

**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 Appropriations

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BILL: CS/CS/SB 454

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Brandes

SUBJECT: Regulation of Insurance Companies

DATE: April 7, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Matiyow/Sanders</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Matiyow/Sanders</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
4.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 454 makes several changes relating to the regulation of insurance companies. The bill:

- Deletes the future repeal of the exemption of medical malpractice insurance premiums from the Florida Hurricane Catastrophe Fund (fund) assessments. Under current law, the exemption is repealed May 31, 2019.
- Allows an insurer issuing only renter's insurance, tenant's coverage or cooperative unit owners insurance to maintain a surplus of \$10 million to do business in the state.
- Removes the requirement that all members of an audit committee for an insurer must be free of any relationships that could interfere with the member's independent judgement.
- Allows Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) surcharges to be counted as insurer assets if those surcharges are paid to the Association before the surcharges are collected from the insureds.
- Removes the requirement on insurers writing certain lines of medical malpractice insurance to make a full rate filing annually; these insurers will have the option to certify their rates with the Office of Insurance Regulation (OIR).
- Renames "owners and encumbrance" reports to "property information" report and clarifies such reports are not title insurance.
- Allows electronic checks and drafts as acceptable methods of payment for specified lines of insurance and allows insurers to charge a \$15 insufficient funds fee.

- Specifies display requirements for the electronic delivery of documents.

The impact on state revenues and expenditures is indeterminate. The continued exemption from the fund assessments for medical malpractice insurance premiums most likely will not impact revenues generated by the fund. The OIR has identified a need to modify existing computer systems but the costs of such modifications can be absorbed within existing agency resources.<sup>1</sup>

The bill takes effect upon becoming a law.

## II. Present Situation:

### **Title Insurance**

Title insurance is: (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.<sup>2</sup> Title insurance serves to indemnify the insured against financial loss caused by defects in the title arising out of events that occurred before the date of the policy.<sup>3</sup> Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (DFS) while title insurance companies are licensed and regulated by the OIR.

### ***Owners and Encumbrance Reports***

An owners and encumbrance report discloses certain defined documents imparting constructive notice and appearing in the official records relating to specified real property.<sup>4</sup> Such reports may not directly or indirectly set forth or imply any opinion, warranty, guarantee, insurance, or other similar assurance as to the status of title to real property.<sup>5</sup> Additionally, any ownership and encumbrance report or similar report that is relied on or intended to be relied on by a consumer must be on forms approved by the OIR, and must provide for a maximum liability for incorrect information of not more than \$1,000.<sup>6</sup>

### **The Florida Hurricane Catastrophe Fund and its assessments**

The Florida Hurricane Catastrophe Fund is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. The fund is administered by the State Board of Administration and is a tax-exempt source of reimbursement to property insurers for a selected percentage of hurricane losses above the insurer's retention. Admitted property insurers in the state are required to purchase \$17 billion in coverage from the fund. Each insurer's mandatory amount purchased is based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. The

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<sup>1</sup> OIR staff provided an update regarding fiscal impact via telephone on March 9, 2017.

<sup>2</sup> See s. 624.608, F.S.

<sup>3</sup> See *Lawyers Title Insurance Co. Inc. v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 797 (Fla. 4<sup>th</sup> DCA 2003).

<sup>4</sup> Section 627.7843(1), F.S.

<sup>5</sup> Section 627.7843(2), F.S.

<sup>6</sup> Section 627.7843(3), F.S.

fund must charge insurers the actuarially indicated premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

Reimbursements to insurers for losses above the current moneys in the fund are financed through bonding. When the moneys in the fund are insufficient to cover losses, the law authorizes the fund to issue revenue bonds funded by emergency assessments on property and casualty policyholders. Bonds would be funded by an emergency assessment of up to 6 percent of premium on most lines of property and casualty insurance for funding losses from a single year, and up to 10 percent of premium for funding losses from multiple years. All lines of property and casualty insurance, including surplus lines insurance, are subject to emergency assessment except for workers' compensation and medical malpractice liability insurance. The exemption for medical malpractice insurance being subject to fund assessments is scheduled to repeal on May 31, 2019.

### **Florida Insurance Guaranty Association (FIGA) and its assessments**

When a property and casualty insurance company becomes insolvent, Florida Insurance Guaranty Association (FIGA) is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders who have paid premiums for insurance are not left with valid yet unpaid claims. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

In order to pay claims and to maintain the operations of an insolvent insurer, FIGA has several potential funding sources. FIGA's primary funding source is from the liquidation of assets of insolvent insurance companies domiciled in Florida. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida. In the event the insolvent insurer's assets are insufficient to pay all claims, FIGA can issue two types of post-insolvency assessments against property and casualty insurance companies to raise funds to pay claims. FIGA's assessments are computed and billed based on FIGA's immediate needs to pay claims. Currently, assessments may not exceed two percent of net direct-written premium in one year for regular assessments, and an additional emergency assessment of two percent of direct-written premium for hurricane-related insolvencies.

### **Renters Insurance**

Renter's insurance, sometimes referred to as tenant's insurance, includes three basic types of protection. The basic types of protection are for personal possessions, liability, and additional living expenses.<sup>7</sup> Standard renter's insurance policies protect personal belongings against damage from fire, smoke, lightning, vandalism, theft, explosion, windstorm, water, and other disasters listed in the policy. With respect to personal liability, standard renter's insurance policies provide liability protection against lawsuits for bodily injury or property damage that the insured or the insured's family members cause to other people. It also pays for damages caused

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<sup>7</sup> Insurance Information Institute, *Renters Insurance*, at <http://www.iii.org/article/renters-insurance> (last visited April 7, 2017).

by pets to others in the home. Finally, standard renter's insurance policies cover additional living expenses. If the tenant's home is destroyed by a disaster, which is covered by the policy, renter's insurance covers the additional costs incurred for the insured to reside elsewhere. Policies will generally reimburse the difference between additional living expenses and normal living expenses. Additional living expenses cover hotel bills, temporary rentals, restaurant meals and other expenses incurred while the home is being rebuilt.

### **Insurance Company Surplus**

Section 624.407, F.S., establishes the surplus requirement for insurers doing business in this state. The surplus requirement for a new property and casualty insurer issuing only renter's insurance policies is:

- \$15 million if not a wholly owned subsidiary of an insurer domiciled in any other state.<sup>8</sup>
- \$50 million if a wholly owned subsidiary of an insurer domiciled in any other state.<sup>9</sup>

### **Audit Committee**

In addition to each authorized insurer having to file with the OIR statements of its financial condition, transactions, and affairs<sup>10</sup>, each authorized insurer must also hire a certified public accountant to prepare an audit.<sup>11</sup> The board of the insurer is required to establish an audit committee of three or more directors of the insurer or an affiliated company. The audit committee is responsible for discussing audit findings and interacting with the certified public accountant with regard to his or her findings. The audit committee must be comprised solely of members who are free from any relationship that, in the opinion of its board of directors, would interfere with the exercise of independent judgment as a committee member. The audit committee must report to the board any findings of adverse financial conditions or significant deficiencies in internal controls that have been noted by the accountant. The insurer may request the office to waive this requirement of the audit committee membership based upon unusual hardship to the insurer.<sup>12</sup>

### **Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) and its assessments**

As a condition of their authority to offer workers' compensation insurance coverage in Florida, all insurers and self-insurance funds are required to be members of the Florida Workers' Compensation Insurance Guaranty Association, Inc. (FWCIGA).<sup>13</sup> The FWCIGA is a not-for-profit corporation established pursuant to part V of ch. 631, F.S., adjunct to the Department of Financial Services (DFS). The FWCIGA assists in the detection and prevention of insurer insolvencies and provides for the payment of workers' compensation covered claims.<sup>14</sup> The

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<sup>8</sup> Section 624.407(1)(e)1., F.S.

<sup>9</sup> Section 624.407(1)(e)2., F.S.

<sup>10</sup> Section 624.424(1)(a), F.S.

<sup>11</sup> Section 624.424(8)(a), F.S.

<sup>12</sup> Section 624.424(8)(c), F.S.

<sup>13</sup> Section. 631.911, F.S. Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. In Florida, the Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for rehabilitating or liquidating insurance companies.

<sup>14</sup> Section 631.902, F.S. The term "covered claim" is defined in s. 631.904(2), F.S.

FWCIGA evaluates workers' compensation claims made by insureds against insolvent member companies or funds, and determines if such claims are covered claims subject to payment by FWCIGA. The FWCIGA is funded by distributions from the estates of insolvent insurers, investment income, and assessments of member insurers.<sup>15</sup>

The FWCIGA determines whether an assessment against member insurers is necessary to pay covered claims of an insolvent insurer or to reimburse the FWCIGA for expenses associated with administering its statutory functions. The assessments are levied by the Department of Financial Services on each insurer based upon the proportion of the insurer's net direct written premium in Florida to the total of all such insurers writing workers' compensation coverages in Florida for the preceding calendar year. The maximum assessment rate is two percent for insurers and 1.5 percent for self-insurance funds. If these assessments are insufficient to satisfy claims and administration costs, an additional assessment of 1.5 percent can be levied.<sup>16</sup>

### **Insurer Assets**

When determining the financial condition of an insurer, statutory accounting principles allow insurers to include as an asset, assessment surcharges that have yet to be collected from policyholders. Under current law assessments levied by the Florida Insurance Guaranty Association, resulting in surcharges to policyholders yet to be collected by insurers, can be counted as assets if there is a reasonable expectation by the insurer that such surcharges will be paid.<sup>17</sup>

### **Medical Malpractice Insurance**

Medical malpractice insurance is a professional liability coverage obtained by health care providers to indemnify them from damages arising out of an act of medical negligence. Florida requires licensed physicians and licensed osteopathic physicians to meet financial responsibility requirements as a condition of obtaining and maintaining state licensure to practice medicine. Insurers that issue medical malpractice insurance are required to complete a full rate filing with the OIR once every calendar year.<sup>18</sup>

### **Insufficient Funds Fee**

Current law allows up to a \$15 insufficient funds fee to be charged to a policyholder of a motor vehicle insurance contract when the policyholders payment by debit card, credit card, electronic funds transfer, or electronic check is returned or declined.<sup>19</sup>

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<sup>15</sup> Florida Workers' Compensation Insurance Guaranty Association, Inc., *Frequently Asked Questions*, <http://fwciga.org/faq> (last visited April 7, 2017).

<sup>16</sup> Section 631.914, F.S.

<sup>17</sup> Section 625.012(15)(a), F.S.

<sup>18</sup> Section. 627.062(7)(e), F.S.

<sup>19</sup> Section 627.7295(9), F.S.

### **Delivery of Insurance Policies**

Part II of s. 627, F.S., generally applies to most lines of insurance written in this state.<sup>20</sup> Under this part, every insurance policy must be mailed, delivered or electronically transmitted to the policyholder within 60 days after the insurance takes effect. An insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy for commercial risks constitutes delivery to the insured or to the person entitled to delivery, unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. Electronic transmission shall include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.<sup>21</sup>

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

**Sections 1, 2 and 3** amend ss. 177.041, 177.091, and 197.502, F.S., respectively, relating to information contained in a “property information” report. The bill strikes references to certifications by abstractors or title companies and ownership and encumbrance reports. Instead, the bill refers to such reports as property information reports. The changes conform to **Section 13** of the bill and are designed to clarify that such reports are not title insurance.

**Section 4** amends s. 215.555, F.S., to delete the scheduled repeal of the exemption from the Florida Hurricane Catastrophe Fund (fund) assessments for medical malpractice insurance. The exemption will continue beyond May 31, 2019.

**Section 5** amends s. 624.407, F.S., to allow an insurer issuing only renter’s insurance, tenant’s coverage, or cooperative unit owners insurance, or any combination of such coverages, to maintain a surplus of \$10 million, regardless if they are wholly owned subsidiary of an insurer domiciled in Florida or another state.

**Section 6** amends s. 624.424, F.S., to delete the requirement that all members of an audit committee must, in the opinion of the board, be free of any relationships that could interfere with the member’s independent judgement when conducting an audit.

**Section 7** amends s. 625.012, F.S., to allow assessments paid by the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) prior to the collection of policy surcharges from policyholders to count as assets when determining the financial condition of an insurer. This section also allows assessments paid to the (FWCIGA) to be treated the same way assessments paid to the Florida Insurance Guaranty Association (FIGA) are currently treated.

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<sup>20</sup> Section 627.401, F.S.

<sup>21</sup> Section 627.421(1), F.S.

**Sections 8 and 9** amend ss. 627.062 and 627.0645, F.S., respectively, to allow insurers, when filing rates on certain lines<sup>22</sup> of medical malpractice insurance, the option of making a full rate filing or, when no rate change is needed, certifying to the Office of Insurance Regulation (OIR) that their rates are actuarially sound and not inadequate.

**Section 10** amends s. 627.4035, F.S., to allow the use of electronic checks and drafts as acceptable methods of payment for most insurance policies.<sup>23</sup> **Section 6** also allows insurers to charge a \$15 insufficient funds fee so long as the insufficient funds were not the result of fraudulent activity of the account on file and such fraudulent activity was not attributed to the policyholder. A \$15 insufficient funds fee is currently allowed for automobile insurance policies<sup>24</sup> and is being expanded to include a broader range of policies.

**Section 11** amends s. 627.421, F.S., to specify that, with regards to any font, size, color, spacing, or other formatting requirement for printed documents, an electronically delivered document satisfies these requirements if it has reasonably similar proportions or emphasis of the characters relative to the rest of the electronic document or is otherwise displayed in a reasonably conspicuous manner.

**Section 12** amends s. 627.7295, F.S., to delete provisions that are applicable only to motor vehicle contracts because similar provisions have been set forth in section 10 of this bill that are applicable to a broader range of policies.

**Section 13** amends s. 627.7843, F.S., clarifying that a “property information” report may be completed by anyone including title insurers. The report must contain a disclosure stating that the report is not title insurance, that the maximum liability of the report’s issuer for errors or omissions is limited to the amount paid for the report, and recovery may only be made by the named recipient of the report.

The provisions of this section do not apply to a title opinion issued by an attorney.

**Section 14** provides the bill takes effect upon becoming a law.

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<sup>22</sup> The bill allows insurers to certify rates for medical malpractice insurance policies that are subject to “file and use” or “use and file” rate review under s. 627.062(2)(a) and (f), F.S. Medical malpractice insurance is subject to these requirements if it covers a facility that is not a hospital licensed under chapter 395 F.S., a nursing home licensed under part II of chapter 400 F.S., or an assisted living facility licensed under part I of chapter 429 F.S., a health care practitioner who is not a dentist licensed under chapter 466 F.S., a physician licensed under chapter 458 F.S., an osteopathic physician licensed under chapter 459 F.S., chiropractic physician licensed under chapter 460 F.S., a podiatric physician licensed under chapter 461 F.S., a pharmacist licensed under chapter 465 F.S., or a pharmacy technician registered under chapter 465 F.S. Accordingly, it is these types of medical malpractice insurance that are affected by the bill. Medical malpractice insurance covering other entities or practitioners are not subject to paragraphs (a) and (f) of s. 627.062(2), F.S., pursuant to sub-subparagraphs o. and p. of s. 627.062(3)(d)1, F.S., and thus are not affected by the bill.

<sup>23</sup> Section 627.401, F.S.

<sup>24</sup> Section 627.7295(9), F.S.

**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:**

Under CS/CS/SB 454, medical malpractice insurance will continue to be exempt beyond May 31, 2019, from assessments levied by the Florida Hurricane Catastrophe Fund (fund). To the extent that assessments levied on or after June 1, 2019, do not reach the statutory maximum rate percentages, any assessments that otherwise would have been levied on medical malpractice insurance premiums will be shifted to the other lines of insurance subject to the assessments. To the extent that the assessments reach the maximum rates allowed, the fund will receive fewer revenues (based on the amount of premiums written for medical malpractice).

**B. Private Sector Impact:**

Medical malpractice insurance will continue to be exempt beyond May 31, 2019, from assessments levied by the fund.

Insurers will be allowed to count as assets expected surcharges due to assessments from the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). Insurers will have the option of certifying their rates on certain lines of medical malpractice insurance.

Policyholders on most lines of insurance will be permitted to use electronic checks and drafts as acceptable methods of payment will be subject to a \$15 insufficient funds fee, when applicable.

**C. Government Sector Impact:**

The Office of Insurance Regulation (OIR) will need to modify existing computer systems but advise the update can be absorbed within existing resources. In addition, the OIR staff may have a reduced workload to the extent an insurer certifies its rates on certain lines of medical malpractice insurance rather than submitting a full rate filing.<sup>25</sup>

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<sup>25</sup> See footnote 13.



**VI. Technical Deficiencies:**

Section 6 on line 284 strikes the word “solely” from the requirement that an audit committee must be comprised solely of members free from relationships that interfere with independent judgment in the opinion of the insurer’s board of directors. The revision is intended to comply with a National Association of Insurance Commissioners Model Act that has been adopted in Rule 69O-137.002(14), F.A.C. The elimination of “solely” from the statute does not make clear the requirements for audit committee members, and greater specificity is recommended

Line 313 should strike the word monthly as the Workers Compensation Guarantee Association issues their installments quarterly.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 177.041, 177.091, 197.502, 215.555, 624.407, 624.424, 625.012, 627.062, 627.0645, 627.4035, 627.421, 627.7295 and 627.7843.

**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 Appropriations on April 5, 2017:**

The committee substitute:

- Allows an insurer issuing only renter’s insurance, tenant’s coverage or cooperative unit owners insurance to maintain a surplus of \$10 million, regardless if they are wholly owned subsidiary of an insurer domiciled in Florida or another state.
- Clarifies that an insufficient funds fee cannot be charged if the insufficient funds were the result of fraudulent activity of the account on file and such fraudulent activity was not attributed to the policyholder.
- Renames “owners and encumbrance” reports to “property information” report and clarifies such reports are not title insurance.
- Removes the requirement that all members of an audit committee for an insurer must be free of any relationships that could interfere with the member’s independent judgement.

**CS by Banking and Insurance on March 6, 2017:**

The CS made a technical change to clarify that monthly installments on surcharges from the Florida Workers' Compensation Insurance Guaranty Association assessments can be included in the calculation on an insurers assets. The CS also removed the section of the bill pertaining to excluded named driver.

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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