

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2038

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee, Banking and Insurance Committee, and Senator Fasano

SUBJECT: Insurance

DATE: April 14, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich/Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	<u>Maclure</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Property and Casualty Insurance – The committee substitute:

- Requires the Division of Consumer Services of the Department of Financial Services to designate an employee as a primary contact for consumers on sinkhole issues.
- Forbids an insurer from canceling or non-renewing a policy because of a single claim on a property insurance policy resulting from water damage, unless the insurer can demonstrate that the insured policyholder failed to take action to prevent a recurrence of damages as reasonably requested by the insurance company.
- Mandates that when an insurer refuses to provide coverage due to adverse underwriting information, the insurer must provide the applicant specific information on the reasons for the refusal to insure and inform the applicant how to obtain the loss underwriting if it is a basis for a refusal to insure.
- Requires a lender to reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy, if a lender fails to timely pay a premium. If the payment is not over 90 days overdue, the insurer must reinstate the insurance policy retroactive to the day of cancellation. If the premium payment is more than 90 days overdue, or if the insurer refuses to reinstate the policy, the lender must pay the difference between the cost of the previous insurance policy and a comparable, new policy for 2 years.
- Requires the insurer to pay for any consequential physical damage that is the result of repairs undertaken to repair or replace damage that was covered under the policy, unless the insurance policy says otherwise.
- Provides that, when a portion of a home must be repaired or replaced, the repair or replacement must include adjoining areas as necessary.

- Provides that industrial fire insurance policies are exempt from the requirement that a residential property insurance rate filing must include actuarially reasonable discounts, credits, or other rate differentials for properties on which fixtures or construction techniques that reduce windstorm loss have been installed or implemented.
- Requires the Florida State University Department of Risk Management and Insurance to conduct a feasibility and cost-benefit study for a potential Florida Sinkhole Insurance Facility and other matters related to the affordability and availability of sinkhole insurance.

Auto Insurance – The committee substitute:

- Allows businesses that sell personal accident and motor vehicle excess liability insurance to submit one application to the Department of Financial Services in order to obtain licenses for each location of the business.
- Establishes guidelines to apply to the adjustment and settlement of personal and commercial motor vehicle insurance claims.
- Provides specified consumer protections pertaining to: third-party claimants; motor vehicle repairs; replacement parts; adjustment and settlement of first-party motor vehicle total losses; settlements; partial losses; storage charges; and sales taxes.
- Specifies that, before an action may be brought against the Florida Automobile Joint Underwriting Association (FAJUA), the department and the FAJUA must have been given 90 days' written notice of the violation, and provides that the FAJUA may require from the insured proof that he or she has obtained the mandatory types and amounts of insurance from another admitted carrier prior to the cancellation of a policy the insured obtained from the joint underwriting plan. The 90-day notice represents a 30-day increase over current law.

Personal Lines Property and Casualty Insurance – The committee substitute:

- Provides for a study by the Florida State University Department of Risk Management and Insurance on factors affecting costs and potential assessments on consumers of personal lines property and casualty insurance in this state and, in particular, in areas in which coverage is underwritten by the Citizens Property and Casualty Insurance Company.

Credit Life and Disability Insurance – The committee substitute:

- Allows credit life and disability insurers to use newly adopted disability and mortality tables to set reserves, and repeals the previous requirement that the minimum reserve for credit life and disability policies be the unearned gross premium.

Premium Finance Companies – The committee substitute:

- Eliminates the filing fee specified in s. 627.849, F.S., for submission of premium finance forms.
- Requires that, when a financed insurance contract is canceled, an insurer must return the unpaid balance due under the finance contract to the premium finance company and any

remaining unearned premium to the agent or insured, within 30 days of the cancellation date. In turn, the committee substitute places a time requirement on the premium finance company to refund to the insured any refund due on the account within 15 days of the account being overpaid or, if the refund is sent or credited to the agent, return or credit the amount of the overpayment and notify the insured of the refunded amount.

Reinsurance – The committee substitute:

- Provides that a single assuming insurer may use letters of credit to fund up to half of the trust fund and trusteed surplus required to be maintained under current law.

Adoption of Mortality Tables – The committee substitute:

- Allows the Financial Services Commission to adopt the latest revisions to the minimum standards for valuation of life insurance policies, produced by the National Association of Insurance Commissioners, by rule rather than having the standards adopted through legislation.

Local Government Self-Insurance Funds – The committee substitute:

- Provides that a local government self-insurance fund providing for workers' compensation benefit coverage must file a full statement of its financial condition, transactions, and affairs.

This committee substitute amends the following sections of the Florida Statutes: 20.121, 501.137, 624.4622, 624.610, 625.081, 625.121, 626.321, 627.0629, 627.311, 627.4091, 627.4133, 627.476, 627.838, 627.848, and 627.849. The committee substitute creates the following sections of the Florida Statutes: 626.9743, 626.9744, and 627.7077; and repeals section 625.131, Florida Statutes.

II. Present Situation:

Consumer Services

The Division of Consumer Services within the Department of Financial Services has several functions, such as receiving inquiries and complaints from consumers, disseminating information, and providing assistance. These functions are prescribed in s. 20.121(2)(h), F.S.

Mortgage Lenders

Section 501.137, F.S., provides that if a mortgage lender receives funds for the payment of property taxes or hazard insurance premiums, when the funds are held in escrow, the lender must promptly pay the taxes and premiums when they are due, provided that adequate escrow funds are on deposit. If the escrow funds are insufficient, the mortgage lender must notify the property owner within 15 days of receiving the tax notice or insurance premium notice.

If the lender, through negligence, fails to pay the tax or insurance premium when the tax or premium is due and there are sufficient escrow funds on deposit, and if the property owner suffers a loss as a result of such failure, the lender will be liable for such loss; except, however, that with respect to any loss which would otherwise have been insured, the extent of such liability shall not exceed the coverage limits of any insurance policy which has lapsed.

Local Government Self-Insurance Funds

Two or more local governments may by interlocal agreement create a local government self-insurance fund for the purpose of securing payment for benefits under the state's workers' compensation law (s. 624.4622(1), F.S.).

Unfair Trade Practices

Part IX of ch. 626, F.S., contains the Unfair Insurance Trade Practices Act, ss. 626.951-626.99, F.S. The act defines and provides for the determination of all unfair methods of competition as well as what acts constitute unfair or deceptive trade practices. Violators of the act are subject to a maximum fine of \$2,500 for an unwillful violation, not to exceed \$10,000 for all unwillful violations arising out of the same action, and a maximum fine of \$20,000 for a willful violation, not to exceed \$100,000 for all willful violations arising out of the same action.¹

Multiple unfair trade practices or unfair modes of competition are identified in the act, including, for example, making misrepresentations regarding an insurance policy; engaging in unfair claim settlement practices such as denying claims without conducting a reasonable investigation; and engaging in unfair discrimination.² The act also contains a "policyholders bill of rights," which mandates that policyholders have the right to competitive pricing practices by insurers, to obtain comprehensive coverage, and to an insurance company that is financially stable, as well as other rights.³

Insurance Contracts

Chapter 627, F.S., governs insurance rates and contracts. Part II of this chapter contains the statutory regulations for what may be included in an insurance contract, defines certain types of coverages, provides the requirements for filing of insurance policies with the Office of Insurance Regulation for approval, and requires an insurer to provide a notice of cancellation, nonrenewal, or of the renewal premium, along with a variety of other provisions.

Mortality and Disability Tables for Life Insurance and Annuities

Currently, new mortality and disability tables for life insurance and annuities are required to be adopted by statute under s. 625.121, F.S. Every state except Florida permits its insurance department to adopt these mortality and disability tables by rule rather than enacting a law every time the tables are updated. The National Association of Insurance Commissioners (NAIC)

¹ Section 626.9521, F.S.

² Section 626.9541, F.S.

³ Section 626.9641, F.S.

adopts and updates periodically the mortality and disability tables pertaining to life insurance and annuities. According to representatives with the Office of Insurance Regulation, allowing the office to adopt the NAIC tables by rule would facilitate the adoption of such tables and aid insurers in complying with Florida's regulations.

Motor Vehicle Consumer Protections

According to representatives of the Division of Consumer Services within the Department of Financial Services, in 1992 the then-Department of Insurance promulgated Rule 4-166.027, F.A.C., which provided protections for motor vehicle consumers by establishing broad standards for the prompt, fair, and equitable settlement of first-party and third-party personal and commercial motor vehicle insurance claims. This rule established:

- guidelines for insurers to follow in adjusting and settling claims;
- prohibitions for insurers as to actions regarding third-party claimants, e.g., urging such claimants to use their own policy (even though the claimant's vehicle was damaged by the negligent actions of the company's insured), thus avoiding paying the claim under the policy issued by that insurer;
- standards for vehicle repairs;
- provisions as to partial and total loss value; and
- provisions for replacement parts.

In 2002, this rule was removed because its terms were found to extend beyond the jurisdiction of the department. According to department officials, the rule provisions provided a standard for fair and equitable auto claims handling that both consumers and insurance companies could use. In 2003, the division received approximately 500,000 phone calls from consumers and 40,000 written complaints. Division representatives state that 30 to 40 percent of these complaints involve motor vehicle insurance. Many times consumers are in need of special attention as to motor vehicle claims procedures, according to these representatives.

Consumers are currently afforded protection under the unfair and deceptive claims practices provisions in the Insurance Code. These practice provisions prohibit insurers from engaging in specified unfair claim settlement practices as to their insureds and in specified cases, third-parties.⁴ These provisions prohibit the making of material misrepresentations in order to effect a settlement; making misrepresentations as to pertinent facts or insurance policy provisions relating to coverages; failing to act promptly with respect to claims; and failing to affirm or deny full or partial coverage of claims, among other provisions.

Officials with the Department of Financial Services state that it is important to codify the provisions of Rule 4-166.027, F.A.C., into law in order to establish uniform standards in the adjustment of auto losses. While most insurers adhere

⁴ Section 626.9541, F.S.

to this rule, its incorporation into state law will help maintain consumer protections as well as avoid potential disputes and litigation in the future.

Motor Vehicle Crash Parts

Motor vehicle crash parts, sometimes referred to as cosmetic parts, are the sheet metal components of vehicles. These are the most frequently damaged parts in auto accidents, such as the fenders, hoods, and doors panels. There are two sources for these parts: auto manufacturers, who sell these parts under their own names, also known as original-equipment manufacturers (OEMs), and generic or aftermarket crash parts suppliers. Before generic parts existed, creating competition in the marketplace, OEMs were able to sell their parts at much higher prices than they can today. According to the Insurance Institute for Highway Safety (IIHS), the introduction of aftermarket parts forced the price of OEM parts down by an average of 30 percent.

In the continuing debate about whether generic parts are as good as parts from OEMs, the issue of safety is in the forefront. Critics claim that using parts from sources other than OEMs could compromise safety. However, the IIHS says that with the possible exception of hoods, there are no safety implications of using cosmetic crash parts from any source. This position has been demonstrated by crash tests conducted at the IIHS. In addition, an independent, third-party nonprofit organization, Certified Automotive Parts Association (CAPA), inspects generic automotive parts and guarantees the quality of those that meet its high standards. Generic crash parts do not interfere with a vehicle's existing warranty and are often manufactured by the same supplier and in the same manner as OEM parts.

Many states have enacted laws that dictate to insurers and auto body shops when and how they must disclose the use of aftermarket parts to their customers. The majority of these states, including Florida, require repair estimates to identify non-OEM parts and specify that warranties on such parts are the responsibility of the part manufacturer, not the manufacturer of the vehicle itself. Under part III of ch. 501, F.S., an insurer or repair facility must clearly identify in the written estimate for repairs, in 10-point type, each such part in all instances where nonoriginal equipment manufacturer aftermarket crash parts are used. A violation of part III constitutes a violation of the unfair insurance trade practices act under part IX of ch. 626, F.S.

Some insurers restricted their use of generic crash parts or stopped using them altogether after litigation involving State Farm Mutual Auto Insurance Company.⁵ According to IIHS representatives, this change has contributed to the increase in the cost of repairing cars after collisions.

⁵ In October 1999, in the case of *Avery vs. State Farm*, a southern Illinois jury found State Farm Mutual Auto Insurance Co. liable for \$456 million in damages and an additional \$730 million in punitive damages in a class action lawsuit involving the use of generic auto parts. The total award was reduced to \$1.05 billion. The plaintiffs argued that the company had failed to tell its policyholders about the use of aftermarket parts in auto repairs, violating the state's consumer fraud laws, and that their use did not restore the automobile to its original condition, which was a breach of contract. In its April 5, 2001, decision, the appellate court left standing nearly all of the trial court's findings, and affirmed the judgment. State Farm has appealed the judgment, which has the potential to affect policyholders everywhere, to the state's high court. If it is allowed to stand, the verdict could allow automakers to arguably charge more for replacement parts.

Diminished Value

During the past several years, litigation has occurred involving diminished market value, which is the value of a vehicle above the repair value. According to representatives with IIHS, trends in recent court decisions nationwide have deemed that diminished value is not recoverable under policies, limiting insurer liability to the cost of repairs. State supreme and appellate courts in Maine, Delaware, Florida, Alabama, Louisiana, Missouri, and Wisconsin have recently addressed the issue and ruled that diminished value is not recoverable.

In March 2003, the South Carolina Supreme Court ruled that insurance companies are not obligated to pay for the diminished value of a vehicle that was damaged in a crash, and are only required to pay for the cost of repairs. It ruled unanimously that State Farm does not have to make up the difference in diminished value of a wrecked car as well as pay for repairs.

Reinsurance

Section 624.610, F.S., governs reinsurance. The purpose of the section “is to protect the interests of insureds, claimants, ceding insurers, assuming insurers, and the public.” Under paragraph (3)(c), credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified financial institution for the payment of the valid claims of its U.S. ceding insurers. Under current law, the trust fund consists of funds in trust in an amount not less than the assuming insurer’s liabilities related to reinsurance ceded by United States ceding insurers. Further, the assuming insurer must maintain a trusteed surplus of at least \$20 million. The funds in the trust and trusteed surplus consist of assets of a quality substantially similar to that required under the provisions of the Florida Statutes relating to investments by insurers (part II of ch. 625, F.S.).

Residential Property Insurance Rate Filings

A rate filing for residential property insurance must include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques that reduce windstorm loss have been installed or implemented (s. 627.0629(1), F.S.).

Florida Automobile Joint Underwriting Association

The Office of Insurance Regulation is authorized to approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance. (See s. 627.311(3), F.S.) The Florida Automobile Joint Underwriting Association (FAJUA) is created under the plan. Section 624.155, F.S., governs civil actions against an insurer. As a condition precedent to bringing an action, the Department of Financial Services and the authorized insurer must be given 60 days’ written notice of the violation that is the basis for the action.

III. Effect of Proposed Changes:

This committee substitute contains provisions relating to: property and casualty insurance; automobile insurance; credit life and disability insurance; premium finance companies; adoption of mortality tables; reinsurance; and local government workers' compensation self insurance. Following is a section-by-section description of the committee substitute.

Section 1. Amends s. 20.121, F.S., to require the Division of Consumer Services of the Department of Financial Services to designate an employee of the division as a primary contact for consumers on issues relating to sinkholes. The designated employee is to serve as a source for consumers for information regarding sinkhole-related insurance issues.

Section 2. Amends s. 501.137, F.S., which contains consumer protection provisions that require mortgage lenders to pay taxes or insurance premiums when receiving funds for the payment of property taxes or hazard insurance premiums. If the lender neglects to timely pay a tax or premium when escrow funds are available and the property owner suffers a loss, the lender is liable for a loss that would have been insured up to policy limits.

The committee substitute adds to these requirements that if a lender fails to timely pay a premium, and the payment is not more than 90 days overdue, the insurer must reinstate the insurance policy retroactive to the day of cancellation, and the lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy. If the premium payment is more than 90 days overdue, or if the insurer refuses to reinstate the policy, the lender must pay the difference between the cost of the previous insurance policy and a new, comparable policy for 2 years.

Section 3. Creates subsection (3) of s. 624.4622, F.S. The section contains requirements for the creation of self insurance funds by two or more local governmental entities for paying workers' compensation benefits.

The new subsection (3) specifies that a local government self-insurance fund created after January 1, 2005, must – for its first 5 fiscal years – file with the Office of Insurance Regulation a full financial statement of its financial condition, transactions, and affairs, including a statement of opinion on loss and loss adjustment expense reserves by a member of the American Academy of Actuaries. The fiscal statement must be filed within 60 days after the end of the fund's fiscal year, and quarterly statements must be filed within 45 days after the end of the quarter. The office may grant filing extensions for good cause.

Section 4. Amends s. 624.610, F.S., relating to reinsurance and the trust fund requirements for a single assuming insurer. Under current law, the trust fund consists of funds in trust in an amount not less than the assuming insurer's liabilities related to reinsurance ceded by United States ceding insurers. Further, the assuming insurer must maintain a trusteed surplus of at least \$20 million. The funds in the trust and trusteed surplus consist of assets of a quality substantially similar to that required under the provisions of the Florida Statutes relating to investments by insurers (part II of ch. 625, F.S.). The committee substitute revises these provisions to state that at least 50 percent of the funds in the trust, covering the assuming insurer's liabilities related to reinsurance ceded by United States ceding insurers, and the trusteed surplus shall consist of these

kinds of assets. The balance may be funded through clean, irrevocable, unconditional, and evergreen letters of credit.

Section 5. Amends s. 625.081, F.S., governing active life reserves that a health insurer must maintain for all health insurance policies. The committee substitute exempts credit disability insurance from the particular requirement that the insurer's active life reserve must not be less in the aggregate than the pro rata gross unearned premiums for such policies. The exemption will allow reserves to be set using new mortality and disability tables adopted by section 6 of this committee substitute. Use of these tables should enable insurers to set more accurate reserves.

Section 6. Amends 625.121, F.S., relating to the standard valuation law pertaining to life insurance policies. The committee substitute permits the Financial Services Commission to adopt the National Association of Insurance Commissioner's (NAIC) mortality and disability tables by rule. Under current law, mortality and disability tables are periodically updated and adopted for use by all states. This provision permits the commission to adopt updated tables by rule for policies issued on or after July 1, 2004. The provision applies to ordinary life policies, disability benefits in or supplemental to ordinary policies, accidental death benefits in or supplemental to policies, annuities, and pure endowments.

The committee substitute also prescribes minimum reserves for single-premium credit disability insurance, monthly premium credit life insurance, monthly premium credit disability insurance, and single-premium credit life insurance policies issued prior to and after January 1, 2004.

Section 7. Amends s. 626.321, F.S., pertaining to limited licenses for baggage and motor vehicle excess liability insurance. The committee substitute provides that an entity applying for a license is required to submit only one application for a license; is required to obtain a license for each office; and is required to pay applicable license fees. The committee substitute further provides that, for limited licenses for baggage and motor vehicle excess liability insurance, a business entity offering this type of insurance may use part-time, in addition to full-time, employees to offer such insurance. However, the insurance sales activities must be in connection with and incidental to the rental of a motor vehicle.

Section 8. Creates s. 626.9743, F.S., which applies to adjustment and settlement of personal and commercial motor vehicle insurance claims. The committee substitute codifies many of the provisions under former Rule 4-116.027, F.A.C., pertaining to motor vehicle consumer protections. (See discussion under Present Situation section, above.). The committee substitute provides for the following:

- An insurance company may not, when liability and damages owed under the policy are reasonably clear, recommend that a third-party claimant make a claim under his or her own policy solely to avoid having to pay the claim under the policy issued by that insurer.
- An insurer that elects to repair a vehicle, and requires a specific repair shop for vehicle repairs, shall cause the damaged vehicle to be restored to its physical condition as to performance and appearance immediately prior to the loss at no additional cost to the insured or third-party claimant other than as stated in the policy.

- An insurer may not require the use of replacement parts in the repair of a motor vehicle which are not at least equivalent in kind and quality to the damaged parts prior to the loss in terms of fit, appearance, and performance.
- When the amount offered in settlement reflects a reduction by the insurer because of betterment or depreciation, the information relating to the reduction must be maintained with the insurer's claim file.
- An insurer shall, if partial losses are settled on the basis of a written estimate, supply the insured with a copy of the estimate upon which the settlement is based.
- An insurer shall provide notice to an insured before termination of payment for previously authorized storage charges and such notice shall provide 72 hours for the insured to remove the vehicle from storage.
- An insurer may defer payment of the sales tax (unless and until the obligation has been incurred), if such tax will be incurred by a claimant upon replacement of a total loss or upon repair of a partial loss.

The committee substitute also describes the methods that insurers must use when an insurance policy provides for the adjustment and settlement of first-party motor vehicle total losses on the basis of actual cash value or replacement provisions.

The committee substitute provides that nothing in this section shall be construed to authorize or preclude enforcement of policy provisions relating to settlement disputes.

Section 9. Creates s. 626.9744, F.S., mandating that insurers follow two new requirements, unless the insurance policy provides otherwise, when a homeowner's insurance policy provides for the adjustment and settlement of first-party losses based on repair or settlement cost. First, when a loss requires repair or replacement of an item or part, any physical damage that occurs as a result of the repair or replacement work and that is covered by the policy shall be included in the loss to the extent of any applicable limits. The insurer may not require the insured to pay for betterment required by ordinance or code or any other cost except the applicable deductible, unless the policy specifically excludes such coverage.

The second requirement is that when a loss requires the repair or replacement of portions of a home, and the replaced items do not match in quality, color, or size, the insurer must make reasonable repairs or replacement of items in adjoining areas of the home. In determining the extent of repairs or replacements of items in adjoining areas, the insurer may consider cost, the degree of uniformity that can be achieved without such cost, the remaining useful life of the undamaged portion, and other relevant factors. This requirement does not make the insurer a warrantor of repairs, and does not authorize or preclude enforcement of policy provisions relating to settlement disputes.

Section 10. Amends s. 627.0629, F.S., relating to residential property insurance and rate filings. Current law specifies that a residential property insurance rate filing must include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques that reduce windstorm loss have been installed or implemented. The committee substitute specifies that these provisions do not apply to industrial fire insurance policies as defined in s. 626.729, F.S. The committee substitute also

specifies that the provisions of s. 627.0629(2), F.S., which govern the effect of a building code rating factor plan on rate filings, do not apply to industrial fire insurance policies.

Section 11. Amends s. 627.311, F.S., relating to joint underwriters and joint reinsurers. Current law provides that the Office of Insurance Regulation may approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance. The Florida Automobile Joint Underwriting Association (FAJUA) is created under the plan. The law prescribes requirements related to the plan. The committee substitute specifies that before an action may be brought against the plan (i.e., the FAJUA), the department and the plan must have been given 90 days' written notice of the violation. This change represents a 30-day increase from the 60-day notice required under s. 624.155, F.S. The extra 30 days will give the FAJUA more time to investigate the alleged violation. The authority for this increased period of notice expires on October 1, 2007.

The committee substitute also provides that the FAJUA may require from the insured proof that he or she has obtained the mandatory types and amounts of insurance from another admitted carrier prior to the cancellation of a policy the insured obtained from the joint underwriting plan.

Section 12. Adds subsection (5) to s. 627.4091, F.S., which states that when an insurer refuses to provide coverage to an applicant due to adverse underwriting information, the insurer must provide to the applicant specific information regarding the reasons for the refusal to insure. If the refusal to insure is based on a loss underwriting history or a report from a consumer reporting agency, the insurer must identify the loss underwriting history and notify the applicant of his or her right to obtain a copy of the report from the consumer reporting agency.

Section 13. Adds subsections (4) and (5) to s. 627.4133, F.S. Under subsection (4), an insurer that cancels a property insurance policy on property secured by a mortgage due to the failure of the lender to timely pay the premium when due shall reinstate the policy once payments are made as required by s. 501.137, F.S. (See the description, above, of section 2 of this committee substitute.)

Through new subsection (5), the committee substitute provides that an insurer cannot use a single claim on a property insurance policy which is the result of water damage to cancel or non-renew coverage, unless the insured failed to take action (reasonably requested by the insurer) to prevent a future similar occurrence of damage to the insured property.

Section 14. Amends s. 627.476, F.S., to permit an insurance company to substitute the ordinary mortality tables adopted after 1980 by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard. The tables would have to be adopted by rule of the Financial Services Commission.

Section 15. Creates s. 627.7077, F.S., which requires the Florida State University Department of Risk Management and Insurance to conduct a feasibility and cost-benefit study of a potential Florida Sinkhole Insurance Facility and other matters related to the affordability and availability of sinkhole insurance. The university must submit a preliminary report of its analysis, findings, and recommendations to the Financial Services Commission and the Legislature by February 1, 2005. The final report is due April 1, 2005.

The committee substitute specifies that the study shall be funded through an assessment on insurers issuing property insurance in this state. The budget for the study may not exceed \$300,000. The Office of Insurance Regulation is authorized to collect the assessments, which shall be pro rated among the insurers using a prescribed formula based on direct earned premiums.

Section 16. Deletes subsection (3) of s. 627.838, F.S., to eliminate a requirement that a filing with the Office of Insurance Regulation of a premium finance form or a service charge and interest rate plan must be accompanied by the \$10 form filing fee specified in s. 627.849, F.S. Section 18 of the committee substitute eliminates the \$10 form filing fee in s. 627.849, F.S., altogether.

Section 17. Amends s. 627.848(1)(e), F.S., which provides the requirements for canceling an insurance contract when a premium finance agreement contains a power of attorney or other authority enabling the premium finance company to cancel any insurance contract listed in the agreement. The committee substitute adds a time requirement that, when a financed insurance contract is canceled, the insurer must return the unpaid balance due under the finance contract to the premium finance company and any remaining unearned premium to the agent or insured, within 30 days of the cancellation date. In turn, the committee substitute places a time requirement on the premium finance company to refund to the insured any refund due on the account within 15 days of the account being overpaid. However, if the refund is sent or credited to the agent, the premium finance company must return or credit to the agent the amount of the overpayment and notify the insured of the refunded amount.

Section 18. Amends s. 627.849, F.S., to eliminate the \$10 fee for filing forms with the Department of Financial Services regarding premium financing.

Section 19. The committee substitute requires the Legislative Auditing Committee to contract with the Department of Risk Management and Insurance at Florida State University to conduct a detailed analysis of factors affecting costs and potential assessments on consumers, and availability, of personal lines property and casualty insurance in Florida generally and, in particular, in those areas in which coverage is underwritten by the Citizens Property and Casualty Insurance Company. The analysis is due no later than February 1, 2005, and shall be funded by assessments on insurers issuing personal lines property and casualty insurance in this state. The budget for the study may not exceed \$250,000. The Office of Insurance Regulation is authorized to collect the assessments, which shall be pro rated among the insurers using a prescribed formula based on direct earned premiums.

Section 20. Repeals s. 625.131, F.S., which requires the minimum reserve for credit life and disability policies to be the unearned gross premium, and contains reserve requirements. The section is repealed due to the adoption of new standard ordinary mortality tables in s. 625.121(13), F.S., which will be used to set reserves. The new mortality tables should enable insurers to set more accurate reserves. (See the discussion, above, of section 6 of this committee substitute.)

Section 21. States that the legislation shall not be construed to create or be the basis for a civil action. In addition, the legislation does not limit settlement or adjustment of claims by methods that are otherwise permissible under state law.

Section 22. Provides that, except as otherwise provided in the act, the act will take effect July 1, 2004.

IV. **Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

The committee substitute eliminates a \$10 fee required under s. 627.849, F.S., to file forms with the Department of Financial Services regarding insurance premium finance companies. Currently the fee is deposited in the Insurance Regulatory Trust Fund. The department estimates that elimination of the fee will reduce revenues to the trust fund by less than \$1,000 annually.

B. Private Sector Impact:

Prohibition on an Insurer Refusing to Insure a Residence Due to One Occurrence of Water Damage that was Incurred and Repaired – The provision will help homeowners to maintain coverage despite an occurrence of water damage in a home if steps are taken to prevent an additional event as requested by an insurer.

Requirement for Property Insurance that Consequential Damages Resulting from a Repair or Replacement be Included in the Loss – This provision would ensure that policyholders do not have to pay to repair damage that is incurred as a result of a repair or replacement that was covered by the insurance policy, and will benefit consumers. However, the committee substitute provides that the provision does not apply if an insurance policy provides otherwise.

Requirement that Repairs to a Home Create a Reasonably Uniform Appearance – Consumers will benefit from the repairs done to a home that will restore it aesthetically to the appearance it enjoyed before damage was incurred without further cost to the

policyholder. However, the committee substitute provides that this provision does not apply if an insurance policy provides otherwise.

Requirement that Insurers Reinstate Coverage when a Policy is Cancelled Due to Non-Payment by a Mortgage Company – Property owners would be afforded greater protections to either reinstate a property insurance policy that has been canceled due to nonpayment of premium by the mortgage lender or to be reimbursed for the additional cost of obtaining replacement coverage. State regulated financial institutions and mortgage lenders would be subject to any policy reinstatement fees or additional costs for replacement coverage for two years. The committee substitute may expose insurers to loss for risks covered under a policy for up to 90 days for which the premium has not yet been paid, but the past due premium would be required to be paid before the coverage is reinstated, retroactive to the date of cancellation.

Standards and Practices for Auto Claims – Consumers should benefit from the protections afforded in this committee substitute. Some insurers will have to implement vehicle claims practices required under the committee substitute; however, many insurers have already complied with these provisions because they were contained in Rule 4-166.027, F.A.C., (since repealed), most of which is now codified in this legislation.

Reinsurance/Trust Fund Requirements for Single Assuming Insurers – Single assuming insurers would be able to use letters of credit to fund up to half of the trust fund and trusteed surplus required to be maintained under current law.

Industrial Fire Insurance Policies – These policies would be exempt from the requirement that a residential property insurance rate filing must include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques that reduce windstorm loss have been installed or implemented.

Sinkhole Insurance Facility Study/Personal Lines Property and Casualty Insurance – The two Florida State University studies will be financed with assessments on property insurers and personal lines property and casualty insurers, up to a total study budget of \$300,000 (sinkholes study) and \$250,000 (personal lines study).

C. **Government Sector Impact:**

The Department of Financial Services reports that the legislation will not have a fiscal impact on the department.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
