

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/HB 1035	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Insurance & Banking Subcommittee; Boyd and others	112 Y's	1 N's
COMPANION BILLS:	CS/CS/SB 1344	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/HB 1035 passed the House on April 28, 2014, as CS/CS/SB 1344. The bill makes the following changes concerning insurance administrators:

- Changes persons whom are subject to biographical review by the Office of Insurance Regulation for issuance of a certificate of authority;
- Requires that insurance administrator agreements specify the rights, duties, and obligations of the administrator and the insurer;
- Requires insurance administrators to provide a designee of the insurer with documentation relating to deposits and withdrawals from a fiduciary account upon request;
- Permits insurance administrators to pay claims from funds collected on the insurer's behalf on drafts of, and authorized by, the insurer's designee; and
- Changes the filing date for insurance administrator financial statements and audited financial statements.

Additionally, insurers are authorized to contract with third parties to conduct reviews of insurance administrator operations for administrators that administer benefits for more than 100 certificate holders for the insurer.

When insurance is purchased by credit card, the bill permits unearned premiums to be refunded to the credit card holder by mail or electronic transfer. For canceled motor vehicle insurance policies, the bill allows unearned premiums to be refunded by electronic transfer.

The bill amends provisions relating to appointments to the governing boards of the Florida Medical Malpractice Joint Underwriting Association (FMMJUA), Florida Birth-Related Neurological Injury Compensation Association (NICA), and Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). For FMMJUA and NICA, authority to recommend board members is removed from two inactive trade associations and provided to their successor organization, Property Casualty Insurers Association of America, and the Florida Insurance Council. The bill also removes authority for the Florida Obstetric and Gynecological Society to make recommendations for a NICA board member and provides authority to the American Congress of Obstetricians and Gynecologists, District XII. With respect to FWCIGA, the bill decreases from three to two members the number of board members selected by self-insurance funds and authorizes the Governor to appoint a board member with commercial insurance experience.

The bill has no fiscal impact on state or local government.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Insurance Administrators

An insurance administrator is defined in s. 626.88(1), F.S., and generally is a person or entity that solicits or effects coverage, collects premiums, or adjusts or settles claims on behalf of a commercial self-insurance fund, a life insurer, or a health insurer. Insurance administrators also provide billing and collection services to health insurers and health maintenance organizations. Part VII of chapter 626, F.S., contains the statutory provisions governing insurance administrators. The bill makes several changes to the law governing these administrators.

Current law requires licensed insurance administrators to file financial statements and audited financial statements with the Office of Insurance Regulation (OIR) on a calendar year basis. Some administrators, however, do not use a calendar year for financial statements and use a fiscal year instead. For these administrators, the current law requiring reporting on a calendar year basis increases costs and work load to prepare and audit financial statements on a calendar year basis as their typical statements do not coincide with a calendar year. The bill changes the filing date for administrator's financial statements and audited financial statements. Instead of being due March 1st each year, financial statements will now be due within three months after the end of the administrator's fiscal year. Audited financial statements will be due within five months after the end of the administrator's fiscal year, rather than on June 1st each year.

Under current law, insurance administrator operations for administrators that administer benefits for more than 100 certificate holders for an insurer must be reviewed by the insurer at least semiannually. The bill allows an insurer required to conduct this review to contract with a qualified third party to do the review.

The bill also makes the following changes concerning insurance administrators:

- Changes which persons are subject to biographical review by OIR relating to issuance of a certificate of authority for an insurance administrator;
- Provides that written agreements to act as an insurance administrator must specify the rights, duties, and obligations of the administrator and the insurer;
- Requires insurance administrators to provide a designee of the insurer with documentation relating to deposits and withdrawals on behalf of or for such insurer from a fiduciary account upon request; and
- Permits insurance administrators to pay claims from funds collected on the insurer's behalf on drafts authorized by the insurer's designee.

Refunds of Unearned Premiums

Florida law permits licensed agents or insurers to transact insurance through the use of a credit card facility or organization under certain conditions, including that refunds of unearned premiums be made directly to the credit card holder. The bill deletes the requirement that these refunds be made directly to the credit card holder and allows refunds of unearned premiums to be made by mail or electronic transfer.

When a motor vehicle insurance policy is canceled, either by the insurer or policyholder, Florida law requires that any unearned premium be returned to the policyholder by mail. The bill allows these refunds to also be made by electronic transfer.

Florida Medical Malpractice Joint Underwriting Association

The Florida Medical Malpractice Joint Underwriting Association (FMMJUA) is an insurance risk apportionment plan that provides professional liability insurance coverage in Florida for health care providers that cannot find coverage in the private market. Individual physicians, surgeons, osteopaths, podiatrists, chiropractors, dentists, nurses, other types of health care providers, physician partnerships

or corporations, hospitals, and certain medical facilities can be covered by professional liability insurance provided by the FMMJUA.¹

The FMMJUA operates under the direction of a nine-member board of governors. Five of the nine board members represent insurers and are selected by the Chief Financial Officer (CFO). The CFO selects three of the five board members representing insurers from recommendations from three insurance trade associations. The American Insurance Association, the Alliance of American Insurers, and the National Association of Independent Insurers each recommend board members to the CFO, who chooses one board member from the recommendations from each of the three trade associations.

In 2004, the Alliance of American Insurers and the National Association of Independent Insurers merged to form the Property Casualty Insurers Association of America (PCI).² Thus, the bill removes authority for these trade associations to recommend board members, and provides authority for their successor organization, the PCI, to make recommendations for the FMMJUA board. It also provides authority for the Florida Insurance Council to make recommendations for board membership. The CFO will choose one board member from the recommendations made by the PCI and one board member from recommendations made by the Florida Insurance Council.

Florida Birth-Related Neurological Injury Compensation Association

The Florida Birth-Related Neurological Injury Compensation Association (NICA) manages the Florida Birth-Related Neurological Injury Compensation Plan (Plan). The Plan provides a wide range of benefits to a child who has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury during labor, delivery, or resuscitation in the immediate post-delivery period.³ Acceptance into the Plan is determined by an administrative law judge after a petition is filed with the Department of Administrative Hearings.⁴ Once a child is accepted into the Plan by order from the judge, the child is covered by the Plan and provided benefits and care under the Plan for a lifetime.

NICA's mission⁵ is to:

1. Encourage physicians to practice obstetrics and make obstetrical services available to patients.
2. Stabilize and help make malpractice insurance available to all physicians.
3. Provide needed care to injured children.

NICA operates under the direction of a five-member board of directors appointed by the CFO. One board member represents citizens, one represents participating physicians, one represents hospitals, one represents casualty insurers, and one represents physicians other than participating physicians. The CFO can choose board members from a list of names submitted by various trade associations for all board members except the one representing citizens, but is not bound by the nominations from the associations.⁶

The Florida Obstetric and Gynecological Society and the Florida Hospital Association, respectively, submit recommendations for the representative of participating physicians and the representative of hospitals on the NICA board. The bill removes authority for the Florida Obstetric and Gynecological Society to make recommendations for a NICA board member to represent participating physicians and provides authority to the American Congress of Obstetricians and Gynecologists (ACOG), District XII. District XII Florida became effective January 1, 2013, and represents the entire state of Florida.⁷

¹ Section 627.351(4)(h)1., F.S.

² <http://www.insurancejournal.com/magazines/features/2004/01/12/35629.htm> (Last accessed: March 16, 2014).

³ Section 766.302(2), F.S.

⁴ Section 766.304, F.S.

⁵ <http://www.nica.com/what-is-nica.html> (Last accessed: March 16, 2014).

⁶ Section 766.315(2)(a), F.S.

⁷ See the ACOG, District XII Florida website: http://www.acog.org/About_ACOG/ACOG_Districts/District_XII (Last accessed: March 16, 2014). Any member of ACOG, District XII holding the designation of Fellow, Junior Fellow, or Life Fellow automatically qualifies as an active member of the Florida Obstetric and Gynecological Society.

The American Insurance Association, the Alliance of American Insurers, and the National Association of Independent Insurers each submit one name to the CFO for the casualty insurer representative on the NICA board.⁸ The bill maintains the authority of the American Insurance Association to recommend a NICA board member to the CFO. It also provides authority to the Florida Insurance Council and the PCI (the successor organization to the Alliance of American Insurers and the National Association of Independent Insurers) to each recommend a board member.

Florida Workers' Compensation Insurance Guaranty Association

The purpose of the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) is to implement ss. 631.902-631.927, F.S., and to provide a mechanism for the payment of covered claims, to avoid excessive delay in payment, and to avoid financial loss to claimants in the event of the insolvency of a member insurer. FWCIGA is governed by an 11-member board of directors, comprised of the insurance consumer advocate, a designee of the CFO, six persons from among the 20 largest workers' compensation insurers in Florida, and three persons selected by self-insurance funds.

The bill revises membership on the FWCIGA board. It decreases the number of board members selected by self-insurance funds from three to two members and provides for the Governor to appoint a board member with commercial insurance experience.

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:

None.

D. FISCAL COMMENTS:

None.

⁸ Other trade associations submit names to the CFO for the NICA board (s. 766.315(2), F.S.).