

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 982

SPONSOR: Banking and Insurance Committee and Senator Lee

SUBJECT: Motor Vehicle Insurance Policies

DATE: March 8, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Woodham</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 982 requires an insurer of private passenger automobiles to give its policyholder at least 30 days' advance written notice of the renewal premium of the policy, to be sent to the policyholder's last address as shown by the insurer's records. Failure to provide the notice of a premium increase results in coverage remaining in effect at the existing rate until 30 days after the notice is given or until the effective date of replacement coverage obtained by the insured, whichever occurs first.

This committee substitute creates section 627.7277, of the Florida Statutes.

II. Present Situation:

Presently, s. 627.4133, F.S., provides that an insurer provide 45 days' advance written notice of nonrenewal or of the renewal premium. This statute applies to policies providing coverage for workers' compensation and employer's liability insurance, property and casualty, surety, and marine insurance, but specifically excludes motor vehicle insurance subject to s. 627.728, F.S.

Similarly, s. 627.6043, F.S., provides that an insurer delivering or issuing an individual health insurance policy, give the policyholder at least 45 days' advance written notice of cancellation, nonrenewal or a change in rates.

Section 627.7282, F.S., covers notice of additional premium or cancellation upon nonpayment by the holder of a private passenger motor vehicle policy. However, this section only applies in the limited circumstance where a policyholder has been charged a premium which is incorrect for the coverage set forth in the insurance application. The policyholder then has 10 days from the notice in which to pay the additional premium or cancel the policy.

Section 627.728, F.S., requires 45 days' written notice be mailed to the named insured prior to cancellation of a motor vehicle policy, except when the cancellation is for nonpayment of

premium, only 10 days' notice is required. The section also sets forth what constitutes sufficient proof of notice. The section specifically excludes nonrenewals from this requirement.

However, the case of Boman v. State Farm Mutual Automobile Insurance Co., 505 So.2d 445 (Fla. 1st DCA 1987), applied the notice requirement of s. 627.728, F.S., in conjunction with the policy provisions under review in that case, to require notice of the renewal premium. The court held that for purposes of shifting the burden of proof of non-delivery of notice to the insured, the insurer must show proof of mailing as set forth in s. 627.728(5). Provisions in the insurance policy regarding the method of notice, which were inconsistent with the proof of notice requirements of s. 627.728, F.S., were rendered invalid by the court. The policy provisions and the Florida Insurance Code were construed in context with each other to create an *implied* duty on the insurer to notify its insured of the amount of the renewal premium and the date the premium was due. Although not expressly stated in the opinion, it would appear that the statute's minimum 10-day notice for nonrenewal due to nonpayment of premium would be implied for notice of the renewal premium in that case.

The court in Boman also noted that the provision regarding mailing contained in s. 627.728(5), F.S., indicated a legislative intent that the act of mailing would no longer be treated as sufficient proof of notice to the insured unless accomplished in the specified manner. Customary evidence of mailing, such as the testimony of an employee that it is the usual custom and practice to place the notice in the post office mail receptacle, is competent proof of mailing, but it may be rebutted by evidence to the contrary, including evidence of non-receipt, by the insured.

III. Effect of Proposed Changes:

Section 1. Creates s. 627.7277, F.S., relating to notice of renewal premiums for private passenger motor vehicle insurance policies, as described in s. 627.728(1)(a), F.S.

The created section mandates that insurers of private passenger motor vehicles provide 30 days' advance written notice of the renewal premium for the policy. The section further provides a description of what constitutes sufficient proof of notice. An insurer must mail the notice by United States postal proof of mailing or certified or registered mail to the named insured at the address shown in the policy, in order to be deemed sufficient proof of notice. Evidence of providing notice by other means, such as regular mail, could be rebutted by evidence to the contrary and create a question of fact for a judge or a jury.

If the insurer fails to provide the 30 days' notice of the renewal premium, which results in a premium increase, then the coverage under the policy remains in effect until after the 30 days' notice has been given, or until the effective date of replacement coverage by the insured, whichever is first.

This section does not affect notice required for additional premiums when an incorrect premium has been charged or notice required for cancellation of a private passenger vehicle policy which are specifically addressed in ss. 627.7282 and 627.728, F.S., respectively.

Section 2. States that the act will apply to the renewal of a policy having an effective date of renewal on or after August 15, 2000. This will effectively require an insurer of private passenger

automobiles to notify a policyholder on July 16, 2000, of the renewal premium for a policy having an effective date of renewal on August 15, 2000.

Section 3. The act shall take effect upon becoming a law.

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:

None.

B. Private Sector Impact:

By requiring insurers to provide 30 days' advance written notice of renewal premiums, individuals holding a private passenger automobile insurance policy should have a sufficient amount of time to evaluate their insurance options and obtain coverage estimates from other insurance providers, or choose to retain coverage with their current insurer.

Since insurers currently send premium notices to policyholders, no additional expenses should result from this bill, other than the potential costs of continuing to provide coverage at the old rate if the insurer fails to provide the required notice of a premium increase.

C. Government Sector Impact:

None.

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.
