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 Committee on Rules

BILL:	CS/CS/SB 870
INTRODUCER:	Rules Committee; Judiciary Committee; and Senator Smith
SUBJECT:	Insurance
DATE:	April 22, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Favorable**
2.	Brown	Cibula	JU	**Fav/CS**
3.	Billmeier	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 870 revises provisions in insurance law, addressing property, casualty, and surety policies, long-term care policies, reciprocal insurance, and premium financing.

Current law provides that property, casualty, and surety insurers do not assume direct liability unless the policy or contract of insurance is countersigned by a licensed agent for the insurer. This bill provides that the absence of a countersignature by an agent of the insurer does not affect the validity of a property, casualty, or surety insurance policy or contract. This change may reduce the risk that an insured loses coverage due to events the insured cannot control.

This bill provides that the Florida Motor Vehicle No-Fault Law does not preclude a county from enacting and enforcing an ordinance applicable to health care clinics that receive reimbursement under the law.

This bill provides that statutory provisions relating to insurance premium financing do not apply to installment payment arrangements if such arrangements do not involve the advancement of funds and do not exceed the service changes provided in s. 627.901, F.S.

Current law requires insurers issuing long-term care policies to offer a nonforfeiture protection provision. A nonforfeiture benefit is a benefit such as reduced paid-up insurance, a shortened coverage period or any other benefit approved by the Office of Insurance Regulation (OIR) if the policy is canceled. The bill specifies that an insurer may offer a nonforfeiture provision in a

long-term care insurance policy in the form of a return of the insured's premium if the insured dies, surrenders the policy, or cancels the policy.

Current law authorizes the practice of reciprocal insurance, a grouping of subscribers offering an interexchange of reciprocal agreements of indemnity. This bill authorizes a reciprocal insurer to distribute up to 10 percent of surplus to its subscribers, capping the distribution at 50 percent of net income from the prior calendar year.

The Florida Insurance Guaranty Association (FIGA) provides a mechanism for payment of covered claims of an insolvent property and casualty insurer. After an insurer enters insolvency, the FIGA is authorized to levy both regular assessments and emergency assessments. This bill:

- Creates a uniform assessment percentage to be collected from policyholders. The collection must begin at least 90 days after the certification of the assessment.
- Authorizes the FIGA to use a monthly installment method for the collection of assessments from insurers in addition to the current pay and recoup method, streamlines the reconciliation of collections, and eliminates a regulatory filing with the OIR.
- Codifies the OIR's interpretation of an admissible asset for purposes of statutory accounting treatment of the FIGA assessments.

This bill takes effect July 1, 2014.

II. Present Situation:

Countersignature Requirement on Property, Casualty, and Surety Policies

Section 624.425(1), F.S., requires all property, casualty, and surety insurance policies or contracts to be issued and countersigned by an agent. The agent must be regularly commissioned, currently licensed, and appointed as an agent for the insurer.

The purpose of the countersignature requirement is "to protect the public … by requiring such policies to be issued by resident, licensed agents over whom the state can exercise control and thus prevent abuses."[1]

The absence of a countersignature does not necessarily invalidate the insurance policy. The insurer may waive the countersignature requirement.[2] If the countersignature requirement is not waived, a policy is not enforceable against the insurer, as a court will not consider the policy properly executed.[3] In the absence of a countersignature, whether a policy is waived is a factual matter determined on a case-by-case basis.[4] In at least one recent case, a defendant argued that the lack of a countersignature constituted a defense in a breach of contract action.[5]
Section 624.426, F.S., excludes some policies from the countersignature requirement. These are:

[1] *Wolfe v. Aetna Insurance Company*, 436 So. 2d 997, 999 (Fla. 5th DCA 1983).
[2] *See Meltsner v. Aetna Casualty and Surety Company of Hartford, Conn.*, 233 So. 2d 849, 850 (Fla. 3rd DCA 1969) (holding under the facts of that case that the countersignature requirement was waived).
[3] 43 AM. JUR. 2d Insurance s. 225.
[4] *See Meltsner*, 233 So. 2d at 850 (finding a waiver of the countersignature requirement); *Wolfe*, 436 So. 2d at 999 (finding a waiver of the countersignature requirement).
[5] *See FCCI Insurance Company v. Gulfwind Companies, LLC*, 2003 CC 003056 NC (Fla. Sarasota County Court).

- Contracts of reinsurance;
- Policies of insurance on the rolling stock of railroad companies doing a general freight and passenger business;
- United States Custom surety bonds issued by a corporate surety approved by the United States Department of Treasury;
- Policies of insurance issued by insurers whose agents represent one company or a group of companies under common ownership if a company within one group is transferring policies to another company within the same group and the agent of record remains the same; and
- Policies of property, casualty, and surety insurance issued by insurers whose agents represent one company or a group of companies under common ownership and for which the application is lawfully submitted to the insurer.[6]

The Florida Insurance Guaranty Association and Assessments on Property and Casualty Insurance

Part II of ch. 631, Florida Statutes., governs the FIGA, a nonprofit corporation, created to provide a mechanism for the payment of covered claims, including unearned premiums, of insolvent property and casualty insurance companies.[7] Property and casualty insurance companies [8] doing business in Florida are required to be members of the FIGA as a condition of their authority to transact insurance.[9] When a property and casualty insurance company becomes insolvent, the FIGA is required to assume the claims of the insurer and pay the claims of the company's policyholders, which include claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount the FIGA will cover is $300,000, but special limits apply to damages to structure and contents on homeowners, condominiums, and homeowners' association claims. For damages to structure and contents on homeowners' claims, the FIGA covers an additional $200,000, for a total of $500,000. For condominium and homeowners' association claims, the FIGA covers the lesser of policy limits or $100,000 multiplied by the number of units in the association.

FIGA Funding and Assessments

In order to pay the remaining covered claims and maintain the operations of an insolvent insurer, the FIGA has several potential funding sources. For example, the FIGA receives funds that are available from distributions of the estate of the insolvent insurance company. The Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for the liquidation of assets of insolvent insurance companies.[10] In addition, the FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

[6] Section 624.426, F.S.
[7] Section 631.51, F.S.
[8] Workers' compensation insurance is excluded from FIGA since the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) pays covered claims under chapter 440, F.S., Florida's Workers' Compensation Law.
[9] Section 631.55(1), F.S.
[10] Typically, insurers are placed into liquidation when the company is insolvent and the goal of liquidation is to dissolve the insurance company. *See* s. 631.061, F.S., for the grounds for liquidation.

After insolvency occurs, the FIGA is authorized to levy assessments against Florida member insurance companies under two separate statutory provisions. Under s. 631.57(3)(a), F.S., the FIGA is authorized to levy an assessment as necessary for up to 2 percent of an insurer's net written premium for the kind of insurance included in the account for which the assessment is levied. This assessment is known as the "regular assessment." The second assessment is an emergency assessment authorized under s. 631.57(3)(e), F.S., which may be levied only to pay covered claims of an insurer that was rendered insolvent by the effects of a hurricane. At the discretion of the FIGA, emergency assessments are payable in 12 monthly installments or in a single payment. The emergency assessment is capped at 2 percent of an insurer's net direct written premiums in Florida for the calendar year preceding the assessment.

Section 631.57(3), F.S., provides the procedure used by the FIGA to levy both regular and emergency assessments on member insurance companies and the procedure used by member insurance companies to pass the assessment on to their policyholders. The procedures are generally the same for regular and emergency assessments:

1. The FIGA determines that an assessment is needed to pay claims or administration costs, or to pay bonds issued by the FIGA.
2. The FIGA certifies the need for an assessment levy to the OIR.
3. The OIR reviews the certification, and if it is sufficient, the OIR issues an order to all insurance companies subject to the FIGA assessment to pay their assessment to the FIGA.
4. Regular assessments must be paid by the insurance companies within 30 days of the levy, and emergency assessments can be paid either in one payment at the end of that month, or spread out over 12 months, at the option of the FIGA.
5. For both types of assessments, once an insurance company pays the assessment to the FIGA, it may begin to recoup the assessment from its policyholders at the policy issuance or renewal.[11]

An insurer must submit an informational filing to the OIR at least 15 days before applying the recoupment factor to any policies. The factor is applied to policies issued or renewed by the insurer for 1 year under the affected lines of insurance. The 15-day requirement also applies if the insurer needs to continue applying the recoupment factor for an additional year. The factor is calculated to provide for the probable recoupment of assessments over a 1-year period, unless an insurer elects to recoup the assessment over a longer period. If the excess amount does not exceed 15 percent of the total assessment paid, the excess amount is remitted to the FIGA within 60 days after the end of the 1-year period in which the excess recoupment charges were collected. Any excess recoupments remitted to the FIGA are used to reduce future assessments. If the excess amount exceeds 15 percent of the total assessment paid, the excess amount is required to be returned to an insurer's current policyholders by refunds or premium credits.

The assessment has been 4 percent just twice, in 1993 and 2006, in the 43-year history of the FIGA.[12] Insurers pay the assessments up front and recoup the assessment from policyholders upon issuance or renewal of the policies.

[11] If an insurer's book of business is declining during the recoupment period, the assessment factor will be insufficient to recoup the total amount of assessment paid to FIGA. In those circumstances, the insurance company must continue to collect the assessment from policyholders beyond 12 months, until the assessment is recouped in full.

[12] This occurred in 1993 following Hurricane Andrew and in 2006 following Hurricane Wilma and the other storms of the 2004/2005 hurricane seasons.

Part II of ch. 631, F.S., provides a limited exception to the assessment. Subject to regulatory approval, an insurer may be exempted from any regular or emergency assessment if an assessment will result in the insurer's financial statement reflecting an amount of capital or surplus less than the sum required by any jurisdiction in which the insurer is authorized to transact insurance.[13]

Accounting for Assessments

Statutory accounting principles (SAP) govern the preparation of an insurer's annual statement, which is filed with the OIR. The SAP is characterized as a more conservative approach as the SAP measures the ability to pay claims in the future. In contrast, other users, such as shareholders, bondholders, banks, credit rating agencies, and the Securities and Exchange Commission, may require financial statements that are prepared in accordance with generally accepted accounting principles (GAAP). The GAAP financial statements attempt to match revenues to expenses.[14] The OIR requires insurers to file annual SAP statements and independently audited financial reports.[15]

In some respects, GAAP differs from SAP in the treatment of certain transactions, such as FIGA assessments. Under both accounting methods, a liability is recognized. However, SAP allows recognition of an asset for the amount that is likely to be recovered from future premium surcharges for an assessment, which offsets or eliminates the negative effect on statutory surplus.[16] For purposes of GAAP, the assessment recoverable from future premium writings does not qualify as an asset,[17] resulting in a reduction of retained earnings in the period an assessment is levied. The impact of the assessment on GAAP financial statements is essentially a timing issue; retained earnings are reduced in the year the assessment is paid and increased the following year as the assessment is recouped from policyholders.

Nonforfeiture Provision in Long-term Care Insurance Policies

A long-term care insurance policy is defined in law as:

> Any insurance policy or rider … designed to provide coverage on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital.[18]

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[13] Section 631.57(4), F.S.
[14] The Financial Accounting Standards Board (FASB) Accounting Standards Codification is the single source of authoritative nongovernmental U.S. Generally Accepted Accounting Principles (GAAP), http://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1176154526495 (last visited April 1, 2014).
[15] Section 624.424, F.S.
[16] *See* Thomas Howell Ferguson P.A., *Accounting for Guaranty Fund Assessments*, memorandum to Sandy Robinson at FIGA, December 3. 2013, (on file with the Senate Committee on Banking and Insurance).
[17] Asset recognition is measured based on projected future premium collections or policy surcharges from in-force policies, excluding expected renewals of short-duration contracts, which would disqualify the assessment future recoverable as an asset.
[18] Section 627.9404(1), F.S.

Insurers who offer long-term care policies must offer a nonforfeiture protection provision providing reduced paid-up insurance, extended term, shortened benefit period, or any other benefits approved by the OIR[19]

Personal Injury Protection/Florida Motor Vehicle No-Fault Law

The Florida Motor Vehicle No-Fault Law (No-Fault) is contained in Sections 627.730 through 627.7405, F.S. The No-Fault law provides Personal Injury Protection (PIP) coverage for medical, surgical, funeral, and disability insurance benefits without regard to fault, and mandates insurance on all motor vehicles required to be registered. No-Fault law provisions also limit damages for pain, suffering, mental anguish, and inconvenience.[20] The overall purpose of the No-Fault law is to ensure swift payment of valid claims without requiring formal legal action.[21]

Still, since the inception of No-Fault, problems have emerged, including significant allegations of fraudulent claims and an exponential increase in litigation, the opposite intended effect from the legislation.

> According to Florida's Office of Insurance Regulation the number of PIP claims opened or recorded in 2010 had increased 28% since 2006. As for lawsuits filed in Florida, the number of PIP lawsuits pending at year-end increased by 387% from 2006 to 2010, with the number of lawsuits settled during the year increasing by 315%. The number of procedures billed per claim and the total amount of charges per claim have likewise increased from 2006.[22]

The Hillsborough County Commission adopted a series of ordinances between 2011 and 2012 to address some of the concerns about fraudulent billing. Plaintiffs challenged one of the ordinances specifically designed to stem the "rapid increase in personal injury protection insurance fraud occurring within Hillsborough County."[23] The Court indicated that:

> According to the plain language of the Florida Statutes, the Plaintiffs, licensed professional or "physicians" licensed pursuant to Chapters 456, 458, 459, or 460, Florida Statutes, *may* operate or perform medical services at their AHCA Licensed Health Care Clinics under state law, while Ordinance 11-13, as amended by Ordinance 12-6, makes such operation illegal, after a clinic has had its license denied.[24]

[19] Section 627.94072(2), F.S.
[20] Section 27.731, F.S.
[21] Mark J. Rose, *Florida's No-Fault Law and the 2012 Statutory Amendments*, 31 NO. 3 TRIAL ADVOC. Q. 23, 23 (summer 2012).
[22] *Id*. at 23 [citations omitted].
[23] *Doctor's Pain Management Group v. Hillsborough County*, Case Nos.: 11-012935, 11-013630, and 11-CA-013039 (Fla. 13th Cir. Ct. 2013) (pg. 9). The ordinance in question is Ordinance 11-13, which required medical clinics primarily offering treatment to auto accident injuries to obtain a license.
[24] *Id*. at 11.

In its review of Florida law, the court determined that the Legislature intended to entirely preempt the field of health care licensing.[25] Therefore, a county has no authority to determine who may practice as a healthcare provider, in any circumstance.[26]

Reciprocal Insurance

Reciprocal insurance is insurance resulting from an interexchange of subscribers of reciprocal agreements of indemnity, effected through a designated attorney.[27] Reciprocal insurers can transact any kind of insurance except life or title insurance.[28] Florida law requires reciprocal insurers to have and maintain surplus funds of at least $250,000, and an expendable surplus of at least $750,000.[29] Reciprocal insurers may return to subscribers unused premiums, savings, or credits accruing to their accounts.[30]

Premium Financing by an Insurer

Section 627.902, F.S., provides that an insurer, a subsidiary of an insurer, or a corporation under substantially the same management or control as an authorized insurer or group of authorized insurers may finance property, casualty, surety, and marine insurance premiums on policies issued or business produced by such insurer or insurers. However, any such insurer, subsidiary, or corporation or group of insurers that charges a total service charge per year or rate of interest which is substantially more than $3 per installment or $36 per year is subject to part XV of chapter 627, F.S., is subject to part XV of ch. 627, F.S.[31]

In *Smith*, the court addressed whether service fees paid to an insurer as part of an installment plan were subject to the premium finance statutes. The court held that insurer was not acting as a premium finance company pursuant to part XV of ch. 627, F.S., because it did not advance funds to the insured but that the service charge was "financing" as contemplated by part XVI of ch. 627, F.S.[32] The court further held that s. 627.904, F.S., governed the insurer's service fees.[33],[34]

Part XV of ch. 627, F.S., regulates premium finance companies. It requires premium finance companies to be licensed, provides for disciplinary actions against a licensee, provides limitations on certain fees, and provides for the contents of premium finance agreements.

[25] *Id*.
[26] *Id*. at 13.
[27] Section 629.011, F.S.
[28] Section 629.041(1), F.S.
[29] Section 629.071, F.S.
[30] Section 629.271, F.S.
[31] What constitutes "substantially more" than $3 per installment is not defined in statute. In *Smith v. Foremost Insurance Company*, 884 So.2d 341 (Fla. 2d DCA 2004), the court held that it was a jury question as to whether a $5 fee was "substantially more" than the $3 fee.
[32] *See Smith*, 884 So.2d at 344-345.
[33] *See Smith*, 844 So.2d at 345.
[34] Section 627.904, F.S., provides that an insurer must file service charge or interest rate plans with the OIR.

III. Effect of Proposed Changes:

CS/CS/SB 870 revises provisions in insurance law, addressing property, casualty, and surety policies, long-term care policies, reciprocal insurance, and premium financing.

Assessments on Property and Casualty Insurance Policies

The bill significantly revises the assessment process for regular and emergency assessments.

In the OIR order levying the assessment, the bill requires the office to specify the assessment percentage to be collected uniformly from all assessable policyholders for the assessment year. The order must also specify the start of the assessment year, which is a 12-month period that may start on the first day of each quarter, beginning January 1. The assessment year is the 12 month period during which FIGA assessments are recouped or collected from assessable policyholders.

Insurers are required to make an initial payment to the FIGA before the beginning of the assessment year, on or before the date specified in the order. The initial payment made by insurers who wrote insurance in the preceding calendar year is based on the net direct written premiums of the prior year multiplied by the uniform percentage. The initial payment made by insurers that did not write in the prior calendar year is based on a good faith estimate of the anticipated premiums that would be written for the assessment year, multiplied by the uniform percentage of premium. Currently, an insurer's prior year market share is used as a basis for determining an insurer's total assessment. The insurer calculates the recoupment factor to provide for the probable recoupment in 1 year.

The bill authorizes the FIGA to use a monthly installment method for the collection of assessments from policyholders by insurers. The monthly installment method may also be used in combination with the method requiring insurers to make an initial payment to the FIGA and subsequently recoup that payment from policyholders. The bill provides the FIGA with the discretion to use the installment plan based on the FIGA's projected cash flow. If the FIGA projects that it has cash on hand for the payment of expected claims in the applicable account for 6 months, the FIGA may recommend a monthly assessment instead of a single payment.

Once the OIR issues an order requiring insurers to pay an assessment, insurers may begin collecting assessments from policyholders for the assessment year. The initial collection start date must be at least 90 days after the FIGA board certifies the need for an assessment. Under the current collection method, an insurer generally remits the regular assessment within 30 days of the levy; however, the emergency assessment currently may be payable as a single payment or in 12 monthly installments, at the FIGA's option.

Insurers are required to file a reconciliation report with the FIGA within 45 days after the end of the assessment year, indicating the amount of the initial payment to the FIGA, whether the payment was based on prior year premiums or a good faith projection, the amounts collected. Reconciliation reports are subject to s. 626.9541(1)(e), F.S. Insurers are required to complete and submit a payment reconciliation to the FIGA within 90 days after the end of the assessment year. If an insurer's collections exceed the initial payment to the FIGA, the insurer will remit the excess amount to the FIGA. If an insurer's collections are less than the initial payment to the

FIGA, the FIGA will credit the insurer that amount against future assessments, which will streamline the current reconciliation process. The bill also eliminates the required informational filing with OIR regarding the amount of the recoupment factor and recoupment factor methodology.

The bill provides that assessments levied under s. 631.57(3), F.S., are levied upon insurers and that this subsection does not create a cause of action by a policyholder with respect to the levying of, or a policyholder's duty to pay assessments. The bill retains the current caps on assessments of 2 percent for the regular assessment and 2 percent for the emergency assessment per year.

The bill specifies that assessments levied before policy surcharges are collected result in a receivable, which is recognized as an admissible asset [35] under statutory accounting principles, to the extent the receivable is likely to be realized. This revision codifies the current practice of the OIR.[36] The asset must be established and recorded separately from the liability. The insurer must reduce the amount recorded as an asset if it cannot fully recoup the assessment amount because of a reduction in writings or withdrawal from the market. For assessments that are paid after policy surcharges are collected pursuant to the monthly payment option created by the bill, the recognition of assets is based on actual premium written offset by the obligation to the FIGA.

Insurers must issue premiums statements which separately display charges or recoupments to inform the policyholders of the amount charged for FIGA assessments. These charges and recoupments, however, are not included in rates filed and approved by the OIR.

Countersignatures on Property, Casualty, and Surety Insurance Policies

The bill provides that the absence of a countersignature does not affect the validity of the insurance policy or contract. The bill will preclude arguments by an insurer that a policy is invalid because it lacks a countersignature.

Long-term Care Insurance Policies

Current law requires insurers of long-term care policies to offer a nonforfeiture protection provision. The bill specifies that an insurer may offer a nonforfeiture provision in a long-term care insurance policy in the form of a return of premium in the event of the insured's death, or surrender or cancellation of the policy. The return of a premium is not currently identified as a benefit in a nonforfeiture provision. This change adds an additional option to nonforfeiture provisions.

The Florida Motor Vehicle No-Fault Law (PIP)

The bill provides that the PIP law does not preclude a county from enacting and enforcing an ordinance applicable to health care clinics that receive reimbursement under the PIP law.

[35] As defined in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4.
[36] Office of Insurance Regulation, Supplemental Memorandum to Information Memorandum OIR-06-023M (December 1, 2006). http://www.floir.com/siteDocuments/SupplementalMemo.pdf (Last visited April 1, 2014).

Reciprocal Insurance

Current law authorizes reciprocal insurers to return to subscribers unused premiums, savings, or credits accruing to their accounts.[37] This bill allows reciprocal insurers to return a portion of unassigned funds to subscribers in an amount of up to 10 percent of surplus funds with distribution capped at 50 percent of net income from the prior calendar year.

Premium Financing

This bill provides that parts XV and XVI of ch. 627, F.S., do not apply to installment payment arrangements offered by an insurer if such arrangements do not involve the advancement of funds which would constitute financing and exceed the service charges provided in s. 627.901, F.S. This would make clear that premium finance provisions in parts XV and XVI of ch. 627 do not apply to installment payment arrangements provided the installment plan service changes do not exceed the charges provided in s. 627.901, F.S.[38] It

Effective Date

The bill takes effect July 1, 2014.

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.

[37] Section 629.271, F.S.

[38] Section 627.901, F.S., caps service charges at $3 per installment and provides the maximum service change cannot exceed $36 per year.

B. Private Sector Impact:

Countersignature Required on Policies for Property, Casualty, and Surety Insurance

This bill removes the requirement for a countersignature by an agent of the insurer. Policyholders may benefit as their policy cannot be invalidated due to the lack of a countersignature.

C. Government Sector Impact:

Assessments

The bill establishes an alternative assessment method, which will allow the FIGA to use a monthly installment plan or a combination of methods for the collection of regular and emergency assessments. This will include the current method of collecting assessments up front from insurers who would recoup from policyholders. However, for purposes of the emergency assessment used to defease bonds, the bill provides that the assessment is payable as a lump sum payment or in installments at the option of the FIGA. Current law provides the FIGA the option of collecting the emergency assessment from insurers up front or paying over 12 months.

Advocates of the bill contend that the current assessment mechanism poses a threat to the solvency of property insurers doing business in Florida after a storm. Advocates of the bill state that a monthly payment reduces the risk of insolvency.

The bill provides a more equitable assessment by creating a uniform percentage assessment of policyholders. The assessment applies to insurers writing in the preceding year and new insurers writing insurance as of, or after the date the FIGA certifies the assessment. Under the current method, the amount of assessment is based on the market share of an insurer for the prior year. Insurers that did not write in the prior year but are currently writing are not subject to an assessment.

The bill streamlines the assessment recoupment, reconciliation, and reporting process for insurers by requiring insurers to file a reconciliation report and a payment reconciliation report with FIGA. The bill eliminates the requirement that an insurer must file an informational statement with the OIR prior to applying a recoupment factor on policies.

VI. Technical Deficiencies:

This bill provides that parts XV or XVI of ch. 627, F.S., does not disallow or otherwise apply to installment payment arrangements offered by an insurer if such arrangements do not involve the advancement of funds which would constitute financing and exceed the service charges provided in s. 627.901, F.S. While it appears the intent of the bill was to continue to require insurers to be subject to the fee caps in s. 627.901, F.S., it could be argued that the bill would allow insurers to exceed the caps.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.425, 627.727, 627.7311, 627.94072, 629.271, 631.54, 631.55, 631.57, and 631.64 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/CS by Rules on April 21, 2014:
The committee substitute provides that parts XV and XVI of ch. 627, F.S., do not apply to installment payment arrangements offered by an insurer if such arrangements do not involve the advancement of funds which would constitute financing and exceed the service charges provided in s. 627.901, F.S.

CS by Judiciary on April 1, 2014:
The committee substitute:

- Clarifies that an insurer may offer a nonforfeiture provision in a long-term care insurance policy in the form of a return of an insured's premium.
- Provides that a county may enact and enforce an ordinance regulating health care clinics receiving reimbursement under the Florida Motor Vehicle No-Fault Law.
- Revises the law on assessments imposed on property and casualty insurance policyholders by:
  - Creating a uniform assessment percentage to be collected from policy holders and requiring the insurer to initiate collection at least 90 days after the Florida Insurance Guaranty Association (FIGA) certifies the assessment;
  - Authorizing FIGA to use a monthly installment method for collecting assessments from insurers in addition to the current pay and recoup method;
  - Streamlining reconciliation of collections and eliminates a regulatory filing with the Office of Insurance Regulation (OIR); and
  - Codifying the OIR's interpretation of an admissible asset for purposes of statutory accounting treatment of FIGA assessments.
- Authorizes reciprocal insurers to distribute surplus funds to subscribers.

B. Amendments:

None.