

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 731 Insurance Claims

SPONSOR(S): Botana

TIED BILLS: **IDEN./SIM. BILLS:** SB 1024

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 1 N	Fortenberry	Lloyd
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

In general, insurance rates in Florida may not be excessive, inadequate, or unfairly discriminatory. Section 627.0651, F.S., provides specific requirements for rates charged for motor vehicle insurance. Insurers must establish and use rates, rating schedules, and rating manuals that allow the them a reasonable rate of return.

Upon receiving notice of a rate filing or rate change, the Office of Insurance Regulation (OIR), must review the rate or rate change to determine if it is excessive, inadequate, or unfairly discriminatory by considering certain factors using generally accepted and reasonable actuarial techniques. The factors include, but are not limited to, past and prospective loss experience and expenses, cost of repairs, adequacy of loss reserves, and cost of reinsurance.

Florida law provides criminal penalties for any person who commits insurance fraud by engaging in certain acts with intent to injure, defraud, or deceive any insurer. An insurer that has been damaged as a result of a violation of the statute providing for criminal penalties has a cause of action to recover compensatory damages, plus reasonable investigation and litigation expenses, including attorney fees, at a trial or appellate court, if the insurer has reported the possible fraudulent insurance act to the Division of Investigative and Forensic Services within the Department of Financial Services (DFS) and the violation has resulted in a criminal adjudication of guilt.

The bill adds additional factors that OIR must consider when determining whether a rate filing or rate change for motor vehicle insurance policies is excessive, inadequate, or unfairly discriminatory. In addition to the other factors, OIR must also consider the recovery of funds by judgement or settlement and attorney fees and costs awarded or returned for payments recovered as a result of: claimed violations of certain statutory chapter parts and sections relating to activities such as kickbacks, fraudulent insurance claims, and patient brokering; and repayment of claims paid for pursuant to actions or allegations of common law fraud, civil conspiracy, unjust enrichment, or unlawful conduct.

The bill requires that, if an insurer that has been damaged as a result of a violation of one of the above statutory chapter parts or sections and obtains a repayment or refund of claims paid pursuant to PIP insurance coverage, the insurer must report the amount of funds received as a result of a claim, settlement, or judgment, including attorney fees and costs to DFS. The bill also provides that payment of a deductible is not a requirement to receive PIP benefits.

The bill has no impact on local or state government revenues or expenditures. The bill may have an indeterminate positive direct economic impact on the private sector.

The bill is effective on July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Motor Vehicle Insurance Rates

In general, insurance rates in Florida may not be excessive, inadequate, or unfairly discriminatory.¹ Section 627.0651, F.S., provides specific requirements for rates charged for motor vehicle insurance. Insurers must establish and use rates, rating schedules, and rating manuals that allow them a reasonable rate of return.²

Upon receiving notice of a rate filing or rate change, the Office of Insurance Regulation (OIR), must review the rate or rate change to determine if it is excessive, inadequate, or unfairly discriminatory by considering the following factors using generally accepted and reasonable actuarial techniques:

- Past and prospective loss experience in and out of Florida.
- Past and prospective expenses.
- Degree of competition among insurers for the risk insured.
- Investment income reasonably expected by the insurer, subject to certain limitations.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.
- Cost of repairs to motor vehicles.
- Cost of medical services, if applicable.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors,.
- Other relevant factors which impact the frequency or severity of claims or expenses.

Recovery of Costs by Insurers

Florida law provides criminal penalties for any person who commits insurance fraud by engaging in certain acts with intent to injure, defraud, or deceive any insurer.³ An insurer that has been damaged as a result of a violation of the statute providing for criminal penalties has a cause of action to recover compensatory damages, plus reasonable investigation and litigation expenses, including attorney fees, at a trial or appellate court, if the insurer has reported the possible fraudulent insurance act to the Division of Investigative and Forensic Services within the Department of Financial Services (DFS) and the violation has resulted in a criminal adjudication of guilt.⁴

Effect of the Bill

The bill adds additional factors that OIR must consider when determining whether a rate filing or rate change for motor vehicle insurance policies is excessive, inadequate, or unfairly discriminatory. In addition to the other factors, OIR must also consider the recovery of funds by judgement or settlement and attorney fees and costs awarded or returned for payments recovered as a result of:

- claimed violations of the following statutory chapter parts or statutory sections:
 - s. 456.054, F.S., which prohibits kickbacks by healthcare providers;
 - part X, of ch. 400, F.S., which pertains to health care clinics;
 - part II, of ch. 501, F.S., which is the Florida Deceptive and Unfair Trade Practices Act;

¹ S. 627.062(1), F.S.

² S. 627.0651(1), F.S.

³ S. 817.234, F.S.

⁴ S. 817.234(5), F.S.

- s. 627.732, F.S., which provides definitions related to motor vehicle insurance;
- s. 627.736(17), F.S., which provides personal injury protection (PIP) insurance requirements;
- s. 817.234, F.S., which provides criminal penalties for false and fraudulent insurance claims; and
- s. 817.505, F.S., which prohibits patient brokering.
- repayment of claims paid for pursuant to actions or allegations of common law fraud, civil conspiracy, unjust enrichment, or unlawful conduct.

The bill requires that, if an insurer that has been damaged as a result of a violation of one of the above statutory chapter parts or sections and obtains a repayment or refund of claims paid pursuant to PIP insurance coverage, the insurer must report the amount of funds received as a result of a claim, settlement, or judgment, including attorney fees and costs to DFS.⁵

The bill also provides that payment of a deductible is not a requirement to receive PIP benefits.

B. SECTION DIRECTORY:

Section 1. Creates the “Transparency in Recoveries Act.”

Section 2. Amends s. 627.0651, F.S., relating to making and use of rates for motor vehicle insurance.

Section 3. Amends s. 817.234, F.S., relating to false and fraudulent insurance claims.

Section 4. Provides an effective date of July 1, 2024.

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.

⁵ The bill places this new requirement adjacent to the others in s. 817.234(5), F.S., which provide for an insurer’s cause of action to recover compensatory damages due to insurance fraud for which there has been a criminal adjudication of guilt.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive direct economic impact on motor vehicle insurance policyholders if the recovery of funds by insurers for judgments, settlements, attorney fees and costs, or recovered payments results in lower premiums.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES