CS/CS/SB 2176 — Insurance

by General Government Appropriations Committee; Banking and Insurance Committee; and Senator Peaden

Insurer Rating Laws

The bill amends the insurance "Rating Law," to allow specified types of commercial lines insurance to be exempt from the rate filing and review requirements of s. 627.062(2), F.S. The bill provides that in order to exercize this exemption an insurer must notify the Office of Insurance Regulation (OIR) of any changes to rates for these exempted types of insurance within 30 days after the effective date of the change. The bill specifies the information that must be included in the notice, and requires that underwriting files, premiums, and loss/expense statistics must be maintained by the insurer and subject to review by the OIR.

The bill provides that commercial motor vehicle insurance covering a fleet of 20 or more vehicles is exempt from: s. 627.0651(1), F.S., requiring certain rate filing information; s. 627.0651(2), F.S., requiring the OIR to review the rate filing; s. 627.0651(9), F.S., allowing the OIR to require information necessary to evaluate the filing; and s. 627.0645, F.S., requiring annual rate filings.

Although the bill exempts the specified lines from the filing and review requirements, these types of insurance coverages continue to be subject to the requirement that rates shall not be excessive, inadequate, or unfairly discriminatory.

This bill prohibits an association, fund, or pool created to manage a risk management program or self-insurance public entity from requiring its members to give more than a 45 day notice of the member's intention to withdraw from the association, fund, or pool.

Firefighters and Law Enforcement Officers

Current law establishes a presumption for state and local firefighters and law enforcement, and correctional and correctional probation officers regarding determinations of employment related disability. It provides that certain diseases (tuberculosis, heart disease, and hypertension) acquired by such firefighters and officers are presumed to have been suffered in the line of duty. This presumption in law has the effect of shifting from the employee to the employer, the burden of proving by competent evidence that the disabling disease resulted from the person's employment. The bill provides that a law enforcement officer, correctional officer, or correctional probation officer who suffers from tuberculosis, heart disease, or hypertension and departs from the prescribed course of treatment of his or her physician, and the departure is demonstrated to result in an aggravation of his or her condition, would lose a specified presumption for claims after July 1, 2010. The bill also specifies that only retirement coverage under claims made prior to leaving employment are eligible for a specified presumption. These provisions do not apply to state or local firefighters.

The bill provides a broader interpretation of workers' compensation benefits payable to off-duty deputy sheriffs to include, but not be limited to, providing security, patrol, or traffic direction for a private employer. For purposes of workers' compensation benefits related to off-duty employment, the bill authorizes a sheriff to include the sheriff's proportionate cost of workers' compensation premiums for the off-duty deputy sheriffs providing such off duty employment.

Medicare Suppliment Policies

The bill amends provisions relating to the regulation of Medicare supplement policies. First, the bill revises provisions related to unfair methods of competition and unfair or deceptive acts to provide that this section does not prohibit a Medicare supplement insurer from providing a premium credit to an insured for using an in-network inpatient facility. The bill expressly provides that an insurer offering Medicare supplement policy is not prohibited from entering into an agreement through a network with inpatient facilities that agree to waive the Medicare Part A deductible in whole or part. The insurer's network agreement would not be subject to the approval of the OIR and the insurer would not be required to file a copy of the agreement with the OIR. Further, the bill requires an insurer to factor such a waiver of the Medicare Part A deductible and premium credit into the insurer's loss-ratio calculation and policy premium.

Pursuant to s. 627.410, F.S., plans are required to have their forms and rates approved by the OIR prior to their use. Section 626.9541(1)(g), F.S., prohibits unfair discrimination between insureds of the same actuarially supportable class in the amount of premiums or rates charged for any policy of health insurance or in any of the terms or conditions of such contract. Section 626.9541(1)(h), F.S., prohibits an insurer, except as otherwise expressly provided by law, or in an applicable filing with the office, to knowingly permit or offer to make, or make, any contract or agreement as to such contract other than as plainly expressed in the insurance contract or to pay, allow, or give, directly or indirectly, as inducement to such insurance contract, any unlawful rebate of premium payable on the contract.

The OIR has noted that there is no provision in the underlying insurance contracts of insurers using such agreements stating that a discount, rebate or premium credit will be available to an insured for using a preferred hospital, and there is nothing in the rate filing demonstrating how the arrangement is assumed to be utilized by the insureds or how it impacts premiums. Representatives of the OIR also state that they have not received a filing from a Medigap insurer requesting approval of the arrangement, incorporating the arrangement into the contract, or incorporating the arrangement into the rate to be charged insureds. This bill may limit the ability of the OIR to evaluate the fairness or adequacy of a discount and the impact of such discount agreements in the ratemaking process.

Warranty Associations

This bill reduces much of the regulatory oversight that OIR currently exercises over warranty associations. The bill also creates new prohibited acts and adds new criminal penalties to the statutes that regulate warranty associations. Among its key provisions, the bill:

- Exempts, from regulation under the Florida Insurance Code, motor vehicle service agreements that are sold to non-consumers.
- Provides that unlicensed activity by warranty associations is a first-degree misdemeanor.
- Prohibits false, deceptive or misleading advertising by warranty associations.

- Removes the requirement to submit warranty service agreements to OIR for approval; however, the bill provides that OIR may order a form not to be used if it doesn't meet specified criteria.
- Switches from quarterly to annual financial reports requirements for warranty associations.
- Makes periodic OIR examinations discretionary and provides factors to consider in choosing to conduct an examination.
- Provides that there is no violation for knowingly overcharging if a motor vehicle service agreement company refunds any excess premium within 45 days.
- Makes a failure to provide a complete sample copy of the terms and conditions of a service or warranty agreement prior to sale an unfair practice, but provides that this information may be provided online.
- Broadens the definition of home warranty service agreements.
- Allows premium increases in renewal home warranty contracts if supported by claims history or claims cost data.
- Removes OIR's ability to require additional regular or special reports from home warranty associations.
- Repeals the requirement for home warranty associations and motor vehicle service agreement companies to file rates with OIR.
- Requires that warranty contracts sold in Florida must be accompanied by a written disclosure to the consumer that the rate charged for the contract is not subject to regulation by the OIR.

Annuities Sales

This bill makes several changes in the insurance code to enhance penalties for unethical annuities sales practices as well as provide certain consumer protections for seniors who purchase annuities contracts. The act makes the following provisions:

- Prohibits annuity sales agents from making a member of his/her family the beneficiary of an annuity if that annuity is sold to anyone other than another family member.
- Strengthens DFS’s ability to deny licensure to agents who have a history of financial misconduct involving seniors.
- Requires more favorable annuity contract terms for seniors and requires sales agents to provide seniors with greater disclosures prior to the sale of an annuity contract.
- Heightens administrative fines for deceptive annuity sales practices towards seniors and gives DFS the authority to order the selling agent to pay restitution to a senior who is harmed by a violation of this section.

If approved by the Governor, these provisions take effect January 1, 2011.
Vote: Senate 37-1; House 119-0