HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/CS/HB 165	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Regulatory Affairs Committee; Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Santiago	117 **Y's**	0 **N's**
COMPANION BILLS:	CS/CS/SB 258	**GOVERNOR'S ACTION:**	Pending

SUMMARY ANALYSIS

CS/CS/CS/HB 165 passed the House on April 22, 2015, and subsequently passed the Senate on April 23, 2015.

The bill contains changes for various types of property and casualty insurance. The bill:

- Removes the requirement to certify property insurance rate filings that are subject to informational rate filing;
- Removes the requirement for commercial non-residential multiperil insurance, which is subject to informational rate filing, to make an annual filing when rates have not changed;
- Allows insurers to use hurricane loss projection models and estimates of probable maximum losses in a rate filing for 120 days following the stated expiration date of the model, rather than 60 days;
- Changes and makes uniform the due date for a notice of cancellation, nonrenewal, or termination of residential property insurance (all policyholders will get at least a 120-day notice; however, some may receive such notice during hurricane season, instead of by June 1);
- Requires a notice of right to participate in the neutral evaluation program to be issued only if there is sinkhole coverage under the policy and if the sinkhole claim was submitted timely;
- Aligns the period in which Personal Injury Protection medical services were rendered with the year the applicable reimbursement fee schedule is in effect and states precisely the beginning and end of the year (March 1 through the end of the following February);
- Creates an exemption from a licensure requirement under the Florida Motor Vehicle No-Fault Law for clinics that are certified under federal law and exempt from state health care clinic licensure;
- Modifies motor vehicle preinsurance inspection requirements to exempt leased vehicles from such inspections and allows insurers to elect whether to require receipt of certain documents related to the vehicle;
- Adds the vehicle's registration and removes the dealer's invoice from the documents that the insurer may require at the time of insuring a new, unused motor vehicle and limits claim reimbursement and property damage coverage suspension based on the timing of document delivery, if the insurer elected to require the documents; and
- Allows insurers to include Florida Insurance Guaranty Association (FIGA) coverage information in their advertising and sales efforts, but they must explain the limits of the FIGA coverage.

The bill has no fiscal impact on state or local government revenues or expenditures. The bill is expected to have a positive impact on the private sector.

Subject to the Governor's veto powers, the effective date of the bill is July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Certification in lieu of Rate Filing and Exemptions from Annual Base Rate Filings

Commercial lines insurance (commercial insurance) is insurance designed for, and bought by, a business to cover losses sustained by the business.[1] Some commercial insurance, such as workers' compensation, is required to be purchased by businesses;[2] however, most commercial insurance is purchased by businesses on a voluntary basis. The type of commercial insurance bought by a business also depends, in part, on the business type and industry.

The rating requirements for property, casualty, and surety insurance are set forth in part I of ch. 627, F.S., which is entitled the "Rating Law" and applies to all property, casualty, and surety insurance. The law states that rates "shall not be excessive, inadequate, or unfairly discriminatory."[3] The Office of Insurance Regulation (OIR) has responsibility to review and approve or disapprove rates charged by insurance companies to ensure compliance with the rate standards.

The following types of commercial insurance are exempt from the rate filing and review requirements:[4]

- Excess or umbrella;
- Surety and fidelity;
- Boiler and machinery and leakage and fire extinguishing equipment;
- Errors and omissions;
- Directors and officers, employment practices, fiduciary liability, and management liability;
- Intellectual property and patent infringement liability;
- Advertising injury and Internet liability;
- Property risks rated under a highly protected risks rating plan;
- General liability;
- Nonresidential property, except for collateral protection insurance;[5]
- Nonresidential multiperil;
- Excess property;
- Burglary and theft;
- Medical malpractice for certain health care facilities and health care providers; and
- Other types of commercial lines insurance as determined by the OIR.

These types of insurance remain subject to the requirement that rates must not be excessive, inadequate, or unfairly discriminatory. An insurer or rating organization covered by the exemption must notify the OIR within 30 days after the effective date of a rate change. Notice is limited to the name of the insurer, the type of kind of insurance, and the statewide percentage change in rates. The OIR, at its discretion, may review the rates for compliance with the statutory requirements.[6]

Currently, the law requires the chief executive officer or chief financial officer and the chief actuary of a property insurer to certify, under oath, that they have reviewed a rate filing and that it is accurate; fairly represents the basis for the filing; reflects all premium savings reasonably expected to result from

[1] INSURANCE INFORMATION INSTITUTE, *Glossary* (defining commercial lines), http://www.iii.org/services/glossary/uc? (last viewed April 15, 2015).
[2] Generally, non-construction businesses employing four or more employees must buy workers' compensation insurance. Construction businesses must buy workers' compensation insurance if the business has one or more employees.
[3] s. 627.062(1), F.S.
[4] s. 627.062(3)(d)1., F.S.
[5] "Collateral protection insurance" means commercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. s. 624.6085, F.S.
[6] s. 627.062(3)(d)1., F.S.

legislative enactments; and is compliant with generally accepted and reasonable actuarial techniques.[7] However, the law does not require a rate filing for most commercial property insurance. The bill requires the certification only when a rate filing is required of a property insurer.

Subsection 627.0645(1), F.S., requires an annual base rate filing for certain lines of insurance. Under this provision, insurers must make an annual base rate filing for commercial non-residential multiperil insurance, even though they are not required to file rates for this line subject to OIR approval.[8] The bill revises this provision to correct this anomaly. This relieves insurers from having to make annual base rate filings for commercial non-residential multiperil insurance.

Nonrenewal Notice for Property Insurance

Under current law,[9] 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.[10] 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 bill repeals the required notice deadline of June 1st for policies being cancelled, nonrenewed, or terminated between June 1st and November 30th. The bill also lengthens the notice time period under current law from 100 days to 120 days. Under the bill, 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 bill, 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 bill does not change the notice period for these policyholders.

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.[11] 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.[12] A sinkhole is defined as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.[13] Catastrophic ground cover collapse is also defined in the law.[14] It describes a more severe circumstance than sinkhole loss, primarily in that it renders the structure uninhabitable.

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[7] s. 627.062(8)(a), F.S.
[8] Commercial non-residential risks are subject to "informational" filings under the Rating Law.
[9] s. 627.4133(2), F.S.
[10] 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.)
[11] ch. 1981-280, L.O.F.
[12] s. 30, ch. 2007-001, L.O.F.
[13] s. 627.706(2)(h), F.S.
[14] 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.

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 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.[15] 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.[16] 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, F.S., 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.[17]

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.[18] 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.

The neutral evaluation program is mandatory once requested by either party.[19] 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. So, notices may be going out to policyholders where the denial is based upon a lack of coverage, rather than only where the circumstances allow the Department to render an effective outcome on a neutral evaluation request.

The bill 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,[20] which is two years after the policyholder knew or reasonably should have known about the sinkhole loss.

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[15] s. 627.706, F.S.

[16] 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.

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

[18] s. 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).

[19] s. 627.7074(4), F.S., and rule 69J-8.007(3), F.A.C.

[20] s. 627.706(5), F.S.

Personal Injury Protection Insurance

House Bill 119, the personal injury protection insurance (PIP) reform bill enacted in 2012,[21] 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 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,[22] 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 bill 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.

Health Care Clinic Licensing

Health care clinics are regulated under the Health Care Clinic Act.[23] The purpose of the Act is to "provide for the licensure, establishment, and enforcement of basic standards for health care clinics and to provide administrative oversight by the Agency for Health Care Administration."[24] A "clinic" under the act is defined as "an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider."[25] However, there is an extensive list of entities that are exempt from the definition and licensure requirements established by the act.[26] According to the AHCA web site,[27] there are 1,849 licensed Health Care Clinics and 10,009 clinics that have voluntarily received a certificate of exemption from Health Care Clinic licensure. [28, 29]

Despite the availability of an exemption to clinic licensure, "an entity shall be deemed a clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law (No-Fault Law), s. 627.730-627.7405, unless exempted under s. 627.736(5)(h)."[30] The list of exempt clinics under the No-Fault Law is much shorter and includes clinics owned, operated by, or affiliated with separately licensed facilities or providers. The following entities do not have to be licensed as a health care clinic to make charges or receive reimbursement under the No-Fault Law:

- An entity wholly owned by a physician licensed under chapter 458 or chapter 459, or by the physician and the spouse, parent, child, or sibling of the physician;

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[21] ch. 2012-151, L.O.F.
[22] Available at http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx (last accessed: January 23, 2015).
[23] Part X, chapter 400, F.S.
[24] s. 400.990(2), F.S.
[25] s. 400.9905(4), F.S.
[26] s. 400.9905(4)(a)–(n), F.S.
[27] AGENCY FOR HEALTH CARE ADMINISTRATION, *Facility/Provider Location*, http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx (last visited Apr. 10, 2015).
[28] Data obtained from http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx, with search limited to Facility/Provider Type - "Health Care Clinic" or "Health Care Clinic Exemption."
[29] A Health Care Clinic that is exempt from the licensure requirements of 400.9905, F.S., may choose to obtain a certificate of exemption from the AHCA. Rule 59A-33.006, F.A.C.
[30] s. 400.9905(4), F.S.

- An entity wholly owned by a dentist licensed under chapter 466, or by the dentist and the spouse, parent, child, or sibling of the dentist;
- An entity wholly owned by a chiropractic physician licensed under chapter 460, or by the chiropractic physician and the spouse, parent, child, or sibling of the chiropractic physician;
- A hospital or ambulatory surgical center licensed under chapter 395;
- An entity that wholly owns or is wholly owned, directly or indirectly, by a hospital or hospitals licensed under chapter 395; or
- An entity that is a clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

The bill creates an exemption from a licensure requirement under the No-Fault Law for clinics that are certified under federal law and exempt from state health care clinic licensure

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 bill 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 bill 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.

Insurance Advertising and Solicitation Restrictions

Chapter 631, F.S., relating to insurer insolvency and guaranty payments, governs the receivership process for insurance companies in Florida.[31] Federal law specifies that insurance companies cannot file for bankruptcy. Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.[32]

Florida operates five insurance guaranty funds to ensure policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits

[31] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. §§ 1011- 1012 (McCarran-Ferguson Act).

[32] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

provided by law.[33] A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums[34] to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

Statutory provisions relating to the Florida Insurance Guaranty Association (FIGA), which was created in 1970, are contained in part II of chapter 631, F.S.[35] FIGA operates under a board of directors and is a nonprofit corporation. When a property and casualty insurance company becomes insolvent, The 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.

In order to pay claims and to maintain the operations of an insolvent insurer, the FIGA has several potential funding sources. Its primary funding source is from the liquidation of assets of insolvent insurance companies domiciled in Florida. The 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, the FIGA can issue two types of post-insolvency assessments against property and casualty insurance companies to raise funds to pay claims.

Section 631.65, F.S., prohibits anyone from using the existence of the FIGA in their insurance advertising or solicitations. The bill allows insurers to include FIGA coverage information in their advertising and sales efforts, but they must explain the limits of the FIGA coverage.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

A. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[33] The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of insolvent health maintenance organizations, and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

[34] The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired portion of the policy.

[35] ss. 631.50 through 631.70, F.S.

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 participate in the sinkhole neutral evaluation program would likely benefit insurers by 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.

C. FISCAL COMMENTS:

None.