

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/HB 941 (CS/CS/SB 1428)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Economic Affairs Committee; Holder (Budget Subcommittee on General Government Appropriations; Banking and Insurance; Smith)	99 Y's	16 N's
COMPANION BILLS:	CS/CS/SB 1428	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/HB 941 passed the House on February 16, 2012, was amended by the Senate on March 9, 2012, and subsequently passed the House on March 9, 2012. The bill includes portions of HB 4169 and HB 307. The bill provides changes to workers' compensation insurance and commercial lines insurance. The bill also provides for the payment for professional development expenses for employees of the Office of Insurance Regulation (OIR).

The bill allows insurance companies writing commercial lines insurance policies to transfer these insurance policies to a different Florida licensed insurance company that is a member of the same insurance group or owned by the same holding company as the first insurer. But, no residential property insurance policy, except specified types covering farms, can be transferred under the bill. Insurers transferring policies must give policyholders a 45-day notice of the transfer and provide the financial rating of the new insurer.

For workers' compensation, the bill eliminates the annual mandatory onsite premium audits of policyholders required to be done by the workers' compensation insurer, if the insurer meets certain financial requirements. The audit must still be done if requested by the policyholder or ordered by OIR.

The bill excludes workers' compensation insurers from the excess profits law which requires these insurers to refund excess profits to policyholders.

Under Florida law, corporate officers can elect to be exempt from workers' compensation coverage requirements. Individuals who make such election are not considered "employees" for premium calculation purposes, and are not eligible to receive workers' compensation benefits if they suffer a workplace injury. The term "corporate officer" is defined to include members of limited liability companies (LLCs) in the construction industry who own at least 10 percent of the LLC. For workers' compensation purposes, the bill expands the definition of corporate officer to include 10 percent owners of non-construction limited liability companies. The change allows these owners to elect to file for an exemption from workers' compensation coverage requirements.

The bill authorizes OIR to expend funds within existing resources for professional development of employees.

An electronic application process for workers' compensation exemptions will eliminate the need for eight FTEs in the Department of Financial Services and a total annual cost savings of \$301,816 from the Workers' Compensation Administration Trust Fund. The other changes to workers' compensation provided by the bill have a positive fiscal impact on the private sector which is delineated in the Fiscal Analysis.

Subject to the Governor's veto powers, the effective date of the bill is July 1, 2012, unless otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Transfer of Commercial Lines Insurance

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover losses sustained by the business.¹ Major types of commercial insurance are: boiler and machinery, business income, commercial auto, comprehensive general liability, directors and officers liability, medical malpractice liability, product liability, professional liability, and workers' compensation.

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 commercial insurance a business purchases also depends, in part, on the business type and industry.

The bill allows insurance companies writing commercial lines insurance policies to transfer these insurance policies to a different Florida licensed insurance company that is a member of the same insurance group or owned by the same holding company as the first insurer. But, no residential property insurance policy, except specified types covering farms, can be transferred under the bill.

The policy transfer is a renewal of the policy, rather than a cancellation or nonrenewal of the policy. Thus, insurers will not have to provide 100 days' notice³ of nonrenewal, or notice by June 1st, whichever is earlier, because the policy will be transferred, rather than nonrenewed. However, insurers transferring policies must give policyholders notice of the transfer 45 days before the transfer and provide the financial rating of the insurer receiving the policies. Allowing policies to be transferred between affiliated insurers, rather than requiring policies to be nonrenewed by the original insurer and reissued by an affiliated insurer, allows insurers to more easily manage their book of business and eliminates confusion among policyholders associated with policy nonrenewal and subsequent reissuance.

The bill is very similar to s. 627.728(4)(d), F.S., which allows an insurance company to transfer automobile insurance policies to a new insurer under the same ownership or management of first insurer instead of canceling and nonrenewing the policies at the end of the policy term. Insurers wanting to transfer automobile policies to an associated insurer must give 45-days notice to the policyholder and must notify the policyholder of the policy premium and any reasons for an increase in premium. The 45-day transfer notice requirement for automobile policy transfers is consistent with the notice requirement in current law for cancellation or nonrenewal of automobile policies.

Premium Audits for Workers' Compensation Insurance

In workers' compensation, a payroll audit is done to ensure the employer is properly reporting payroll information to the workers compensation insurer because workers' compensation insurance premiums are based on an employer's payroll. Section 440.381(3), F.S., requires the Financial Services Commission to establish rules setting the minimum requirements for workers' compensation payroll audits by workers' compensation insurers.⁴ This statute further requires employers not in the construction industry to be audited at least biennially, whereas, audits are required yearly for employers in the construction industry.

¹ <http://www2.iii.org/glossary/> (defining commercial lines) (last viewed December 11, 2011).

² Generally, non-construction businesses employing four or more employees have to buy workers' compensation insurance. Construction businesses must buy workers' compensation insurance if the business has one or more employees.

³ Under current law, policyholders whose residential structure has been insured by the same insurer for at least the five years before the date of nonrenewal receive 120 days' notice of nonrenewal, rather than 100 days.

⁴ Rule 69O-189.003, F.A.C., addresses workers' compensation premium audits.

Although s. 440.381(3), F.S., requires premium audits, s. 627.442(2), F.S., enacted in 2011,⁵ does not require workers' compensation premium audits unless one is required by the insurance policy, ordered by OIR, or if requested by the policyholder once a year. The bill limits the application of s. 627.442, F.S., to only workers' compensation insurers having surplus of at least \$200 million or insurers within an insurer group having at least \$400 million in surplus. In addition, for these insurers, the bill repeals current law allowing a workers' compensation insurance policy to require an audit and allowing a policyholder to request one once a year. Audits, however, will still be required to be done by these insurers if ordered by the OIR or requested by the policyholder.

Excess Profits in Workers' Compensation Insurance

In Florida, workers' compensation insurers do not file their own rates. Rather, rate filings are made by the National Council on Compensation Insurance, the designated licensed rating and statistical organization for Florida's workers' compensation insurers. Workers' compensation rate filings are submitted to the Office of Insurance Regulation (OIR) and ultimately either approved or disapproved after a public hearing.

Pursuant to s. 627.215, F.S., workers' compensation insurers (and insurers in specified other lines) are required to return "excess profits" to the businesses they insure. The law requires companies to report the following data to the OIR: calendar year earned premium; accident year incurred losses and loss adjustment expenses; administrative and selling expenses incurred in Florida or allocated to the state for the calendar year; and policyholder dividends applicable to the calendar year. An excess profit is realized if an insurer's underwriting gains are greater than the anticipated underwriting profit, plus five percent, for the three most recent calendar years. Insurers that realize excess profits are required to issue refunds to policyholders in the form of cash or a credit. The OIR reports that workers' compensation insurers have returned over \$200 million in excess profits to their policyholders since 2003.⁶

The excess profit law for workers' compensation was enacted in 1979 to coincide with the implementation of a wage-loss benefit reform (no longer utilized) to protect employers by ensuring that excess profits generated by the expected reduction in benefits for injured workers were returned to employers. The bill excludes workers' compensation insurers from excess profit provisions.

Certificates of Exemption in Workers' Compensation Insurance

Workers' Compensation Exemptions:⁷ Section 440.05, F.S., "Election of exemption; revocation of election; notice, certification," permits corporate officers to elect to be exempt from workers' compensation coverage requirements. Individuals who make such election are not considered employees for premium calculation purposes, and are not eligible to receive workers' compensation benefits if they suffer a workplace injury. The term "corporate officers" is defined in s. 440.02(9), F.S., to include members of limited liability companies (LLCs) in the construction industry who own at least 10 percent of the LLC.^{8,9}

Construction Industry versus Non-Construction Exemptions: The Division of Workers' Compensation (DWC) processes applications for construction industry exemptions (which are valid for

⁵⁵ Section 15, Ch. 2011-174, L.O.F.

⁶ OIR analysis of HB 4169, dated January 5, 2012. On file with staff of the Insurance & Banking Subcommittee.

⁷ For an overview of the exemption process and eligibility requirements, see the Department of Financial Services website: <http://www.myfloridacfo.com/wc/employer/exemption.html> (last accessed November 9, 2011).

⁸ The "Florida Limited Liability Companies Act" (LLC Act) is contained in ss. 608.401-608.705, F.S. An LLC is defined as an LLC organized and existing under the act. In general, an LLC has "the attributes of both a corporation and a partnership..." See 51 Am. Jur. 2d, Limited Liability Companies, s. 1.

⁹ The LLC Act defines an LLC member as "any person who has been admitted to a limited liability company as a member in accordance with this chapter and has an economic interest in a limited liability company which may, but need not, be represented by a capital account or, in the case of a foreign limited liability company, has been admitted to a limited liability company as a member in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized."

2 years) and non-construction industry exemptions (which have no expiration date). In the construction industry, corporate officers and members of LLCs with a minimum 10 percent ownership interest in the corporation or LLC, respectively, may elect to be exempt. There is no ownership requirement associated with non-construction industry exemptions. Currently, it is unclear whether non-construction LLC members who are 10 percent owners of the LLC are considered employees under the workers' compensation law.

The bill amends the definition of "corporate officers" to include non-construction LLC members with 10 percent ownership interest. Thus, such members are employees, but may elect to be exempt from workers' compensation coverage requirements.

Exemption Applications:¹⁰ Currently, applicants for exemption complete a "Notice of Election to be Exempt" form (DWC-250). The application must be notarized, and submitted to the DWC. Construction industry applications must also be accompanied by a \$50 application fee and proof of requisite ownership (a copy of the stock certificate or documentation of 10 percent ownership of the LLC). A construction industry exemption is valid for two years, while there is no time limit on non-construction exemptions.

The bill provides for the electronic submission of exemption applications, with streamlined reporting requirements (e.g., elimination of notarization requirement and, for construction industry exemptions, the filing of copies of stock certificates). Additional data elements to be reported by all applicants electronically are date of birth, Florida driver's license number or Florida identification card number. Construction industry applicants will also provide a statement of ownership interest. Within 60 days of expiration of a construction industry exemption, the Department of Financial Services (DFS) is required to send notice to the exemption holder, either at the address on the exemption certificate or to the e-mail on file with DFS.

The bill provides that all certificates of exemption issued by the DWC on or after January 1, 2013 are valid for two years.

Professional Development of OIR Employees

The bill authorizes OIR to expend funds within existing resources for professional development of its employees. According to OIR, the office has always paid professional development expenses for its employees using the general budget authority provided to the OIR. However, recently the Department of Financial Services advised the OIR that direct statutory authority was needed for payment of these expenses. The bill provides the needed statutory authority for payment.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:

Certificates of Exemption in Workers' Compensation Insurance

The Department of Financial Services indicates that providing for an electronic application process for workers' compensation exemptions will eliminate the need for eight FTEs that review and process the exemptions. The potential reduction represents 23 percent of the exemption processing positions and a total annual cost savings of \$301,816 from the Workers' Compensation

¹⁰ The application fee for a construction industry exemption is \$50. There is no application fee for a non-construction industry exemption application. Pursuant to s. 440.05(8)(b), F.S., monies collected by the Division of Workers' Compensation are used to fund the division's investigative efforts, most of which relate to the construction industry.

Administration Trust Fund. The cost savings of \$301,816 will be from two appropriation categories: \$287,416 from Salaries and Benefits and \$14,000 from Expenses.

DFS indicates that costs associated with modifying its exemption technology to provide for electronic submissions will be minimal and completed within current budget authority.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Excess Profits in Workers' Compensation Insurance

Insurers that most effectively manage their risks will be able to retain additional profits realized from their efforts. Additional workers' compensation insurers will likely consider writing business in the state as the limitation on excess profits is removed.

Businesses will no longer be entitled to refunds that resulted from an insurer's excess profits.

Premium Audits for Workers' Compensation Insurance

Eliminates the mandatory onsite premium audits of policyholders if a workers' compensation insurer meets certain financial requirements. This will save insurers money by performing audits that are more risk-based.

Certificates of Exemption in Workers' Compensation Insurance

The bill's changes will streamline the exemption process and make it easier for applicants to complete and submit an exemption. The elimination of the requirement to notarize the exemption application will reduce a regulatory step for applicants and eliminate the cost associated with using a notary. With an established expiration period for all exemptions, persons with non-construction industry exemptions will have to apply for an exemption every two years. Presently, non-construction industry exemptions do not have an expiration date. The bill, however, will not result in new fees, as there continues to be no application fee for non-construction industry exemptions.

D. FISCAL COMMENTS:

Certificates of Exemption in Workers' Compensation Insurance

The streamlining of the exemption reporting process with an electronic submission process (which allows for a reduction of eight positions and an annual cost savings of \$301,816) is part of the Department of Financial Services' Legislative Budget Request and Schedule VIII-B submission for FY 2012-2013.