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 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]

[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.
[6] S. 324.011, F.S.

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]

Effect of the Bill

Motor Vehicle Insurance Online Verification System

[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).

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:
  - 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.

[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."

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]

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.

[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.
[23] Ch. 2019-108, Laws of Fla.

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 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

[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.

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.

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

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

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.

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.

[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.

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 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;

[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.
[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.

- 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]

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

[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.
[54] S. 627.914, F.S. *See also* R. 69O-189.0055, F.A.C.

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]

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]

[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.
[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.

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]

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:

[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.

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:

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

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.

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.