

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 165 Property and Casualty Insurance

SPONSOR(S): Santiago

TIED BILLS: **IDEN./SIM. BILLS:** SB 258

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Lloyd	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Proposed Committee Substitute (PCS) contains changes for various types of property and casualty insurance. Issues addressed include:

- **Motor Vehicle Insurance Rating** – currently, the use of a single zip code as a rating territory for motor vehicle insurance rates is deemed unfairly discriminatory and is thus prohibited; subject to certain conditions, the PCS allows single zip code rating territories on a “file and use” basis, rather than deeming them unfairly discriminatory in all instances;
- **Nonrenewal Notice for Property Insurance** – presently, personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the action, except, for such actions during hurricane season (Jun 1-Nov1), notice must be given by June 1, also insureds who have been covered by the insurer for 5 years must receive 120 days notice; the PCS changes and makes uniform the due date for a notice of cancellation, nonrenewal, or termination – all will get at least a 120-day notice, however, with this change, some may receive such notice during hurricane season, instead of by June 1;
- **Delivery of Insurance Policies Electronically** – current law provides that every insurance policy must be mailed or delivered to the insured within 60 days after the insurance takes effect; the PCS permits electronic delivery of personal lines policies in lieu of delivery by mail upon the affirmative election of the policyholder;
- **Neutral Evaluation in Sinkhole Claims** – currently, a notice of right to participate in the neutral evaluation program must be issued by the insurer upon receipt of the sinkhole testing report or when a claim denial is issued; the PCS requires such notices to be issued only if there is sinkhole coverage under the policy and if the sinkhole claim was submitted timely;
- **Personal Injury Protection (PIP) Insurance** – reimbursements for medical services are currently made consistent with the Medicare fee schedule in effect on March 1 of the year the service is rendered and the schedule in effect on March 1 applies for the remainder of that year; it is unclear what period “remainder of that year” describes; the PCS aligns the period in which services were rendered with the year the applicable fee schedule is in effect and states precisely the beginning and end of the year (March 1 through the end of the following February); and
- **Preinsurance Inspection of Private Passenger Motor Vehicles** – under current law, there are exemptions from required preinsurance inspections for “purchased” cars, if certain documents are provided; the PCS adds leased vehicles to the exemptions; allows insurers to elect to receive the documents; revises the types of documents that insurers may require; and, limits claim reimbursement and property damage coverage suspension based on the timing of document delivery.

The PCS has no fiscal impact on state or local government expenditures. The PCS should have a positive impact on the private sector. The PCS is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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. OIR informs that this provision was most likely enacted as an anti-redlining measure, and at that time it was probably considered unlikely that defining a territory consisting of less than two zip codes had a legitimate purpose. However, OIR notes that given the increasing role of "big data" in rating insurance, it may become more common for models including demographic data and insurance data to be used in the determination of rating territory boundaries in the future.¹

The Proposed Committee Substitute (PCS) amends s. 627.0651, F.S., deeming motor vehicle rating territories that are based on a single zip code to be unfairly discriminatory, unless submitted to OIR for review prior to use and the proposed rating territory has sufficient actual or expected loss and loss adjustment expense experience to be actuarially measurable and credible.

Nonrenewal Notice for Property Insurance

Under current law,² personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the cancellation, nonrenewal, or termination.³ Further, for any cancellation, nonrenewal, or termination that takes effect between June 1st and November 30th, an insurer must provide at least 100 days written notice, or notice by June 1st, whichever is earlier. The June 1st notice deadline ensures policyholders whose property insurance policies will be cancelled, nonrenewed, or terminated during hurricane season (June 1st – November 30th) will receive notice of the cancellation, nonrenewal, or termination by the start of hurricane season.

The PCS repeals the required notice by June 1st for policies being cancelled, nonrenewed, or terminated between June 1st and November 30th. The PCS also lengthens the notice time period under current law from 100 days to 120 days. Under the PCS, policyholders with a policy renewal date from June 1st to November 30th will receive 120 days' notice before the policy's cancellation, nonrenewal, or termination date. This change means some property insurance policyholders will receive notice of cancellation, nonrenewal, or termination during hurricane season (June 1st–November 30th). Under the PCS, policies renewing September 28th–November 30th that are being nonrenewed, cancelled or terminated by the insurer will receive notice of nonrenewal, cancellation or termination during hurricane season.

Policyholders with property insured by the same insurer for five years or more receive 120 days' notice of cancellation, nonrenewal, or termination and the PCS does not change the notice period for these policyholders.

¹ Correspondence from OIR dated February 7, 2014, on file with the Regulatory Affairs Committee.

² Section 627.4133(2), F.S.

³ 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.)

Delivery of Insurance Policies Electronically

Section 627.421, F.S., requires every insurance policy⁴ to be mailed or delivered 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.⁵ Insurance is specifically included in E-SIGN.⁶ 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.

Florida's Uniform Electronic Transaction Act (UETA)⁷ 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.

Current law allows all insurance policies to be electronically transmitted to the policyholder⁸ and provides electronic delivery parameters for insurance covering commercial risks.

For personal lines insurance,⁹ the PCS allows insurers to deliver insurance policies by electronic means in lieu of delivery by mail if the policyholder affirmatively elects electronic delivery. The PCS 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.

Neutral Evaluation in Sinkhole Claims

Since 1981, insurers offering property coverage in Florida have been required by law to provide coverage for property damage from sinkholes.¹⁰ Beginning in 2007, catastrophic ground cover collapse became the mandatory coverage under basic policies and sinkhole loss became a mandatory offering that may be elected by the insured.¹¹ A sinkhole is defined as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.¹² Catastrophic ground cover collapse is also defined in the law¹³ and it describes a more severe circumstance than sinkhole loss, primarily in that it renders the structure uninhabitable.

Sinkholes occur in certain parts of Florida due to the unique geological structure of the land. Sinkholes are geographic features formed by movement of rock or sediment into voids created by the dissolution

⁴ Section 627.402, F.S., defines policy to include endorsements, riders, and clauses. 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.)

⁵ 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 effective October 1, 2000.

⁶ *Id.*

⁷ Section 668.50, F.S.

⁸ Ch. 2013-190, L.O.F.

⁹ Personal lines insurance is property and casualty insurance sold to individuals and families for non-commercial purposes. S. 626.015(15), F.S.

¹⁰ Ch. 1981-280, L.O.F.

¹¹ Section 30, Ch. 2007-1, L.O.F.

¹² Section 627.706(2)(h), F.S.

¹³ Catastrophic ground cover collapse is an abrupt ground cover collapse resulting in a depression that is clearly visible to the eye, with structural damage to building that is covered by the insurance, including the foundation, and the building is condemned and ordered vacated. S. 627.706(2)(a), F.S.

of water-soluble rock. Sinkhole formation may be aggravated and accelerated by urbanization and suburbanization, by sub-surface water usage and changes in weather patterns.

Insurers must offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.¹⁴ At a minimum, sinkhole loss coverage includes repairing the covered building, repairing the foundation, and stabilizing the underlying land. All property insurers can restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's principal building.¹⁵ Furthermore, insurers can require an inspection of the property before providing sinkhole loss coverage.

Pursuant to s. 627.707, F.S., upon receipt of a claim for sinkhole loss to a covered building, the insurer must inspect the property to determine if sinkhole activity has caused structural damage. If such damage exists and the insurer is unable to identify a valid cause of the damage or identifies damage consistent with sinkhole loss, the insurer is required to conduct testing to determine the cause. However, the testing is only required if the policy covers sinkhole loss. The testing must meet statutory standards and a report must be issued that contains required information. The Department of Financial Services (Department) states that testing under s. 627.707 is necessary to proceed with the neutral evaluation program operated by the Department, but that the Department does not determine when the testing must be performed.¹⁶

Under s. 627.7074(3), F.S., following the report or a denial of the claim, the insurer must inform the policyholder in writing of their right to participate in the neutral evaluation program and must include an informational brochure prepared by the Department.¹⁷ In the context of that subsection, it is not readily apparent whether the term "denial of the claim" means all denials, denials involving the existence of a sinkhole, or something else. So, ineffectual or unwarranted notices may be going out to policyholders.

The neutral evaluation program is mandatory once requested by either party.¹⁸ The Department has received requests for neutral evaluation from individuals in cases where the insurer alleges that there is no sinkhole coverage or that the sinkhole claim is untimely filed. Since the testing, and the appurtenant report, is unlikely to be done until contests over coverage and timeliness are resolved, the insureds may receive notice of the right to neutral evaluation at a point in the process that neutral evaluation cannot be done.

The PCS requires an insurer to notify a policyholder of the right to participate in neutral evaluation of a sinkhole claim only if there is sinkhole coverage on the damaged property and if the sinkhole claim was submitted within the statute of limitations period,¹⁹ which is two years after the policyholder knew or reasonably should have known about the sinkhole loss.

Personal Injury Protection Insurance

House Bill 119, the personal injury protection insurance (PIP) reform bill enacted in 2012,²⁰ amended s. 627.736(5)(a)2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The legislation provides in part that:

[T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered...*and the applicable fee schedule or*

¹⁴ Section 627.706, F.S.

¹⁵ By law, sinkhole loss coverage by Citizens Property Insurance Corporation (Citizens) does not cover sinkhole losses to appurtenant structures, driveways, sidewalks, decks, or patios. Citizens Property Insurance Corporation is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

¹⁶ Department of Financial Services, Division of Consumer Services, letter dated February 13, 2015, on file with the Insurance and Banking Subcommittee.

¹⁷ Section 627.7074(3)(d), F.S., and Rule 69J-8.006, F.A.C. The Department's sinkhole pamphlet is posted on the web at <http://www.myfloridacfo.com/division/Consumers/Mediation/documents/SettlingSinkholeClaim.pdf> (last accessed: February 12, 2015).

¹⁸ Section 627.7074(4), F.S., and Rule 69J-8.007(3), F.A.C.

¹⁹ Section 627.706(5), F.S.

²⁰ Ch. 2012-151, L.O.F.

payment limitation applies throughout the remainder of that year [italics added for emphasis]....”

The above-emphasized language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied through the calendar year (through December 31st) or whether it applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,²¹ stating that the plain language of the section requires the fee schedule in place on March 1st to apply throughout the following 365 days, or until the following March 1st.

The PCS amends s. 627.736(5)(a)2., F.S., to define a “service year” for rendered services, supplies, or care. For this purpose, a “service year” is from March 1 through the end of the following February. The period for the applicable Medicare fee schedule is then applied to this same period. This should provide certainty that reimbursement for any medical services, supplies, or care under PIP will be reimbursed based on the applicable Medicare fee schedule in effect on the preceding March 1.

Preinsurance Inspection of Private Passenger Motor Vehicles

Section 627.744, F.S., requires preinsurance inspections of private passenger motor vehicles, but lists various exemptions, 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 five dollars.

The PCS adds an exemption from preinsurance inspection for new, unused “leased” motor vehicles to the existing exemption for “purchased” vehicles, if the vehicle is leased from a licensed motor vehicle dealer or leasing company. If the insurer waives its right to a preinsurance inspection, it also provides an insurer the discretion to require persons who purchase or lease a new, unused motor vehicle to submit certain documents. Currently, such documents are required to be provided whenever the exemption is utilized. Persons who do not submit the required documentation, upon request, at the time the policy is issued are required to submit the document before any physical damage loss is payable under the policy. The PCS amends the list of documents that an insurer may require to include the vehicle registration in addition to the existing option of providing the vehicle title along with the window sticker and deletes from the list of documents the detailed dealer’s invoice. Failure of the insurer to request the documentation is added to the prohibition on suspending coverage due to the insured’s failure to provide documentation. Finally, the condition on claim payment pending receipt of documentation is revised to apply only if the carrier exercised its option to require the documentation.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.0651, F.S., relating to making and use of rates for motor vehicle insurance.

Section 2: Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program to correct a cross reference.

Section 3: Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

Section 4: Amends s. 627.421, F.S., relating to delivery of policy.

Section 5: Amends s. 627.7074, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims.

²¹ Available at <http://www.flor.com/Sections/PandC/ProductReview/PIPInfo.aspx> (last accessed: January 23, 2015).

Section 6: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 7: Amends s. 627.744, F.S., relating to required preinsurance inspection of private passenger motor vehicles.

Section 8: 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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurers emailing policies would likely save costs associated with printing and mailing insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many insurers would opt to deliver their policies by email and how many policyholders would choose to obtain their policies by email rather than by mail. However, any savings realized by insurers should be passed through to policyholders.

Consolidating the notice of nonrenewal, cancellation, or termination into a uniform 120 day notice requirement would likely benefit insurers. Administering multiple conditions that set the notice period (currently the earlier of 100 days or June 1st, if the date falls between June 1 and November 30, or 120 days if the policyholder has been with the insurer for five or more years) would no longer be required. The extent of this benefit has not been calculated. However, any savings realized by insurers should be passed through to policyholders.

Limiting the issuance of notices of right to sinkhole neutral evaluators would likely benefit insurers by only requiring the notice in fewer instances. The extent of this benefit has not been calculated. However, any savings realized by insurers should be passed through to policyholders.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This PCS 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