

Insurance & Banking Subcommittee

Thursday, March 4, 2021
10:00 AM - 12:00 PM
Morris Hall (17 HOB)

Meeting Packet

Chris Sprowls
Speaker

Nick DiCeglie
Chair

The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

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Meeting Agenda

Thursday, March 4, 2021
10:00 AM – 12:00 PM
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 273 Motor Vehicle Insurance Coverage Exclusions by Plakon
- HB 423 Hurricane Loss Mitigation Program by Tuck
- HB 619 Pub. Rec./Application for a De Novo Banking Charter by Barnaby
- HB 717 Consumer Protection by Clemons
- HB 733 Credit for Reinsurance by Fetterhoff
- HB 797 Florida Life and Health Insurance Guaranty Association by Robinson, W

V. Closing Remarks

VI. Adjournment

HB 273

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 273 Motor Vehicle Insurance Coverage Exclusions
SPONSOR(S): Plakon
TIED BILLS: **IDEN./SIM. BILLS:** SB 420

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Rowley	Luczynski
2) Commerce Committee			

SUMMARY ANALYSIS

Chapter 627, part XI, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle insurance coverage requirements. Motor vehicle insurance includes two types of coverage: financial responsibility (i.e., bodily injury, death, and property damage or (BI/PD) and no-fault (i.e., personal injury protection or PIP). A policy providing coverage for BI/PD is required to cover individuals named on the policy and anyone operating a motor vehicle listed on the policy when the operator has the express or implied permission of the insured motor vehicle owner. A policy providing PIP coverage is required to cover the motor vehicle owner, persons operating the insured motor vehicle, relatives residing in the same household as the policyholder, passengers in the motor vehicle, anyone struck and injured by the motor vehicle while not a passenger in a self-propelled vehicle, and anyone specifically named on the policy. For motor vehicle policies covering BI/PD, PIP, or both, neither the policyholder nor the insurer can exclude an individual required to be covered by law.

Because there is no authority under the motor vehicle insurance laws for an insurer to exclude a specific individual (i.e., an excluded named driver) from coverage, an insurer may choose not to write a policy in order to avoid covering specific individuals (e.g., a high insurance risk driver). This results in some consumers being denied opportunities to purchase motor vehicle insurance or having to pay more because they live with individuals the policyholder or insurer would like to exclude from the policy. Additionally, policyholders may have their policies cancelled if the license or registration of a co-resident is suspended or revoked.

The bill authorizes the specific exclusion of named drivers from private passenger motor vehicle insurance coverages, except for periods when the excluded named driver is not operating a covered vehicle (e.g., when he or she is a passenger in the vehicle), if the exclusion is unfairly discriminatory, or if the exclusion is inconsistent with filed underwriting guidelines. The exclusion of a named driver is contingent upon the written consent of the named insured. The bill requires insurers to list excluded drivers on the policy's declarations page or on a policy endorsement.

The bill does not appear to have a fiscal impact on state or local government. It has positive and negative impacts on the private sector.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 627, part XI, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle insurance coverage requirements. Owners and operators of motor vehicles must maintain the ability to respond in damages at specified minimum amounts for personal injury protection, bodily injury or death, and property damage.

Motor vehicle insurance includes two types of coverage: financial responsibility (i.e., bodily injury, death, and property damage or BI/PD) and no-fault (i.e., personal injury protection or PIP). A policy providing coverage for bodily injury, death, and property damage is required to provide coverage for: [1]

- Individuals named on the policy; and
- Anyone operating a motor vehicle listed on the policy when the operator has the express or implied permission of the insured motor vehicle owner.

A policy providing PIP coverage is required to cover: [2]

- The owner of the motor vehicle;
- Persons operating the insured motor vehicle;
- Relatives residing in the same household[3] as the policyholder;
- Passengers in the motor vehicle;
- Anyone struck by the motor vehicle who suffers bodily injury while not occupying a self-propelled vehicle; and
- Anyone specifically named on the policy.

For motor vehicle policies covering BI/PD, PIP, or both, neither the policyholder nor the insurer can exclude an individual required to be covered by law. [4] The law also prohibits an insurer from "knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life."[5] However, an insurer may cancel a motor vehicle insurance policy if the policyholder or any operator who resides in the same household or customarily operates a motor vehicle insured under the policy has her or his driver license revoked or suspended.[6]

Because the law does not expressly permit insurers to exclude or remove specifically named individuals from motor vehicle insurance policies, individuals with resident relatives considered by insurers to be high insurance risks may have existing policies cancelled and/or be denied opportunities to purchase new policies.

Effect of the Bill

The bill authorizes insurers and the named insured to exclude specific individuals from a private passenger motor vehicle insurance policy. An excluded individual would not be covered for damages

[1] S. 324.151(1), F.S.
[2] Ss. 627.736(1) and (4)(e) and 627.7407(5)(b), F.S.
[3] "Relative residing in the same household" means a relative of any degree by blood or by marriage who usually makes her or his home in the same family unit, whether or not temporarily living elsewhere. S. 627.732(6), F.S.
[4] The insurer may shift certain liabilities from BI/PD and PIP coverage to uninsured/underinsured vehicle coverage (UM). S. 627.727(3)(c), F.S. UM coverage includes damages caused to a policyholder, a resident relative of the policyholder, or an individual named on the policy who is injured by non-family member who was operating an insured vehicle, if the BI/PD and PIP coverage excludes coverage of these damages.
[5] S. 626.9541(1)(g), F.S.
[6] Ss. 627.7275 and 627.728, F.S.

that occur if he or she operates a motor vehicle that is insured under a policy that excludes the individual by name. The bill prohibits exclusion for periods when the excluded named driver is not operating a motor vehicle covered under the policy (e.g., a passenger in the vehicle), if the exclusion is unfairly discriminatory by law, as determined by the Office of Insurance Regulation (OIR), or if the exclusion is inconsistent with the underwriting guidelines filed by the insurer with OIR. The exclusion is contingent upon the written consent of the named insured. The bill requires insurers to list excluded named drivers on the policy's declarations page or on a policy endorsement.

B. SECTION DIRECTORY:

Section 1. Creates s. 627.747, F.S., relating to named driver exclusion.

Section 2. Amends s. 324.151, F.S., relating to motor vehicle liability policies; required provisions.

Section 3. Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 4. Amends s. 627.7407, F.S., relating to application of the Florida Motor Vehicle No-Fault Law.

Section 5. Provides an effective date of July 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:

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 if they need to secure their own coverage following exclusion from a policy.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. The bill does not appear to affect county or municipal governments.

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 motor vehicle insurance coverage exclusions; creating s. 627.747, F.S.; providing that private passenger motor vehicle policies may exclude certain identified individuals from specified coverages under certain circumstances; providing that such policies may not exclude coverage under certain circumstances; amending ss. 324.151, 627.736, and 627.7407, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 627.747, Florida Statutes, is created to read:

627.747 Named driver exclusion.—

(1) A private passenger motor vehicle policy may exclude an identified individual who is not a named insured from the following coverages while the identified individual is operating a motor vehicle, provided the identified individual is named on the declarations page or by endorsement and the named insured consents in writing to such exclusion:

(a) Notwithstanding the Florida Motor Vehicle No-Fault Law, the personal injury protection coverage specifically applicable to the identified individual's injuries, lost wages,

and death benefits.

(b) Property damage liability coverage.

(c) Bodily injury liability coverage, if required by law and purchased by the named insured.

(d) Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the named insured has purchased such coverage.

(e) Any coverage the named insured is not required by law to purchase.

(2) A private passenger motor vehicle policy may not exclude coverage when:

(a) The identified individual is injured while not operating a motor vehicle;

(b) The exclusion is unfairly discriminatory under the Florida Insurance Code, as determined by the office; or

(c) The exclusion is inconsistent with the underwriting rules filed by the insurer pursuant to s. 627.0651(13)(a).

Section 2. Paragraph (a) of subsection (1) of section 324.151, Florida Statutes, is amended to read:

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy to be proof of financial responsibility under s. 324.031(1)~~,~~ shall be issued to owners or operators under the following provisions:

(a) An owner's liability insurance policy must ~~shall~~

designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted, must ~~and shall~~ insure the owner named therein, and, except for a named driver excluded under s. 627.747, must insure any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner against loss from the liability imposed by law for damage arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7). Insurers may make available, with respect to property damage liability coverage, a deductible amount not to exceed $500. In the event of a property damage loss covered by a policy containing a property damage deductible provision, the insurer shall pay to the third-party claimant the amount of any property damage liability settlement or judgment, subject to policy limits, as if no deductible existed.

Section 3. Subsection (1) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(1) REQUIRED BENEFITS.—An insurance policy complying with the security requirements of s. 627.733 must provide personal injury protection to the named insured, relatives residing in

the same household unless excluded under s. 627.747, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, subject to subsection (2) and paragraph (4)(e), to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits resulting from bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) *Medical benefits.*—Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices and medically necessary ambulance, hospital, and nursing services if the individual receives initial services and care pursuant to subparagraph 1. within 14 days after the motor vehicle accident. The medical benefits provide reimbursement only for:

1. Initial services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a chiropractic physician licensed under chapter 460, or an advanced practice registered nurse registered under s. 464.0123 or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Initial services and care may also be provided by a person or entity licensed under part III

of chapter 401 which provides emergency transportation and treatment.

2. Upon referral by a provider described in subparagraph 1., followup services and care consistent with the underlying medical diagnosis rendered pursuant to subparagraph 1. which may be provided, supervised, ordered, or prescribed only by a physician licensed under chapter 458 or chapter 459, a chiropractic physician licensed under chapter 460, a dentist licensed under chapter 466, or an advanced practice registered nurse registered under s. 464.0123, or, to the extent permitted by applicable law and under the supervision of such physician, osteopathic physician, chiropractic physician, or dentist, by a physician assistant licensed under chapter 458 or chapter 459 or an advanced practice registered nurse licensed under chapter 464. Followup services and care may also be provided by the following persons or entities:

a. A hospital or ambulatory surgical center licensed under chapter 395.

b. An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, advanced practice registered nurses registered under s. 464.0123, or dentists licensed under chapter 466 or by such practitioners and the spouse, parent, child, or sibling of such practitioners.

c. An entity that owns or is wholly owned, directly or

indirectly, by a hospital or hospitals.

d. A physical therapist licensed under chapter 486, based upon a referral by a provider described in this subparagraph.

e. A health care clinic licensed under part X of chapter 400 which is accredited by an accrediting organization whose standards incorporate comparable regulations required by this state, or

(I) Has a medical director licensed under chapter 458, chapter 459, or chapter 460;

(II) Has been continuously licensed for more than 3 years or is a publicly traded corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange; and

(III) Provides at least four of the following medical specialties:

(A) General medicine.

(B) Radiography.

(C) Orthopedic medicine.

(D) Physical medicine.

(E) Physical therapy.

(F) Physical rehabilitation.

(G) Prescribing or dispensing outpatient prescription medication.

(H) Laboratory services.

3. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. up to $10,000 if a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced practice registered nurse licensed under chapter 464 has determined that the injured person had an emergency medical condition.

4. Reimbursement for services and care provided in subparagraph 1. or subparagraph 2. is limited to $2,500 if a provider listed in subparagraph 1. or subparagraph 2. determines that the injured person did not have an emergency medical condition.

5. Medical benefits do not include massage as defined in s. 480.033 or acupuncture as defined in s. 457.102, regardless of the person, entity, or licensee providing massage or acupuncture, and a licensed massage therapist or licensed acupuncturist may not be reimbursed for medical benefits under this section.

6. The Financial Services Commission shall adopt by rule the form that must be used by an insurer and a health care provider specified in sub-subparagraph 2.b., sub-subparagraph 2.c., or sub-subparagraph 2.e. to document that the health care provider meets the criteria of this paragraph. Such rule must include a requirement for a sworn statement or affidavit.

(b) *Disability benefits.*—Sixty percent of any loss of

gross income and loss of earning capacity per individual from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his or her household. All disability benefits payable under this provision must be paid at least every 2 weeks.

(c) *Death benefits.*—Death benefits of $5,000 per individual. Death benefits are in addition to the medical and disability benefits provided under the insurance policy. The insurer may pay death benefits to the executor or administrator of the deceased, to any of the deceased's relatives by blood, legal adoption, or marriage, or to any person appearing to the insurer to be equitably entitled to such benefits.

Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section, and such insurer may not require the purchase of any other motor vehicle coverage other than the purchase of property damage liability coverage as required by s. 627.7275 as a condition for providing such benefits. Insurers may not require that property damage liability insurance in an amount greater than $10,000 be purchased in conjunction with personal injury protection. Such insurers shall make benefits and required property damage

liability insurance coverage available through normal marketing channels. An insurer writing motor vehicle liability insurance in this state who fails to comply with such availability requirement as a general business practice violates part IX of chapter 626, and such violation constitutes an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance. An insurer committing such violation is subject to the penalties provided under that part, as well as those provided elsewhere in the insurance code.

Section 4. Paragraph (a) of subsection (5) of section 627.7407, Florida Statutes, is amended to read:

627.7407 Application of the Florida Motor Vehicle No-Fault Law.—

(5) No later than November 15, 2007, each motor vehicle insurer shall provide notice of the provisions of this section to each motor vehicle insured who is subject to subsection (1). The notice is not subject to approval by the Office of Insurance Regulation. The notice must clearly inform the policyholder:

(a) That beginning on January 1, 2008, Florida law requires the policyholder to maintain personal injury protection ("PIP") insurance coverage and that this insurance pays covered medical expenses for injuries sustained in a motor vehicle crash by the policyholder, passengers, and relatives residing in the policyholder's household unless excluded under s. 627.747.

Section 5. This act shall take effect July 1, 2021.

INSURANCE & BANKING SUBCOMMITTEE

HB 273 by Rep. Plakon
Named Driver Exclusion

AMENDMENT SUMMARY
March 4, 2021

Amendment 1 by Rep. Plakon (Line 39): The amendment clarifies that the type of discrimination prohibited by subsection 2(b) is discrimination based on individual characteristics (i.e., race, color, religion, sex, national origin, age, handicap, pregnancy, or marital status), rather than discrimination based on ratemaking factors.

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 Plakon offered the following:

Amendment

Remove lines 39-40 and insert:

(b) The identified individual is being excluded solely because of his or her race, color, religion, sex, national origin, age, handicap, pregnancy, or marital status.

HB 423

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 423 Hurricane Loss Mitigation Program
SPONSOR(S): Tuck and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Pandemics & Public Emergencies Committee	18 Y, 0 N	Skinner	Dearden
2) Insurance & Banking Subcommittee		Haas	Luczynski
3) Appropriations Committee			
4) Commerce Committee			

SUMMARY ANALYSIS

In 1993, the Legislature created the Florida Hurricane Catastrophe Fund (FHCF), a tax-exempt trust fund. The FHCP was created in response to the problems that developed in the residential property insurance industry following property losses incurred through a serious of catastrophic events, including Hurricane Andrew in 1992. When the Internal Revenue Service issued a private letter ruling granting tax-exempt status to the FHCF, it required a certain amount of FHCF funds to be appropriated for hurricane mitigation purposes.

Since fiscal year 1997-98 and annually thereafter, the Legislature has been required to appropriate from the investment income of the FHCF no less than $10 million, but no more than 35 percent, from the investment income of the FHCF from the prior fiscal year. The FHCF appropriation provides funding to state agencies, local governments, public and private educational institutions, and nonprofit organizations to support programs intended to:

- Improve hurricane preparedness;
- Reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures or financing upgrades; or
- Protect local infrastructure from potential hurricane damage.

In 1999, the Legislature created the Hurricane Loss Mitigation Program (HLMP), which is now established under the Division of Emergency Management. The HLMP is funded by the annual appropriation of $10 million from the FHCF. The funds are to be used as follows:

- $3 million is directed towards retrofitting public facilities for use as hurricane shelters.
- $7 million is directed toward programs to improve the wind resistance of residences and mobile homes, educating persons concerning the Florida Building Code cooperative programs with local governments and the Federal Government, and other efforts to prevent or reduce losses or reduce the cost of rebuilding after a disaster. These funds are further directed as follows:
    - $2.8 million to the Mobile Home Tie-Down Program;
    - $700,000 to the Florida International University center for hurricane research; and
    - $3.5 million to the Hurricane Loss Mitigation Program Retrofit Grant for the purpose of improving community resiliency.

The HLMP expires on June 30, 2021. The bill extends the Hurricane Loss Mitigation Program repeal date to June 30, 2031.

The bill has no fiscal impact on the General Revenue fund. Annually, $10 million is appropriated from the FHFC to the HLMP. Should this bill become law, these funds would continue to be appropriated until June 30, 2031. The bill has an indeterminate but likely positive impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 1993, the Legislature created the Florida Hurricane Catastrophe Fund (FHCF), a tax-exempt trust fund.[1] The FHCP was created in response to the problems that developed in the residential property insurance industry following property losses incurred through a series of catastrophic events, including Hurricane Andrew in 1992.[2] It was determined that state action was required to correct the inability of the private sector insurance and reinsurance market to maintain sufficient capacity.[3] The program is intended to provide a stable and ongoing source of reimbursement to insurers for a portion of their catastrophic hurricane losses, creating additional insurance capacity for the state.[4] The FHCF is administered by the State Board of Administration, which is governed by a three member Board of Trustees, comprised of the Governor, who serves as chair, the Chief Financial Officer, and the Attorney General.[5]

The private letter ruling[6] issued by the Internal Revenue Service granting tax-exempt status to the FHCF requires a certain amount of FHCF funds to be appropriated for hurricane mitigation purposes.[7] Beginning in fiscal year (FY) 1997-98 and annually thereafter, the Legislature is required to appropriate no less than $10 million, but not more than 35 percent, from the investment income of the FHCF from the prior fiscal year. The FHCF appropriation provides funding for state agencies, local governments, public and private educational institutions, and nonprofit organizations to support programs intended to:

- Improve hurricane preparedness;
- Reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures or financing upgrades; or
- Protect local infrastructure from potential hurricane damage.[8]

In 1999,[9] the Legislature created the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA). The HLMP is funded by the annual appropriation of $10 million from the FHCF. The HLMP is now established under the Division of Emergency Management (Division).[10]

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[1] Ch. 93-409, Laws of Fla.
[2] S. 215.555(1)(b), F.S.
[3] S. 215.555(1)(c), F.S.
[4] S. 215.555(1)(e), F.S.
[5] S. 215.555(3), F.S.; S. 215.44(1), F.S.
[6] A "private letter ruling," or PLR, is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed. A PLR is issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described. Internal Revenue Service, *Understanding IRS Guidance – A Brief Primer*, https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer (last visited Feb. 11, 2021).
[7] State Board of Administration of Florida, *Florida Hurricane Catastrophe Fund Fiscal Year 2008-2009 Annual Report*, p. 16, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20100413_SBA_CATF_Annual_Report.pdf?ver=2016-06-08-121914-787 (last visited Feb. 26, 2021).
[8] S. 215.555(7)(c), F.S
[9] Ch. 99-305, Laws of Fla.
[10] S. 215.559, F.S.

Current law requires the funds to be used as follows:

- Three million dollars ($3 million) is directed towards retrofitting public facilities for use as hurricane shelters. The Division must prioritize funds for projects included in the annual Shelter Retrofit Report and projects in regional planning council areas with shelter deficits.[11]

  The Division's 2020 Shelter Retrofit Report indicates that significant success has been made toward reducing the deficit of safe[12] public hurricane evacuation shelter space (shelter space).[13] The combination of existing building surveys, retrofit projects, and the availability of retrofit and mitigation-related funds, as well as the application of enhanced hurricane resistance design and construction standards has increased the number of shelter spaces.[14] As of 2020, the amount of available shelter spaces has increased to 1,060,767.[15] Available shelter space is projected to increase to 1,120,174 by August 2021.[16]

- Seven million dollars ($7 million) must be used for programs that:
  - Improve the wind resistance of residences and mobile homes, through loans, subsidies, grants, demonstration projects, and direct assistance;
  - Educate persons concerning the Florida Building Code cooperative programs with local governments and the Federal Government; and
  - Prevent or reduce losses or costs of rebuilding after a disaster.[17]

Of the $7 million allocated to the uses described above:

- Forty percent ($2.8 million) is directed to the Mobile Home Tie-Down Program.[18] This program is administered by Tallahassee Community College (TCC) and is used to mitigate future losses for mobile homes and to provide tie-downs for mobile homes in communities throughout the state.[19]

  Over the years, the Mobile Home Tie-Down Program has been reviewed and audited. In 2016, the Department of Financial Services Bureau of Auditing (Bureau) audited the Mobile Home Tie-Down Program and determined that a contractual agreement should exist between the Division and TCC.[20] The Bureau determined an agreement is required due to the funds being classified as "grant and aid."[21] The Bureau recommended a written agreement that incorporates the relevant statutory requirements, a clear scope of work, deliverables, monitoring, and financial consequences.[22] The Division and TCC subsequently executed a written agreement for the program that incorporated the Bureau's recommendations, including a scope of work.[23] The program's scope of work requires the mobile home tie-down improvements under this program to meet or exceed the standards

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[11] S. 215.559(1)(b), F.S.
[12] "'Safe' is defined as meeting the intent of American Red Cross (ARC) Hurricane Evacuation Shelter Selection Standards (June 2018)." Florida Division of Emergency Management, 2020 State Retrofit Report (Nov. 2020), https://portal.floridadisaster.org/shelters/External/Current/2020%20SRR/2020%20Shelter%20Retrofit%20Report.pdf (last visited Feb. 12, 2021).
[13] *Id*.
[14] *Id*.
[15] *Id.*
[16] *Id*.
[17] S. 215.559(1)(a), F.S.
[18] S. 215.559 (2)(a), F.S.
[19] Florida Division of Emergency Management, *Florida Hurricane Loss Mitigation Program 2020 Annual Report* (Jan. 1, 2021), https://portal.floridadisaster.org/mitigation/HLMP/Internet%20Documents/Reports/2020%20HLMP%20Annual%20Report.pdf (last visited Feb. 12, 2021).
[20] *May 10, 2016 Letter from Department of Financial Services Bureau of Auditing to Division of Emergency Management Director Bryan Koon*, https://www.myfloridacfo.com/division/aa/Aud_Act/docs/DEM%20Report%20dtd%205-10-2016_Redacted.pdf (last visited Feb. 12, 2021).
[21] *Id.*
[22] *Id*.
[23] *Id*.

established in Rules 15C-1.0101 through 15C-1.0109, F.A.C.[24] However, the program is not intended to bring an existing mobile home up to building code standards.[25]

In FY 2019-20, ten counties (Manatee, Pinellas, Hillsborough, Volusia, Palm Beach, Charlotte, Brevard, Highlands, Collier, and Pasco) benefitted from the Mobile Home Tie-Down Program. A total of 1,702 manufactured or mobile homes were retrofitted.[26] Currently, the program is not accepting new applications, as the waiting list exceeds five years; new applications will be accepted once the waiting list is reduced to three years.[27]

- Ten percent ($700,000) is directed to the Florida International University (FIU) center for hurricane research.[28]

  Research conducted by FIU during Fiscal Year 2019-2020 included:
  - Experimental and Analytical Assessment of Effects of Leakage around Doors, Windows, and Other Openings on Internal Pressures in Residential Buildings;
  - Numerical and Experimental Investigation to Codify Wind Pressure Distribution of Elevated House;
  - Codification Wind-induced Loads on Irregular Shaped Buildings;
  - Development of integrated storm tide and freshwater flooding model Phase 3;
  - Investigation and Incorporation of WOW testing outputs in the Florida Public Hurricane Loss Model; and
  - Education and Outreach Programs to Convey the Benefits of Various Hurricane Loss Mitigation Devices and Techniques.[29]

- The remaining 50 percent ($3.5 million) is used to fund the Hurricane Loss Mitigation Program Retrofit Grant (Grant) for the purpose of improving community resiliency.[30] Funded activities include inspections, retrofits, and construction or modification of building components designed to increase a structure's ability to withstand hurricane conditions.[31]

  Under this Grant, eligible applicants are nonprofit organizations, qualified for-profit organizations, and governmental entities.[32] Homeowners are not eligible, but may partner with an eligible local government.[33] In FY2020, sixteen recipients received the grant to conduct wind mitigation retrofits to homes. These recipients included:
  - City of North Lauderdale;
  - City of Bradenton;
  - City of Deerfield Beach;
  - Rebuild Northwest Florida;
  - St. Lucie County;
  - Centro-Campesino;
  - Crisis Housing Solutions;
  - Flagler County;
  - Lake and Sumter County Emergency Response;
  - City of Lauderdale Lakes;

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[24] Department of Financial Services, *Original Contract - D9042 (executed Aug. 7, 2018)*, https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=310000&ContractId=D9042 (last visited Feb. 12, 2021).
[25] Tallahassee Community College, Mobile Home Tie-Down Program, https://www.tcc.fl.edu/about/college/administrative-services/sponsored-programs/mobile-home-tie-down-program/ (last visited Feb. 12, 2021).
[26] Florida Division of Emergency Management, *supra* note 19.
[27] Tallahassee Community College, Mobile Home Tie-Down Program, https://www.tcc.fl.edu/about/college/administrative-services/sponsored-programs/mobile-home-tie-down-program/ (last visited Feb. 12, 2021).
[28] S. 215.559(3), F.S.
[29] Florida Division of Emergency Management, *supra* note 19.
[30] Florida Division of Emergency Management, *Hurricane Loss Mitigation Program*, https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/ (last visited Feb. 12, 2021).
[31] *Id*.
[32] *Id.*
[33] *Id*.

- Broward County;
- Miami-Dade County;
- City of Pompano;
- City of Carrabelle;
- Franklin County; and
- Emerald Coast Regional Planning Council.[34]

Seven additional projects were funded that did not involve residential wind retrofitting.[35] These projects comprised the following: Vizcaya Museum (flood mitigation), City of Plantation (public wind retrofit), ARC Tampa Bay (group home wind mitigation) , Eckerd College (public wind retrofit), City of Sunrise (public wind retrofit), Town of Southwest Ranches (stormwater drainage), and Coral Springs Improvement (water-pump station hardening).[36]

Current law requires the Division, with the exception of the hurricane research program conducted by FIU, to develop these programs in consultation with an advisory council (Council).[37] The Council also reviews and approves FIU's hurricane research work plan.[38] The Council must consist of:

- A representative designated by the Chief Financial Officer;
- A representative designated by the Florida Homebuilders Association;
- A representative designated by the Florida Insurance Council;
- A representative designated by the Federation of Manufactured Home Owners;
- A representative designated by the Florida Association of Counties; and
- A representative designated by the Florida Manufactured Housing Association.[39]

The Division is required to submit a full report and evaluation of these activities on January 1st each year.[40] The report must be submitted to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate.[41] The Office of Insurance Regulation (OIR) must review the report and make recommendations to the insurance industry as deemed appropriate by the OIR.[42] The recommendations may be used by insurers for potential discounts or rebates.[43]

Below are the Hurricane Loss Mitigation Program Activities for FY 2019-20:

Hurricane Loss Mitigation Program Activities for Fiscal Year 2019-20[44]	
Shelter Retrofit Program	$3,000,000
HLMP Retrofit Grant	$3,500,000
Manufactured Homes	$2,800,000
Hurricane Mitigation Research	$700,000
TOTAL	**$10,000,000**

The Hurricane Loss Mitigation Program expires on June 30, 2021.[45]

[34] *Id*.
[35] *Id.*
[36] *Id.*
[37] S. 215.559(4), F.S.
[38] S. 215.559(3), F.S.
[39] S. 215.559(4), F.S.
[40] S. 215.559(6), F.S.
[41] *Id*.
[42] *Id*.
[43] *Id.*
[44] Florida Division of Emergency Management, *supra* note 19.
[45] S. 215.559(7), F.S.

Effect of Proposed Changes

The bill extends the Hurricane Loss Mitigation Program repeal date to June 30, 2031.

B. SECTION DIRECTORY:

Section 1: Amends s. 215.559, F.S., relating to Hurricane Loss Mitigation Program.

Section 2: Provides this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Annually, $10 million is appropriated from the Florida Hurricane Catastrophe Fund to the Hurricane Loss Mitigation Program. Should this bill become law, these funds would continue to be appropriated until June 30, 2031.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that research and program activities conducted through the Hurricane Loss Mitigation Program strengthen structures, educate the public, and reduce property losses, the public and private sector will benefit. However, the impact on the private sector is indeterminate.

D. FISCAL COMMENTS:

Should the mitigation program and funding for mitigation purposes be repealed, the tax-exempt status of the FHCF could be in jeopardy.

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 to take an 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 a 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 the Hurricane Loss Mitigation Program; amending s. 215.559, F.S.; delaying the future repeal of the Hurricane Loss Mitigation Program; providing an effective date.

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

Section 1. Subsection (7) of section 215.559, Florida Statutes, is amended to read:

215.559 Hurricane Loss Mitigation Program.—A Hurricane Loss Mitigation Program is established in the Division of Emergency Management.

(7) This section is repealed June 30, 2031 ~~2021~~.

Section 2. This act shall take effect upon becoming a law.

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

INSURANCE & BANKING SUBCOMMITTEE

HB 423 by Rep. Tuck
Hurricane Loss Mitigation Program

AMENDMENT SUMMARY
March 4, 2021

Amendment 1 by Rep. Tuck (between lines 13 and 14): The amendment removes an obsolete rate standard for mobile home insurance policies issued by Citizens Property Insurance Corporation.

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 Tuck offered the following:

Amendment (with directory and title amendments)

Between lines 13 and 14, insert:

(2)

(b)1. The Manufactured Housing and Mobile Home Mitigation and Enhancement Program is established. The program shall require the mitigation of damage to or the enhancement of homes for the areas of concern raised by the Department of Highway Safety and Motor Vehicles in the 2004-2005 Hurricane Reports on the effects of the 2004 and 2005 hurricanes on manufactured and mobile homes in this state. The mitigation or enhancement must include, but need not be limited to, problems associated with weakened trusses, studs, and other structural components caused

by wood rot or termite damage; site-built additions; or tie-down systems and may also address any other issues deemed appropriate by Tallahassee Community College, the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The program shall include an education and outreach component to ensure that owners of manufactured and mobile homes are aware of the benefits of participation.

2. The program shall be a grant program that ensures that entire manufactured home communities and mobile home parks may be improved wherever practicable. The moneys appropriated for this program shall be distributed directly to Tallahassee Community College for the uses set forth under this subsection.

3. Upon evidence of completion of the program, the Citizens Property Insurance Corporation shall grant, on a pro rata basis, actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles for the properties of owners of manufactured homes or mobile homes on which fixtures or construction techniques that have been demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The discount on the premium must be applied to subsequent renewal premium amounts. Premiums of the Citizens Property Insurance Corporation must reflect the location of the home and the fact that the home has been installed in compliance with building codes adopted after

Hurricane Andrew. ~~Rates resulting from the completion of the Manufactured Housing and Mobile Home Mitigation and Enhancement Program are not considered competitive rates for the purposes of s. 627.351(6)(d)1. and 2.~~

4. On or before January 1 of each year, Tallahassee Community College shall provide a report of activities under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must set forth the number of homes that have taken advantage of the program, the types of enhancements and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase in availability of insurance products to owners of manufactured or mobile homes.

Tallahassee Community College shall develop the programs set forth in this subsection in consultation with the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The moneys appropriated for the programs set forth in this subsection shall be distributed directly to Tallahassee Community College to be used as set forth in this subsection.

D I R E C T O R Y A M E N D M E N T

Remove lines 9-10 and insert:

Section 1. Paragraph (b) of subsection (2) and subsection (7) of section 215.559, Florida Statutes, are amended to read:

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

Remove line 3 and insert:

Program; amending s. 215.559, F.S.; deleting construction relating to Citizens Property Insurance Corporation coverage rates; delaying the

HB 619

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 619 Pub. Rec./Application for a De Novo Banking Charter
SPONSOR(S): Barnaby
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Hinshelwood	Luczynski
2) Government Operations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry. In order to apply for authority to organize a new state-chartered bank, the proposed directors must file a written application with the OFR. The application includes such information as the name, residence, and occupation of each proposed director; the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank is to be located; the total initial capital; the proposed business plan; and pro forma financial statements. Additionally, each proposed executive officer, director, and major shareholder must complete and submit detailed biographical and financial information, including but not limited to names, home addresses, current and past employment, and statements of assets, liabilities, and total net worth. The OFR utilizes this information to ascertain whether the proposed directors and executives have the kind of experience, ability, standing, and reputation that indicates a reasonable promise of successful bank operation.

While some existing public record exemptions may apply to certain records received by the OFR pursuant to an application to organize a new bank, current statutes do not provide a public record exemption specifically directed at such applications. Presently, with the exception of some material for which the applicant may claim trade secret status, the majority of information on an application is subject to public inspection and copying.

The bill creates a public record exemption for certain information received by the OFR pursuant to an application for a de novo (new) banking charter and makes such information confidential and exempt. However, existing statutory provisions would permit the release of the information for certain purposes and to certain persons, such as furnishing information to other agencies responsible for the regulation or supervision of financial institutions, reporting suspected criminal activity to law enforcement and prosecutorial agencies, and providing information pursuant to an order of a court or an administrative law judge or pursuant to a legislative subpoena.

The bill provides for repeal of the exemption on October 2, 2026, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill may have a minimal negative fiscal impact on state government. The bill has an indeterminate but likely positive impact on the private sector.

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 public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a).[1] The general law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.[2]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[3] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[4]

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[5]

Office of Financial Regulation (OFR)

The OFR regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[6] 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 (Codes) and the rules promulgated thereunder.[7] The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions
- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 662, F.S. – Family Trust Companies
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Capital Stock Associations
- Chapter 667, F.S. – Savings Banks

[1] Art. I, s. 24(c), Fla. Const.
[2] Art. I, s. 24(c), Fla. Const.
[3] S. 119.15, F.S.
[4] S. 119.15(6)(b), F.S.
[5] S. 119.15(3), F.S.
[6] S. 20.121(3)(a)2., F.S.
[7] Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

As of June 30, 2020, the Division of Financial Institutions regulates 197 financial institutions:[8]

- 69 banks
- 66 credit unions
- 21 international bank offices
- 15 trust companies
- 16 family trust companies
- 10 qualified limited service affiliates

Regulation of Banks

Under the dual banking system in the United States, banks may be chartered under either state or federal law:

- *State-chartered banks* are chartered under the laws of the state in which the bank is headquartered. State-chartered banks have both a state regulator, which for banks chartered by the state of Florida is the OFR, and a federal regulator. 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 (FRB), and the primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation (FDIC).[9]
- *National banks* are chartered by the Office of the Comptroller of the Currency (OCC) under the National Bank Act.[10] As such, the OCC is the primary federal regulator for national banks.[11]

Formation of a De Novo (New) State-Chartered Bank

In order to apply for authority to organize a new state-chartered bank, the proposed directors must file a written application with the OFR on form OFR-U-1.[12] The application includes such information as the name, residence, and occupation of each proposed director; the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank is to be located; the total initial capital; the proposed business plan; and pro forma financial statements.[13] Additionally, each proposed executive officer, director, and major shareholder must complete and submit an Interagency Biographical and Financial Report, Form OFR-U-10.[14] This form requires extensive personal identification information and personal financial information, including but not limited to names, home addresses, current and past employment, and statements of assets, liabilities, and total net worth.

The OFR utilizes this information in order to make an investigation of:[15]

1) The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.
2) The need for bank facilities or additional bank facilities, as the case may be, in the primary service area where the proposed bank is to be located.
3) The ability of the primary service area to support the proposed bank and all other existing bank facilities in the primary service area.

After making such investigation, the OFR must approve an application if it finds the following:[16]

1) Local conditions indicate reasonable promise of successful operation for the proposed state bank.
2) The proposed capitalization is adequate, but at least $8 million.

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[8] Office of Financial Regulation, *Fast Facts* (2021 ed.), https://www.flofr.com/sitePages/documents/FastFacts.pdf.
[9] 12 U.S.C. § 1813(q).
[10] 12 U.S.C. § 38.
[11] 12 U.S.C. § 1813(q).
[12] S. 658.19(1), F.S.; rule 69U-105.202(1), F.A.C. The form is available at https://www.flofr.com/sitePages/CommercialBanks.htm.
[13] *Id.*
[14] *Id*.
[15] S. 658.20(1), F.S.
[16] s. 658.21, F.S.

3) The proposed capital structure is in such form as the OFR may require, subject to certain minimum requirements.
4) Regarding officers and directors:
    a. The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation.
    b. None of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, F.S., relating to the control of money laundering and terrorist financing; ch. 896, F.S., relating to offenses related to financial institutions; or similar state or federal law.
    c. At least two of the proposed directors who are not also proposed officers have had at least one year of direct experience as an executive officer, regulator, or director of a financial institution within the five years before the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than five years before the date of the application, the OFR may allow the applicant to have only one director who has direct financial institution experience within the last five years.
    d. The proposed president or chief executive officer must have had at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years.
5) The corporate name of the proposed state bank is approved by the OFR.
6) Provision has been made for suitable quarters at the location in the application.

In 2018, the OFR received its first two banking applications since 2009. Three applications were received annually in 2019 and 2020.[17] Based on data provided by the OFR, the chart below depicts the new bank application activity since 2001 for Florida.

Year	Number of New Banking Applications	Number of New Banks Opened
2001	8	11
2002	11	8
2003	13	10
2004	19	16
2005	25	18
2006	21	18
2007	12	18
2008	6	7
2009	2	2
2010	0	0
2011	0	0
2012	0	0
2013	0	0
2014	0	0
2015	0	0
2016	0	0
2017	0	0
2018	2	1
2019	3	0
2020	3	1

Current Public Record Exemptions Related to Financial Institutions

[17] *Id.*

Presently, s. 655.057, F.S., contains a number of public record exemptions for certain records relating to OFR's regulation of financial institutions:

- Subsection 655.057(1), F.S., makes confidential and exempt records and information relating to active investigations. The records remain confidential and exempt after the investigation is completed or ceases to be active to the extent disclosure would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.
- Subsection 655.057(2), F.S., makes confidential and exempt reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the OFR or any other state agency or federal agency responsible for the regulation or supervision of financial institutions. However, this exemption provides for the following release of such reports:
    - The reports may be released to specified persons such as the financial institution under examination (or its holding company) and certain proposed acquirers of a financial institution.
    - The reports must be released within one year after the appointment of a liquidator, receiver, or conservator to the financial institution, except that portions of the reports which identify specified individuals such as depositors and stockholders remain confidential and exempt.
- Subsection 655.057(3), F.S., makes confidential and exempt the OFR's informal enforcement actions to the extent that disclosure would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.
- Subsection 655.057(4), F.S., makes confidential and exempt trade secrets, as defined in s. 688.002, F.S., which comply with s. 655.0591, F.S., and are held by the OFR in accordance with its statutory duties.
- Subsections 655.057(7) and (8), F.S., make confidential and exempt a list of stockholders or members of a financial institution.

Subsections 655.057(5) and (6), F.S., permit the following release of records or information which otherwise fall under exemptions provided in the statute:

- Publishing specified reports that are required to be submitted to the OFR or that are required by applicable federal statutes or regulations to be published.
- Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions.
- Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.
- Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.
- Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to ch. 280, F.S.
- Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and the OFR.
- Providing records or information pursuant to an order of a court or an administrative law judge or pursuant to a legislative subpoena, according to specified procedures and restrictions.

While some of the above public record exemptions, or other public record exemptions provided in ch. 119, F.S., may apply to certain records received by the OFR pursuant to an application to organize a new bank, current statutes do not provide a public record exemption specifically directed at such applications. Presently, with the exception of some material for which the applicant may claim trade

secret status pursuant to s. 655.0591, F.S., all of the information received by the OFR on form OFR-U-1 is subject to public inspection and copying. Additionally, significant portions of the information received by the OFR on form OFR-U-10 is subject to public inspection and copying, with only certain information, such as social security numbers, passport numbers, home county identification numbers, immigration file numbers, and certain financial disclosures being exempted from public records requirements.

Effect of the Bill

The bill creates a public record exemption within s. 655.057, F.S., for certain information received by the OFR pursuant to an application for a new banking charter. Specifically, the bill provides that information received by the OFR pursuant to an application for a new banking charter is confidential and exempt[18] from public record requirements to the extent that disclosure would:

- Reveal personal financial information.
- Reveal a driver license or identification card number, a passport number, a military identification number, or any other similar number issued on a government document used to verify identity.
- Reveal the home address of any individual.
- Reveal the identity of a minority shareholder or subscriber.
- Reveal the name of a proposed officer or director, to the extent that doing so would jeopardize the proposed officer's or director's current employment with or participation in the affairs of another financial institution.
- Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual.
- Reveal books and records of a financial institution or registrant.
- Reveal an applicant's business plan and any attached supporting documentation.

Section 655.057(12)(c), F.S., currently defines “personal financial information” to mean:

- Information relating to the existence, nature, source, or amount of a person’s personal income, expenses, or debt.
- Information relating to a person’s financial transactions of any kind.
- Information relating to the existence, identification, nature, or value of a person’s assets, liabilities, or net worth.

Although the information covered by this new public record exemption is confidential and exempt, existing provisions of s. 655.057, F.S., permit the following release of records or information which otherwise fall under exemptions provided in the statute:

- Publishing specified reports that are required to be submitted to the OFR or that are required by applicable federal statutes or regulations to be published.
- Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions.
- Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.
- Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.
- Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to ch. 280, F.S.

[18] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att’y Gen. Fla. 85-62 (1985).

- Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and the OFR.
- Providing records or information pursuant to an order of a court or an administrative law judge or pursuant to a legislative subpoena, according to specified procedures and restrictions.

The bill provides for the repeal of the exemption on October 2, 2026, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 655.057, F.S., relating to records; limited restrictions upon public access.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The proposed public record exemption may encourage and attract the formation of new banks as Florida-chartered institutions, in which case the bill would have a positive impact on investment, employment, economic growth, and consumer access to financial services. However, the impact to the private sector is indeterminate.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. Agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

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:

Vote Requirement
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 exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption
Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public record exemption for certain information received by the OFR pursuant to an application for a new banking charter. The purpose of the exemption is to protect sensitive personal, financial, and business information that the OFR receives in conjunction with its duties related to the review of applications for the organization or establishment of state financial institutions. As such, the bill appears to be no broader than necessary to accomplish its purpose. However, see Drafting Issues below.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As currently drafted, the public record exemption may not be feasible for the OFR to determine precisely which records and information are covered. Additionally, the exemption does not clearly cover all sensitive personal, financial, and business information contained in the application. The sponsor has indicated an intent to address these issues.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; amending s. 655.057, F.S.; providing an exemption from public records requirements for certain information received by the Office of Financial Regulation pursuant to an application for a de novo banking charter; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Present subsections (5) through (14) of section 655.057, Florida Statutes, are redesignated as subsections (6) through (15), respectively, a new subsection (5) is added to that section, and present subsection (14) of that section is amended, to read:

655.057 Records; limited restrictions upon public access.—

(5)(a) Except as otherwise provided in this section and except for such portions thereof which are public records, information received by the office pursuant to an application for a de novo banking charter is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution to the extent that disclosure would:

1. Reveal personal financial information.

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

2. Reveal a driver license or identification card number, a passport number, a military identification number, or any other similar number issued on a government document used to verify identity.

3. Reveal the home address of any individual.

4. Reveal the identity of a minority shareholder or subscriber.

5. Reveal the name of a proposed officer or director, to the extent that doing so would jeopardize the proposed officer's or director's current employment with or participation in the affairs of another financial institution.

6. Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual.

7. Reveal books and records of a financial institution or registrant.

8. Reveal an applicant's business plan and any attached supporting documentation.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

(15)~~(14)~~ Subsections (1), (2), (6), and (10) ~~(5), and (9)~~ are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and are repealed on October 2, 2022,

unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that information received by the Office of Financial Regulation pursuant to an application for a de novo banking charter be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to the extent that disclosure would reveal personal financial information; reveal a driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity; reveal the home address of any individual; reveal the identity of a minority shareholder or subscriber; reveal the name of a proposed officer or director, to the extent that doing so would jeopardize the proposed officer's or director's current employment with or participation in the affairs of another financial institution; defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; reveal books and records of a financial institution or registrant; or reveal an applicant's business plan and any attached supporting documentation. The office may receive sensitive personal, financial, and business information in conjunction with its duties related to the review of applications for the organization or establishment of state financial institutions.

An exemption from public records is necessary to ensure the office's ability to administer its regulatory duties while preventing unwarranted damage to an applicant's good name or impairment of its safety and soundness, as well as the safety and soundness of the financial system of this state. Release of any portion of an application that reveals an individual's personal financial information, government identity verification documents, or home address could cause unwarranted damage to the good names or reputation of those individuals or jeopardize their safety.

Section 3. This act shall take effect July 1, 2021.

INSURANCE & BANKING SUBCOMMITTEE

HB 619 by Rep. Barnaby
Pub. Rec./Application for a De Novo Banking Charter

AMENDMENT SUMMARY
March 4, 2021

Amendment 1 by Rep. Barnaby (Lines 19-85): The amendment:

- Aligns the House bill with the Senate bill.
- More clearly identifies the categories of records and information covered by the exemption, which makes the exemption more feasible for the record custodian.
- More completely covers the sensitive personal, financial, and business information contained in an application to establish a new state-chartered bank.
- Conforms the statement of public necessity to the changes made to the exemption.

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 Barnaby offered the following:

Amendment (with title amendment)

Remove lines 19-85 and insert:

(5)(a) Except as otherwise provided in this section and except for those portions that are otherwise public record, the following information received by the office pursuant to an application for authority to organize a new state bank under chapter 658 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Personal financial information.

2. A driver license number, a passport number, a military identification number, or any other similar number issued on a government document used to verify identity.

3. Books and records of a current or proposed financial institution.

4. The personal identifying information of a shareholder, subscriber, proposed officer, or proposed director of the proposed bank when such information has been marked by the applicant as confidential when submitted to the office. As used in this subparagraph, the term "personal identifying information" means names, home addresses, e-mail addresses, telephone numbers, names of relatives, work experience, professional licensing and educational background, and photographs.

5. The proposed bank's business plan and any attached supporting documentation when such information has been marked by the applicant as confidential when submitted to the office.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

(15)~~(14)~~ Subsections (1), (2), (6), and (10) ~~(5), and (9)~~ are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and are repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that certain information received by the Office of

Financial Regulation pursuant to an application for authority to organize a new state bank under chapter 658, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to the extent that disclosure would reveal personal financial information; reveal a driver license number, a passport number, a military identification number, or any other similar number issued on a government document used to verify identity; reveal books and records of a current or proposed financial institution; reveal the personal identifying information of a shareholder, subscriber, proposed officer, or proposed director; or reveal a proposed bank's business plan and any attached supporting documentation. The office may receive sensitive personal, financial, and business information in conjunction with its duties related to the review of applications for the organization or establishment of new state banks. An exemption from public records requirements is necessary to ensure the office's ability to administer its regulatory duties while preventing unwarranted damage to the proposed bank or the shareholders, subscribers, proposed officers, or proposed directors of the proposed bank or other financial institutions in this state. The release of information that could lead to the identification of an individual involved in the potential establishment of a new bank in this state may subject such individuals to retribution and jeopardize their current

employment with, or participation in the affairs of, another financial institution. Thus, the public availability of such information has a chilling effect on the establishment of new banks in this state. Further, the public availability of the books and financial records of a current or proposed financial institution in this state presents an unnecessary risk of harm to the business operations of such institutions. Finally, the public availability of a proposed bank's business plan may cause competitive harm to such bank's future business operations and presents an unfair competitive advantage for existing financial institutions that are not required to release such information.

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

Remove line 6 and insert:
application for a de novo banking charter; defining the term "personal identifying information"; providing

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 717 Consumer Protection
SPONSOR(S): Clemons and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1598

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Rowley	Luczynski
2) State Administration & 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 prohibits consumer reporting agencies from charging a fee for reissuing a personal identification number used to remove a security freeze. It requires that insurers notify applicants of the availability of DFS's financial literacy resources at certain times.
- **Consumer Services** – The bill requires that licensees provide documents when responding to written requests from DFS's Division of Consumer Services.
- **Professions** – The bill defines "claims adjusting," establishes insurance adjusting firms' licensure requirements and penalties, and adds grounds upon which DFS may revoke or suspend licenses. The bill also establishes penalties for aiding and abetting unlicensed adjusting firms and bail bond agents.
- **Agency Names** – The bill provides the specific authority for DFS to disapprove agency names containing the words "Medicaid" and "Medicare."
- **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, 2021.
- **Policyholder Rights** – The bill extends the time that a policyholder has to cancel a contract with a public adjuster, and amends the Homeowner Claims Bill of Rights. The bill also provides claims handling requirements, including policyholder notification of a change in adjuster, for both admitted and surplus lines insurers.
- **Export to Surplus Lines** – The bill mandates that the notification regarding the export of a policy to the surplus lines market, currently given only to commercial policyholders, be given to all policyholders.
- **Unfair or Deceptive Acts** – 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** – The bill requires dispute resolution for policies sold in Florida, and insuring property in Florida, on the admitted or surplus lines markets, occurs 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.
- **Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)** – FWCIGA covers claims for workers' compensation policies that are in effect on the date of the final order of an insurer's liquidation, leaving some policyholders whose policies have lapsed prior to liquidation with unpaid claims. The bill eliminates that disparity by removing an exception to the definition of "covered claim."

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

Except where otherwise provided, 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 501.005, F.S., allows 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 in the consumer report without express authorization from the consumer.[1] Within 10 days of placing a security freeze, a consumer reporting agency is required to provide the consumer with a unique personal identification number (PIN) that the consumer must utilize to request removal of the freeze.[2] Current law permits a consumer reporting agency to charge up to $10 to reissue a lost or misplaced PIN.[3]

Effect of the Bill

The bill removes a credit reporting agency's ability to charge a fee to reissue a PIN.

Credit Reports and Scores

Under certain circumstances, insurers are permitted to utilize applicants' credit reports and scores in underwriting and rating decisions.[4] The insurer must notify applicants that credit reports and scores are being utilized for these purposes.[5] 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.[6] 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] S. 501.005(1), F.S.
[2] S. 501.005(4), F.S.
[3] S. 501.005(5), F.S.
[4] *See* s. 626.9741, F.S.
[5] *Id.*
[6] Florida Department of Financial Services, Agency Analysis of House Bill 717, p. 3 (Feb. 25, 2021).

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 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 OIR (insurance companies) must respond to written requests from DFS's Division of Consumer Services concerning consumer complaints.[7] It does not require that licensees provide documents in response to such requests.

Effect of the Bill

The bill adds requested documents to the response that a licensee must provide to the Division of Consumer Services when the division makes a written request to a licensee regarding a consumer complaint, but specifies that documents need not be released if they are protected by attorney-client or work-product privilege.

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. In 2017, the legislature passed a law modifying the requirements for licensure for adjusters, including adjusting firms.[8] Prior to 2017, an adjusting firm was required to be licensed only if it failed to designate a primary adjuster within 30 days of starting the firm or changing the primary adjuster. Current law still authorizes, but does not require, licensure of adjusting firms.

Although 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. Additionally, the law does not define the practice of "claims adjusting."

Effect of the Bill

The bill establishes that no individual or entity may act as an adjusting firm without complying 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. The licensing requirements for an adjusting firm are essentially notification requirements. An application for licensure as an adjusting firm requires providing the name of each majority owner, partner, officer, and director of the firm, the home address of each, and firm's location. 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 provides 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. The bill also defines "claims adjusting" and provides that no person, except a duly licensed attorney, shall provide claims adjusting services unless licensed and appointed as an adjuster.

[7] S. 624.307(10)(b), F.S.
[8] Ch. 2017-147, Laws of Fla.

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. Additionally, Florida law does not provide for administrative action when a person violates Federal Trade Commission laws regarding telephone solicitation.

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:

- taking action that allows 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.

Bail Bond Agents

Bail bond agents and temporary bail bond agents must be licensed in order to operate within Florida. While the law 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.[9]

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.

Agency Names

Existing Florida law permits DFS to disapprove insurance agency names under certain circumstances, including when those names may mislead the public.[10] 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.[11]

Effect of the Bill

The bill adds use of the words "Medicare" and "Medicaid" to the grounds for which DFS may disapprove an insurance agency name. An agency licensed as of July 1, 2021, whose name contains the word Medicare or Medicaid, may continue to use the name until June 30, 2023, as long as its license remains valid. A license containing the word Medicare or Medicaid will automatically expire on July 1, 2023.

[9] S. 648.30, F.S.
[10] S. 626.602, F.S.
[11] DFS, *supra* note 6, at 2.

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.[12] 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.[13]

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, 2021. 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.[14] In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.[15] At present, absent a state of emergency, such a contract may only be canceled within three days after the latter of the date on which the contract was executed or within three days after the date on which the claimant has notified the insurer of the claim.[16] During a state of emergency, and for one year after the date of loss, an insured or claimant has five days after the date on which the contract was executed to cancel the contract without penalty or obligation.

Public adjusters who have contracted with claimants must also provide to the claimant a written estimate of loss to assist the claimant with obtaining a claim payment from the insurance company. 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.[17]

Effect of the Bill

The bill changes the timeframe for an insured or claimant to cancel a contract with a public adjuster without penalty or obligation to ten calendar days, rather than from three business days after the latter of the date on which the contract was executed or the date on which the insured or claimant has notified the insurer of the claim. The bill provides that the ten-day timeframe applies regardless of whether there is a state of emergency.

Additionally, the bill provides that the written estimate that the public adjuster must provide to the claimant must include a written itemized per unit estimate of the repairs, including itemized information on equipment, materials, and labor and supplies. The written estimate must be provided to the insured within 60 days after the date the contract is executed. Additionally, the bill prohibits a licensed contractor or subcontractor from soliciting an insured to file a claim with an insurer.

[12] S. 627.502, F.S.
[13] DFS, *supra* note 6, at 5.
[14] S. 626.854, F.S.
[15] *See id.*
[16] *Id.*
[17] DFS, *supra* note 6, at 2-3.

Homeowner Claims Bill of Rights

Section 627.7142, F.S., contains a Homeowner Claims 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, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor. 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, and resolution of disputed claims.[18] At present, when timeframes are listed in the Bill of Rights, they do not specify whether they are determined in calendar or business days.[19] 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 the insurer fails to timely fulfill 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.

Effect of the Bill

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

- 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 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 requires an insurer to provide the Bill of Rights to a policyholder within 14 days after receiving an initial claim communication, even during a state of emergency.

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.[20] Policyholders have complained to DFS that repeated changes in adjusters for insurance companies have contributed to significant claim delays.[21] 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.[22]

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 to existing law regarding the investigation and adjusting of residential property insurance claims:

[18] S. 627.7142, F.S.
[19] *Id.*
[20] *See* s. 627.70131, F.S.
[21] DFS, *supra* note 6, at 4.
[22] *Id.*

- Changes the timeframe from 10 business days to 14 days from receipt of a proof of loss statement for an insurer to begin the investigation of a claim.
- 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 and license number.
- Provides that any subsequent communication with the policyholder regarding the claim must include the name and license number of the adjuster communicating about the claim.
- Requires the insurer to maintain a record or log of each adjuster who communicates with the policyholder and to provide a list of those adjusters to the policyholder, DFS, or OIR upon request.
- 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 provides that the above changes 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

Notification of Export

When insurance is not available to Florida consumers from authorized insurance carriers[23], it generally becomes necessary and legally permissible to obtain a policy on the surplus lines market.[24] 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 market.[25] 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.[26] The notification currently provided to commercial policyholders whose policies are issued on the surplus lines market also includes the statement that "superior coverage may be available in the admitted market and at a lesser cost."[27]

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 notification statement currently signed by consumers whose commercial insurance policies are being exported to the surplus lines market must be signed, or otherwise acknowledged by all consumers whose insurance policies are being exported to the surplus lines market. The bill also replaces the statement "superior coverage may be available in the admitted market and at a lesser cost," with "coverage may be available in the admitted market." Additionally, the notification statement advises consumers whose policies are being exported that surplus lines carriers are not protected under the Florida Insurance Guaranty Act in the event of the carrier's insolvency.

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.[28] 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 an applicant for a specific ancillary coverage or product, in addition to the cost of insurance applied for, without informing

[23] Authorized insurance carriers are those who have received a certificate of authority from OIR to transact insurance business within the state. S. 624.09, F.S.
[24] *See* s. 626.913, F.S.
[25] S. 626.916(3)(b)3, F.S.
[26] DFS, *supra* note 6, at 3.
[27] S. 626.916(3)(b)3, F.S.
[28] S. 626.9541, F.S.

the applicant.[29] According to DFS, some Florida insurers have begun a practice of effectuating entire policies without informing consumers they have done so.[30]

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. However, collateral protection insurance by a mortgagee or escrow does not constitute sliding.

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.

Effect of the Bill

The bill provides that no property insurance policy sold in Florida, insuring property located in Florida, after July 1, 2021, 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.

Florida Insurance Guaranty Association Deductible

Under federal law, insurance companies cannot file for bankruptcy.[31] 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[32] in Florida and sets up guaranty associations where necessary.[33] Florida operates five guaranty associations including the Florida Insurance Guaranty Association (FIGA).[34]

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."[35] It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.[36]

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.[37] Under current law, therefore, there is a $100 deductible on all property and casualty claims covered by FIGA.

Effect of the Bill

[29] S. 626.9541(1)(z), F.S.
[30] DFS, *supra* note 6, at 3.
[31] 11 U.S.C. § 109(b)(2).
[32] 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.
[33] Ch. 631, F.S.
[34] Ch. 631, part II, F.S.
[35] S. 631.51, F.S.
[36] S. 631.52, F.S.
[37] S. 631.57(1), F.S.

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.

Florida Workers' Compensation Insurance Guaranty Association

The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) was created in 1997 by merging the workers' compensation account in FIGA with the Florida Self-Insurance Fund Guaranty Association.[38] FWCIGA "provides a mechanism for the payment of covered claims under chapter 440, F.S., to avoid" delay and financial loss to claimants due to the insolvency of a workers' compensation insurer.[39] When a workers' compensation insurer or self-insurance fund becomes insolvent, FWCIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. Because FWCIGA covers claims for workers' compensation policies that are in effect on the date of the final order of liquidation, this leaves policyholders whose policies have lapsed prior to liquidation with unpaid claims.

Effect of the Bill

The bill removes the language "any return of premium resulting from a policy that was not in force on the date of the final order of liquidation" from the definition of what is excluded as a "covered claim."

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. Creates s. 626.5813, F.S., relating to claims adjusting.

Section 5. Amends s. 626.602, F.S., relating to insurance agency names; disapproval.

Section 6. 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 7. Amends s. 626.782, F.S., "Industrial class insurer" defined.

Section 8. Amends s. 626.783, F.S., relating to the definition of "Ordinary-combination class insurer."

Section 9. Repeals s. 626.796, F.S., relating to representing another insurer in same industrial debit territory.

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.

[38] Ch. 97-262, Laws of Fla.
[39] S. 631.902, F.S.

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

Section 16. Amends s. 627.502, F.S., relating to “Industrial life insurance”; defined; reporting.

Section 17. Amends s. 627.70131, F.S., relating to insurer’s duty to acknowledge communications regarding claims; investigation.

Section 18. Creates s. 627.7031, relating to foreign venue clauses prohibited.

Section 19. Amends s. 627.7142, F.S., relating to Homeowner Claims Bill of Rights.

Section 20. Amends s. 631.57, F.S., relating to powers and duties of the association.

Section 21. Amends s. 631.904, F.S., relating to definitions.

Section 22. Amends s. 648.30, F.S., relating to licensure and appointment required.

Section 23. Provides an effective date of upon becoming law, except as otherwise provided.

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 s. 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 reissuance of PINs and eliminates the deductible FIGA charges for covered claims.

The bill has potential 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 loss of revenue for the consumer reporting agencies. The amount of this loss is unknown.

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, Florida Constitution, may apply given the nature of the administrative penalty created in Section 3 of the bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 626.862, F.S., exempts licensed and appointed insurance agents (agents) from the requirement to be licensed as an adjuster to adjust losses for an insurer. DFS has indicated that section 4 of the bill, which clarifies the meaning of claims adjusting and who may provide claims adjusting services, should have included agents and should be amended to avoid conflict with s. 626.862, F.S., by exempting agents, along with attorneys, from the adjuster license requirement.

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 certain consumers, rather than authorizing such agencies to charge the customers' representatives; amending s. 624.307, F.S.; revising a requirement for persons 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; amending s. 626.112, F.S.; removing a provision requiring the department to automatically convert registrations of approved registered insurance agencies to insurance agency licenses; prohibiting unlicensed activity by an adjusting firm unless the firm complies with a specified requirement; 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; creating s. 626.5813, F.S.; defining the term "claims adjusting"; prohibiting a person from providing claims adjusting

services unless the person meets specified requirements; amending s. 626.602, F.S.; authorizing the department to disapprove the use of insurance agency names containing the words "Medicare" or "Medicaid"; providing a time-limited exception for certain insurance agencies; prohibiting relicensing of insurance agencies using such names; providing for future expiration of such licenses; providing an exception from future expiration; 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. 626.854, 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; requiring that certain public adjuster's contracts include a specified disclosure; specifying requirements for written estimates of loss provided by

public adjusters to claimants or insureds; prohibiting licensed contractors and subcontractors from engaging in certain activities unless licensed and compliant as public adjusters; amending s. 626.916, F.S.; providing a disclosure requirement that an insurance coverage must meet 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 the term "sliding" as unfair methods of competition and unfair or deceptive acts; amending s. 626.9741, F.S.; requiring an insurer's notification regarding certain credit report or score information to include specified language under certain circumstances; amending ss. 626.9957 and 627.062, F.S.; conforming cross-references; amending s. 627.502, F.S.; prohibiting a life insurer 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; replacing the defined term "agent" with the term "representative"; revising the timeframe in which an insurer must begin an investigation after receipt of proof of loss statements; requiring an insurer-

assigned licensed adjuster to provide the policyholder with certain information; specifying information that must be included in certain communication with the policyholder regarding a claim; requiring an insurer to keep records of the licensed adjusters interacting with policyholders; requiring an insurer to establish a process to provide the policyholder, the office, or the department with a list of adjusters associated with a claim; requiring an insurer to include specified notices when providing preliminary or partial damage estimates or claim payments; providing applicability; creating s. 627.7031, F.S.; prohibiting foreign venue clauses in property insurance policies; providing applicability; amending s. 627.7142, F.S.; revising circumstances under which an insurer must provide a Homeowner Claims Bill of Rights to a policyholder; 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 obligation of the Florida Insurance Guaranty Association, Incorporated, as to certain covered claims; amending s. 631.904, F.S.; revising the definition of the term "covered claim" to exclude certain premium returns; amending s. 648.30, F.S.; providing penalties for a licensed bail bond

agent or temporary bail bond agent who knowingly engages in certain activities; providing effective dates.

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 protected 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 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 that are not subject to attorney-client or work-product 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. Subsection (9) of section 626.112, Florida Statutes, is renumbered as subsection (10), paragraph (d) of subsection (7) and present subsection (9) are amended, and a new subsection (9) is added to that section, to read:

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

(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. Section 626.5813, Florida Statutes, is created to read:

626.5813 Claims adjusting.—

(1)(a) As used in this section, the term "claims adjusting" means directly or indirectly:

1. Attempting or undertaking to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertaking to negotiate or effect settlement of a claim, loss, or damage under an insurance contract, if such action results in payment to or receipt of money, commission, or any other thing of value by the party or parties rendering such service or persons affiliated with such party or parties; or

2. Soliciting services as described in subparagraph 1. or soliciting an insured or policyholder to file an insurance claim.

(b) The term does not include:

1. Paid services as a spokesperson used as part of a written or an electronic advertisement.

2. Paid services as a photographer or videographer used to capture images of damage.

3. Paid services to inventory personal property or

business personal property.

4. Discussion or explanation of a bid for construction or repair services by a licensed contractor under part I of chapter 489, or a subcontractor for a licensed contractor, with a property owner or the insurer of such property.

(2) Except for a duly licensed attorney at law as exempted under s. 626.860, a person may not provide claims adjusting services unless licensed and appointed as an adjuster under this part.

Section 5. 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 agency whose name contains the word "Medicare" or "Medicaid" but which is licensed as of July 1, 2021, may continue to use that name until June 30, 2023, as long as the agency's license remains valid. If the agency's license expires or is suspended or revoked, the agency may not be relicensed using that name. Licenses containing either of these words automatically expire on July 1, 2023, unless these words are removed from the name.

Section 6. 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) Taking an action that allows 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 7. 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, 2021, and as to such insurance, operates under a system of collecting a debit by its agent.

Section 8. 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 9. Section 626.796, Florida Statutes, is repealed.

Section 10. Subsections (6), (11), and (15) of section 626.854, Florida Statutes, are 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) An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 10 calendar ~~3 business~~ days after the date on which the contract is executed ~~or within 3 business 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 contain the following language in minimum 18-point bold type: "You, the insured, may cancel this contract for any reason without penalty or obligation to you within 10 days after the date of this contract by providing notice to (name of public adjuster) ,

submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, at the address specified in the contract." ~~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.~~

(11) Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds within 60 days after the date of the public adjuster's contract. The written estimate must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies, in accordance with accepted industry standards. The public adjuster shall retain such written estimate for at least 5 years and shall make the estimate available to the claimant or insured, the insurer, and the department upon request.

(15) A licensed contractor under part I of chapter 489, or a subcontractor, may not adjust a claim on behalf of an insured,

or solicit an insured to file an insurance claim, unless licensed and compliant as a public adjuster under this chapter. However, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

Section 11. Effective January 1, 2022, 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 acknowledgment 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 paragraph (1)(f) ~~must sign a disclosure 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 in paragraph (1)(f) ~~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 agent is renewing insurance or issuing collateral protection insurance, as defined in s.

624.6085, pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

Section 13. Effective January 1, 2022, 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 applicant or insured must include the following language: "The Department of Financial Services offers free financial literacy programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, 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 must ~~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 is ~~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. 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, 2021, a life insurer may not write a new policy of industrial life insurance.

Section 17. Effective January 1, 2022, 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 does ~~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 14 ~~10 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 a printed or electronic document containing his or her name and license number.

(c) Any subsequent communication with the policyholder regarding the claim must also include the name and license number of the adjuster communicating about the claim. Communication of the adjuster's name and license number may be included along with other information already being provided to the policyholder.

(4) An insurer shall maintain a record or log of each adjuster who communicates with the policyholder as provided in paragraphs (3)(b) and (3)(c), and shall provide a list of the adjusters to the policyholder, the office, or the department upon request.

(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 COVERED DAMAGES 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 payment on a claim which is not the full and final payment for the 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)(a) ~~(5)(a)~~ Within 90 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 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 does ~~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 to surplus lines insurance authorized under ss. 626.913-

626.937 providing residential coverage.

Section 18. Section 627.7031, Florida Statutes, is created to read:

627.7031 Foreign venue clauses prohibited.—After July 1, 2021, a personal residential property insurance policy sold in the state and insuring only real property located in the state may not require an insured to pursue dispute resolution through litigation, arbitration, or mediation outside the state. This section also applies to surplus lines insurers and to surplus lines insurance authorized under ss. 626.913-626.937.

Section 19. Effective January 1, 2022, 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 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 90 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.

4. Receive payment of interest, as provided in section 627.70131, Florida Statutes, 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 initial, reopened, or supplemental claim or the undisputed portion of your claim or does not deny your claim within 90 days after your claim is filed. The interest, if applicable, must be paid when your claim or undisputed portion of your claim is paid.

5.~~4.~~ Have 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.

6.~~5.~~ Have neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

7.~~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 to provide to your insurer.

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 20. 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. Before ~~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 $200,000 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 21. Subsection (2) of section 631.904, Florida Statutes, is amended to read:

631.904 Definitions.—As used in this part, the term:

(2) "Covered claim" means an unpaid claim, including a claim for return of unearned premiums, which arises out of, is within the coverage of, and is not in excess of the applicable limits of, an insurance policy to which this part applies, which policy was issued by an insurer and which claim is made on behalf of a claimant or insured who was a resident of this state at the time of the injury. The term "covered claim" includes unpaid claims under any employer liability coverage of a workers' compensation policy limited to the lesser of $300,000 or the limits of the policy. The term "covered claim" does not include any amount sought as a return of premium under any

retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; any claim that would otherwise be a covered claim that has been rejected or denied by any other state guaranty fund based upon that state's statutory exclusions, including, but not limited to, those based on coverage, policy type, or an insured's net worth, except this exclusion from the definition of covered claim does not apply to employers who, before ~~prior to~~ April 30, 2004, entered into an agreement with the corporation preserving the employer's right to seek coverage of claims rejected by another state's guaranty fund~~; or any return of premium resulting from a policy that was not in force on the date of the final order of liquidation~~. Member insurers have no right of subrogation against the insured of any insolvent insurer. This provision applies retroactively to cover claims of an insolvent self-insurance fund resulting from accidents or losses incurred before ~~prior to~~ January 1, 1994, regardless of the date the petition in circuit court was filed alleging insolvency and the date the court entered an order appointing a receiver.

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. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

INSURANCE & BANKING SUBCOMMITTEE

HB 717 by Rep. Clemons
Consumer Protection

AMENDMENT SUMMARY
March 4, 2021

Amendment 1 by Rep. Clemons (Line 134): The amendment removes the $60 licensure fee for insurance adjusting firms.

Amendment 2 by Rep. Clemons (Line 207): The amendment exempts “agents” from the adjuster licensure requirement in the new section that clarifies what constitutes claims adjusting for the purpose of licensure as a claims adjuster. The purpose of the amendment is to avoid conflict and maintain consistency with existing law (section 626.862, F.S.), which exempts licensed and appointed insurance agents from the requirement to be licensed as an adjuster to adjust losses for an insurer.

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)

Between lines 134 and 135, insert:

Section 3. Subsection (20) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.— The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

~~(20) Adjusting firm, original or renewal 3-year license. . . . . $ 60.00~~

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

Remove line 12 and insert:
consumer complaints; amending s. 624.501 F.S.;
deleting a fee for adjusting firm licenses; amending
s. 626.112, F.S.;

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	_____	

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Clemons offered the following:

Amendment

Remove lines 207-209 and insert:

under s. 626.860, or an agent as exempted under s. 626.862, a person may not provide claims adjusting services unless licensed and appointed as an adjuster under this part.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 733 Credit for Reinsurance
SPONSOR(S): Fetterhoff
TIED BILLS: **IDEN./SIM. BILLS:** SB 728

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

SUMMARY ANALYSIS

Reinsurance is a transaction between a primary insurer (ceding insurer) and a reinsurer (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. 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 (U.S.) ceding insurers acquire is placed with non-U.S. assuming insurers. Because state insurance regulators do not regulate non-U.S. insurers or assuming insurers, the purchase of reinsurance by Florida insurers from such non-U.S. 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 assuming insurer 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 meets certain criteria. Credit for reinsurance means that a ceding insurer is permitted under statutory accounting rules to recognize the reinsurance as an asset or as a reduction 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. These criteria include having its head office or its domicile, and being licensed in, a reciprocal jurisdiction, maintaining 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, responding to OIR's document requests, and maintaining a practice of prompt payment of claims. The bill also specifies certain elements that an assuming insurer must include in its reinsurance agreements in order for the ceding insurer to take credit for reinsurance. The bill requires that an assuming insurer's regulatory authority confirm to OIR that the assuming insurer has complied with the capital and surplus requirements and solvency or capital ratio requirements in the bill. It also establishes that a ceding insurer 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 criteria in the bill. Additionally, OIR may suspend or revoke the assuming insurer's eligibility if the assuming insurer does not continue to meet the mandatory criteria.

If insurers are able to take credit for reinsurance for additional reinsurance transactions, they will be able to recognize additional assets or reductions in liability. The greater an insurer's assets or lower its liabilities, the higher the insurer's surplus. The insurer's surplus provides a measure of financial stability and provides a source of funds in the event that reserves are inadequate.

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 July 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 (U.S.) ceding insurers acquire is placed with non-U.S. assuming insurers. In fact, in 2018, offshore and non-U.S.-owned[5] assuming insurers assumed 88.9 percent of insurance premiums ceded by U.S. insurers.[6] The availability of non-U.S. reinsurance contributes to global diversification of risk, provides claims relief to U.S. insurers, and mitigates the financial impact of catastrophes.[7] Even though reinsurance provides benefits, because the U.S. state insurance regulators do not regulate non-U.S. insurers or assuming insurers, the purchase of reinsurance by U.S. insurers from such non-U.S. companies provides concern and challenges for state insurance regulators.

Regulation of Reinsurance

Direct Regulation of Authorized Assuming Insurers 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 assuming insurers[9] who are domiciled and licensed in Florida and assuming insurers licensed in Florida who are domiciled in other states.[10] Under current law, if a Florida insurer cedes reinsurance to an assuming insurer who is authorized to transact insurance or reinsurance in Florida

[1] National Association of Insurance Commissioners, https://content.naic.org/consumer_glossary.htm#R (last visited Feb. 22, 2021). 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 Feb. 22, 2021).
[3] *See* IRMI, *In Defense of Reinsurance*, https://www.irmi.com/articles/expert-commentary/in-defense-of-reinsurance (last visited Feb. 22, 2021).
[4] *Id.*
[5] In the insurance context, a company formed under laws other than those of a U.S. jurisdiction is known as an alien insurer. *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/Offshore_Report_2018_Data.html (last visited Feb. 22, 2021).
[7] International Association of Insurance Supervisors, *Reinsurance and Financial Stability,* https://www.iaisweb.org/file/34046/reinsurance-and-financial-stability (last visited Feb. 22, 2021).
[8] Statutes also refer to OIR as the office.
[9] Authorized assuming insurers are licensed or accredited to provide reinsurance in a particular state. *See* s. 624.610, F.S.
[10] S. 624.610, F.S.

and meets other specified requirements, the ceding insurer is permitted to take credit for that reinsurance on its books.[11]

Indirect Regulation of Unauthorized Assuming insurers and Credit for Reinsurance

When an assuming insurer is not an authorized assuming insurer 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 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 (MLMR), amendments to which are designed to modernize reinsurance regulation in the U.S..[18] In 2017, the U.S. entered the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement).[19] In 2019, the NAIC made revisions to MLMR in response to the Covered Agreement. In

[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 reduction 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 Feb. 26, 2021). *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 Feb. 26, 2021).
[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 Feb. 26, 2021).
[15] *Id*.
[16] National Association of Insurance Commissioners, *NAIC Model Laws*, https://content.naic.org/cipr_topics/topic_naic_model_laws.htm (last visited Feb. 26, 2021).
[17] National Association of Insurance Commissioners, *Accreditation*, https://content.naic.org/cipr_topics/topic_accreditation.htm (last visited Feb. 26, 2021).
[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 Feb. 26, 2021).
[19] U.S. Department of the Treasury, *U.S. – EU Covered Agreement*, https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/covered-agreements/us-eu-covered-agreement (last visited Feb. 26, 2021). Covered agreements are authorized under 31 U.S.C. §§ 313–314, and are written bilateral or multilateral agreements regarding

part, the Covered Agreement commits the U.S. to phasing-out collateral requirements for European Union assuming insurers by 2022.[20] The Covered Agreement also exempts European Union assuming insurers from current U.S. domiciliary requirements by creating a classification known as a reciprocal jurisdiction.[21]

Effect of the Bill

The changes to MLMR as a result of the Covered Agreement, necessitate that existing Florida law regarding credit for reinsurance be amended. The bill creates a new subsections within the reinsurance statute regarding the circumstances under which ceding insurers can take credit for reinsurance. The bill establishes that a ceding insurer will *not* be permitted to take credit for reinsurance when an assuming insurer is not authorized or accredited to transact insurance or reinsurance in Florida *unless* the assuming insurer agrees to the following in its reinsurance agreements:

- If the assuming insurer fails to perform its obligations under the reinsurance agreement, and at the request of the ceding insurer, the assuming insurer shall submit to the jurisdiction of any U.S. court of competent jurisdiction, comply with the requirements necessary to give that court jurisdiction, and abide by the final decision of that court or any appellate court in the event of an appeal.
- Designate the Florida Chief Financial Officer as its agent to for service of process in a suit by a ceding insurer.

The bill also provides that credit for reinsurance must be allowed when reinsurance is ceded to an assuming insurer that meets all of the following criteria:

- The assuming insurer must be licensed in, and have its head office in or be domiciled in, a reciprocal jurisdiction.
- The assuming insurer must have minimum capital and surplus as calculated by the methodology of its domiciliary jurisdiction in the amount of $250 million or in a greater 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

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insurance or reinsurance entered into between the U.S. and one or more foreign authorities to provide protections for insurance and reinsurance consumers similar to those provided by state insurance regulators within U.S. jurisdictions.

[20] U.S. Department of the Treasury, *Statement of the United States on the Covered Agreement with the European Union*, https://ustr.gov/sites/default/files/files/US%20Covered%20Agreement.pdf (last visited Feb. 26, 2021).

[21] *Id.* Model Law #785 defines a reciprocal jurisdiction as:

- A non-U.S. jurisdiction that is subject to an in-force covered agreement with the U.S., each within its legal authority, or in the case of a covered agreement between the U.S. and the European Union, is a member state of the European Union;
- A U.S. 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 Feb. 26, 2021).

[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.

    - confirm that the assuming insurer is not presently participating in any solvent scheme of arrangement[23] that involves Florida's ceding insurers, and should the 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 regulatory authority[24] 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 insurer 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 insurer's eligibility under s. 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 s. 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.

By allowing insurers to take credit for reinsurance for additional reinsurance transactions, the bill allows insurers to recognize additional assets or reductions in liability. The greater an insurer's assets or lower its liabilities, the higher the insurer's surplus. The insurer's surplus provides a measure of financial stability and provides a source of funds in the event that reserves are inadequate.

B. SECTION DIRECTORY:

Section 1. Amends s. 624.610, F.S., relating to reinsurance.

Section 2. Provides an effective date of July 1, 2021.

[23] A solvent scheme of arrangement is an English statutory procedure that is used by a solvent company to bring finality to some or all of their insurance business, and by insolvent companies, as an alternative to liquidation. They involve running-off business and making distributions to creditors. Michelle Kierce, et al., *Schemes of arrangement and their ongoing currency*, Insurance and Reinsurance 2010, https://www.sidley.com/~/media/files/publications/2010/01/schemes-of-arrangement-and-their-ongoing-currency/files/view-article/fileattachment/schemes-of-arrangement-and-their-ongoing-currenc__.pdf (last visited Feb. 27, 2021).

[24] The assuming insurer's regulatory authority is the entity that regulates the conduct of insurance companies in the assuming insurer's country of domicile.

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:

None.

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.[25] 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:

None.

[25] S. 624.610(14), F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to credit for reinsurance; amending s. 624.610, F.S.; making a technical change; adding conditions under which a ceding insurer must be allowed credit for reinsurance; transferring specified authority and duties relating to credit for reinsurance from the Commissioner of Insurance to the Office of Insurance Regulation; revising the attorney designation requirement in reinsurance agreements with certain assuming insurers under certain circumstances; defining the terms "reciprocal jurisdiction" and "covered agreement"; requiring the office to publish a list of reciprocal jurisdictions on its website; authorizing the office to remove reciprocal jurisdictions under a specified circumstance; specifying requirements for assuming insurers and reinsurance agreements; specifying documentation requirements; authorizing a ceding insurer or its representative that is subject to rehabilitation, liquidation, or conservation to seek a certain court order; providing construction; specifying a limitation on credit taken by a ceding insurer; requiring the office to publish on its website a list of certain assuming insurers; authorizing the office to revoke or suspend an assuming insurer's eligibility under

certain circumstances; prohibiting credit for reinsurance under certain circumstances; providing exceptions; making technical changes; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (4) through (15) of section 624.610, Florida Statutes, are renumbered as subsections (5) through (16), respectively, subsection (2), paragraphs (c), (e), and (f) of subsection (3), present subsection (4), paragraph (a) of present subsection (5), and paragraph (b) of present subsection (11) 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 reduction ~~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 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).

(f) If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in this state pursuant to paragraph (a) or paragraph (b), the credit permitted by paragraph (c) or paragraph (d) must not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1.a. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

b. To designate the Chief Financial Officer, pursuant to s. 48.151, ~~or a designated attorney~~ as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

2. This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance

agreement to arbitrate their disputes, if this obligation is created in the agreement.

(4) Credit must be allowed when the reinsurance is ceded to an assuming insurer meeting the requirements of this subsection.

(a) The assuming insurer must be licensed in, and have its head office in or be domiciled in, as applicable, a reciprocal jurisdiction. As used in this subsection, the term "reciprocal jurisdiction" means a jurisdiction that is any of the following:

1. 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, a jurisdiction that is a member state of the European Union. As used in this subsection, the term "covered agreement" means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. ss. 313 and 314, which is currently in effect or in a period of provisional application and which addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

2. A United States jurisdiction that meets the requirements for accreditation under the Financial Regulation

Standards and Accreditation Program of the National Association of Insurance Commissioners.

3. A qualified jurisdiction, as determined by the office, which is not otherwise described in subparagraph 1. or subparagraph 2. and which meets all of the following additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by commission rule:

a. The jurisdiction allows an insurer domiciled, or having its head office, in the jurisdiction to take credit for reinsurance ceded to an insurer domiciled in the United States in the same manner as reinsurance ceded to insurers domiciled in that jurisdiction.

b. The jurisdiction does not require an assuming insurer domiciled in the United States to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the jurisdiction or as a condition for allowing the ceding insurer to take credit for the ceded risk.

c. The jurisdiction provides written confirmation that it recognizes the state regulatory approach to group supervision and group capital and that insurers and insurance groups domiciled, or maintaining their headquarters, in a jurisdiction accredited by the National Association of Insurance Commissioners are subject only to worldwide prudential insurance group supervision by the domiciliary state and are not subject

to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.

d. The jurisdiction provides written confirmation that information regarding insurers and their parent, subsidiary, or affiliated entities shall be provided to the office in accordance with a memorandum of understanding or similar document between the office and such qualified jurisdiction.

The office shall timely publish on its website a list of reciprocal jurisdictions. The office may remove a reciprocal jurisdiction determined to no longer meet the requirements of this paragraph.

(b)1. 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 the amount of $250,000,000 or in a greater amount specified by commission rule.

2. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis:

a. Minimum capital and surplus equivalents, or net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, in the amount of $250,000,000 or in a greater amount specified by commission rule.

b. A central fund containing a balance of $250,000,000 or a greater amount specified by commission rule.

(c) If credit is allowed for reinsurance ceded to the assuming insurer pursuant to:

1. Subparagraph (a)1., the assuming insurer must maintain a minimum solvency or capital ratio specified in the applicable covered agreement.

2. Subparagraph (a)2., the assuming insurer must maintain a risk-based capital ratio of 300 percent of the authorized control level, calculated in accordance with s. 624.4085.

3. Subparagraph (a)3., the assuming insurer must maintain a solvency or capital ratio determined by the office to be an effective measure of solvency.

(d) The assuming insurer must, in a form specified by the commission:

1. Agree to provide prompt written notice and explanation to the office if the assuming insurer falls below the minimum requirements set forth in paragraph (b) or paragraph (c), or if any regulatory action is taken against it for serious noncompliance with applicable law of any jurisdiction.

2. Consent in writing to the jurisdiction of the courts of this state and to the designation of the Chief Financial Officer, pursuant to s. 48.151, as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

This subparagraph does not limit or alter in any way the capacity of parties to a reinsurance agreement to agree to an alternative dispute resolution mechanism, except to the extent that such agreement is unenforceable under applicable insolvency or delinquency laws.

3. Consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor which have been declared enforceable in the jurisdiction where the judgment was obtained.

4. Confirm in writing that it will include in each reinsurance agreement 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 enforcement of a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate.

5. Confirm in writing that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agree 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 if the assuming insurer enters

into such a solvent scheme of arrangement. Such security must be consistent with subsection (5) or as specified by commission rule.

(e) If requested by the office, the assuming insurer or its legal successor must provide, on behalf of itself and any legal predecessors, the following additional documentation:

1. The assuming insurer's annual audited financial statements, for the 2-year period before entering into the reinsurance agreement and on an annual basis thereafter, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report.

2. The solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor, for the 2-year period before entering into the reinsurance agreement.

3. Before entering into the reinsurance agreement and not more than semiannually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more regarding reinsurance assumed from ceding insurers domiciled in the United States.

4. Before entering into the reinsurance agreement and not more than semiannually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable

on paid and unpaid losses by the assuming insurer.

5. Additional information as reasonably required by the office.

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements and must report to the office reinsurance recoverables that are more than 90 days overdue or that are in dispute, as specified by commission rule.

(g) The assuming insurer must annually provide to the office confirmation from its reciprocal jurisdiction, on a form adopted by the commission or as otherwise specified by commission rule, that, as of the preceding December 31 or as of the annual date otherwise statutorily reported to the reciprocal jurisdiction, the assuming insurer complied with the requirements of paragraphs (b) and (c).

(h) This subsection does not preclude an assuming insurer from providing the office with information on a voluntary basis.

(i) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer or its representative may seek and, if determined appropriate by the court in which the proceedings are pending, obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(j) This subsection does not limit or alter in any way the capacity of parties to a reinsurance agreement to agree on

requirements for security or other terms in the reinsurance agreement, except as expressly prohibited by this section or other applicable law or commission rule.

(k)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 pursuant to this subsection or 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 for which, and to the extent that, credit is not available under this subsection, if the reinsurance qualifies for credit under any other applicable provision of law or commission rule.

3. This subsection does not authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as authorized by the terms of the agreement.

4. This subsection does not limit or alter in any way the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(l) The office shall timely publish on its website a list

of assuming insurers that meet all of the requirements of this subsection.

(m) If the office determines that an assuming insurer no longer meets one or more of the requirements of this subsection, the office may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection.

1. During the suspension of an assuming insurer's eligibility, a 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 subsection (5).

2. If an assuming insurer's eligibility is revoked, a 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 subsection (5).

(5) ~~(4)~~ An asset allowed or a reduction ~~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 reduction

~~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)(a) ~~(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.

(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.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 797 Florida Life and Health Insurance Guaranty Association
SPONSOR(S): Robinson, W.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Hinshelwood	Luczynski
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

An insurance guaranty association ensures that policyholders' paid insurance premiums are protected and outstanding claims are settled, up to limits provided by law, if their insurer is liquidated. The Florida Life and Health Insurance Guaranty Association (FLAHIGA) is the guaranty association for most insurance companies that write life and health insurance or annuities in Florida. The bill makes the following changes to conform to the Life and Health Insurance Guaranty Association Model Act:

- Adds a definition for the term "Moody's Corporate Bond Yield Average".
- Amends the definition of "person" to include "limited liability company" and "governmental body or entity".
- Clarifies that, in dealing with an impaired domestic insurer, the FLAHIGA may assume or reissue covered policies, in addition to guaranteeing and reinsuring the policies.
- Expressly provides that the FLAHIGA has the right to appear or intervene before a court or agency in another state.
- Provides that, for purposes of the FLAHIGA's standing to appear before any court in this state, the FLAHIGA's powers and duties include reissuing or modifying covered policies.
- Provides that the FLAHIGA may recover payment of improper claims.
- Clarifies that the FLAHIGA has the authority to join an organization of other state guaranty associations to further the purposes and to carry out the powers and duties of the FLAHIGA.
- As to Class A assessments, which pay the FLAHIGA's general administrative expenses, removes the cap of $250, permits the assessments to be made on a pro rata basis, and allows the FLAHIGA's board to credit the assessments against future assessments related to insurer insolvencies.
- Provides that, if an insurer's assessment is deferred because the assessment would endanger the insurer's financial solvency, the insurer must pay the assessment once it regains financial strength.
- Removes the reduced assessment cap for nonprofit annuity insurers that issue policies to educational groups, thus making such insurers subject to the assessment cap for all other annuity insurers.
- Directs that the FLAHIGA establish a procedure for removing a board member if that member becomes impaired or insolvent and establish a policy and procedure to address conflicts of interest.

The bill has no impact on state or local governments and an indeterminate impact on the private sector.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Insurer Insolvency

States primarily regulate insurance companies, and the state of domicile serves as the primary regulator for insurers. In Florida, the Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers and other risk-bearing entities.[1] The OIR monitors the solvency of insurers, examines insurers, and takes administrative action, if necessary.

Chapter 631, F.S., relating to insurer insolvency and guaranty payments, governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.[2] Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.[3]

Florida operates five insurance guaranty funds and associations[4] to ensure that policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[5] A guaranty association generally is a not-for-profit corporation created by law and is directed to protect policyholders from financial losses and delays in claims payments and settlements due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums[6] to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill makes changes to one of the five guaranty funds and associations – the Florida Life and Health Insurance Guaranty Association (FLAHIGA), which is the guaranty association for most health and life insurers.

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[1] S. 20.121(3), F.S.

[2] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. ss. 1011-1012.

[3] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

[4] The FLAHIGA (ss. 631.711 – 631.738, F.S.) generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The HMOCAP (ss. 631.811 – 631.828, F.S.) offers assistance to members of insolvent health maintenance organizations, and the Florida Workers' Compensation Insurance Guaranty Association (ss. 631.901 – 631.932, F.S.) is directed by law to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association (ss. 440.385 – 440.386, F.S.) protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association (ss. 631.50 – 631.70, F.S.) is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

[5] "Before the creation of guaranty associations, a typical claimant could have waited for years for payment of a claim and then still receive only a fraction of what was due under the terms of the policy or contract. Guaranty associations, subject to statutory limitations, were created to alleviate these problems and ensure the stability of the insurance market. Specifically, in the event of a life/health insurer liquidation, the guaranty mechanism provides for the continuation of eligible contracts that would otherwise terminate." National Association of Insurance Commissioners, *Guaranty Associations/Funds*, https://www.naic.org/cipr_topics/topic_guaranty_associations.htm (last visited Feb. 26, 2021).

[6] The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired portion of the policy.

The FLAHIGA

Statutory provisions relating to the FLAHIGA, which was created in 1979, are contained in ch. 631, part III, F.S. The FLAHIGA is a nonprofit corporation and is governed by a board of directors composed of at least nine but not more than 11 member insurance companies.[7] All insurance companies (with limited exceptions) licensed to write life and health insurance or annuities in Florida are required, as a condition of doing business in Florida, to be a member of the FLAHIGA.[8]

Plan of Operation

The FLAHIGA's operations are set forth in a plan of operation. Amendments to the plan of operation must be submitted to the DFS for approval and are effective upon written approval by the DFS.[9] The plan of operation must:[10]

- Establish procedures for handling the FLAHIGA's assets.
- Establish the amount and method of reimbursing the FLAHIGA's board members for expenses incurred by them as board members, though board members are not otherwise compensated by the FLAHIGA for their services.[11]
- Establish regular places and times for meetings of the board of directors.
- Establish procedures for keeping records of all financial transactions of the FLAHIGA, its agents, and the board of directors.
- Establish procedures whereby selections for the board of directors are made and submitted to the DFS.
- Establish any additional procedures for assessments.
- Contain additional provisions necessary or proper for the execution of the powers and duties of the FLAHIGA.

Additionally, the plan of operation may delegate duties of the FLAHIGA, except the power to borrow and to assess its members, to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states.[12] This provision contemplates membership in and delegation of duties to the National Organization of Life and Health Insurance Guaranty Associations discussed below.

Insolvency Process

In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, the FLAHIGA automatically becomes liable for the policy obligations that the liquidated insurer owed to its Florida policyholders.[13] The FLAHIGA services the policies, collects premiums, and pays valid claims under the policies. The FLAHIGA's rights under the policies are those that applied to the insurer prior to liquidation. The FLAHIGA may cancel the policy if the insurer could have done so, but normally the FLAHIGA continues the policies until it can transfer to, or substitute the policies with, a new, stable insurer with approval of the OIR.

The FLAHIGA's aggregate liability with respect to one life may not exceed the following:

- Life insurance death benefit: $300,000 per insured life.
- Life insurance cash surrender: $100,000 per insured life.
- Health insurance or long-term care insurance: $300,000 per insured life.

[7] Ss. 631.715(1) and 631.716(1), F.S.
[8] S. 631.715(1), F.S.
[9] S. 631.721(1)(a), F.S.
[10] S. 631.721(3), F.S.
[11] S. 631.716(3), F.S.
[12] S. 631.721(4), F.S.
[13] Generally, the FLAHIGA covers only policyholders and certificate holders that were valid Florida residents on the date that a member insurer is declared insolvent and liquidated. However, non-residents of Florida and beneficiaries of covered persons are covered by the FLAHIGA under limited circumstances. s. 631.713(2), F.S.

- Annuity cash surrender: $250,000 for deferred annuity contracts per contract owner.
- Annuity in benefit: $300,000 per contract owner.
- Basic hospital expense, basic medical-surgical, or major medical expense health insurance policies (other than long-term care insurance policies): $500,000 per insured life.[14]

Additionally, the FLAHIGA will only cover a policy or contract to the extent that:

- The interest rate on which the policy or contract is based, averaged over the four-year period immediately preceding the date on which the member insurer becomes impaired or insolvent, is less than the Moody's Corporate Bond Yield Average (averaged for that same four-year period) minus two percentage points.
- The interest rate on which the policy or contract is based, on and after the date on which the member insurer becomes an impaired or insolvent, is less than the Moody's Corporate Bond Yield Average minus three percentage points.

The FLAHIGA statutes do not currently define the term "Moody's Corporate Bond Yield Average".

Powers and Duties of the FLAHIGA

The FLAHIGA carries out its duties pursuant to authority granted by and directives contained in statute. Among the powers statutorily granted to the FLAHIGA is the authority to:

- Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of an impaired domestic insurer;[15] and
- Take such legal action as may be necessary to avoid payment of improper claims.[16]

Additionally, the FLAHIGA has standing to appear before any court in this state which has jurisdiction over an impaired or insolvent insurer to which the FLAHIGA is or may become obligated.[17] Such standing extends to all matters germane to the powers and duties of the FLAHIGA, including but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. While the statute expressly provides the FLAHIGA standing to appear in courts of this state, the statute does not expressly provide the FLAHIGA the right to appear or intervene before a court or agency in another state.

Assessment of Members

By law, the FLAHIGA is divided into three operating accounts:[18]

- The health insurance account;
- The life insurance account; and
- The annuity account.

The FLAHIGA is authorized to levy two types of assessments to carry out its responsibilities:

- Class A assessments may be levied for the purpose of covering the FLAHIGA's general administrative costs and for the cost of examining a member insurer that the FLAHIGA's board believes in good faith may be impaired or insolvent.[19] These assessments may only be made on a non-pro rata basis up to $250 per member per calendar year.[20] Additionally, Class A assessments may not be credited against future Class B assessments.[21]

[14] S. 631.717(12), F.S.; FLAHIGA, *Frequently Asked Questions,* https://www.flahiga.org/FAQ (last visited Feb. 26, 2021).
[15] S. 631.717(1)(a), F.S.
[16] S. 631.717(13)(f), F.S.
[17] S. 631.717(7), F.S.
[18] S. 631.715(2)(a), F.S.
[19] Ss. 631.718(2)(a) and 631.723(3), F.S.
[20] S. 631.718(3)(a), F.S.
[21] *Id.*

- Class B assessments are authorized to fund the FLAHIGA's duties related to a specific insolvency.[22] Except for assessments related to long-term care insurance insolvencies, Class B assessments are based on an insurer's pro rata share of all premiums collected by insurers in this state on policies covered by the account during the three years prior to the assessment.[23] Except for assessments related to long-term care insurance insolvencies, an insurer's assessment for each account may not exceed, in any one calendar year, 1 percent of the insurer's average premiums written in the covered account during the three-year period preceding the year in which the assessment is made.[24] An insurer may offset any assessment against either its premium tax or corporate income tax liability in 5 percent increments over the 20-year period following the year in which the assessment was paid.[25] When assessments related to insolvencies are imposed, the FLAHIGA must issue a certificate of contribution to each insurer paying such assessment for the amount of the assessment paid.[26] A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the OIR approves.[27] However, any amount of assessment offset against the insurer's premium tax or corporate income tax liability may not be shown as an asset of the insurer.[28]

Currently, there is a cap on assessment of any member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S.,[29] or for the benefit of employees of Florida educational institutions.[30] Such nonprofit insurance companies may not be assessed in any one calendar year more than the greater of:[31]

- The amount which the company paid to this state in the previous year as premium tax and corporate tax on the business to which the FLAHIGA statutes apply, or
- 0.1 percent of written premium on such business in this state.

The FLAHIGA may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations.[32] In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers.[33]

National Organization of Life and Health Insurance Guaranty Associations (NOLHGA)[34]

NOLHGA is a voluntary membership organization founded in 1983 when state life and health insurance guaranty associations saw the need for a mechanism to help them coordinate their efforts to provide protection to policyholders when a life or health insurance company insolvency affects people in multiple states. Today, NOLHGA membership includes life and health insurance guaranty associations of all 50 states and the District of Columbia.

When an insurer licensed in multiple states is declared insolvent, NOLHGA, on behalf of affected member state guaranty associations, assembles a task force of guaranty association officials. This task force analyzes the company's commitments to policyholders; ensures that covered claims are paid;

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[22] S. 631.718(2)(b), F.S.
[23] S. 631.718(3)(c), F.S.
[24] S. 631.718(5)(a), F.S.
[25] S. 631.72(1), F.S.
[26] S. 631.718(8), F.S.
[27] *Id.*
[28] *Id.*
[29] Section 121.35, F.S., requires the Department of Management Services to establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for eligible members of the State University System who elect to participate in the program.
[30] S. 631.718(9), F.S.
[31] *Id.*
[32] S. 631.718(4), F.S.
[33] *Id*.
[34] NOLHGA, *About Us*, https://www.nolhga.com/aboutnolhga/main.cfm/location/whatisnolhga (last visited Feb. 26, 2021).

and, where appropriate, arranges for covered policies to be transferred to a healthy insurer. The task force may also support the efforts of the receiver to dispose of the company's assets in a way that maximizes their value. When there is a shortfall of estate assets needed to pay the claims of covered policyholders, guaranty associations assess the licensed insurers in their states a proportional share of the funds needed.

NOLHGA's coordination of the workout of a multi-state insolvency significantly reduces costs to guaranty associations because the NOLHGA task force avoids the need for each state guaranty association to hire its own legal and financial experts. This coordination of effort also helps reduce the length of time a receiver may require to develop a plan of rehabilitation or otherwise resolve a multi-state insolvency.

The National Association of Insurance Commissioners (NAIC) – Life and Health Guaranty Association Model Act

The NAIC is the U.S. 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.[35] Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate their regulatory oversight.[36] OIR Commissioner David Altmaier currently serves as the NAIC President.[37]

The NAIC has promulgated and periodically updates a model act for use by states in governing their Life and Health Insurance Guaranty Associations.[38] Below are pertinent provisions in the most recent model act. Italicized words indicate portions of the model act that the bill adds to the FLAHIGA statutes.

- Definitions:
  - *"Moody's Corporate Bond Yield Average" means the monthly average corporates as published by Moody's Investors Service, Inc., or any successor thereto.*[39]
  - "Person" means an individual, corporation, *limited liability company*, partnership, association, *governmental body or entity*, or voluntary organization.[40]
- Powers of the guaranty association state that the association may guarantee, *assume, reissue*, or reinsure, or cause to be guaranteed, assumed, *reissued*, or reinsured, any or all of the policies or contracts of the impaired insurer.[41]
- The guaranty association's standing to appear or intervene before a court or agency in this state extends to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, *reissuing, modifying*, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations.[42] *The guaranty association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.*[43] These provisions enable the guaranty association to protect its interest and the best interests of the policyholders, contract owners, certificate holders, or enrollees in the handling of an impairment or insolvency by providing that the association's standing to appear in courts with jurisdiction over an insolvent insurer will extend to any matters concerning the duties of the association.[44]

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[35] NAIC, *About the NAIC*, https://www.naic.org/index_about.htm (last visited Feb. 26, 2021).
[36] *Id*.
[37] *Id.*
[38] NAIC, *Life and Health Insurance Guaranty Association Model Act,* 2018, http://www.naic.org/store/free/MDL-520.pdf (last visited Feb. 26, 2021).
[39] *Id.* at 9 and 37.
[40] *Id.* at 9 and 38.
[41] *Id*. at 12.
[42] *Id.* at 15.
[43] *Id.*
[44] *Id.* at 20.

- The guaranty association may take such legal action as may be necessary or appropriate to avoid *or recover* payment of improper claims.[45]
- *The guaranty association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association*.[46] This provision is intended to explicitly recognizes that prompt and efficient discharge of the guaranty association's obligations will be greatly facilitated, especially in multistate insolvencies, by acting in concert through NOLHGA to develop and, where appropriate, carry out coordinated plans.[47]
- The amount of a Class A assessment shall be determined by the board and may be authorized and called on a *pro rata or* non-pro rata basis. *If pro rata, the board may provide that it be credited against future Class B assessments.*[48]
- The guaranty association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. *Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the Association*.[49]
- The plan of operation shall:
    - *Establish procedures whereby a director may be removed* for cause, including in the case *where a member insurer director becomes an impaired or insolvent insurer*.[50]
    - *Require the board of directors to establish a policy and procedures for addressing conflicts of interest*.[51]

Effect of the Bill

Definitions

In conformity with the NAIC model act, the bill:

- Adds a definition for "Moody's Corporate Bond Yield Average" and defines the term as meaning the monthly average corporate bond yields published by Moody's Investor Services, Inc., or any successor thereto.[52]
- Adds "limited liability company" and "governmental body or entity" to the definition of "person".

Powers and Duties of the FLAHIGA

In conformity with the NAIC model act, the bill adds that:

- The FLAHIGA has authority to assume or reissue, or cause to be reissued, any or all of the covered policies of an impaired domestic insurer.
- The FLAHIGA has right to appear or intervene before a court or agency in another state which has jurisdiction over:
    - An impaired or insolvent insurer for which the FLAHIGA is or may become obligated; or
    - A person or property against whom the FLAHIGA may have rights through subrogation or otherwise.
- For purposes of the FLAHIGA's standing to appear before any court in this state, the FLAHIGA's powers and duties include reissuing or modifying covered policies.

[45] *Id.* at 16.
[46] *Id.*
[47] *Id.* at 20.
[48] *Id.* at 21.
[49] *Id*. at 22.
[50] *Id*. at 24.
[51] *Id.*
[52] The term "Moody's Corporate Bond Yield Average" is used in the context of an interest rate cap on FLAHIGA's coverage of policies or contracts of the impaired or insolvent insurer.

- The FLAHIGA has the power to take such legal action as may be necessary to recover payment of improper claims.
- The FLAHIGA has the power to join an organization of other state guaranty associations to further the purposes and to carry out the powers and duties of the FLAHIGA (i.e., membership in NOLHGA).[53]

Assessments

In conformity with the NAIC model act, the bill removes the cap of $250 on Class A assessments, permits Class A assessments to be made on either a pro rata or non-pro rata basis, and allows the FLAHIGA's board to credit Class A assessments against future Class B assessments. The ability to credit Class A assessments against future Class B assessments provides budget flexibility. However, since Class A assessments are much smaller than Class B assessments, this change may not significantly decrease liability for Class B assessments.

The bill removes the cap on assessment of any member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S., or for the benefit of employees of Florida educational institutions. Such companies would still be subject to assessment caps applicable to all member insurers, and the FLAHIGA maintains its ability to abate or defer the assessment of a member insurer if payment of the assessment would put the member insure at risk of becoming impaired or insolvent.

Also in conformity with the NAIC model act, the bill adds a provision that would cause a member insurer to pay all assessments that were deferred, once the conditions that caused a deferral have been removed or rectified.

Plan of Operation

In conformity with the NAIC model act, the bill directs that the FLAHIGA's plan of operation must:
- Establish a procedure for removing a member of the board of directors when that member becomes an impaired or insolvent insurer.
- Require the board of directors to establish a policy and procedures for addressing conflicts of interest.

B. SECTION DIRECTORY:

Section 1. Amends s. 631.714, F.S., relating to definitions.

Section 2. Amends s. 631.717, F.S., relating to powers and duties of the association.

Section 3. Amends s. 631.718, F.S., relating to assessments.

Section 4. Amends s. 631.721, F.S., relating to plan of operation.

Section 5. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[53] The FLAHIGA is already a member of NOLHGA, and the FLAHIGA's plan of operation is already permitted to delegate many of the FLAHIGA's duties to NOLHGA.

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 bill may result in increased costs to some insurance companies because it removes the reduced assessment cap for nonprofit annuity insurers that issue policies to educational groups, provides that a member insurer must pay all assessments that were deferred once the insurer regains financial strength, removes the cap on Class A assessments, and allows Class A assessments to be made on a pro rata basis. However, for these same reasons, the bill may equally result in decreased costs to other insurance companies. Overall, the bill may lead to better financial strength of the FLAHIGA, the safety net for insurance companies that write life and health insurance or annuities in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer agency rulemaking authority nor require an agency to promulgate rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Florida Life and Health Insurance Guaranty Association; amending s. 631.714, F.S.; defining the term "Moody's Corporate Bond Yield Average" and redefining the term "person," to apply to provisions relating to life and health insurance guaranty of payments; amending s. 631.717, F.S.; authorizing the Florida Life and Health Insurance Guaranty Association to assume, reissue, and cause to be reissued covered polices of impaired insurers under certain circumstances; revising the association's standing before a court; providing that the association has the right to appear or intervene before a court or agency in another state under certain circumstances; authorizing the association to join certain organizations for specified purposes; amending s. 631.718, F.S.; authorizing the board of directors of the association to credit specified assessments against certain future assessments under certain circumstances; deleting provisions prohibiting credits against future insolvency assessments and provisions limiting the amount assessed; requiring member insurers to pay deferred assessments under certain circumstances; deleting provisions limiting the amount that may be assessed against specified

member insurers; amending s. 631.721, F.S.; providing additional requirements for the association's plan of operation; providing an effective date.

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

Section 1. Subsections (8), (9), and (10) of section 631.714, Florida Statutes, are renumbered as subsections (9), (10), and (11), respectively, present subsection (9) is amended, and a new subsection (8) is added to that section, to read:

631.714 Definitions.—As used in this part, the term:

(8) "Moody's Corporate Bond Yield Average" means the monthly average corporate bond yields published by Moody's Investors Service, Inc., or any successor thereto.

(10) ~~(9)~~ "Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

Section 2. Paragraph (a) of subsection (1), subsection (7), and paragraph (f) of subsection (13) of section 631.717, Florida Statutes, are amended, and paragraph (h) is added to subsection (13) of that section, to read:

631.717 Powers and duties of the association.—

(1) If a domestic insurer is an impaired insurer, the association may, subject to the approval of the impaired insurer and the department:

(a) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, any or all of the covered policies of the impaired insurer;

(7) The association shall have standing to appear before any court in this state which has jurisdiction over an impaired or insolvent insurer to which the association is or may become obligated under this part. Such standing shall extend to all matters germane to the powers and duties of the association, including but not limited to, proposals for reinsuring, reissuing, modifying, or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. The association also has the right to appear or intervene before a court or agency in another state which has jurisdiction over:

(a) An impaired or insolvent insurer for which the association is or may become obligated; or

(b) A person or property against whom the association may have rights through subrogation or otherwise.

(13) The association may:

(f) Take such legal action as may be necessary to avoid or recover payment of improper claims.

(h) Join an organization of other state guaranty associations to further the purposes and to carry out the powers and duties of the association.

Section 3. Paragraph (a) of subsection (3) and subsections

(4) and (9) of section 631.718, Florida Statutes, are amended, and paragraphs (b) and (c) of subsection (3) of that section are republished, to read:

631.718 Assessments.—

(3)(a) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If on a pro rata basis, the board may credit the assessment against future Class B assessments ~~The assessment may not be credited against future insolvency assessments and may not exceed $250 per member insurer in any one calendar year~~.

(b)1. The amount of any Class B assessment, except for assessments related to long-term care insurance, must be allocated for assessment purposes among the accounts pursuant to an allocation formula, which may be based on the premiums or reserves of the impaired or insolvent insurer.

2. The amount of the Class B assessment for long-term care insurance written by the impaired or insolvent insurer must be allocated according to a methodology included in the plan of operation and approved by the department. The methodology must provide for 50 percent of the assessment to be allocated to health member insurers and 50 percent to be allocated to life and annuity member insurers.

3. For the purposes of the methodology outlined in subparagraph 2. and included in the plan of operation, the health member insurers' share of the assessment must be

calculated by including the assessable premiums of member health maintenance organizations of the Florida Health Maintenance Organization Consumer Assistance Plan.

(c) Class B assessments against member insurers for each account must be based upon the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the 3 most recent calendar years for which information is available preceding the year of the assessment in proportion to premiums received on business in this state for those calendar years by all assessed member insurers. If the most recent 3 years of premium information is not available for each member insurer, the board of directors may use the premium information that is reasonably available.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

~~(9) Notwithstanding any provision to the contrary, no member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, or for the benefit of employees of educational institutions situated in this state may be assessed in any one calendar year an amount greater than the amount which it paid to this state in the previous year as premium tax and corporate tax on the business to which this part applies or 0.1 percent of written premium on such business in this state, whichever is greater.~~

Section 4. Paragraphs (h) and (i) are added to subsection (3) of section 631.721, Florida Statutes, and subsections (1) and (2) of that section are republished, to read:

631.721 Plan of operation.—

(1)(a) The association shall submit to the department a proposed plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The proposed plan of operation and any amendments thereto shall become effective upon approval in writing by the department.

(b) If at any time the association fails to submit suitable amendments to the plan, the department shall, after notice and hearing, adopt such reasonable rules as are necessary to effectuate the provisions of this part. Such rules shall continue in force until modified by the department or superseded

by a proposed plan submitted by the association and approved by the department.

(2) All member insurers shall comply with the approved plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this part:

(h) Establish a procedure for removing a member of the board of directors when that member becomes an impaired or insolvent insurer.

(i) Require the board of directors to establish a policy and procedures for addressing conflicts of interest.

Section 5. This act shall take effect July 1, 2021.