HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 273 Insurer Notifications
SPONSOR(S): Insurance & Banking Subcommittee; Perry
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 202

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Cooper	Cooper
2) Regulatory Affairs Committee	16 Y, 0 N	Cooper	Hamon

SUMMARY ANALYSIS

Section 627.421, F.S., requires every insurance policy to be mailed, delivered or electronically transmitted to the insured (policyholder) within 60 days after the insurance takes effect. The law also contains specific electronic delivery parameters for insurance covering commercial risks. Also, subject to certain conditions, property and casualty insurers are allowed to post policies on the insurer's website instead of mailing, delivering or electronically transmitting the policies to insureds.

For personal lines insurance, the bill allows insurers to deliver policy documents, including policies, endorsements, notices, or other documents, by electronic means in lieu of delivery by mail if the policyholder affirmatively elects electronic delivery.

Under current law, to make a change in the terms of a property and casualty insurance contract, the insurer must give the policyholder a written Notice of Change in Policy Terms with the policy renewal notice, and the policy renewal notice must be provided to the policyholder in accordance with current law, which requires insurers to give notice of renewal 45 days prior to the renewal date. A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide the Notice of Change in Policy Terms to the policyholder, the terms of the insurance policy are not changed.

The bill allows an insurer to send a Notice of Change of Policy Terms separate from the renewal notice as long as the notice is sent within the policy nonrenewal time limits in current law. Generally, the nonrenewal time limits are notice at least 100 days prior to the effective date of the nonrenewal. For any nonrenewal that takes effect between June 1st and November 30th, at least 100 days written notice, or notice by June 1st, whichever is earlier, is required. Furthermore, policyholders with property insured by the same insurer for five years or more receive 120 days' notice of nonrenewal instead of 100 days' notice. Thus, the bill requires a Notice of Change of Policy Terms to be given sooner when it is not included with the renewal notice.

The bill also requires the insurer to provide the policyholder's insurance agent with a sample copy of the Notice of Change of Policy Terms before or at the same time as the Notice is provided to the policyholder.

If an insurer seeks to offer optional coverage (that increases the premium) as a part of a renewal policy, the bill prohibits the insurer from using the "Notice of Change in Policy Terms" to add the optional coverage to the policy unless the policyholder affirmatively approves.

The bill has no fiscal impact on state or local government. Property and casualty insurers who choose to provide a Notice of Change of Policy Terms by mail, separate from the renewal notice, may incur additional costs associated with printing and mailing this Notice. On the other hand, insurers who utilize the electronic delivery option should experience cost savings.

The bill is effective on July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Electronic Delivery of Insurance Policies

Section 627.421, F.S., requires every insurance policy[1] to be mailed, delivered, or electronically transmitted to the insured (policyholder) within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed. Regarding electronic transmission, the law also contains specific delivery parameters for insurance covering commercial risks. Also, subject to certain conditions, property and casualty insurers are allowed to post policies on the insurer's website instead of mailing, delivering or electronically transmitting the policies to insureds.

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.[2] Insurance is specifically included in E-SIGN.[3] E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

In addition, s. 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

For personal lines insurance,[4] the bill allows insurers to deliver policy documents by electronic means in lieu of delivery by mail if the policyholder affirmatively elects electronic delivery. The bill does not likely implicate E-SIGN or UETA because it requires the affirmative consent of the policyholder before the electronic delivery of insurance policy documents.

Change of Policy Terms In Insurance Policies

Under current law, to make a change in the terms of a property and casualty insurance contract, the insurer must give the policyholder a written Notice of Change in Policy Terms[5] with the policy renewal notice and the policy renewal notice must be provided to the policyholder in accordance with current law, which requires insurers to give notice of renewal 45 days prior to the renewal date.[6] A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide the Notice of Change in Policy Terms to the policyholder, the terms of the insurance policy are not changed.

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[1] s. 627.402, F.S., defines policy to include endorsements, riders, clauses, and papers that are part of such policy. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. (see s. 627.401, F.S.). See also s. 627.43141(1) (b), F.S., where the definition for "policy" for property and casualty insurance is the same.

[2] Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effect October 1, 2000.

[3] *Id.*

[4] Personal lines insurance is property and casualty insurance sold to individuals and families for non-commercial purposes. S. 626.015(15), F.S.

[5] s. 627.43141(1) (a), F.S., defines change in policy terms to mean "the modification, addition, or deletion of any term , coverage, duty, or condition from the previous policy. The correction of typographical or scrivener's errors or the application of mandated legislative changes is not a change in policy terms."

[6] s. 627.43141, F.S.

The bill allows an insurer to send a Notice of Change of Policy Terms separate from the renewal notice as long as the notice is sent within the policy nonrenewal time limits in current law. Generally, the nonrenewal time limits are notice at least 100 days prior to the effective date of the nonrenewal.[7] And, for any nonrenewal that takes effect between June 1st and November 30th, at least 100 days written notice, or notice by June 1st, whichever is earlier, is required. Furthermore, policyholders with property insured by the same insurer for five years or more receive 120 days' notice of nonrenewal instead of 100 days' notice. Thus, the bill requires a Notice of Change of Policy Terms to be given sooner when it is not included with the renewal notice.

The bill also requires the insurer to provide the policyholder's insurance agent with a sample copy of the Notice of Change of Policy Terms before or at the same time as the Notice is provided to the policyholder.

New procedures for offering optional coverage as a part of the Notice of Change of Policy Terms are delineated in the bill. Optional coverage is defined to mean the addition of new insurance coverage that has not previously been requested or approved by the policyholder but that does not include any change to the base policy or a deductible or an insurance limit. The bill further provides that a renewal policy that includes the addition of optional coverage that increases the premium to a policyholder may not use the "Notice of Change in Policy Terms" to add the optional coverage to the policy unless the policyholder affirmatively indicates to the insurer or agent that the policyholder approves the addition of the optional coverage.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.421, F.S., relating to delivery of policy.

Section 2: Amends s. 627.43141, F.S., relating to notice of change in policy terms.

Section 3: Provides an effective date of July 1, 2015.

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.

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[7] A 45-day notice of cancellation or nonrenewal, rather than the 100-day or 120-day notice is allowed if the OIR determines early cancellation of some or all of an insurer's property insurance policies is necessary to protect the best interest of the public or the policyholders. (s. 627.4133(2)(b)5., F.S.)

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Property and casualty insurers who choose to provide a Notice of Change of Policy Terms by mail, separate from the renewal notice, may incur additional costs associated with printing and mailing this Notice. On the other hand, insurers who utilize the electronic delivery option should experience cost savings.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This 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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2015, the Insurance & Banking Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment defined optional coverage and prohibited the use of "notice of change in policy terms" for that coverage unless certain conditions are met. The second amendment conformed the bill to the substantively identical provision in HB 165, accommodating non-substantive bill drafting differences between the two bills.

The staff analysis is drafted to reflect the committee substitute as passed by the Insurance & Banking Subcommittee.