

**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 Banking and Insurance

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BILL: CS/SB 1036

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Automobile Insurance

DATE: January 27, 2016

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Knudson | Knudson        | BI        | Fav/CS |
| 2. |         |                | CM        |        |
| 3. |         |                | RC        |        |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1036 makes the following changes relating to automobile insurance:

**Use of Rating Territories Contained Within a Single Zip-Code**

- Allows motor vehicle insurance rates to be developed using rating territories contained within a single zip code if:
  - The rating territories incorporate sufficient loss and loss adjustment expense data to be actuarially measurable and credible; and
  - The Office of Insurance Regulation (OIR) determines that a rate filing using such rating territories does not contain a rate or rate change that is excessive, inadequate, or unfairly discriminatory.

**Cancellation of Policies Issued by the Florida Automobile Joint Underwriting Association**

- Allows the Florida Automobile Joint Underwriting Association (Auto JUA) to cancel personal lines or commercial lines policies issued by the plan for nonpayment of premium if a check is dishonored for any reason or any other form of payment is rejected or deemed invalid. The cancellation may only occur within the first 60 days of the policy or binder;
- Prohibits an insured of the Auto JUA from cancelling a policy or binder within the first 90 days of its effective date unless the insured vehicle is totally destroyed, ownership of the vehicle is transferred, or another policy is purchased covering the vehicle;

### **Payment of Premium and Return of Unearned Premium**

- Allows motor vehicle insurers to apply the unearned portion of premium to unpaid balances of other policies with the same insurer or insurer group instead of returning the premium via mail or electronic transfer.
- Specifies that motor vehicle insurance premiums may be paid in cash in the form of a draft or drafts. Allows the insurer to impose an insufficient funds fee of up to \$15 per occurrence if specified methods of premium payments are declined for insufficient funds.
- Exempts policies paid via a recurring credit card or debit card agreement with the insurer from the requirement that, prior to issuing or binding a motor vehicle insurance policy, the insured must pay at least 2 months' premium.

### **Personal Injury Protection (PIP)**

- Exempts publicly traded corporations with \$250 million or more in total annual sales in health care services from the requirement to obtain health care clinic licensure as a condition of qualifying for reimbursement under PIP coverage.
- Clarifies and updates references to billing requirements under PIP.

### **Preinsurance Inspection of Private Passenger Motor Vehicles**

- Allows insurers to opt out of the preinsurance inspection requirements of the section for private passenger motor vehicles. An insurer that opts out of the statutory preinsurance inspection process must file a manual rule notifying the OIR that it is doing so, and may establish its own preinsurance inspection program.

The effective date is July 1, 2016.

## **II. Present Situation:**

### **Zip Codes and Rating Territories for Motor Vehicle Insurance**

Section 627.062, F.S., is Florida's rating law. Among other requirements, it provides that insurance rates cannot be excessive, inadequate, or unfairly discriminatory. Insurer rate filings that comply with the law and are adequately supported by actuarial justification must be accepted by the OIR. Pursuant to s. 627.0651, F.S., the use of a single zip code as a rating territory for motor vehicle insurance rates is deemed unfairly discriminatory and is thus prohibited.

### **Cancellation of Florida Automobile Joint Underwriting Association Policies**

Insurers<sup>1</sup> that offer motor vehicle insurance in the state must participate in the Auto JUA.<sup>2</sup> The Auto JUA exists to provide motor vehicle insurance to individuals who cannot obtain such coverage in the voluntary insurance market. The Auto JUA distributes this risk among its members. It is subject to various limitations regarding issuance and cancellation of coverage, and

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<sup>1</sup> s. 624.03, F.S.

<sup>2</sup> s. 627.311, F.S.

provision of premium credits/discounts to protect its solvency, the coverage of its insureds, and to avoid Auto JUA policies being competitive with the voluntary market. Motor vehicle insurers, including the Auto JUA, are limited regarding the cancellation of insurance policies.<sup>3</sup> An insurer may not cancel a policy within 60 days of the effective date of the policy, except for non-payment of premium.<sup>4</sup>

### **Return of Unearned Premium upon Cancellation of Motor Vehicle Insurance**

Section 627.7283, F.S., requires insurers to mail or electronically transfer the unearned portion of any premium paid on a motor vehicle insurance policy. If the insured cancels the policy, the insurer must return the unearned premium within 30 days upon the later of the policy cancellation or the receipt of notice of policy cancellation. If the insurer cancels the policy, the unearned premium must be returned within 15 days of the effective date of the policy cancellation.

### **Requirement to Initially Pay 2 Months' Premium before Issuance of Private Passenger Motor Vehicle Insurance**

Before a policy of private passenger motor vehicle insurance may be initially issued or bound, s. 627.7295(7), F.S., requires the insurer or insurance agent to collect 2 months' premium from the insured before the effective date of the policy. This requirement does not apply:

- To policy renewals or replacement policies issued by the same insurer group;
- To an insurer that issues private passenger motor vehicle insurance policies primarily to active duty or former personnel or their dependents;
- If all policy payments are paid pursuant to a payroll deduction plan or an automatic electronic funds transfer payment from the policyholder;
- If all policy payments are paid pursuant to an automatic electronic funds transfer payment plan from an agent, a managing general agent, or a premium finance company if the policy includes Personal Injury Protection (PIP) insurance, property damage liability coverage of at least \$10,000, and bodily injury liability coverage of at least \$10,000 per person and \$20,000 per accident; or
- If the insured had a policy in effect for at least 6 months, the insured's agent is terminated by the insurer that issued the policy; and the insured obtains coverage on the policy's renewal date with a new company through the terminated agent.

### **Personal Injury Protection Insurance – Billings for Medical Services**

Florida's Motor Vehicle No-Fault Law (the "No-Fault Law")<sup>5</sup> requires motorists to carry personal injury protection (PIP) coverage. Personal injury protection coverage provides \$10,000 in medical and disability benefits and a \$5,000 death benefit.<sup>6</sup> Medical benefits are limited to \$2,500 if the injured person is determined to not have an emergency medical condition.<sup>7</sup> The purpose of the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance

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<sup>3</sup> ss. 627.7295 and 627.728, F.S.

<sup>4</sup> s. 627.7295(4), F.S.

<sup>5</sup>ss. 627.730-627.7405, F.S.

<sup>6</sup>s. 627.736(1), F.S.

<sup>7</sup>s. 627.736(1)(a)4., F.S.

benefits without regard to fault. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents.<sup>8</sup>

Section 627.736(5)(d), F.S., requires all statements and bills for medical services reimbursable by PIP to be submitted according to specified criteria. The billings must be on properly completed Centers for Medicare and Medicaid Services (CMS) 1500 forms, UB 92 forms, or any other standard form approved by the OIR or adopted by the Financial Services Commission. Billings must, to the extent applicable, follow the Physicians' Current Procedural Terminology (CPT)<sup>9</sup> or Healthcare Correct Procedural Coding System (HCPCS)<sup>10</sup> or the International Classification of Diseases<sup>11</sup> (ICD-9). Though the No-Fault Law requires use of the ICD-9, the current updated version is the ICD-10.<sup>12</sup>

### **Personal Injury Protection Insurance –Health Care Clinic Licensure**

The No-Fault Law requires entities that seek reimbursement under PIP coverage to obtain licensure under the Health Care Clinic Act<sup>13</sup>, unless exempt from this requirement. The purpose of the Health Care Clinic Act is to provide for the licensure, establishment, and enforcement of basic standards for health care clinics and to provide administrative oversight by the AHCA.<sup>14</sup>

The exemptions include:

- Hospitals licensed under ch. 395, F.S.
- Ambulatory surgical centers licensed under ch. 395, F.S.
- An entity that wholly owns or is wholly owned by a hospital licensed under ch. 395, F.S.
- An entity that is a clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.
- Entities wholly owned by:
  - Physicians licensed under ch. 458, F.S., or ch. 459, F.S.;
  - Dentists licensed under ch. 466, F.S.;
  - Chiropractic physicians licensed under ch. 460;
- An entity certified under 42 C.F.R. part 485, subpart H (entities qualified under Medicare to provide outpatient physical therapy and speech pathology services).

### **Preinsurance Inspection of Private Passenger Motor Vehicles**

Section 627.744, F.S., requires insurers to perform preinsurance inspections of private passenger motor vehicles. It also provides various exemptions from the required preinsurance inspection,

<sup>8</sup> s. 627.737, F.S.

<sup>9</sup> The American Medical Association CPT codes, provide standardized nomenclature used to report medical procedures and services. See American Medical Association, *About CPT®*, <http://www.ama-assn.org/ama/pub/physician-resources/solutions-managing-your-practice/coding-billing-insurance/cpt/about-cpt.page> (last visited Jan. 22, 2016).

<sup>10</sup> The HCPCS contains codes for products, supplies, and services not included in CPT codes such as durable medical equipment, prosthetics, orthotics, and supplies when used outside a physician's office. See Centers for Medicare & Medicaid Services, HCPCS – General Information HCPCS Background Information, <https://www.cms.gov/medicare/coding/medhcpcsgeninfo/index.html> (last visited Jan. 22, 2016).

<sup>11</sup> The ICD classifies diseases and other health problems and is used by health care providers and insurers.

<sup>12</sup> World Health Organization, *International Classification of Diseases (ICD)*, <http://www.who.int/classifications/icd/en/> (Last visited Jan. 22, 2016).

<sup>13</sup> Sections 400.990 – 400.995, F.S.

<sup>14</sup> Section 400.990, F.S.

including for new, unused motor vehicles “purchased” from a licensed motor vehicle dealer or leasing company when the insurer is provided with the bill of sale, buyer’s order, or copy of the title and certain other documentation.

Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Physical damage coverage may not be suspended during the policy period due to the applicant’s failure to provide the required documents. However, claim payments are conditioned upon and are not payable until the required documents are received by the insurer. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed \$5.

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

#### **Use of Rating Territories Contained Within a Single Zip-Code**

**Section 1** amends s. 627.0651, F.S., to allow motor vehicle insurance rates to be developed using rating territories contained within a single zip code if:

- The rating territories incorporate sufficient loss and loss adjustment expense data to be actuarially measurable and credible; and
- The Office of Insurance Regulation (OIR) determines that a rate filing using such rating territories does not contain a rate or rate change that is excessive, inadequate, or unfairly discriminatory.

#### **Florida Automobile Joint Underwriting Association Policies – Cancellation for Non-Payment of Premium**

**Section 2** amends s. 627.311(3), F.S., to allow the Florida Automobile Joint Underwriting Association to cancel personal or commercial lines policies issued by the plan for nonpayment of premium if a check is dishonored for any reason or any other form of payment is rejected or deemed invalid. The cancellation may only occur within the first 60 days of the policy or binder. The bill prohibits the insured of the Association from cancelling a policy or binder within the first 90 days of its effective date except if the insured motor vehicle is totally destroyed, ownership of the vehicle is transferred, or after the purchase of another policy or binder covering the motor vehicle.

#### **Motor Vehicle Insurance – Return of Unearned Premium upon Cancellation**

**Section 3** amends s. 627.7283, F.S., which sets the requirements for insurers to return unearned premium to policyholders when insurance policies are cancelled by the insured or insurer. The bill allows motor vehicle insurers to apply the unearned portion of premium to unpaid balances of other policies with the same insurer or insurer group instead of returning the premium via mail or electronic transfer.

#### **Motor Vehicle Insurance – Methods of Premium Payment**

**Section 4** amends s. 627.7295, F.S., to exempt policies paid via a recurring credit card or debit card agreement with the insurer from the requirement that, prior to issuing or binding a motor vehicle insurance policy, the insured must pay at least 2 months’ premium.

The bill also authorizes premiums to be paid in cash in the form of a draft or drafts. The bill allows the insurer to impose an insufficient funds fee of up to \$15 per occurrence if a payment via draft made by debit card, credit card, or automatic electronic funds transfer is returned, declined, or cannot be processed due to insufficient funds.

### **Personal Injury Protection**

**Section 5** amends s. 627.736(5)(d), F.S., to clarify that billings under the Motor Vehicle No-Fault law must follow the Physicians Current Procedural Terminology (CPT), the Healthcare Common Procedure Coding System in effect for the year in which services are rendered, and the International Classification of Diseases (ICD) adopted by the United States Department of Health and Human Services for the year in which services are rendered. Compliance with all three standardizes PIP billings and facilitates the timely adjustment and payment of benefits. The bill will require compliance with the current version of the ICD, the ICD-10.

The bill also exempts publicly traded corporations with \$250 million or more in total annual sales in health care services from the requirement to obtain health care clinic licensure as a condition of qualifying for reimbursement under PIP coverage.

### **Insurer Opt-out of Statutory Preinsurance Inspection**

**Section 6** amends s. 627.744, F.S., to allow insurers to opt out of the preinsurance inspection requirements of the section for private passenger motor vehicles. An insurer that opts out of the statutory preinsurance inspection process must file a manual rule notifying the OIR that it is doing so, and may establish its own preinsurance inspection program.

### **Effective Date**

**Section 7** provides an effective date of July 1, 2016.

## **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:**

Policyholders of motor vehicle insurance will be subject to an insufficient funds fee of up to \$15 if payment by debit card, credit card, or automatic electronic funds transfer is returned, declined, or cannot be processed because of insufficient funds.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The bill authorizes the payment of motor vehicle insurance premiums via cash by draft. However, s. 627.4035, F.S., currently allows payment by cash, check, debit card, credit card and electronic funds transfer. It is unclear what additional methods are captured by the bill. The \$15 insufficient funds fee authorized by the bill only applies to debit card, credit card, or automatic electronic funds transfer, all of which are currently available methods of payment under s. 627.4035, F.S., and thus would not apply to the additional methods of “draft” payment, if any, that are authorized by the bill.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 627.0651, 627.311, 627.7283, 627.7295, 627.736, and 627.744.

**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 Banking and Insurance January 26, 2016:**

The CS:

- Allows motor vehicle insurance rates to be developed using rating territories contained within a single zip code if specified requirements are met;
- Specifies that motor vehicle insurance premiums may be paid in cash in the form of a draft or drafts. Allows the insurer to impose an insufficient funds fee of up to \$15 per occurrence if specified methods of premium payments are declined for insufficient funds;

- Exempts publicly traded corporations with \$250 million or more in total annual sales in health care services from the requirement to obtain health care clinic licensure as a condition of qualifying for reimbursement under PIP coverage.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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