additional coverage options. Information about lawful gun ownership collected by an insurer could not be shared with affiliates or third parties without the express consent or “opt-in” by the insured or applicant, or when the necessity arises under the limits of the bill.

The bill would prohibit insurers from denying, nonrenewing, or cancelling coverage or charging unfairly discriminatory rates based on the lawful ownership, possession, or use of a firearm and would authorize the OIR to impose penalties on insurers that engage in this practice.

To the extent an insurer collects and shares information regarding lawful gun ownership, an insurer may incur indeterminate administrative costs revising its notice and disclosure process to comply with the “opt-in” and notice requirements required by the bill. Currently, an insurer is required to provide a consumer with an opportunity to opt-out of disclosures with nonaffiliated third parties (with some exceptions); however, no opt-out applies with respect to disclosures to affiliates.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

It is unclear how the provisions of the bill would be interpreted or implemented with the existing requirements under s. 790.338(7), F.S., which prohibits an insurer that issues any type of coverage pursuant to ch. 627, F.S., from denying coverage, increasing premiums, or otherwise discriminating against any insured or applicant for insurance on the basis of or upon reliance upon the lawful ownership, possession or storage of a firearm or ammunition. An insurer is authorized to consider the fair market value of firearms or ammunitions in the setting of premiums for scheduled personal property coverage.

**VIII. Statutes Affected:**

This bill substantially amends section 626.9541 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on February 3, 2014:**

- Specifies that the provisions of the bill do not prevent an insurer from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by an insurance applicant to insure a firearm or firearm collection above the standard policy coverage.
- Expands the circumstances under which an insurer may disclose information regarding the lawful ownership or possession of firearms by an insurance applicant, insured, or household member, to include when such disclosure is necessary to:
  - quote coverage;
  - bind coverage;
  - continue coverage; or
  - adjust a claim.
- Specifies that the provisions of the bill do not prevent an insurer and its licensed agent from sharing the same information, for purposes of underwriting and issuing insurance coverage, when a separate rider has been voluntarily requested by the policyholder or prospective policyholder to insure a firearm or firearm collection the value of which exceeds the standard policy limit.

**B. Amendments:**

None.