# Insurance & Banking Subcommittee

**Tuesday, January 28, 2020**
**3:30 pm – 6:30 pm**
**Sumner Hall (404 HOB)**

**Jose Oliva**
**Speaker**

**Byron Donalds**
**Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Insurance & Banking Subcommittee

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| **Start Date and Time:** | Tuesday, January 28, 2020 03:30 pm |
| **End Date and Time:** | Tuesday, January 28, 2020 06:30 pm |
| **Location:** | Sumner Hall (404 HOB) |
| **Duration:** | 3.00 hrs |

**Consideration of the following bill(s) with proposed committee substitute(s):**

PCS for HB 895 -- Insurance

**Consideration of the following bill(s):**

HB 723 Peer-to-Peer Car Sharing by Fischer
HB 1137 Consumer Protection by Clemons
HB 1211 Reinsurance by Jones
HB 1409 Pub. Rec./Records of Insurers/Department of Financial Services by Grant, M.
HB 1439 Bank Property of Deceased Account Holders by Yarborough

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, January 27, 2020.

By Request of Chair Donalds, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, January 27, 2020.

**NOTICE FINALIZED on 01/24/2020 4:13PM by Harrell.Lindsey**

# The Florida House of Representatives

**Commerce Committee**

**Insurance & Banking Subcommittee**

**Jose R. Oliva**
**Speaker**

**Byron Donalds**
**Chair**

# AGENDA

January 28, 2020
404 House Office Building
3:30 PM – 6:30 PM

## I. Call to Order & Roll Call

## II. Consideration of the following bills:

A. PCS for HB 895 Insurance by Santiago

B. HB 723 Peer-to-Peer Car Sharing by Fischer

C. HB 1137 Consumer Protection by Clemons

D. HB 1211 Reinsurance by Jones

E. HB 1409 Pub. Rec./Records of Insurers/Department of Financial Services by Grant, M.

F. HB 1439 Bank Property of Deceased Account Holders by Yarborough

## III. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4871 Fax: (850) 413-0419

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 895 Insurance
**SPONSOR(S):** Insurance & Banking Subcommittee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Insurance & Banking Subcommittee | | Lloyd | Cooper |

### SUMMARY ANALYSIS

**Hurricane Catastrophe Fund** – The Florida Hurricane Catastrophe Fund, which is a state created tax-exempt trust fund that acts a reinsurer to the Florida property insurance market, reimburses insurers for collateral protection insurance insurers must place on indebted properties when the owner's insurance policy has lapsed. This "force placed" insurance can differ in value from the value of the insurance the owner had purchased. The bill allows insurers to recover the value of the "force placed" insurance, as an alternative to the last reported value associated with the property owner's lapsed insurance policy, which is the current standard.

**Motor Vehicle Insurance** –

- Personal injury protection and property damage coverage are required to register a vehicle and bodily injury coverage is required when an accident occurs. Law enforcement does not have real time access to verify motor vehicle insurance. The bill requires the Department of Highway Safety & Motor Vehicles to create the motor vehicle insurance online verification system by July 1, 2023. It also creates a task force to assist, review, and report on the implementation of the system.
- Currently, an insurer is only required to collect one month's premium at the inception of a motor vehicle insurance policy; prior to July 2019, this was two month's premium. The insurer is prohibited from cancelling the policy in the first 60 days, unless the initial payment fails. The bill reduces the cancellation prohibition from 60 days to 30 days.

**Travel Insurance** – Travel insurance is a limited line of insurance. There are few requirements in the Florida Insurance Code specifically regulating travel insurance. Using the Travel Insurance Model Act, from the National Association of Insurance Commissioners, the bill expands the Florida Insurance Code to include a new chapter of statutes to regulate the transaction of travel insurance. The Model Act is generally consistent with Florida's current regulation of travel insurance, but there are some differences.

**Surplus Lines Agent Affidavits** – Surplus lines agents must obtain coverage rejections from Florida insurers before "exporting" a policy to a surplus lines insurer. The agent is required to file an affidavit quarterly attesting to the required coverage rejections. The bill eliminates the required affidavit (the information reported on the affidavit is otherwise available in electronic data filings).

**Workers' Compensation Insurance Reporting Requirements** – Workers' compensation insurance carriers are required to record and report certain loss, expense, and claims experience to aid the Office of Insurance Regulation in making determinations concerning the adequacy of workers' compensation experience for ratemaking purposes. Currently, insurers in receivership stop reporting data because they are no longer members of the rating organization that handles the date reporting. The bill requires insurers in receivership to continue reporting the required data.

**Agent Licensing** – To sell a motor vehicle servicing agreement, service warranty agreement, or home warranty contract, one must be licensed as a salesperson or sales representative, depending on the type of agreement or contract sold. The bill allows a licensed general lines agent or personal lines agent to sell such agreements and contracts without a separate salesperson or sales representative license.

The bill has an unknown impact on state and local revenues; a negative impact on state and local expenditures; and, positive and negative impacts on the private sector.

The bill is effective on July 1, 2020.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Hurricane Catastrophe Fund – Collateral Protection Insurance**

*Background*

The Florida Hurricane Catastrophe Fund (FHCF)[1] is a tax-exempt trust fund created by the Legislature in 1993 as a form of reinsurance for residential property losses. The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage of hurricane losses to residential property above the insurer's retention (deductible). As a condition of doing business in Florida, property insurers are required to enter into reimbursement contracts with FHCF. The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

The FHCF reimburses its participating insurers for losses on covered policies, subject to limitations.[2] Collateral protection insurance[3] is included as a covered policy.[4] It protects both a borrower's and a lender's financial interest and is covered at the value of the last known policy. Collateral protection insurance is placed by an insurer when a borrower's policy on the property has lapsed. Sometimes, the insurer is unable to obtain correct information from the homeowner and places coverage at an amount other than the amount of the homeowner's lapsed policy. This can create a discrepancy between the coverage in place and the amount of the homeowner's lapsed policy, which is the value currently covered by the FHCF.

*Effect of the Bill*

The bill allows the value of the lender's force-placed collateral protection insurance to be reimbursed as a covered policy, if the lender has notified the homeowner in writing of the coverage amount and the homeowner has not requested the insurer to issue a policy for a different amount.

**Motor Vehicle Insurance**

MOTOR VEHICLE INSURANCE ONLINE VERIFICATION SYSTEM

*Background*

Chapter 324, F.S., is the Financial Responsibility Law of 1955.[5] The intent of ch. 324, F.S., is to:

> [R]ecognize the existing privilege to own or operate a motor vehicle when such vehicles are used with due consideration for others and their property, and to promote safety and provide financial security requirements for such owners or operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle. Therefore, the law requires that the operator of a motor vehicle involved in a crash or convicted of certain traffic offenses is required to provide

[1] S. 215.555, F.S.
[2] S. 215.555(1)(d), F.S.
[3] "Collateral protection insurance" means commercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document. Collateral protection insurance is not residential coverage. S. 624.6085, F.S.
[4] S. 215.555(1)(c), F.S.
[5] S. 324.251, F.S.

proof of financial ability to respond for damages in future accidents as a requisite to his or her future exercise of operating a motor vehicle.[6]

Section 316.646, F.S., requires persons required by law to maintain certain motor vehicle insurance coverage, to possess proof of insurance, and specifies when the person is required to provide proof of motor vehicle insurance. If a person is cited for violating this requirement and can provide proof of insurance that was valid and the time of the citation, the clerk of the court may dismiss the case and may assess a dismissal fee of up to $10.[7]

Section 320.02, F.S., requires the registration of motor vehicles. Proof of purchase of personal injury protection and property damage insurance must be provided in order to register a motor vehicle. If the registrant is required to purchase bodily injury liability coverage as a result of a conviction of driving under the influence, then proof of bodily injury liability coverage is also required at that time.[8]

Section 324.0221, F.S., requires motor vehicle insurers to notify the Department of Highway Safety & Motor Vehicles (DHSMV) of cancellations or nonrenewals of motor vehicle insurance within 10 days after the processing or effective date of each cancellation or nonrenewal. Furthermore, the statute requires insurers to notify DHSMV within 10 days of the issuance of new insurance policies from persons not previously insured by that insurance company. When DHSMV receives a notice of cancellation from an insurer, DHSMV's system will attempt to verify if additional insurance has been provided and if the registration for the vehicle is still valid. If no additional insurance is verified for the registered vehicle after 20 days, the system will create a financial responsibility case on the owner or registrant's driver license and registration. Five days after the case is created a letter is generated and submitted to the vehicle owner or registrant notifying him or her that replacement proof of insurance is required for the registered vehicle. If insurance information is not provided, or the owner or registrant does not cancel the registration, the owner or registrant's driver license and registration will be suspended at 12:01 a.m. on the fifteenth day from the date of the postmarked letter.[9]

Currently, there is no mechanism in place to determine in real time that a proof of insurance coverage for the required financial responsibility is valid. The current process requires insurance carriers to report insurance information so that it can be compared to DHSMV-maintained vehicle registration. Under this reporting process, any vehicle registrations that are not tied to an insurance record are considered uninsured.[10]

A number of states have implemented online motor vehicle insurance verification programs including Alabama,[11] Oklahoma,[12] Texas,[13] and Tennessee.[14] Most of the states that have implemented online motor vehicle verification programs require that the systems generally meet standards developed by the Insurance Industry Committee on Motor Vehicle Administration (IICMVA).[15]

Several states that have instituted motor vehicle insurance verification programs have reported significant reductions in the number of uninsured motorists.[16]

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[6] S. 324.011, F.S.
[7] S. 318.18(2)(b)3., F.S.
[8] S. 320.02(5), F.S.
[9] S. 322.251(2), F.S.
[10] *See* s. 324.011, F.S.
[11] Alabama Act 2011-688.
[12] Okla. Stat. tit. 47, s. 7-600.2.
[13] Tex. Transp. Code Ann. ss. 601.053(c) & 601.191.
[14] Tenn. Code Ann. ss. 55-12-201 – 55-12-215.
[15] The Insurance Industry Committee on Motor Vehicle Administration (IICMVA) is an all-industry advisory group formed in January 1968 as the official liaison between the insurance industry and Motor Vehicle Departments in the US and Canada. https://www.iicmva.com/ (last visited Jan. 25, 2020).
[16] Alice Holbrook, *Are Auto Insurance Verification Programs a Good Idea?*, available at https://www.nerdwallet.com/blog/insurance/auto-insurance-verification-programs-good-idea/ (last visited Jan. 25, 2020).

*Effect of the Bill*

*Motor Vehicle Insurance Online Verification System*

The bill creates s. 324.252, F.S., requiring DHSMV to establish an online verification system for motor vehicle insurance. The system's goal is to identify uninsured motorists and aid DHSMV in enforcing the financial responsibility law. The online verification system must:

- Be accessible through the Internet by authorized personnel of DSHMV, the courts, law enforcement personnel, any other entities authorized by DHSMV, and insurers authorized by OIR to offer motor vehicle insurance.
- Send requests to insurers for verification of evidence of insurance for motor vehicles registered in this state via online services established by the insurers in compliance with IICMVA specifications and standards, with enhancements, additions, and modifications, as DSHMV requires. However, the enhancements, additions, and modifications may not conflict with, nullify, or add requirements that are inconsistent with IICMVA specifications or standards.
- Be operational by July 1, 2023. The task force must conduct a pilot program for at least nine months to test the system before statewide use. The system may not be used in any enforcement action until successful completion of the pilot program.
- Be available 24 hours a day, except for permitted downtime for system maintenance and other work, as needed, to verify the insurance status of any vehicle registered in this state through the insurer's National Association of Insurance Commissioners (NAIC) company code, in combination with other identifiers such as vehicle identification number, policy number, or other characteristics or markers as specified by the task force.
- Include appropriate provisions, consistent with industry standards, as specified by the task force, to secure the system's data against unauthorized access.
- Include a disaster recovery plan to ensure service continuity in the event of a disaster.
- Include information that enables DHSMV to make inquiries of evidence of insurance by using multiple data elements for greater matching accuracy, specifically the insurer's NAIC company code, in combination with other identifiers such as vehicle identification number, policy number, or other characteristics or markers as specified by the task force.
- Include a self-reporting mechanism for insurers with fewer than 2,000 vehicles insured within this state or for individual entities that are self-insured.

The bill provides DHSMV the following powers and duties:

- Upon advance notice, DHSMV must allow online services established by an insurer to have reasonable downtime for system maintenance and other work, as needed. An insurer is not subject to administrative penalties or disciplinary actions when its online services are not available under such circumstances or when an outage is unplanned by the insurer and is reasonably outside its control.
- Upon recommendation of the task force, DHSMV may contract with a private vendor that has personnel with extensive operational and management experience in the development, deployment, and operation of insurance online verification systems.
- DSHMV and its private vendor, if any, must each maintain a contact person for the insurers during the establishment, implementation, and operation of the system.
- DHSMV must maintain a historical record of the system data for 6 months after the date of any verification request and response.

An insurance company authorized to issue insurance policies for motor vehicles registered in this state:

- Must comply with the verification requirements of motor vehicle insurance for every motor vehicle insured by that company in this state as required by DSHMV rule.

- Must maintain policyholder records in order to confirm insurance coverage for six months after the date of any verification request and response.
- Must cooperate with DHSMV in establishing, implementing, and maintaining the system.
- Is immune from civil liability for good faith efforts to comply with statutory requirements related to the online verification system. An online verification request or response may not be used as the basis of a civil action against an insurer.

A law enforcement officer, during a traffic stop or crash investigation, must request information from the online verification system to establish compliance with ch. 324, F.S., and to verify the current validity of the policy described on the insurance identification card.

The motor vehicle insurance online verification system does not apply to commercial motor vehicle coverage.[17] However, insurers of commercial motor vehicles may participate in the online verification system on a voluntary basis.

The bill amends s. 320.02(5), F.S., providing that upon implementation of the motor vehicle insurance online verification system, the online verification may be used to verify motor vehicle insurance at the time of motor vehicle registration.

The bill amends s. 324.0221, F.S., requiring an insurer to transmit weekly, in a DHSMV-prescribed format, the insurer's records of all active insurance policies[18] to enable DHSMV to identify uninsured vehicles.

The bill authorizes DHSMV to verify information from an insurer as provided in s. 324.252, F.S. This does not relieve an insurer from the reporting requirements in s. 324.0221, F.S.

DHSMV may adopt rules to administer the motor vehicle insurance online verification system .

*Motor Vehicle Insurance Online Verification Task Force*

The bill creates, within DHSMV, the Motor Vehicle Insurance Online Verification Task Force (task force). The task force must:

- Facilitate the implementation of the motor vehicle insurance online verification system, including recommending data and cybersecurity processes and protocols.
- Assist in the development of a detailed guide for insurers by providing data fields and other information necessary for compliance with the online verification system.
- Coordinate a pilot program and conduct the program for at least nine months to test the online verification system and identify necessary changes to be implemented before statewide use.
- Issue recommendations based on periodic reviews of the online verification system.

The task force consists of nine voting members and one nonvoting member. DHSMV's executive director, who is a nonvoting member, serves as its chair. The nine voting members must be appointed by July 31, 2020, as follows:

- Three appointed by DHSMV's executive director, representing the Florida Highway Patrol, the Division of Motorist Services, and the Information Systems Administration.
- One appointed by the Commissioner of Insurance, representing the Office of Insurance Regulation (OIR).
- Three appointed by the Chief Financial Officer, representing the motor vehicle insurance industry, as follows:

[17] The bill defines "commercial motor vehicle coverage" as any coverage provided to an insured under a commercial coverage form and rated from a commercial manual approved by OIR.
[18] This is commonly known as the insurance company's "book of business."

    - One member representing the motor vehicle insurer with the largest national market share as of December 31, 2019.
    - One member representing the motor vehicle insurer with the largest Florida market share as of December 31, 2019.
    - One member selected from a list of representatives recommended by the IICMVA.
- One appointed by the Chief Financial Officer, representing the Department of Financial Services (DFS).
- One appointed by the executive director of the Agency for State Technology, representing the agency.

By September 30, 2020, the task force must meet to establish procedures for conducting its business, and electing a vice chair. The task force must meet at the call of the chair, who is responsible for preparing the agenda for each meeting with the consent of the task force. A majority of the voting members of the task force constitutes a quorum, and a quorum is necessary for the purpose of voting on any action or recommendation of the task force. All meetings must be held in Tallahassee.

DSHMV must provide the task force members with administrative and technical support. Task force members serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

No later than six months after the pilot program concludes, the task force must issue a report to DHSMV, the President of the Senate, and the Speaker of the House of Representatives. The report must evaluate the online verification system's effectiveness in identifying uninsured motorists. The task force may also make recommendations for system enhancements in the report or at any time before the task force's completion of its work.

By July 1, 2023, the task force must complete its work and submit its final report evaluating the online verification system's effectiveness and making recommendations for system enhancements to DHSMV, the President of the Senate, and the Speaker of the House of Representatives. Upon submission of the report, the task force expires.

PREPAYMENT OF PREMIUM ON INITIAL POLICY PURCHASE AND CANCELLATION OF POLICIES

*Background*

Law requires that a policy[19] of private passenger motor vehicle insurance or a binder[20] for such a policy may be initially issued only if, before the effective date of such binder or policy, the insurer or agent has collected from the insured an amount equal to one month's premium.[21] An insurer, agent, or premium finance company may not, directly or indirectly, take any action resulting in the insured having paid from the insured's own funds an amount less than the required one month premium. This applies without regard to whether the premium is financed by a premium finance company or is paid pursuant to a periodic payment plan of an insurer or an insurance agent. The statute also provides various circumstances where this would not apply including policy renewal, coverage to active duty or former military personnel, and payments by automatic payroll deduction or electronic funds transfer. The insurer may not cancel the policy during the first 60 days, unless the reason for the cancellation is the issuance of a check for the premium that is dishonored for any reason or any other type of premium payment that was subsequently determined to be rejected or invalid.[22]

[19] Section 627.7295(1)(a), F.S., defines "policy" as a motor vehicle insurance policy that provides personal injury protection coverage, property damage liability coverage, or both.
[20] Section 627.7295(1)(b), F.S., defines "binder" as a binder that provides motor vehicle personal injury protection and property damage liability coverage.
[21] S. 627.7295(7), F.S.
[22] S. 627.7295(4), F.S.

Prior to July 2019, insurers were required to collect two months of premium prior to issuing a private passenger motor vehicle policy. This was reduced to one month's premium by CS/CS/CS HB 301 (2019).[23] However, the cancellation limitation was not reduced at the same time. Now an insurer is only required to collect one month's premium, but cannot cancel the policy for 60 days.

*Effect of the Bill*

The bill reduces the limitation on insurer cancellation from 60 days to 30 days consistent with the 2019 law change that reduced the required collection of initial premium from two month's premium to one month's premium.

**Travel Insurance**

*Background*

The Florida Insurance Code[24] generally regulates travel insurance. OIR currently reviews policies relating to travel insurance, pursuant to s. 626.321 (1)(c), F.S. DFS is responsible for licensing of individuals and entities that sell travel insurance.[25]

TRAVEL INSURANCE RATES AND FORMS

Policies and certificates of travel insurance may provide coverage for risks incidental to travel, planned travel, or accommodations while traveling, including, but not limited to, accidental death and dismemberment of a traveler; trip or event cancellation, interruption, or delay; loss of or damage to personal effects or travel documents; damages to travel accommodations; baggage delay; emergency medical travel or evacuation of a traveler; or medical, surgical, and hospital expenses related to an illness or emergency of a traveler. Such policy or certificate may be issued for longer terms, but each policy or certificate must be limited to coverage for travel or use of accommodations of no longer than 90 days.[26]

A group policy for travel insurance is exempt from filing rates and forms.[27] Currently, a travel insurance policy that is sold directly from an insurance company to a consumer is required to make annual rate filings.[28] Regardless of whether a travel insurance rate is required to filed, it may not be excessive, inadequate, or unfairly discriminatory.[29]

TRAVEL INSURANCE AGENT LICENSING

A travel insurance agent or agency license may be issued to only:[30]

- A full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency and may authorize the sale of such ticket policies only in connection with the sale of transportation tickets, or to the full-time salaried employee of such an agent. No

[23] Ch. 2019-108, Laws of Fla.
[24] The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.
[25] S. 626.321, F.S. A travel insurance license is a limited license.
[26] S. 626.321(1)(c), F.S. A policy or certificate providing coverage for air ambulatory services only may exceed the 90 day limit on travel/accommodation (due to illness or injury, and unforeseeable length of time may pass before return home by air ambulance).
[27] Travel insurance is not subject to rate requirements listed in s. 627.062 (2)(a), F.S., or s. 627.062 (2)(f), F.S., as long as it is "issued as a master group policy with a situs in another state where each certificate holder pays less than $30 in premium for each covered trip and where the insurer has written less than $1 million in annual written premiums in the travel insurance product in this state during the most recent calendar year." S. 627.062 (3)(d)1.n., F.S.
[28] Each rating organization filing rates for, and each insurer writing, any line of property or casualty insurance is required to complete annual filings. s. 627.0645 (1), F.S.
[29] S. 627.062(1), F.S.
[30] S. 626.321(1)(c), F.S.

such policy shall be for a duration of more than 48 hours or for the duration of a specified one-way trip or round trip.
- An individual that is:
  - The developer of a timeshare plan that is the subject of an approved public offering statement under ch. 721, F.S.;
  - A managing entity operating a timeshare plan approved under ch. 721, F.S.;
  - A seller of travel as defined in ch. 559, F.S.;
  - A seller of travel as defined in ch. 559, F.S.; or
  - A subsidiary or affiliate of any of the entities described above.
- The full-time salaried employee of a licensed general lines agent or to a business entity that offers motor vehicles for rent or lease if insurance sales activities authorized by the license are in connection with and incidental to the rental or lease of a motor vehicle.
  - A license issued to a business entity that offers motor vehicles for rent or lease encompasses each office, branch office, employee, authorized representative located at a designated branch, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to this paragraph
  - The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee must notify the department within 30 days after closing or terminating an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.
  - A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees.

The travel insurance agency license is only issued to the business entity. Each of its branches must be appointed by the insurers the agency and branch represents and the appointments must be filed with DFS. Appointments are subject to an original appointment filing fee and a renewal fee every 24 months.[31]

TRAVEL INSURANCE MODEL ACT

In 2016, the National Conference of Insurance Legislators began considering the adoption of a Travel Insurance Model Act. The final version of this the Travel Insurance Model Act was approved on July 15, 2017. NAIC used this model act to create a model of their own. At least 42 states have implemented portions of the NAIC Model Act.[32]

*Effect of the Bill*

The bill incorporates NAIC's Travel Insurance Model Act, MDL-635,[33] into the Florida Insurance Code.

The bill creates a new chapter of Florida Statutes entitled "Travel Insurance." The chapter applies to:

- Travel insurance covering any resident of Florida that is sold, solicited, negotiated, or offered in this state, as well as policies and certificates that are delivered or issued in this state; and
- Policies and certificates that are delivered or issued for delivery in Florida.

[31] S. 626.501(9), F.S. *See also* s. 626.381, F.S.
[32] National Association of Insurance Commissioners, *Travel Insurance Model Act* (4th quarter, 2018), https://www.naic.org/store/free/MDL-632.pdf (last visited Jan. 25, 2020).
[33] *Id.*

Specific provisions outlined in this chapter supersede any general provisions otherwise applicable to travel insurance. This chapter does not apply to:

- Major medical plans that provide medical protection for travelers with trips lasting longer than 6 months; and
- Travel assistance services and cancellation waivers.

A person offering, soliciting, or negotiating travel insurance or protection plans may not do so using an opt-out option that requires a consumer to take an affirmative action when purchasing a trip. Any person offering travel insurance is subject to the Unfair Insurance Trade Practices Act (UITPA),[34] unless otherwise specified. If a conflict arises between UITPA and this chapter, the provisions of this chapter will control. If a destination jurisdiction requires travel insurance coverage, it is not an unfair trade practice to require the consumer to purchase the required coverage through the travel retailer or the limited lines insurance producer supplying the trip or package. A consumer also has the option to obtain and provide proof of coverage from another source, provided it meets the jurisdiction's requirements and is purchased prior to departure. It is not an unfair trade practice to market travel insurance directly to a consumer online, as long as the web page provides an accurate summary or short description of the coverage and the consumer has access to the full policy provisions through electronic means. Conversely, a person commits an unfair trade practice under UITPA if he or she offers or sells a policy that could never result in payment of any claims or markets blanket travel insurance coverage as free.

A person may act or represent himself or herself as a travel administrator[35] if he or she is a licensed and appointed property and casualty insurance producer in Florida, is appointed as a managing agent in Florida, or holds a valid third party administrator license. A travel administrator and its employees are exempt from the licensing requirements listed in ch. 626, part VI, F.S. An insurer has the responsibility of ensuring a travel administrator acts in accordance with this chapter and maintains books and records, which must be available to DFS upon request.

The bill requires travel insurance documents to be provided to a consumer before purchase. Fulfillment materials must be sent to the purchaser of a travel protection plan after purchase, confirming the purchase and outlining the details of the plan. Fulfillment materials must include whether the travel insurance is primary or secondary to other applicable coverage and whether the policy has preexisting condition exclusions. A policyholder or certificate holder can cancel a policy or certificate for a full refund up to 15 days after date of delivery, if delivered by postal mail, and 10 days after date of delivery, if delivered by means other than postal mail.

For purposes of rates and forms, the bill classifies travel insurance under the inland marine line of insurance. Coverage for sickness, accident, disability, or death during travel may be classified and filed under the accident and health or the inland marine line of insurance. Travel insurance may be in the form of an individual, group or blanket policy. A group or blanket policy is classified as commercial inland marine insurance under s. 627.021(2)(d), F.S. A policy not issued to a commercial entity and primarily used for personal, family, or household purposes is classified as personal inland marine insurance and is not subject to the rate requirements under s. 627.062, F.S.

The bill would require an insurer to pay a premium tax, as required under s.624.509, F.S. on travel insurance premiums paid by the primary policyholder or certificate holder and by the blanket policyholder.[36] The premium paid does not include amounts received for travel assistance services or cancellation waivers.

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[34] Ch. 626, Part IX, F.S.

[35] A travel administrator is a person who directly or indirectly underwrites policies for, collects charges, collateral, or premiums from, or adjusts or settles claims on residents of this state, in connection with travel insurance.

[36] This does not appear to be a new tax. Travel insurance is already subject to premium tax under the Florida Insurance Code. This provision appears to be included to clarify the applicability of premium tax requirements to the newly created ch. 647, F.S.

TRAVEL INSURANCE AGENT LICENSING

The bill revises current travel insurance agent and agency licensing. The following individuals and entities will require licensing and appointment to transact travel insurance:

- A limited lines travel insurance producer, which is:
  - A licensed administrator or third-party administrator;
  - A licensed insurance producer, including a limited lines producer; or
  - A travel administrator.
- A general lines or personal lines agent.

The following individual or entity must be registered and appointed (under a licensed limited lines travel insurance producer) to transact travel insurance:

- Travel retailer, which is a business entity that:
  - Makes, arranges, or offers planned travel.
  - Disseminates travel insurance, under conditions specified in the bill, as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

A licensed limited lines travel insurance producer must designate one employee responsible for compliance issues applicable to the licensee and the registered travel retailers appointed under the licensee. The licensed producer must provide for the training of all employees and appointees. The licensed producer is responsible for all acts of its appointees and must ensure compliance with the law.

The bill gives DFS rulemaking authority to administer the chapter.

**Surplus Lines Agent Affidavits**

*Background*

SURPLUS LINES OVERVIEW

Surplus lines insurance refers to a category of insurance for risks that the admitted market is unable or unwilling to provide coverage.[37] There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code, which means they do not obtain a certificate of authority from OIR to transact insurance in Florida.[38] Rather, surplus lines insurers are "unauthorized" insurers[39] that may transact surplus lines insurance, if they are made eligible by OIR.

The Florida Surplus Lines Service Office (FSLSO) is a self-regulating, nonprofit association of approved unauthorized insurers established by the Legislature in 1997. The FSLSO was created to protect consumers seeking surplus line insurance in the state, monitor marketplace compliance, and protect

[37] The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.
[38] S. 624.09(1), F.S.
[39] S. 624.09(2), F.S.

state revenues.[40] All licensed surplus lines agents are deemed to be members of the FSLSO. The FSLSO operates under the supervision of a nine-member board of governors, which has oversight responsibilities for the Florida surplus lines market.

"To export" a policy[41] means to place it with an unauthorized insurer under the Surplus Lines Law.[42] Unless an exception applies, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers before the agent can place insurance in the surplus lines market.[43] "Diligent effort" means, subject to certain exceptions,[44] seeking coverage from and being rejected by at least three authorized insurers in the admitted market.[45] The law further specifies that:[46]

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- For personal residential property risks,[47] the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

SURPLUS LINES AGENTS

Surplus lines agents are authorized to handle the placement of insurance coverages with surplus lines insurers.[48] Licensed resident general lines agents who meet the statutory criteria for licensure are eligible for licensure as a surplus lines agent.[49] In order to place coverage with a surplus lines carrier, the agent must make a "diligent effort" to place the policy with a Florida-authorized insurer, i.e., one with a certificate of authority from OIR.[50]

Surplus lines agents are required to report and file with the FSLSO specified information on each surplus lines insurance policy within 30 days of the effective date of the transaction, must transmit service fees to the FSLSO each month, and must transmit assessment and tax payments to the FSLSO quarterly.[51] When requested by DFS or the FSLSO, surplus lines agents are also required to submit a copy of any policy and certain other information.[52] Surplus lines agents are required to maintain each surplus lines contract, including applications and all certificates, and other detailed information about each surplus lines policy, in their agency office for a period of five years.[53]

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[40] See S. 626.921, F.S. and FLORIDA SURPLUS LINES SERVICE OFFICE, *About*, https://www.fslso.com/about (last visited Jan. 26, 2020).
[41] S. 626.914(3), F.S.
[42] Sections 626.913 – 626.937, F.S., constitute the "Surplus Lines Law." S. 626.913(1), F.S.
[43] S. 626.916(1)(a), F.S.
[44] Exceptions include commercial lines risk, such as "excess or umbrella, surety and fidelity, boiler and machinery and leakage and fire extinguishing equipment," and so on, as specified in s. 627.062(3)(d)1., F.S. S. 626.916(3)(b), F.S.
[45] If the cost to replace a residential dwelling is $1,000,000 or more, then only one coverage rejection is needed prior to export. S. 626.914(4), F.S. When exporting a flood insurance policy, diligent effort requirements do not apply until July 1, 2019, or the Insurance Commissioner declares an adequate flood insurance market among admitted insurers, whichever occurs first. S. 627.715(4), F.S.
[46] S. 626.916(1), F.S.
[47] Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.
[48] S. 626.914(1), F.S.
[49] S. 626.927, F.S. Generally, to be licensed as a surplus lines agent, an individual must be: (1) deemed DFS to have sufficient experience in the insurance business (2) have 1-year experience working for a licensed surplus lines agent or have completed 60 class hours in an approved surplus lines course, and (3) pass a written examination.
[50] There are certain exceptions to the diligent effort requirement. *Supra*, note 44.
[51] Ss. 626.921(2) and 626.931, F.S.
[52] S. 626.923, F.S.
[53] S. 626.930, F.S.

*Effect of the Bill*

The bill eliminates the required quarterly affidavit. The FSLSO receives relevant information electronically in ongoing data filings.

**Workers' Compensation Insurance Reporting Requirements**

*Background*

Workers' compensation insurance carriers are required to record and report certain loss, expense, and claims experience to aid OIR in making determinations concerning the adequacy of workers' compensation experience for ratemaking purposes.[54] Additionally, carriers are required to provide the following information annually on both Florida experience and nationwide experience separately:

- Payrolls by classification;
- Manual premiums by classification;
- Standard premiums by classification;
- Losses by classification and injury type; and
- Expenses.

Carriers satisfy these requirements by providing their data to the National Council on Compensation Insurance, Inc. (NCCI). When a carrier goes into receivership due to insolvency, they cease reporting to NCCI and, therefore, their data no longer in reported to OIR.

*Effect of the Bill*

The bill requires workers' compensation carriers that enter receivership to continue to report the required data. The receiver, who is now in possession of the carrier, is permitted to do so directly or outsource the reporting to a third party. OIR may approve a modified reporting plan to accommodate limited data reporting.

**Agent Licensing**

*Background*

GENERAL LINES AGENT

A general lines agent[55] is one who sells the following lines of insurance: property;[56] casualty,[57] including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,[58] or a workers' compensation self-insurance fund;[59] surety;[60] health;[61] and, marine.[62] The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.[63]

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[54] S. 627.914, F.S. *See also* R. 69O-189.0055, F.A.C.
[55] S. 626.015(5), F.S.
[56] S. 624.604, F.S.
[57] S. 624.605, F.S.
[58] As defined in s. 624.462, F.S.
[59] Pursuant to s. 624.4621, F.S.
[60] S. 626.606, F.S.
[61] Ss. 624.603 and 627.6482, F.S.
[62] S. 624.607, F.S.
[63] S. 626.829, F.S.

PERSONAL LINES AGENT

A personal lines agent is a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.[64]

MOTOR VEHICLE SERVICING AGREEMENTS

Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. A motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended. Motor vehicle service agreements can only be sold by a licensed and appointed salesperson. Salespersons are licensed in the same manner as insurance representatives under ch. 626, F.S., with some exceptions to the requirements applied to insurance representatives.

SERVICE WARRANTY ASSOCIATIONS

Service warranty associations are entities, other than insurers, which issue service warranties. A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.[65] No person or entity shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative.[66]

HOME WARRANTY CONTRACTS

A home warranty association is any corporation or any other organization, other than an authorized insurer, issuing home warranties. A home warranty is any contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss. No person may not solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative.[67]

*Effect of the Bill*

The bill allows a licensed general lines agent or licensed personal lines agent to advertise, solicit, negotiate, or sell motor vehicle service agreements, home warranty contracts, or service warranty contracts without being separately licensed as a sales representative or insurance representative, as applicable.[68]

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[64] S. 626.015(17), F.S.

[65] S. 634.401(13).

[66] S. 634.419, F.S. A "sales representative" is any person, retail store, corporation, partnership, or sole proprietorship utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties. However, in the case of service warranty associations selling service warranties from one or more business locations, the person in charge of each location may be considered the sales representative. S. 634.401(12), F.S.

[67] S. 634.317, F.S. "Sales representative" is any person with whom an insurer or home inspection or warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term includes all employees of an insurer or association engaged directly in the sale or issuance of home warranties. S. 634.301(12), F.S

[68] See Section III.C., Drafting Issues or Other Comments.

B. SECTION DIRECTORY:

**Section 1.** Amending s. 215.555, F.S., relating to Florida Hurricane Catastrophe Fund.
**Section 2.** Amending s. 316.646, F.S., relating to security required; proof of security and display thereof.
**Section 3.** Amending s. 320.02, F.S., relating to registration required; application for registration; forms.
**Section 4.** Creating s. 324.252, F.S., relating to insurance online verification system.
**Section 5.** Creating s. 324.255, F.S., relating to Motor Vehicle Insurance Online Verification Task Force.
**Section 6.** Amending s. 624.01, F.S., relating to short title.
**Section 7.** Amending s. 626.321, F.S., relating to limited licenses.
**Section 8.** Amending s. 626.931, F.S., relating to agent affidavit and Insurer reporting requirements.
**Section 9.** Amending s. 626.932, F.S., relating to surplus lines tax.
**Section 10.** Amending s. 626.935, F.S., relating to suspension, revocation, or refusal of surplus lines agent's license.
**Section 11.** Amending s. 627.7295, F.S., relating to motor vehicle insurance contracts.
**Section 12.** Amending s. 627.914, F.S., relating to reports of information by workers' compensation insurers required.
**Section 13.** Amending s. 634.171, F.S., relating to salesperson to be licensed and appointed.
**Section 14.** Amending s. 634.317, F.S., relating to license and appointment required.
**Section 15.** Amending s. 634.419, F.S., relating to license and appointment required.
**Section 16.** Providing direction to the Division of Law Revision.
**Section 17.** Creating s. 647.01, F.S. relating to purpose and scope.
**Section 18.** Creating s. 647.02, F.S., relating to definitions.
**Section 19.** Creating s. 647.03, F.S., relating to premium tax.
**Section 20.** Creating s. 647.04, F.S., relating to travel protection plans.
**Section 21.** Creating s. 647.05, F.S., relating to sales practices.
**Section 22.** Creating s. 647.06, F.S., relating to travel administrators.
**Section 23.** Creating s. 647.07, F.S., relating to travel insurance policy.
**Section 24.** Creating s. 647.08, F.S., relating to rulemaking authority.
**Section 25.** Providing an effective date of July 1, 2020.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Unknown.

   The licenses and appointments for representation of travel insurers are subject to filing and renewal fees. Some entities may no longer require licensure under the bill, but they will continue to require appointment. There are few licensees in travel insurance, but many appointees. This may cause an unknown reduction in licensing revenue.

   The motor vehicle insurance online verification system may lead to increased penalty revenue due to higher levels of interdiction and citation of insurance violations.

2. Expenditures:

   Programming will be required for DHSMV to establish the motor vehicle insurance online verification system . Upon recommendation of the task force, DHSMV may contract with a private vendor to assist in establishing and maintaining the verification system. The bill also requires a pilot program to be conducted to test the system's functionality prior to statewide use.

DHSMV estimates that it will require $3.3 million to procure and implement a basic vendor-supplied online insurance verification system. Following implementation, there will be a recurring cost of $2.8 million per year to support this system, with the amount increasing to $3.4 million in out years.[69]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown. The motor vehicle insurance online verification system may lead to increased penalty revenue due to higher levels of interdiction and citation of insurance violations.

2. Expenditures:

Unknown. The bill requires local law enforcement agencies and officers to access the motor vehicle insurance online verification system during all traffic stops and crash investigations after a certain date. The negative cost of implementing hardware and software changes and conducting training to comply with the requirements of the bill have not been estimated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may positively affect consumers by increased availability and/or lowered premiums of motor vehicle insurance written with named driver exclusions. However, high-risk consumers may experience increased application denials or higher premiums when they must secure their own coverage following exclusion from a policy.

The bill requires motor vehicle insurers to implement reporting compliant with the motor vehicle insurance online verification system . This has an unknown negative fiscal impact on insurers that could be passed on to consumers.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article VII, s. 19, Fla. Const., does not appear to apply. Travel insurance is currently subject to premium tax under the Florida Insurance Code. The newly created ch. 647, F.S., Travel Insurance, includes language a premium tax provision regarding travel insurance likely to prevent currently taxable premiums from being relieved of the tax.

B. RULE-MAKING AUTHORITY:

The bill requires the Department of Highway Safety and Motor Vehicles and the Department of Financial Services to adopt rules.

[69] Florida Department of Highway Safety and Motor Vehicles, Agency Analysis of 2020 HB 895, p. 4 (Jan. 24, 2020).

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 21 of the bill creates two new violations of the Unfair Insurance Trade Practices Act in relation to travel insurance. It may avoid confusion if these provision were amended into the Act, rather than stating them in a separate chapter of statute.

Section 21 of the bill cross-references s. 626.321 (1)(c)3.a., F.S., in regard to information that must be disclosed to a policyholder or certificate holder. The effect of this cross reference is unclear.

Section 22 of the bill exempts a travel administrator and its employees from the licensing requirements in ch. 626, part VI, F.S. Currently, there are express exemptions listed in statute.[70] It may avoid confusion if the bill's exemptions are placed with the existing exemptions found in s. 626.852, F.S.

On line 723, context indicates that the term "sale" should be "sales."

On lines 694, 709, and 724, the proposed language use the phrase "licensed under as a [specified license type] under this section." However, the referenced sections are not licensing statutes; rather, they each establish which licensees may transact the specified business. The phrase "under this section" should be deleted to avoid confusion.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[70] Ss. 626.852(3)-(6), F.S.

A bill to be entitled

An act relating to insurance; amending s. 215.555, F.S.; revising the definition of the term "covered policy" to include a coverage amount requested by lenders under specified residential insurance policies in certain circumstances; amending s. 316.646, F.S.; requiring law enforcement officers to access certain information during traffic stops or crash investigations for certain purposes; amending s. 320.02, F.S.; authorizing insurance online verification for motor vehicle registration; creating s. 324.252, F.S.; requiring the Department of Highway Safety and Motor Vehicles to establish an online verification system for motor vehicle insurance; providing system requirements; providing powers and duties of the department; providing requirements for insurers and law enforcement officers; providing immunity from liability; prohibiting the use of an online verification request or response for a civil action; providing applicability; providing rulemaking authority; creating s. 324.255, F.S.; creating the Motor Vehicle Insurance Online Verification Task Force; providing duties of the task force; providing membership; providing meeting requirements; requiring the department to provide support; providing report

requirements; providing the date by which the task force must complete its work and submit its final report; providing for expiration of the task force; amending s. 624.01, F.S.; adding ch. 647, F.S., created by this act to the list of statutes composing the Florida Insurance Code; amending s. 626.321, F.S.; amending s. 626.321, F.S.; providing that certain travel insurance licenses are subject to review by the Department of Financial Services, rather than the Office of Insurance Regulation; revising the list of individuals and entities who may apply for such licenses; revising the requirements for such licenses; prohibiting persons from engaging in certain acts unless licensed or registered; providing authorizations and duties of limited lines travel insurance producers and travel retailers; requiring travel retailer registers; providing applicability of penalties; providing fingerprinting and licensing fee requirements; providing instruction or training requirements under certain circumstances; authorizing travel retailers to receive compensation under certain circumstances; providing that limited lines travel insurance producers are responsible for their travel retailers' acts; authorizing persons licensed in major lines of authority as insurance producers to sell,

solicit, and negotiate travel insurance; amending s. 626.931, F.S.; deleting provisions requiring certain surplus lines agents to file affidavits with the Florida Surplus Lines Service Office; amending s. 626.932, F.S.; revising the timeline for the surplus lines agents' tax remittance; amending s. 626.935, F.S.; conforming provisions to changes made by the act; amending s. 627.7295, F.S.; revising the timeframe for insurers' cancellation of motor vehicle insurance policies or contracts for nonpayment; amending s. 627.914, F.S.; requiring certain workers' compensation insurers and self-insurance funds to continue to report certain information; authorizing such reporting to be outsourced under certain circumstances; requiring the office to approve a modified reporting plan; authorizing the office to use certain information for a specified purpose; amending ss. 634.171, 634.317, and 634.419, F.S.; authorizing licensed personal lines or general lines agent to advertise, solicit, negotiate, or sell motor vehicle service agreements, home warranties, and service warranties, respectively, without a sales representative license; providing a directive to the Division of Law Revision; creating s. 647.01, F.S.; providing purpose; providing applicability; creating

s. 647.02, F.S.; providing definitions; creating s. 647.03, F.S.; providing definitions; providing requirements for certain travel insurance premiums for tax purposes; providing duties of travel insurers; creating s. 647.04, F.S.; authorizing travel protection plans to be offered under certain circumstances; creating s. 647.05, F.S.; providing requirements for documents provided to consumers before the purchase of travel insurance; providing requirements for disclosures of preexisting condition exclusions in travel insurance policies and certificates; providing requirements for fulfillment materials and specified information; providing circumstances under which travel protection plan payments may be cancelled for a full refund; providing practices that are not unfair trade practices or violations of law; prohibiting certain practices; providing that persons offering travel insurance to residents of this state are subject to the Unfair Insurance Trade Practices Act; providing that specified provisions supersede such act; providing practices that are unfair insurance trade practices; creating s. 647.06, F.S.; prohibiting certain persons from representing themselves as travel administrators; exempting travel administrators and their employees

from certain licensing requirements; providing insurers' responsibilities relating to travel administrators; creating s. 647.07, F.S.; providing classification and filing of travel insurance for purposes of rates and forms; providing eligibility and underwriting standards for travel insurance; creating s. 647.08, F.S.; requiring the Department of Financial Services to adopt rules; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (2) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(c) "Covered policy" means any insurance policy covering residential property in this state, including, but not limited to, any homeowner, mobile home owner, farm owner, condominium association, condominium unit owner, tenant, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including a commercial self-insurance fund holding a certificate of authority issued by the Office of Insurance Regulation under s. 624.462, the Citizens Property Insurance Corporation, and any

joint underwriting association or similar entity created under law. The term "covered policy" includes any collateral protection insurance policy covering personal residences which protects both the borrower's and the lender's financial interests, in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowner's policy, or in an amount at least equal to the coverage amount requested by the lender if the homeowner has been notified in writing of the coverage amount and the homeowner has not requested that the insurer issue the policy in a different amount, if such policy can be accurately reported as required in subsection (5). Additionally, covered policies include policies covering the peril of wind removed from the Florida Residential Property and Casualty Joint Underwriting Association or from the Citizens Property Insurance Corporation, created under s. 627.351(6), or from the Florida Windstorm Underwriting Association, created under s. 627.351(2), by an authorized insurer under the terms and conditions of an executed assumption agreement between the authorized insurer and such association or Citizens Property Insurance Corporation. Each assumption agreement between the association and such authorized insurer or Citizens Property Insurance Corporation must be approved by the Office of Insurance Regulation before the effective date of the assumption, and the Office of Insurance Regulation must provide written notification to the board within 15 working days after

such approval. "Covered policy" does not include any policy that excludes wind coverage or hurricane coverage or any reinsurance agreement and does not include any policy otherwise meeting this definition which is issued by a surplus lines insurer or a reinsurer. All commercial residential excess policies and all deductible buy-back policies that, based on sound actuarial principles, require individual ratemaking shall be excluded by rule if the actuarial soundness of the fund is not jeopardized. For this purpose, the term "excess policy" means a policy that provides insurance protection for large commercial property risks and that provides a layer of coverage above a primary layer insured by another insurer.

Section 2. Subsection (5) of section 316.646, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section, to read:

316.646 Security required; proof of security and display thereof.—

(5) Upon implementation of the motor vehicle insurance online verification system established in s. 324.252, a law enforcement officer, during a traffic stop or crash investigation, shall access information from the online verification system to establish compliance with this chapter and chapter 324 and to verify the current validity of the policy described on any insurance identification card produced by the operator of a motor vehicle.

Section 3. Paragraph (f) is added to subsection (5) of section 320.02, Florida Statutes, to read:

320.02 Registration required; application for registration; forms.—

(5)

(f) Upon implementation of the motor vehicle insurance online verification system established in s. 324.252, the online verification may be used in lieu of the verification procedures in this subsection.

Section 4. Section 324.252, Florida Statutes, is created to read:

324.252 Insurance online verification system.—The department shall establish an online verification system for motor vehicle insurance. The goal of the system is to identify uninsured motorists and aid the department in the enforcement of the financial responsibility law.

(1) The online verification system must:

(a) Be accessible through the Internet by authorized personnel of the department, the courts, law enforcement personnel, any other entities authorized by the department, and insurers authorized by the Office of Insurance Regulation to offer motor vehicle insurance.

(b) Send requests to insurers for verification of evidence of insurance for motor vehicles registered in this state via online services established by the insurers in compliance with

the specifications and standards of the Insurance Industry Committee on Motor Vehicle Administration (IICMVA), with enhancements, additions, and modifications as required by the department. However, the enhancements, additions, and modifications may not conflict with, nullify, or add requirements that are inconsistent with the specifications or standards of the IICMVA.

(c) Be operational by July 1, 2023. The Motor Vehicle Insurance Online Verification Task Force established in s. 324.255 must conduct a pilot program for at least 9 months to test the system before statewide use. The system may not be used in any enforcement action until successful completion of the pilot program.

(d) Be available 24 hours a day, except as provided in paragraph (2)(a), to verify the insurance status of any vehicle registered in this state through the insurer's National Association of Insurance Commissioners (NAIC) company code, in combination with other identifiers such as vehicle identification number, policy number, or other characteristics or markers as specified by the Motor Vehicle Insurance Online Verification Task Force.

(e) Include appropriate provisions, consistent with industry standards as specified by the Motor Vehicle Insurance Online Verification Task Force, to secure the system's data against unauthorized access.

(f) Include a disaster recovery plan to ensure service continuity in the event of a disaster.

(g) Include information that enables the department to make inquiries of evidence of insurance by using multiple data elements for greater matching accuracy, specifically the insurer's NAIC company code, in combination with other identifiers such as vehicle identification number, policy number, or other characteristics or markers as specified by the Motor Vehicle Insurance Online Verification Task Force.

(h) Include a self-reporting mechanism for insurers with fewer than 2,000 vehicles insured within this state or for individual entities that are self-insured.

(2) The department has the following powers and duties:

(a) Upon an insurer's advance notice to the department, the department shall allow online services established by the insurer to have reasonable downtime for system maintenance and other work, as needed. An insurer is not subject to administrative penalties or disciplinary actions when its online services are not available under such circumstances or when an outage is unplanned by the insurer and is reasonably outside its control.

(b) Upon recommendation of the Motor Vehicle Insurance Online Verification Task Force, the department may contract with a private vendor that has personnel with extensive operational and management experience in the development, deployment, and

operation of insurance online verification systems.

(c) The department and its private vendor, if any, shall each maintain a contact person for the insurers during the establishment, implementation, and operation of the system.

(d) The department shall maintain a historical record of the system data for 6 months after the date of any verification request and response.

(3) An insurance company authorized to issue insurance policies for motor vehicles registered in this state:

(a) Shall comply with the verification requirements of motor vehicle insurance for every motor vehicle insured by that company in this state as required by department rule.

(b) Shall maintain policyholder records in order to confirm insurance coverage for 6 months after the date of any verification request and response.

(c) Shall cooperate with the department in establishing, implementing, and maintaining the system.

(d) Is immune from civil liability for good faith efforts to comply with this section. An online verification request or response may not be used as the basis of a civil action against an insurer.

(4) A law enforcement officer, during a traffic stop or crash investigation, shall query information from the online verification system to establish compliance with this chapter and to verify the current validity of the policy described on

any insurance identification card produced by the operator of a motor vehicle.

(5) This section does not apply to vehicles insured under commercial motor vehicle coverage. As used in this subsection, the term "commercial motor vehicle coverage" means any coverage provided to an insured under a commercial coverage form and rated from a commercial manual approved by the Office of Insurance Regulation. However, insurers of such vehicles may participate in the online verification system on a voluntary basis.

(6) The department may adopt rules to administer this section.

Section 5. Section 324.255, Florida Statutes, is created to read:

324.255 Motor Vehicle Insurance Online Verification Task Force.—There is created the Motor Vehicle Insurance Online Verification Task Force within the department.

(1) The task force shall:

(a) Facilitate the implementation of the motor vehicle insurance online verification system established in s. 324.252, including recommending data and cybersecurity processes and protocols.

(b) Assist in the development of a detailed guide for insurers by providing data fields and other information necessary for compliance with the online verification system.

(c) Coordinate a pilot program and conduct the program for at least 9 months to test the online verification system and identify necessary changes to be implemented before statewide use.

(d) Issue recommendations based on periodic reviews of the online verification system.

(2) The task force shall consist of nine voting members and one nonvoting member.

(a) The nine voting members shall be appointed by July 31, 2020, in the following manner:

1. Three representatives of the department, representing the Florida Highway Patrol, the Division of Motorist Services, and the Information Systems Administration, appointed by the executive director of the department.

2. One representative of the Office of Insurance Regulation, appointed by the Commissioner of Insurance.

3. Three representatives of the motor vehicle insurance industry, appointed by the Chief Financial Officer as follows:

a. One member must represent the motor vehicle insurer with the largest national market share as of December 31, 2019.

b. One member must represent the motor vehicle insurer with the largest Florida market share as of December 31, 2019.

c. One member must be selected from a list of representatives recommended by the Insurance Industry Committee on Motor Vehicle Administration.

4. One representative of the Department of Financial Services, appointed by the Chief Financial Officer.

5. One representative of the Agency for State Technology, appointed by the executive director of the agency.

(b) The executive director of the department, who shall be a nonvoting member, shall serve as chair of the task force.

(3) By September 30, 2020, the task force shall meet to establish procedures for the conduct of its business, and the voting members shall elect a vice chair at that meeting. The task force shall meet at the call of the chair, who shall prepare the agenda for each meeting with the consent of the task force. A majority of the voting members of the task force constitutes a quorum, and a quorum is necessary for the purpose of voting on any action or recommendation of the task force. All meetings shall be held in Tallahassee.

(4) The department shall provide the task force members with administrative and technical support. Task force members shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

(5) The task force shall issue a report to the department, the President of the Senate, and the Speaker of the House of Representatives no later than 6 months after the pilot program concludes. The report must evaluate the online verification system's effectiveness in identifying uninsured motorists. The task force may also make recommendations for system enhancements

in the report or at any time before the task force's completion of its work.

(6) By July 1, 2023, the task force shall complete its work and submit its final report evaluating the online verification system's effectiveness and making recommendations for system enhancements to the department, the President of the Senate, and the Speaker of the House of Representatives. Upon submission of the report, the task force shall expire.

Section 6. Section 624.01, Florida Statutes, is amended to read:

624.01 Short title.—Chapters 624-632, 634, 635, 636, 641, 642, 647, 648, and 651 constitute the "Florida Insurance Code."

Section 7. Paragraph (c) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses and registration.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(c) Travel insurance.—License covering only policies and certificates of travel insurance which are subject to review by the office. Policies and certificates of travel insurance may provide coverage for travel insurance, as defined in s. 647.02 ~~risks incidental to travel, planned travel, or accommodations while traveling, including, but not limited to, accidental death~~

~~and dismemberment of a traveler; trip or event cancellation, interruption, or delay; loss of or damage to personal effects or travel documents; damages to travel accommodations; baggage delay; emergency medical travel or evacuation of a traveler; or medical, surgical, and hospital expenses related to an illness or emergency of a traveler. Such policy or certificate may be issued for terms longer than 90 days, but, other than a policy or certificate providing coverage for air ambulatory services only, each policy or certificate must be limited to coverage for travel or use of accommodations of no longer than 90 days~~. The license may be issued only to an individual or business entity that has filed with the department an application for a license in a form and manner prescribed by the department.~~:~~

1. A limited lines travel insurance producer, as defined s. 647.02, shall be licensed to sell, solicit, or negotiate travel insurance through a licensed insurer.

2. A person may not act as a limited lines travel insurance producer or travel retailer unless properly licensed or registered, respectively. As used in this paragraph, the term "travel retailer" means a business entity that:

a. Makes, arranges, or offers planned travel.

b. May, under subparagraph 3., offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

3. A travel retailer may offer and disseminate travel insurance under a limited lines travel insurance producer business entity license only if all of the following requirements are met:

a. The limited lines travel insurance producer or travel retailer provides to purchasers of travel insurance:

(I) A description of the material terms or the actual material terms of the insurance coverage.

(II) A description of the process for filing a claim.

(III) A description of the review or cancellation process for the travel insurance policy.

(IV) The identity and contact information of the insurer and limited lines travel insurance producer.

b. At the time of licensure, the limited lines travel insurance producer establishes and maintains a register on the department's website and appoints each travel retailer that offers travel insurance on behalf of the limited lines travel insurance producer. The limited lines travel insurance producer must maintain and update the register, which must include the travel retailer's federal tax identification number and the name, address, and contact information of the travel retailer and an officer or person who directs or controls the travel retailer's operations. The limited lines travel insurance producer shall submit the register to the department upon reasonable request. The limited lines travel insurance producer

shall also certify that the travel retailer register complies with 18 U.S.C s. 1033. The grounds for the suspension and revocation and the penalties applicable to resident insurance producers under this section apply to the limited lines travel insurance producers and travel retailers.

c. The limited lines travel insurance producer has designated one of its employees as the designated responsible producer. The designated responsible producer, who must be a licensed insurance producer, is responsible for the compliance with the travel insurance laws and regulations applicable to the limited lines travel insurance producer and its registrants. The designated responsible producer and the president, secretary, treasurer, and any other officer or person who direct or control the limited lines travel insurance producer's insurance operations must comply with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel insurance producer.

d. The limited lines travel insurance producer has paid all applicable licensing and appointment fees as set forth in applicable general law.

e. The limited lines travel insurance producer requires each employee and each authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which is subject, at the discretion of the department, to review and

approval. The training material must, at a minimum, contain adequate instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective purchasers.

As used in this paragraph, the term "offer and disseminate" means to provide general information, including a description of the coverage and price, as well as processing the application and collecting premiums.

4. A travel retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that have been approved by the travel insurer. Such materials must include information that, at a minimum:

a. Provides the identity and contact information of the insurer and the limited lines travel insurance producer.

b. Explains that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer.

c. Explains that a travel retailer is authorized to provide only general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of

the customer's existing insurance coverage.

5. A travel retailer employee or authorized representative who is not licensed as an insurance producer may not:

a. Evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

b. Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

c. Hold himself or herself or the travel retailer out as a licensed insurer, licensed producer, or insurance expert.

Notwithstanding any other provision of law, a travel retailer whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions in this section may receive related compensation upon registration by the limited lines travel insurance producer as described in paragraph (2)(b).

6. As the insurer's designee, the limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use reasonable means to ensure compliance by the travel retailer with this section.

7. Any person licensed as a general or personal lines insurance agent may sell, solicit, and negotiate travel insurance.

~~1. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency and may authorize the sale of such ticket policies only in connection with the sale of transportation tickets, or to the full-time salaried employee of such an agent. Such policy may not be for more than 48 hours or more than the duration of a specified one-way trip or round trip.~~

~~2. To an entity or individual that is:~~

~~a. The developer of a timeshare plan that is the subject of an approved public offering statement under chapter 721;~~

~~b. An exchange company operating an exchange program approved under chapter 721;~~

~~c. A managing entity operating a timeshare plan approved under chapter 721;~~

~~d. A seller of travel as defined in chapter 559; or~~

~~e. A subsidiary or affiliate of any of the entities described in sub-subparagraphs a.-d.~~

~~3. To a full-time salaried employee of a licensed general lines agent or a business entity that offers travel planning services if insurance sales activities authorized by the license are in connection with, and incidental to, travel.~~

~~a. A license issued to a business entity that offers travel planning services must encompass each office, branch office, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to~~

~~this paragraph.~~

~~b. The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee shall notify the department within 30 days after the closing or terminating of an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.~~

~~c. A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees and parties with whom the licensee has entered into a contractual agreement to offer travel insurance.~~

~~A licensee shall require each individual who offers policies or certificates under subparagraph 2. or subparagraph 3. to receive initial training from a general lines agent or an insurer authorized under chapter 624 to transact insurance within this state. For an entity applying for a license as a travel insurance agent, the fingerprinting requirement of this section applies only to the president, secretary, and treasurer and to~~

~~any other officer or person who directs or controls the travel insurance operations of the entity.~~

Section 8. Section 626.931, Florida Statutes, is amended to read:

626.931 ~~Agent affidavit and~~ Insurer reporting requirements.—

~~(1) Each surplus lines agent that has transacted business during a calendar quarter shall on or before the 45th day following the calendar quarter file with the Florida Surplus Lines Service Office an affidavit, on forms as prescribed and furnished by the Florida Surplus Lines Service Office, stating that all surplus lines insurance transacted by him or her during such calendar quarter has been submitted to the Florida Surplus Lines Service Office as required.~~

~~(2) The affidavit of the surplus lines agent shall include efforts made to place coverages with authorized insurers and the results thereof.~~

(1)~~(3)~~ Each foreign insurer accepting premiums shall, on or before the end of the month following each calendar quarter, file with the Florida Surplus Lines Service Office a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this state during such calendar quarter.

(2)~~(4)~~ Each alien insurer accepting premiums shall, on or before June 30 of each year, file with the Florida Surplus Lines

Service Office a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this state during the preceding calendar year.

(3)~~(5)~~ The department may waive the filing requirements described in subsections (1) ~~(3)~~ and (2) ~~(4)~~.

(4)~~(6)~~ Each insurer's report and supporting information shall be in a computer-readable format as determined by the Florida Surplus Lines Service Office or shall be submitted on forms prescribed by the Florida Surplus Lines Service Office and shall show for each applicable agent:

(a) A listing of all policies, certificates, cover notes, or other forms of confirmation of insurance coverage or any substitutions thereof or endorsements thereto and the identifying number; and

(b) Any additional information required by the department or Florida Surplus Lines Service Office.

Section 9. Paragraph (a) of subsection (2) of section 626.932, Florida Statutes, is amended to read:

626.932 Surplus lines tax.—

(2)(a) The surplus lines agent shall make payable to the department the tax related to each calendar quarter's business as reported to the Florida Surplus Lines Service Office, and remit the tax to the Florida Surplus Lines Service Office at the same time as the fee payment required ~~provided for the filing of the quarterly affidavit,~~ under s. 626.9325 ~~s. 626.931~~. The

Florida Surplus Lines Service Office shall forward to the department the taxes and any interest collected pursuant to paragraph (b), within 10 days of receipt.

Section 10. Paragraph (d) of subsection (1) of section 626.935, Florida Statutes, is amended to read:

626.935 Suspension, revocation, or refusal of surplus lines agent's license.—

(1) The department shall deny an application for, suspend, revoke, or refuse to renew the appointment of a surplus lines agent and all other licenses and appointments held by the licensee under this code, on any of the following grounds:

~~(d) Failure to make and file his or her affidavit or reports when due as required by s. 626.931.~~

Section 11. Subsection (4) of section 627.7295, Florida Statutes, is amended to read:

627.7295 Motor vehicle insurance contracts.—

(4) The insurer may cancel the policy in accordance with this code except that, notwithstanding s. 627.728, an insurer may not cancel a new policy or binder during the first 30 ~~60~~ days immediately following the effective date of the policy or binder for nonpayment of premium unless the reason for the cancellation is the issuance of a check for the premium that is dishonored for any reason or any other type of premium payment that was subsequently determined to be rejected or invalid.

Section 12. Subsection (4) of section 627.914, Florida

Statutes, is renumbered as subsection (5), subsections (2) and (3) of that section are amended, and a new subsection (4) is added to that section, to read:

627.914 Reports of information by workers' compensation insurers required.—

(2)(a) Each insurer and self-insurance fund authorized to write a policy of workers' compensation insurance shall report ~~transmit~~ the following information annually on both Florida experience and nationwide experience separately:

1.~~(a)~~ Payrolls by classification.

2.~~(b)~~ Manual premiums by classification.

3.~~(c)~~ Standard premiums by classification.

4.~~(d)~~ Losses by classification and injury type.

5.~~(e)~~ Expenses.

An insurer or self-insurance fund that is placed in receivership pursuant to part I of chapter 631 must continue to report the information required under this paragraph. At the discretion of the receiver, the insurer or self-insurance fund may outsource the reporting of such information to a third-party reporting vendor. The office shall approve a modified reporting plan that is limited in terms of data elements.

(b) A report of the ~~this~~ information required under paragraph (a) shall be filed no later than July 1 of each year. All reports shall be filed in accordance with standard reporting

procedures for insurers, which procedures have received approval by the office, and shall contain data for the most recent policy period available. A statistical or rating organization may be used by insurers and self-insurance funds to report the data required by this section. The statistical or rating organization shall report each data element in the aggregate only for insurers and self-insurance funds required to report under this section who elect to have the organization report on their behalf. Such insurers and self-insurance funds shall be named in the report.

(3) Individual self-insurers as defined in s. 440.02 shall report only Florida data as prescribed in subparagraphs (2)(a)1.-5. ~~paragraphs (2)(a)-(c)~~ to the office.

(a) The office shall publish the dates and forms necessary to enable individual self-insurers to comply with this section.

(b) A statistical or rating organization may be used by individual self-insurers for the purposes of reporting the data required by this section and calculating experience ratings.

(4) The office may use the information it receives under this section in its adoption of rates and experience ratings modifications.

Section 13. Section 634.171, Florida Statutes, is amended to read:

634.171 Salesperson to be licensed and appointed.—Salespersons for motor vehicle service agreement companies and

insurers shall be licensed, appointed, renewed, continued, reinstated, or terminated as prescribed in chapter 626 for insurance representatives in general. However, they shall be exempt from all other provisions of chapter 626 including fingerprinting, photo identification, education, and examination provisions. License, appointment, and other fees shall be those prescribed in s. 624.501. A licensed and appointed salesperson shall be directly responsible and accountable for all acts of her or his employees and other representatives. Each service agreement company or insurer shall, on forms prescribed by the department, within 30 days after termination of the appointment, notify the department of such termination. An ~~No~~ employee or salesperson of a motor vehicle service agreement company or insurer may not directly or indirectly solicit or negotiate insurance contracts, or hold herself or himself out in any manner to be an insurance agent, unless so qualified, licensed, and appointed therefor under the Florida Insurance Code. A licensed personal lines or general lines agent is not required to be licensed as a salesperson under this section to advertise, solicit, negotiate, or sell motor vehicle service agreements. A motor vehicle service agreement company is not required to be licensed as a salesperson to solicit, sell, issue, or otherwise transact the motor vehicle service agreements issued by the motor vehicle service agreement company.

Section 14. Section 634.317, Florida Statutes, is amended

to read:

634.317 License and appointment required.—A ~~No~~ person may not solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative. A licensed and appointed sales representative shall be directly responsible and accountable for all acts of the licensee's employees. A licensed personal lines or general lines agent is not required to be licensed as a sales representative under this section to advertise, solicit, negotiate, or sell home warranties.

Section 15. Section 634.419, Florida Statutes, is amended to read:

634.419 License and appointment required.—A ~~No~~ person or entity may not ~~shall~~ solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative. Sales representatives shall be responsible for the actions of persons under their supervision. However, a service warranty association licensed as such under this part shall not be required to be licensed and appointed as a sales representative to solicit, negotiate, advertise, or effectuate its products. A licensed personal lines or general lines agent is not required to be licensed as a sale representative under this section to advertise, solicit, negotiate, or sell service warranties.

Section 16. The Division of Law Revision is directed to create chapter 647, Florida Statutes, consisting of ss. 647.01-647.08, Florida Statutes, to be entitled "Travel Insurance."

Section 17. Section 647.01, Florida Statutes, is created to read:

647.01 Purpose and scope.—

(1) The purpose of this chapter is to promote the public welfare by creating a comprehensive legal framework within which travel insurance may be sold in this state.

(2) This chapter applies to:

(a) Travel insurance that covers any resident of this state and that is sold, solicited, negotiated, or offered in this state.

(b) Policies and certificates that are delivered or issued for delivery in this state.

This chapter does not apply to cancellation fee waivers or travel assistance services, except as expressly provided in this chapter.

(3) All other applicable provisions of the insurance laws of this state continue to apply to travel insurance, except that the specific provisions of this chapter shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

Section 18. Section 647.02, Florida Statutes, is created

to read:

647.02 Definitions.—As used in this chapter, the term:

(1) "Aggregator site" means a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping.

(2) "Blanket travel insurance" means a policy of travel insurance issued to an eligible group providing coverage to all members of the eligible group without a separate charge to individual members of the eligible group.

(3) "Cancellation fee waiver" means a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.

(4) "Department" means the Department of Financial Services.

(5) "Eligible group," solely for the purposes of travel insurance, means two or more persons who are engaged in a common enterprise or who have an economic, educational, or social affinity or relationship, including, but not limited to, any of the following:

(a) An entity engaged in the business of providing travel or travel services, including, but not limited to:

1. A tour operator, lodging provider, vacation property owner, hotel, resort, travel club, travel agency, property manager, and cultural exchange program.

2. An operator, owner, or lessor of a means of transportation of passengers, including, but not limited to, a common carrier, airline, cruise line, railroad, steamship company, and public bus carrier.

With regard to any particular travel or type of travel or travelers, all members or customers of the group must have a common exposure to risk attendant to such travel.

(b) A university, college, school, or other institution of learning, covering students, teachers, employees, or volunteers.

(c) An employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests.

(d) A sports team or camp, or a sponsor thereof, covering participants, members, campers, employees, officials, supervisors, or volunteers.

(e) A religious, charitable, recreational, educational, or civic organization, or a branch thereof, covering any group of members, participants, or volunteers.

(f) A financial institution or financial institution vendor, or a parent holding company, trustee, or agent of or designated by one or more financial institutions or financial

institution vendors, including account holders, credit card holders, debtors, guarantors, or purchasers.

(g) An incorporated or unincorporated association, including a labor union, having a common interest and constitution and bylaws, which is organized and maintained in good faith for purposes other than obtaining insurance coverage for its members or participants.

(h) A trust or the trustees of a fund that covers its members, employees, or customers and is established, created, or maintained for the benefit of its members, employees, or customers, subject to:

1. The department's authorizing the use of a trust.

2. The premium tax provisions in s. 647.03 applicable to incorporated or unincorporated associations that have a common interest and constitution and bylaws and that are organized and maintained in good faith for purposes other than obtaining insurance coverage for their members, employees, or customers.

(i) An entertainment production company covering any group of participants, volunteers, audience members, contestants, or workers.

(j) A volunteer fire department, ambulance, rescue, police, court, first-aid, civil defense, or other such volunteer group.

(k) A preschool, daycare institution for children or adults, or senior citizen club.

(l) An automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers as defined by their travel status on the rented or leased vehicles. The common carrier, the operator, owner, or lessor of a means of transportation, or the motor vehicle or truck rental or leasing company is the policyholder under a policy to which this section applies.

(m) Any other group for which the department has made the following determinations:

1. The group members are engaged in a common enterprise or have an economic, educational, or social affinity or relationship.

2. Issuance of the travel insurance policy is not contrary to the public interest.

(6) "Fulfillment materials" means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's coverage and assistance details.

(7) "Group travel insurance" means travel insurance issued to an eligible group.

(8) "Limited lines travel insurance producer" means:

(a) A licensed or third-party administrator;

(b) A licensed insurance producer, including a limited lines producer; or

(c) A travel administrator.

(9) "Travel administrator" means a person who directly or indirectly underwrites policies for, collects charges, collateral, or premiums from, or adjusts or settles claims on, residents of this state, in connection with travel insurance, except that a person is not considered a travel administrator if the person is:

(a) A person working for a travel administrator to the extent that the person's activities are subject to the supervision and control of the travel administrator;

(b) An insurance producer selling insurance or engaged in administrative and claims-related activities within the scope of the producer's license;

(c) A travel retailer, as defined s. 626.321(1)(c)2., offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with s. 626.321(1)(c);

(d) A person adjusting or settling claims in the normal course of the person's practice or employment as an attorney at law, without collecting charges or premiums in connection with insurance coverage; or

(e) A business entity that is affiliated with a licensed insurer while acting as a travel administrator for the direct and assumed insurance business of the affiliated insurer.

(10) "Travel assistance services" means noninsurance services for which the consumer is not indemnified based on a

fortuitous event, and the provision of which does not result in transfer or shifting of risk which would constitute the business of insurance. The term includes, but is not limited to, security advisories, destination information, vaccination and immunization information services, travel reservation services, entertainment, activity and event planning, translation assistance, emergency messaging, international legal and medical referrals, medical case monitoring, coordination of transportation arrangements, emergency cash transfer assistance, medical prescription replacement assistance, passport and travel document replacement assistance, lost luggage assistance, concierge services, and any other service that is furnished in connection with planned travel. Travel assistance services are not insurance and not related to insurance.

(11) "Travel insurance" means insurance coverage for personal risks incidental to planned travel, including:

(a) Interruption or cancellation of trip or event;

(b) Loss of baggage or personal effects;

(c) Damages to accommodations or rental vehicles;

(d) Sickness, accident, disability, or death occurring during travel;

(e) Emergency evacuation;

(f) Repatriation of remains; or

(g) Any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable

contingencies related to travel as determined by the office.

The term does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting longer than 6 months, including major medical plans for those working or residing overseas as expatriates, or any other product that requires a specific insurance producer license.

(12) "Travel protection plan" means a plan that provides one or more of the following: travel insurance, travel assistance services, and cancellation fee waivers.

Section 19. Section 647.03, Florida Statutes, is created to read:

647.03 Premium tax.—

(1) As used in this section, the term:

(a) "Primary certificateholder" means an individual who purchases travel insurance under a group policy.

(b) "Primary policyholder" means an individual who purchases individual travel insurance.

(2) A travel insurer shall pay the premium tax, as required under s. 624.509, on travel insurance premiums paid by any of the following:

(a) A primary policyholder who is a resident of this state.

(b) A primary certificateholder who is a resident of this state.

(c) A blanket travel insurance policyholder:

1. Who is a resident in this state;

2. Who has his or her principal place of business in this state; or

3. Whose affiliate or subsidiary who has purchased blanket travel insurance for eligible blanket group members has his or her principal place of business in this state.

The premium tax under this subsection is subject to any apportionment rules that apply to an insurer across multiple taxing jurisdictions or that authorize an insurer to allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

(3) A travel insurer shall:

(a) Document the state of residence or principal place of business of the policyholder or certificateholder, or an affiliate or subsidiary thereof, as required under subsection (2).

(b) Report as premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

Section 20. Section 647.04, Florida Statutes, is created to read:

647.04 Travel protection plans.—A travel protection plan may be offered for one price for the combined features that the

travel protection plan offers in this state if the travel protection plan meets all of the following requirements:

(1) The travel protection plan clearly discloses to the consumer, at or before the time of purchase, that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and provides information and an opportunity, at or before the time of purchase, for the consumer to obtain additional information regarding the features and pricing of each.

(2) The fulfillment materials:

(a) Describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan.

(b) Include the travel insurance disclosures required in this chapter, the contact information for persons providing travel assistance services, and cancellation fee waivers, as applicable.

Section 21. Section 647.05, Florida Statutes, is created to read:

647.05 Sales practices.—

(1)(a) All documents provided to a consumer before the purchase of travel insurance, including, but not limited to, sales materials, advertising materials, and marketing materials, must be consistent with the travel insurance policy, including, but not limited to, forms, endorsements, policies, rate filings,

and certificates of insurance.

(b) For travel insurance policies or certificates that contain preexisting condition exclusions, information and an opportunity to learn more about the preexisting condition exclusions must be provided any time before the purchase. Information on the exclusions and the opportunity to learn more about these exclusions must be included in the coverage's fulfillment materials.

(c) The fulfillment materials and the information described in s. 626.321(1)(c)3.a. must be provided to a policyholder or certificateholder as soon as practicable after the purchase of a travel protection plan. Unless the insured has started a covered trip or filed a claim under the travel insurance coverage, the policyholder or certificateholder may cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at least:

1. Fifteen days after the date of delivery of the travel protection plan's fulfillment materials by postal mail; or

2. Ten days after the date of delivery of the travel protection plan's fulfillment materials by means other than postal mail.

For the purposes of this paragraph, the term "delivery" means handing fulfillment materials to the policyholder or

certificateholder or sending fulfillment materials by postal mail or electronic means to the policyholder or certificateholder.

(d) An insurer shall disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.

(e) If travel insurance is marketed directly to a consumer through an insurer's website or by others through an aggregator site, it is not an unfair trade practice or other violation of law if the following requirements are met:

1. The web page provides an accurate summary or short description of the coverage.

2. The consumer has access to the full provisions of the policy through electronic means.

(2) A person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may not do so by using a negative or opt-out option that would require a consumer to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form, when the consumer purchases a trip.

(3) If a consumer's destination jurisdiction requires insurance coverage, it is not an unfair trade practice to require that the consumer choose between the following options as a condition of purchasing a trip or travel package:

(a) Purchasing the coverage required by the destination

jurisdiction through the travel retailer, as defined s. 626.321(1)(c)2., or limited lines travel insurance producer supplying the trip or travel package; or

(b) Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements before departure.

(4)(a) A person offering travel insurance to residents of this state is subject to part IX of chapter 626, the Unfair Insurance Trade Practices Act, except as otherwise provided in this chapter. If a conflict arises between this chapter and the Unfair Insurance Trade Practices Act regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this chapter shall control.

(b) A person commits an unfair insurance trade practice under the Unfair Insurance Trade Practices Act if the person:

1. Offers or sells a travel insurance policy that could never result in payment of any claims for any insured under the policy; or

2. Markets blanket travel insurance coverage as free.

Section 22. Section 647.06, Florida Statutes, is created to read:

647.06 Travel administrators.—

(1) Notwithstanding any other provision of the Florida Insurance Code, a person may not act or represent himself or herself as a travel administrator in this state unless the

person:

(a) Is a licensed and appointed property and casualty insurance producer in this state for activities authorized under that producer license;

(b) Is a licensed insurance agency, appointed as a managing general agent in this state; or

(c) Holds a valid third-party administrator license in this state.

(2) A travel administrator and its employees are exempt from the licensing requirements of part VI of chapter 626 for the travel insurance it administers.

(3) An insurer is responsible for ensuring that a travel administrator administering travel insurance underwritten by the insurer:

(a) Acts in accordance with this chapter.

(b) Maintains all books and records that are relevant to the insurer and makes these books and records available to the department upon request.

Section 23. Section 647.07, Florida Statutes, is created to read:

647.07 Travel insurance policy.—

(1) Notwithstanding any other provision of the Florida Insurance Code, travel insurance shall be classified and filed for purposes of rates and forms under the inland marine line of insurance; however, travel insurance that provides coverage for

sickness, accident, disability, or death occurring during travel, either exclusively or in conjunction with related coverages of emergency evacuation or repatriation of remains, or incidental limited property and casualty benefits such as baggage or trip cancellation, may be classified and filed for purposes of rates and forms under either the accident and health line of insurance or the inland marine line of insurance.

(2) Travel insurance may be in the form of an individual, group, or blanket policy. Group or blanket policies are classified as commercial inland marine insurance under s. 627.021(2)(d). Travel insurance policies not issued to a commercial entity and primarily used for personal, family, or household purposes is considered personal inland marine insurance, and shall not be subject to s. 627.062. Sections of policies or endorsements for travel insurance that are considered personal inland marine consisting of travel assistance services or cancellation fee waivers are not subject to s. 627.410.

(3) Travel insurance programs may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels.

Section 24. Section 647.08, Florida Statutes, is created to read:

647.08 Rulemaking authority.—The department shall adopt

rules to administer this chapter.

Section 25. This act shall take effect July 1, 2020.

## INSURANCE & BANKING SUBCOMMITTEE

## PCS for HB 895
## Insurance

## AMENDMENT SUMMARY
## January 28, 2020

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**Amendment 1 by Rep. Santiago (Line 163):** The amendment makes technical and clarifying changes identified by the Department of Highway Safety & Motor Vehicles. It also makes the development and implementation of the Motor Vehicle Insurance Online Verification System and the associated task force contingent upon receiving a specific appropriation, which could occur this Session or in the future.

**Amendment 2 by Rep. Santiago (Line 694):** The amendment corrects a scrivener's error and removes superfluous language.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | ____ | (Y/N) |
| ADOPTED AS AMENDED | ____ | (Y/N) |
| ADOPTED W/O OBJECTION | ____ | (Y/N) |
| FAILED TO ADOPT | ____ | (Y/N) |
| WITHDRAWN | ____ | (Y/N) |
| OTHER | | |

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Santiago offered the following:

**Amendment**

Remove lines 163-358 and insert:

Section 2. Subsection (5) of section 316.646, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section, to read:

316.646 Security required; proof of security and display thereof.—

(5) Eighteen months after implementation of the motor vehicle insurance online verification system established in s. 324.252, a law enforcement officer, during a traffic stop or crash investigation, shall access information from the online verification system to establish compliance with this chapter

and chapter 324.

Section 3. Paragraph (f) is added to subsection (5) of section 320.02, Florida Statutes, to read:

320.02 Registration required; application for registration; forms.—

(5)

(f) Upon implementation of the motor vehicle insurance online verification system established in s. 324.252, the online verification may be used in lieu of the verification procedures in this subsection.

Section 4. Section 324.252, Florida Statutes, is created to read:

324.252 Insurance online verification system.—The department shall establish an online verification system for motor vehicle insurance. The goal of the system is to identify uninsured motorists and aid the department in the enforcement of the financial responsibility law.

(1) The online verification system must:

(a) Be accessible through electronic means for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions, any other entities authorized by the department, and insurers authorized by the Office of Insurance Regulation to provide motor vehicle insurance. The department

may also establish a web portal or other mechanism that provides the general public with the ability to confirm whether a particular vehicle is currently insured.

(b) In real time send requests to insurers for verification of evidence of insurance for motor vehicles registered in this state, and receive confirmation in real time from insurers via electronic means consistent with the specifications and standards of the Insurance Industry Committee on Motor Vehicle Administration (IICMVA), with enhancements, additions, and modifications as required by the department. However, the enhancements, additions, and modifications may not conflict with, nullify, or add requirements that are materially inconsistent with the specifications or standards of the IICMVA.

(c) Be operational within 3 years after this act becoming effective. The Motor Vehicle Insurance Online Verification Task Force established in s. 324.255 must conduct a pilot program for at least 9 months to test the system before statewide use. The system may not be used in any enforcement action until successful completion of the pilot program.

(d) Be available 24 hours a day, except as provided in paragraph (2)(a), to verify the insurance status of any vehicle registered in this state through the insurer's National Association of Insurance Commissioners (NAIC) company code, Florida Code in combination with other identifiers including vehicle identification number, car make, car model, year,

registered owner's name, policy number, levels/types of coverage, or other characteristics or markers as specified by the Motor Vehicle Insurance Online Verification Task Force.

(e) Include appropriate safeguards and controls to prevent misuse or unauthorized access.

(f) Include a disaster recovery plan to ensure service continuity in the event of a disaster.

(g) Include information that enables the department to make inquiries of evidence of insurance by using multiple data elements for greater matching accuracy, specifically the insurer's NAIC company code, in combination with other identifiers such as vehicle identification number, policy number, or other characteristics or markers as specified by the Motor Vehicle Insurance Online Verification Task Force or the department.

(h) Include a self-reporting mechanism for insurers with fewer than 2,000 vehicles insured within this state or for individual entities that are self-insured.

(2) The department has the following powers and duties:

(a) Upon an insurer's advance notice to the department, the department shall allow online services established by the insurer to have reasonable downtime for system maintenance and other work, as needed. An insurer is not subject to administrative penalties or disciplinary actions when its online services are not available under such circumstances or when an

outage is unplanned by the insurer and is reasonably outside its control.

(b) Upon recommendation of the Motor Vehicle Insurance Online Verification Task Force, the department may develop and operate its own system or competitively procure a private vendor that has personnel with extensive operational and management experience in the development, deployment, and operation of insurance online verification systems.

(c) The department and its private vendor, if any, shall each maintain a contact person for the insurers during the establishment, implementation, and operation of the system.

(d)The department is authorized to enter into agreements governing the use of the system with any public or private entity accessing the system to verify insurance coverage.

(e) The department shall maintain a historical record of the system data for 3 years after the date of any verification request and response.

(3) An insurance company authorized to issue insurance policies for motor vehicles registered in this state:

(a) Shall comply with the verification requirements of motor vehicle insurance for every motor vehicle insured by that company in this state.

(b) Shall maintain policyholder records in order to confirm insurance coverage for 3 years after the date of any verification request and response.

(c) Shall cooperate with the department in establishing, implementing, and maintaining the system.

(d) Is immune from civil liability for good faith efforts to comply with this section. An online verification request or response may not be used as the basis of a civil action against an insurer.

(4) A law enforcement officer, during a traffic stop or crash investigation, shall query information from the online verification system to establish compliance with this chapter.

(5) This section does not apply to vehicles insured under commercial motor vehicle coverage. As used in this subsection, the term "commercial motor vehicle coverage" means any coverage provided to an insured under a commercial coverage form and rated from a commercial manual approved by the Office of Insurance Regulation. However, insurers of such vehicles may participate in the online verification system on a voluntary basis.

(6) The department may adopt rules to administer this section.

Section 5. Section 324.255, Florida Statutes, is created to read:

324.255 Motor Vehicle Insurance Online Verification Task Force.—There is created the Motor Vehicle Insurance Online Verification Task Force within the department.

(1) The task force shall:

(a) Facilitate the implementation of the motor vehicle insurance online verification system established in s. 324.252.

(b) Assist in the development of a detailed guide for insurers by providing data fields and other information necessary for compliance with the online verification system.

(c) Coordinate a pilot program and conduct the program for at least 9 months to test the online verification system and identify necessary changes to be implemented before statewide use.

(d) Issue recommendations based on periodic reviews of the online verification system.

(2) The task force shall consist of ten voting members and one nonvoting member.

(a) The nine voting members shall be appointed by July 31 of the year this section becomes effective, in the following manner:

1. Three representatives of the department, representing the Florida Highway Patrol, the Division of Motorist Services, and the Information Systems Administration, appointed by the executive director of the department.

2. One representative of the Office of Insurance Regulation, appointed by the Commissioner of Insurance.

3. Three representatives of the motor vehicle insurance industry, appointed by the Chief Financial Officer as follows:

a. One member must represent the motor vehicle insurer

with the largest national market share as of December 31 of the year prior to the appointment.

b. One member must represent the motor vehicle insurer with the largest Florida market share as of December 31 of the year prior to the appointment.

c. One member must be selected from a list of representatives recommended by the Insurance Industry Committee on Motor Vehicle Administration.

4. One representative of the Department of Financial Services, appointed by the Chief Financial Officer.

5. One representative of the Division of State Technology, appointed by the secretary of the Department of Management Services.

6. One member who must be a member of local law enforcement, appointed by the executive director of the department.

(b) The executive director of the department, who shall be a nonvoting member, shall serve as chair of the task force.

(3) By September 30 of the year to this section becomes effective, the task force shall meet to establish procedures for the conduct of its business, and the voting members shall elect a vice chair at that meeting. The task force shall meet at the call of the chair, who shall prepare the agenda for each meeting with the consent of the task force. A majority of the voting members of the task force constitutes a quorum, and a quorum is

necessary for the purpose of voting on any action or recommendation of the task force. All meetings shall be held in Tallahassee.

(4) The department shall provide the task force members with administrative and technical support. Task force members shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

(5) By July 1 of the third year following this section becoming effective, the task force shall complete its work and submit its final report evaluating the online verification system's effectiveness and making recommendations for system enhancements to the department, the President of the Senate, and the Speaker of the House of Representatives. Upon submission of the report, the task force shall expire.

Section 6. Sections 2 through 5 of this act shall take effect upon a specific appropriation.

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | ____ | (Y/N) |
| ADOPTED AS AMENDED | ____ | (Y/N) |
| ADOPTED W/O OBJECTION | ____ | (Y/N) |
| FAILED TO ADOPT | ____ | (Y/N) |
| WITHDRAWN | ____ | (Y/N) |
| OTHER | | |

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Santiago offered the following:

**Amendment**

Remove lines 694-724 and insert:

to be licensed as a salesperson to advertise, solicit, negotiate, or sell motor vehicle service agreements. A motor vehicle service agreement company is not required to be licensed as a salesperson to solicit, sell, issue, or otherwise transact the motor vehicle service agreements issued by the motor vehicle service agreement company.

Section 14. Section 634.317, Florida Statutes, is amended to read:

634.317 License and appointment required.—A ~~No~~ person may not solicit, negotiate, or effectuate home warranty contracts

for remuneration in this state unless such person is licensed and appointed as a sales representative. A licensed and appointed sales representative shall be directly responsible and accountable for all acts of the licensee's employees. A licensed personal lines or general lines agent is not required to be licensed as a sales representative to advertise, solicit, negotiate, or sell home warranties.

Section 15. Section 634.419, Florida Statutes, is amended to read:

634.419 License and appointment required.—A ~~No~~ person or entity may not ~~shall~~ solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative. Sales representatives shall be responsible for the actions of persons under their supervision. However, a service warranty association licensed as such under this part shall not be required to be licensed and appointed as a sales representative to solicit, negotiate, advertise, or effectuate its products. A licensed personal lines or general lines agent is not required to be licensed as a sales representative to advertise, solicit, negotiate, or sell service

HB 723

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 723 Peer-to-Peer Car Sharing
**SPONSOR(S):** Fischer
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | | Lloyd | Cooper |
| 2) Transportation & Infrastructure Subcommittee | | | |
| 3) Commerce Committee | | | |

### SUMMARY ANALYSIS

In recent years, the private market, through the use of the Internet and smart phone technology, has allowed the development of new forms of direct person to person economic arrangements. Companies have emerged to facilitate the sharing of motor vehicles such that a private passenger vehicle is given over to another individual to operate for a period of time. These services are different from transportation network companies, like Uber, Sidecar, and Lyft, in that another person takes over possession and control of the motor vehicle from the owner. This is known as peer-to-peer car sharing (car sharing). This is often done for short periods (i.e., for less than a day with hourly rates). There are similar commercial services available where one can rent a car from a business on an hourly basis; these are known as car sharing services and are similar to but distinct from traditional rental car companies.

The bill establishes statutory requirements for car sharing, including the liabilities and insurance obligations among participants to a car sharing agreement. The bill:

- Defines terms, including "peer-to-peer car sharing," which is the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program. Further, it is not rental, for-hire, or joint use of motor vehicles, such as ridesharing or carpooling.
- Establishes insurance requirements for each party involved in car sharing. During the period that the owner is sharing the car to another driver, the car sharing program (e.g., Turo, Drift, and Getaround) is responsible for providing motor vehicle insurance at or above the statutory minimums for private passenger motor vehicles. It coordinates coverage if there are multiple insurance policies involved and depending on the circumstances. If the owner's or driver's policy lapses or is inadequate, the program is responsible for the insurance requirements.
- Allows motor vehicle insurers insuring the shared vehicle owner to exclude coverage for use of the vehicle in car sharing.
- Provides that the car sharing program and vehicle owner are not vicariously liable for the actions and damages of the driver during periods of car sharing use.
- Specifies recordkeeping requirements and retention periods.
- Includes requirements for consumer protection notifications.
- Addresses the repair, use, and non-use of motor vehicles under a safety recall notice.
- Provides that the bill does not limit the liability of the car sharing program for its acts or omissions that cause bodily harm during car sharing; nor, the owner or driver to the car sharing program for economic losses due to a breach of contract.

The bill has no impact on state or local revenues or expenditures. It has a positive impact on the private sector.

The bill is effective on March 1, 2021.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

In recent years, the private market, using the Internet and smart phone technology, has allowed the development of new forms of direct person to person economic arrangements. Transportation network companies have organized to allow individuals to earn extra income by sharing rides in their personal cars. Entities like Uber, Lyft, and Sidecar facilitate the connection of individuals seeking rides with those offering rides and manage payment transactions for the service. Because of questions over safety, regulations, and insurance considerations, the Legislature passed CS/HB 221[1] in 2017 to preempt local regulations and establish statutory requirements for transportation network companies, including defining insurance liabilities and standards.

In a manner similar to transportation network companies, new companies have emerged to facilitate the sharing of motor vehicles such that a private passenger vehicle is given over to another individual to operate for a period. This is known as peer-to-peer car sharing. This is often done for short periods (i.e., for less than a day with hourly rates). There are similar commercial services available where one can rent a car from a business on an hourly basis; these are called car sharing services and are distinct from traditional rental car companies.[2]

There are no statutes specifically regulating the standards and requirements applicable to peer-to-peer car sharing.

Renting a Motor Vehicle to Another

Current law establishes the requirements for a person (including natural persons and businesses) who wishes to rent a motor vehicle to another.[3] These include requiring: inspection of the driver license of the person to whom the vehicle is to be rented; and, comparing and verifying the signature thereon with the signature of such person written in his or her presence before the vehicle can be rented. Further, record must keep of the registration number of the motor vehicle rented, the name and address of the person renting and the number, date, and place of issue.

Peer-to-Peer Car Sharing

In peer-to-peer car sharing (car sharing), owners interested in renting their vehicles can register as a host on a car sharing site.[4] Sites require photos of the car and help the owner determine a rental fee based on the location and type of car. The host then specifies the car's availability. The host may choose to have the car picked up at his or her house, deliver the vehicle, or have it picked up at an another location, such as an airport. Hosts typically receive between 65 and 75 percent of rental fees. Payments are typically made to the owner through direct deposit.[5] The site provides the recordkeeping necessary to the transaction and in compliance with requirements of law.

Renters also register with the car sharing site. The site will conduct a background check and look at the renters' driving records before approving them. The rental process involves choosing an available car, reserving a rental date and time, and providing credit card information if it is not already on file. At the

[1] Ch. 2017-12, Laws of Fla.
[2] S. 212.0606, F.S.
[3] S. 322.38, F.S.,
[4] Turo, Getaround, and Drift are examples of car sharing websites/applications.
[5] Russ Heaps, *The Good, Bad and Ugly of Peer-to-Peer Car Sharing*, Autotrader, (February 2015), https://www.autotrader.com/car-shopping/good-bad-and-ugly-peer-peer-car-sharing-234961 (last visited Jan. 25, 2020).

end of the rental period, the driver replaces any consumed fuel before returning the car to its pickup location.[6]

One car sharing website, Turo.com, reports that its company has users in 56 countries in over 5,500 cities across the world. It also has over 850 makes and models of vehicles and offers up to $1 million in liability insurance.[7] The average host earns $500 per month. Hosts with three or more cars average over $3,000 per month.[8]

Car Sharing Service

For the purposes of defining the applicability of the rental car surcharge[9] authorized by s. 212.0606, F.S., a "car sharing service" is a membership-based organization or business that requires the payment of an application or membership fee and provides member access to motor vehicles:

- Only at locations that are not staffed by car sharing service personnel employed solely for the purpose of interacting with car sharing service members;
- Twenty-four hours per day, seven days per week;
- Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;
- On hourly or shorter increments;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car sharing service or its affiliates.

The car rental surcharge applicable to car sharing services does not apply to the lease, rental, or usage of a motor vehicle from a location-owned, operated, or leased by or for the benefit of an airport or airport authority.[10]

For-Hire Vehicles

With certain exceptions, offering for lease or rent any motor vehicle in the State of Florida qualifies the vehicle as a "for-hire vehicle." Specifically, s. 320.01(15)(a), F.S., provides:

> "For-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire". The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire".

Documentation Required for Operation of a Vehicle

Section 320.0605(1), F.S., requires that at all times while a vehicle is being used or operated on the roads of Florida, the operator of the vehicle must be in the possession of:

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[6] *Id.*
[7] Turo, *About Turo*, https://turo.com/en-us/about (last visited Jan. 25, 2020).
[8] *Id.*
[9] A rental car surcharge of $2.00 per day for each day of the first 30 days of a car rental and $1.00 per day for a car sharing service, if the rental by the service is less than 24 hours, is required to be collected and paid to the state. S. 212.0606, F.S.
[10] S. 212.0606(2), F.S.

- The registration certificate or an official copy;
- A true copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period;
- A temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet; or
- A cab card issued for a vehicle registered under the International Registration Plan.

The certificate or document must be exhibited upon demand of any authorized law enforcement officer or agent of the Department of Highway Safety and Motor Vehicles (DHSMV), except for a registered fleet vehicle.[11] This provision does not apply during the first 30 days after purchase of a replacement vehicle. A violation is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in Chapter 318, F.S.[12]

Section 320.0605(2), F.S., specifies that the rental or lease documentation must include:

- Date of rental and time of exit from rental facility;
- Rental station identification;
- Rental agreement number;
- Rental vehicle identification number;
- Rental vehicle license plate number and state of registration;
- Vehicle's make, model, and color;
- Vehicle's mileage; and
- Authorized renter's name.

**Effect of the Bill**

The bill creates a new section of the Florida Insurance Code[13] providing requirements for "peer-to-peer car sharing," also called "car sharing" in the bill. Car sharing is the authorized use of a "shared vehicle" (vehicle or car) through a "peer-to-peer car sharing program"[14] (program) by an individual, the "shared vehicle driver" (driver), that is not the "shared vehicle owner" (owner). The following terms relevant to the events and roles involved in car sharing are also defined:

- "Car sharing delivery period"
- "Car sharing start time"
- "Car sharing termination time"
- "Peer-to-peer car sharing" or "car sharing"
- "Peer-to-peer car sharing program"
- "Peer-to-peer car sharing program agreement"
- "Shared vehicle"
- "Shared vehicle driver"

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[11] A fleet vehicle registered under s. 320.0657, F.S., provides for the permanent registration of fleet license plates.

[12] Chapter 318, F.S., relates to the disposition of traffic infractions.

[13] The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

[14] The bill defines "peer-to-peer car sharing program" as a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. It does not include a rental car company, taxi cab association, the owner of a for-hire vehicle, or a car sharing service.

A "for-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire." S. 320.01(15), F.S.

- "Shared vehicle owner"[15]

Where applicable, exceptions are provided by the bill to establish car sharing as concept separate from current laws governing rental, for-hire, or joint use of motor vehicles, such as ridesharing or carpooling.

Car Sharing Insurance Requirements

The program is required to ensure that the owner and driver of the vehicle have the following motor vehicle insurance, which are the statutory minimums required for private passenger motor vehicles, during car sharing periods:

- Property damage coverage of at least $10,000;
- Bodily injury coverage of at least $10,000 for injury to one person and $20,000 for injury to two or more persons;
- Personal injury protection of $10,000; and
- Uninsured/underinsured motorist coverage, as required by s. 627.727, F.S.[16]

The program must also ensure that the insurance coverage above either recognizes the use of the vehicle in car sharing or does not exclude shared use. Compliant insurance coverage may be maintained by the vehicle owner, driver, the program, or any combination thereof, which will be the primary insurance coverage during periods the vehicle is shared. If the owner's or driver's insurance lapses or does not provide the required coverage, the program's coverage must provide coverage as if it were primary from day one, i.e., provide coverage from the first dollar claimed. Further, the program's coverage must not require that a claim be denied by another insurer. The program is authorized to maintain multiple insurance policies to meet its obligations.[17]

Liabilities and Exclusions

If it is determined that the vehicle owner was in control[18] of the vehicle at the time of a loss, the owner shall indemnify the program for the liabilities it assumes under the bill.

During shared periods, the program assumes the liability of the vehicle owner for bodily injury and property damage to third parties, uninsured/underinsured motorists, and personal injury protection coverages in the amount specified in the car sharing agreement, which must meet statutory minimums. This shifting of liability is void if the owner makes an intentional or fraudulent material misrepresentation or omission to the program before the sharing period when the loss occurred or if the owner acts in concert with a vehicle driver who fails to return the vehicle as provided in the sharing agreement.

If a dispute exists about who was in control of a vehicle at the time of a loss and the program does not have, did not retain, or fails to provide specific required information, the program will have primary liability for a claim.

If the owner's insurer defends or indemnifies a claim related to a vehicle that it has excluded from coverage and for which it is not liable under the bill, the owner's insurer is entitled to contribution from the program's insurer under certain conditions.

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[15] The bill defines "shared vehicle owner" as the registered owner, or a person or entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program. Therefore, an individual or a business may "stand in the shoes" of the registered owner for purpose of any responsibility or obligation of the owner under the bill.

[16] While uninsured/underinsured motorist coverage is required to be offered to every purchaser of motor vehicle insurance in this state, the purchaser may reject such coverage in writing. S. 627.727(1), F.S. Therefore, such insurance is elective.

[17] The program has an insurable interest in the shared vehicle. Also, it may meet its insurance obligations by purchasing insurance from an admitted insurer, which means claims are backed by the Florida Insurance Guaranty Association, in the event the insurer becomes insolvent, or the insurance may be purchased from an authorized surplus lines company, provided the company carries a minimum rating specified by the bill.

[18] See Section III.C. Drafting Issues or Other Comments.

Exemption from Vicarious Liability

The program and the shared vehicle owner are exempted from vicarious liability under any local or state law that imposes liability based on vehicle ownership.[19] This means that the actions and liabilities of the driver cannot be imputed to be those of the program or the vehicle owner.

Motor Vehicle Insurance Policy Exclusions

The bill specifies that a motor vehicle insurer may exclude coverage and the duty to defend or indemnify any claim under an owner's policy, including, but not limited to, all types of motor vehicle coverage. The bill provides current insurance policies approved for use in Florida that exclude coverage of vehicles offered for rent, sharing, or hire or for any business use are not invalidated or limited.

Notification Regarding Liens

If the vehicle has a lien against it at the time it is registered for use within the program, the program must notify the owner that using the vehicle for car sharing may violate the terms of the contract with the lienholder.

Required Recordkeeping

The program must collect and verify records regarding vehicle use, including:

- The times used;
- Fees paid by the driver; and
- Revenues received by the owner.

These records must be retained for at least the duration of the statute of limitations for personal injuries and provided on request to the vehicle owner, the owner's insurer, or the vehicle driver's insurer. The following records must also be kept by the program:[20]

- The name and address of the driver;
- The driver license number of the driver and each other person, if any, who will operate the vehicle; and
- The place of issuance of the driver license.

Consumer Protections

The sharing agreement must include the following disclosures to the owner and driver:

- Any right of the program to seek indemnification from either the owner or driver for economic losses due to a breach of contract;
- A motor vehicle insurance policy issued to the owner for the vehicle or to the driver does not provide a defense or indemnification for any claim asserted by the program;
- The program's insurance is only in effect during the sharing period;

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[19] The bill references the federal Graves Amendment, 49 U.S.C. 30106 (2005). The Graves Amendment provides that the owner of a motor vehicle who engages in the business of renting or leasing vehicles and has not been negligent or committed a crime is not liable for the damages caused by a renter/lessee during the rental or lease period merely based on being the owner of the rented or leased vehicle. The Graves Amendment defines owner as a person who is—

(A) a record or beneficial owner, holder of title, lessor, or lessee of a motor vehicle;

(B) entitled to the use and possession of a motor vehicle subject to a security interest in another person; or

(C) a lessor, lessee, or a bailee of a motor vehicle, in the trade or business of renting or leasing motor vehicles, having the use or possession thereof, under a lease, bailment, or otherwise.

[20] See Section III.C. Drafting Issues or Other Comments.

- If the driver uses the vehicle beyond the agreed termination time, the owner and driver may not have insurance coverage;
- The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the owner or the driver;
- The vehicle owner's motor vehicle liability insurance may exclude coverage for a vehicle;
- An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries; and
- Any conditions under which a vehicle driver must maintain a personal motor vehicle insurance policy with certain coverage on a primary basis in order to book a vehicle.

The program may not enter into an agreement with a driver, unless the driver:

- Holds a Florida driver license of the type required for the class of vehicle shared;
- Holds a driver license issued by the driver's state or country of the type required for the class of vehicle and the driver is the minimum age to operate a vehicle in Florida; or
- Is specifically authorized by DHSMV to drive vehicles of the class shared.

The program is solely responsible for program equipment installed in or on the vehicle for the purposes of allowing use of the vehicle in car sharing through the program. The program must indemnify the owner for any damage to or theft of such equipment during share periods that is not caused by the owner; the program may seek indemnification from the driver for such damage.

Motor Vehicle Safety Recalls

The program must verify the recall and repair status of the vehicle when it is registered for use with the program. The owner must be notified by the program that: vehicles under recall cannot be shared until repaired; if the owner receives a recall notice while the vehicle is available for sharing, the vehicle must be removed from sharing as soon as practicable; and, if the vehicle is in the possession of a driver, the owner shall notify the program as soon as practicable so that it can be repaired.[21]

Construction

The bill specifically provides that it does not limit the liability of the program for acts and omissions by the program that cause bodily harm to a person as a result of car sharing. It also provides that it does not limit the program's right to contract for indemnification from owners or drivers for economic losses due to a breach of contract.

B. SECTION DIRECTORY:

**Section 1.** Creates s. 627.7483, F.S., relating to peer-to-peer car sharing; insurance requirements.

**Section 2.** Provides an effective date of March 1, 2021.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None known.

2. Expenditures:

   None known.

[21] *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None known.

2. Expenditures:

None known.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Providing specific requirements and delineating insurance obligations and liabilities of the various parties to a peer-to-peer car sharing agreement may increase economic activity and avoid litigation over the scope of each party's liability.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill neither authorizes nor requires administrative rulemaking.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill defines a "shared vehicle owner" a the registered owner, or a person or entity designated by the registered owner, of a motor vehicle made available for sharing to drivers through a peer-to-peer car sharing program. The bill uses the term "shared vehicle owner" exclusively in the context of the role of the registered owner of the motor vehicle. It does not provide a separate context for when a person or entity designated owner would act on behalf of the owner or limit the liability of designated person or entity to only the liabilities that could arise from their actions performed in the interest of the owner. Therefore, all responsibilities, obligations, and liabilities that the bill places on the owner are shared entirely by the designee, without limitation. This may create a situation where a person is designated only to facilitate delivery or return of a vehicle and they become liable for all of the owner's insurance obligations with respect to the vehicle and the program.

On line 98, the bill uses the phrase "person or entity," as described above regarding the owner. The general definition of the word "person" in statute includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.[22] Given that the term "person" is broadly defined to include various types of "person" that are usually considered "entities," it is unclear what the difference is between the two parts of the phrase "person or entity." If "person" in this context is meant to be an individual or a natural person, then the phrase should be clarified to avoid confusion.

[22] S. 1.01(3), F.S.

The bill requires the car sharing program to ensure that the owner and driver of a vehicle have uninsured/underinsured motorist coverage as required by law. The uninsured/underinsured motorist coverage statute is elective. However, on lines 175-182, the bill shifts liability for specified coverages from the owner to the program, including liability to uninsured/underinsured motorists. This language implies that the program is required to provide uninsured/underinsured motorist coverage meeting or exceeding statutory minimums. It is unclear if the intent of the bill is to require uninsured/underinsured motorist coverage, despite its elective status or to allow the program to accept arrangements and be free from liability where the owner and or the driver have rejected uninsured/underinsured motorist coverage.

The bill is modeled on the statute governing transportation network companies, s. 627.748, F.S. On line 150, the word "network" appears where context indicates that the term should be "car sharing program." This is likely a scrivener's error.

The bill defines that the "car sharing termination time" is when agreed use time ends and the vehicle is returned to the agreed upon location, the vehicle is returned to an alternate agreed upon location, or the vehicle owner takes *possession and control* of the vehicle. In three instances, the bill provides for limitations or liabilities when the vehicle owner is in control of the vehicle. It is unclear if references to "in control" and "in possession and control" are intended to have the same meaning. Further, it is unclear if "in control" refers to an individual actively operating the vehicle or if it means the general responsibility for a vehicle by means of being able to exclude others from its use without permission. Since a clear understanding of this term is needed to understand the extent of liability shifting between the owner and the program, the use of the term may need to be clarified.

On lines 288-290, the bill requires designation of personnel capable of fielding calls for roadside assistance and other customer service inquiries. It is not clear to whom the term "personnel" refers to for this purpose.

On lines 312-318, the bill specifies certain records that the program must keep. This occurs in a section titled "Consumer Protections" rather than in an earlier section titled "Recordkeeping." The recordkeeping requires the retention of a non-exclusive list specified records for a designated period. It is unclear if listing additional recordkeeping requirements in another portion of the bill is subject to the same retention period. It may avoid confusion to list all recordkeeping requirements in a single section of the bill.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to peer-to-peer car sharing; creating s. 627.7483, F.S.; providing definitions; providing motor vehicle insurance requirements for peer-to-peer car sharing; providing that peer-to-peer car-sharing programs have an insurable interest in shared vehicles in specified periods; authorizing peer-to-peer car-sharing programs to own and maintain certain policies of motor vehicle insurance; providing liabilities under certain circumstances; providing applicability; requiring shared vehicle owners' insurers to indemnify networks under certain circumstances; providing exemptions from vicarious liabilities; authorizing motor vehicle insurance policies to exclude specified coverages under certain circumstances; authorizing specified insurers to seek contributions against indemnifications under certain circumstances; providing requirements for notifications of implications of liens; providing requirements for recordkeeping; requiring specified disclosures to shared vehicle drivers and owners; requiring driver license verification and data retention under certain circumstances; providing responsibilities and indemnifications for specified equipment; providing requirements for verification and notification

relating to motor vehicle safety recalls; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.7483, Florida Statutes, is created to read:

627.7483 Peer-to-peer car sharing; insurance requirements.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Car-sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car-sharing start time, if applicable, as documented by the governing peer-to-peer car-sharing program agreement.

(b) "Car-sharing period" means the period of time that commences either at the car-sharing delivery period or, if there is no car-sharing delivery period, at the car-sharing start time and that ends at the car-sharing termination time.

(c) "Car-sharing start time" means the time when the shared vehicle is under the control of the shared vehicle driver, which time occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the records of a peer-to-peer car-sharing program.

(d) "Car-sharing termination time" means the earliest of the following events:

1. The expiration of the agreed-upon period of time established for the use of a shared vehicle according to the terms of the peer-to-peer car-sharing program agreement if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car-sharing program agreement;

2. The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car-sharing program; or

3. The time the shared vehicle owner takes possession and control of the shared vehicle.

(e) "Peer-to-peer car sharing" or "car sharing" means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include the renting of a motor vehicle through a rental car company, the use of a for-hire vehicle as defined in s. 320.01(15), ridesharing as defined in s. 341.031(9), carpool as defined in s. 450.28(3), or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(2).

(f) "Peer-to-peer car-sharing program" means a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. For the purposes of this section, the term does not include a rental car company, a car-sharing service as defined in s.

212.0606(2), a taxicab association, or the owner of a for-hire vehicle as defined in s. 320.01(15).

(g) "Peer-to-peer car-sharing program agreement" means the terms and conditions established by the peer-to-peer car-sharing program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental agreement or an agreement for a for-hire vehicle as defined in s. 320.01(15) or for a car-sharing service as defined in s. 212.0606(2).

(h) "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental car, a for-hire vehicle as defined in s. 320.01(15), or a motor vehicle used for ridesharing as defined in s. 341.031(9), for carpool as defined in s. 450.28(3), or for car-sharing service as defined in s. 212.0606(2).

(i) "Shared vehicle driver" means an individual who has been authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.

(j) "Shared vehicle owner" means the registered owner, or a person or entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. For the

purposes of this section, the term does not include an owner of a for-hire vehicle as defined in s. 320.01(15).

(2) INSURANCE COVERAGE REQUIREMENTS.—

(a)1. A peer-to-peer car-sharing program shall ensure that, during each car-sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle insurance policy that provides all of the following:

a. Property damage liability coverage that meets the minimum coverage amounts required under s. 324.022.

b. Bodily injury liability coverage limits as described in s. 324.021(7)(a) and (b).

c. Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736.

d. Uninsured and underinsured vehicle coverage as required under s. 627.727.

2. The peer-to-peer car-sharing program shall also ensure that the motor vehicle insurance policy under subparagraph 1.:

a. Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car-sharing program; or

b. Does not exclude the use of a shared vehicle by a shared vehicle driver.

(b)1. The insurance described under paragraph (a) may be satisfied by a motor vehicle insurance policy maintained by:

a. A shared vehicle owner;

b. A shared vehicle driver;

c. A peer-to-peer car-sharing program; or

d. A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car-sharing program.

2. The insurance policy maintained in subparagraph 1. which satisfies the insurance requirements under paragraph (a) is primary during each car-sharing period.

3.a. If the insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subparagraph 1. has lapsed or does not provide the coverage required under paragraph (a), the insurance maintained by the peer-to-peer car-sharing program must provide the coverage required under paragraph (a), beginning with the first dollar of a claim, and must defend such claim, except under circumstances as set forth in subparagraph (3)(a)2.

b. Coverage under a motor vehicle insurance policy maintained by the peer-to-peer car-sharing program must not be dependent on another motor vehicle insurer first denying a claim, and another motor vehicle insurance policy is not required to first deny a claim.

c. Notwithstanding any other law, statute, rule, or regulation to the contrary, a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during the car-sharing period. This sub-subparagraph does not create liability for a network for maintaining the coverage required under

paragraph (a) and under this paragraph, if applicable.

d. A peer-to-peer car-sharing program may own and maintain as the named insured one or more policies of motor vehicle insurance which provide coverage for:

(I) Liabilities assumed by the peer-to-peer car-sharing program under a peer-to-peer car-sharing program agreement;

(II) Liability of the shared vehicle owner;

(III) Liability of the shared vehicle driver;

(IV) Damage or loss to the shared motor vehicle; or

(V) Damage, loss, or injury to persons or property to satisfy the personal injury protection and uninsured and underinsured motorist coverage requirements of this section.

e. Insurance required under paragraph (a), when maintained by a peer-to-peer car-sharing program, may be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the office. A peer-to-peer car-sharing program is not transacting in insurance when it maintains the insurance required under this section.

(3) LIABILITIES AND INSURANCE EXCLUSIONS.—

(a) Liability.—

1. A peer-to-peer car-sharing program shall assume liability, except as provided in subparagraph 2., of a shared

vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car-sharing period in an amount stated in the peer-to-peer car-sharing program agreement, which amount may not be less than those set forth in ss. 324.021(7)(a) and (b), 324.022, 627.727, and 627.736, respectively.

2. The assumption of liability under subparagraph 1. does not apply if a shared vehicle owner:

a. Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car-sharing program before the car-sharing period in which the loss occurs; or

b. Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the peer-to-peer car-sharing program agreement.

3. A peer-to-peer car-sharing program shall assume primary liability for a claim when it is in whole or in part providing the insurance required under paragraph (2)(a) and:

a. A dispute exists as to who was in control of the shared motor vehicle at the time of the loss; and

b. The peer-to-peer car-sharing program does not have available, did not retain, or fails to provide the information required under subsection (5).

The shared vehicle owner's insurer shall indemnify the peer-to-peer car-sharing program to the extent of the insurer's obligation, if any, under the applicable insurance policy if it is determined that the shared vehicle owner was in control of the shared motor vehicle at the time of the loss.

(b) Vicarious liability.—A peer-to-peer car-sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. s. 30106 (2005) under any state or local law that imposes liability solely based on vehicle ownership.

(c) Exclusions in motor vehicle insurance policies.—An authorized insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property damage;

2. Personal injury protection coverage;

3. Uninsured and underinsured motorist coverage;

4. Medical payments coverage;

5. Comprehensive physical damage coverage; and

6. Collision physical damage coverage.

This paragraph does not invalidate or limit any exclusion

contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles made available for rent, sharing, or hire or for any business use.

(d) Contribution against indemnification.—A shared vehicle owner's motor vehicle insurer that defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy has the right to seek contribution against the motor vehicle insurer of the peer-to-peer car-sharing program if the claim is:

1. Made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car-sharing period; and

2. Excluded under the terms of its policy.

(4) NOTIFICATION OF IMPLICATIONS OF LIEN.—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car-sharing program, including the use without physical damage coverage, may violate the terms of the contract with the lienholder.

(5) RECORDKEEPING.—A peer-to-peer car-sharing program

shall:

(a) Collect and verify records pertaining to the use of a shared vehicle, including, but not limited to, the times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner.

(b) Retain the records in paragraph (a) for a time period not less than the applicable personal injury statute of limitations.

(c) Provide the information contained in the records in paragraph (a) upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation.

(6) CONSUMER PROTECTIONS.—

(a) Disclosures.—Each peer-to-peer car-sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

1. Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

2. That a motor vehicle insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program.

3. That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each car-sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car-sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage.

4. The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver.

5. That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle.

6. An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries.

7. Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

(b) Driver license verification and data retention.—

1. A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver:

a. Holds a driver license issued under chapter 322 which authorizes the driver to drive vehicles of the class of the

shared vehicle;

b. Is a nonresident who:

(I) Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and

(II) Is at least the same age as that required of a resident to drive; or

c. Is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the class of the shared vehicle.

2. A peer-to-peer car-sharing program shall keep a record of:

a. The name and address of the shared vehicle driver;

b. The number of the driver license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

c. The place of issuance of the driver license.

(c) Responsibility for equipment.—A peer-to-peer car-sharing program has sole responsibility for any equipment that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction, including a GPS system. The peer-to-peer car-sharing program shall indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the car-sharing period which is not caused

by the shared vehicle owner. The peer-to-peer car-sharing program may seek indemnity from the shared vehicle driver for any damage to or loss of such equipment which occurs during the car-sharing period.

(d) Motor vehicle safety recalls.—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must:

1. Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

2. Notify the shared vehicle owner that if the shared vehicle owner:

a. Has received an actual notice of a safety recall on the vehicle, he or she may not make a vehicle available as a shared vehicle on the peer-to-peer car-sharing program until the safety recall repair has been made.

b. Receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car-sharing program, he or she shall remove the shared vehicle as available on the peer-to-peer car-sharing program as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair

has been made.

c. Receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, he or she shall notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall, so that he or she may address the safety recall repair.

(7) CONSTRUCTION.—This section does not limit:

(a) The liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program which results in the bodily injury to a person as a result of the use of a shared vehicle through peer-to-peer car sharing; or

(b) The ability of a peer-to-peer car-sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

Section 2. This act shall take effect March 1, 2021.

## INSURANCE & BANKING SUBCOMMITTEE

## HB 723 by Rep. Fischer
## Peer-to-Peer Car Sharing

## AMENDMENT SUMMARY
## January 28, 2020

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**Amendment 1 by Rep. Caruso (Line 30):** The amendment applies the $2.00 daily rental car surcharge, which is applicable to motor vehicle rentals for the first 30 days of a rental, to the car sharing agreements proposed by the bill.

**Amendment 2 by Rep. Fischer (Line 98):** The amendment clarifies that the term "person" means a "natural person" (i.e., a human being).

**Amendment 3 by Rep. Fischer (Line 150):** The amendment corrects a scrivener's error.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | ____ | (Y/N) |
| ADOPTED AS AMENDED | ____ | (Y/N) |
| ADOPTED W/O OBJECTION | ____ | (Y/N) |
| FAILED TO ADOPT | ____ | (Y/N) |
| WITHDRAWN | ____ | (Y/N) |
| OTHER | | |

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Caruso offered the following:

**Amendment (with title amendment)**

Between lines 30 and 31, insert:

Section 1. Section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

(1) Except as provided in subsection (2), a surcharge of $2 per day or any part of a day is imposed upon the lease or rental by a motor vehicle rental company or a peer-to-peer car sharing program of a motor vehicle licensed for hire and designed to carry fewer than nine passengers, regardless of whether the motor vehicle is licensed in this state, for financial consideration without transfer of the title of the motor

vehicle. The surcharge is imposed regardless of whether the lease or rental occurs in person or through digital means. The surcharge applies to only the first 30 days of the term of a lease or rental and must be collected by the motor vehicle rental company or the peer-to-peer car-sharing program. The surcharge is subject to all applicable taxes imposed by this chapter.

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**T I T L E  A M E N D M E N T**

Remove line 2 and insert:

An act relating to peer-to-peer car sharing; amending s. 212.0606, F.S.; requiring specified surcharges to be imposed upon the lease or rental of a certain motor vehicle if the lease or rental is facilitated by a motor vehicle rental company or a peer-to-peer car-sharing program under certain circumstances; creating

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 723 (2020)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | ____ | (Y/N) |
| ADOPTED AS AMENDED | ____ | (Y/N) |
| ADOPTED W/O OBJECTION | ____ | (Y/N) |
| FAILED TO ADOPT | ____ | (Y/N) |
| WITHDRAWN | ____ | (Y/N) |
| OTHER | | |

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Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Fischer offered the following:

**Amendment**

Remove line 98 and insert:

a natural person or entity designated by the registered owner, of a

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 723 (2020)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | ____ | (Y/N) |
| ADOPTED AS AMENDED | ____ | (Y/N) |
| ADOPTED W/O OBJECTION | ____ | (Y/N) |
| FAILED TO ADOPT | ____ | (Y/N) |
| WITHDRAWN | ____ | (Y/N) |
| OTHER | | |

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Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Fischer offered the following:

**Amendment**

Remove line 150 and insert:

for a peer-to-peer car-sharing program for maintaining the coverage required under

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1137 Consumer Protection
**SPONSOR(S):** Clemons
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1492

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | | Fortenberry | Cooper |
| 2) Government Operations & Technology Appropriations Subcommittee | | | |
| 3) Commerce Committee | | | |

## SUMMARY ANALYSIS

The bill makes the following changes to the laws governing the divisions under the Florida Department of Financial Services (DFS):

- **Consumer Credit Scores and Security Freezes**–The bill eliminates consumer reporting agencies' ability to charge a fee for a personal identification number used to place a security freeze. The bill requires that insurers notify applicants of the availability of DFS's financial literacy resources at the time they notify them of the use of credit scores and reports for underwriting purposes.
- **Consumer Services**–The bill requires that licensees provide documents when responding to written requests from DFS or the Office of Insurance Regulation and it eliminates obsolete penalties.
- **Professions**–The bill establishes insurance adjusting firms' licensure requirements and penalties for licensees who aid and abet unlicensed individuals, adds grounds upon which DFS may revoke or suspend licenses, and permits suspension of a title insurance agent's license for two years
- **Agency Names**–DFS may disapprove insurance agency names when they may mislead the public, but DFS seeks the specific authority to disapprove agency names that contain "Medicare" and "Medicaid." This bill provides the authority for DFS to disapprove agency names containing those words.
- **Industrial Class Insurers**–The bill amends the laws regarding industrial life insurance, small policies written upon individual lives, so that no such policies may be sold in Florida after July 1, 2020.
- **Policyholder Rights**–The bill extends the time that a policyholder has to cancel a contract with a public adjuster, and amends the Homeowners Claim Bill of Rights and property insurer claim's handling requirements, including policyholder notification of a change in adjuster.
- **Export to Surplus Lines**–The bill mandates that the disclosure regarding the export of a policy to the surplus lines market, which is currently given only to commercial policyholders, be to all policyholders.
- **Unfair or Deceptive Acts**–Sliding, an insurance agent's failure to fully disclose the details of, and obtain consent to, purchase of service and products, is prohibited. The bill adds two grounds, based upon effectuating an entire insurance policy without consent, to the list of acts that constitute sliding.
- **Foreign Venue Clauses Prohibited**–Florida law does not mandate that dispute resolution for policies sold in Florida, on the admitted or surplus lines markets, occur in within the state. The bill amends the law so that dispute resolution for such policies must occur in Florida.
- **Florida Insurance Guaranty Association (FIGA) Deductible**–Currently, a policyholder whose claim is covered by FIGA must pay a $100 deductible on that claim. The bill eliminates that deductible.
- **Unclaimed Property**–Florida law provides a detailed framework for the recovery of unclaimed property held by DFS. The bill creates uniform forms for use by claimants' representatives involved in the recovery process and caps the fees such representatives may charge.

The bill has no impact on state expenditures or local government revenues or expenditures. It may have a positive impact on state revenues. The bill may have a positive economic benefit to consumers and a possible indeterminate negative economic impact on insurers.

The bill is effective upon becoming law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department of Financial Services (DFS) is composed of 13 divisions and one independent office. They are the Divisions of:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services (DIFS);
- Public Assistance Fraud (DPAF);
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

**Consumer Credit Reports and Scores and Security Freezes**

Security Freezes

Section 501.0051, F.S., permits a consumer to put a security freeze on his or her credit report, which prohibits a consumer reporting agency from releasing the consumer's credit report, credit score, or any information contained within the consumer report without express authorization. In order to place a security freeze, a consumer must utilize a unique personal identification number (PIN). In 2018, the law was amended to prevent a credit reporting agency from charging a fee of up to $10 for a consumer to place a security freeze.[1] However, current law permits a consumer reporting agency to charge a consumer up to $10 to provide or reissue a unique PIN to a consumer.

*Effect of the Bill*

The bill removes a credit reporting agency's ability to charge a fee of $10 or less to reissue or provide a unique PIN to a consumer to use to obtain a credit report security freeze.

Credit Reports or Scores

Under certain circumstances, insurers are permitted to utilize applicants' credit reports and scores in underwriting and rating decisions.[2] The insurer must notify applicants that credit reports and scores are being utilized for these purposes.[3] DFS currently offers free financial literacy programs and maintains a toll-free insurance consumer helpline and a website to assist consumers with insurance questions, concerns, and complaints.[4] Insurers are not required to provide applicants with information regarding these resources when they notify them of the use of their credit reports and scores.

[1] Ch. 2018–62, Laws of Fla.
[2] *See* s. 626.9741, F.S.
[3] *Id.*
[4] Florida Department of Financial Services, Agency Analysis of House Bill 1137, p. 3 (Jan. 15, 2020).

*Effect of the Bill*

The bill provides that, at the same time that insurers inform consumers of the use of credit reports and scores for underwriting and rating purposes, the insurers must provide consumers with notification that DFS offers free financial literacy programs to assist them in understanding how credit scores are calculated, what factors are considered, and how credit works.

**Companies' Responses to Department of Financial Services Division of Consumer Services**

Current law requires that licensees holding certificates of authority from DFS (agents and agencies) or the Office of Insurance Regulation (OIR) (insurance companies) must respond to written requests from DFS or OIR concerning consumer complaints. It does not require that the licensees provide documents in response to such requests.[5] Additionally, the law contains administrative penalties for and individual's noncompliance with DFS's or OIR's written requests related to consumer complaints that have never been utilized and are obsolete.[6]

*Effect of the Bill*

The bill adds requested documents to the response that a licensee must provide to DFS or OIR when one of those agencies makes a written request to a licensee regarding a consumer complaint. It also eliminates the monetary penalties for noncompliance by an individual, while leaving them in place for noncompliance by a licensed entity.

**Requirements Placed on Licensees of the Department of Financial Services**

Agents, Customer and Service Representatives, Adjusters, Insurance Agencies, Managing General Agents, and Insurance Adjusting Firms

Section 626.112, F.S., sets forth various requirements that insurance agents, agencies, adjusters, customer and service representatives, and managing general agents must meet in order to operate within Florida. However, it includes no requirements for insurance adjusting firms. DFS has indicated that the lack of requirements renders them unable to track and address concerns with adjusting firms and adjusters who work for them.[7]

Additionally, while current law provides penalties for acting as an unlicensed insurance agent, adjuster, customer or service representative, or managing general agent, it does not provide any penalties for aiding or abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities within the state.

*Effect of the Bill*

The bill establishes that no individual or entity may act as an adjusting firm unless it complies with the legal requirements for obtaining an adjusting firm license for each location where activity occurs that only a licensed adjuster may perform. However, a licensed adjusting firm owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or using the services of other licensees is exempt from this requirement. If an adjusting firm is required to be licensed, but fails to apply for licensure, it may be assessed an administrative penalty of up to $10,000.

The bill also establishes that any person who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in Florida without a license commits a third-degree felony.

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[5] S. 627.307, F.S.

[6] Florida Department of Financial Services (DFS), Agency Analysis of House Bill 1137, p. 2 (Jan. 15, 2020).

[7] *Id.*

Grounds for Refusal, Suspension, or Revocation of Agent's, Adjuster's, Customer or Service Representative's, or Managing General Agent's License or Appointment

Section 626.621, F.S., provides grounds under which DFS may deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of an applicant, agent, adjuster, customer or service representative, or managing general agent. Currently, these licensees or appointees are not required to maintain the privacy of consumers' financial and medical information.[8] Additionally, Florida law does not provide for administrative action when a person violates Federal Trade Commission laws regarding telephone solicitation.[9]

*Effect of the Bill*

The bill adds the following to the grounds for which DFS can deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of the above-listed persons:

- permitting a consumer's or customer's personal financial or medical information to be made available or accessible to the general public; and
- initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless the prospective customer requests such contact.

Title Insurance Agents

DFS regulates title insurance agents under ch.626, part v, F.S. While Florida law provides that the licenses of most insurance agents or agencies may be suspended for two years for violations of the Florida Insurance Code, s. 626.8443, F.S., only provides DFS with the authority to suspend a title insurance agent's or agency's license for one year.[10]

*Effect of the Bill*

The bill extends the period for which a title agent's or agency's license can be suspended from one year to two years to conform to suspension periods for other license types, to allow the agent or agency more time to renew the suspended license before it expires, and to ensure greater consumer protection.[11]

Bail Bond Agents

Under s. 648.30, F.S., bail bond agents and temporary bail bond agents must be licensed in order to operate within Florida. While this statute provides for penalties for operating as a bail bond agent or temporary bail bond agent without a license, it does not currently provide any penalty for a licensee under ch. 648, F.S., who aids or abets an unlicensed individual to violate the provisions of the chapter.[12]

*Effect of the Bill*

The bill provides that any licensee under ch. 648, F.S. who knowingly aids or abets an unlicensed person in violating the licensure and appointment requirements of the chapter commits a third-degree felony.

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[8] *Id.*
[9] *Id.*
[10] *Id.* at 3.
[11] *Id.* at 6.
[12] S. 648.30, F.S.

**Agency Names**

Existing Florida law permits DFS to disapprove insurance agency names under certain circumstances, including when those names may mislead the public.[13] DFS has concerns that the inclusion of the words "Medicare" or "Medicaid" in the name of an insurance agency may confuse "vulnerable consumers" about the nature of the agency, but it lacks the specific authority to disapprove an agency name that includes those words. [14]

*Effect of the Bill*

The bill adds Medicare and Medicaid to the grounds for which DFS may disapprove an insurance agency name. An agency licensed as of July 1, 2020, whose name contains the word Medicare or Medicaid, may continue to use the name as long as its license remains valid. If its license expires, is suspended, or is revoked, it may not be relicensed using the existing name.

**Industrial Class Insurers**

Industrial class insurers write industrial life insurance policies, which are life insurance policies written upon individual lives in small amounts for which agents generally collect weekly or monthly premiums.[15] In general, the prevalence of industrial life insurance policies has continued to decline. Based upon data available from DFS, no new industrial life insurance has been written in the past year and few licensed life insurers continue to maintain industrial life insurance policies.[16]

*Effect of the Bill*

The bill amends and repeals the statutes related to industrial class insurers and industrial life insurance so that no industrial life insurance policy may be sold in Florida after July 1, 2020. The bill has no effect on industrial life insurance policies that were sold prior to that date and have continued to remain in force.

**Policyholder Rights**

Public Adjusters

Public adjusters are regulated under ch. 626, part VI, F.S. Florida law defines a public adjuster as someone who, for something of value, directly or indirectly, prepares, completes, or files an insurance claim for an insured or third-party claimant, or who, for something of value, acts on behalf of, or aids, an insured or third-party claimant in settling a claim for loss or damage covered by an insurance contract, or who advertises for employment as an adjuster of such claims.[17] In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.[18] At present, such a contract may only be canceled within three days after the latter of the date on which the contract was executed on which the claimant has notified the insurer of the claim.[19] According to information received from DFS, following the hurricanes that have affected Florida in recent years, consumers have complained about claims resolution delays due to the lack of responsiveness of public adjusters they hired and the inability to cancel contracts they have executed with these adjusters.[20]

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[13] S. 626.062, F.S.
[14] DFS, *supra*, at 2.
[15] Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/industrial%20life%20insurance (last visited January 26, 2020).
[16] DFS, *supra*, at 3.
[17] S. 626.854, F.S.
[18] *See id.*
[19] *Id.*
[20] DFS, *supra*, at 3.

*Effect of the Bill*

The bill establishes that, during a state of emergency declared by the Florida Governor, and for one year after the date of loss, an insured or claimant may cancel a contract with a public adjuster without penalty or obligation within the latter of 30 calendar days after the date on which the contract was executed or the date on which the insured or claimant notified the insurer of the claim. In the absence of a declared state of emergency and beyond the one-year period following any declared state of emergency, an insured or claimant has seven calendar days, after the latter of the date on which the policyholder executed a contract with a public adjuster or the date on which the insured or claimant notified the insurer of the claim, to cancel the contract without penalty or obligation.

Homeowner Claims Bill of Rights and Policy Delivery

Section 627.7142, F.S., contains a Homeowners Claim Bill of Rights (Bill of Rights) that insurers issuing personal lines residential property insurance policies in Florida must provide to policyholders within 14 days after receiving an initial communication with respect to a claim. While the Bill of Rights does not contain all of the rights of a policyholder, it is designed to summarize some of the significant rights, including rights regarding communications from insurers, payments of claims, resolution of disputed claims.[21] At present, when timeframes are listed in the Bill of Rights, they do not specify whether they are determined in calendar or business days.[22] The Bill of Rights contains no requirements that an insurer notify the policyholder when it assigns a different adjuster to the claim. It does not specify that a policyholder may be entitled to receive interest from an insurer when they insurer fails to timely fulfil claim obligations. Furthermore, the Bill of Rights does not mention that a policyholder may take video of damage before and after repairs in addition to photographs of the damage.

Section 627.421, F.S., provides certain requirements for the delivery of an insurance policy to a policyholder following the inception of coverage. However, it does not require that a personal lines residential policyholder receive the Bill of Rights with the delivery of a policy or that that such policyholder receive a notice containing the policyholders' hurricane coverages at any point following the initial delivery of a policy.

*Effect of the Bill*

The bill amends the Bill of Rights in the following ways:

- clarifies that all timeframes mentioned within it will be calculated based upon calendar days;
- states that a policyholder to which the Bill of Rights applies must receive notification from the insurance company within seven calendar days if there has been a change in the company adjuster assigned to a claim and the notification must include the assigned adjuster's contact information
- states that a policyholder to which the Bill of Rights applies must receive the payment of interest from the insurance company if the insurance company does not pay full settlement of a claim or deny the claim within 90 calendar days after the claim is filed; and
- clarifies that in addition to photographs, a policyholder may take video of damage before and after repairs.

The bill amends the statute regarding delivery of insurance policies to require that for personal lines residential property insurance policies, between March 3, and April 2, each year, the insurer shall deliver a notification to all policyholders that includes the Homeowner Claims Bill of Rights and outlines the hurricane coverage provided in the policy, including the hurricane deductible and the coverages and exclusions.

[21] S. 627.7142, F.S.
[22] *Id.*

Insurer's Duties to Acknowledge and Investigate Claims

Pursuant to Florida law, residential property insurers have certain obligations regarding the handling of claims, including responding to communications and timely payment or denial of claims.[23] Policyholders have complained to DFS that repeated changes in adjusters for insurance companies have contributed to significant claim delays.[24] In addition, policyholders have indicated that because of a lack of access to claims information, their insurance agents are not able to respond claims-related questions in a meaningful way.[25]

The applicable law neither requires that any licensed adjuster assigned by an insurer to conduct a physical inspection of damage property provide the policyholder with his or her name, license number, and contact information, nor requires that the insurer provide a copy of the inspection report to the policyholder following receipt from the adjuster. There is no statutory requirement that an insurer notify a policyholder when it has assigned a new adjuster to the policyholder's claim. Further, the law does not contain any mandate that the insurer inform the policyholder of the fact that an estimate may be preliminary in nature and may be revised or the fact that when a partial payment is issued the insurer is continuing to evaluate a claim and may issue additional payments.

*Effect of the Bill*

The bill makes the following changes existing law regarding the investigation and adjusting of residential property insurance claims:

- If an investigation of a claim involves a physical inspection of property, a licensed adjuster assigned by the insurer must provide a policyholder with his or her name, license number, and contact information.
- The insurer must produce to the policyholder an unedited copy of any report of a physical inspection of a property that a licensed adjuster provides to the insurer within seven days after receipt by the insurer.
- If an insurer assigns the claim to a new licensed adjuster following the receipt of the report, the insurer must provide the policyholder with the name, license number, and contact information for the newly assigned licensed adjuster within seven days after the change. Any subsequent changes to the assigned licensed adjuster must be handled in the same way.
- An insurer must establish a process so that the named agent of record[26] for an insurance policy is provided access to the information gathered from an inspection by an adjuster so that the agent of record can answer policyholder questions regarding claims.
- When providing a preliminary or partial damage claim estimate or a preliminary or partial claim payment, an insurer must provide a detailed disclosure as specified in the bill.

The bill establishes that s. 627.70131, F.S., regarding residential property insurance claims shall be applicable to surplus lines policies in addition to policies written on the admitted market.

**Export of Policies to Surplus Lines**

When insurance is not available to Florida consumers from authorized insurance carriers[27], it generally becomes necessary and legally permissible to obtain a policy on the surplus lines market.[28] However, under current surplus lines law, only consumers purchasing commercial insurance policies on the surplus lines market receive notification at the time of purchase that policies are being issued on that

[23] *See* s. 627.70131, F.S.
[24] DFS, *supra*, at 4.
[25] *Id.*
[26] An agent of record means that agent named on the declarations page of the insurance policy.
[27] Authorized insurance carriers are those who have received a certificate of authority from OIR to transact insurance business within the state. S. 624.06, F.S.
[28] *See* s. 626.913, F.S.

market.[29] Consequently, the first time that some residential policyholders are informed that their policies have been issued by surplus lines carriers is after their policies have been issued.[30]

*Effect of the Bill*

The bill amends surplus lines law to require that, at the time policies are exported to the surplus lines market, the disclosure statement currently signed by consumers whose commercial insurance policies are being exported to the surplus lines market must be signed by all consumers whose insurance policies are being exported to the surplus lines market.

**Unfair Methods of Competition and Unfair or Deceptive Acts–Sliding**

The Florida Insurance Code prohibits licensees from engaging in unfair methods of competition and unfair or deceptive acts or practices, including sliding.[31] Sliding is the practice of an insurance agent's failure to fully disclose the details of, and obtain consent to, the purchase of services and products.[32] Under Florida law, sliding currently includes: representing to an applicant that a specific ancillary coverage or product is required by law when it is not; representing to an applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge where there is a charge for it; and charging and applicant for a specific ancillary coverage or product, in addition to the cost of insurance applied for, without informing the applicant.[33] According to DFS, some Florida insurers have begun a practice of effectuating entire policies without informing consumers they have done so.[34]

*Effect of the Bill*

The bill adds the following to the list of prohibited conduct that constitutes sliding:

- Initiating, effectuating, binding, or otherwise issuing an insurance policy without prior informed consent from the owner of the property being insured; and
- Mailing, transmitting, or otherwise submitting a premium invoice to a mortgagee or escrow agent in order to effectuate an insurance policy without the prior informed consent from the owner of the property being insured.

**Foreign Venue Clauses in Property Insurance Policies**

Currently, Florida law does not mandate that property claims dispute resolution for policies sold in Florida, whether such resolution occurs through litigation, arbitration, or mediation, occur within Florida. The law contains no distinction for the location of dispute resolution regardless of whether a property insurance policy was issued on the admitted or surplus lines markets.[35]

*Effect of the Bill*

The bill provides that no property insurance policy issued within Florida after July 1, 2020, whether issued on the admitted or surplus lines markets, may require that an insured engage in dispute resolution, through litigation, arbitration, or mediation, outside Florida.

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[29] S. 626.916(3)(b)3, F.S.
[30] DFS, *supra*, at 3.
[31] S. 626.9541, F.S.
[32] Insurance Journal, *Michigan Bulletin Warns Insurance Produces Against 'Sliding'*, https://www.insurancejournal.com/news/midwest/2018/05/11/489050.htm (last visited January 26, 2020)
[33] S. 626.9541(1)(z), F.S.
[34] DFS, *supra*, at 3.
[35] DFS, *supra,* at p.4.

**Florida Insurance Guaranty Association Deductible**

Under federal law, insurance companies cannot file for bankruptcy.[36] Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers[37] in Florida and sets up guaranty associations where necessary.[38] Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA).[39] FIGA provides a "mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer."[40] It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.[41] When a Florida property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. Florida law provides that FIGA is only obligated to pay the portions of claims made to insolvent property and casualty insurers, which are in excess of $100, and less than $300,000.[42] Under current law, therefore, there is a $100 deductible on all property and casualty claims covered by FIGA.

*Effect of the Bill*

The bill eliminates the $100 deductible on claims paid by FIGA so that such claims will be covered for any amount exceeding $0 and less than $300,000.

**Unclaimed Property**

Chapter 717, F.S., provides a framework for the rightful owners to obtain unclaimed property that is held by DFS. Currently, licensed claimants' representatives are registered with DFS to gain access to DFS's unclaimed property database and to seek authorizations from claimants to file claims on their behalf for unclaimed property held by DFS.[43] Each registrant who files claims utilizes a unique power of attorney through which claimants provide authorization to registrants.[44] The lack of uniformity in the use of the powers of attorney poses problems for both consumers and for DFS staff.

Additionally, under current law, if a Full Disclosure Statement has been provided to an unclaimed property claimant, fees collected by a claimant's representative for providing services related to the collection of the unclaimed property are unlimited.[45] If the Full Disclosure Statement has not been provided to the claimant, then the fees are capped at 20% of the value of the property recovered, and $1,000 per account claimed in the recovery.[46]

*Effect of the Bill*

The bill changes the unclaimed property claims law to further streamline the process for consumers. It provides that DFS will adopt forms by rule entitled "Florida Uniform Property Recovery Agreement" (Recovery Agreement) and "Florida Uniform Property Purchase Agreement" (Purchase Agreement).

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[36] 11 U.S.C. § 109(b)(2).
[37] An "insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. S. 631.904(4), F.S.
[38] Ch. 631, F.S.
[39] Ch. 631, part II, F.S.
[40] S. 631.51, F.S.
[41] S. 631.52, F.S.
[42] S. 631.57(1), F.S.
[43] DFS, *supra*, at 4.
[44] *Id.*
[45] S. 717.135, F.S. The text of the Full Disclosure Statement is located in s. 717.135(3)(a), F.S.
[46] *Id.*

These Agreements will be the exclusive means of a claimant's representative engaging a claimant or seller to file an unclaimed property claim with DFS.

The bill significantly amends s 717.135, F.S., to eliminate the current power of attorney requirements and replace them with requirements for the Recovery Agreement and Purchase Agreement. Pursuant to the bill, the Recovery Agreement and Purchase Agreement must include and disclose:

- The total dollar amount of the unclaimed property accounts claimed or sold;
- Either the total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing registered claimant's representative;
- Either the total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing registered claimant's representative;
- The net dollar amount the claimant or seller will receive;
- The unclaimed property account number and name of the owner for each account claimed;
- For the purchase agreement, a statement that the purchase price will be remitted to the seller within 30 days after the seller executes the form;
- The name, contact information, and license number of the registered claimant's representative;
- The manual signature of the claimant or seller and the date signed;
- The social security number or taxpayer identification number of the claimant or seller, if available; and
- A limit of total fees and costs, or the total discount amount in the case of a purchase agreement, to no more than 20 percent of the claimed amount.

The Recovery Agreement and Purchase Agreement may not contain language that makes them irrevocable or that creates an assignment of any unclaimed property held by DFS. For the Purchase Agreement, if DFS does not receive proof that the seller received payment, then the claim is void.

All references to "power of attorney" within the remainder of the unclaimed property claims laws are changed to the Recovery Agreement and Purchase Agreement, as appropriate, so that these forms will be utilized in unclaimed property claims going forward in lieu of powers of attorney. Section 717.1351, F.S., relating to the acquisition of unclaimed property is repealed because it is no longer necessary following the additional changes to the unclaimed property claims laws set forth within the bill.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 501.0051, F.S., relating to protected consumer report security freeze.

**Section 2.** Amends s. 624.307, F.S., relating to general powers; duties.

**Section 3.** Amends s. 626.112, F.S., relating to license and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.

**Section 4.** Amends s. 626.602, F.S., relating to insurance agency names; disapproval.

**Section 5.** Amends s. 626.621, F.S., relating to grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.

**Section 6.** Amends s. 626.782, F.S., relating to the definition of "Industrial class insurer."

**Section 7.** Amends s. 626.783, F.S., relating to the definition of "Ordinary-combination class insurer."

**Section 8.** Repeals s. 626.796, F.S., relating to representing another insurer in same industrial debit territory.

**Section 9.** Amends s. 626.8443, F.S., relating to duration of suspension or revocation.

**Section 10.** Amends s. 626.854, F.S., relating to "Public adjuster" defined; prohibitions.

**Section 11.** Amends s. 626.916, F.S., relating to eligibility for export.

**Section 12.** Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

**Section 13.** Amends s. 626.9741, F.S., relating to use of credit reports and credit scores by insurers.

**Section 14.** Amends s. 626.9957, F.S., to conform cross-references.

**Section 15.** Amends s. 627.062, F.S., to conform cross-references.

**Section 16.** Amends s. 627.421, F.S., relating to delivery of policy.

**Section 17.** Amends s. 627.502, F.S., relating to "Industrial life insurance" defined; reporting; prohibition on new policies after a certain date.

**Section 18.** Amends s. 627.70131, F.S., relating to insurer's duty to acknowledge communications regarding claims; investigation.

**Section 19.** Creates s. 627.7031, relating to foreign venue clauses prohibited.

**Section 20.** Amends s. 627.7142, F.S., relating to Homeowner Claims Bill of Rights.

**Section 21.** Amends s. 631.57, F.S., relating to powers and duties of the association.

**Section 22.** Amends s. 648.30, F.S., relating to licensure and appointment required; prohibited acts; penalties.

**Section 23.** Amends s. 717.124, F.S., relating to unclaimed property claims.

**Section 24.** Amends s. 717.12404, F.S., relating to claims on behalf of a business entity or trust.

**Section 25.** Amends s. 717.1315, F.S., relating to retention of records by claimant's representatives and buyers of unclaimed property.

**Section 26.** Amends s. 717.1322, F.S., relating to administrative and civil enforcement.

**Section 27.** Amends s. 717.135, F.S., relating to power of attorney to recover reported property in the custody of the department.

**Section 28.** Repeals s. 717.1351, F.S., relating to acquisition of unclaimed property.

**Section 29.** Provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill has the potential to result in increased revenues in the form of administrative fines collected for violations of ss. 624.307 and 626.112, F.S.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have positive economic impacts for consumers. It removes fees charged for the issuance of PIN numbers and eliminates the deductible FIGA charges for claims it covers. Portions of the bill are intended to expedite the handling of property insurance claims. If repairs are made sooner, policyholders will be able to return home and, in some cases, return to work quicker. Businesses may also benefit economically when homeowners, as consumers, are able to recover sooner after catastrophes. Additionally, by eliminating streamlining the unclaimed property claim process using new forms and by capping the fees that a claimants' representatives can charge, consumers may be able to keep a greater percentage of the unclaimed property they recover.

The bill has the potential for negative direct economic impacts on the private sector. The inability of a consumer reporting agency to charge a fee for a PIN will result in a loss of revenue for the consumer reporting agencies. The amount of this loss is unknown. The requirement that residential property insurers provide the Homeowner Bill of Rights once per year, by mail or email, if not done as part of otherwise scheduled communication, may have an indeterminate cost for insurers.

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:

   Article VII, s. 19, Fla. Const., may apply given the nature of the administrative penalty created in Section 3 of the bill.

B. RULE-MAKING AUTHORITY:

The bill requires DFS to promulgate two new forms related to unclaimed property claims (Recovery Agreement and Purchase Agreement) to be adopted pursuant to rule. Because s. 717.138, F.S., provides sufficient rulemaking authority for DFS to adopt rules pursuant under ch. 120, F.S., no additional rulemaking authority is necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to consumer protection; amending s. 501.0051, F.S.; prohibiting consumer reporting agencies from charging to reissue or provide a new unique personal identifier to a consumer for the removal of a security freeze; amending s. 624.307, F.S.; revising a requirement for entities licensed or authorized by the Department of Financial Services or the Office of Insurance Regulation to respond to the department's Division of Consumer Services regarding consumer complaints; revising administrative penalties the division may impose for failure to comply; amending s. 626.112, F.S.; prohibiting unlicensed activity by an adjusting firm; providing an exemption; providing an exemption from licensure for branch firms that meet certain criteria; providing an administrative penalty for failing to apply for certain licensure; providing a criminal penalty for aiding or abetting unlicensed activity; deleting an obsolete provision; amending s. 626.602, F.S.; authorizing the department to disapprove the use of insurance agency names containing the words "Medicare" or "Medicaid"; providing an exception for certain insurance agencies; amending s. 626.621, F.S.; adding grounds on which the department may take certain



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

actions against a license, appointment, or application of certain insurance representatives; amending ss. 626.782 and 626.783, F.S.; revising the definitions of the terms "industrial class insurer" and "ordinary-combination class insurer," respectively, to conform to changes made by the act; repealing s. 626.796, F.S., relating to the representation of multiple insurers in the same industrial debit territory; amending s. 626.8443, F.S.; increasing the maximum period of suspension of a title insurance agent's or agency's license; amending s. 626.854, F.S.; revising the timeframes in which an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation; amending s. 626.916, F.S.; revising the classes of insurance subject to a disclosure requirement before being eligible for export under the Surplus Lines Law; amending s. 626.9541, F.S.; adding certain acts or practices to the definition of sliding; amending s. 626.9741, F.S.; requiring an insurer to include certain additional information when providing an applicant or insured with certain credit report or score information; amending ss. 626.9957 and 627.062, F.S.; conforming cross-references; amending s. 627.421, F.S.; requiring personal lines residential property insurers to

annually deliver a certain notification to policyholders within a specified timeframe; amending s. 627.502, F.S.; prohibiting life insurers from writing new policies of industrial life insurance beginning on a certain date; amending s. 627.70131, F.S.; providing that communication made to or by an insurer's representative, rather than to or by an insurer's agent, constitutes communication to or by the insurer; requiring an insurer-assigned licensed adjuster to provide the policyholder with certain information in certain investigations; requiring that certain adjuster reports be provided to policyholders within a certain timeframe; specifying requirements for insurers in notifying policyholders for certain changes in assigned adjusters; requiring an insurer to establish a process to provide the agent of record access to claim status information for a certain purpose; defining the term "agent of record"; requiring insurers to include specified notices when providing preliminary or partial damage estimates or claim payments; specifying the timeframe in which an insurer must pay or deny property insurance claims under certain circumstances; providing applicability; conforming provisions to changes made by the act; creating s. 627.7031, F.S.; prohibiting foreign venue

clauses in property insurance policies; providing applicability; amending s. 627.7142, F.S.; revising information contained in the Homeowner Claims Bill of Rights; conforming provisions to changes made by the act; amending s. 631.57, F.S.; deleting a deductible on the Florida Insurance Guaranty Association, Incorporated's obligation as to certain covered claims; amending s. 648.30, F.S.; prohibiting the aiding or abetting of unlicensed activity of a bail bond agent or temporary bail bond agent; amending ss. 717.124, 717.12404, 717.1315, and 717.1322, F.S.; conforming provisions to changes made by the act; amending s. 717.135, F.S.; replacing provisions relating to powers of attorney to recover unclaimed property with provisions relating to uniform forms for unclaimed property recovery agreements and purchase agreements; requiring the department to adopt the uniform forms by rule; specifying required information and disclosures in the forms; requiring that, for the purchase agreement form, proof the seller received payment be filed with the department along with the claim; requiring registered claimant's representatives to use the forms as the exclusive means of engaging with a claimant or seller to file claims and prohibiting them from using or distributing other

agreements; specifying a limitation on fees and costs owed or paid; prohibiting certain language in the forms; authorizing the department to pay additional accounts owned by the claimant under certain circumstances; providing construction; repealing s. 717.1351, F.S., relating to the acquisition of unclaimed property; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (9) of section 501.0051, Florida Statutes, is amended to read:

501.0051 Protected consumer report security freeze.—

(9)

(b) A consumer reporting agency may not charge to ~~a reasonable fee, not to exceed $10, if the representative fails to retain the original unique personal identifier provided by the consumer reporting agency and the agency must~~ reissue the unique personal identifier or provide a new unique personal identifier to the consumer ~~representative~~.

Section 2. Paragraph (b) of subsection (10) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(10)

(b) Any entity ~~person~~ licensed or issued a certificate of

authority by the department or the office shall respond, in writing, to the division within 20 days after receipt of a written request for documents and information from the division concerning a consumer complaint. The response must address the issues and allegations raised in the complaint and include any requested documents. The division may impose an administrative penalty for failure to comply with this paragraph of up to $2,500 per violation upon any entity licensed by the department or the office ~~and $250 for the first violation, $500 for the second violation, and up to $1,000 for the third or subsequent violation upon any individual licensed by the department or the office~~.

Section 3. Present subsection (9) of section 626.112, Florida Statutes, is redesignated as subsection (10), a new subsection (9) is added to that section, and paragraph (d) of subsection (7) and present subsection (9) of that section are amended, to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents, insurance adjusting firms.—

(7)

~~(d) Effective October 1, 2015, the department must automatically convert the registration of an approved registered insurance agency to an insurance agency license.~~



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(9)(a) An individual, firm, partnership, corporation, association, or other entity may not act in its own name or under a trade name, directly or indirectly, as an adjusting firm unless it complies with s. 626.8696 with respect to possessing an adjusting firm license for each place of business at which it engages in an activity that may be performed only by a licensed insurance adjuster. However, an adjusting firm that is owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is exempt from the adjusting firm licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed adjusting firm is considered a branch firm and is not required to be licensed if:

1. It transacts business under the same name and federal tax identification number as the licensed adjusting firm;

2. It has designated with the department a primary adjuster operating the location as required by s. 626.8695; and

3. The address and telephone number of the branch location have been submitted to the department for inclusion in the licensing record of the licensed adjusting firm within 30 days after insurance transactions begin at the branch location.

(c) If an adjusting firm is required to be licensed, but fails to file an application for licensure in accordance with this section, the department shall impose on the firm an

administrative penalty of up to $10,000.

(10) ~~(9)~~ Any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license in violation of this section or who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Subsection (4) is added to section 626.602, Florida Statutes, to read:

626.602 Insurance agency names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency on any of the following grounds:

(4) The name contains the word "Medicare" or "Medicaid." An insurance agency whose name contains the word "Medicare" or "Medicaid" but which is licensed as of July 1, 2020, may continue to use that name as long as the agency's license is valid. If the agency's license expires or is suspended or revoked, the agency may not be relicensed using that name.

Section 5. Subsections (16) and (17) are added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or

appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(16) Allowing the personal financial or medical information of a consumer or customer to be made available or accessible to the general public, regardless of the format in which the record is stored.

(17) Initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless requested by the prospective customer.

Section 6. Section 626.782, Florida Statutes, is amended to read:

626.782 "Industrial class insurer" defined.—An "industrial class insurer" is an insurer collecting premiums on policies of ~~writing~~ industrial life insurance, as defined in s. 627.502, written before July 1, 2020, and as to such insurance, operates under a system of collecting a debit by its agent.

Section 7. Section 626.783, Florida Statutes, is amended

to read:

626.783 "Ordinary-combination class insurer" defined.—An "ordinary-combination class insurer" is an insurer writing ~~both~~ ordinary class insurance and collecting premiums on existing industrial life ~~class~~ insurance under s. 626.782.

Section 8. Section 626.796, Florida Statutes, is repealed.

Section 9. Subsection (1) of section 626.8443, Florida Statutes, is amended to read:

626.8443 Duration of suspension or revocation.—

(1) The department shall, in its order suspending a title insurance agent's or agency's license or appointment or in its order suspending the eligibility of a person to hold or apply for such license or appointment, specify the period during which the suspension is to be in effect, but such period shall not exceed 2 years ~~1 year~~. The license, ~~or~~ appointment, or eligibility shall remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license, appointment, or eligibility that ~~which~~ has been suspended may not be reinstated except upon request for such reinstatement, but the department shall not grant such reinstatement if it finds that the circumstance or circumstances for which the license, appointment, and eligibility was suspended still exist or are likely to recur.

Section 10. Subsection (6) of section 626.854, Florida Statutes, is amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(6) Except during a state of emergency declared by the Governor and except during the 1-year period after the date of loss, an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 7 calendar ~~3 business~~ days after the date on which the contract is executed or within 7 calendar ~~3 business~~ days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later. During a state of emergency declared by the Governor or during the 1-year period after the date of loss, an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 30 calendar days after the date on which the contract is executed or within 30 calendar days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later. The public adjuster's contract must disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that

provides proof thereof, to the public adjuster at the address specified in the contract~~; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract~~.

Section 11. Subsection (3) of section 626.916, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(f) The insured has signed a disclosure in substantially the following form: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

(3)(a) Subsection (1) does not apply to wet marine and transportation or aviation risks that ~~which~~ are subject to s. 626.917.

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured has signed ~~must sign~~ a disclosure as required under paragraph (1)(f) ~~that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."~~ If the disclosure ~~notice~~ is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.

Section 12. Paragraph (z) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(z) *Sliding.*—Sliding is the act or practice of any of the following:

1. Representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required.~~;~~

2. Representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required.~~; or~~

3. Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant.

4. Initiating, effectuating, binding, or otherwise issuing a policy of insurance without the prior informed consent of the owner of the property to be insured.

5. Mailing, transmitting, or otherwise submitting by any means an invoice for premium payment to a mortgagee or escrow agent, for the purpose of effectuating an insurance policy, without the prior informed consent of the owner of the property to be insured.

Section 13. Subsection (3) of section 626.9741, Florida Statutes, is amended to read:

626.9741 Use of credit reports and credit scores by insurers.—

(3) An insurer must inform an applicant or insured, in the same medium as the application is taken, that a credit report or score is being requested for underwriting or rating purposes.

The notification to the consumer must include the following language: "The Department of Financial Services offers free financial literacy programs to assist you in understanding how credit scores are calculated, what factors are considered, and how credit works. The Department's toll-free Insurance Consumer Helpline is available to assist you with insurance-related questions and inquiries. To learn more about the free financial literacy programs or for help with insurance, call 1-877-693-5236 or visit www.MyFloridaCFO.com." An insurer that makes an adverse decision based, in whole or in part, upon a credit report must provide at no charge~~,~~ a copy of the credit report to the applicant or insured or provide the applicant or insured with the name, address, and telephone number of the consumer reporting agency from which the insured or applicant may obtain the credit report. The insurer must provide notification to the consumer explaining the reasons for the adverse decision. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's adverse decision. Such notification shall include a description of the four primary reasons, or such fewer number as existed, which were the primary influences of the adverse decision. The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" does not meet the explanation requirements of this subsection. A credit score may not be used in underwriting or rating insurance

unless the scoring process produces information in sufficient detail to permit compliance with the requirements of this subsection. It shall not be deemed an adverse decision if, due to the insured's credit report or credit score, the insured continues to receive a less favorable rate or placement in a less favorable tier or company at the time of renewal except for renewals or reunderwriting required by this section.

Section 14. Subsection (1) of section 626.9957, Florida Statutes, is amended to read:

626.9957 Conduct prohibited; denial, revocation, or suspension of registration.—

(1) As provided in s. 626.112, only a person licensed as an insurance agent or customer representative may engage in the solicitation of insurance. A person who engages in the solicitation of insurance as described in s. 626.112(1) without such license is subject to the penalties provided under s. 626.112(10) ~~s. 626.112(9)~~.

Section 15. Subsection (10) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(10) Any interest paid pursuant to s. 627.70131(7) ~~s. 627.70131(5)~~ may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

Section 16. Subsection (6) is added to section 627.421, Florida Statutes, to read:

627.421 Delivery of policy.—

(6) For personal lines residential property insurance policies, the insurer shall, between March 3 and April 2 of each year, inclusive, deliver a notification to all policyholders via mail or e-mail which includes the Homeowner Claims Bill of Rights and outlines the hurricane coverage included in the policy, including the hurricane deductible and the coverages and exclusions.

Section 17. Section 627.502, Florida Statutes, is amended to read:

627.502 "Industrial life insurance" defined; reporting; prohibition on new policies after a certain date.—

(1) For the purposes of this code, "industrial life insurance" is that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that ~~which~~, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

(2) Every life insurer servicing existing ~~transacting~~ industrial life insurance shall report to the office all annual statement data regarding the exhibit of life insurance, including relevant information for industrial life insurance.

(3) Beginning July 1, 2020, a life insurer may not write a

new policy of industrial life insurance.

Section 18. Section 627.70131, Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(1)(a) Upon an insurer's receiving a communication with respect to a claim, the insurer shall, within 14 calendar days, review and acknowledge receipt of such communication unless payment is made within that period of time or unless the failure to acknowledge is caused by factors beyond the control of the insurer which reasonably prevent such acknowledgment. If the acknowledgment is not in writing, a notification indicating acknowledgment shall be made in the insurer's claim file and dated. A communication made to or by a representative ~~an agent~~ of an insurer with respect to a claim shall constitute communication to or by the insurer.

(b) As used in this subsection, the term "representative" ~~"agent"~~ means any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer.

(c) This subsection shall not apply to claimants represented by counsel beyond those communications necessary to provide forms and instructions.

(2) Such acknowledgment shall be responsive to the communication. If the communication constitutes a notification

of a claim, unless the acknowledgment reasonably advises the claimant that the claim appears not to be covered by the insurer, the acknowledgment shall provide necessary claim forms, and instructions, including an appropriate telephone number.

(3)(a) Unless otherwise provided by the policy of insurance or by law, within 10 business ~~working~~ days after an insurer receives proof of loss statements, the insurer shall begin such investigation as is reasonably necessary unless the failure to begin such investigation is caused by factors beyond the control of the insurer which reasonably prevent the commencement of such investigation.

(b) If such investigation involves a physical inspection of the property, the licensed adjuster assigned by the insurer must provide the policyholder with his or her name, license number, and contact information.

(c) An unedited copy of any report received by the insurer, which was produced by the licensed adjuster based upon the physical inspection of the property, must be provided to the policyholder electronically or as a physical copy within 7 days after receipt by the insurer.

(d) If an insurer assigns the claim to a different licensed adjuster after receipt of a report from the adjuster who performed the physical inspection, the insurer must, within 7 days after changing the licensed insurance adjuster assigned to a claim, provide the name, license number, and contact

information of the new adjuster to the policyholder. The notification may be sent electronically or via mail. If the notification is a physical letter, it must be postmarked within 7 days after the change in adjuster. Any subsequent change to the assigned adjuster must be handled in accordance with this paragraph.

(4) An insurer shall establish a process by which the agent of record for an insurance policy is provided access to information provided to the policyholder under subsection (3) in order to assist the agent of record in answering the policyholder's questions regarding claims. As used in this subsection, the term "agent of record" means the agent named on the declarations page of the insurance policy.

(5) For purposes of this section, the term "insurer" means any residential property insurer.

(6)(a) When providing a preliminary or partial estimate of damage regarding a claim, an insurer shall include with the estimate the following statement printed in at least 12-point bold, uppercase type: THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE LOSS TO YOUR INSURED PROPERTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(b) When providing a preliminary or partial payment on a claim, an insurer shall include with the payment the following

statement printed in at least 12-point bold, uppercase type: WE ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(7)~~(5)~~(a) Within 90 calendar days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 calendar days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code. However, failure to comply with this subsection

does not form the sole basis for a private cause of action.

(b) Notwithstanding subsection (5) ~~(4)~~, for purposes of this subsection, the term "claim" means any of the following:

1. A claim under an insurance policy providing residential coverage as defined in s. 627.4025(1);

2. A claim for structural or contents coverage under a commercial property insurance policy if the insured structure is 10,000 square feet or less; or

3. A claim for contents coverage under a commercial tenant policy if the insured premises is 10,000 square feet or less.

(c) This subsection shall not apply to claims under an insurance policy covering nonresidential commercial structures or contents in more than one state.

(8) This section applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937.

Section 19. Section 627.7031, Florida Statutes, is created to read:

627.7031 Foreign venue clauses prohibited.—A property insurance policy sold in this state after July 1, 2020, may not require an insured to pursue dispute resolution through litigation, arbitration, or mediation outside this state. This section applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937.

Section 20. Section 627.7142, Florida Statutes, is amended to read:

627.7142 Homeowner Claims Bill of Rights.—An insurer issuing a personal lines residential property insurance policy in this state must provide a Homeowner Claims Bill of Rights to a policyholder within 14 days after receiving an initial communication with respect to a claim, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor. The purpose of the bill of rights is to summarize, in simple, nontechnical terms, existing Florida law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The Homeowner Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner Claims Bill of Rights does not create a civil cause of action by any individual policyholder or class of policyholders against an insurer or insurers. The failure of an insurer to properly deliver the Homeowner Claims Bill of Rights is subject to administrative enforcement by the office but is not admissible as evidence in a civil action against an insurer. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene statutory requirements, including, but not limited to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner

Claims Bill of Rights must state:

HOMEOWNER CLAIMS

BILL OF RIGHTS

This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 calendar days after the time you communicated the claim.

2. Upon written request, receive from your insurance company within 30 days after you have submitted a complete proof-of-loss statement to your insurance company, confirmation that your claim is covered in

full, partially covered, or denied, or receive a written statement that your claim is being investigated.

3. Within 7 calendar days, receive notification from your insurance company if there has been a change in the company adjuster who is assigned to your claim. The notification must include the assigned adjuster's contact information.

4. Within 90 calendar days, subject to any dual interest noted in the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your claim.

5. Receive payment of interest from your insurance company, which begins accruing from the date your claim is filed if your insurance company does not pay full settlement of your claim or the undisputed portion of your claim or does not deny your claim within 90 calendar days after your claim is filed. The interest must be paid when your claim or undisputed portion of your claim is paid.

6.~~4.~~ Free mediation of your disputed claim by the Florida Department of Financial Services, Division of Consumer Services, under most circumstances and subject to certain restrictions.

7.~~5.~~ Neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

8.~~6.~~ Contact the Florida Department of Financial Services, Division of Consumer Services' toll-free helpline for assistance with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at...(toll-free phone number)..., or you can seek assistance online at the Florida Department of Financial Services, Division of Consumer Services' website at...(website address)....

YOU ARE ADVISED TO:

1. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

2. Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take photographs or video of damage before and after any repairs.

3. Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based on a

percentage of the insurance proceeds that you will receive for repairing or replacing your property.

4. Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

5. Require all contractors to provide proof of insurance before beginning repairs.

6. Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached.

Section 21. Paragraph (a) of subsection (1) and subsection (6) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days

after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. includes ~~only~~ the amount of each covered claim which is ~~in excess of $100 and is~~ less than $300,000, except that policies providing coverage for homeowner's insurance shall provide for an additional $200,000 for the portion of a covered claim which relates only to the damage to the structure and contents.

3.a. Notwithstanding subparagraph 2., the obligation under subparagraph 1. for policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, shall include that amount of each covered property insurance claim which is less than $100,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph

(3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

4. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(6) The association may extend the time limits specified in paragraph (1)(a) by up to an additional 60 days ~~or waive the applicability of the $100 deductible specified in paragraph (1)(a)~~ if the board determines that either or both such actions are necessary to facilitate the bulk assumption of obligations.

Section 22. Section 648.30, Florida Statutes, is amended to read:

648.30 Licensure and appointment required; prohibited acts; penalties.—

(1) A person may not act in the capacity of a bail bond agent or temporary bail bond agent or perform any of the functions, duties, or powers prescribed for bail bond agents or temporary bail bond agents under this chapter unless that person is qualified, licensed, and appointed as provided in this chapter.

(2) A person may not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title in this state.

(3) A person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a bond, wherever issued, unless that person is qualified, licensed, and appointed as provided in this chapter or licensed as a bail bond agent or bail bond enforcement agent, or holds an equivalent license by the state where the bond was written.

(4) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any licensee under this chapter who knowingly aids or abets an unlicensed person in violating this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 23. Paragraphs (b) and (c) of subsection (4) and subsections (1) and (10) of section 717.124, Florida Statutes, are amended to read:

717.124 Unclaimed property claims.—

(1) Any person, excluding another state, claiming an interest in any property paid or delivered to the department under this chapter may file with the department a claim on a form prescribed by the department and verified by the claimant or the claimant's representative. The claimant's representative

must be an attorney licensed to practice law in this state, a licensed Florida-certified public accountant, or a private investigator licensed under chapter 493. The claimant's representative must be registered with the department under this chapter. The claimant, or the claimant's representative, shall provide the department with a legible copy of a valid driver license of the claimant at the time the original claim form is filed. If the claimant has not been issued a valid driver license at the time the original claim form is filed, the department shall be provided with a legible copy of a photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. In lieu of photographic identification, a notarized sworn statement by the claimant may be provided which affirms the claimant's identity and states the claimant's full name and address. The claimant must produce to the notary photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Florida Uniform

Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney or purchase agreement~~, if applicable, is void.

(a) Within 90 days after receipt of a claim, the department may return any claim that provides for the receipt of fees and costs greater than that permitted under this chapter or that contains any apparent errors or omissions. The department may also request that the claimant or the claimant's representative provide additional information. The department shall retain a copy or electronic image of the claim.

(b) A claimant or the claimant's representative shall be deemed to have withdrawn a claim if no response to the department's request for additional information is received by the department within 60 days after the notification of any apparent errors or omissions.

(c) Within 90 days after receipt of the claim, or the response of the claimant or the claimant's representative to the department's request for additional information, whichever is later, the department shall determine each claim. Such determination shall contain a notice of rights provided by ss. 120.569 and 120.57. The 90-day period shall be extended by 60 days if the department has good cause to need additional time or if the unclaimed property:

1. Is owned by a person who has been a debtor in bankruptcy;

2. Was reported with an address outside of the United States;

3. Is being claimed by a person outside of the United States; or

4. Contains documents filed in support of the claim that are not in the English language and have not been accompanied by an English language translation.

(d) The department shall deny any claim under which the claimant's representative has refused to authorize the department to reduce the fees and costs to the maximum permitted under this chapter.

(4)

(b) If an owner authorizes an attorney licensed to practice law in this state, Florida-certified public accountant, or private investigator licensed under chapter 493, and registered with the department under this chapter, to claim the unclaimed property on the owner's behalf, the department is authorized to make distribution of the property or money in accordance with the Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement under s. 717.135 ~~such power of attorney~~. The original Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney~~ must be executed by the claimant or seller ~~owner~~ and must be filed with the department.

(c)1. Payments of approved claims for unclaimed cash accounts shall be made to the owner after deducting any fees and costs authorized pursuant to a Florida Uniform Unclaimed Property Recovery Agreement ~~written power of attorney~~. The contents of a safe-deposit box shall be delivered directly to the claimant ~~notwithstanding any power of attorney or agreement to the contrary~~.

2. Payments of fees and costs authorized pursuant to a Florida Uniform Unclaimed Property Recovery Agreement ~~written power of attorney~~ for approved claims must ~~shall~~ be made or issued to the law firm of the designated attorney licensed to practice law in this state, the public accountancy firm of the licensed Florida-certified public accountant, or the designated employing private investigative agency licensed by this state. Such payments shall be made by electronic funds transfer and may be made on such periodic schedule as the department may define by rule, provided the payment intervals do not exceed 31 days. Payment made to an attorney licensed in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, operating individually or as a sole practitioner, shall be to the attorney, certified public accountant, or private investigator.

(10) Notwithstanding any other provision of this chapter, the department may develop a process by which a registered claimant's representative or a buyer of unclaimed property may

electronically submit to the department an electronic image of a completed claim and claims-related documents pursuant to this chapter, including a Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~a limited power of attorney or purchase agreement~~ that has been manually signed and dated by a claimant or seller pursuant to s. 717.135 ~~or s. 717.1351~~, after the claimant's representative or the buyer of unclaimed property receives the original documents provided by the claimant or the seller for any claim. Each claim filed by a registered claimant's representative or a buyer of unclaimed property must include a statement by the claimant's representative or the buyer of unclaimed property attesting that all documents are true copies of the original documents and that all original documents are physically in the possession of the claimant's representative or the buyer of unclaimed property. All original documents must be kept in the original form, by claim number, under the secure control of the claimant's representative or the buyer of unclaimed property and must be available for inspection by the department in accordance with s. 717.1315. The department may adopt rules to implement this subsection.

Section 24. Subsection (2) of section 717.12404, Florida Statutes, is amended to read:

717.12404 Claims on behalf of a business entity or trust.—

(2) Claims on behalf of a dissolved corporation, a

business entity other than an active corporation, or a trust must include a legible copy of a valid driver license of the person acting on behalf of the dissolved corporation, business entity other than an active corporation, or trust. If the person has not been issued a valid driver license, the department shall be provided with a legible copy of a photographic identification of the person issued by the United States, a foreign nation, or a political subdivision or agency thereof. In lieu of photographic identification, a notarized sworn statement by the person may be provided which affirms the person's identity and states the person's full name and address. The person must produce his or her photographic identification issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney~~, if applicable, is void.

Section 25. Subsection (1) of section 717.1315, Florida Statutes, is amended to read:

717.1315 Retention of records by claimant's representatives and buyers of unclaimed property.—

(1) Every claimant's representative and buyer of unclaimed property shall keep and use in his or her business such books, accounts, and records of the business conducted under this chapter to enable the department to determine whether such person is complying with this chapter and the rules adopted by the department under this chapter. Every claimant's representative and buyer of unclaimed property shall preserve such books, accounts, and records, including every Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney or agreement~~ between the owner and such claimant's representative or buyer, for at least 3 years after the date of the initial ~~power of attorney or~~ agreement.

Section 26. Paragraph (j) of subsection (1) of section 717.1322, Florida Statutes, is amended to read:

717.1322 Administrative and civil enforcement.—

(1) The following acts are violations of this chapter and constitute grounds for an administrative enforcement action by the department in accordance with the requirements of chapter 120 and for civil enforcement by the department in a court of competent jurisdiction:

(j) Requesting or receiving compensation for notifying a person of his or her unclaimed property or assisting another person in filing a claim for unclaimed property, unless the person is an attorney licensed to practice law in this state, a

Florida-certified public accountant, or a private investigator licensed under chapter 493, or entering into, or making a solicitation to enter into, an agreement ~~a power of attorney~~ to file a claim for unclaimed property owned by another, or a contract or agreement to purchase unclaimed property, unless such person is registered with the department pursuant to this chapter and an attorney licensed to practice law in this state in the regular practice of her or his profession, a Florida-certified public accountant who is acting within the scope of the practice of public accounting as defined in chapter 473, or a private investigator licensed under chapter 493. This subsection does not apply to a person who has been granted a durable power of attorney to convey and receive all of the real and personal property of the owner, is the court-appointed guardian of the owner, has been employed as an attorney or qualified representative to contest the department's denial of a claim, or has been employed as an attorney to probate the estate of the owner or an heir or legatee of the owner.

Section 27. Section 717.135, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 717.135, F.S., for present text.)

717.135 Recovery agreements and purchase agreements for claims filed by claimant's representative; fees and costs.—

(1) In order to protect the interests of owners of



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

unclaimed property, the department shall adopt by rule a form entitled "Florida Uniform Unclaimed Property Recovery Agreement" and a form entitled "Florida Uniform Property Purchase Agreement."

(2) The Florida Uniform Unclaimed Property Recovery Agreement form and the Florida Uniform Property Purchase Agreement form must include and disclose:

(a) The total dollar amount of unclaimed property accounts claimed or sold.

(b) Either the total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing registered claimant's representative.

(c) Either the total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing registered claimant's representative.

(d) The net dollar amount to be received by the claimant or seller.

(e) For each account claimed, the unclaimed property account number and name of the apparent owner, as listed on the department's database.

(f) For the Florida Uniform Property Purchase Agreement, a statement that the purchase price will be remitted to the seller within 30 days after the execution of the form by the seller.

(g) The name, address, e-mail address, phone number, and license number of the registered claimant's representative.

(h) The manual signature of the claimant or seller and the date signed.

(i) The social security number or taxpayer identification number of the claimant or seller, if available. A number is available if one has been issued to the claimant or seller.

(j) A limit of total fees and costs, or the total discount amount in the case of a purchase agreement, to no more than 20 percent of the claimed amount.

(3) For a Florida Uniform Property Purchase Agreement form, proof that the seller has received payment must be filed with the department along with the claim. If proof of payment is not provided, the claim is void.

(4) A registered claimant's representative shall use the Florida Uniform Unclaimed Property Recovery Agreement form or the Florida Uniform Property Purchase Agreement form as the exclusive means of engaging with a claimant or seller to file a claim with the department.

(5) Fees and costs may be owed or paid to a registered claimant's representative only pursuant to the forms authorized by this section and upon approval of the claim filed thereby.

(6) A claimant's representative may not use or distribute any other agreement of any type with respect to the claimant or seller which relates to unclaimed property accounts held by the

department or the Chief Financial Officer other than the agreements authorized by this section. Any agreement that is not authorized by this section is null and void.

(7) The forms under subsection (1):

(a) May not contain language that makes the agreement irrevocable; and

(b) May not contain language that creates an assignment of any unclaimed property held by the department.

(8) This section does not supersede the conflicting claims provisions of s. 717.1241.

(9) At the time a claim is approved, the department may pay any additional account that is owned by the claimant but has not been claimed at the time of approval, provided that no subsequent claim has been filed and is pending for the claimant at the time of approval.

Section 28. Section 717.1351, Florida Statutes, is repealed.

Section 29. This act shall take effect upon becoming a law.

## INSURANCE & BANKING SUBCOMMITTEE

## HB 1137 by Rep. Clemons
## Consumer Protection

## AMENDMENT SUMMARY
## January 28, 2020

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**Amendment 1 by Rep. Clemons (strike-all):** The strike-all amendment contains the current provisions of the bill and makes the following modifications and clarifications:

- Clarifies that the documents a licensee must provide to DFS or OIR in response to a written request are only those documents that are not subject to attorney-client privilege.
- Clarifies that consumers must either sign or otherwise acknowledge receipt of the disclosure notifying them of the export of their insurance policies to the surplus lines market and eliminates from that disclosure the statement that coverage on the admitted market may be cheaper.
- Clarifies that collateral protection insurance by a mortgagee or escrow does not constitute sliding.
- Eliminates the requirement that personal lines residential property insurers must send the Homeowner Claims Bill of Rights to policyholders each year. It also expands the period during which such insurers must mail hurricane coverage information to policyholders from March 3 through April 1, to March 1 through June 1 and provides that this information will only be provided to policyholders who have email addresses on file with their insurers.
- Eliminates the requirement that an insurer send a copy of a physical inspection report from an adjuster to a policyholder.
- Changes the effective date for certain sections of the bill to January 1, 2021.
- Makes various formatting and technical changes.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | ____ | (Y/N) |
| ADOPTED AS AMENDED | ____ | (Y/N) |
| ADOPTED W/O OBJECTION | ____ | (Y/N) |
| FAILED TO ADOPT | ____ | (Y/N) |
| WITHDRAWN | ____ | (Y/N) |
| OTHER | | |

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Clemons offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (9) of section 501.0051, Florida Statutes, is amended to read:

501.0051 Protected consumer report security freeze.—

(9)

(b) A consumer reporting agency may not charge to ~~a reasonable fee, not to exceed $10, if the representative fails to retain the original unique personal identifier provided by the consumer reporting agency and the agency must~~ reissue the unique personal identifier or provide a new unique personal identifier to the consumer ~~representative~~.

Section 2. Paragraph (b) of subsection (10) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(10)

(b) Any entity ~~person~~ licensed or issued a certificate of authority by the department or the office shall respond, in writing, to the division within 20 days after receipt of a written request for documents and information from the division concerning a consumer complaint. The response must address the issues and allegations raised in the complaint and include any requested documents concerning the consumer complaint not subject to attorney-client privilege. The division may impose an administrative penalty for failure to comply with this paragraph of up to $2,500 per violation upon any entity licensed by the department or the office ~~and $250 for the first violation, $500 for the second violation, and up to $1,000 for the third or subsequent violation upon any individual licensed by the department or the office~~.

Section 3. Present subsection (9) of section 626.112, Florida Statutes, is redesignated as subsection (10), a new subsection (9) is added to that section, and paragraph (d) of subsection (7) and present subsection (9) of that section are amended, to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service

representatives, managing general agents, insurance adjusting firms.—

(7)

~~(d) Effective October 1, 2015, the department must automatically convert the registration of an approved registered insurance agency to an insurance agency license.~~

(9)(a) An individual, firm, partnership, corporation, association, or other entity may not act in its own name or under a trade name, directly or indirectly, as an adjusting firm unless it complies with s. 626.8696 with respect to possessing an adjusting firm license for each place of business at which it engages in an activity that may be performed only by a licensed insurance adjuster. However, an adjusting firm that is owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is exempt from the adjusting firm licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed adjusting firm is considered a branch firm and is not required to be licensed if:

1. It transacts business under the same name and federal tax identification number as the licensed adjusting firm;

2. It has designated with the department a primary adjuster operating the location as required by s. 626.8695; and

3. The address and telephone number of the branch location

have been submitted to the department for inclusion in the licensing record of the licensed adjusting firm within 30 days after insurance transactions begin at the branch location.

(c) If an adjusting firm is required to be licensed, but fails to file an application for licensure in accordance with this section, the department shall impose on the firm an administrative penalty of up to $10,000.

(10) ~~(9)~~ Any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license in violation of this section or who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Subsection (4) is added to section 626.602, Florida Statutes, to read:

626.602 Insurance agency names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency on any of the following grounds:

(4) The name contains the word "Medicare" or "Medicaid." An insurance agency whose name contains the word "Medicare" or "Medicaid" but which is licensed as of July 1, 2020, may continue to use that name as long as the agency's license is valid. If the agency's license expires or is suspended or

revoked, the agency may not be relicensed using that name.

Section 5. Subsections (16) and (17) are added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(16) Permitting the personal financial or medical information of a consumer or customer to be made available or accessible to the general public, regardless of the format in which the record is stored.

(17) Initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless requested by the prospective customer.

Section 6. Section 626.782, Florida Statutes, is amended to read:

626.782 "Industrial class insurer" defined.—An "industrial class insurer" is an insurer collecting premiums on policies of ~~writing~~ industrial life insurance, as defined in s. 627.502, written before July 1, 2020, and as to such insurance, operates under a system of collecting a debit by its agent.

Section 7. Section 626.783, Florida Statutes, is amended to read:

626.783 "Ordinary-combination class insurer" defined.—An "ordinary-combination class insurer" is an insurer writing ~~both~~ ordinary class insurance and collecting premiums on existing industrial life ~~class~~ insurance under s. 626.782.

Section 8. Section 626.796, Florida Statutes, is repealed.

Section 9. Subsection (1) of section 626.8443, Florida Statutes, is amended to read:

626.8443 Duration of suspension or revocation.—

(1) The department shall, in its order suspending a title insurance agent's or agency's license or appointment or in its order suspending the eligibility of a person to hold or apply for such license or appointment, specify the period during which the suspension is to be in effect, but such period shall not exceed 2 years ~~1 year~~. The license, ~~or~~ appointment, or eligibility shall remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension

period. A license, appointment, or eligibility that ~~which~~ has been suspended may not be reinstated except upon request for such reinstatement, but the department shall not grant such reinstatement if it finds that the circumstance or circumstances for which the license, appointment, and eligibility was suspended still exist or are likely to recur.

Section 10. Subsection (6) of section 626.854, Florida Statutes, is amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(6) Except during a state of emergency declared by the Governor and except during the 1-year period after the date of loss, an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 7 calendar ~~3 business~~ days after the date on which the contract is executed or within 7 calendar ~~3 business~~ days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later. During a state of emergency declared by the Governor or during the 1-year period after the date of loss, an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 21 calendar days after the date on which the contract is executed or within 21 calendar days after the date on which the

insured or claimant has notified the insurer of the claim, whichever is later. The public adjuster's contract must disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address specified in the contract~~; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract~~.

Section 11. Effective January 1, 2021, subsection (3) of section 626.916, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(f) The insured has signed or otherwise provided documented acknowledgement of a disclosure in substantially the following form: "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent

unlicensed insurer."

(3)(a) Subsection (1) does not apply to wet marine and transportation or aviation risks that ~~which~~ are subject to s. 626.917.

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured has complied with ~~must sign a disclosure~~ paragraph (1)(f) ~~that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."~~ If the disclosure ~~notice~~ is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.

Section 12. Paragraph (z) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(z) *Sliding.*—Sliding is the act or practice of any of the following:

1. Representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required.~~;~~

2. Representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required.~~; or~~

3. Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant.

4. Initiating, effectuating, binding, or otherwise issuing a policy of insurance without the prior informed consent of the owner of the property to be insured.

5. Mailing, transmitting, or otherwise submitting by any means an invoice for premium payment to a mortgagee or escrow agent, for the purpose of effectuating an insurance policy, without the prior informed consent of the owner of the property to be insured. However, this subparagraph does not apply in

cases where the mortgagee or escrow is renewing insurance or issuing collateral protection insurance as defined in s. 624.6085, F.S., pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

Section 13. Effective January 1, 2021, subsection (3) of section 626.9741, Florida Statutes, is amended to read:

626.9741 Use of credit reports and credit scores by insurers.—

(3) An insurer must inform an applicant or insured, in the same medium as the application is taken, that a credit report or score is being requested for underwriting or rating purposes. The notification to the consumer must include the following language: "The Department of Financial Services offers free financial literacy programs to assist you in understanding how credit scores are calculated, what factors are considered, and how credit works. The Department's toll-free Insurance Consumer Helpline is available to assist you with insurance-related questions and inquiries. To learn more about the free financial literacy programs or for help with insurance, call 1-877-693-5236 or visit www.MyFloridaCFO.com." An insurer that makes an adverse decision based, in whole or in part, upon a credit report must provide at no charge, a copy of the credit report to the applicant or insured or provide the applicant or insured with the name, address, and telephone number of the consumer reporting agency from which the insured or applicant may obtain

the credit report. The insurer must provide notification to the consumer explaining the reasons for the adverse decision. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's adverse decision. Such notification shall include a description of the four primary reasons, or such fewer number as existed, which were the primary influences of the adverse decision. The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" does not meet the explanation requirements of this subsection. A credit score may not be used in underwriting or rating insurance unless the scoring process produces information in sufficient detail to permit compliance with the requirements of this subsection. It shall not be deemed an adverse decision if, due to the insured's credit report or credit score, the insured continues to receive a less favorable rate or placement in a less favorable tier or company at the time of renewal except for renewals or reunderwriting required by this section.

Section 14. Subsection (1) of section 626.9957, Florida Statutes, is amended to read:

626.9957 Conduct prohibited; denial, revocation, or suspension of registration.—

(1) As provided in s. 626.112, only a person licensed as an insurance agent or customer representative may engage in the solicitation of insurance. A person who engages in the

solicitation of insurance as described in s. 626.112(1) without such license is subject to the penalties provided under s. 626.112(10) ~~s. 626.112(9)~~.

Section 15. Subsection (10) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(10) Any interest paid pursuant to s. 627.70131(7) ~~s. 627.70131(5)~~ may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

Section 16. Effective January 1, 2021, subsection (6) is added to section 627.421, Florida Statutes, to read:

627.421 Delivery of policy.—

(6) For personal lines residential property insurance policies, the insurer shall, between March 1 and June 1 of each year, inclusive, deliver a an outline of the hurricane coverage included in the policy, including the hurricane deductible and the coverages and exclusions to all policyholders. This requirement shall apply only for those insureds that have provided the insurer with a valid e-mail address. This information shall be delivered directly to the policyholder via email or by an e-mail notice of information being posted to a secure web-based policy information page.

Section 17. Section 627.502, Florida Statutes, is amended to read:

627.502 "Industrial life insurance" defined; reporting;

prohibition on new policies after a certain date.—

(1) For the purposes of this code, "industrial life insurance" is that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that ~~which~~, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

(2) Every life insurer servicing existing ~~transacting~~ industrial life insurance shall report to the office all annual statement data regarding the exhibit of life insurance, including relevant information for industrial life insurance.

(3) Beginning July 1, 2020, a life insurer may not write a new policy of industrial life insurance.

Section 18. Effective January 1, 2021, section 627.70131, Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(1)(a) Upon an insurer's receiving a communication with respect to a claim, the insurer shall, within 14 calendar days, review and acknowledge receipt of such communication unless payment is made within that period of time or unless the failure to acknowledge is caused by factors beyond the control of the insurer which reasonably prevent such acknowledgment. If the

acknowledgment is not in writing, a notification indicating acknowledgment shall be made in the insurer's claim file and dated. A communication made to or by a representative ~~an agent~~ of an insurer with respect to a claim shall constitute communication to or by the insurer.

(b) As used in this subsection, the term "representative" ~~"agent"~~ means any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer.

(c) This subsection shall not apply to claimants represented by counsel beyond those communications necessary to provide forms and instructions.

(2) Such acknowledgment shall be responsive to the communication. If the communication constitutes a notification of a claim, unless the acknowledgment reasonably advises the claimant that the claim appears not to be covered by the insurer, the acknowledgment shall provide necessary claim forms, and instructions, including an appropriate telephone number.

(3)(a) Unless otherwise provided by the policy of insurance or by law, within 10 business ~~working~~ days after an insurer receives proof of loss statements, the insurer shall begin such investigation as is reasonably necessary unless the failure to begin such investigation is caused by factors beyond the control of the insurer which reasonably prevent the commencement of such investigation.

(b) If such investigation involves a physical inspection of the property, the licensed adjuster assigned by the insurer must provide the policyholder with his or her name, license number, and contact information.

(c) If an insurer assigns the claim to a different licensed adjuster from the adjuster who performed the physical inspection, the insurer must, within 7 days after changing the licensed insurance adjuster assigned to a claim, provide the name, license number, and contact information of the new adjuster to the policyholder. The notification may be sent electronically or via mail. If the notification is a physical letter, it must be postmarked within 7 days after the change in adjuster. The policyholder must be provided notice of any subsequent change to the assigned adjuster as set forth by this paragraph.

(4) An insurer shall establish a process by which an agent of record for an insurance policy receives the same notice as the policyholder as provided in paragraphs (b) and (c) of subsection (3) in order to assist the agent of record in answering the policyholder's questions regarding claims. As used in this subsection, the term "agent of record" means the agent named on the declarations page of the insurance policy.

(5) For purposes of this section, the term "insurer" means any residential property insurer.

(6)(a) When providing a preliminary or partial estimate of

damage regarding a claim, an insurer shall include with the estimate the following statement printed in at least 12-point bold, uppercase type: THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE LOSS TO YOUR INSURED PROPERTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(b) When providing a preliminary or partial payment on a claim, an insurer shall include with the payment the following statement printed in at least 12-point bold, uppercase type: WE ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(7) ~~(5)~~ (a) Within 90 calendar days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 calendar days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest at the rate set

forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code. However, failure to comply with this subsection does not form the sole basis for a private cause of action.

(b) Notwithstanding subsection (5) ~~(4)~~, for purposes of this subsection, the term "claim" means any of the following:

1. A claim under an insurance policy providing residential coverage as defined in s. 627.4025(1);

2. A claim for structural or contents coverage under a commercial property insurance policy if the insured structure is 10,000 square feet or less; or

3. A claim for contents coverage under a commercial tenant policy if the insured premises is 10,000 square feet or less.

(c) This subsection shall not apply to claims under an insurance policy covering nonresidential commercial structures or contents in more than one state.

(8) This section also applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937.

Section 19. Section 627.7031, Florida Statutes, is created to read:

627.7031 Foreign venue clauses prohibited.—After July 1, 2020, a personal residential property insurance policy sold in this state, insuring real property located in this state, may not require an insured to pursue dispute resolution through litigation, arbitration, or mediation outside this state. This section applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937.

Section 20. Effective January 1, 2021, section 627.7142, Florida Statutes, is amended to read:

627.7142 Homeowner Claims Bill of Rights.—An insurer issuing a personal lines residential property insurance policy in this state must provide a Homeowner Claims Bill of Rights to a policyholder within 14 days after receiving an initial communication with respect to a claim~~, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor~~. The purpose of the bill of rights is to summarize, in simple, nontechnical terms, existing Florida law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The Homeowner Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner Claims Bill of Rights does not create a civil cause of action by

any individual policyholder or class of policyholders against an insurer or insurers. The failure of an insurer to properly deliver the Homeowner Claims Bill of Rights is subject to administrative enforcement by the office but is not admissible as evidence in a civil action against an insurer. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene statutory requirements, including, but not limited to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner Claims Bill of Rights must state:

HOMEOWNER CLAIMS
BILL OF RIGHTS

This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable

policy.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 calendar days after the time you communicated the claim.

2. Upon written request, receive from your insurance company within 30 days after you have submitted a complete proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated.

3. Within 7 calendar days, receive notification from your insurance company if there has been a change in the company adjuster who is assigned to your claim. The notification must include the assigned adjuster's contact information.

4. Within 90 calendar days, subject to any dual interest noted in the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your claim.

5. Receive payment of interest, as provided in s.

627.7031, from your insurance company, which begins accruing from the date your claim is filed if your insurance company does not pay full settlement of your claim or the undisputed portion of your claim or does not deny your claim within 90 calendar days after your claim is filed. The interest, if applicable, must be paid when your claim or undisputed portion of your claim is paid.

6.~~4.~~ Free mediation of your disputed claim by the Florida Department of Financial Services, Division of Consumer Services, under most circumstances and subject to certain restrictions.

7.~~5.~~ Neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

8.~~6.~~ Contact the Florida Department of Financial Services, Division of Consumer Services' toll-free helpline for assistance with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at...(toll-free phone number)..., or you can seek assistance online at the Florida Department of Financial Services, Division of Consumer Services' website at...(website address)....

YOU ARE ADVISED TO:

1. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

2. Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take photographs or video of damage before and after any repairs.

3. Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds that you will receive for repairing or replacing your property.

4. Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

5. Require all contractors to provide proof of insurance before beginning repairs.

6. Take precautions if the damage requires you to leave your home, including securing your property and

turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached.

Section 21. Paragraph (a) of subsection (1) and subsection (6) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. includes ~~only~~ the amount of each covered claim which is ~~in excess of $100 and is~~ less than $300,000, except that policies providing coverage for homeowner's insurance shall provide for an additional $200,000 for the portion of a covered claim which relates only to the damage to the structure and contents.

3.a. Notwithstanding subparagraph 2., the obligation under subparagraph 1. for policies covering condominium associations or homeowners' associations, which associations have a

responsibility to provide insurance coverage on residential units within the association, shall include that amount of each covered property insurance claim which is less than $100,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

4. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(6) The association may extend the time limits specified in paragraph (1)(a) by up to an additional 60 days ~~or waive the applicability of the $100 deductible specified in paragraph~~

~~(1)(a)~~ if the board determines that either or both such actions are necessary to facilitate the bulk assumption of obligations.

Section 22. Section 648.30, Florida Statutes, is amended to read:

648.30 Licensure and appointment required; prohibited acts; penalties.—

(1) A person may not act in the capacity of a bail bond agent or temporary bail bond agent or perform any of the functions, duties, or powers prescribed for bail bond agents or temporary bail bond agents under this chapter unless that person is qualified, licensed, and appointed as provided in this chapter.

(2) A person may not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title in this state.

(3) A person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a bond, wherever issued, unless that person is qualified, licensed, and appointed as provided in this chapter or licensed as a bail bond agent or bail bond enforcement agent, or holds an equivalent license by the state where the bond was written.

(4) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any licensee under this chapter who knowingly aids or

abets an unlicensed person in violating this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 23. Paragraphs (b) and (c) of subsection (4) and subsections (1) and (10) of section 717.124, Florida Statutes, are amended to read:

717.124 Unclaimed property claims.—

(1) Any person, excluding another state, claiming an interest in any property paid or delivered to the department under this chapter may file with the department a claim on a form prescribed by the department and verified by the claimant or the claimant's representative. The claimant's representative must be an attorney licensed to practice law in this state, a licensed Florida-certified public accountant, or a private investigator licensed under chapter 493. The claimant's representative must be registered with the department under this chapter. The claimant, or the claimant's representative, shall provide the department with a legible copy of a valid driver license of the claimant at the time the original claim form is filed. If the claimant has not been issued a valid driver license at the time the original claim form is filed, the department shall be provided with a legible copy of a photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other

evidence deemed acceptable by the department by rule. In lieu of photographic identification, a notarized sworn statement by the claimant may be provided which affirms the claimant's identity and states the claimant's full name and address. The claimant must produce to the notary photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney or purchase agreement~~, if applicable, is void.

(a) Within 90 days after receipt of a claim, the department may return any claim that provides for the receipt of fees and costs greater than that permitted under this chapter or that contains any apparent errors or omissions. The department may also request that the claimant or the claimant's representative provide additional information. The department shall retain a copy or electronic image of the claim.

(b) A claimant or the claimant's representative shall be deemed to have withdrawn a claim if no response to the department's request for additional information is received by

the department within 60 days after the notification of any apparent errors or omissions.

(c) Within 90 days after receipt of the claim, or the response of the claimant or the claimant's representative to the department's request for additional information, whichever is later, the department shall determine each claim. Such determination shall contain a notice of rights provided by ss. 120.569 and 120.57. The 90-day period shall be extended by 60 days if the department has good cause to need additional time or if the unclaimed property:

1. Is owned by a person who has been a debtor in bankruptcy;

2. Was reported with an address outside of the United States;

3. Is being claimed by a person outside of the United States; or

4. Contains documents filed in support of the claim that are not in the English language and have not been accompanied by an English language translation.

(d) The department shall deny any claim under which the claimant's representative has refused to authorize the department to reduce the fees and costs to the maximum permitted under this chapter.

(4)

(b) If an owner authorizes an attorney licensed to

practice law in this state, Florida-certified public accountant, or private investigator licensed under chapter 493, and registered with the department under this chapter, to claim the unclaimed property on the owner's behalf, the department is authorized to make distribution of the property or money in accordance with the Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement under s. 717.135 ~~such power of attorney~~. The original Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney~~ must be executed by the claimant or seller ~~owner~~ and must be filed with the department.

(c)1. Payments of approved claims for unclaimed cash accounts shall be made to the owner after deducting any fees and costs authorized pursuant to a Florida Uniform Unclaimed Property Recovery Agreement ~~written power of attorney~~. The contents of a safe-deposit box shall be delivered directly to the claimant ~~notwithstanding any power of attorney or agreement to the contrary~~.

2. Payments of fees and costs authorized pursuant to a Florida Uniform Unclaimed Property Recovery Agreement ~~written power of attorney~~ for approved claims must ~~shall~~ be made or issued to the law firm of the designated attorney licensed to practice law in this state, the public accountancy firm of the licensed Florida-certified public accountant, or the designated

employing private investigative agency licensed by this state. Such payments shall be made by electronic funds transfer and may be made on such periodic schedule as the department may define by rule, provided the payment intervals do not exceed 31 days. Payment made to an attorney licensed in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, operating individually or as a sole practitioner, shall be to the attorney, certified public accountant, or private investigator.

(10) Notwithstanding any other provision of this chapter, the department may develop a process by which a registered claimant's representative or a buyer of unclaimed property may electronically submit to the department an electronic image of a completed claim and claims-related documents pursuant to this chapter, including a Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~a limited power of attorney or purchase agreement~~ that has been manually signed and dated by a claimant or seller pursuant to s. 717.135 ~~or s. 717.1351~~, after the claimant's representative or the buyer of unclaimed property receives the original documents provided by the claimant or the seller for any claim. Each claim filed by a registered claimant's representative or a buyer of unclaimed property must include a statement by the claimant's representative or the buyer of unclaimed property attesting that all documents are true copies of the original documents and that

all original documents are physically in the possession of the claimant's representative or the buyer of unclaimed property. All original documents must be kept in the original form, by claim number, under the secure control of the claimant's representative or the buyer of unclaimed property and must be available for inspection by the department in accordance with s. 717.1315. The department may adopt rules to implement this subsection.

Section 24. Subsection (2) of section 717.12404, Florida Statutes, is amended to read:

717.12404 Claims on behalf of a business entity or trust.—

(2) Claims on behalf of a dissolved corporation, a business entity other than an active corporation, or a trust must include a legible copy of a valid driver license of the person acting on behalf of the dissolved corporation, business entity other than an active corporation, or trust. If the person has not been issued a valid driver license, the department shall be provided with a legible copy of a photographic identification of the person issued by the United States, a foreign nation, or a political subdivision or agency thereof. In lieu of photographic identification, a notarized sworn statement by the person may be provided which affirms the person's identity and states the person's full name and address. The person must produce his or her photographic identification issued by the United States, a state or territory of the United States, a

foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney~~, if applicable, is void.

Section 25. Subsection (1) of section 717.1315, Florida Statutes, is amended to read:

717.1315 Retention of records by claimant's representatives and buyers of unclaimed property.—

(1) Every claimant's representative and buyer of unclaimed property shall keep and use in his or her business such books, accounts, and records of the business conducted under this chapter to enable the department to determine whether such person is complying with this chapter and the rules adopted by the department under this chapter. Every claimant's representative and buyer of unclaimed property shall preserve such books, accounts, and records, including every Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney or agreement~~ between the owner and such claimant's representative or buyer, for at least 3 years after the date of the initial ~~power of attorney or~~ agreement.

Section 26. Paragraph (j) of subsection (1) of section 717.1322, Florida Statutes, is amended to read:

717.1322 Administrative and civil enforcement.—

(1) The following acts are violations of this chapter and constitute grounds for an administrative enforcement action by the department in accordance with the requirements of chapter 120 and for civil enforcement by the department in a court of competent jurisdiction:

(j) Requesting or receiving compensation for notifying a person of his or her unclaimed property or assisting another person in filing a claim for unclaimed property, unless the person is an attorney licensed to practice law in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, or entering into, or making a solicitation to enter into, an agreement ~~a power of attorney~~ to file a claim for unclaimed property owned by another, or a contract or agreement to purchase unclaimed property, unless such person is registered with the department pursuant to this chapter and an attorney licensed to practice law in this state in the regular practice of her or his profession, a Florida-certified public accountant who is acting within the scope of the practice of public accounting as defined in chapter 473, or a private investigator licensed under chapter 493. This subsection does not apply to a person who has been granted a durable power of attorney to convey and receive all of the real

and personal property of the owner, is the court-appointed guardian of the owner, has been employed as an attorney or qualified representative to contest the department's denial of a claim, or has been employed as an attorney to probate the estate of the owner or an heir or legatee of the owner.

Section 27. Section 717.135, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 717.135, F.S., for present text.)

717.135 Recovery agreements and purchase agreements for claims filed by claimant's representative; fees and costs.—

(1) In order to protect the interests of owners of unclaimed property, the department shall adopt by rule a form entitled "Florida Uniform Unclaimed Property Recovery Agreement" and a form entitled "Florida Uniform Property Purchase Agreement."

(2) The Florida Uniform Unclaimed Property Recovery Agreement form and the Florida Uniform Property Purchase Agreement form must include and disclose:

(a) The total dollar amount of unclaimed property accounts claimed or sold.

(b) Either the total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing registered claimant's representative.

(c) Either the total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing registered claimant's representative.

(d) The net dollar amount to be received by the claimant or seller.

(e) For each account claimed, the unclaimed property account number and name of the apparent owner, as listed on the department's database.

(f) For the Florida Uniform Property Purchase Agreement, a statement that the purchase price will be remitted to the seller within 30 days after the execution of the form by the seller.

(g) The name, address, e-mail address, phone number, and license number of the registered claimant's representative.

(h) The manual signature of the claimant or seller and the date signed.

(i) The social security number or taxpayer identification number of the claimant or seller, if available. A number is available if one has been issued to the claimant or seller.

(j) A limit of total fees and costs, or the total discount amount in the case of a purchase agreement, to no more than 20 percent of the claimed amount.

(3) For a Florida Uniform Property Purchase Agreement form, proof that the seller has received payment must be filed with the department along with the claim. If proof of payment is

not provided, the claim is void.

(4) A registered claimant's representative shall use the Florida Uniform Unclaimed Property Recovery Agreement form or the Florida Uniform Property Purchase Agreement form as the exclusive means of engaging with a claimant or seller to file a claim with the department.

(5) Fees and costs may be owed or paid to a registered claimant's representative only pursuant to the forms authorized by this section and upon approval of the claim filed thereby.

(6) A claimant's representative may not use or distribute any other agreement of any type with respect to the claimant or seller which relates to unclaimed property accounts held by the department or the Chief Financial Officer other than the agreements authorized by this section. Any agreement that is not authorized by this section is null and void.

(7) The forms under subsection (1):

(a) May not contain language that makes the agreement irrevocable; and

(b) May not contain language that creates an assignment of any unclaimed property held by the department.

(8) This section does not supersede the conflicting claims provisions of s. 717.1241.

(9) At the time a claim is approved, the department may pay any additional account that is owned by the claimant but has not been claimed at the time of approval, provided that no

subsequent claim has been filed and is pending for the claimant at the time of approval.

Section 28. Section 717.1351, Florida Statutes, is repealed.

Section 29. Except as otherwise provided, this act shall take effect upon becoming law.

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**T I T L E A M E N D M E N T**

Remove everything before the enacting clause and insert:
A bill to be entitled
An act relating to consumer protection; amending s. 501.0051, F.S.; prohibiting consumer reporting agencies from charging to reissue or provide a new unique personal identifier to a consumer for the removal of a security freeze; amending s. 624.307, F.S.; revising a requirement for entities licensed or authorized by the Department of Financial Services or the Office of Insurance Regulation to respond to the department's Division of Consumer Services regarding consumer complaints; revising administrative penalties the division may impose for failure to comply; amending s. 626.112, F.S.; prohibiting unlicensed activity by an adjusting firm; providing an exemption; providing an exemption from licensure for branch firms that meet certain criteria; providing an administrative penalty for failing to apply for certain licensure; providing a criminal penalty for

aiding or abetting unlicensed activity; deleting an obsolete provision; amending s. 626.602, F.S.; authorizing the department to disapprove the use of insurance agency names containing the words "Medicare" or "Medicaid"; providing an exception for certain insurance agencies; amending s. 626.621, F.S.; adding grounds on which the department may take certain actions against a license, appointment, or application of certain insurance representatives; amending ss. 626.782 and 626.783, F.S.; revising the definitions of the terms "industrial class insurer" and "ordinary-combination class insurer," respectively, to conform to changes made by the act; repealing s. 626.796, F.S., relating to the representation of multiple insurers in the same industrial debit territory; amending s. 626.8443, F.S.; increasing the maximum period of suspension of a title insurance agent's or agency's license; amending s. 626.854, F.S.; revising the timeframes in which an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation; amending s. 626.916, F.S.; revising the classes of insurance subject to a disclosure requirement before being eligible for export under the Surplus Lines Law; amending s. 626.9541, F.S.; adding certain acts or practices to the definition of sliding; amending s. 626.9741, F.S.; requiring an insurer to include certain additional information when providing an applicant or insured with certain credit report or score information; amending ss. 626.9957 and 627.062, F.S.; conforming

cross-references; amending s. 627.421, F.S.; requiring personal lines residential property insurers to annually deliver a certain notification to certain policyholders within a specified timeframe; amending s. 627.502, F.S.; prohibiting life insurers from writing new policies of industrial life insurance beginning on a certain date; amending s. 627.70131, F.S.; providing that communication made to or by an insurer's representative, rather than to or by an insurer's agent, constitutes communication to or by the insurer; requiring an insurer-assigned licensed adjuster to provide the policyholder with certain information in certain investigations; specifying requirements for insurers in notifying policyholders for certain changes in assigned adjusters; requiring an insurer to establish a process to provide the agent of record access to claim status information for a certain purpose; defining the term "agent of record"; requiring insurers to include specified notices when providing preliminary or partial damage estimates or claim payments; specifying the timeframe in which an insurer must pay or deny property insurance claims under certain circumstances; providing applicability; conforming provisions to changes made by the act; creating s. 627.7031, F.S.; prohibiting foreign venue clauses in property insurance policies; providing applicability; amending s. 627.7142, F.S.; revising information contained in the Homeowner Claims Bill of Rights; conforming provisions to changes made by the act; amending s. 631.57, F.S.; deleting a

deductible on the Florida Insurance Guaranty Association, Incorporated's obligation as to certain covered claims; amending s. 648.30, F.S.; prohibiting the aiding or abetting of unlicensed activity of a bail bond agent or temporary bail bond agent; amending ss. 717.124, 717.12404, 717.1315, and 717.1322, F.S.; conforming provisions to changes made by the act; amending s. 717.135, F.S.; replacing provisions relating to powers of attorney to recover unclaimed property with provisions relating to uniform forms for unclaimed property recovery agreements and purchase agreements; requiring the department to adopt the uniform forms by rule; specifying required information and disclosures in the forms; requiring that, for the purchase agreement form, proof the seller received payment be filed with the department along with the claim; requiring registered claimant's representatives to use the forms as the exclusive means of engaging with a claimant or seller to file claims and prohibiting them from using or distributing other agreements; specifying a limitation on fees and costs owed or paid; prohibiting certain language in the forms; authorizing the department to pay additional accounts owned by the claimant under certain circumstances; providing construction; repealing s. 717.1351, F.S., relating to the acquisition of unclaimed property; providing effective dates.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1211 Reinsurance
**SPONSOR(S):** Jones
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1376

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | | Fortenberry | Cooper |
| 2) Government Operations & Technology Appropriations Subcommittee | | | |
| 3) Commerce Committee | | | |

## SUMMARY ANALYSIS

Reinsurance is a transaction between a ceding insurer (primary insurer) and an assuming insurer (reinsurer) whereby the assuming insurer agrees to cover all or part of the ceding insurer's losses or loss adjustment expenses in exchange for a premium. Because of the impact of hurricanes in Florida, the catastrophe protection provided by reinsurance is a significant reason for ceding insurers' purchase of reinsurance within the state. Most reinsurance that United States' ceding insurers acquire is placed with non-United States assuming insurers. Because state insurance regulators do not regulate alien insurers or reinsurers, the ceding of reinsurance by United States insurers to such alien companies provides concern and challenges for state insurance regulators. Depending on their status within Florida, assuming insurers may be authorized or unauthorized. When an assuming insurer is an unauthorized reinsurer within Florida, the Florida Office of Insurance Regulation (OIR) does not have direct regulatory authority over that assuming insurer. In order to exercise some indirect regulatory authority over these assuming insurers, OIR limits the ceding insurer's credit for reinsurance unless the assuming insurer posts acceptable collateral or security in the amount of the assuming insurer's obligations under the reinsurance agreement. Credit for reinsurance means that a ceding insurer is permitted under statutory accounting rules to recognize the reinsurance as an asset or as a deduction from liability for the amount of the ceded liability or risk transferred.

The bill amends the reinsurance law to add criteria that an assuming insurer must meet in order for a ceding insurer to be given credit for reinsurance ceded to that assuming insurer. These criteria include having its principal office or its domicile and being licensed in, a reciprocal jurisdiction, maintain minimum capital and surplus, meeting minimum solvency or capital ratios, providing prompt notice to OIR if it falls below minimum requirements or has legal action taken against it, meeting certain other written requirements, responding to OIR's document requests, and maintaining a practice of prompt payment of claims. The bill requires that an assuming insurer's supervisory authority confirm to OIR on an annual basis that the assuming insurer has complied with the capital and surplus requirements and solvency or capital ratio requirements set forth in the bill. It also establishes that a ceding reinsurer may only take credit for reinsurance agreements entered into, amended, or renewed on or after the date at which the assuming insurer has met the mandatory criteria set forth within the bill. Credit may only be taken for losses incurred and reserves reported on or after the later of the date upon which the assuming insurer has met these requirements or has entered into a new reinsurance agreement, amendment, or renewal with the ceding insurer. Additionally, OIR may suspend or revoke the assuming insurer's eligibility under the applicable statute if the assuming insurer does not continue to meet the mandatory criteria under the applicable reinsurance statute.

The bill requires the passage of additional rules using existing rulemaking authority. The bill has no impact on state or local government revenues or expenditures. It has no known direct economic impact on the private sector.

The bill has an effective date of January 1, 2021.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Reinsurance**

Reinsurance is a transaction between a ceding insurer[1] and an assuming insurer whereby the assuming insurer agrees to cover all or part of the ceding insurer's losses or loss adjustment expenses in exchange for a premium. The purposes of reinsurance include increasing capacity, stabilizing underwriting results, financing, providing catastrophe protection, withdrawing from a line or class of business, spreading risk, and obtaining expertise.[2] Because of the impact of hurricanes in Florida, the catastrophe protection provided by reinsurance is a significant reason for ceding insurers' purchase of reinsurance within the state. While the purchase of reinsurance creates a contractual relationship between the ceding insurer and the assuming insurer, it does not modify the relationship between the ceding insurer and its policyholders.[3] Therefore, the ceding insurer remains obligated to pay policyholder claims and only the ceding insurer may recover from the assuming insurer unless an applicable reinsurance contract specifies otherwise.[4]

Most reinsurance that United States' ceding insurers acquire is placed with non-United States assuming insurers. In fact, in 2018, offshore and alien-owned[5] assuming insurers assumed 88.9 percent of insurance premiums ceded by United States' insurers.[6] The availability of alien reinsurance contributes to global diversification of risk, provides claims relief to United States insurers, and mitigates the financial impact of catastrophes.[7] Even though reinsurance provides benefits, because the United States state insurance regulators do not regulate alien insurers or reinsurers, the ceding of reinsurance by United States insurers to such alien companies provides concern and challenges for state insurance regulators.

Regulation of Reinsurance

*Direct Regulation of Authorized Reinsurers and Credit for Reinsurance*

Regulations and requirements for reinsurance transactions in Florida are provided in s. 624.610, F.S., and ch. 69O-144, F.A.C. The Florida Office of Insurance Regulation (OIR)[8], directly regulates authorized reinsurers[9] who are domiciled and licensed in Florida and reinsurers licensed in Florida who are domiciled in other states.[10] Under current law, a Florida insurer cedes reinsurance to an assuming

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[1] National Association of Insurance Commissioners, https://content.naic.org/consumer_glossary.htm#R (last visited January 24, 2020). A ceding insurer is an insurer that transfers risk assumed from policyholders to an assuming insurer. The ceding insurer and assuming insurer may also be referred to as the primary insurer and the reinsurer, respectively. Reinsurance is also colloquially referred to as "insurance for insurers" because of the risk transfer from one insurer to another.

[2] National Association of Insurance Commissioners, https://content.naic.org/cipr_topics/topic_reinsurance.htm (last visited January 24, 2020).

[3] *See* IRMI, *In Defense of Reinsurance*, https://www.irmi.com/articles/expert-commentary/in-defense-of-reinsurance (last visited January 24, 2020).

[4] *Id.*

[5] In the insurance context, an alien company is one formed under laws other than those of a United States jurisdiction. *See s. 624.06, F.S.*

[6] Reinsurance Associaton of America, *Offshore Reinsurance in the US Market: 2018 Data*, https://www.reinsurance.org/RAA/Industry_Data_Center/Offshore/_Report_2018_Data.html (last visited January 24, 2020).

[7] International Association of Insurance Supervisors, *Reinsurance and Financial Stability,* https://www.iaisweb.org.file/34046/reinsurance-and-financial-stability (last visited January 24, 2020).

[8] OIR is also referred to as the office in various statutes.

[9] Authorized reinsurers are licensed or accredited to provide reinsurance in a particular state. *See* s. 624.610, F.S.

[10] S. 624.610, F.S.

insurer who is authorized to transact insurance or reinsurance in Florida, and meets other specified requirements, the ceding insurer is permitted to take credit for that reinsurance on its books.[11]

*Indirect Regulation of Unauthorized Reinsurers and Credit for Reinsurance*

When an assuming insurer is not an authorized reinsurer within Florida, OIR does not have direct regulatory authority over that assuming insurer. Pursuant to s. 624.610, F.S., and in order to exercise some indirect regulatory authority over these assuming insurers, OIR limits the ceding insurer's credit for reinsurance unless the assuming insurer posts acceptable collateral or security in the amount of the assuming insurer's obligations under the reinsurance agreement.[12]

**National Association of Insurance Commissioners**

*National Association of Insurance Commissioners Authority, Accreditation, and Model Laws*

The National Association of Insurance Commissioners (NAIC) is a "standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories."[13] While the NAIC does not have actual regulatory authority, it allows state regulators to establish standards and best practices, to engage in peer review, and to coordinate regulatory oversight.

The NAIC also maintains an accreditation program that considers key financial authorities and responsibilities of state insurance regulators that warrant national consistency among jurisdictions in order to improve oversight of multi-state insurers and reduce the cost of inefficiencies that is passed on to policyholders.[14] As of November 2019, all 50 states, the District of Columbia and Puerto Rico were all accredited by the NAIC.[15]

The NAIC develops model laws and regulations to promote uniformity among jurisdictions and to balance the needs of insurers operating in multiple jurisdiction with those of the applicable regulatory frameworks.[16] The model laws are considered best practices for insurance regulation and the accreditation program requires compliance with certain model laws, including those that are solvency related.[17]

*Credit for Reinsurance Model Law and Regulation and the Covered Agreement*

Among the NAIC model laws and regulations that have become part of the accreditation standards are the Credit for Reinsurance Model Law #785 and Credit for Reinsurance Model Regulation #786, amendments to which are designed to modernize reinsurance regulation in the United States.[18]

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[11] Credit for reinsurance means that a ceding insurer is permitted under statutory accounting rules to recognize the reinsurance as an asset or as a deduction from liability for the amount of the ceded liability or risk transferred. IRMI, https://www.irmi.com/term/insurance-definitions/credit-for-reinsurance (last visited January 24, 2020). *See also* s. 624.610(3), F.S.
[12] *See* s. 624.610(4), F.S.
[13] National Association of Insurance Commissioners, https://content.naic.org/index_about.htm (last visited January 24, 2020).
[14] National Association of Insurance Commissioners, *State Legislative Brief The NAIC Accreditation Program,* https://www.naic.org/documents/cmte_legislative_liaison_brief_accreditation.pdf (last visited January 24, 2020).
[15] *Id.*
[16] National Association of Insurance Commissioners, *NAIC Model Laws,* https://content.naic.org/cipr_topics/topic_naic_model_laws.htm (last visited January 24, 2020).
[17] National Association of Insurance Commissioners, *Accreditation,* https://content.naic.org/cipr_topics/topic_accreditation.htm (last visited January 24, 2020).
[18] National Association of Insurance Commissioners, *Revisions to the Credit for Reinsurance Model Law,* https://www.naic.org/documents/committees_e_reinsurance_related_reinsurance_model_law_160108.pdf (last visited January 24, 2020).

In 2017, the United States entered the Bilateral Agreement Between the United States of American and the European Union on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement).[19] In 2019, the NAIC made revisions to Model Law #785 and Model Regulation #786 in response to the Covered Agreement. In part, the Covered Agreement commits the United States to phasing-out collateral requirements for European Union assuming insurers by 2022.[20] The Covered Agreement also exempts European Union assuming insurers from current United States domiciliary requirements by creating a classification known as a reciprocal jurisdiction.[21]

**Effect of the Bill**

The changes to Model Law #785 and Model Regulation #786 following the execution of the Covered Agreement, necessitate that existing Florida law regarding credit for reinsurance be amended. The bill creates a new subsection within the reinsurance statute that provides the following mandatory criteria that an assuming insurer must meet in order for a ceding insurer to be given credit for reinsurance ceded to that assuming insurer:

- The assuming insurer must have its principal office or its domicile, and must be licensed in, a reciprocal jurisdiction.
- The assuming insurer must have minimum capital and surplus as calculated by the methodology of its domiciliary jurisdiction in an amount specified by commission[22] rule.
- The assuming insurer must have a minimum solvency or capital ratio as specified by the commission.
- The assuming insurer must agree to provide prompt written notice to OIR if it falls below the minimum requirements specified in the bill or if any regulatory action is taken against it for serious noncompliance with applicable law.
- The assuming insurer must consent in writing to:
    - submit to the jurisdiction of Florida courts;
    - designate the Florida Chief Financial Officer as its agent for service or process or an attorney to accept lawful process;
    - pay all final judgments declared enforceable in the jurisdiction where the judgments were obtained;
    - include a provision in each reinsurance agreement that, where necessary, the assuming insurer will provide security in the amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to the agreement; and
    - confirm that the assuming insurer is not presently participating in any solvent scheme of arrangement that involves Florida's ceding insurers, and should the

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[19] U.S. Department of the Treasury, *U.S. and EU Covered Agreement*, https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/us-and-eu-covered-agreement (last visited January 25, 2020). Covered agreements are authorized under 31 U.S.C. §§ 313–314, and are written bilateral or multilateral agreements regarding insurance or reinsurance entered into between the United States and one or more foreign authorities to provide protections for insurance and reinsurance consumers similar to those provided by state insurance regulators within United States jurisdictions.

[20] U.S. Department of the Treasury, *Statement of the United States on the Covered Agreement with the European Union*, https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/us-and-eu-covered-agreement (last visited January 25, 2020).

[21] *Id.* Model Law #785 defines a reciprocal jurisdiction as:

- A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or in the case of a covered agreement between the United States and the European Union, is a member state of the European Union;
- A United States jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program;
- A qualified jurisdiction, as determined by an insurance commissioner.

National Association of Insurance Commissioners, *Credit for Reinsurance Model Law-785,* https://www.naic.org/store/free/MDL-785.pdf (last visited January 25, 2020).

[22] The commission referred to is the Financial Services Commission. Section 20.121(3), F.S., establishes that the Financial Services Commission consists of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

assuming insurer enter into such arrangement, it will notify OIR and the ceding insurer and will provide appropriate security.

- The assuming insurer must provide documentation to OIR upon request under criteria specified by the commission.
- The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements pursuant to criteria specified by the commission.

The bill requires that an assuming insurer's supervisory authority confirm to OIR on an annual basis that the assuming insurer has complied with the capital and surplus requirements and solvency or capital ratio requirements set forth in the bill. It also establishes that a ceding reinsurer may only take credit for reinsurance agreements entered into, amended, or renewed on or after the date at which the assuming insurer has met the mandatory criteria set forth within the bill. Additionally, credit may only be taken for losses incurred and reserves reported on or after the later of the date upon which the assuming insurer has met these requirements or has entered into a new reinsurance agreement, amendment, or renewal with the ceding insurer.

Pursuant to the bill, if the ceding insurer is subject to rehabilitation, liquidation, or conservation, the ceding insurer may obtain a court order requiring that the assuming insurer post security for all outstanding ceded liabilities. If OIR determines that the assuming insurer no longer meets one or more of the requirements under the bill, OIR may revoke or suspend the assuming reinsurer's eligibility under 624.610, F.S. While the eligibility is suspended, any reinsurance agreement issued, amended, or renewed after the effective date of the suspension does not qualify for credit for reinsurance. If the eligibility is revoked, credit for reinsurance may not be granted after the effective date of the revocation for any reinsurance agreements entered into by the assuming insurer, including those entered into before the date of the revocation.

The bill provides that the subsection created within 624.610, F.S., does not:

- preclude an assuming insurer from volunteering information to OIR;
- limit or alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms of the reinsurance agreement, except where otherwise prohibited, or to renegotiate the reinsurance agreement; or
- authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as authorized within the agreement.

The bill makes other technical changes to s. 624.610, F.S., including the deletion of an obsolete subsection and the replacement of the word "commissioner" with "office" in several places.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 624.610, F.S., relating to reinsurance.

**Section 2.** Provides an effective date of January 1, 2021.

## 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 known.

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:

B. RULE-MAKING AUTHORITY:

Section 624.610(14), F.S., provides that the commission may adopt rules necessary to implement the provisions of that section and "protect the interests of insureds, claimants, ceding insurers, assuming insurers, and the public." The rules must be in "substantial compliance" with the NAIC model regulations relating to credit for reinsurance, the NAIC Accounting Practices and Procedures Manual as of March 2002 and subsequent consistent amendments to it; and the NAIC model regulation for Credit for Reinsurance and Life and Health Reinsurance Agreements.[23] The bill requires the exercise of this authority and the adoption of certain forms. Therefore, the bill will likely result in the changes to the rules in ch. 69O-144, F.A.C.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 322: In lines 232 and 281–282, respectively, the phrases "in a form specified by the commission" and "on a form adopted by the commission" are used. However, in line 322 the phrase "secured in a form acceptable to the office." Because rulemaking authority regarding reinsurance is delegated to the commission, it may be advisable to amend line 322 to conform to the remainder of the bill.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[23] S. 624.610(14), F.S.

A bill to be entitled

An act relating to reinsurance; amending s. 624.610, F.S.; transferring specified powers and duties of the Commissioner of Insurance Regulation to the Office of Insurance Regulation; requiring credits for reinsurance to be allowed to ceding insurers under certain circumstances; providing requirements for assuming insurers in order for such credits to be allowed; providing the definitions of the terms "reciprocal jurisdiction" and "covered agreement"; requiring assuming insurers to have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, and, if applicable, minimum capital and surplus equivalents and a central fund; requiring assuming insurers to have and maintain on an ongoing basis a minimum solvency or capital ratio; providing additional requirements for assuming insurers; requiring assuming insurers to provide security in a specified amount; specifying circumstances under which credits may be taken; authorizing ceding insurers and their representatives to seek orders requiring assuming insurers to post security for certain liabilities; authorizing the office to revoke and suspend the eligibility of assuming insurers under a specified circumstance; prohibiting credits under

certain circumstances; providing exceptions; deleting obsolete language; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (4) through (14) of section 624.610, Florida Statutes, are renumbered as subsection (5) through (15), respectively, subsection (2), paragraphs (c) and (e) of subsection (3), present subsections (4) and (5), paragraph (b) of present subsection (11), present subsection (15), and subsection (16) of that section are amended, and a new subsection (4) is added to that section, to read:

624.610 Reinsurance.—

(2) Credit for reinsurance must be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (3)(a), paragraph (3)(b), ~~or~~ paragraph (3)(c), or subsection (4). Credit must be allowed under paragraph (3)(a) or paragraph (3)(b) only for cessions of those kinds or lines of business that the assuming insurer is licensed, authorized, or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed or authorized to transact insurance

or reinsurance.

(3)

(c)1. Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in paragraph (6)(b) ~~(5)(b)~~, for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the office to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the office information substantially the same as that required to be reported on the NAIC Annual Statement form by authorized insurers. The assuming insurer shall submit to examination of its books and records by the office and bear the expense of examination.

2.a. Credit for reinsurance must not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(I) The insurance regulator of the state in which the trust is domiciled; or

(II) The insurance regulator of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

b. The form of the trust and any trust amendments must be filed with the insurance regulator of every state in which the ceding insurer beneficiaries of the trust are domiciled. The

trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the insurance regulator.

c. The trust remains in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustee of the trust shall report to the insurance regulator in writing the balance of the trust and list the trust's investments at the preceding year end, and shall certify that the trust will not expire before ~~prior to~~ the following December 31.

3. The following requirements apply to the following categories of assuming insurer:

a. The trust fund for a single assuming insurer consists of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20 million. Not less than 50 percent of the funds in the trust covering the assuming insurer's liabilities attributable to

reinsurance ceded by United States ceding insurers and trusteed surplus shall consist of assets of a quality substantially similar to that required in part II of chapter 625. Clean, irrevocable, unconditional, and evergreen letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (6)(a) ~~(5)(a)~~, effective no later than December 31 of the year for which the filing is made and in the possession of the trust on or before the filing date of its annual statement, may be used to fund the remainder of the trust and trusteed surplus.

b.(I) In the case of a group including incorporated and individual unincorporated underwriters:

(A) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust consists of a trusteed account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(B) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust consists of a trusteed account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) In addition to these trusts, the group shall maintain in trust a trusteed surplus of which $100 million must be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(II) The incorporated members of the group must not be engaged in any business other than underwriting of a member of the group, and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as the unincorporated members.

(III) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the insurance regulator an annual certification by the group's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(e) If the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), paragraph (b), paragraph (c), or paragraph (d), the office ~~commissioner~~ may allow credit, but only if the assuming insurer holds surplus in excess of $250 million and has a secure financial strength rating from at least two statistical rating organizations deemed acceptable by the office ~~commissioner~~ as having experience and expertise in rating insurers doing business in Florida, including, but not limited to, Standard & Poor's, Moody's

Investors Service, Fitch Ratings, A.M. Best Company, and Demotech. In determining whether credit should be allowed, the office ~~commissioner~~ shall consider the following:

1. The domiciliary regulatory jurisdiction of the assuming insurer.

2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and the financial surveillance of the reinsurer.

3. The substance of financial and operating standards for reinsurers in the domiciliary jurisdiction.

4. The form and substance of financial reports required to be filed by the reinsurers in the domiciliary jurisdiction or other public financial statements filed in accordance with generally accepted accounting principles.

5. The domiciliary regulator's willingness to cooperate with United States regulators in general and the office in particular.

6. The history of performance by reinsurers in the domiciliary jurisdiction.

7. Any documented evidence of substantial problems with the enforcement of valid United States judgments in the domiciliary jurisdiction.

8. Any other matters deemed relevant by the office ~~commissioner~~. The office ~~commissioner~~ shall give appropriate consideration to insurer group ratings that may have been

issued. The office ~~commissioner~~ may, in lieu of granting full credit under this subsection, reduce the amount required to be held in trust under paragraph (c).

(4) Credit must be allowed when the reinsurance is ceded to an assuming insurer that meets the requirements of this subsection.

(a) The assuming insurer must have its principal office or its domicile, and must be licensed, in a reciprocal jurisdiction. As used in this subsection, the term "reciprocal jurisdiction" means a jurisdiction that meets one of the following requirements:

1. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. As used in this paragraph, the term "covered agreement" is an agreement that is:

a. Entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. ss. 313 and 314 in effect on May 24, 2018.

b. Currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into a reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to

recognize credit for reinsurance.

2. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC Financial Regulation Standards and Accreditation Program.

3. A qualified jurisdiction, as determined by the office, that:

a. Is not a jurisdiction in subparagraph 1. or subparagraph 2.

b. Meets additional requirements specified by the commission that are consistent with the terms and conditions of an in-force covered agreement.

(b) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount specified by commission rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts specified by commission rule.

(c) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, specified by the commission. If the assuming insurer

is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis a minimum solvency or capital ratio in the jurisdiction where the assuming insurer has its head office or its domicile, as applicable, and is also licensed.

(d) The assuming insurer must agree and provide adequate assurance to the office, in a form specified by the commission, that the assuming insurer:

1. Provides prompt written notice and explanation to the office if the assuming insurer falls below the minimum requirements specified in paragraph (b) or paragraph (c) or if any regulatory action is taken against it for serious noncompliance with applicable law.

2. Consents in writing to:

a. Submit to the jurisdiction of the courts of this state.

b. Designate the Chief Financial Officer under s. 48.151 as the agent for service of process, or designate an attorney as its true and lawful attorney, upon whom a lawful process in an action, suit, or proceeding instituted by or on behalf of the ceding insurer may be served.

c. Pay all final judgments, wherever enforcement is sought, that have been obtained by a ceding insurer or its legal successor and that have been declared enforceable in the jurisdiction where the judgment was obtained.

Sub-subparagraphs a. and b. do not limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except that such agreements are unenforceable under applicable insolvency or delinquency laws.

d. Each reinsurance agreement includes a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or its legal successor on behalf of its resolution estate.

e. The assuming insurer confirms that it is not presently participating in any solvent scheme of arrangement that involves this state's ceding insurers, and agrees to notify the ceding insurer and the office and to provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer should the assuming insurer enter into such a solvent scheme of arrangement. Such security must be consistent with this subsection and subsection (3).

(e) If requested by the office, the assuming insurer or its legal successor must provide to the office, on behalf of itself and any legal predecessors, any documentation pursuant to

criteria specified by the commission.

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements pursuant to criteria specified by the commission.

(g) The assuming insurer's supervisory authority must confirm to the office on an annual basis, on a form adopted by the commission, that, as of the preceding December 31 or the annual date otherwise statutorily reported to the reciprocal jurisdiction, the assuming insurer complied with the requirements specified in paragraphs (b) and (c).

(h)1. Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after the date on which the assuming insurer has satisfied the requirements to assume reinsurance under this subsection, and only with respect to losses incurred and reserves reported on or after the later of the date on which the assuming insurer has met all eligibility requirements under this subsection, and the effective date of the new reinsurance agreement, amendment, or renewal.

2. This paragraph does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subsection, as long as the reinsurance qualifies for credit under any other applicable provision of this section.

(i) If subject to a legal process of rehabilitation,

liquidation, or conservation, as applicable, the ceding insurer or its legal successor may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(j) If the office determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the office may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection.

1. While an assuming insurer's eligibility is suspended, any reinsurance agreement issued, amended, or renewed after the effective date of the suspension does not qualify for credit, except to the extent that the assuming insurer's obligations under the contract are secured in accordance with this subsection.

2. If an assuming insurer's eligibility is revoked, credit for reinsurance may not be granted after the effective date of the revocation with respect to any reinsurance agreement entered into by the assuming insurer, including a reinsurance agreement entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the office and consistent with this subsection.

(k) This subsection does not:

1. Preclude an assuming insurer from providing the office

with information on a voluntary basis.

2. Limit or in any way alter the capacity of parties to a reinsurance agreement to:

a. Agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this section or other applicable law or rule of the commission.

b. Renegotiate the reinsurance agreement.

3. Authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as permitted by the terms of the agreement.

(5) ~~(4)~~ An asset allowed or a deduction from liability taken for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of subsections (2), ~~and~~ (3), and (4) is allowed in an amount not exceeding the liabilities carried by the ceding insurer. The deduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution, as defined in paragraph (6)(b) ~~(5)(b)~~. This security may be in the form of:

(a) Cash in United States dollars;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets pursuant to part II of chapter 625;

(c) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (6)(a) ~~(5)(a)~~, effective no later than December 31 of the year for which the filing is made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement; or

(d) Any other form of security acceptable to the office.

(6)~~(5)~~(a) For purposes of paragraph (5)(c) ~~(4)(c)~~ regarding letters of credit, a "qualified United States financial institution" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or any state thereof;

2. Is regulated, supervised, and examined by United States or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by either the office or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions

whose letters of credit will be acceptable to the office.

(b) For purposes of those provisions of this law which specify institutions that are eligible to act as a fiduciary of a trust, a "qualified United States financial institution" means an institution that is a member of the Federal Reserve System or that has been determined by the office to meet the following criteria:

1. Is organized or, in the case of a United States branch or agency office of a foreign banking organization, is licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

2. Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(12) ~~(11)~~

(b) The summary statement must be signed and attested to by either the chief executive officer or the chief financial officer of the reporting insurer. In addition to the summary statement, the office may require the filing of any supporting information relating to the ceding of such risks as it deems necessary. If the summary statement prepared by the ceding insurer discloses that the net effect of a reinsurance treaty or treaties (or series of treaties with one or more affiliated reinsurers entered into for the purpose of avoiding the following threshold amount) at any time results in an increase

of more than 25 percent to the insurer's surplus as to policyholders, then the insurer shall certify in writing to the office that the relevant reinsurance treaty or treaties comply with the accounting requirements contained in any rule adopted by the commission under subsection (15) ~~(14)~~. If such certificate is filed after the summary statement of such reinsurance treaty or treaties, the insurer shall refile the summary statement with the certificate. In any event, the certificate must state that a copy of the certificate was sent to the reinsurer under the reinsurance treaty.

~~(15) Any reinsurer approved pursuant to s. 624.610(3)(a)2., as such provision existed prior to July 1, 2000, which fails to obtain accreditation pursuant to this section prior to December 30, 2003, shall have its approval terminated by operation of law on that date.~~

(16) This section applies ~~act shall apply~~ to all cessions on or after January 1, 2021 ~~2001~~, under reinsurance agreements that have an inception, anniversary, or renewal date on or after January 1, 2021 ~~2001~~.

Section 2. This act shall take effect January 1, 2021.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1409 Pub. Rec./Records of Insurers/Department of Financial Services
**SPONSOR(S):** Grant, M.
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1188

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | | Salter | Cooper |
| 2) Oversight, Transparency & Public Management Subcommittee | | | |
| 3) Commerce Committee | | | |

## SUMMARY ANALYSIS

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government. However, the Legislature may provide exemptions for disclosure with a statement of public necessity and a two thirds vote by members.

The bill permits the Department of Financial Services to withhold certain records from disclosure. Currently, all personal financial and health information of a consumer, all underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to lines transacted by the insurer, all personnel and payroll records of the insurer, and consumer claim files are protected from disclosure. However, when insurance companies become insolvent, this information is no longer protected and can be disclosed. In these situations, the bill prevents this information from public disclosure.

The bill exempts certain documents and reports submitted by companies to the Office of Insurance Regulation. The bill provides exceptions to these exemptions. All exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S. The exemptions will be repealed on October 25, 2025, unless reviewed and saved through reenactment by the Legislature. The bill also contains a public necessity statement.

The bill has no fiscal impact on state or local government revenue or expenditures. It has no known positive or negative economic impacts on the private sector.

The bill provides an effective date of July 1, 2020.

**Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for personal identifying information of an injured or deceased worker; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.[1] The Legislature, however, may provide by general law for the exemption of records from the constitutional requirements.[2] An exemption must state with specificity the public necessity justifying the exemption and may be no broader than necessary to accomplish the stated purpose of the law.[3] A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.[4]

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.[5] A public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served, if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protects personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protects trade or business secrets.[6]

The Act requires the automatic repeal of an exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

Insurers and insurance companies routinely keep records of policyholders and claimants during the normal course of business. As long as the business remains solvent, these records are not freely available to any person who requests such information, unless there is a valid reason for the request. DFS's current ability to withhold information is limited to information outlined in s. 119.071, F.S. The ability to withhold information does not cover family member medical and health history, private financial information, or insurance coverage. If an insurance company becomes insolvent, policyholders and claimants no longer receive the same protections and anyone can request access to their information.

In 2011, as part of the NAIC's Solvency Modernization Initiative, the NAIC adopted a new insurance regulatory tool: the U.S. Own Risk and Solvency Assessment (ORSA), which requires insurance companies to issue their own assessment of their current and future risk through an internal risk self-assessment process, allowing regulators to form an enhanced view of an insurer's ability to withstand financial stress.[7] In essence, an ORSA is an internal process undertaken by an insurer or insurance group to assess the adequacy of its risk management and current and prospective solvency positions under normal and severe stress scenarios. An ORSA requires insurers to analyze all reasonably foreseeable and relevant material risks (i.e., underwriting, credit, market, operational, liquidity risks, etc.) that could have an impact on an insurer's ability to meet its policyholder obligations.

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[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(c).
[3] *Id.*
[4] *Id.*
[5] S. 119.15, F.S.
[6] S. 119.15(6)(b), F.S.
[7] NAIC, Own Risk and Solvency Assessment, at http://www.naic.org/cipr_topics/topic_own_risk_solvency_assessment.htm (last visited Jan. 25, 2020).

In conducting an ORSA, an insurer or insurance group references highly sensitive and strategic financial information. Additionally, a corporate governance annual disclosure, which an ORSA falls under, provides OIR with confidential information. The disclosure must be as descriptive as possible,[8] and include material and relevant information sufficient to enable OIR to understand the corporate governance structure, policies, and practices used by the insurer or insurance group.[9] Currently, competitors can request access to this information, providing competitors with detailed insight into an insurer or insurance company's financial position and strategies.

**Effect of the Bill**

The bill provides exemptions from public records disclosure[10] and s. 14(a), Art. I of the State Constitution for the following records, in whatever form:

- All personal financial and health information of a consumer, including a family member or dependent;
- Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to lines transacted by the insurer;
- Personnel and payroll records of the insurer; and
- Consumer claim files.

The bill defines personal financial and health information as:

- A consumer's personal health condition, disease or injury;
- A history of a consumer's personal medical diagnosis or treatment;
- The existence, nature, source, or amount of a consumer's personal income or expenses;
- Records of, or relating to, a consumer's personal financial transactions of any kind;
- The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;
- The existence or content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; or
- The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

The bill provides public records exemptions for several internal documents required by the Office of Insurance Regulation (OIR) and held by the Department of Financial Services (DFS) before, on, or after July 1, 2020. The following records are exempt from s. 119.07 (1), F.S., and s. 24 (a), Art. I of the State Constitution:

- An ORSA summary report, a substantially similar ORSA summary report, and any supporting documents submitted to OIR pursuant to s. 628.8015, F.S.;
- A corporate governance annual disclosure and any supporting documents submitted to OIR pursuant to s. 628.8015, F.S.; and
- Information received from the National Association of Insurance Commissioners (NAIC), a governmental entity of any state, the Federal Government, or a government of another nation which is confidential and is held by DFS for use relating to insurer solvency.

The bill provides exceptions to the public records exemptions. Records or portions of records made confidential and exempt by this bill may be released under specified circumstances:

- If disclosure is necessary for performance of duties and responsibilities, records may be released to a state or federal agency, upon written request. The receiving agency must maintain the confidential and exempt status of the records.
- Records may be released to comply with a properly authorized civil, criminal, or regulatory investigation or a subpoena or summons by a federal, state, or local authority.

[8] S. 628.8015 (3)(c)2., F.S.
[9] S. 628.8015 (3)(c)3., F.S.
[10] S. 119.07 (1), F.S.

- If the recipient agrees in writing to maintain the confidential and exempt status of the records, the NAIC and its affiliates and subsidiaries may receive records or portions of records.
- Records may be released to the guaranty associations and funds of the various states which are receiving, adjudicating, and paying claims of an insolvent insurer subject to delinquency proceedings, pursuant to ch. 633, F.S. The receiving association must maintain the confidential and exempt status of the records.
- Upon written request, records may be released to persons identified as employees under s. 626.989 (4)(d),[11] whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts.
- Records containing personal financial and health information of a consumer may be released upon written request of the consumer or the consumer's legally authorized representative.

The listed exemptions are applicable even when an insurer or insurance company becomes insolvent. The bill's public records exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S. The exemptions will be repealed on October 25, 2025, unless reviewed and saved through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1: Creates s. 631.195, F.S., related to records of insurers; public records exemptions.

Section 2: Provides a public necessity statement as required by the Florida Constitution.

Sections 3: Provides an effective date.

## 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.

[11] This section relates to insurance fraud investigations by DFS or the Division of Investigative and Forensic Services.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; creating s. 631.195, F.S.; defining the terms "consumer" and "personal financial and health information"; exempting from public records requirements consumer personal financial and health information, certain underwriting files, insurer personnel and payroll records, and consumer claim files that are made or received by the Department of Financial Services acting as receiver as to an insurer; exempting from public records requirements certain reports and documents held by the department relating to insurer own-risk and solvency assessments and corporate governance annual disclosures and certain information received from the National Association of Insurance Commissioners or governments; providing retroactive applicability; providing that exempted records may be released under specified circumstances; providing for future legislative review and repeal of the exemptions; providing statements of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 631.195, Florida Statutes, is created



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

to read:

631.195 Records of insurers; public records exemptions.—

(1) As used in this section, the term:

(a) "Consumer" means a prospective purchaser of, a purchaser of, a beneficiary of, or an applicant for any insurance product or service. The term also includes a family member or dependent of such person.

(b) "Personal financial and health information" means:

1. A consumer's personal health condition, disease, or injury;

2. A history of a consumer's personal medical diagnosis or treatment;

3. The existence, nature, source, or amount of a consumer's personal income or expenses;

4. Records of, or relating to, a consumer's personal financial transactions of any kind;

5. The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;

6. The existence or content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; or

7. The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

(2) The following records, in whatever form, of an insurer

which are made or received by the department, acting as receiver pursuant to this chapter, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) All personal financial and health information of a consumer.

(b) Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to those lines transacted by the insurer.

(c) Personnel and payroll records of the insurer.

(d) Consumer claim files.

(3) The following records held by the department are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) An ORSA summary report, a substantially similar ORSA summary report, and supporting documents submitted to the office pursuant to s. 628.8015.

(b) A corporate governance annual disclosure and supporting documents submitted to the office pursuant to s. 628.8015.

(c) Information received from the National Association of Insurance Commissioners, a governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity and which is held by the department for use in the performance of its duties relating to insurer solvency.

(4) The exemptions in subsections (2) and (3) apply to records held by the department before, on, and after July 1, 2020.

(5) Records or portions of records made confidential and exempt by this section may be released under any of the following circumstances:

(a) To any state or federal agency, upon written request, if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving agency shall maintain the confidential and exempt status of such record or portion of such record.

(b) To comply with a properly authorized civil, criminal, or regulatory investigation or a subpoena or summons by a federal, state, or local authority.

(c) To the National Association of Insurance Commissioners and its affiliates and subsidiaries, if the recipient agrees in writing to maintain the confidential and exempt status of the records.

(d) To the guaranty associations and funds of the various states which are receiving, adjudicating, and paying claims of the insolvent insurer subject to delinquency proceedings pursuant to this chapter. The receiving guaranty association shall maintain the confidential and exempt status of such record or portion of such record.

(e) Upon written request, to persons identified as

designated employees as described in s. 626.989(4)(d), whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts.

(f) In the case of personal financial and health information of a consumer, upon written request of the consumer or the consumer's legally authorized representative.

(6) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds it is a public necessity to exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution all personal financial and health information of a consumer, underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to those lines transacted by the insurer, personnel and payroll records of an insurer, and consumer claim files that are made or received by the Department of Financial Services acting as receiver as to an insurer. Disclosure of financial, health, underwriting, personnel, payroll, or consumer claim information would create the opportunity for theft or fraud, thereby jeopardizing the financial security of a person. Limiting disclosure of such information held by the department is also necessary in order to protect the financial interests of the persons to whom that

information pertains. Such information could be used for fraudulent or other illegal purposes, including identity theft, and could result in substantial financial harm. Furthermore, every person has an expectation of and a right to privacy in all matters concerning his or her financial interests. The Legislature further finds that it is a public necessity that health information held by the department be made confidential and exempt because matters of personal health are traditionally private and confidential concerns between the patient and his or her health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors. Moreover, public disclosure of health information could have a negative effect upon a person's business and personal relationships and could also have detrimental financial consequences.

(2)(a) The Legislature further finds that it is a public necessity to exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution the following records held by the department:

1. An own-risk and solvency assessment (ORSA) summary report, a substantially similar ORSA summary report, and supporting documents submitted to the Office of Insurance Regulation pursuant to s. 628.8015, Florida Statutes;

2. A corporate governance annual disclosure and supporting documents submitted to the office pursuant to s. 628.8015,

Florida Statutes; and

3. Information received from the National Association of Insurance Commissioners, a governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity and which is held by the department for use in the performance of its duties relating to insurer solvency.

(b) In conducting an ORSA, an insurer or insurance group identifies and evaluates the material and relevant risks to the insurer or insurance group and the adequacy of capital resources to support these risks. The ORSA summary report, substantially similar ORSA report, and supporting documents contain highly sensitive and strategic financial information about an insurer or insurer group. Having a comprehensive and unbiased assessment provides the office with an effective early warning mechanism for preventing insolvencies and protecting policyholders and promotes a stable insurance market. Divulging the ORSA summary report, substantially similar ORSA summary report, and supporting documents will injure the insurer or insurance group by providing competitors with detailed insight into their financial position, risk management strategies, business plans, pricing and marketing strategies, management systems, and operational protocols.

(c) The corporate governance annual disclosure describes an insurer's governance structure and the internal practices and

procedures used in conducting the business affairs of the company, making strategic operational decisions affecting its competitive position, and managing its financial condition. Release of the corporate governance annual disclosure and supporting documents will injure the insurer or insurance group in the marketplace by providing competitors with the insurer's or the insurance group's confidential business information. Broad disclosure will give state regulators a thorough understanding of the corporate governance structure and internal policies and practices used by insurers and promote market integrity. Effective governance mechanisms will enable insurers to take any necessary corrective actions and achieve strategic goals while allowing the office to perform its regulatory duties effectively and efficiently.

(d) Divulgence of confidential or exempt information received from the National Association of Insurance Commissioners or governments could impede the exchange of information and communication among regulators across multiple agencies and jurisdictions and jeopardize the ability of regulators to effectively supervise insurers and groups operating in multiple jurisdictions and engaged in significant cross-border activities.

Section 3. This act shall take effect July 1, 2020.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1439 Bank Property of Deceased Account Holders
**SPONSOR(S):** Yarborough
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 380, HB 397

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | | Hinshelwood | Cooper |
| 2) Civil Justice Subcommittee | | | |
| 3) Commerce Committee | | | |

## SUMMARY ANALYSIS

Probate is a court-supervised process that ensures a deceased person's (decedent's) debts are paid in an orderly fashion and that the rightful beneficiaries, whether determined according to a will or by default rules of succession, receive the property to which they are entitled. Assets subject to probate are those that were owned in the decedent's sole name at death or that were owned by the decedent and one or more co-owners but lacked a provision for automatic succession of ownership at death. Florida has two types of probate administration: formal administration for estates of any size and summary administration for estates generally under $75,000. Additionally, Florida has an abbreviated process for distributing small estates that consist of only personal property, such as money. To initiate this abbreviated process for the disposition of personal property, any interested party may file an informal application by affidavit, letter, or otherwise with the court. If the court is satisfied that the decedent's assets meet the criteria for this abbreviated process, the court may, by letter or other writing under the seal of the court, authorize the payment, transfer, or disposition of the personal property, tangible or intangible, belonging to the decedent to those persons entitled.

Under the Florida Disposition of Unclaimed Property Act, checking or savings accounts or certificates of deposit that remain dormant for five years are presumed unclaimed and must be turned over to the Department of Financial Services (DFS), which maintains a website at which members of the public can search for unclaimed property to which they may be entitled. A deceased owner's beneficiaries may claim the property by filing an affidavit with the DFS (no court order required) if all of the unclaimed property held by the DFS on behalf of the owner has an aggregate value of $10,000 or less and no probate proceeding is pending.

The bill authorizes certain family members of a decedent to present a sworn affidavit and certified death certificate to a financial institution in Florida and receive up to $10,000 from "qualified accounts" (depository accounts or certificates of deposit held in the sole name of the decedent without a pay-on-death or any other survivor designation) if the total amount of the combined funds in all qualified accounts at that financial institution is less than $10,000 and if at least two years have passed since the decedent's death. No court proceeding, order, or judgment is needed. The affidavit must contain a statement acknowledging that a personal representative has not been appointed to administer the decedent's estate and attesting that no probate proceeding or summary administration procedure has been commenced with respect to the estate. The affidavit must also include a statement acknowledging that the affiant has no knowledge of the existence of any last will and testament or other document or agreement relating to the distribution of the decedent's estate. The financial institution is not required to determine whether the contents of the sworn affidavit are truthful, and the financial institution is fully released and discharged from further liability for the amount paid.

The bill has no fiscal impact on state or local governments and an indeterminate impact on the private sector.

The bill provides an effective date of July 1, 2020.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Regulation of Depository Financial Institutions

The U.S. dual banking system allows commercial banks to become chartered (organized) under either federal or state law:

- National banks are chartered under federal law, i.e., the National Bank Act.[1] Their primary federal regulator is the Office of the Comptroller of the Currency, an independent agency within the U.S. Department of the Treasury.
- State-chartered banks are chartered under the laws of the state in which the bank is headquartered. The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System. The primary federal regulator for non-members is the Federal Deposit Insurance Corporation (FDIC).[2]

In addition to having a federal regulator, state-chartered banks are regulated by their chartering state. In Florida, the state regulatory agency for financial institutions is the Office of Financial Regulation (OFR).[3] The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes (FI Codes) and the rules promulgated thereunder.[4] The OFR also ensures that Florida-chartered financial institutions comply with state and applicable federal requirements for safety and soundness.[5] The OFR does not regulate federally chartered financial institutions or financial institutions chartered by other states.

Like banks, credit unions accept deposits and make loans, and can be state-chartered or federally-chartered:

- State-chartered credit unions may be formed under the Florida Credit Union Act (FCUA), which became law in 1980.[6] The FCUA provides that "[a] credit union is a cooperative, nonprofit association, organized . . . for the purposes of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition."[7] State-chartered credit unions have both a state regulator, the OFR, and a federal regulator, the National Credit Union Association (NCUA).
- Federally-chartered credit unions are chartered under the Federal Credit Union Act of 1934[8] and are regulated by the NCUA.

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[1]The National Bank Act of 1964 (12 U.S.C. § 24 Seventh) gives enumerated powers and "all such incidental powers as shall be necessary to carry on the business of banking" to nationally chartered banks. To prevent inconsistent or intrusive state regulation from impairing the national system, Congress provided: "No national bank shall be subject to any visitorial powers except as authorized by Federal law." *Id.* at § 484(a).

[2]12 U.S.C. § 1813(q).

[3]s. 20.121(3)(a)2., F.S.

[4]Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

[5]While the FI Codes do not specifically define "safety and soundness," the FI Codes define "unsafe and unsound practice" as "any practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved." *See* s. 655.005(1)(y), F.S. For a discussion of the FDIC's approach to unsafe or unsound practices, see FDIC's Risk Management Manual of Examination Policies, Section 15.1, at: https://www.fdic.gov/regulations/safety/manual/section15-1.pdf (last visited Jan. 24, 2020).

[6] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.

[7] s. 657.003, F.S.

[8] Public Law 73-467, codified at 12 U.S.C. § 1751 *et seq.*

The FI Codes currently provide that "[t]he books and records pertaining to . . . the deposit accounts . . . of depositors . . . [and] members . . . of any financial institution shall be kept confidential by the financial institution and its directors, officers, and employees and may not be released except upon express authorization of the account holder as to her or his own accounts . . . ."[9] The FI Codes provide limited exceptions to the confidential protection given such information.[10] One such exception states that a financial institution is not prohibited from disclosing financial information as authorized by the Gramm-Leach-Bliley Act,[11] as set forth in 15 U.S.C. s. 6802 relating to obligations with respect to disclosures of personal information.[12]

Probate Process in Florida

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent's debts, and distributing the decedent's assets to his or her beneficiaries.[13] Probate proceedings are governed by The Florida Probate Code found in chs. 731 – 735, F.S., and the Florida Probate Rules of court.[14] The probate process ensures that the decedent's debts are paid in an orderly fashion and that the rightful beneficiaries, whether determined according to a will or by default rules of succession, receive the property to which they are entitled.

Assets subject to probate are those that were owned in the decedent's sole name at death or that were owned by the decedent and one or more co-owners but lacked a provision for automatic succession of ownership at death.[15] The following are examples to illustrate common probate and non-probate assets:[16]

- A bank account or investment account in the sole name of a decedent is a probate asset; but a bank account or investment account owned by the decedent and payable on death or transferable on death to another, or held jointly with rights of survivorship with another, is not a probate asset.
- A life insurance policy, annuity contract or individual retirement account that is payable to a specific beneficiary is not a probate asset; but a life insurance policy, annuity contract, or individual retirement account payable to the decedent's estate is a probate asset.
- Real estate titled in the sole name of the decedent, or in the name of the decedent and another person as tenants in common, is a probate asset (unless it is homestead property); but real estate titled in the name of the decedent and one or more other persons as joint tenants with rights of survivorship is not a probate asset.
- Property owned by spouses as tenants by the entirety is not a probate asset on the death of the first spouse to die; it goes automatically to the surviving spouse.

There are two types of probate administration in Florida: formal administration and summary administration.

*Formal Administration*

Any interested person[17] may petition the court to begin administration of the decedent's estate.[18] Venue

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[9] S. 655.059(2)(b), F.S.
[10] *Id.*
[11] Pub. L. 106-102.
[12] S. 655.059(2)(b)1., F.S.
[13] The Florida Bar, *Consumer Pamphlet: Probate in Florida*, https://www.floridabar.org/public/consumer/pamphlet026/ (last visited Jan. 24, 2020).
[14] Available at https://www-media.floridabar.org/uploads/2020/01/Probate-Rules-01-01-20.pdf (last visited Jan. 24, 2020).
[15] The Florida Bar, *supra* note 13.
[16] *Id.*
[17] "Interested person" is defined as "any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent's estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor's estate. The term does not include a beneficiary who has received complete distribution. The

is proper in the county where the decedent was domiciled.[19] If the decedent left a will, the custodian of the will must deposit the original copy of the will with the clerk of the court having venue of the decedent's estate within 10 days of receiving information that the decedent died.[20]

The probate proceedings are presided over by a circuit court judge. The judge will determine whether the decedent's will, if any, is valid. If the decedent had no will or the will is invalid, the decedent is said to have died intestate. The estate will be administered by a personal representative who is a fiduciary appointed by the court.[21] If the decedent had a valid will that named a person to serve as the personal representative, the court will appoint the named person so long as that person is qualified to serve as such.[22] If the decedent did not leave a will, the surviving spouse is given first preference to serve as the personal representative.[23]

The judge will issue letters of administration in order to grant authority to the personal representative to act on behalf of the decedent's estate.[24] It is recommended that a personal representative engage a qualified attorney to assist in the administration of the decedent's probate estate.[25] Many legal issues arise, even in the simplest probate estate administration, and most of these issues will be novel and unfamiliar to non-attorneys.[26] The attorney for the personal representative advises the personal representative on the rights and duties under the law, and represents the personal representative in probate estate proceedings.[27] The attorney for the personal representative is not the attorney for any of the beneficiaries of the decedent's probate estate.[28]

The personal representative must:[29]

- Identify, gather, value, and safeguard the decedent's probate assets.
- Publish a notice to creditors in a local newspaper in order to give notice to potential claimants to file claims in the manner required by law.
- Serve a notice of administration to provide information about the probate estate administration and notice of the procedures required to be followed by those having any objection to the administration of the decedent's probate estate.
- Conduct a diligent search to locate known or reasonably ascertainable creditors, and notify these creditors of the time by which their claims must be filed.
- Object to improper claims and defend suits brought on such claims.
- Pay valid claims.
- File tax returns and pay any taxes properly due.
- Employ professionals to assist in the administration of the probate estate; for example, attorneys, certified public accountants, appraisers, and investment advisers.
- Pay expenses of administering the probate estate.
- Pay statutorily required amounts to the decedent's surviving spouse or family.
- Distribute probate assets to beneficiaries.
- Close the probate estate.

The Florida Probate Code provides the order and priority of distributions from the decedent's estate. In general, the decedent's assets are used first to pay the cost of the probate proceeding; then assets are

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meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings." S. 731.201(23), F.S.

[18] S. 733.202, F.S.

[19] S. 733.101(1), F.S.

[20] S. 732.901(1), F.S.

[21] Ss. 731.201(28) and 733.602, F.S.

[22] *See* ch. 733, part III, F.S., for qualifications and disqualifications.

[23] S. 733.301(1)(b), F.S.

[24] S. 731.201(24), F.S.

[25] The Florida Bar, *supra* note 13.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*; ch. 733, parts VI-IX, F.S.

used to pay the decedent's funeral expenses, followed by payment of the decedent's outstanding debts, and the remainder is distributed to the decedent's beneficiaries.[30]

As previously noted, the personal representative must use diligent efforts to give actual notice of the probate proceeding to known or reasonably ascertainable creditors, and the personal representative must publish a notice to creditors in a local newspaper in order to give notice to other potential claimants. Creditors' claims are barred unless filed in the probate proceeding within the later of three months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor.[31] The decedent's estate, personal representative, and beneficiaries are no longer liable for any claim or cause of action against the decedent two years after the decedent's death, regardless of whether letters of administration have been issued.[32] This is often referred to as the "non-claim statute".

The judge presiding over the probate proceeding will consider evidence to confirm the identities of beneficiaries who are entitled to receive property from the decedent's probate estate. A Florida resident does have the right to entirely disinherit anyone.[33] However, the decedent's surviving spouse and children may be entitled to receive assets from the decedent's probate estate, even if the decedent's will gives them nothing.[34] Florida law protects the decedent's surviving spouse and certain surviving children from total disinheritance.[35] For example:[36]

- Homestead protection: A surviving spouse may have rights in the decedent's homestead real property.[37]
- Elective share: A surviving spouse may have the right to claim an "elective share" from the decedent's probate estate. The elective share is, generally speaking, 30 percent of all of the decedent's assets, including any assets that are non-probate assets.[38]
- Family allowance: A surviving spouse or the decedent's children may have the right to a family allowance to provide them with funds (up to $18,000) before final distribution of the estate assets.[39]
- Pretermitted spouse or children: If the decedent married, or had children, after the date of the decedent's last will, and if the decedent neglected to provide for the new spouse or children, an omitted family member may nevertheless be entitled to a share of the decedent's probate estate.[40]

If a decedent left no will or if any part of the decedent's estate is not effectively disposed of by will, the decedent's property will pass to the decedent's heirs as prescribed by default rules of intestate succession.[41]

The intestate share of the surviving spouse is as follows:[42]

- If there is no surviving descendant of the decedent, the entire intestate estate.
- If the decedent is survived by one or more descendants, all of whom are also descendants of the surviving spouse, and the surviving spouse has no other descendant, the entire intestate estate.
- If there are one or more surviving descendants of the decedent who are not lineal descendants of the surviving spouse, one-half of the intestate estate.

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[30] The Florida Bar, *supra* note 13.
[31] S. 733.702(1), F.S.
[32] S. 733.710, F.S.
[33] The Florida Bar, *supra* note 13.
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] Art. X, s. 4, Fla. Const.; ss. 732.401 and 732.4015, F.S.
[38] Ch. 732, part II, F.S.
[39] Ss. 732.403 and 733.707(1)(e), F.S.
[40] Ss. 732.301 and 732.302, F.S.
[41] S. 732.101, F.S.; ch. 732, part I, F.S.
[42] S. 732.102, F.S.

- If there are one or more surviving descendants of the decedent, all of whom are also descendants of the surviving spouse, and the surviving spouse has one or more descendants who are not descendants of the decedent, one-half of the intestate estate.

The part of the intestate estate not passing to the surviving spouse as described above, or the entire intestate estate if there is no surviving spouse, descends as follows:[43]

- To the descendants of the decedent.
- If there is no descendant, to the decedent's father and mother equally, or to the survivor of them.
- If there is none of the foregoing, to the decedent's brothers and sisters and the descendants of deceased brothers and sisters.
- If there is none of the foregoing, the estate must be divided: one-half to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order:
    - To the grandfather and grandmother equally, or to the survivor of them.
    - If there is no grandfather or grandmother, to uncles and aunts and descendants of deceased uncles and aunts of the decedent.
    - If there is either no paternal kindred or no maternal kindred, the estate must go to the other kindred who survive, in the order stated above.
- If there is no kindred of either part, the whole of the property must go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.

Descent of inheritance under the above intestate succession statutes must be per stirpes.[44] If property descends to the decedent's collateral kin and part of the collateral kin are of the whole blood to the decedent and the other part of the half blood, the half-blooded kin inherit only half as much as the whole-blooded kin.[45] Heirs of the decedent conceived before his or her death, but born thereafter, inherit intestate property as if they had been born in the decedent's lifetime.[46] With some exceptions, an adopted person is a descendant of the adopting parent, is one of the natural kindred of all members of the adopting parent's family, is not a descendant of his or her natural parents, and is not one of the kindred of any member of the natural parent's family or any prior adoptive parent's family.[47] A person born out of wedlock is a descendant of his or her father and is one of the natural kindred of all members of the father's family if the natural parents eventually married or if paternity has otherwise been established.[48] A natural or adoptive parent is barred from inheriting from or through a child if the natural or adoptive parent's parental rights were terminated prior to the death of the child, and the natural or adoptive parent must be treated as if the parent predeceased the child.[49]

*Summary Probate Administration*

Summary administration is an alternative to the formal administration process that is generally faster and less costly than formal administration. For example, a personal representative is not appointed and, therefore, no fee need be paid to such a person. Additionally, the shorter process can result in lower attorney's fees. Summary administration is available only if the decedent has been dead for more than two years or if the value of the estate subject to administration in Florida (less the value of property

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[43] S. 732.103, F.S.

[44] Distribution per stirpes means that the inherited property is "[p]roportionately divided between beneficiaries according to their deceased ancestor's share." BLACK'S LAW DICTIONARY 1181 (8th ed. 2004). In other words, if an estate is distributed per stirpes, individuals within each generation of the family receive an equal distribution of the estate. Distribution per stirpes differs from distribution per capita in which individuals within the same class (for example, all living descendants of the decedent) inherit equally. Distribution per capita can result in individuals within the same generation inheriting differing amounts if other members in that generation had children but predeceased the decedent.

[45] S. 732.105, F.S.

[46] S. 732.106, F.S.

[47] S. 732.108, F.S.

[48] *Id.*

[49] S. 732.1081, F.S.

which is exempt from the claims of creditors[50]) is less than $75,000.[51] Summary administration is not available if a decedent's will specifically directs formal administration.[52]

A petition for summary administration may be filed by any beneficiary or person nominated as personal representative in the decedent's will.[53] The petition must be signed and verified by any surviving spouse and any beneficiaries who will not receive a full distributive share under the proposed distribution.[54] However, any other beneficiary must be served with formal notice of the petition.[55] Once the court receives the petition for summary administration and is satisfied that the estate qualifies, the court issues an order of summary administration allowing immediate distribution of assets to the persons entitled to them.[56]

If the decedent passed away more than two years before the filing of the petition for summary administration, creditors' claims do not need to be addressed in the summary administration proceeding because Florida's non-claim statute effectively bars any creditors' claims that are not brought within two years of the decedent's death.[57] If the decedent passed away less than two years before the filing of the petition for summary judgment, the petitioner is required to make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, serve a copy of the petition on those creditors, and make provision for payment for those creditors to the extent that assets are available.[58] As for those creditors who are not known or reasonably ascertainable, if proof of publication of a specified notice to creditors has been filed with the court, all claims and demands of such creditors are forever barred unless their claims are filed within three months after the first publication of the notice.[59]

Those who receive a distribution of estate assets generally remain liable for claims against the decedent for two years after the date of death.[60] The following parties are entitled to receive reasonable attorney's fees and costs if they prevail in an action to enforce their claim:

- Any known or reasonably ascertainable creditor who did not receive notice and for whom provision for payment was not made.[61]
- Any heir or devisee[62] of the decedent who was lawfully entitled to share in the estate but who was not included in the order of summary administration and distribution.[63]

If the decedent owned a homestead in Florida, the heirs may not automatically have clear title such that the property can later be sold. The heirs may be required to get a court to issue an order determining homestead, which is a process that can be accomplished alongside or as part of a summary administration proceeding.[64] If the Florida homestead is the only asset in the decedent's probate estate, it will qualify for summary administration regardless of the value of the homestead because the value of Florida homestead property is not counted for purposes of determining whether the estate meets the $75,000 limitation for summary administration.

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[50] For example, homestead property that is protected from creditors' claims by Art. X, s. 4, Fla. Const.
[51] S. 735.201(1), F.S.
[52] *Id.*
[53] S. 735.203(1), F.S.
[54] *Id.*
[55] *Id.*
[56] S. 735.206(3), F.S.
[57] S. 733.710, F.S.
[58] S. 735.206(2), F.S.
[59] S. 735.2063, F.S.
[60] S. 735.206(4)(d)-(f), F.S.
[61] S. 735.206(4)(d), F.S.
[62] "Devisee" means "[a] recipient of property by will." BLACK'S LAW DICTIONARY 484 (8th ed. 2004).
[63] S. 735.206(4)(g), F.S.
[64] The value of homestead property is not counted for purposes of determining whether the decedent's probate estate falls within the cap of $75,000 for summary administration.

*Disposition of Personal Property Without Administration*

Disposition of personal property without administration is yet another alternative to the formal administration process and is a more abbreviated process than summary administration.[65] It is available only if the decedent's probate estate consists solely of the following:[66]

- Personal property classified as exempt under the provisions of s. 732.402, F.S., such as household furnishings up to a net value of $20,000 and two vehicles;
- Personal property exempt from the claims of creditors under the Florida Constitution, such as personal property valued at $1,000 or less;[67] and
- Non-exempt personal property valued at less than the sum of:
    - The amount of preferred funeral expenses, and
    - The amount of reasonable and necessary medical and hospital expenses incurred in the last 60 days of the decedent's final illness.

Personal property is anything that is movable (e.g., money and jewelry) or intangible (e.g., stocks and bonds).[68]

To initiate this abbreviated process, any interested party may file an informal application by affidavit, letter, or otherwise with the court.[69] If the court is satisfied that the decedent's assets meet the criteria for this abbreviated process, the court may, by letter or other writing under the seal of the court, authorize the payment, transfer, or disposition of the personal property, tangible or intangible, belonging to the decedent to those persons entitled.[70] Any person, firm, or corporation paying, delivering, or transferring property under the court's authorization is forever discharged from liability thereon.[71]

Escheated and Unclaimed Property

When a person dies leaving an estate without being survived by any person entitled to a part of it, that part reverts to the state.[72] Such property is said to "escheat to the state".[73] Property that escheats must be sold as provided in the Florida Probate Rules and the proceeds paid to Florida's Chief Financial Officer, who heads the Department of Financial Services (DFS), and deposited in the State School Fund.[74] A person claiming to be entitled to the proceeds may, within 10 years after the payment to the Chief Financial Officer, petition the court to assert entitlement to the proceeds.[75] If no claim is timely asserted, the state's right to the proceeds becomes absolute.[76]

Similarly, abandoned and unclaimed property must be turned over to the DFS under the Florida Disposition of Unclaimed Property Act (Act). Under the Act, the Division of Unclaimed Property, a division within the DFS, is responsible for receiving abandoned property, attempting to locate the rightful owner, and returning the property or proceeds to the owner. The Act protects the interests of missing owners of property while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. There is no statute of limitations in the Act for an owner's claim; the owner may claim his or her property at any time and at no cost.

Generally, all intangible property, including any income thereon less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than five years after the property becomes payable or distributable, unless

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[65] S. 735.301, F.S.
[66] S. 735.301(1), F.S.
[67] Art. X, s. 4(a)(2), Fla. Const.
[68] BLACK'S LAW DICTIONARY 1254 (8th ed. 2004).
[69] S. 735.301(2), F.S.
[70] *Id.*
[71] *Id.*
[72] S. 732.107, F.S.
[73] *Id.*
[74] *Id.*; s. 20.121(1), F.S.; s. 733.816, F.S.
[75] S. 732.107, F.S.; s. 733.816, F.S.
[76] *Id.*

otherwise provided in the Act.[77] For particular kinds of property, the Act provides varying time periods to trigger a finding that such property is presumed unclaimed and must be turned over to the DFS. For example, the presumption of unclaimed property arises for:

- *Traveler's checks* 15 years after its issuance if, within that time, the owner has not communicated in writing with the issuer concerning it or otherwise indicated an interest in it.[78]
- *Money orders* 7 years after its issuance if, within that time, the owner has not communicated in writing with the issuer concerning it or otherwise indicated an interest in it.[79]
- *Sums payable on a check, draft, or similar instrument on which a banking or financial organization is directly liable* 5 years after it was payable, or after its issuance if payable on demand, if, within that time, the owner has not communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest in it.[80]
- *Checking or savings deposits or a certificate of deposit, including interest or dividends thereon, held by a banking or financial organization* 5 years after the owner last:
    - Increased or decreased the amount of the deposit;
    - Increased or decreased the amount of another deposit with the banking or financial organization so long as the banking or financial organization communicates in writing, at the address to which communications regarding the other deposit are regularly sent, with the owner with regard to the deposit that would otherwise be presumed unclaimed;
    - Communicated with the banking or financial organization concerning the property;
    - Otherwise indicated an interest in the property;
    - Communicated in writing with the banking or financial organization concerning another relationship with such banking or financial organization;
    - Otherwise indicated an interest concerning another relationship with such banking or financial organization so long as the banking or financial organization communicates in writing, at the address to which communications regarding the other relationship are regularly sent, with the owner with regard to the property that would otherwise be presumed unclaimed.[81]
- *Intangible property held by fiduciaries* 5 years after it has become payable or distributable if, within that time, the owner has not increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest in it.[82]
- *Intangible property held by fiduciaries under trust instruments* 2 years after it has become payable or distributable if, within that time, the owner has not increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest in it.[83]
- *Tangible and intangible property held by a banking or financial organization in a safe-deposit box* 3 years after the lease or rental period on the box has expired.[84]

Holders of unclaimed property are required to file an annual report of unclaimed property with the DFS, and must transmit the unclaimed property with the report, between January 1 and May 1 of each year.[85] The report and transmittal must include all property considered unclaimed in the previous calendar year.[86] Holders of inactive accounts having a value of $50 or more are required to use due diligence to locate and notify the apparent owners at least 60 days but not more than 120 days prior to filing the report of unclaimed property with the DFS.[87] The report of unclaimed property must contain certain

[77] S. 717.102(1), F.S.
[78] S. 717104(1), F.S.
[79] S. 717.104(2), F.S.
[80] S. 717.105, F.S.
[81] S. 717.106, F.S.
[82] S. 717.112(1), F.S.
[83] S. 717.1125, F.S.
[84] S. 717.116, F.S.
[85] Ss. 717.117(3) and 717.119, F.S.
[86] *Id.*
[87] S. 717.117(4), F.S.

identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address.[88]

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.[89] Any person who pays or delivers property to the DFS in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.[90] The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.[91] Claims for recovery of unclaimed property may be filed by or on behalf of any person with an interest in the property.[92] The DFS maintains a website at which members of the public can search for unclaimed property to which they may be entitled.[93]

The Act provides a process for a deceased owner's beneficiaries to claim the property without an order of a probate court if all of the unclaimed property held by the DFS on behalf of the owner has an aggregate value of $10,000 or less and no probate proceeding is pending.[94] To do so, the claimant must file with the DFS an affidavit, signed by all beneficiaries, stating that all the beneficiaries have amicably agreed among themselves upon a division of the estate and that all funeral expenses, expenses of the last illness, and any other lawful claims have been paid.[95] The claimant must provide any additional information reasonably necessary to make a determination of entitlement.[96] If the owner died testate,[97] the claim must be accompanied by a copy of the will.[98] Each person receiving property under this process is personally liable for all lawful claims against the estate of the owner, but only to the extent of the value of the property received by such person under this process, exclusive of the property exempt from claims of creditors under the constitution and laws of Florida.[99] Any heir or devisee of the owner, who was lawfully entitled to share in the property but did not receive his or her share of the property, may enforce his or her rights in appropriate proceedings against those who received the property and will be awarded costs and attorney's fees.[100]

The DFS is required to make a determination on a claim within 90 days.[101] If a claim is determined in favor of the claimant, the DFS must deliver or pay over to the claimant the property or the amount the DFS actually received or the proceeds, if it has been sold by the DFS.[102] All proceeds from unclaimed property are deposited by the DFS into the Unclaimed Property Trust Fund.[103] The DFS is allowed to retain up to $15 million to make prompt payment on verified claims and to cover costs incurred by the DFS in administering and enforcing the Act.[104] All remaining funds must be deposited into the State School Fund to be used for public education.[105]

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[88] S. 717.117(1), F.S.
[89] S. 717.1201, F.S.
[90] *Id.*
[91] S. 717.117 and 717.124, F.S.
[92] S. 717.124, F.S.
[93] FLTreasureHunt.gov, https://www.fltreasurehunt.gov/ (last visited Jan. 24, 2020).
[94] S. 717.1243, F.S.
[95] *Id.*
[96] *Id.*
[97] "Testate" means "[h]aving left a will at death." BLACK'S LAW DICTIONARY 1514 (8th ed. 2004).
[98] S. 717.1243, F.S.
[99] *Id.*
[100] S. 717.1243, F.S.
[101] S. 717.124(1), F.S.
[102] S. 717.124, F.S.
[103] S. 717.123, F.S.
[104] *Id.*
[105] *Id.*

Filing and Disclosure of Death Certificates in Florida

The Florida Vital Statistics Act directs the Department of Health (DOH), to establish the Bureau of Vital Statistics (Bureau)[106] under the direction of a state registrar for the uniform and efficient registration, compilation, storage, and preservation of all vital records[107] in this state.[108] The DOH is also responsible for establishing registration districts throughout the state and appointing a local registrar of vital statistics for each registration district.

A certificate for each death or fetal death that occurs in Florida must be filed within 5 days after such death and prior to the final disposition of the dead body or fetus.[109] Final disposition means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.[110] The registration of the death certificate may be submitted via the DOH's electronic death registration system to the Bureau on a form prescribed by the DOH, or to the local registrar of the district in which the death occurred.

The DOH must provide a certified copy of all or part of a death or fetal death certificate, excluding any portions that are confidential and exempt from public disclosure, to any person requesting it upon receipt of a request and payment of the prescribed fee.[111] All information relating to cause of death in all death and fetal death records is confidential and exempt from public disclosure.[112] Additionally, social security numbers are confidential and exempt from public disclosure.[113] However, 50 years after the date of death, the portions of a certificate of death which were exempt from public disclosure lose such protection, though the social security number information remains confidential and exempt.[114] A certification of the death or fetal death certificate which includes the confidential portions, such as cause of death and social security number, may be issued only:[115]

- To the decedent's spouse or parent;
- To the decedent's child, grandchild, or sibling, if of legal age;
- To any person who provides an executed will, insurance policy, or other document that demonstrates his or her interest in the estate of the decedent;
- To any person who provides documentation that he or she is acting on behalf of any of the above-named persons;
- To any agency of the state or local government or the United States for official purposes upon approval of the DOH; or
- Upon order of any court of competent jurisdiction.

**Effect of the Bill**

The bill amends s. 655.059, F.S., to correct the citation to the Gramm-Leach-Bliley Act and to provide another exception to the general rule that a financial institution's books and records relating to deposit accounts must be kept confidential by the financial institution. The new exception states that a financial institution is not prohibited from disclosing the existence of and amounts on deposit in any qualified account of a decedent pursuant to s. 655.795, F.S., and providing a copy of any affidavit delivered to the financial institution pursuant thereto, to a person authorized to receive such information under s. 655.795, F.S.

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[106] Although the statute refers to an Office of Vital Statistics, it has been established as the Bureau of Vital Statistics within DOH.
[107] A vital record is defined as certificates or reports of birth, death, fetal death, marriage, dissolution of marriage, certain name changes, and data related thereto. S. 382.001(17), F.S.
[108] S. 382.003, F.S.
[109] S. 382.008, F.S.
[110] S. 382.002(9), F.S.
[111] S. 382.025(2)(a), F.S.
[112] S. 382.008(6), F.S.
[113] S. 119.071(5)(a)5., F.S.
[114] *Id.*; s. 382.025(2)(b), F.S.
[115] S. 382.025(2)(a), F.S.

The bill creates s. 655.795, F.S., to authorize certain family members of a decedent to present a sworn affidavit to a financial institution in this state and receive up to $10,000 from "qualified accounts", defined as depository accounts or certificates of deposit held in the sole name of the decedent without a pay-on-death or any other survivor designation. The bill does not require a court proceeding, order, or judgment in order for the family member to receive the funds. Family members authorized to present the sworn affidavit to the financial institution are as follows:

- The surviving spouse of the decedent;
- An adult child of the decedent if the decedent left no surviving spouse;
- An adult descendant of the decedent if the decedent left no surviving spouse and no surviving adult child; or
- A parent of the decedent if the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

The financial institution may pay the funds to the authorized family member if the total amount of the combined funds in all qualified accounts at that financial institution do not exceed an aggregate of $10,000 and if at least two years have passed since the decedent's death.

In order to receive the funds, the authorized family member must provide the financial institution with a certified copy of the decedent's death certificate and a sworn affidavit that includes all of the following:

- A statement attesting that the affiant is the surviving spouse, adult child, adult descendant, or parent of the decedent.
    - If the affiant is an adult child of the decedent, the affidavit must attest that the decedent left no surviving spouse.
    - If the affiant is an adult descendant of the decedent, the affidavit must attest that the decedent left no surviving spouse and no surviving adult child.
    - If the affiant is a parent of the decedent, the affidavit must attest that the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.
- The date of death and the address of the decedent's last residence.
- A statement attesting that the total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of $10,000.
- A statement acknowledging that a personal representative has not been appointed to administer the decedent's estate and attesting that no probate proceeding or summary administration procedure has been commenced with respect to the estate.
- A statement attesting that the affiant has been provided with and has read the provisions of s. 655.795, F.S., which identify each of the family members of the decedent[116] and attesting that notarized letters of all of the family members of the decedent other than the affiant consenting to the affiant's funds withdrawal are attached. The natural parent or guardian of any person who is a minor may give consent on behalf of such person.
- A statement acknowledging that the affiant has no knowledge of the existence of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.
- A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution's obligation regarding the amount paid.
- A statement acknowledging that the affiant understands that he or she is personally liable to the persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.

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[116] The bill defines "family members of the decedent" to mean:

1. The surviving spouse of the decedent;
2. If the decedent left one or more eligible children: the surviving spouse of the decedent, the surviving eligible children, and the surviving descendants of any deceased eligible child;
3. If the decedent left no surviving spouse: the surviving children of the decedent and the surviving descendants of any deceased child of the decedent; or
4. If the decedent left no surviving spouse, no surviving child, and no surviving descendant: the surviving parents of the decedent.

The term "eligible child" means a child of the decedent who is not also the child of the surviving spouse of the decedent.

- A statement acknowledging that the affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

The bill provides the substance of the sworn affidavit that would satisfy the bill's requirements. The financial institution must maintain a copy or an image of the affidavit for seven years after releasing the funds. If a family member of the decedent requests a copy of the affidavit during such time, the financial institution may provide a copy of the affidavit to the requesting family member of the decedent.

The financial institution is not required to determine whether the contents of the sworn affidavit are truthful. The payment of the funds by the financial institution to the affiant constitutes the financial institution's full release and discharge regarding the amount paid. A person does not have a right or cause of action against the financial institution for taking an action, or for failing to take an action, in connection with the affidavit or the payment of the funds.

The authorized family member who withdraws the funds is personally liable to any person rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the authorized family member's share.

In addition to any other penalty provided by law, a person who knowingly makes a false statement in a sworn affidavit given to a financial institution to receive a decedent's funds under this section commits theft, punishable as provided in s. 812.014.

Upon presentation of a decedent's death certificate to a financial institution not less than two years after the decedent's death, the financial institution may release information on the existence of and amounts contained in any qualified account of the decedent at the financial institution to the following persons:

- A surviving spouse who presents a copy of a marriage certificate evidencing the spouse's marriage to the decedent; or
- An adult child of the decedent who presents a copy of a birth certificate evidencing that the decedent is the parent of the adult child.

The bill takes effect July 1, 2020.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 655.059, F.S., relating to access to books and records; confidentiality; penalty for disclosure.

**Section 2.** Creates s. 655.795, F.S., relating to payment to surviving successor without court proceeding.

**Section 3.** Provides an effective date of July 1, 2020.

## 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:

The impact on the private sector is indeterminate. The affidavit process created by the bill may prevent families from incurring court costs and attorney fees to probate the decedent's estate in order to obtain the funds prior to the funds being given to the state as unclaimed property after five years. However, the authorized family member who withdraws the funds is personally liable to any person rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the authorized family member's share. A decedent's family may still incur court costs and attorney fees following the withdraw of funds if there is subsequent disagreement or confusion as to how much each family member is owed or if the person who withdrew funds does not remit money to those rightfully entitled to the funds. Additionally, unlike in the summary administration process or the unclaimed property process, an heir or devisee rightfully owed money that he or she did not receive after funds were withdrawn from the financial institution will not be awarded attorney's fees and costs in an action to enforce the claim.[117]

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not require attestation that the value of the decedent's entire estate is under $10,000. Therefore, it is possible that the funds which a financial institution can release pursuant to the bill may be part of a larger probate estate that is otherwise subject to formal or summary administration proceedings under the Florida Probate Code.

[117] Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in an order of summary administration and distribution is entitled to receive reasonable attorney's fees and costs if they prevail in an action to enforce their claim. S. 735.206(4)(g), F.S. Similarly, the process for a beneficiary to receive up to $10,000 by filing an unclaimed property affidavit provides that any heir or devisee of the owner, who was lawfully entitled to share in the property but did not receive his or her share of the property, may enforce his or her rights in appropriate proceedings against those who received the property and will be awarded costs and attorney's fees. S. 717.1243, F.S.

The bill's prioritization of individuals defined as an "authorized family member" and "family members of the decedent" does not track the prioritization of the decedent's heirs as prescribed by the rules of intestate succession found in part I of ch. 732, F.S.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to bank property of deceased account holders; amending s. 655.059, F.S.; specifying that a financial institution is not prohibited from disclosing specified information and providing copies of specified affidavits to certain persons relating to deceased account holders; creating s. 655.795, F.S.; providing definitions; authorizing a financial institution to pay funds on deposit in certain accounts to the authorized family member of a decedent without any court proceeding, order, or judgment under certain circumstances; requiring the authorized family member to provide the financial institution a certified copy of the decedent's death certificate and a specified affidavit in order to receive the funds; providing an affidavit form that the authorized family member may use; providing that the financial institution has no duty to make certain determinations; specifying that a person does not have a right or cause of action against a financial institution for certain actions or for failing to take certain actions; providing liability for authorized family members; requiring a financial institution to maintain a copy or image of the affidavit for a specified time; authorizing the financial institution

to provide copies of the affidavit to certain persons; authorizing a financial institution to release certain information on specified accounts under certain circumstances; providing a criminal penalty; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (2) of section 655.059, Florida Statutes, is amended to read:

655.059 Access to books and records; confidentiality; penalty for disclosure.—

(2)

(b) The books and records pertaining to trust accounts and the deposit accounts and loans of depositors, borrowers, members, and stockholders of any financial institution shall be kept confidential by the financial institution and its directors, officers, and employees and may not be released except upon express authorization of the account holder as to her or his own accounts, loans, or voting rights. However, information relating to any loan made by a financial institution may be released without the borrower's authorization in a manner prescribed by the board of directors for the purpose of meeting the needs of commerce and for fair and accurate credit information. Information may also be released, without the

authorization of a member or depositor but in a manner prescribed by the board of directors, to verify or corroborate the existence or amount of a customer's or member's account when such information is reasonably provided to meet the needs of commerce and to ensure accurate credit information. In addition, a financial institution, affiliate, and its subsidiaries, and any holding company of the financial institution or subsidiary of such holding company, may furnish to one another information relating to their customers or members, subject to the requirement that each corporation receiving information that is confidential maintain the confidentiality of such information and not provide or disclose such information to any unaffiliated person or entity. Notwithstanding this paragraph, this subsection does not prohibit:

1. A financial institution from disclosing financial information as referenced in this subsection as authorized ~~by Pub. L. No. 106-102 (1999), as set forth~~ in 15 U.S.C. s. 6802 (2010) ~~U.S.C.A. s. 6802, as amended~~.

2. The Florida office of the international banking corporation or international trust entity from sharing books and records under this subsection with the home-country supervisor in accordance with subsection (1).

3. A financial institution from disclosing the existence of and amounts on deposit in any qualified account of a decedent pursuant to s. 655.795, and providing a copy of any affidavit

delivered to the financial institution pursuant thereto, to a person authorized to receive such information under s. 655.795.

Section 2. Section 655.795, Florida Statutes, is created to read:

655.795 Payment to successor without court proceedings.—

(1) As used in this section, the term:

(a) "Authorized family member" means:

1. The surviving spouse of the decedent;

2. An adult child of the decedent if the decedent left no surviving spouse;

3. An adult descendant of the decedent if the decedent left no surviving spouse and no surviving adult child; or

4. A parent of the decedent if the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) "Child" includes a minor and an adult child of a person, unless the context clearly indicates otherwise.

(c) "Descendant" includes a minor and an adult descendant of a person, unless the context clearly indicates otherwise.

(d) "Eligible child" means a child of the decedent who is not also the child of the surviving spouse of the decedent.

(e) "Family members of the decedent" means:

1. The surviving spouse of the decedent;

2. If the decedent left one or more eligible children: the surviving spouse of the decedent, the surviving eligible

children, and the surviving descendants of any deceased eligible child;

3. If the decedent left no surviving spouse: the surviving children of the decedent and the surviving descendants of any deceased child of the decedent; or

4. If the decedent left no surviving spouse, no surviving child, and no surviving descendant: the surviving parents of the decedent.

(f) "Qualified account" means a depository account or certificate of deposit held in the sole name of the decedent without a pay-on-death or any other survivor designation.

(2) A financial institution in this state may pay to the authorized family member of a decedent, without any court proceeding, order, or judgment, the funds on deposit in all qualified accounts of the decedent at the financial institution if the total amount of the combined funds in the qualified accounts at the financial institution do not exceed an aggregate total of $10,000. The financial institution may not make such payment earlier than 2 years after the date of the decedent's death.

(3) In order to receive the funds described in subsection (2), the authorized family member must provide the financial institution with a certified copy of the decedent's death certificate and a sworn affidavit that includes all of the following:

(a) A statement attesting that the affiant is the surviving spouse, adult child, adult descendant, or parent of the decedent.

1. If the affiant is an adult child of the decedent, the affidavit must attest that the decedent left no surviving spouse.

2. If the affiant is an adult descendant of the decedent, the affidavit must attest that the decedent left no surviving spouse and no surviving adult child.

3. If the affiant is a parent of the decedent, the affidavit must attest that the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) The date of death and the address of the decedent's last residence.

(c) A statement attesting that the total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of $10,000.

(d) A statement acknowledging that a personal representative has not been appointed to administer the decedent's estate and attesting that no probate proceeding or summary administration procedure has been commenced with respect to the estate.

(e) A statement attesting that the affiant has been

provided with and has read the provisions of this section which identify each of the family members of the decedent and attesting that notarized letters of all of the family members of the decedent other than the affiant consenting to the affiant's funds withdrawal are attached. The natural parent or guardian of any person who is a minor may give consent on behalf of such person.

(f) A statement acknowledging that the affiant has no knowledge of the existence of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.

(g) A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution's obligation regarding the amount paid.

(h) A statement acknowledging that the affiant understands that he or she is personally liable to the persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.

(i) A statement acknowledging that the affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

(4) The authorized family member may use an affidavit in substantially the following form to fulfill the requirements of subsection (3):

AFFIDAVIT UNDER SECTION 655.795, FLORIDA STATUTES, TO OBTAIN BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ...(Name of decedent)...

State of ....

County of ....

Before the undersigned authority personally appeared ...(name of affiant)..., of ...(residential address of affiant)..., who has been sworn and says the following statements are true:

(a) The affiant is (initial one of the following responses):

.... The surviving spouse of the decedent.

.... A surviving adult child of the decedent, and the decedent left no surviving spouse.

.... A surviving adult descendant of the decedent, and the decedent left no surviving spouse and no surviving adult child.

.... A surviving parent of the decedent, and the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) As shown in the certified death certificate, the date of death of the decedent was ...(date of death)..., and the address of the decedent's last residence was ...(address of last residence)....

(c) The affiant is entitled to payment of the funds in the

decedent's depository accounts and certificates of deposit held by the financial institution ...(name of financial institution).... The total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of $10,000. The affiant requests full payment from the financial institution.

(d) A personal representative has not been appointed to administer the decedent's estate, and no probate proceeding or summary administration procedure has been commenced with respect to the estate.

(e) The affiant has been provided with and has read the provisions of s. 655.795, Florida Statutes, which identify each of the family members of the decedent, and (initial one of the following responses):

.... There are no family members of the decedent other than the affiant.

.... The family members of the decedent are ...(identify by name).... Notarized letters from all of the family members of the decedent other than the affiant consenting to the affiant's funds withdrawal are attached.

(f) The affiant has no knowledge of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.

(g) The payment of the funds constitutes a full release and discharge of the financial institution regarding the amount

paid.

(h) The affiant understands that he or she is personally liable to the persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.

(i) The affiant understands that making a false statement in this affidavit may be punishable as a criminal offense.

By ...(signature of Affiant)...

Sworn to and subscribed before me this .... day of .... by ...(name of Affiant)..., who is personally known to me or produced .... as identification, and did take an oath.

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

My commission expires: ...(date of expiration of commission)...

(5) The financial institution is not required to determine whether the contents of the sworn affidavit are truthful. The payment of the funds by the financial institution to the affiant constitutes the financial institution's full release and discharge regarding the amount paid. A person does not have a

right or cause of action against the financial institution for taking an action, or for failing to take an action, in connection with the affidavit or the payment of the funds.

(6) The authorized family member who withdraws the funds under this section is personally liable to any person rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the authorized family member's share.

(7) The financial institution shall maintain a copy or an image of the affidavit for 7 years after releasing the funds. If a family member of the decedent requests a copy of the affidavit during such time, the financial institution may provide a copy of the affidavit to the requesting family member of the decedent.

(8) Upon presentation of a decedent's death certificate to a financial institution not less than 2 years after the date of death of the decedent, the financial institution may release information on the existence of and amounts contained in any qualified account of the decedent at the financial institution to the following persons:

(a) A surviving spouse who presents a copy of a marriage certificate evidencing the spouse's marriage to the decedent; or

(b) An adult child of the decedent who presents a copy of a birth certificate evidencing that the decedent is the parent of the adult child.

(9) In addition to any other penalty provided by law, a person who knowingly makes a false statement in a sworn affidavit given to a financial institution to receive a decedent's funds under this section commits theft, punishable as provided in s. 812.014.

Section 3. This act shall take effect July 1, 2020.

## INSURANCE & BANKING SUBCOMMITTEE

## HB 1439 by Yarborough
## Bank Property of Deceased Account Holders

## AMENDMENT SUMMARY
## January 28, 2020

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**Amendment 1 by Rep. Yarborough (Strike-all):** The amendment:

- Amends the process by which a family member of a decedent (deceased person) who died intestate (without a will) may provide an affidavit to a financial institution in Florida and receive funds from the decedent's qualified accounts at the financial institution. Specifically, the amendment makes the following changes:
  - Moves the statute from the financial institutions codes to the Florida Probate Code.
  - Lowers from $10,000 to $1,000 the aggregate amount of qualified accounts that may be withdrawn from the financial institution.
  - Allows the financial institution to pay the funds to the affiant after six months rather than two years.
  - Removes the requirement that the affiant provide notarized letters of other family members consenting to the affiant's withdrawal of funds.
  - Adding that the affiant is personally liable to creditors and other persons rightfully entitled to the funds.
  - Requiring the financial institution to retain a copy of the affidavit in accordance with its customary retention policies rather than seven years.
- Creates a process by which a beneficiary of an intestate decedent may file an affidavit with the court to request distribution of certain assets of the decedent. This process is available if the intestate decedent left only personal property that is exempt from probate proceedings, personal property that is constitutionally protected from creditors' claims, and nonexempt personal property valued at less than the sum of $10,000 and certain funeral and medical expenses. The decedent must have died more than one year prior to the filing of the affidavit, and there must either be no Florida probate proceeding pending or it must have been previously granted.
- Makes other technical changes.

COMMITTEE/SUBCOMMITTEE ACTION

| | |
|---|---|
| ADOPTED | __ (Y/N) |
| ADOPTED AS AMENDED | __ (Y/N) |
| ADOPTED W/O OBJECTION | __ (Y/N) |
| FAILED TO ADOPT | __ (Y/N) |
| WITHDRAWN | __ (Y/N) |
| OTHER | _____ |

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Yarborough offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (2) of section 655.059, Florida Statutes, is amended to read:

655.059 Access to books and records; confidentiality; penalty for disclosure.—

(2)

(b) The books and records pertaining to trust accounts and the deposit accounts and loans of depositors, borrowers, members, and stockholders of any financial institution shall be kept confidential by the financial institution and its directors, officers, and employees and may not be released

except upon express authorization of the account holder as to her or his own accounts, loans, or voting rights. However, information relating to any loan made by a financial institution may be released without the borrower's authorization in a manner prescribed by the board of directors for the purpose of meeting the needs of commerce and for fair and accurate credit information. Information may also be released, without the authorization of a member or depositor but in a manner prescribed by the board of directors, to verify or corroborate the existence or amount of a customer's or member's account when such information is reasonably provided to meet the needs of commerce and to ensure accurate credit information. In addition, a financial institution, affiliate, and its subsidiaries, and any holding company of the financial institution or subsidiary of such holding company, may furnish to one another information relating to their customers or members, subject to the requirement that each corporation receiving information that is confidential maintain the confidentiality of such information and not provide or disclose such information to any unaffiliated person or entity. Notwithstanding this paragraph, this subsection does not prohibit:

1. A financial institution from disclosing financial information as referenced in this subsection as authorized ~~by Pub. L. No. 106-102 (1999), as set forth~~ in 15 U.S.C. s. 6802 (2010) ~~U.S.C.A. s. 6802, as amended~~.

2. The Florida office of the international banking corporation or international trust entity from sharing books and records under this subsection with the home-country supervisor in accordance with subsection (1).

3. A financial institution from disclosing the existence of and amounts on deposit in any qualified account of a decedent pursuant to s. 735.303 and from providing a copy of any affidavit delivered to the financial institution pursuant thereto, to a person authorized to receive such information under s. 735.303.

Section 2. Section 735.303, Florida Statutes, is created to read:

735.303 Payment to successor without court proceedings.—

(1) As used in this section, the term:

(a) "Family member" means:

1. The surviving spouse of the decedent;

2. An adult child of the decedent if the decedent left no surviving spouse;

3. An adult descendant of the decedent if the decedent left no surviving spouse and no surviving adult child; or

4. A parent of the decedent if the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) "Qualified account" means a depository account or certificate of deposit held by a financial institution in the

sole name of the decedent without a pay-on-death or any other survivor designation.

(2) A financial institution in this state may pay to the family member of a decedent, without any court proceeding, order, or judgment, the funds on deposit in all qualified accounts of the decedent at the financial institution if the total amount of the combined funds in the qualified accounts at the financial institution do not exceed an aggregate total of $1,000. The financial institution may not make such payment earlier than 6 months after the date of the decedent's death.

(3) In order to receive the funds described in subsection (2), the family member must provide the financial institution with a certified copy of the decedent's death certificate and a sworn affidavit that includes all of the following:

(a) A statement attesting that the affiant is the surviving spouse, adult child, adult descendant, or parent of the decedent.

1. If the affiant is an adult child of the decedent, the affidavit must attest that the decedent left no surviving spouse.

2. If the affiant is an adult descendant of the decedent, the affidavit must attest that the decedent left no surviving spouse and no surviving adult child.

3. If the affiant is a parent of the decedent, the affidavit must attest that the decedent left no surviving

spouse, no surviving adult child, and no surviving adult descendant.

(b) The date of death and the address of the decedent's last residence.

(c) A statement attesting that the total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of $1,000.

(d) A statement acknowledging that a personal representative has not been appointed to administer the decedent's estate and attesting that no probate proceeding or summary administration procedure has been commenced with respect to the estate.

(e) A statement acknowledging that the affiant has no knowledge of the existence of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.

(f) A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution's obligation regarding the amount paid.

(g) A statement acknowledging that the affiant understands that he or she is personally liable to the creditors of the decedent and other persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.

(h) A statement acknowledging that the affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

(4) The family member may use an affidavit in substantially the following form to fulfill the requirements of subsection (3):

AFFIDAVIT UNDER SECTION 735.303, FLORIDA STATUTES, TO OBTAIN BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ...(Name of decedent)...

State of ....

County of ....

Before the undersigned authority personally appeared ...(name of affiant)..., of ...(residential address of affiant)..., who has been sworn and says the following statements are true:

(a) The affiant is (initial one of the following responses):

.... The surviving spouse of the decedent.

.... A surviving adult child of the decedent, and the decedent left no surviving spouse.

.... A surviving adult descendant of the decedent, and the decedent left no surviving spouse and no surviving adult child.

.... A surviving parent of the decedent, and the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) As shown in the certified death certificate, the date of death of the decedent was ...(date of death)..., and the address of the decedent's last residence was ...(address of last residence)....

(c) The affiant is entitled to payment of the funds in the decedent's depository accounts and certificates of deposit held by the financial institution ...(name of financial institution).... The total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of $1,000. The affiant requests full payment from the financial institution.

(d) A personal representative has not been appointed to administer the decedent's estate, and no probate proceeding or summary administration procedure has been commenced with respect to the estate.

(e) The affiant has no knowledge of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.

(f) The payment of the funds constitutes a full release and discharge of the financial institution regarding the amount paid.

(g) The affiant understands that he or she is personally liable to the creditors of the decedent and other persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.

(h) The affiant understands that making a false statement in this affidavit may be punishable as a criminal offense.

By ...(signature of Affiant)...

Sworn to and subscribed before me this .... day of .... by ...(name of Affiant)..., who is personally known to me or produced .... as identification, and did take an oath.

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

My commission expires: ...(date of expiration of commission)...

(5) The financial institution is not required to determine whether the contents of the sworn affidavit are truthful. The payment of the funds by the financial institution to the affiant constitutes the financial institution's full release and discharge regarding the amount paid. A person does not have a

right or cause of action against the financial institution for taking an action, or for failing to take an action, in connection with the affidavit or the payment of the funds.

(6) The family member who withdraws the funds under this section is personally liable to the creditors of the decedent and any other person rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the family member's share.

(7) The financial institution shall maintain a copy or an image of the affidavit in accordance with its customary retention policies. If a surviving spouse or descendant of the decedent requests a copy of the affidavit during such time, the financial institution may provide a copy of the affidavit to the requesting surviving spouse or descendant of the decedent.

(8) In addition to any other penalty provided by law, a person who knowingly makes a false statement in a sworn affidavit given to a financial institution to receive a decedent's funds under this section commits theft, punishable as provided in s. 812.014.

Section 3. Section 735.304, Florida Statutes, is created to read:

735.304 Disposition without administration of intestate property in small estates.-

(1) No administration shall be required or formal proceedings instituted upon the estate of a decedent who has

died intestate leaving only personal property exempt under the provisions of s. 732.402, personal property exempt from the claims of creditors under the Florida Constitution, and nonexempt personal property the value of which does not exceed the sum of $10,000 and the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness, provided the decedent has been deceased for more than 1 year and no administration of the decedent's estate is pending in this state or has been previously granted.

(2) Any heir at law of the decedent entitled to a share of the intestate estate pursuant to s. 732.102 or s. 732.103 may by affidavit request distribution of assets of the decedent through informal application under this section. The affidavit must be signed and verified by the surviving spouse, if any, and any heirs at law, except that joinder in the affidavit is not required of an heir who will receive a full intestate share under the proposed distribution of the personal property. Before the filing of the affidavit, the affiant must make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, and the proposed distribution must make provision for payment of those creditors to the extent that assets are available or the creditors must consent to the proposed distribution. The affidavit must be served in the manner of formal notice upon all heirs at law who have not

joined in the affidavit; upon all known or reasonably ascertainable creditors of the decedent; and, if the decedent at the time of death was over the age of 55 years of age, upon the Agency for Health Care Administration.

(3) If the court is satisfied that subsection (1) is applicable and the affidavit filed by the heir at law meets the requirements of subsection (2), the court, by letter or other writing under the seal of the court, may authorize the payment, transfer, disposition, delivery, or assignment of the tangible or intangible personal property to those persons entitled.

(a) Any individual, corporation, or other person paying, transferring, delivering, or assigning personal property under the authorization shall be forever discharged from liability thereon.

(b) Bona fide purchasers for value from those to whom personal property of the decedent has been paid, transferred, delivered, or assigned shall take the property free of all claims of creditors of the decedent and all rights of the surviving spouse and all other beneficiaries or heirs at law of the decedent.

(c) Personal property of the decedent that is not exempt from claims of creditors and that remains in the possession of those to whom it has been paid, delivered, transferred, or assigned shall continue to be liable for claims against the decedent until barred as provided in the Florida Probate Code.

Any known or reasonably ascertainable creditor who did not consent to the proposed distribution and for whom provision for payment was not made may enforce the claim and, if the creditor prevails, shall be awarded costs, including reasonable attorney fees, against those who joined in the affidavit.

(d) Recipients of the decedent's personal property under this section shall be personally liable for a pro rata share of all lawful claims against the estate of the decedent, but only to the extent of the value on the date of distribution of the personal property actually received by each recipient, exclusive of the property exempt from claims of creditors under the constitution and statutes of Florida.

(e) Except as otherwise provided in s. 733.710, after 2 years from the death of the decedent, neither the decedent's estate nor those to whom it may be distributed shall be liable for any claim against the decedent, unless within that time proceedings have been taken for the enforcement of the claim.

(f) Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the distribution under this section may enforce all rights in appropriate proceedings against those who signed the affidavit or received distribution of personal property and, if successful, shall be awarded costs including reasonable attorney fees as in chancery actions.

Section 4. This act shall take effect July 1, 2020.

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**T I T L E  A M E N D M E N T**

Remove everything before the enacting clause and insert:
An act relating to bank property of deceased account holders; amending s. 655.059, F.S.; specifying that a financial institution is not prohibited from disclosing specified information and providing copies of specified affidavits to certain persons relating to deceased account holders; creating s. 735.303, F.S.; providing definitions; authorizing a financial institution to pay funds on deposit in certain accounts to a specified family member of a decedent without any court proceeding, order, or judgment under certain circumstances; requiring the family member to provide the financial institution a certified copy of the decedent's death certificate and a specified affidavit in order to receive the funds; providing an affidavit form that the family member may use; providing that the financial institution has no duty to make certain determinations; specifying that a person does not have a right or cause of action against a financial institution for certain actions or for failing to take certain actions; providing liability for the family member who withdraws funds;

requiring a financial institution to maintain a copy or image of the affidavit for a specified time; authorizing the financial institution to provide copies of the affidavit to certain persons; providing a criminal penalty; creating s. 735.304, F.S.; providing that specified types of personal property are not subject to probate administration under certain circumstances; providing that specified persons may request distribution of a decedent's assets by affidavit filed with a court under certain circumstances; providing requirements for content of the affidavit and service of the affidavit on specified persons; requiring certain actions relating to the decedent's creditors; authorizing the court to approve the affidavit and payment of personal property under certain circumstances; providing certain bona fide purchasers protection from specified claims of creditors; providing for liability against certain personal property for a specified time; providing for liability of recipients of the decedent's personal property under certain circumstances; providing a limitation on liability of the decedent's estate and recipients of the estate under certain circumstances; providing for the award of costs and reasonable

attorney fees under certain circumstances; providing an effective date.