

Insurance & Banking Subcommittee

Wednesday, March 10, 2021
9:30 AM - 11:30 AM
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

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9:30 AM – 11:30 AM
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 245 Massage Therapy by Chaney
- HB 701 Behavioral Health Care Services Coverage and Access by Stevenson
- HB 815 Insurance by Gregory
- HB 895 Consumer Finance Loans by Stevenson
- HB 917 Documentary Stamp Tax Exemption by McClain

Consideration of the following proposed committee substitute(s):

- PCS for HB 6077 -- Assets of an Estate in Administration

I. Closing Remarks

II. Adjournment

HB 245

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 245 Massage Therapy
SPONSOR(S): Chaney
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee	18 Y, 0 N	Guzzo	McElroy
2) Insurance & Banking Subcommittee		Rowley	Luczynski
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Massage practice is the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, and may be aided by hydrotherapy, including colonic irrigation or thermal therapy, or any electrical or mechanical device, or the application of a chemical or herbal preparation to the human body. The Board of Massage Therapy (Board), within the Department of Health (DOH), regulates massage practice in this state.

The bill expands the scope of practice for massage therapy by authorizing a massage therapist to perform a massage therapy assessment to determine the course of massage therapy treatment.

Current law authorizes a massage therapist to use his or her hand, foot, arm, or elbow during the course of massage therapy treatment. The bill authorizes a massage therapist to also use his or her knee during the course of massage therapy treatment.

The bill also changes the term “massage” to “massage therapy” throughout statutes to standardize terminology.

The bill has no fiscal impact on state or local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Massage Therapy

Massage practice is the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation or thermal therapy, or any electrical or mechanical device, or the application of a chemical or herbal preparation to the human body.[1] Massage is therapeutic and a massage therapist must know anatomy and physiology and understand the relationship between the structure and function of the tissues being treated and the total function of the body.[2]

Chapter 480, F.S., entitled the "Massage Practice Act" governs the practice of massage therapy in Florida. The Board of Massage Therapy (Board), within the Department of Health (DOH), regulates massage practice, including massage therapists and massage establishments.[3]

Massage Therapist Licensure

A massage therapist is a person who administers massage for compensation.[4] To qualify for licensure as a massage therapist, an applicant must:

- Be at least 18 years of age or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a Board-approved massage school;
- Undergo background screening; and
- Pass an examination.[5]

A massage therapist is required to renew his or her license every two years and must complete 24 hours of continuing education for each renewal period.[6]

As of February 24, 2021, there are 38,875 actively licensed massage therapists in Florida.[7]

Massage Schools

A person seeking licensure as a massage therapist is required to complete a course of study at a Board-approved massage school. The Board requires the course of study to be comprised of at least 500 hours, completed at a rate of no more than six hours per day and no more than 30 hours per week.

[1] S. 480.033(3), F.S.
[2] S. 480.032, F.S.
[3] S. 480.035, F.S.
[4] S. 480.033(4), F.S.
[5] S. 480.041(1), F.S.
[6] S. 480.0415, F.S., and rule 64B7-28.009, F.A.C.
[7] Department of Health, FLHealthSource.gov, Public Data Portal (search by Board/Council "Board of Massage Therapy", then by Profession "massage therapist", then by license status "practicing statuses only"), available at https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders, (last visited Mar. 5, 2021).

The education must include:

- 150 hours of anatomy and physiology;
- 100 hours of basic massage theory and history;
- 125 hours of clinical practicum;
- 76 hours of allied modalities;
- 15 hours of business;
- 15 hours of theory and practice of hydrotherapy;
- 10 hours of Florida laws and rules;
- 4 hours of professional ethics;
- 3 hours of HIV/AIDS education; and
- 2 hours of medical errors.[8]

In addition to the training above, a massage therapy student seeking to provide colonic irrigation[9] services must be certified by the Board to provide such services. Prior to passing an exam, the student must complete a course of study in colonic irrigation, which must include a minimum of 100 classroom hours, consisting of:

- 50 hours in theory, anatomy, physiology, pathology of the colon and digestive system and principles of colon hygiene;
- 45 hours of clinical practicum that includes 20 treatments; and
- 5 hours in sterilization techniques and equipment training.[10]

Colonic Irrigation Apprenticeship Training Programs

As an alternative to completing a course of study in colonic irrigation, a licensed massage therapist may be certified to provide colonic irrigation services upon completing a colonic irrigation apprenticeship training program.[11] An apprentice must act under the direct supervision of a sponsor who is a licensed massage therapist, certified to practice colonic irrigation, and have practiced colonic irrigation for at least three years.[12]

The apprenticeship must be completed within 12 months of commencement and must consist of at least 1,448 hours of training, including:

- 300 hours of anatomy;
- 300 hours of physiology;
- 20 hours of basic massage theory and history;
- 50 hours of theory and the practice of hydrotherapy;
- 25 hours of Florida Laws and Rules regulating the practice of massage therapy;
- 50 hours of allied modalities;
- 700 hours of clinical practicum; and
- 3 hours of HIV/AIDS instruction.[13]

Upon completion of the above training, the apprentice must pass a Board-approved exam.[14]

Effect of the Bill

[8] Rule 64B7-32.003(1), F.A.C.
[9] Colonic irrigation is a method of hydrotherapy used to cleanse the colon with the aid of a mechanical device and water (s. 480.033(6), F.S.).
[10] Rule 64B7-32.005(1), F.A.C.
[11] S. 480.041(5)(b), F.S., and rule 64B7-29, F.A.C.
[12] Rule 64B7-29.001, F.A.C.
[13] Rule 64B7-29.003, F.A.C.
[14] Rule 64B7-25.001(2)(d), F.A.C.

The bill expands the scope of practice for massage therapy to include performing massage therapy assessment. The bill defines "massage therapy assessment" as the determination of the course of massage therapy treatment by a massage therapist. Currently, a massage therapist may perform a massage on a patient, but there is no specific statutory authority for a massage therapist to assess the patient to determine the course of treatment.

Current law authorizes a massage therapist to use his or her hand, foot, arm, or elbow during the course of massage therapy treatment. The bill authorizes a massage therapist to also use his or her knee during the course of massage therapy treatment.

The bill changes the term "massage" to "massage therapy" throughout statutes to standardize terminology, including revising the title of ch. 480, F.S., from "Massage Practice" to "Massage Therapy Practice."

B. SECTION DIRECTORY:

Section 1: Renames ch. 480, F.S.
Section 2: Amends s. 480.031, F.S., relating to the "Massage Practice Act."
Section 3: Amends s. 480.032, F.S., relating to purpose.
Section 4: Amends s. 480.033, F.S., relating to definitions.
Section 5: Amends s. 477.013, F.S., relating to definitions.
Section 6: Amends s. 477.0135, F.S., relating to exemptions.
Section 7: Amends s. 477.0265, F.S., relating to prohibited acts.
Section 8: Amends s. 480.034, F.S., relating to exemptions.
Section 9: Amends s. 480.035, F.S., relating to Board of Massage Therapy.
Section 10: Amends s. 480.041, F.S., relating to massage therapists; qualifications; licensure; endorsement.
Section 11: Amends s. 480.043, F.S., relating to massage establishments; requisites; licensure; inspection; human trafficking awareness training and policies.
Section 12: Amends s. 480.046, F.S., relating to grounds for disciplinary action by the board.
Section 13: Amends s. 480.0465, F.S., relating to advertisement.
Section 14: Amends s. 480.047, F.S., relating to penalties.
Section 15: Amends s. 480.052, F.S., relating to power of county or municipality to regulate massage.
Section 16: Amends s. 480.0535, F.S., relating to documents required while working in a massage establishment.
Section 17: Amends s. 627.6407, F.S., relating to massage.
Section 18: Amends s. 627.6619, F.S., relating to massage.
Section 19: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.
Section 20: Amends s. 641.31, F.S., relating to health maintenance contracts.
Section 21: Amends s. 823.05, F.S., relating to places and groups engaged in certain activities declared a nuisance; abatement and enjoinment.
Section 22: 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:

None.

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:

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 massage therapy; renaming ch. 480, F.S., as "Massage Therapy Practice"; amending s. 480.031, F.S.; conforming a provision to changes made by the act; amending s. 480.032, F.S.; revising the purpose of ch. 480, F.S.; amending s. 480.033, F.S.; revising and providing definitions; amending ss. 477.013, 477.0135, 477.0265, 480.034, 480.035, 480.041, 480.043, 480.046, 480.0465, 480.047, 480.052, 480.0535, 627.6407, 627.6619, 627.736, 641.31, and 823.05, F.S.; conforming provisions to changes made by the act; making technical changes; providing an effective date.

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

Section 1. Chapter 480, Florida Statutes, entitled "Massage Practice," is renamed "Massage Therapy Practice."

Section 2. Section 480.031, Florida Statutes, is amended to read:

480.031 Short title.—This act ~~shall be known and~~ may be cited as the "Massage Therapy Practice Act."

Section 3. Section 480.032, Florida Statutes, is amended to read:

480.032 Purpose.—The Legislature recognizes that the

practice of massage therapy is potentially dangerous to the public in that massage therapists must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and the function of the tissues being treated and the total function of the body. Massage therapy is a therapeutic health care practice, and regulations are necessary to protect the public from unqualified practitioners. It is therefore deemed necessary in the interest of public health, safety, and welfare to regulate the practice of massage therapy in the ~~this~~ state; however, restrictions shall be imposed to the extent necessary to protect the public from significant and discernible danger to health and yet not in such a manner which will unreasonably affect the competitive market. Further, consumer protection for both health and economic matters shall be afforded the public through legal remedies provided for in this act.

Section 4. Section 480.033, Florida Statutes, is amended to read:

480.033 Definitions.—As used in this act:

(1)~~(5)~~ "Apprentice" means a person approved by the board to study colonic irrigation under the instruction of a licensed massage therapist practicing colonic irrigation.

(2)~~(1)~~ "Board" means the Board of Massage Therapy.

(3)~~(9)~~ "Board-approved massage therapy school" means a facility that meets minimum standards for training and

curriculum as determined by rule of the board and that is licensed by the Department of Education pursuant to chapter 1005 or the equivalent licensing authority of another state or is within the public school system of this state or a college or university that is eligible to participate in the William L. Boyd, IV, Effective Access to Student Education Grant Program.

(4) ~~(6)~~ "Colonic irrigation" means a method of hydrotherapy used to cleanse the colon with the aid of a mechanical device and water.

(5) ~~(2)~~ "Department" means the Department of Health.

(6) ~~(11)~~ "Designated establishment manager" means a massage therapist who holds a clear and active license without restriction, who is responsible for the operation of a massage establishment in accordance with the provisions of this chapter, and who is designated the manager by the rules or practices at the establishment.

(7) "Establishment" or "massage establishment" means a site or premises, or portion thereof, wherein a massage therapist practices massage therapy.

(8) ~~(10)~~ "Establishment owner" means a person who has ownership interest in a massage establishment. The term includes an individual who holds a massage establishment license, a general partner of a partnership, an owner or officer of a corporation, and a member of a limited liability company and its subsidiaries who holds a massage establishment license.

(9) ~~(8)~~ "Licensure" means the procedure by which a person, hereinafter referred to as a "practitioner," applies to the board for approval to practice massage or to operate an establishment.

(10) ~~(4)~~ "Massage therapist" means a person licensed as required by this act, who performs ~~administers~~ massage therapy, including massage therapy assessment, for compensation.

(11) ~~(3)~~ "Massage therapy" means the manipulation of the soft tissues of the human body with the hand, foot, knee, arm, or elbow, regardless of whether ~~or not~~ such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.

(12) "Massage therapy assessment" means the determination of the course of massage therapy treatment.

Section 5. Subsection (13) of section 477.013, Florida Statutes, is amended to read:

477.013 Definitions.—As used in this chapter:

(13) "Skin care services" means the treatment of the skin of the body, other than the head, face, and scalp, by the use of a sponge, brush, cloth, or similar device to apply or remove a chemical preparation or other substance, except that chemical peels may be removed by peeling an applied preparation from the skin by hand. Skin care services must be performed by a licensed cosmetologist or facial specialist within a licensed cosmetology

or specialty salon, and such services may not involve massage therapy, as defined in s. 480.033 ~~s. 480.033(3)~~, through manipulation of the superficial tissue.

Section 6. Paragraph (a) of subsection (1) of section 477.0135, Florida Statutes, is amended to read:

477.0135 Exemptions.—

(1) This chapter does not apply to the following persons when practicing pursuant to their professional or occupational responsibilities and duties:

(a) Persons authorized under the laws of this state to practice medicine, surgery, osteopathic medicine, chiropractic medicine, massage therapy, naturopathy, or podiatric medicine.

Section 7. Paragraph (f) of subsection (1) of section 477.0265, Florida Statutes, is amended to read:

477.0265 Prohibited acts.—

(1) It is unlawful for any person to:

(f) Advertise or imply that skin care services, as performed under this chapter, have any relationship to the practice of massage therapy as defined in s. 480.033 ~~s. 480.033(3)~~, except those practices or activities defined in s. 477.013.

Section 8. Subsection (4) of section 480.034, Florida Statutes, is amended to read:

480.034 Exemptions.—

(4) An exemption granted is effective to the extent that

an exempted person's practice or profession overlaps with the practice of massage therapy.

Section 9. Subsection (2) of section 480.035, Florida Statutes, is amended to read:

480.035 Board of Massage Therapy.—

(2) Five members of the board shall be licensed massage therapists and shall have been engaged in the practice of massage therapy for not less than 5 consecutive years prior to the date of appointment to the board. The Governor shall appoint each member for a term of 4 years. Two members of the board shall be laypersons. Each board member shall be a high school graduate or shall have received a high school equivalency diploma. Each board member shall be a citizen of the United States and a resident of this state for not less than 5 years. The appointments are ~~will be~~ subject to confirmation by the Senate.

Section 10. Subsections (1) and (4) and paragraph (b) of subsection (5) of section 480.041, Florida Statutes, are amended to read:

480.041 Massage therapists; qualifications; licensure; endorsement.—

(1) Any person is qualified for licensure as a massage therapist under this act who:

(a) Is at least 18 years of age or has received a high school diploma or high school equivalency diploma;

(b) Has completed a course of study at a board-approved massage therapy school that meets standards adopted by the board; and

(c) Has received a passing grade on a national examination designated by the board.

(4) Upon an applicant's passing the examination and paying the initial licensure fee, the department shall issue to the applicant a license, valid until the next scheduled renewal date, to practice massage therapy.

(5) The board shall adopt rules:

(b) Providing for educational standards, examination, and certification for the practice of colonic irrigation, as defined in s. 480.033 ~~s. 480.033(6)~~, by massage therapists.

Section 11. Subsection (14) of section 480.043, Florida Statutes, is amended to read:

480.043 Massage establishments; requisites; licensure; inspection; human trafficking awareness training and policies.—

(14) Except for the requirements of subsection (13), this section does not apply to a physician licensed under chapter 457, chapter 458, chapter 459, or chapter 460 who employs a licensed massage therapist to perform massage therapy on the physician's patients at the physician's place of practice. This subsection does not restrict investigations by the department for violations of chapter 456 or this chapter.

Section 12. Paragraphs (a), (b), (c), (f), (g), (h), (i),

and (o) of subsection (1) of section 480.046, Florida Statutes, are amended to read:

480.046 Grounds for disciplinary action by the board.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(a) Attempting to procure a license to practice massage therapy by bribery or fraudulent misrepresentation.

(b) Having a license to practice massage therapy revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of massage therapy or to the ability to practice massage therapy. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

(f) Aiding, assisting, procuring, or advising any unlicensed person to practice massage therapy contrary to ~~the provisions of~~ this chapter or to a rule of the department or the board.

(g) Making deceptive, untrue, or fraudulent representations in the practice of massage therapy.

(h) Being unable to practice massage therapy with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of

material or as a result of any mental or physical condition. In enforcing this paragraph, the department ~~shall have~~, upon probable cause, may ~~authority to~~ compel a massage therapist to submit to a mental or physical examination by physicians designated by the department. Failure of a massage therapist to submit to such examination when so directed, unless the failure was due to circumstances beyond her or his control, constitutes ~~shall constitute~~ an admission of the allegations against her or him, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A massage therapist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent practice of massage therapy with reasonable skill and safety to clients.

(i) Gross or repeated malpractice or the failure to practice massage therapy with that level of care, skill, and treatment which is recognized by a reasonably prudent massage therapist as being acceptable under similar conditions and circumstances.

(o) Practicing massage therapy at a site, location, or place which is not duly licensed as a massage establishment, except that a massage therapist, as provided by ~~rules adopted by the~~ board rule, may provide massage therapy services, excluding colonic irrigation, at the residence of a client, at the office of the client, at a sports event, at a convention, or at a trade

show.

Section 13. Section 480.0465, Florida Statutes, is amended to read:

480.0465 Advertisement.—Each massage therapist or massage establishment licensed under ~~the provisions of~~ this act shall include the number of the license in any advertisement of massage therapy services appearing in a newspaper, airwave transmission, telephone directory, or other advertising medium. Pending licensure of a new massage establishment under ~~pursuant to the provisions of~~ s. 480.043(7), the license number of a licensed massage therapist who is an owner or principal officer of the establishment may be used in lieu of the license number for the establishment.

Section 14. Paragraphs (a), (b), and (c) of subsection (1) of section 480.047, Florida Statutes, are amended to read:

480.047 Penalties.—

(1) It is unlawful for any person to:

(a) Hold himself or herself out as a massage therapist or to practice massage therapy unless duly licensed under this chapter or unless otherwise specifically exempted from licensure under this chapter.

(b) Operate any massage establishment unless it has been duly licensed as provided herein, except that nothing herein shall be construed to prevent the teaching of massage therapy in this state at a board-approved massage therapy school.

(c) Permit an employed person to practice massage therapy unless duly licensed as provided herein.

Section 15. Section 480.052, Florida Statutes, is amended to read:

480.052 Power of county or municipality to regulate massage therapy.—A county or municipality, within its jurisdiction, may regulate persons and establishments licensed under this chapter. Such regulation shall not exceed the powers of the state under this act or be inconsistent with this act. This section shall not be construed to prohibit a county or municipality from enacting any regulation of persons or establishments not licensed pursuant to this act.

Section 16. Subsections (1) and (2) of section 480.0535, Florida Statutes, are amended to read:

480.0535 Documents required while working in a massage establishment.—

(1) In order to provide the department and law enforcement agencies the means to more effectively identify, investigate, and arrest persons engaging in human trafficking, a person employed by a massage establishment and any person performing massage therapy therein must immediately present, upon the request of an investigator of the department or a law enforcement officer, valid government identification while in the establishment. A valid government identification for the purposes of this section is:

(a) A valid, unexpired driver license issued by any state, territory, or district of the United States;

(b) A valid, unexpired identification card issued by any state, territory, or district of the United States;

(c) A valid, unexpired United States passport;

(d) A naturalization certificate issued by the United States Department of Homeland Security;

(e) A valid, unexpired alien registration receipt card (green card); or

(f) A valid, unexpired employment authorization card issued by the United States Department of Homeland Security.

(2) A person operating a massage establishment must:

(a) Immediately present, upon the request of an investigator of the department or a law enforcement officer:

1. Valid government identification while in the establishment.

2. A copy of the documentation specified in paragraph (1)(a) for each employee and any person performing massage therapy in the establishment.

(b) Ensure that each employee and any person performing massage therapy in the massage establishment is able to immediately present, upon the request of an investigator of the department or a law enforcement officer, valid government identification while in the establishment.

Section 17. Section 627.6407, Florida Statutes, is amended

to read:

627.6407 Massage.—Any policy of health insurance that provides coverage for massage shall also cover the services of persons licensed to practice massage therapy pursuant to chapter 480, where the massage therapy, as defined in chapter 480, has been prescribed by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461, as being medically necessary and the prescription specifies the number of treatments.

Section 18. Section 627.6619, Florida Statutes, is amended to read:

627.6619 Massage.—Any policy of health insurance that provides coverage for massage shall also cover the services of persons licensed to practice massage therapy pursuant to chapter 480, where the massage therapy, as defined in chapter 480, has been prescribed by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461, as being medically necessary and the prescription specifies the number of treatments.

Section 19. Paragraph (a) of 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, 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 <u>therapy</u> as defined in s. 480.033 or acupuncture as defined in s. 457.102, regardless of the person, entity, or licensee providing massage <u>therapy</u> 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.

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 20. Subsection (37) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(37) All health maintenance contracts that provide coverage for massage must also cover the services of persons licensed to practice massage <u>therapy</u> pursuant to chapter 480 if the massage is prescribed by a contracted physician licensed

under chapter 458, chapter 459, chapter 460, or chapter 461 as medically necessary and the prescription specifies the number of treatments. Such massage services are subject to the same terms, conditions, and limitations as those of other covered services.

Section 21. Subsection (3) of section 823.05, Florida Statutes, is amended to read:

823.05 Places and groups engaged in certain activities declared a nuisance; abatement and enjoinment.—

(3) A massage establishment as defined in s. 480.033 ~~s. 480.033(7)~~ which operates in violation of s. 480.0475 or s. 480.0535(2) is declared a nuisance and may be abated or enjoined as provided in ss. 60.05 and 60.06.

Section 22. This act shall take effect July 1, 2021.

HB 701

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 701 Behavioral Health Care Services Coverage and Access
SPONSOR(S): Stevenson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Facilities Subcommittee	17 Y, 1 N	Grabowski	Lloyd
2) Insurance & Banking Subcommittee		Rowley	Luczynski
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The term “behavioral health” refers to the promotion of mental health, resilience and wellbeing; the treatment of mental and substance use disorders; and the support of those who experience and/or are in recovery from these conditions, along with their families and communities. Mental illness affects millions of people in the United States each year. Nearly one in five adults live with a mental illness. An estimated 49.5 percent of adolescents aged 13-18 have a mental disorder. Substance abuse also affects millions of people in the United States each year.

Until the late 1990s, private health insurance coverage for mental illness was generally not as comprehensive as coverage for medical and surgical benefits. Likewise, Medicaid has not traditionally provided coverage of mental health conditions at the same level of generosity as coverage for physical health conditions. Changes to federal law in the past two decades have resulted in mental health parity requirements applicable to most health insurers, health maintenance organizations, and Medicaid managed care plans. Although the federal government is responsible for enforcing many of these requirements, the Florida Department of Financial Services (DFS) and the Agency for Health Care Administration (AHCA) also play meaningful roles in monitoring health plan compliance.

HB 701 requires health insurers and HMOs to provide written notice to covered individuals outlining the federal and state requirements for coverage of behavioral health services. In addition, this notice must include the statewide toll-free telephone number established by the Division of Consumer Services at the DFS for reporting complaints related to the availability, affordability, and adequacy of behavioral health services.

The bill directs the DFS, in collaboration with the AHCA, to establish a system to track and monitor complaints related to behavioral health care services submitted by insured individuals to the Division of Consumer Services.

The bill also requires the DFS and the AHCA to provide a report to the Legislature by January 1, 2022 which includes data on the complaints received by the Division of Consumer Services related to behavioral health services.

The bill has no fiscal impact on state or local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Behavioral Health

The term "behavioral health" refers to the promotion of mental health, resilience and wellbeing; the treatment of mental and substance use disorders; and the support of those who experience and/or are in recovery from these conditions, along with their families and communities. Behavioral health conditions and the behavioral health field have historically been financed, authorized, structured, researched, and regulated differently than other health conditions.[1]

Mental Illness and Substance Abuse

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[2] The primary indicators used to evaluate an individual's mental health are:[3]

- **Emotional well-being**- Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being**- Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and,
- **Social well-being**- Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, and sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[4] Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being.

Mental illness affects millions of people in the United States each year. Nearly one in five adults live with a mental illness.[5] An estimated 49.5 percent of adolescents aged 13-18 have a mental disorder.[6] Suicide is the tenth overall leading cause of death in the nation and the second leading cause of death among individuals between the ages of 10 and 24.[7]

Substance abuse also affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[8] Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work,

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[1] Substance Abuse and Mental Health Services Administration, "SAMHSA – Behavioral Health Integration", available at https://www.samhsa.gov/sites/default/files/samhsa-behavioral-health-integration.pdf (last accessed February 22, 2021).
[2] World Health Organization, *Mental Health: Strengthening Our Response,* available at https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last accessed February 22, 2021).
[3] Centers for Disease Control and Prevention, *Learn About Mental Health*, available at http://www.cdc.gov/mentalhealth/basics.htm (last accessed February 22, 2021).
[4] *Id.*
[5] National Institute on Mental Health, *Mental Illness,* https://www.nimh.nih.gov/health/statistics/mental-illness.shtml (last accessed February 22, 2021).
[6] National Institute on Mental Health, *Mental Illness – Prevalence of Any Mental Disorder Among Adolescents,* https://www.nimh.nih.gov/health/statistics/mental-illness.shtml#part_155771 (last accessed February 22, 2021).
[7] National Institute on Mental Health, *Suicide,* https://www.nimh.nih.gov/health/statistics/suicide.shtml (last accessed February 22, 2021).
[8] *World Health Organization, Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last accessed February 22, 2021).

school, or home.[9] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[10] Brain imaging studies of persons with substance abuse disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.[11]

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[12] The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[13]

Mental illness and substance abuse commonly co-occur. Approximately 9.2 million adults have co-occurring disorders.[14] In fact, more than half of all adults with severe mental illness are further impaired by substance abuse disorders (abuse or dependence related to alcohol or other drugs).[15] Drug abuse can cause individuals to experience one or more symptoms of another mental illness.[16] Additionally, individuals with mental illness may abuse drugs as a form of self-medication.[17] Examples of co-occurring disorders include the combinations of major depression with cocaine addiction, alcohol addiction with panic disorder, alcoholism and drug addiction with schizophrenia, and borderline personality disorder with episodic drug abuse.[18]

Federal Mental Health Parity Laws

Commercial Plans

Prior to 1996, private health insurance coverage for mental illness was generally not as comprehensive as coverage for medical and surgical benefits. In response, the Mental Health Parity Act[19] (MHPA) was enacted in 1996, which requires parity of medical and surgical benefits with mental health benefits for annual and aggregate lifetime limits of large group plans.

In 2008, Congress passed the Mental Health Parity and Addiction Equity Act[20] (MHPAEA), which generally applies to large group health plans.[21] The MHPAEA expanded parity of coverage to include financial requirements, treatment limitations, and in- and out-of-network coverage if a plan provided coverage for mental illness. The MHPAEA also applies to the treatment of substance use disorders.[22] Like the MHPA, the MHPAEA does not require large groups to provide benefits for mental

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[9] Substance Abuse and Mental Health Services Administration, *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last accessed February 22, 2021).
[10] National Institute on Drug Abuse*, Drugs, Brains, and Behavior: The Science of Addiction*, https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last accessed February 22, 2021).
[11] *Id.*
[12] Substance Abuse and Mental Health Services Administration, *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last accessed February 22, 2021).
[13] *Id.*
[14] Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the U.S.: Results from the 2018 National Survey on Drug Use and Health,* (August 2019), https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf (last accessed February 22, 2021).
[15] Psychology Today, *Co-Occurring Disorders*, https://www.psychologytoday.com/conditions/co-occurring-disorders (last accessed February 22, 2021).
[16] *Comorbidity: Addiction and Other Mental Illnesses*, National Institute on Drug Abuse, NIH Publication Number 10-5771 (September 2010), https://www.drugabuse.gov/sites/default/files/rrcomorbidity.pdf (last accessed February 22, 2021).
[17] *Id.*
[18] *Id.*
[19] Pub. L. No. 104-204.
[20] Pub. L. No. 110-343.
[21] Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008; Technical Amendment to External Review for Multi-State Plan Program, 78 FR 68239 (November 13, 2013) (codified at 26 CFR Part 54, 29 CFR Part 2590, 45 CFR Parts 146 and 147).
[22] 45 CFR ss. 146 and 160.

health or substance use disorders. The MHPAEA contains a cost exemption, which allows a group health plan to receive a waiver, exempting them from some of the key requirements, if the plan demonstrates that costs increased at least 1 percent because of compliance.[23]

In 2010, the Patient Protection and Affordable Care Act[24] (PPACA) amended the MHPAEA to apply the provisions to individual health insurance coverage. The PPACA mandates that qualified health insurance must provide coverage of 10 essential health benefits,[25] including coverage for mental health and substance use disorders for individual and small group qualified health plans. The final rule, implementing these provisions, generally requires health insurers offering health insurance coverage in the individual and small group markets to comply with the requirements of the MHPAEA regulations in order to satisfy the essential health benefit requirement.[26]

Medicaid and CHIP

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including the Department of Children and Families, which makes eligibility determinations. Florida uses a comprehensive managed care delivery model for primary and acute care services to serve the bulk of its Medicaid population, known as the Statewide Medicaid Managed Care (SMMC) Managed Medical Assistance (MMA) program.[27] The MMA program was enacted in 2011 and fully implemented in 2014.

The Florida Kidcare Program was created by the Florida Legislature in 1998 in response to the federal enactment of the State Children's Health Insurance Program in 1997, later known more simply as the Children's Health Insurance Program (CHIP). The CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who meet other eligibility requirements. The state statutory authority for the Kidcare Program is found in part II of ch. 409, F.S.

Federal law requires state Medicaid programs and the CHIP to comply with mental health and substance use disorder parity requirements. On March 30, 2016, the Centers for Medicare and Medicaid Services (CMS) issued final regulations dictating that the parity requirements established by the MHPAEA apply to Medicaid managed care organizations (MCOs), such as those in Florida's MMA program, and CHIP programs.[28]

The federal regulations require MCOs to comply with strict requirements associated with the establishment of annual and lifetime dollar limits on coverage. If an MCO elects to use an annual or lifetime dollar limit on the coverage of mental health and substance abuse disorder treatments, that limit may not be less generous than any dollar limit on coverage for medical and surgical treatments. In addition, MCOs must comply with requirements for non-quantitative treatment limitations and must make available upon request the medical necessity criteria used for mental health or substance use

[23] Plans and issuers that make changes to comply with MHPAEA and incur an increased cost of at least 2 percent in the first year that MHPAEA applies to the plan or coverage or at least 1 percent in any subsequent plan year may claim an exemption from MHPAEA based on their increased cost. If such a cost is incurred, the plan or coverage is exempt from MHPAEA requirements for the plan or policy year following the year the cost was incurred. The plan sponsors or issuers must notify the plan beneficiaries that MHPAEA does not apply to their coverage. These exemptions last 1 year. After that, the plan or coverage is required to comply again; however, if the plan or coverage incurs an increased cost of at least 1 percent in that plan or policy year, the plan or coverage could claim the exemption for the following plan or policy year.

[24] Pub. L. No.111-148, as amended by Pub. L. No. 111-152.

[25] 45 CFR s. 156.115.

[26] *See* 45 CFR 147.150 and 156.115 (78 FR 12834, Feb. 25, 2013).

[27] S. 409.964, F.S.

[28] Medicaid and Children's Health Insurance Programs; Mental Health Parity and Addiction Equity Act of 2008; the Application of Mental Health Parity Requirements to Coverage Offered by Medicaid Managed Care Organizations, the Children's Health Insurance Program (CHIP), and Alternative Benefit Plans, 81 FR 18389 (March 30, 2016)(codified at 42 CFR Parts 438, 440, 456, 457).

disorders and the rationale for denials of reimbursement for mental health or substance use disorder benefits.[29]

State Regulation of Mental Health Coverage

Office of Insurance Regulation

The regulatory oversight of health insurance is generally reserved to the states, except when explicitly preempted by federal law. In Florida, the Office of Insurance Regulation (OIR) is responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the Florida Insurance Code.[30]

All health insurance policies issued in Florida, with the exception of certain self-insured policies,[31] must meet certain requirements that are detailed throughout the Florida Insurance Code. Chapter 627, F.S., sets parameters and requirements for health insurance policies and ch. 641, F.S., provides requirements for health plans issued by health maintenance organizations (HMOs). At a minimum, insurance policies must specify premium rates, services covered, and effective dates. Insurers must document the time when a policy takes effect and the period during which the policy remains in effect.[32]

The OIR reviews health insurance policies and contracts for compliance with the MHPAEA.[33] The OIR communicates any violations of the MHPAEA to the insurer or HMO. If the insurer or HMO fails to correct the issue, the OIR would refer the issue to the appropriate federal regulator as a possible violation of federal law.[34]

Department of Financial Services

The Florida Department of Financial Services (DFS) includes several divisions and offices that supplement the work of the OIR. The Division of Consumer Services deals with consumer issues and complaints related to the jurisdiction of the DFS and the OIR. The Division:

- Receives inquiries and complaints from consumers;
- Prepares and disseminates information as the DFS deems appropriate to inform or assist consumers;
- Provides direct assistance and advocacy for consumers; and
- Reports potential violations of law or applicable rules by a person or entity licensed by the DFS or the OIR to the appropriate division within the DFS or the OIR, as applicable.[35]

Specifically, the Division is responsible for receiving consumer complaints related to the PPACA, and by extension, the MHPAEA.[36]

Agency for Healthcare Administration

The AHCA is charged with ensuring that plans participating in the MMA program are compliant with federal parity regulations. The current SMMC contract contains a requirement that the MCOs must comply with the federal rule, including any non-quantitative limits that the MCOs may impose through

[29] *Id.*
[30] S. 20.121(3)(a)1., F.S. The OIR's commissioner is the agency head for purposes of final agency action, and its rulemaking body is the Financial Services Commission (the Governor and the Cabinet). The Florida Insurance Code includes chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[31] 29 U.S.C. 18 § 1001 et seq. ERISA regulates certain self-insured plans, which represent approximately 50 percent of the insureds in Florida. These plans cannot be regulated by state law.
[32] S. 627.413(1)(d), F.S.
[33] S. 624.26, F.S.
[34] *Id.*
[35] S. 20.121(2)(h), F.S.
[36] S. 624.26, F.S.

their credentialing, authorization, contracting, provider reimbursement, standards for accessing out-of-network providers, or other practices.[37] To assist the MCOs in their efforts to achieve compliance, the state has directed the MCOs to the reference materials provided by CMS in the Parity Compliance Toolkit and Implementation Roadmap, which are publically available on the CMS website.[38] The AHCA has several existing avenues for monitoring MCOs' compliance with parity, including, but not limited to, the review of new or revised MCO policies and procedures (including utilization management), monitoring of provider and recipient complaints submitted to the Medicaid Complaint Operations Center, and monthly submission to AHCA by the MCOs of complaint, grievance, and appeals reporting.

Effect of Proposed Changes

HB 701 establishes new communication duties for health insurance plans and HMOs, while creating data collection and reporting requirements for the DFS and the AHCA.

The bill requires health insurers and HMOs to provide written notice to covered individuals outlining the federal and state requirements for coverage of behavioral health services. In addition, this notice must include the statewide toll-free telephone number established by the Division of Consumer Services at the DFS for reporting complaints related to the availability, affordability, and adequacy of behavioral health services.

The bill directs the DFS, in collaboration with the AHCA, to establish a system to track and monitor complaints related to behavioral health care services submitted by insured individuals to the Division of Consumer Services.

The bill also requires the DFS and the AHCA to provide a report to the Legislature by January 1, 2022 which includes data on the complaints received by the Division of Consumer Services related to behavioral health services. At a minimum, the report must indicate the number of complaints received, the cause of such complaints, and whether the complaints were resolved within a timely manner.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 624.36, F.S.; relating to coverage of and access to behavioral health care services; tracking and monitoring of complaints; reporting.

Section 2: Creates a one-time reporting requirement.

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.

[37] Agency for Health Care Administration, *2018-2023 Model Health Plan Contract: Exhibit II-A – Managed Medical Assistance Program*, October 1, 2020, https://ahca.myflorida.com/medicaid/statewide_mc/model_health_FY18-23.shtml (last accessed February 23, 2021).
[38] See CMS, *Parity Compliance Toolkit Applying Mental Health and Substance Use Disorder Parity Requirements to Medicaid and Children's Health Insurance Program,* (Jan. 17, 2017), https://www.medicaid.gov/medicaid/benefits/downloads/bhs/parity-toolkit.pdf (last accessed February 25, 2021).

2. Expenditures:

   Requiring the DFS and ACHA to establish a system to track and monitor complaints regarding the adequacy of coverage and access to behavioral health care services may require an indeterminate state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

DFS has concerns about the costs associated with establishing a system to track and monitor complaints. DFS has indicated that its existing system of tracking and monitoring complaints is adequate and the bill sponsor has indicated an intent to address this issue.

It is unclear how often insurers and HMOs would be required to provide the written notice to their insureds, subscribers, and enrollees. The bill sponsor has indicated an intent to address the frequency of the notice requirement.

A bill to be entitled

An act relating to behavioral health care services coverage and access; creating s. 624.36, F.S.; requiring the Department of Financial Services, in collaboration with the Agency for Health Care Administration, to establish a system for tracking and monitoring complaints made to the Division of Consumer Services of the department regarding coverage of and access to behavioral health care services; requiring that insurers and health maintenance organizations provide written notice to certain persons which includes specified information; requiring the department and agency to submit a report containing certain data to the Governor and Legislature by a specified date; providing an effective date.

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

Section 1. Section 624.36, Florida Statutes, is created to read:

624.36 Coverage of and access to behavioral health care services; tracking and monitoring of complaints; reporting.—

(1) The department, in collaboration with the Agency for Health Care Administration, shall establish a system to track and monitor complaints made by insureds covered under individual

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

or group health insurance policies and subscribers of health maintenance organizations, including enrollees, to the Division of Consumer Services of the department regarding the adequacy of coverage of and access to behavioral health care services.

(2) Insurers and health maintenance organizations shall provide written notice to insureds, subscribers, and enrollees which includes the federal and state requirements for coverage of behavioral health care services. Such notice must also include the statewide toll-free telephone number of the Division of Consumer Services of the department for receiving and logging complaints, which may include, but need not be limited to, the challenges of locating and accessing behavioral health care services, the inflated expense of receiving such services, and any other complaints regarding the adequacy of services.

Section 2. By January 1, 2022, the Department of Financial Services and the Agency for Health Care Administration shall jointly submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which contains data relating to complaints made by insureds covered under individual or group health insurance policies and subscribers of health maintenance organizations, including enrollees, to the Division of Consumer Services of the department regarding the adequacy of coverage of and access to behavioral health care services, as described in s. 624.36, Florida Statutes. The report must include, but is not limited

to, the number of complaints, the cause of such complaints, and whether the complaints were resolved within a timely manner.

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

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

INSURANCE & BANKING SUBCOMMITTEE

HB 701 by Rep. Stevenson
Behavioral Health Care Services Coverage and Access

AMENDMENT SUMMARY
March 10, 2021

Amendment 1 by Rep. Stevenson: The amendment removes language from the bill providing that the Department of Financial Services, in collaboration with the Agency for Health Care Administration, shall establish a system to track and monitor complaints. The amendment provides greater details on the information that DFS's report to the Governor and Legislature must include and requires that DFS make certain information available on its website. Additionally, the amendment requires that insurers and health maintenance organizations disclose specified information on their websites. This amendment generally conforms the bill to the intended amendment of the Senate companion bill.

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 Stevenson offered the following:

Amendment (with title amendment)

Remove lines 22-53 and insert:

services; complaints; reporting.—

(1) By January 31, 2022, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives relating to the disposition of complaints received from insureds and subscribers of insurers or health maintenance organizations regulated by the office relating to the access and affordability of behavioral health care services and benefits during the prior calendar year. At a minimum, the report must include all of the following information:

(a) The total number of complaints received.

(b) The nature of complaints, including, but not limited to, concerns related to access to in-network providers or facilities; access to inpatient or outpatient services; availability of specialists; affordability of services; equivalency of behavioral health care benefits with respect to medical and surgical benefits; quality of care; and denial of services, including the types of services denied and the stated reason for the denials.

(c) The disposition of complaints.

(d) Any recommendations made by the department to the Legislature for ensuring access to and the affordability of behavioral health care services to insureds and subscribers.

(2) The department shall make available on its website a description of behavioral health care benefits required to be made available pursuant to s. 627.668 and federal law for individual and group policies and contracts.

Section 2. Section 627.4215, Florida Statutes, is created to read:

627.4215 Disclosures to policyholders; coverage of mental and nervous disorders.—

(1) An insurer shall make all of the following information available on its website:

(a) The federal and state requirements for coverage of behavioral health care services.

(b) Contact information for the Division of Consumer Services of the Department of Financial Services, including a hyperlink, for consumers to submit inquiries or complaints relating to insurer products or services regulated by the department or the office.

(2) On an annual basis, an insurer shall provide written notice to insureds which must include a description of the federal and state requirements for coverage of behavioral health care services. Such notice must also include the website address and statewide toll-free telephone number of the Division of Consumer Services of the department for receiving and logging complaints.

Section 3. Section 641.31085, Florida Statutes, is created to read:

641.31085 Disclosures to subscribers; coverage of mental and nervous disorders.—

(1) A health maintenance organization shall make all of the following information available on its website:

(a) The federal and state requirements for coverage of behavioral health care services.

(b) Contact information for the Division of Consumer Services of the Department of Financial Services, including a hyperlink, for consumers to submit inquiries or complaints relating to health maintenance organization products or services regulated by the department or the office.

(2) On an annual basis, a health maintenance organization shall provide written notice to subscribers which must include a description of the federal and state requirements for coverage of behavioral health care services. Such notice must also include the website address and statewide toll-free telephone number of the Division of Consumer Services of the department for receiving and logging complaints.

Section 4. This act shall take effect October 1, 2021.

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

Remove lines 4-15 and insert:

requiring the Department of Financial Services to submit a specified report to the Governor and Legislature by a specified date; specifying the minimum information the report must contain; requiring the department to make certain information available on its website; creating ss. 627.4215 and 641.31085, F.S.; requiring insurers and health maintenance organizations, respectively, to disclose specified information on their websites; requiring insurers and health maintenance organizations, respectively, to annually provide certain written notices to insureds or subscribers; providing an effective date.

HB 815

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 815 Insurance
SPONSOR(S): Gregory
TIED BILLS: **IDEN./SIM. BILLS:** SB 742

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 regarding insurance:

Florida Hurricane Catastrophe Fund (FHCF) Coverage – Modifies when collateral protection insurance is eligible for FHCF coverage.

Service of Process – Currently, legal service of process on an insurer is perfected on the date documents are served on the Department of Financial Services (DFS). The bill provides that service of process is perfected when process served on DFS is delivered to the insurer or DFS has notified the insurer of its availability online.

Loss Run Statements – Makes clarifying changes to the statutes that provide a framework for insurers to respond to loss run statement requests and eliminates a conflict between these statutes and a statute specific to health insurance loss run statements.

Hurricane Modeling – Current law regarding the use of hurricane loss models prescribes how approved models affect the Office of Insurance Regulation's (OIR) approval of a rate filing. The bill establishes that an insurer may use a weighted or straight average of approved hurricane models in a rate filing.

Mitigation Credits in Residential Property Insurance Rate Filings – Makes the use of building code enforcement rating factors in rating plans optional and allows insurers to give mitigation credit for evaluation by, and compliance with, standards developed by an independent, not-for-profit, scientific research organization.

Workers' Compensation Insurance Reporting Requirements – Provides for a new factor in the determination and fixing of workers' compensation and employer's liability insurance rates.

Citizens Property Insurance Corporation – Allows Citizens the option to insure residential condominiums under commercial residential wind only coverage if the units are intended for residential use, but are rented on a short-term basis.

Replacement Cost Coverage and Law and Ordinance Coverage – Clarifies the laws and ordinances that are applicable to a particular covered loss are those that were enacted on or before the date of that loss. It also provides that an insured has the later of, no less than two years from the date of the loss, or one year from the notice of the claim, to request reimbursement from the insurer for replacement costs.

Export of Flood Coverage to Surplus Lines – Reenacts the exemption from diligent search efforts when an agent is placing flood insurance on the surplus lines market.

Assignment Agreements – Expands the scope of services covered under the definition of "assignment agreement" and changes notification requirements.

Agent Licensing – Allows licensed general or personal lines agents to sell service agreements or warranties without salesperson or sales representative licenses. It expands the definition of a "company employee adjuster" to include licensed all-lines adjusters appointed and employed by insurers' affiliate.

The bill has no impact on state or local government revenues or expenditures. It has an unknown direct economic impact on the private sector.

Except where otherwise provided, the bill is effective on July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Hurricane Catastrophe Fund – Collateral Protection Insurance

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt trust fund created by the Legislature in 1993 as a form of reinsurance for residential property losses.[1] The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage of hurricane losses to residential property above the insurer's retention (deductible).[2] As a condition of doing business in Florida, property insurers are required to enter into reimbursement contracts with the FHCF. The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

The FHCF reimburses its participating insurers for losses on covered policies, subject to limitations.[3] Covered policies include collateral protection insurance[4] policies covering personal residences that protect both the borrower's and the lender's financial interests, in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowner's policy, if such policy meets certain statutory conditions.[5]

Collateral protection insurance is placed by an insurer when a borrower's policy on the property has lapsed. Sometimes, the insurer is unable to obtain correct information from the homeowner and places coverage at an amount other than the amount of the homeowner's lapsed policy. This can create a discrepancy between the coverage in place and the amount of the homeowner's lapsed policy, which makes the policy ineligible for FHCF coverage.

Effect of the Bill

The bill amends the conditions for which a collateral protection insurance policy can be considered a "covered policy" and thus eligible for FHCF coverage. The bill provides that a collateral protection insurance policy is eligible for coverage if it is placed for the amount of the last known coverage, the amount the homeowner was notified of, or the amount that the homeowner requests, in addition to the current law requirement that it also protects the homeowner's interest.

Service of Process

The law provides for the designation of a public officer, board, agency, or commission as the agent for service of process on a person, firm, or corporation in Florida.[6] The Chief Financial Officer (CFO) is designated as the agent for service of process on insurers and other specific entities or persons licensed by the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR).[7] Service of process on the CFO is made by mail, personal service, or via the e-portal.[8]

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[1] S. 215.555, F.S.
[2] *Id*.
[3] S. 215.555(1)(d), F.S.
[4] "Collateral protection insurance" means commercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document. Collateral protection insurance is not residential coverage. S. 624.6085, F.S.
[5] S. 215.555(2)(c), F.S.
[6] S. 48.151, F.S.
[7] *Id*.
[8] *Id*.; Florida Department of Financial Services, https://www.myfloridacfo.com/division/generalcounsel/service-of-process/ (last visited March 7, 2021).

After receiving service of process, the CFO is required to promptly send a copy by registered or certified mail, or by any other verifiable means, to the person designated by the insurer to receive the process.[9] "Verifiable means" includes making the documents available by electronic transmission from a secure website established by DFS.[10] If the documents are made available electronically, the CFO is required to send a notice of receipt of process to the person designated by the insurer to receive legal process.[11] The notice must state the date and manner in which the copy of the process was made available and contain a hyperlink to obtain a copy of the process.[12]

Service is considered perfected on an insurer when the CFO is served with process.[13] Although an insurer is not required to respond to a lawsuit except within 20 days after the date the CFO sends or makes available a copy of the process, the triggering date for other legal deadlines is the date the CFO is served with process.[14] This can create problems for an insurer when there is a delay between the time the CFO is served and the time the CFO notifies the insurer of the process.

Effect of the Bill

The bill provides that service of process is perfected on an insurer when the process served on the CFO is delivered to the insurer or the insurer is notified that a copy of the process is available on DFS's website.

Company Employee Adjuster

The Department of Financial Services, through its Division of Insurance Agent and Agency Services, regulates the licensure of insurance adjusters.[15] An adjuster may be licensed as either an "all-lines adjuster" or a "public adjuster."[16] A company employee adjuster is "a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters or a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage."[17]

Effect of the Bill

The bill expands the definition of a "company employee adjuster" to include a licensed all-lines adjuster who is appointed and employed by an insurer's affiliate.

Loss Run Statements

A loss run statement[18] is a report from an insurer that shows how many claims a specific insured has filed under that insured's policy during a particular period of time.[19] This report can be provided to a prospective insurer when an insured is shopping for a new insurance policy.[20] The prospective insurer

[9] S. 624.423, F.S.
[10] S. 624.307(9), F.S.
[11] *Id*.
[12] *Id*.
[13] S. 624.423(3), F.S.
[14] S. 624.423(2), F.S.
[15] Division of Insurance Agent and Agency Services, https://myfloridacfo.com/Division/Agents/ (last visited March 3, 2021).
[16] S. 626.864, F.S. An individual may be licensed as either an all-lines adjuster or a public adjuster, but not both. An all-lines adjuster may be appointed as one, but no more than one at a time, of the following: independent adjuster, public adjuster apprentice, or company employee adjuster.
[17] S. 626.856, F.S.
[18] Loss run statements are also referred to as loss runs or loss run reports.
[19] Insureon, https://www.insureon.com/insurance-glossary/loss-runs (last visited Mar. 4, 2021).
[20] *Id.*

can use the loss run statement to review the types, frequency, and dollar value of prior claims in order to determine whether to write a policy for the prospective insured and what premium to charge for that policy.[21] Prospective insurers often want to review loss run statements showing a loss run history from three to five years to make decisions about writing insurance policies.[22]

While insureds may request loss run statements for any line of insurance, insureds seeking new general liability, business owner's, commercial property, commercial auto insurance, or workers' compensation insurance, often request them to shop for new insurance[23] upon cancellation or nonrenewal of a policy by an insurer or when the insured chooses to shop for new insurance at the time a policy is up for renewal. Some insurers, especially those providing commercial lines coverage or workers' compensation insurance, have existing loss runs systems that allow their insureds to log into a portal and to obtain their own detailed reports on claims.[24] However, other insurers, in these and other lines of insurance, may provide insureds with loss run statements that they have created upon request or direct the insureds to obtain such statements from their agents of record.

Statutes enacted in 2020 established a statutory framework regarding when and how insurers must provide loss run statements to insureds. Pursuant to these statutes, for all lines of insurance written on the admitted and surplus lines markets, insurers must provide a loss run statement with a 5-year loss history within 15 days of receiving an insured's written request.[25] In the event of a request for a loss run statement regarding a personal lines policy, an insurer may provide the insured information about how to obtain a loss run statement at no charge through a consumer reporting agency.[26] However, the insured may still ask the insurer for a loss run statement even after receiving information from a consumer reporting agency.[27]

Effect of the Bill

The bill amends the statutes regarding loss run statements that were enacted in 2020, so that they better reflect existing industry standards. It revises the number of years of loss history that an insurer must provide from a minimum of 5 years to a minimum of 3 years to reflect the fact that many insurers were routinely providing insureds with a 3-year history upon request before the 2020 statutes were enacted. The bill requires that if a personal lines insured asks an insurer for a loss run statement after receiving information from a consumer reporting agency, the insurer must provide that statement within 15 days. It establishes that sections 626.9202 and 627.444, F.S., regarding loss run statements, do not apply to life insurers.[28]

The bill also resolves a conflict between the newly enacted statutes and an existing statute regarding loss run statements for group health insurance policies by repealing the health-insurance-specific statute.[29] It establishes that, as applied to group health insurance, a loss run statement also includes premiums paid, number of insured on a monthly basis, and dependent status. The bill clarifies that for group health insurance, only plan sponsors, not individual employees covered by the group policy, may request a loss run statement.

Rate Disapprovals Based Upon Hurricane Modeling

[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *See, e.g.,* MSIG Loss Runs, https://www.msigusa.com/loss-runs/ and StarStone, http://myaccount.starstoneworkcomp.com/index.htm (last visited Mar. 4, 2021).
[25] *See* ss. 626.9202 and 627.444, F.S.
[26] S. 627.444(2)(b), F.S.
[27] *Id.*
[28] Because loss run statements are used to shop for new insurance and life insurance claims are only made after the death of an insured, a loss run statement is not necessary for this type of policy.
[29] *See* s. 627.6647, F.S.

The law governing OIR's review and approval of residential property insurance rate filings requires that a rate filing account for mitigation measures that policyholders undertake to reduce hurricane losses.[30] It sets forth the criteria under which OIR may disapprove rate filings, including disapproval of rates that are determined to be excessive, inadequate, or unfairly discriminatory.[31] The law also establishes criteria for the Florida Commission on Hurricane Loss Projection Methodology's (Commission) consideration and approval of hurricane loss models and prescribes how those models affect OIR's approval of property insurance rate filings.[32]

Effect of the Bill

The bill provides parameters for OIR's approval or disapproval of rate filings by providing that, with respect to residential property insurance rate filings, the rate filing may use a modeling indication that is the weighted or straight average of two or more models found to be accurate or reliable by the Commission.

Mitigation Credits in Residential Property Insurance Rate Filings

Current law requires residential property insurers to include "positive and negative rate factors that reflect the manner in which building code enforcement in a particular jurisdiction addresses risk of wind damage" in their rate filing that are filed for approval by OIR.[33] Insurers utilize factors from statewide organizations' building code rating factor plans that evaluate how building code enforcement in particular jurisdictions evaluate risk.[34] Often times these ratings are flawed and not an accurate depiction of actual building code enforcement activity in a jurisdiction.

Since 2003, residential property insurers have been required to provide credits, discounts, and other rate differentials to reduce insurance premiums for properties with mitigation features.[35] Mitigation features are construction techniques used or items installed to protect a structure against windstorm damage and loss.[36]

Code-plus programs help property owners avoid or reduce damage cause by natural hazards and other risks by implementing additional levels of resilience to hazard beyond those require by building codes.[37] Presently, insurers are unable to submit rating plans for review and approval by OIR that include mitigation credits for those insureds that are evaluated by, and comply with, code-plus standards established by independent, not-for-profit, scientific research organizations.[38]

Effect of the Bill

The bill allows insurers the option to include the building code enforcement rating factor within their rating formula rather than requiring them to include it. Therefore, they will no longer be required to use rating factors that may be flawed. The bill also allows insurers to file a rating plan with OIR in which it offers additional windstorm mitigation credits based on standards established by an independent, not-for-profit, scientific research organization (the rating plan). Additionally the bill contains a provision that allows insurers to require that insureds who elect to construct or retrofit a structure to receive premium discounts, credits, or rate reductions allowed under the rating plan provide evidence of compliance with mitigation standards prior to receiving the discounts, credits, or rate reductions.

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[30] S. 627.062(2)(j), F.S.
[31] S. 627.062, F.S.
[32] Ss. 627.0628–627.06281, F.S.
[33] S. 627.0629(2)(b), F.S.
[34] *See, e.g.,* ISO Mitigation, *How Do Building Code Effectiveness Classifications Affect Insurance Pricing?*, https://www.isomitigation.com/bcegs/how-do-building-code-effectiveness-classifications-affect-insurance-pricing/ (last visited Mar. 6, 2021). The Insurance Service Office (ISO) has a program known as Building Code Effectiveness Grading Schedule (BCEGS®), which provides these rating factors.
[35] *See* s. 627.0629, F.S.
[36] Examples of mitigation features include hurricane shutters, a hip roof, or a specific type of roof covering.
[37] Whole Building Design Guide, *Code-Plus Programs For Disaster Resistance,* https://www.wbdg.org/resources/code-plus-programs-disaster-resistance (last visited Mar. 6, 2021).
[38] *See, e.g.,* Institute for Business & Home Safety, https://ibhs.org/ (last visited Mar. 6, 2021).

Workers' Compensation Insurance Reporting Requirements

Workers' compensation insurance carriers are required to record and report certain loss, expense, and claims experience to aid OIR in making determinations concerning the adequacy of workers' compensation experience for ratemaking purposes.[39] Additionally, carriers are required to provide the following information annually on both Florida experience and nationwide experience separately:

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

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

Effect of the Bill

The bill provides for a new factor in the determination and fixing of workers' compensation and employer's liability insurance rates. This factor represents the loss experience of insurers whose data is missing due to insolvency. Insurers may use prior reported data for such insurers and all other relevant information to assess the impact on rates.

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity that provides property insurance coverage to those unable to find coverage in the admitted market. Citizens offers property insurance in three separate accounts: the personal lines account; the commercial lines account; and the coastal account. The commercial lines account offers commercial lines residential and nonresidential policies. Currently, residential condominiums are ineligible for coverage as "commercial residential" if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.[40]

Effect of the Bill

The bill allows Citizens the option to insure residential condominiums under commercial residential wind only coverage if the units are intended for residential use, but are rented on a short-term basis.

Replacement Cost Coverage and Law and Ordinance Coverage

The law requires insurers to offer homeowner's insurance policies providing that any loss will be adjusted on the basis of replacement costs to the dwelling.[41] Replacement cost is usually defined in a policy as the cost to repair or replace damaged property with materials of like kind and quality, without any deduction for depreciation.[42] For a dwelling, an insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible, and then pay any remaining amounts (i.e.,

[39] S. 627.914, F.S.
[40] S. 627.351(6), F.S.
[41] S. 627.7011, F.S.
[42] National Association of Insurance Commissioners, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited Mar. 3, 2021).

replacement costs) only as to repairs and expenses that are actually incurred.[43] Currently, there is no timeframe in which an insured must request reimbursement for replacement cost.

Insurers must also offer replacement cost coverage that includes law and ordinance coverage, which covers the additional costs incurred in repairing a home to bring it into compliance with new laws and ordinances that were not in effect when the home was originally built. The law provides that law and ordinance coverage may be limited to either 25 percent or 50 percent of the dwelling unit.[44] Law and ordinance coverage assists in paying for increased construction costs as a result of newer building code enforcement or ordinances when repairing or replacing a dwelling after a covered loss.

Effect of the Bill

The bill clarifies that for purposes of law and ordinance coverage, the applicable laws and ordinances are those which were enacted on or before the time of a covered loss. The bill also provides that an insured has no less than 2 years from the date of the loss or 1 year from the notice of the claim, whichever occurs later, to repair or replace the property to be eligible to receive the costs to repair a dwelling that are above actual cash value or the costs to replace personal property that are above actual cash value.

Surplus Lines

Surplus lines insurance refers to a category of insurance for risks that the admitted market is unable or unwilling to provide coverage.[45] There are three basic categories of surplus lines risks:

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

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code, which means they do not obtain a certificate of authority from OIR to transact insurance in Florida.[46] Rather, surplus lines insurers are "unauthorized" insurers that may transact surplus lines insurance, if they are made eligible by OIR.[47]

The Florida Surplus Lines Service Office (FSLSO) is a self-regulating, nonprofit association of approved unauthorized insurers established by the Legislature in 1997.[48] The FSLSO was created to protect consumers seeking surplus line insurance in the state, monitor marketplace compliance, and protect state revenues.[49] All licensed surplus lines agents are deemed to be members of the FSLSO.[50] The FSLSO operates under the supervision of a nine-member board of governors, which has oversight responsibilities for the Florida surplus lines market.

"To export" a policy[51] means to place it with an unauthorized insurer under the Surplus Lines Law.[52] Unless an exception applies, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers before the agent can place insurance in the surplus lines market.[53]

[43] S. 627.7011(3)(a), F.S.
[44] S. 627.7011(1), F.S.
[45] S. 626.921, F.S.
[46] S. 624.09, F.S.
[47] *Id*.
[48] S. 626.921, F.S.
[49] *Id*.
[50] S. 626.921(2), F.S.
[51] S. 626.914(3), F.S.
[52] Sections 626.913 – 626.937, F.S., constitute the "Surplus Lines Law."
[53] S. 626.916(1)(a), F.S.

"Diligent effort" means, subject to certain exceptions, seeking coverage from and being rejected by at least three authorized insurers in the admitted market.[54]

Effect of the Bill

The bill allows surplus lines agents to export flood coverage to eligible surplus lines insurers without meeting the diligent effort requirement.

Assignment Agreements

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. This assignment is often called an "assignment of benefits" or "AOB". An "assignment agreement" is an instrument that assigns or transfers post-loss benefits under a residential or commercial property insurance policy to or from a person who protects, repairs, restores, or replaces property or mitigates against further property damage.[55]

Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee may file a lawsuit against the insurer. An assignee must give an insurer and the assignor prior written notice of at least 10 business days before filing suit on a claim.[56] The notice may not be served before the insurer has made a determination of coverage.[57] The notice must specify the damages in dispute, the amount claimed, and a pre-suit settlement demand, and must include an itemized, detailed written invoice or estimate of the work performed or to be performed.[58]

The law requires that pre-suit notice be sent by certified mail, return receipt requested, or by electronic delivery, but does not specify the mailing address or e-mail address where it must be sent. This may delay receipt of notice and thus reduce an insurer's actual time to respond.

Effect of the Bill

The bill expands the scope of services covered under the definition of "assignment agreement." The bill adds inspection services to the scope of services covered by an "assignment agreement" and specifies that the list of services enumerated in the statute is not exhaustive. Additionally, the bill requires that notice of intent to initiate litigation, sent by certified mail, be sent to the name and mailing address specified by the insurer in the policy forms and that notice sent electronically be sent to the e-mail address designated by the insurer in the policy forms.

Agent Licensing

General Lines Agent

A general lines agent[59] is one who sells the following lines of insurance: property;[60] casualty,[61] including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance

[54] If the cost to replace a residential dwelling is $700,000 or more, then only one coverage rejection is needed prior to export. S. 626.914(4), F.S.
[55] S. 627.7152(1)(b), F.S.
[56] S. 627.7152(9)(a), F.S.
[57] *Id*.
[58] *Id*.
[59] S. 626.015(5), F.S.
[60] S. 624.604, F.S.
[61] S. 624.605, F.S.

fund,[62] or a workers' compensation self-insurance fund;[63] surety;[64] health;[65] and, marine.[66] The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.[67]

Personal Lines Agent

A personal lines agent is a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.[68]

Motor Vehicle Servicing Agreements

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

Service Warranty Associations

Service warranty associations are entities, other than insurers, which issue service warranties. A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.[69] No person or entity shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative.[70]

Home Warranty Contracts

A home warranty association is any corporation or any other organization, other than an authorized insurer, issuing home warranties. A home warranty is any contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss. No person may solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative.[71]

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[62] S. 624.462, F.S.
[63] S. 624.4621, F.S.
[64] S. 626.606, F.S.
[65] Ss. 624.603 and 627.6482, F.S.
[66] S. 624.607, F.S.
[67] S. 626.829, F.S.
[68] S. 626.015(17), F.S.
[69] S. 634.401(13).
[70] S. 634.419, F.S. A "sales representative" is any person, retail store, corporation, partnership, or sole proprietorship utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties. However, in the case of service warranty associations selling service warranties from one or more business locations, the person in charge of each location may be considered the sales representative. S. 634.401(12), F.S.
[71] S. 634.317, F.S. "Sales representative" is any person with whom an insurer or home inspection or warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term includes all employees of an insurer or association engaged directly in the sale or issuance of home warranties. S. 634.301(12), F.S

Effect of the Bill

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

B. SECTION DIRECTORY:

Section 1. Amends s. 215.555, F.S., relating to Florida Hurricane Catastrophe Fund.

Section 2. Amends s. 624.423, F.S., relating to serving process.

Section 3. Amends s. 626.856, F.S., relating to "company employee adjuster" defined.

Section 4. Amends s. 626.9202, F.S., relating to loss run statements for all lines of insurance.

Section 5. Amends s. 627.062, F.S., relating to rate standards.

Section 6. Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.

Section 7. Amends s. 627.072, F.S., relating to making and use of rates.

Section 8. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 9. Amends s. 627.444, F.S., relating to loss run statements for all lines of insurance.

Section 10. Repeals s. 627.6647, F.S., relating to insurance risk apportionment plans.

Section 11. Amends s. 627.7011, F.S., relating to homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.

Section 12. Amends s. 627.715, F.S., relating to flood insurance.

Section 13. Amends s. 627.7152, F.S., relating to assignment agreements.

Section 14. Amends s. 634.171, F.S., relating to salesperson to be licensed and appointed.

Section 15. Amends s. 634.317, F.S., relating to license and appointment required.

Section 16. Amends s. 634.419, F.S., relating to license and appointment required.

Section 17. Reenacts s. 627.7153, F.S., relating to policies restricting assignment of post-loss benefits under a property insurance policy.

Section 18. Provides an effective date of July 1, 2021, except as otherwise provided.

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:

OIR has indicated the bill may have positive economic impacts for policyholders, who may benefit from lower collateral protection insurance costs if more policies are eligible for coverage from the FHCF.

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:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to insurance; amending s. 215.555, F.S.; redefining the term "covered policy" under the Florida Hurricane Catastrophe Fund in relation to certain collateral protection insurance policies; amending s. 624.423, F.S.; specifying when service of process is valid and binding upon insurers; amending s. 626.856, F.S.; revising the definition of the term "company employee adjuster"; amending s. 626.9202, F.S.; revising the definition of the term "loss run statement"; specifying the entities that must receive requests for loss run statements; specifying that insurers must provide loss run statements under certain circumstances; revising the required claims history in loss run statements; providing applicability; limiting loss run statement requests with respect to group health insurance policies to group policyholders; amending s. 627.062, F.S.; authorizing a rate filing for homeowners' insurance to use a specified modeling indication; amending s. 627.0629, F.S.; authorizing, rather than requiring, rate filings for certain residential property insurance to include certain rate factors; authorizing insurers to file certain insurance rating plans based on certain windstorm mitigation construction

standards; authorizing insurers to require policyholders to provide evidence of compliance with mitigation standards under certain conditions; amending s. 627.072, F.S.; providing a ratemaking factor for workers' compensation and employer's liability insurance; amending s. 627.351, F.S.; revising conditions for determining the ineligibility of condominiums for wind-only coverage; amending s. 627.444, F.S.; revising the definition of the term "loss run statement"; specifying the entities that must receive requests for loss run statements; specifying that insurers must provide loss run statements under certain circumstances; revising the required claims history in loss run statements; providing applicability; limiting loss run statement requests with respect to group health insurance policies to group policyholders; repealing s. 627.6647, F.S., relating to the release of information required for bid to group health insurance policyholders; amending s. 627.7011, F.S.; revising conditions for inclusion of costs for law and ordinance coverage in loss adjustments under certain homeowners' policies; revising the timeframes of repairs of dwellings and replacement of personal property for which the insurer must pay when property

is insured on the basis of replacement costs; amending s. 627.715, F.S.; providing an exemption from a diligent effort requirement for agents exporting contracts or endorsements providing flood coverage; amending s. 627.7152, F.S.; revising the definition of the term "assignment agreement"; specifying the addresses to which a notice of intent must be served; amending ss. 634.171, 634.317, and 634.419, F.S.; authorizing licensed personal lines or general lines agents to solicit, negotiate, advertise, or sell motor vehicle service agreements, home warranty contracts, and service warranties, respectively, without a sales representative license; reenacting s. 627.7153(1) and (2)(d), F.S., relating to policies restricting assignment of post-loss benefits under a property insurance policy, to incorporate the amendment made by the act to s. 627.7152, F.S., in references thereto; providing effective dates.

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

Section 1. Effective June 1, 2021, paragraph (c) of subsection (2) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

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

(c) "Covered policy" means any insurance policy covering residential property in this state, including, but not limited to, any homeowner, mobile home owner, farm owner, condominium association, condominium unit owner, tenant, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including a commercial self-insurance fund holding a certificate of authority issued by the Office of Insurance Regulation under s. 624.462, the Citizens Property Insurance Corporation, and any joint underwriting association or similar entity created under law. The term "covered policy" includes any collateral protection insurance policy covering personal residences which protects both the borrower's and the lender's financial interests, in an amount at least equal to the coverage amount for the dwelling in place under the lapsed homeowner's policy, the coverage amount that the homeowner has been notified of, or the coverage amount the homeowner requests from the collateral protection insurer, if such collateral protection insurance policy can be accurately reported as required in subsection (5). Additionally, covered policies include policies covering the peril of wind removed from the Florida Residential Property and Casualty Joint Underwriting Association or from the Citizens Property Insurance Corporation, created under s. 627.351(6), or from the Florida Windstorm Underwriting Association, created

under s. 627.351(2), by an authorized insurer under the terms and conditions of an executed assumption agreement between the authorized insurer and such association or Citizens Property Insurance Corporation. Each assumption agreement between the association and such authorized insurer or Citizens Property Insurance Corporation must be approved by the Office of Insurance Regulation before the effective date of the assumption, and the Office of Insurance Regulation must provide written notification to the board within 15 working days after such approval. "Covered policy" does not include any policy that excludes wind coverage or hurricane coverage or any reinsurance agreement and does not include any policy otherwise meeting this definition which is issued by a surplus lines insurer or a reinsurer. All commercial residential excess policies and all deductible buy-back policies that, based on sound actuarial principles, require individual ratemaking shall be excluded by rule if the actuarial soundness of the fund is not jeopardized. For this purpose, the term "excess policy" means a policy that provides insurance protection for large commercial property risks and that provides a layer of coverage above a primary layer insured by another insurer.

Section 2. Effective upon this act becoming a law, subsection (3) of section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

(3) Service of process is valid and binding upon the insurer on the date process served upon the Chief Financial Officer is delivered to the insurer ~~and sent~~ or the insurer has been notified such information has been made available on a secured network in accordance with this section and s. 624.307(9) ~~shall for all purposes constitute valid and binding service thereof upon the insurer~~.

Section 3. Section 626.856, Florida Statutes, is amended to read:

626.856 "Company employee adjuster" defined.—A "company employee adjuster" means a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters, by an affiliate, or by a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage.

Section 4. Effective upon this act becoming a law, subsections (1), (2), and (4) of section 626.9202, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

626.9202 Loss run statements for all lines of insurance.—

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

(a) "Loss run statement" means a report that contains the

policy number, the period of coverage, the number of claims, the paid losses on each claim ~~all claims~~, and the date of each loss. The term does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege. As applied to group health insurance, the term means a report that also contains premiums paid, number of insureds on a monthly basis, and dependent status.

(b) "Provide" means to electronically send a document or to allow access through an electronic portal to view or generate a document.

(2) Notwithstanding any other law, an insurer shall provide to an insured within 15 calendar days after an individual or entity designated by the insurer receives ~~receipt of~~ the insured's written request, either:

(a) A loss run statement; or

(b) For personal lines of insurance, information on how to obtain a loss run statement at no charge through a consumer reporting agency. However, this section does not prohibit an insured from requesting a loss run statement after receiving information from a consumer reporting agency, in which case the insurer must then provide such loss run statement within 15 calendar days after the individual or entity designated by the insurer receives the insured's subsequent written request.

(4) A loss run statement provided pursuant to this section must contain a claims history with the insurer for the preceding 3 ~~5~~ years or, if the claims history is less than 3 ~~5~~ years, a complete claims history with the insurer.

(7) This section does not apply to a life insurer as defined in s. 624.602.

(8) For group health insurance, only the group policyholder may request and be provided a loss run statement pursuant to this section.

Section 5. Paragraph (j) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(j) With respect to residential property insurance rate filings, the rate filing:

1. Must account for mitigation measures undertaken by policyholders to reduce hurricane losses.

2. May use a modeling indication that is the weighted or straight average of two or more models found by the commission to be accurate or reliable pursuant to s. 627.0628.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 6. Paragraph (b) of subsection (2) of section

627.0629, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

627.0629 Residential property insurance; rate filings.—

(2)

(b) A rate filing for residential property insurance made more than 150 days after approval by the office of a building code rating factor plan submitted by a statewide rating organization may ~~shall~~ include positive and negative rate factors that reflect the manner in which building code enforcement in a particular jurisdiction addresses risk of wind damage. The rate filing must ~~shall~~ include variations from standard rate factors on an individual basis based on inspection of a particular structure by a licensed home inspector. If an inspection is requested by the insured, the insurer may require the insured to pay the reasonable cost of the inspection. This paragraph applies to structures constructed or renovated after the implementation of this paragraph.

(9) An insurer may file with the office a personal lines residential property insurance rating plan that provides justified premium discounts, credits, or other rate differentials based on windstorm mitigation construction standards developed by an independent, not-for-profit, scientific research organization. The insurer may require a policyholder who elects to construct or retrofit the structure, in whole or in part, for windstorm mitigation purposes to

present to the insurer evidence of compliance with the mitigation standards before receiving any premium discount, credit, or rate reduction allowed under the rating plan.

Section 7. Subsection (1) of section 627.072, Florida Statutes, is amended to read:

627.072 Making and use of rates.—

(1) As to workers' compensation and employer's liability insurance, the following factors shall be used in the determination and fixing of rates:

(a) The past loss experience and prospective loss experience within and outside this state;

(b) The impact resulting from the past loss experience and prospective loss experience for insurers whose data are missing from statewide experience due to insolvency. Prior reported data for such insurers and all other relevant information may be used to assess the impact on rates;

(c) ~~(b)~~ The conflagration and catastrophe hazards;

(d) ~~(c)~~ A reasonable margin for underwriting profit and contingencies;

(e) ~~(d)~~ Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(f) ~~(e)~~ Investment income on unearned premium reserves and loss reserves;

(g) ~~(f)~~ Past expenses and prospective expenses, both those

countrywide and those specifically applicable to this state; and

(h) ~~(g)~~ All other relevant factors, including judgment factors, within and outside this state.

Section 8. Paragraph (a) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property

insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in

good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures:

a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the

dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.

b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.

c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.

d. Effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the

corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term.

The requirements of sub-subparagraphs b.-d. do not apply in counties where the office determines there is not a reasonable degree of competition. In such counties a personal lines residential structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under

the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, ~~effective July 1, 2014,~~ a condominium may ~~shall~~ be deemed ineligible for coverage when ~~if~~ 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

Section 9. Effective upon this act becoming a law, subsections (1), (2), and (4) of section 627.444, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

627.444 Loss run statements for all lines of insurance.—

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

(a) "Loss run statement" means a report that contains the policy number, the period of coverage, the number of claims, the paid losses on each claim ~~all claims~~, and the date of each loss. The term does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege. As applied to group health insurance, the term means a report that also contains premiums paid, number of insureds on a monthly basis, and dependent status.

(b) "Provide" means to electronically send a document or to allow access through an electronic portal to view or generate a document.

(2) Notwithstanding any other law, an insurer shall provide to an insured within 15 calendar days after an individual or entity designated by the insurer receives ~~receipt of~~ the insured's written request, either:

(a) A loss run statement; or

(b) For personal lines of insurance, information on how to obtain a loss run statement at no charge through a consumer reporting agency. However, this section does not prohibit an insured from requesting a loss run statement after receiving information from a consumer reporting agency, in which case the

insurer must then provide such loss run statement within 15 calendar days after the individual or entity designated by the insurer receives the insured's subsequent written request.

(4) A loss run statement provided pursuant to this section must contain a claims history with the insurer for the preceding 3 ~~5~~ years or, if the claims history is less than 3 ~~5~~ years, a complete claims history with the insurer.

(7) This section does not apply to a life insurer as defined in s. 624.602.

(8) For group health insurance, only the group policyholder may request and be provided a loss run statement pursuant to this section.

Section 10. Section 627.6647, Florida Statutes, is repealed.

Section 11. Paragraph (b) of subsection (1) and subsection (3) of section 627.7011, Florida Statutes, are amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(1) Prior to issuing a homeowner's insurance policy, the insurer must offer each of the following:

(b) A policy or endorsement providing that, subject to other policy provisions, any loss that is repaired or replaced at any location will be adjusted on the basis of replacement costs to the dwelling not exceeding policy limits, rather than actual cash value, and also including costs necessary to meet

applicable laws and ordinances enacted on or before the time of loss which regulate ~~regulating~~ the construction, use, or repair of any property or require ~~requiring~~ the tearing down of any property, including the costs of removing debris. However, additional costs necessary to meet applicable laws and ordinances may be limited to 25 percent or 50 percent of the dwelling limit, as selected by the policyholder, and such coverage applies only to repairs of the damaged portion of the structure unless the total damage to the structure exceeds 50 percent of the replacement cost of the structure.

An insurer is not required to make the offers required by this subsection with respect to the issuance or renewal of a homeowner's policy that contains the provisions specified in paragraph (b) for law and ordinance coverage limited to 25 percent of the dwelling limit, except that the insurer must offer the law and ordinance coverage limited to 50 percent of the dwelling limit. This subsection does not prohibit the offer of a guaranteed replacement cost policy.

(3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs:

(a) For a dwelling, the insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed

and expenses are incurred. The insured has not less than 2 years from the date of loss or 1 year from the notice of the claim, whichever occurs later, to request reimbursement from the insurer for work to be performed and expenses incurred. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702.

(b) For personal property:

1. The insurer must offer coverage under which the insurer is obligated to pay the replacement cost without reservation or holdback for any depreciation in value, whether or not the insured replaces the property.

2. The insurer may also offer coverage under which the insurer may limit the initial payment to the actual cash value of the personal property to be replaced, require the insured to provide receipts for the purchase of the property financed by the initial payment, use such receipts to make the next payment requested by the insured for the replacement of insured property, and continue this process until the insured remits all receipts up to the policy limits for replacement costs. The insured has not less than 2 years from the date of loss or 1 year from the notice of the claim, whichever occurs later, to request reimbursement from the insurer for expenses incurred. The insurer must provide clear notice of this process before the policy is bound. A policyholder must be provided an actuarially

reasonable premium credit or discount for this coverage. The insurer may not require the policyholder to advance payment for the replaced property.

Section 12. Effective upon this act becoming a law, present subsections (4) through (10) of section 627.715, Florida Statutes, are redesignated as subsections (5) through (11), respectively, and a new subsection (4) is added to that section, to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(4) An agent may export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a).

Section 13. Effective upon this act becoming a law, paragraph (b) of subsection (1) and paragraph (a) of subsection (9) of section 627.7152, Florida Statutes, are amended to read:

627.7152 Assignment agreements.—

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

(b) "Assignment agreement" means any instrument by which post-loss benefits under a residential property insurance policy or commercial property insurance policy, as that term is defined in s. 627.0625(1), are assigned or transferred, or acquired in any manner, in whole or in part, to or from a person providing services, including, but not limited to, scopes of service, to inspect, protect, repair, restore, or replace property or to mitigate against further damage to the property.

(9)(a) An assignee must provide the named insured, insurer, and the assignor, if not the named insured, with a written notice of intent to initiate litigation before filing suit under the policy. Such notice must be served by certified mail, return receipt requested, to the name and mailing address designated by the insurer in the policy forms, or by electronic delivery at the e-mail address designated by the insurer in the policy forms at least 10 business days before filing suit, but may not be served before the insurer has made a determination of coverage under s. 627.70131. The notice must specify the damages in dispute, the amount claimed, and a presuit settlement demand. Concurrent with the notice, and as a precondition to filing suit, the assignee must provide the named insured, insurer, and the assignor, if not the named insured, a detailed written invoice or estimate of services, including itemized information

on equipment, materials, and supplies; the number of labor hours; and, in the case of work performed, proof that the work has been performed in accordance with accepted industry standards.

Section 14. Section 634.171, Florida Statutes, is amended to read:

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

Florida Insurance Code. A licensed personal lines or general lines agent is not required to be licensed as a salesperson under this section to solicit, negotiate, advertise, or sell motor vehicle service agreements. A motor vehicle service agreement company is not required to be licensed as a salesperson to solicit, sell, issue, or otherwise transact the motor vehicle service agreements issued by the motor vehicle service agreement company.

Section 15. Section 634.317, Florida Statutes, is amended to read:

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

Section 16. Section 634.419, Florida Statutes, is amended to read:

634.419 License and appointment required; exemptions.—A ~~No~~ person or entity may not ~~shall~~ solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales

representative. Sales representatives shall be responsible for the actions of persons under their supervision. However, a service warranty association licensed as such under this part is ~~shall~~ not ~~be~~ required to be licensed and appointed as a sales representative to solicit, negotiate, advertise, or effectuate its products. A licensed personal lines or general lines agent is not required to be licensed as a sales representative under this section to solicit, negotiate, advertise, or sell service warranties.

Section 17. Effective upon this act becoming a law, for the purpose of incorporating the amendment made by this act to section 627.7152, Florida Statutes, in references thereto, subsection (1) and paragraph (d) of subsection (2) of section 627.7153, Florida Statutes, are reenacted to read:

627.7153 Policies restricting assignment of post-loss benefits under a property insurance policy.—

(1) As used in this section, the term "assignment agreement" has the same meaning as provided in s. 627.7152.

(2) An insurer may make available a policy that restricts in whole or in part an insured's right to execute an assignment agreement only if all of the following conditions are met:

(d) Each restricted policy include on its face the following notice in 18-point uppercase and boldfaced type:

THIS POLICY DOES NOT ALLOW THE UNRESTRICTED ASSIGNMENT

OF POST-LOSS INSURANCE BENEFITS. BY SELECTING THIS POLICY, YOU WAIVE YOUR RIGHT TO FREELY ASSIGN OR TRANSFER THE POST-LOSS PROPERTY INSURANCE BENEFITS AVAILABLE UNDER THIS POLICY TO A THIRD PARTY OR TO OTHERWISE FREELY ENTER INTO AN ASSIGNMENT AGREEMENT AS THE TERM IS DEFINED IN SECTION 627.7152 OF THE FLORIDA STATUTES.

Section 18. Except as otherwise expressly provided in this act, and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2021.

INSURANCE & BANKING SUBCOMMITTEE

HB 815 by Rep. Gregory
Insurance

AMENDMENT SUMMARY
March 10, 2021

Amendment 1 by Rep. Gregory: The amendment makes the following changes to the bill:

- Authorizes an association, trust, or pool created for the purpose of forming or managing a risk management mechanism or providing self-insurance for a public entity to establish a quorum and conduct public business through communication media technology.

- Adds the designation of Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates LLC to the list of several designations, one of which meets a required qualification for an applicant for licensure as a customer representative if earned within 4 years preceding the date of filing an application for licensure.

- Restores language in two statutes relating to loss run statements by replacing "each claim" with "all claims" in order to ensure that protected medical information is not inadvertently disclosed on a loss run statement.

- Moves a new provision in the bill that a residential property insurance filing may use a weighted or straight average of two or more models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable to a more appropriate location in the same section.

- Makes a modification to a provision in the bill allowing an insurer to file a rating plan with rate differentials based on windstorm mitigation construction standards to add that the standards must meet the requirements of the rate filing statute.

- Authorizes an insurer to electronically transmit policy documents and claims communications to an insured, provided the policy is sold in a wholly electronic manner and the insurer provides a disclosure to the insured or policyholder at the time of sale.

- Deletes the requirement that an insured request reimbursement from an insurer for the difference between actual cash value and replacement costs by the latter of no less than two years from the date of the loss or one year from the notice of the claim.

- Provides that fees charged by a public adjuster are not included in the definition of "assignment agreement."

- Revises the notice requirements for certain motor vehicle policies that do not provide coverage for bodily injury and property damage liability and deletes a requirement that such policies be rubber stamped. By removing the rubber stamp requirement, the notice of limited coverage for such policies can be provided to policyholders electronically.

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 Gregory offered the following:

Amendment (with title amendment)

Remove lines 133-554 and insert:

Section 3. Section 624.46227, Florida Statutes, is created to read:

624.46227 Meeting requirements.—Any association, trust, or pool authorized by state law and created for the purpose of forming a risk management mechanism or providing self-insurance for public entities in this state may establish a quorum and conduct public business through communication media technology.

Section 4. Subsection (3) of section 626.7351, Florida Statutes, is amended to read:

626.7351 Qualifications for customer representative's license.—The department shall not grant or issue a license as customer representative to any individual found by it to be untrustworthy or incompetent, or who does not meet each of the following qualifications:

(3) Within 4 years preceding the date that the application for license was filed with the department, the applicant has earned the designation of Accredited Advisor in Insurance (AAI), Associate in General Insurance (AINS), or Accredited Customer Service Representative (ACSR) from the Insurance Institute of America; the designation of Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors; the designation of Certified Professional Service Representative (CPSR) from the National Foundation for CPSR; the designation of Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives; the designation of Certified Insurance Representative (CIR) from All-Lines Training; the designation of Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates LLC; the designation of Professional Customer Service Representative (PCSR) from the Professional Career Institute; the designation of Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in the state whose curriculum is approved by the department and includes comprehensive analysis of basic property and casualty

lines of insurance and testing which demonstrates mastery of the subject; or a degree from an accredited institution of higher learning approved by the department when the degree includes a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance. The department shall adopt rules establishing standards for the approval of curriculum.

Section 5. Section 626.856, Florida Statutes, is amended to read:

626.856 "Company employee adjuster" defined.—A "company employee adjuster" means a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters, by an affiliate, or by a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage.

Section 6. Effective upon this act becoming a law, subsections (1), (2), and (4) of section 626.9202, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

626.9202 Loss run statements for all lines of insurance.—

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

(a) "Loss run statement" means a report that contains the policy number, the period of coverage, the number of claims, the paid losses on all claims, and the date of each loss. The term does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege. As applied to group health insurance, the term means a report that also contains premiums paid, number of insureds on a monthly basis, and dependent status.

(b) "Provide" means to electronically send a document or to allow access through an electronic portal to view or generate a document.

(2) Notwithstanding any other law, an insurer shall provide to an insured within 15 calendar days after an individual or entity designated by the insurer receives ~~receipt of~~ the insured's written request, either:

(a) A loss run statement; or

(b) For personal lines of insurance, information on how to obtain a loss run statement at no charge through a consumer reporting agency. However, this section does not prohibit an insured from requesting a loss run statement after receiving information from a consumer reporting agency, in which case the insurer must then provide such loss run statement within 15

calendar days after the individual or entity designated by the insurer receives the insured's subsequent written request.

(4) A loss run statement provided pursuant to this section must contain a claims history with the insurer for the preceding 3 ~~5~~ years or, if the claims history is less than 3 ~~5~~ years, a complete claims history with the insurer.

(7) This section does not apply to a life insurer as defined in s. 624.602.

(8) For group health insurance, only the group policyholder may request and be provided a loss run statement pursuant to this section.

Section 7. Paragraph (b) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(b) Upon receiving a rate filing, the office shall review the filing to determine if a rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:

1. Past and prospective loss experience within and without this state.

2. Past and prospective expenses.

3. The degree of competition among insurers for the risk insured.

4. Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. The commission may adopt rules using reasonable techniques of actuarial science and economics to specify the manner in which insurers calculate investment income attributable to classes of insurance written in this state and the manner in which investment income is used to calculate insurance rates. Such manner must contemplate allowances for an underwriting profit factor and full consideration of investment income that produces a reasonable rate of return; however, investment income from invested surplus may not be considered.

5. The reasonableness of the judgment reflected in the filing.

6. Dividends, savings, or unabsorbed premium deposits allowed or returned to policyholders, members, or subscribers in this state.

7. The adequacy of loss reserves.

8. The cost of reinsurance. The office may not disapprove a rate as excessive solely due to the insurer having obtained catastrophic reinsurance to cover the insurer's estimated 250-year probable maximum loss or any lower level of loss.

9. Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

10. Conflagration and catastrophe hazards, if applicable.

11. Projected hurricane losses, if applicable, which must be estimated using a model or method found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628. A residential property insurance rate filing may use a weighted or straight average of two or more such models or methods.

12. Projected flood losses for personal residential property insurance, if applicable, which may be estimated using a model or method, or a straight average of model results or output ranges, independently found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology and as further provided in s. 627.0628.

13. A reasonable margin for underwriting profit and contingencies.

14. The cost of medical services, if applicable.

15. Other relevant factors that affect the frequency or severity of claims or expenses.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 8. Paragraph (b) of subsection (2) of section 627.0629, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

627.0629 Residential property insurance; rate filings.—

(2)

(b) A rate filing for residential property insurance made more than 150 days after approval by the office of a building code rating factor plan submitted by a statewide rating organization may ~~shall~~ include positive and negative rate factors that reflect the manner in which building code enforcement in a particular jurisdiction addresses risk of wind damage. The rate filing must ~~shall~~ include variations from standard rate factors on an individual basis based on inspection of a particular structure by a licensed home inspector. If an inspection is requested by the insured, the insurer may require the insured to pay the reasonable cost of the inspection. This paragraph applies to structures constructed or renovated after the implementation of this paragraph.

(9) An insurer may file with the office a personal lines residential property insurance rating plan that provides justified premium discounts, credits, or other rate differentials based on windstorm mitigation construction standards developed by an independent, not-for-profit, scientific research organization, if such standards meet the requirements of this section. The insurer may require a

policyholder who elects to construct or retrofit the structure, in whole or in part, for windstorm mitigation purposes to present to the insurer evidence of compliance with the mitigation standards before receiving any premium discount, credit, or rate reduction allowed under the rating plan.

Section 9. Subsection (1) of section 627.072, Florida Statutes, is amended to read:

627.072 Making and use of rates.—

(1) As to workers' compensation and employer's liability insurance, the following factors shall be used in the determination and fixing of rates:

(a) The past loss experience and prospective loss experience within and outside this state;

(b) The impact resulting from the past loss experience and prospective loss experience for insurers whose data are missing from statewide experience due to insolvency. Prior reported data for such insurers and all other relevant information may be used to assess the impact on rates;

(c) ~~(b)~~ The conflagration and catastrophe hazards;

(d) ~~(c)~~ A reasonable margin for underwriting profit and contingencies;

(e) ~~(d)~~ Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(f) ~~(e)~~ Investment income on unearned premium reserves and loss reserves;

(g) ~~(f)~~ Past expenses and prospective expenses, both those countrywide and those specifically applicable to this state; and

(h) ~~(g)~~ All other relevant factors, including judgment factors, within and outside this state.

Section 10. Paragraph (a) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the

economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute

shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures:

a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the

corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.

b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.

c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.

d. Effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single

condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term.

The requirements of sub-subparagraphs b.-d. do not apply in counties where the office determines there is not a reasonable degree of competition. In such counties a personal lines residential structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code

(2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, ~~effective July 1, 2014,~~ a condominium may ~~shall~~ be deemed ineligible for coverage when ~~if~~ 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

Section 11. Subsection (6) is added to section 627.421, Florida Statutes, to read:

627.421 Delivery of policy.—

(6) If a policy is sold in a wholly electronic manner, the insurer may electronically transmit all policy documents and claims communications to the insured or policyholder so long as the insurer provides a disclosure to the insured or policyholder at the time of sale.

Section 12. Effective upon this act becoming a law, subsections (1), (2), and (4) of section 627.444, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

627.444 Loss run statements for all lines of insurance.—

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

(a) "Loss run statement" means a report that contains the policy number, the period of coverage, the number of claims, the paid losses on all claims, and the date of each loss. The term does not include supporting claim file documentation, including, but not limited to, copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or statutory privilege. As applied to group health insurance, the term means a report that also contains premiums paid, number of insureds on a monthly basis, and dependent status.

(b) "Provide" means to electronically send a document or to allow access through an electronic portal to view or generate a document.

(2) Notwithstanding any other law, an insurer shall provide to an insured within 15 calendar days after an individual or entity designated by the insurer receives ~~receipt of~~ the insured's written request, either:

(a) A loss run statement; or

(b) For personal lines of insurance, information on how to obtain a loss run statement at no charge through a consumer reporting agency. However, this section does not prohibit an insured from requesting a loss run statement after receiving information from a consumer reporting agency, in which case the insurer must then provide such loss run statement within 15 calendar days after the individual or entity designated by the insurer receives the insured's subsequent written request.

(4) A loss run statement provided pursuant to this section must contain a claims history with the insurer for the preceding 3 ~~5~~ years or, if the claims history is less than 3 ~~5~~ years, a complete claims history with the insurer.

(7) This section does not apply to a life insurer as defined in s. 624.602.

(8) For group health insurance, only the group policyholder may request and be provided a loss run statement pursuant to this section.

Section 13. Section 627.6647, Florida Statutes, is repealed.

Section 14. Paragraph (b) of subsection (1) of section 627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(1) Prior to issuing a homeowner's insurance policy, the insurer must offer each of the following:

(b) A policy or endorsement providing that, subject to other policy provisions, any loss that is repaired or replaced at any location will be adjusted on the basis of replacement costs to the dwelling not exceeding policy limits, rather than actual cash value, and also including costs necessary to meet applicable laws and ordinances enacted on or before the time of loss which regulate ~~regulating~~ the construction, use, or repair of any property or require ~~requiring~~ the tearing down of any property, including the costs of removing debris. However, additional costs necessary to meet applicable laws and ordinances may be limited to 25 percent or 50 percent of the dwelling limit, as selected by the policyholder, and such coverage applies only to repairs of the damaged portion of the structure unless the total damage to the structure exceeds 50 percent of the replacement cost of the structure.

An insurer is not required to make the offers required by this subsection with respect to the issuance or renewal of a homeowner's policy that contains the provisions specified in paragraph (b) for law and ordinance coverage limited to 25 percent of the dwelling limit, except that the insurer must offer the law and ordinance coverage limited to 50 percent of the dwelling limit. This subsection does not prohibit the offer of a guaranteed replacement cost policy.

Section 15. Effective upon this act becoming a law, present subsections (4) through (10) of section 627.715, Florida Statutes, are redesignated as subsections (5) through (11), respectively, and a new subsection (4) is added to that section, to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(4) An agent may export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer

without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a).

Section 16. Effective upon this act becoming a law, paragraph (b) of subsection (1) and paragraph (a) of subsection (9) of section 627.7152, Florida Statutes, are amended to read:

627.7152 Assignment agreements.—

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

(b) "Assignment agreement" means any instrument by which post-loss benefits under a residential property insurance policy or commercial property insurance policy, as that term is defined in s. 627.0625(1), are assigned or transferred, or acquired in any manner, in whole or in part, to or from a person providing services, including, but not limited to, scopes of service, to inspect, protect, repair, restore, or replace property or to mitigate against further damage to the property. The term does not include fees collected by a public adjuster as defined in 626.854.

(9)(a) An assignee must provide the named insured, insurer, and the assignor, if not the named insured, with a written notice of intent to initiate litigation before filing suit under the policy. Such notice must be served by certified mail, return receipt requested, to the name and mailing address designated by the insurer in the policy forms, or by electronic delivery at the e-mail address designated by the insurer in the policy forms at least 10 business days before filing suit, but

may not be served before the insurer has made a determination of coverage under s. 627.70131. The notice must specify the damages in dispute, the amount claimed, and a presuit settlement demand. Concurrent with the notice, and as a precondition to filing suit, the assignee must provide the named insured, insurer, and the assignor, if not the named insured, a detailed written invoice or estimate of services, including itemized information on equipment, materials, and supplies; the number of labor hours; and, in the case of work performed, proof that the work has been performed in accordance with accepted industry standards.

Section 17. Section 627.7276, Florida Statutes, is amended to read:

627.7276 Notice of limited coverage.—

(1) An automobile policy that does not contain coverage for bodily injury and property damage must include a notice ~~be clearly stamped or printed to the effect~~ that such coverage is not included in the policy in the following manner:

"THIS POLICY DOES NOT PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE OR ANY OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW."

(2) This notice ~~legend~~ must accompany ~~appear on~~ the policy declaration page and ~~on the filing back of the policy and~~ be ~~printed~~ in a ~~contrasting color from that used on the policy and in~~ type and ~~larger than the largest type used in the~~ text at least as large as the type and text used on the declarations page ~~thereof, as an overprint or by a rubber stamp impression~~.

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

Remove lines 7-57 and insert:

process is valid and binding upon insurers; creating s. 624.46227, F.S.; authorizing an association, trust, or pool created for the purpose of forming or managing a risk management mechanism or providing self-insurance for a public entity to establish a quorum and conduct public business through communication media technology; amending s. 626.7351, F.S.; revising a qualification for licensure as a customer representative; amending s. 626.856, F.S.; revising the definition of the term "company employee adjuster"; amending s. 626.9202, F.S.; revising the definition of the term "loss run statement"; specifying the entities that must receive requests for loss run statements; specifying that insurers must provide loss run statements under certain circumstances; revising the required claims history in loss run statements; providing

applicability; limiting loss run statement requests with respect to group health insurance policies to group policyholders; amending s. 627.062, F.S.; revising the factors for determining whether an insurance rate filing is excessive, inadequate, or unfairly discriminatory; amending s. 627.0629, F.S.; authorizing, rather than requiring, rate filings for certain residential property insurance to include certain rate factors; authorizing insurers to file certain insurance rating plans based on certain windstorm mitigation construction standards; authorizing insurers to require policyholders to provide evidence of compliance with mitigation standards under certain conditions; amending s. 627.072, F.S.; providing a ratemaking factor for workers' compensation and employer's liability insurance; amending s. 627.351, F.S.; revising conditions for determining the ineligibility of condominiums for wind-only coverage; amending s. 627.421, F.S.; authorizing insurers to electronically transmit policy documents and claims documents under certain circumstances; amending s. 627.444, F.S.; revising the definition of the term "loss run statement"; specifying the entities that must receive requests for loss run statements; specifying that insurers must provide loss run statements under certain circumstances; revising the required claims history in loss run statements; providing applicability; limiting loss run statement requests with respect to group health insurance policies to group policyholders; repealing s. 627.6647, F.S.,

relating to the release of information required for bid to group health insurance policyholders; amending s. 627.7011, F.S.; revising conditions for inclusion of costs for law and ordinance coverage in loss adjustments under certain homeowners' policies; amending s. 627.715, F.S.; providing an exemption from a diligent effort requirement for agents exporting contracts or endorsements providing flood coverage; amending s. 627.7152, F.S.; revising the definition of the term "assignment agreement"; specifying the addresses to which a notice of intent must be served; amending s. 627.7276, F.S.; revising notice requirements for motor vehicle policies that do not provide coverage for bodily injury and property damage liability;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 895 Consumer Finance Loans
SPONSOR(S): Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1478

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

SUMMARY ANALYSIS

The Florida Consumer Finance Act in ch. 516, F.S., permits licensed lenders to make secured or unsecured loans up to $25,000 with a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first $3,000.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.

Consumer finance lenders are permitted to charge certain fees, including up to $25 for investigating the credit and character of the borrower. Because the list of permissible fees does not include a prepayment penalty, then impliedly a licensee is prohibited from charging a prepayment penalty. Consumer finance loans are repayable in installments every two weeks, semimonthly, or monthly, but there is currently no minimum or maximum loan term.

The bill provides an express prohibition on prepayment penalties for consumer finance loans. The bill also provides minimum loan terms for consumer finance loans as follows:

- At least 90 days for a loan with principle balance upon origination of no more than $4,000; and
- At least 12 months for a loan with principle balance upon origination that exceeds $4,000.

The bill has no impact on state or local governments and an indeterminate but likely positive 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:

Consumer Finance Loans

The OFR's Division of Consumer Finance is responsible for the licensing and regulation of non-depository financial service entities and individuals, and conducts examinations and complaint investigations for licensed entities to determine compliance with Florida law.

One of the loan products regulated by the OFR's Division of Consumer Finance is the Florida Consumer Finance Act, ch. 516, F.S. ("the Act"). Loans permitted under the Act are commonly referred to as "consumer finance loans", which are "loan[s] of money, credit, goods, or choses in action,[1] including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum."[2] Although consumer finance loans may be secured or unsecured, the Act prohibits lenders from taking a security interest in certain types of collateral.[3]

Consumer finance loans made pursuant to the Act must be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments.[4] Installments may be due every two weeks, semimonthly, or monthly.[5] There is no minimum or maximum loan term under the Act. Consumer finance loans have a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first $3,000.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.[6]

The original principal amount is the amount financed, as defined by the federal Truth in Lending Act (TILA)[7] and TILA's federal implementing regulations.[8] For the purpose of determining compliance with these statutory maximum interest rates, the interest rate computations used must be simple interest.[9] In the event that two or more interest rates are applied to the principal amount of a loan,[10] a lender may charge interest at a single annual percentage rate (APR) which would produce at maturity the total amount of interest as permitted by the tiered interest rate structure above.[11] The APR charged by a lender may not exceed the APR that must be computed and disclosed according to TILA and its implementing regulations.[12] A licensee may not induce or permit a borrower to divide a loan and may

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[1] "Chose in action" is defined as "1. A property right in personam, such as a debt owed by another person . . . 2. The right to bring an action to recover a debt, money, or thing. 3. Personal property that one person owns but another person possesses, the owner being able to regain possession through a lawsuit." BLACK'S LAW DICTIONARY 101 (3d ed. 1996).
[2] S. 516.01(2), F.S.
[3] *See* s. 516.031(1), F.S. (prohibition on taking a security interest in land for a loan less than $1,000); s. 516.17, F.S. (prohibition on assignment of, or order for payment of, wages given to secure a loan).
[4] S. 516.36, F.S. This section does not apply to lines of credit.
[5] *Id.*
[6] S. 516.031(1), F.S.
[7] Codified at 15 U.S.C. § 1601 *et seq.*
[8] Currently, the statute references TILA's implementing regulations as "Regulation Z of the Board of Governors of the Federal Reserve System." s. 516.031(1), F.S. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Cong. (July 21, 2010), commonly referred to as the "Dodd-Frank Act", transferred rulemaking authority for TILA to the Bureau of Consumer Financial Protection, effective July 21, 2011. *See also* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).
[9] *Id.*
[10] For example, on a principle amount of $3,500, an interest rate of 30 percent per annum may be applied to $3,000 of the principle amount, and an interest rate of 24 percent per annum may be applied to the remaining $500 of the principal amount.
[11] S. 516.031(1), F.S.
[12] S. 516.031(2), F.S.

not induce or permit a person to become obligated to the licensee under more than one loan contract for the purpose of obtaining a greater finance charge than would otherwise be permitted under the parameters described above.[13]

If consideration for a new loan contract includes the unpaid principal balance of a prior loan with the licensee, then the principal amount of the new loan contract may not include more than 60 days' unpaid interest accrued on the prior loan.[14]

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition to the grant of a loan, except for the following allowable fees:

- Up to $25 for investigating the credit and character of the borrower;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- A delinquency charge of up to $15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A bad check charge of up to $20.[15]

Because the above list of permissible fees does not include a prepayment penalty, then impliedly a licensee is prohibited from charging a prepayment penalty.[16]

Optional credit property, credit life, and disability insurance may be provided at the borrower's expense via a deduction from the principal amount of the loan.[17]

Licenses granted under the Act are for a single place of business[18] and must be renewed every two years.[19] As of February 16, 2021, there are 170 licensed consumer finance loan companies operating in Florida operating across a total of 382 locations.[20]

The yearly data for licensure under ch. 516, F.S., is contained in the charts below.[21]

Chapter 516, F.S., Licenses by Year										
	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10
Applications Received	318	44	136	82	48	72	192	30	52	32
Applications Approved	228	136	125	76	43	64	95	29	18	19
Active Licenses	589	607	568	609	532	584	626	600	390	386
Renewals & Reactivations	496	1	542	0	523	1	569	0	388	0

[13] S. 516.031(4), F.S.
[14] S. 516.031(5), F.S.
[15] S. 516.031(3), F.S.
[16] *Id*.; Office of Financial Regulation, Agency Analysis of 2021 House Bill 895, p. 2 (Feb. 17, 2021).
[17] S. 516.35(2), F.S.
[18] Ss. 516.01(1) and 516.05(3), F.S.
[19] Ss. 516.03(1) and 516.05(1) & (2), F.S.
[20] Office of Financial Regulation, *supra* note 16.
[21] Office of Financial Regulation, *Active Licenses*, https://www.flofr.com/sitePages/documents/finregstats.pdf (last visited Mar. 16, 2019).

Chapter 516, F.S., Licenses by Year (Cont'd)										
	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20
Applications Received	175	41	82	116	66	102	55	96	109	100
Applications Approved	137	37	53	113	37	81	36	83	104	98
Active Licenses	347	303	293	349	331	349	338	373	348	390
Renewals & Reactivations	226	0	258	0	312	0	326	0	342	0

An application to become a consumer finance lender must be accompanied by a nonrefundable application fee of $625 and a nonrefundable investigation fee of $200.[22] Licenses must be renewed biennially, at which time the licensee must pay a nonrefundable biennial license fee of $625.[23] At the time of application, the applicant must provide evidence of liquid assets of at least $25,000.[24] Each location of a consumer finance lender must be separately licensed.[25]

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[26]

Deferred Presentment Transactions (Payday Loans)

Deferred presentment transactions, commonly referred to as “payday loans”, are another small-dollar loan product under the OFR’s regulatory authority. These transactions are governed by ch. 560, F.S., part IV.

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer’s (borrower’s) check and agreeing to hold the check for a number of days until depositing, presenting, or redeeming the payment instrument.[27] The only persons who may engage in deferred presentment transactions are financial institutions as defined in s. 655.005, F.S.,[28] and money services business licensed under ch. 560, F.S., part II[29] or part III.[30]

There are two types of payday loan products permitted in Florida:

- *Deferred presentment transaction not repayable in installments*: The face amount of a check taken for deferred presentment may not exceed $500, exclusive of fees.[31] Fees may not exceed

[22] S. 516.03(1), F.S.
[23] *Id.*; s. 516.05(1), F.S.
[24] S. 516.03(1), F.S.
[25] S. 516.05(3), F.S.
[26] S. 516.02(4), F.S.
[27] S. 560.402(2) & (3), F.S.
[28] Section 655.005, F.S., defines a “financial institution” to mean a state or federal savings or thrift association, bank, savings back, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 *et seq*. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 *et seq*.
[29] Licensure as a money transmitter. A money transmitter is defined by s. 560.103(23), F.S., as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under ch. 560, F.S., part III.
[30] Licensure as a check casher. A check casher is defined by s. 560.103(6), F.S., as a person who sells currency in exchange for payment instruments received, except travelers checks.
[31] S. 560.404(5), F.S.

10 percent of payment provided to the drawer plus a verification fee of up to $5.[32] The term of a deferred presentment agreement may not be less than seven days or greater than 31 days.[33]

- *Deferred presentment installment transaction*: A deferred presentment installment transaction is repayable in installments, has a term of 60 to 90 days, and may have an outstanding transaction balance (exclusive of fees) of up to $1,000.[34] The permissible fees are a verification fee of up to $5 and up to 8 percent of the outstanding transaction balance on a biweekly basis.[35] The installment periods must be 13 days to one calendar month, except that the first installment period may be longer than the remaining installment periods by not more than 15 days.[36] Prepayment penalties are prohibited.[37]

A deferred presentment provider may not enter into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.[38] In order to enforce this restriction, the OFR maintains a database against which a deferred presentment provider must verify each transaction before entering into the deferred presentment agreement.[39] A deferred presentment provider may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.[40]

For deferred presentment transactions not repayable in installments, if the drawer, by the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days.[41] As a condition of receiving the grace period, the drawer must make an appointment with a consumer credit counseling agency within seven days after the end of the deferment period and complete counseling by the end of the grace period.[42]

If the drawer in a deferred presentment installment transaction informs the deferred presentment provider in writing or in person by noon of the business day before a scheduled payment that the drawer cannot pay in full the scheduled payment, the provider must give the drawer one opportunity to defer a scheduled payment for no additional fee or charge.[43] The deferred payment is due after the last scheduled installment payment, at an interval which is no shorter than the intervals between the originally scheduled payments.[44] Thus, for a deferred presentment installment transaction in which payments are due once every two weeks, the deferred payment would be due at least two weeks after the final installment payment is due.

A deferred presentment provider may not include in the agreement a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense arising out of the agreement or any provision of ch. 560, F.S., part IV.[45] A deferred presentment provider must comply with state and federal disclosure requirements.[46]

Effect of the Bill

[32] S. 560.404(6), F.S.
[33] S. 560.404(8), F.S.
[34] S. 560.404(5) & (8), F.S.
[35] S. 560.404(6), F.S.
[36] S. 560.404(26), F.S.
[37] S. 560.404(6)(c), F.S.
[38] S. 560.404(19), F.S.
[39] S. 560.404(19)(a) & (23), F.S.
[40] S. 560.404(18), F.S.
[41] S. 560.404(22), F.S.
[42] *Id.*
[43] S. 560.404, F.S.
[44] *Id.*
[45] S. 560.404(10), F.S.
[46] S. 560.404(13) & (20), F.S.

The bill provides an express prohibition on prepayment penalties for consumer finance loans. The bill also provides minimum loan terms for consumer finance loans as follows:

- At least 90 days for a loan with principle balance upon origination of no more than $4,000; and
- At least 12 months for a loan with principle balance upon origination that exceeds $4,000.

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

Below is a chart comparing existing law regarding payday loans and consumer finance loans with the changes proposed by the bill.

	Payday Loans (Ch. 560, Part IV, F.S.)		**Consumer Finance Loans (Ch. 516, F.S.)**	
	Payday Loans (Non-Installment)	**Payday Loans (Installment)**	**Current Law**	**HB 895 Proposed Changes**
Loan Amount	$500 (max)	$1,000 (max)	$25,000 (max)	(No change)
Length of Term	7 - 31 days	60 - 90 days	No min. or max.	Add min. loan terms: • At least 90 days for a loan with principle balance upon origination of no more than $4,000 • At least 12 months for a loan with principle balance upon origination that exceeds $4,000
Payments	• Lump sum at end of loan term	• Installments with 13 days to 1 month in between each, except that the first installment period may be longer than the remaining installment periods by a maximum of 15 days	• Installments due monthly, semi-monthly, or every 2 weeks	(No change)
Interest Rate	• APR equivalent (assuming $500 loan amount and $5 verification fee): 129.52% for a 31 day loan, 573.57% for a 7 day loan	• 8% biweekly on the outstanding transaction balance • APR equivalent: approx. 208% (will be slightly higher as a result of the $5 verification fee)	• 30% per year on the first $3,000 of principal • 24% per year on principal above $3,000 and up to $4,000 • 18% per year on principal above $4,000 and up to $25,000	(No change)
Other Upfront Fees Permitted	• 10% of loan amount • $5 verification fee • No additional fees permitted	• $5 verification fee • No additional fees permitted	• Fees specified in s. 516.031(3), F.S., including up to $25 for investigating the credit and character of the borrower • No additional fees permitted	• Add express prohibition on prepayment penalties

B. SECTION DIRECTORY:

Section 1. Amends s. 516.031, F.S., relating to finance charge; maximum rates.

Section 2. Amends s. 516.36, F.S., relating to installment requirement.

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:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on consumers by providing a meaningful opportunity to repay the loan rather than the consumer refinancing every so often in order to extend the time for repayment. However, as it is unclear how many consumers this change would impact, the impact to the private sector is indeterminate.

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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The portion of the bill that provides minimum loan terms should state that the new requirements are for loans made on or after the effective date of the bill. The sponsor has indicated an intent to address this issue.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to consumer finance loans; amending s. 516.031, F.S.; prohibiting a person licensed to make and collect loans under the Florida Consumer Finance Act from charging prepayment penalties for loans; amending s. 516.36, F.S.; providing requirements for loan terms; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (3) of section 516.031, Florida Statutes, to read:

516.031 Finance charge; maximum rates.—

(3) OTHER CHARGES.—

(c) A licensee may not require a borrower to pay a prepayment penalty for paying all or part of the loan principal before the date on which the payment is due.

Section 2. Section 516.36, Florida Statutes, is amended to read:

516.36 Installment requirement.—

(1) Every loan made pursuant to this chapter must be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments. Installments may be due every 2 weeks, semimonthly, or monthly. This section does

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

not apply to lines of credit.

(2) A loan with a principal balance upon origination of no more than $4,000 must provide a term of at least 90 days. A loan with a principal balance upon origination that exceeds $4,000 must provide a term of at least 12 months.

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

INSURANCE & BANKING SUBCOMMITTEE

HB 895 by Rep. Stevenson
Consumer Finance Loans

AMENDMENT SUMMARY
March 10, 2021

Amendment 1 by Rep. Stevenson (Strike): The amendment:

- Authorizes a consumer finance lender to provide a surety bond, certificate of deposit, or letter of credit of a specified amount in lieu of the current statutory requirement to maintain $25,000 of liquid assets.
- Amends the minimum loan term, as created by the bill, to 6 months.
- Provides that the minimum loan term is applicable to a loan, including a refinancing, made on or after the effective date of the bill, rather than such minimum loan term applying to currently outstanding loans, as well.
- Makes conforming changes.
- Changes the effective date of the bill.

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 Stevenson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 516.03, Florida Statutes, is amended to read:

516.03 Application for license; fees; etc.—

(1) APPLICATION.—Application for a license to make loans under this chapter shall be in the form prescribed by rule of the commission. The commission may require each applicant to provide any information reasonably necessary to determine the applicant's eligibility for licensure. The applicant shall also provide information that the office requires concerning any officer, director, control person, member, partner, or joint

venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions or concerning any individual who is the ultimate equitable owner of a 10-percent or greater interest in the applicant. The office may require information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, age, social security number, residential history, qualifications, educational and business history, and disciplinary and criminal history. The applicant must provide evidence of liquid assets of at least $25,000 or documents satisfying the requirements in s. 516.05(10). At the time of making such application the applicant shall pay to the office a nonrefundable biennial license fee of $625. Applications, except for applications to renew or reactivate a license, must also be accompanied by a nonrefundable investigation fee of $200. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of $625, and any other fee prescribed by law. The commission may adopt rules requiring electronic submission of any form, document, or fee required by this act if such rules reasonably accommodate technological or financial hardship. The commission may prescribe by rule requirements and procedures for obtaining an exemption due to a technological or financial hardship.

Section 2. Subsection (6) is added to section 516.031, Florida Statutes, to read:

516.031 Finance charge; maximum rates.—

(6) PREPAYMENT PENALTIES PROHIBITED.—A licensee may not require a borrower to pay a prepayment penalty for paying all or part of the loan principal before the date on which the payment is due.

Section 3. Subsection (10) is added to section 516.05, Florida Statutes, to read:

516.05 License.—

(10)(a) In lieu of the $25,000 liquid asset requirement in s. 516.03(1):

1. An applicant or a licensee may provide to the office a surety bond in the amount of at least $25,000 issued by a bonding company or insurance company authorized to do business in this state.

2. A company with at least one currently licensed location must provide to the office a rider or surety bond, in the amount of at least $5,000 for each additional license, issued by a bonding company or insurance company authorized to do business in this state. However, in no event may the aggregate amount of the surety bond required for a company with multiple licenses exceed $100,000.

(b) In lieu of a surety bond, the applicant or the licensee may provide evidence of a certificate of deposit or an

irrevocable letter of credit in the same amount of the surety bond required under paragraph (a). The certificate of deposit must be deposited in a financial institution, as defined in s. 655.005(1)(i). The letter of credit must be issued by a financial institution, as defined in s. 655.005(1)(i).

(c) The original surety bond, certificate of deposit, or letter of credit must be filed with the office, and the office must be named as beneficiary. The surety bond, certificate of deposit, or letter of credit must be for the use and benefit of any borrower who is injured by acts of a licensee involving fraud, misrepresentation, or deceit, including willful imposition of illegal or excessive charges; or misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower, where such acts are in connection with a loan made under this chapter. The office, or any claimant, may bring an action in a court of competent jurisdiction on the surety bond, certificate of deposit, or letter of credit. The surety bond, certificate of deposit, or letter of credit must be payable on a pro rata basis, but the aggregate amount may not exceed the amount of the surety bond, certificate of deposit, or letter of credit.

(d) The surety bond, certificate of deposit, or letter of credit may not be cancelled by the licensee, bonding or insurance company, or financial institution except upon notice to the office by certified mail. A cancellation may not take

effect until 30 calendar days after receipt by the office of the written notice.

(e) The bonding or insurance company or financial institution must, within 10 calendar days after it pays a claim, give written notice to the office by certified mail of such payment with details sufficient to identify the claimant and the claim or judgment paid.

(f) If the principal sum of the surety bond, certificate of deposit, or letter of credit is reduced by one or more recoveries or payments, the licensee must furnish to the office a new or additional surety bond, certificate of deposit, or letter of credit so that the total or aggregate principal sum equals the amount required under this subsection. Alternatively, a licensee may furnish an endorsement executed by the bonding or insurance company or financial institution reinstating the required principal amount.

(g) The required surety bond, certificate of deposit, or letter of credit must remain in place for 2 years after the licensee ceases licensed operations in this state. During the 2 year period, the office may allow for a reduction or elimination of the surety bond, certificate of deposit, or letter of credit to the extent the licensee’s outstanding consumer finance loans in this state are reduced.

(h) The commission may prescribe by rule forms and procedures to implement this subsection.

Section 4. Paragraph (b) of subsection (1) of section 516.07, Florida Statutes, is amended to read:

516.07 Grounds for denial of license or for disciplinary action.—

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the disciplinary actions specified in subsection (2):

(b) Failure to maintain liquid assets of at least $25,000 or a surety bond, certificate of deposit, or letter of credit in the amount required by s. 516.05(10) at all times for the operation of business at a licensed location or proposed location.

Section 5. Section 516.36, Florida Statutes, is amended to read:

516.36 Installment requirement.—

(1) Every loan made pursuant to this chapter must be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments. Installments may be due every 2 weeks, semimonthly, or monthly. This section does not apply to lines of credit.

(2) Every loan, including a refinancing, made pursuant to this chapter on or after October 1, 2021, must have a minimum loan term of at least 6 months.

Section 6. Paragraph (a) of subsection (4) of section 559.952, Florida Statutes, is amended to read:

559.952 Financial Technology Sandbox.—

(4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other law, upon approval of a Financial Technology Sandbox application, the following provisions and corresponding rule requirements are not applicable to the licensee during the sandbox period:

1. Section 516.03(1), except for the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least $25,000 or documents satisfying the requirements in s. 516.05(10), and the office's authority to investigate the applicant's background. The office may prorate the license renewal fee for an extension granted under subsection (7).

2. Section 516.05(1) and (2), except that the office shall investigate the applicant's background.

3. Section 560.109, only to the extent that the section requires the office to examine a licensee at least once every 5 years.

4. Section 560.118(2).

5. Section 560.125(1), only to the extent that the subsection would prohibit a licensee from engaging in the

business of a money transmitter or payment instrument seller during the sandbox period.

6. Section 560.125(2), only to the extent that the subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period. Any authorized vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-10. and (b), (c), and (d).

9. Section 560.142(1) and (2), except that the office may prorate, but may not entirely eliminate, the license renewal fees in s. 560.143 for an extension granted under subsection (7).

10. Section 560.143(2), only to the extent necessary for proration of the renewal fee under subparagraph 9.

11. Section 560.204(1), only to the extent that the subsection would prohibit a licensee from engaging in, or advertising that it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the sandbox period.

12. Section 560.205(2).

13. Section 560.208(2).

14. Section 560.209, only to the extent that the office may modify, but may not entirely eliminate, the net worth,

corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that the office determines to be commensurate with the factors under paragraph (5)(c) and the maximum number of consumers authorized to receive the financial product or service under this section.

Section 7. This act shall take effect October 1, 2021.

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

Remove lines 3-7 and insert:

516.03; authorizing an applicant for a license to make and collect loans under the Florida Consumer Finance Act to provide a bond, certificate of deposit, or letter of credit in lieu of liquid assets; amending s. 516.031, F.S.; prohibiting a person licensed to make and collect consumer finance loans from charging prepayment penalties for loans; amending s. 516.05; authorizing an applicant for a license to make and collect consumer finance loans or a licensee to provide a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets; providing requirements for such bonds, certificates of deposit, and letters of credit; providing rulemaking authority; amending s. 516.07, F.S.; amending grounds for denial

of license or disciplinary action; amending s. 516.36, F.S.; providing requirements for loan terms; amending s. 559.952, F.S.; revising exceptions for a licensee during the Financial Technology Sandbox period; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 917 Documentary Stamp Tax Exemption
SPONSOR(S): McClain
TIED BILLS: **IDEN./SIM. BILLS:** SB 1334

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

SUMMARY ANALYSIS

Since 1986, the London Interbank Offered Rate (LIBOR) has been the primary reference rate used in setting interest rates for such loans as adjustable rate mortgages, asset-backed securities, municipal bonds, and other types of debt. It is estimated that $200 trillion in financial contracts reference the U.S. Dollar LIBOR. However, the LIBOR has come under increasing scrutiny from regulators and financial markets. The entity that regulates the LIBOR, the Financial Conduct Authority (FCA) of the United Kingdom, states that the LIBOR will cease after the end of 2021, though some U.S. Dollar LIBOR panels have been extended to the end of June 2023. Accordingly, the FCA is recommending transitions to alternative rates before these dates. In the United States, the Alternative Reference Rates Committee (ARRC) has identified the Secured Overnight Financing Rate (SOFR) as its recommended alternative to the U.S. Dollar LIBOR.

Some financial contracts that reference the LIBOR include robust fallback language that contemplates a replacement interest rate index or replacement interest rate calculation in the event that the rate referenced in the contract is discontinued. However, the ARCC has reported that most contracts referencing the LIBOR may not have robust fallback language. Financial institutions and other market participants are in the process of assessing their exposure to the discontinuation of the LIBOR. For contracts based on the LIBOR that do not contain sufficient fallback language, such contracts may need to be modified in order to provide a substantially similar interest rate.

Florida law currently levies a documentary stamp tax on promissory notes, mortgages, other written obligations to pay money, and renewals of those documents. The tax is 35 cents on each $100 or fraction thereof of indebtedness or obligation. For certain documents, the tax is capped at $2,450. The modification of an original document which changes the terms of the indebtedness by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms is a taxable renewal.

The bill provides that a modification of an original document that changes the interest rate, which is made as the result of the discontinuation of an index to which the original interest rate is referenced, is not a renewal and is not subject to the documentary stamp tax.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Documentary Stamp Tax on Notes and Mortgages

Florida law currently levies a documentary stamp tax, capped at $2,450, on promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries made, executed, delivered, sold, transferred, or assigned in the state, and for each renewal of the same.[1] Florida law also levies a documentary stamp tax, with no cap, on mortgage, trust deeds, security agreements, or other evidence of indebtedness filed or recorded in this state, and for renewal of the same.[2] The documents are all taxed at 35 cents on each $100 or fraction thereof of the indebtedness or obligation.[3]

For purposes of taxing renewals of the documents described above, a renewal only includes the modifications of an original document which changes the terms of the indebtedness by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms.[4] Modifications to documents that do not modify the terms of the indebtedness are not renewals and are not subject to the documentary stamp tax. Such non-taxable modifications include:[5]

- Modifications given or recorded to correct error;
- Modification of covenants, conditions, or terms unrelated to the debt;
- Severing of a lien into separate liens;
- Providing for additional, substitute, or further security for the indebtedness;
- Consolidating indebtedness or collateral;
- Adding, changing, or deleting guarantors; or
- Substituting a new mortgagee or payee.

When renewal of a promissory note only extends or continues the identical contractual obligations of the original promissory note and evidences part or all of the original indebtedness, not including any accumulated interest thereon and without enlargement in any way of the original contract and obligation, such renewal note is not subject to the documentary stamp tax, so long as the renewal note has attached to it the original promissory note with other specified notation thereon.[6]

London Interbank Offered Rate (LIBOR)

When two parties enter into a financial contract in which interest payments are to be exchanged, those payments are frequently based on the LIBOR, which provides the benchmark rate for the resulting interest rate.[7] Since 1986, the LIBOR has been the primary reference rate used in setting interest rates for adjustable rate mortgages, asset-backed securities, municipal bonds, credit default swaps, private student loans, and other types of debt.[8]

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[1] S. 201.08(1)(a), F.S.
[2] S. 201.08(1)(b), F.S.
[3] S. 201.08(1)(a) and (b), F.S.
[4] S. 201.08(5), F.S.
[5] *Id.*
[6] S. 201.09(1), F.S.
[7] Consumer Finance Protection Bureau, *You Might Have Heard That LIBOR is Going Away. Here's What You Need to Know About LIBOR and Adjustable-Rate Loans* (Oct. 17, 2019), https://www.consumerfinance.gov/about-us/blog/libor-going-away-heres-what-you-need-know-about-libor-and-adjustable-rate-loans/ (last visited Mar. 5, 2021).
[8] Forbes, *What Is LiborAnd Why Is It Being Abandoned?* (Dec. 16, 2020), https://www.forbes.com/advisor/investing/what-is-libor/ (last visited Mar. 5, 2021).

The LIBOR is calculated daily by the Intercontinental Exchange (ICE) Benchmark Administration.[9] Eighteen international banks submit rates that each bank believes it would pay, not what it actually pays, if it had to borrow money from another bank on the interbank lending market in London.[10] After removing the four highest and four lowest submissions, the ICE Benchmark Administration calculates the rate in five currencies: UK Pound Sterling, the Swiss Franc, the Euro, Japanese Yen, and the U.S. Dollar.[11]

It is estimated that $200 trillion in financial contracts reference the U.S. Dollar LIBOR.[12] Although the derivatives market accounts for 95 percent of the outstanding value of all financial products referencing the U.S. Dollar LIBOR, the LIBOR is also referenced in several trillion dollars of corporate loans, floating-rate mortgages, floating-rate notes, and securitized products.[13] As of 2019, $1.2 trillion worth of residential mortgage loans and $1.3 trillion of consumer loans referenced the LIBOR.[14]

The LIBOR has come under increasing scrutiny from regulators and financial markets alike following documented patterns of attempted manipulation by participating banks and a sustained decline in unsecured interbank borrowing.[15] Others have noted the declining correlations between the LIBOR and actual bank funding costs.[16]

In 2014, the Federal Reserve Board and the Federal Reserve Bank of New York convened the Alternative Reference Rates Committee (ARRC) to identify an alternative reference rate for use primarily in derivatives contracts.[17] The ARCC was reconstituted in 2018 with an expanded membership in an effort to push a wider segment of market participants to focus on their exposure to the LIBOR.[18]

In 2017, the ARRC identified the Secured Overnight Financing Rate (SOFR) as its recommended alternative to the U.S. Dollar LIBOR.[19] SOFR is fully-transaction based and is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities.[20] SOFR is based on transaction data from three segments of the Treasury repurchase agreement market: (1) tri-party repurchase agreements, (2) General Collateral Finance repurchase agreements; and (3) bilateral repurchase agreement transactions cleared through the Fixed Income Clearing Corporation.[21] The Federal Reserve Bank of New York publishes SOFR data daily, as well as SOFR Averages and a SOFR Index.[22]

The entity that regulates the LIBOR, the Financial Conduct Authority (FCA) of the United Kingdom, states that the LIBOR will cease after the end of 2021, though some U.S. Dollar LIBOR panels have been extended to the end of June 2023.[23] Accordingly, the FCA is recommending transitions to alternative rates before these dates.[24]

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[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Alternative Reference Rates Committee, *Frequently Asked Questions* (Dec. 18, 2020), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/ARRC-faq.pdf (last visited Mar. 5, 2021).
[13] *Id.*
[14] Forbes, *supra* note 8.
[15] *Id*.
[16] Bowman et al*., How Correlated is LIBOR with Bank Funding Costs?* (June 29, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm (last visited Mar. 5, 2021).
[17] Alternative Reference Rates Committee, *supra* note 12.
[18] *Id*.
[19] *Id.*
[20] *Id*.
[21] *Id*.
[22] *Id.*
[23] New York Federal Reserve, *Transition From LIBOR*, https://www.newyorkfed.org/arrc/sofr-transition (last visited Mar. 5, 2021); Financial Conduct Authority, *Transition From LIBOR* (Jan. 19, 2021). https://www.fca.org.uk/markets/libor (last visited Mar. 5, 2021).
[24] Financial Conduct Authority, *supra* note 23.

Some financial contracts that reference the LIBOR include robust fallback language[25] that contemplates a replacement interest rate index or replacement interest rate calculation in the event that the rate referenced in the contract is discontinued. However, the ARCC has reported that most contracts referencing the LIBOR may not have robust fallback language.[26] Financial institutions and other market participants are in the process of assessing their exposure to the discontinuation of the LIBOR.[27] For contracts based on the LIBOR that do not contain sufficient fallback language, such contracts may need to be modified in order to provide a substantially similar interest rate.

Effect of the Bill

The bill provides that a modification of an original document that changes the interest rate, which is made as the result of the discontinuation of an index to which the original interest rate is referenced, is not a renewal and is not subject to the documentary stamp tax.

The bill takes effect July 1, 2021.

B. SECTION DIRECTORY:

Section 1. Amends s. 201.08, F.S., relating to tax on promissory or nonnegotiable notes, written obligations to pay money, or assignments of wages or other compensation; exception.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[25] Fallback language should consist of contractual provisions that specify the trigger events for a transition to a replacement rate, the replacement rate, and the spread adjustment to align the replacement rate with the benchmark being replaced—in this case U.S. Dollar LIBOR. Alternative Reference Rates Committee, *Summary of ARRC's LIBOR Fallback Language* (Nov. 2019), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/LIBOR_Fallback_Language_Summary.pdf (last visited Mar. 5, 2021).

[26] *Id.*

[27] *See, e.g.*, U.S. Securities and Exchange Commission Office of Compliance Inspections and Examinations, *Risk Alert* (June 18, 2020), https://www.sec.gov/files/Risk%20Alert%20-%20OCIE%20LIBOR%20Initiative_1.pdf (last visited Mar. 5, 2021); Board of Governors of the Federal Reserve System et al., *Statement on LIBOR Transition* (Nov. 30, 2020), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf (last visited Mar. 5, 2021).

It is possible that lenders and borrowers could encounter liability for paying documentary stamp taxes when modifying, supplementing, or amending their contracts to reference the SOFR reference rate instead of the LIBOR reference rate. The bill will resolve any uncertainty in favor of preventing liability for documentary stamp tax due to the discontinuation of the LIBOR. The overall economic impact on the private sector, while likely positive, is indeterminate.

D. FISCAL COMMENTS:

On February 19, 2021, the Revenue Estimating Conference considered the impact of the bill.[28] The bill was estimated to have zero impact as a result of a Department of Revenue Rule that states in pertinent part, "A renewal that does not add obligor(s) and merely changes the interest rate, the maturity date, or the payment terms is not subject to tax, provided tax was paid on the original document and the original document is attached to the renewal."[29]

Unlike the rule, however, the bill would allow notes to be modified here in Florida, without incurring documentary stamp taxes, even if tax was not paid on the original note. One example of why tax might not have been paid on the original note is that the note was executed out of state; Florida's documentary stamp tax is not applicable to a note executed out of state. Nevertheless, it is worth noting that the documents covered by the bill's exemption are documents that would not have been modified but for rather unforeseen circumstances when the referenced interest rate index is discontinued. If such unforeseen circumstances had not come to pass, the state would not have collected documentary stamp taxes. For this reason, as well, the impact to the state is zero.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As written, the bill may provide an exemption from documentary stamp taxes in broader circumstances than intended. The intent is to limit the exemption to a document modification that changes *only* the interest rate (due to the discontinuation of the index to which the interest rate is referenced). However, the bill's language could be interpreted to provide an exemption for a document modification that changes the interest rate (due to the discontinuation of the index to which the interest rate is referenced) in addition to making other changes (such as changing an obligor). The sponsor has indicated an intent to address this issue.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[28] Revenue Estimating Conference, *2/19/2021 Revenue Impact Results*, http://www.edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/Impact0219.pdf (last visited Mar. 5, 2021).
[29] R. 12B-4.052, F.A.C.

A bill to be entitled

An act relating to documentary stamp tax exemption; amending s. 201.08, F.S.; exempting from assessment of documentary stamp taxes the modification of certain documents that change the interest rate under specified conditions; providing an effective date.

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

Section 1. Subsection (5) of section 201.08, Florida Statutes, is amended to read:

201.08 Tax on promissory or nonnegotiable notes, written obligations to pay money, or assignments of wages or other compensation; exception.—

(5) For purposes of this section, a renewal shall only include modifications of an original document which change the terms of the indebtedness evidenced by the original document by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms. Modifications to documents which do not modify the terms of the indebtedness evidenced such as those given or recorded to correct error; modify covenants, conditions, or terms unrelated to the debt; sever a lien into separate liens; provide for additional, substitute, or further security for the indebtedness; consolidate indebtedness or collateral; add,

change, or delete guarantors; or which substitute a new mortgagee or payee are not renewals and are not subject to tax pursuant to this section. A modification of an original document that changes the interest rate which is made as the result of the discontinuation of an index to which the original interest rate is referenced is not a renewal and is not subject to the tax pursuant to this section. If the taxable amount of a mortgage is limited by language contained in the mortgage or by the application of rules limiting the tax base when there is collateral in more than one state, then a modification which changes such limitation or tax base shall be taxable only to the extent of any increase in the limitation or tax base attributable to such modification. This subsection shall not be interpreted to exempt from taxation an original mortgage that would otherwise be subject to tax pursuant to paragraph (1)(b).

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

INSURANCE & BANKING SUBCOMMITTEE

HB 917 by Rep. McClain
Documentary Stamp Tax Exemption

AMENDMENT SUMMARY
March 10, 2021

Amendment 1 by Rep. McClain (line 29): The amendment:

- Adds the word “only” to limit the documentary stamp tax exemption to instances where a document modification changes *only* the interest rate due to the discontinuation of the index to which the interest rate is referenced.
- Makes other technical changes.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative McClain offered the following:

Amendment (with title amendment)

Remove line 29 and insert:

which changes only the interest rate and which is made as the result of

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

Remove line 5 and insert:

documents that change only the interest rate under

PCS for HB 6077

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 6077 Assets of an Estate in Administration
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Hinshelwood	Luczynski

SUMMARY ANALYSIS

A court having jurisdiction over the administration of an estate may order that part or all of the personal assets of the estate be placed with a financial institution designated by the court. Currently, the financial institutions where a court may order assets placed are "a bank, trust company, or savings and loan association *(which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state)*." The Federal Savings and Loan Insurance Corporation (FSLIC) was created in 1934 in order to insure deposits of savings and loan associations. However, the FSLIC was abolished in 1989 on the heels of the savings and loan crisis of the 1980s. Savings and loan associations are now insured by the Federal Deposit Insurance Corporation, as are commercial banks.

The bill removes a statutory reference to the FSLIC along with other obsolete language.

The bill has no impact on local governments or the state. The bill has an indeterminate but likely positive 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

When a court administers an estate, such as in probate[1] or in a guardianship,[2] there is often an individual appointed by the court to assist with the administration. Depending on the context, such individual will have varying titles such as guardian, curator, executor, administrator, trustee, or receiver. Although the individual may be required by statute or the court to carry a bond,[3] s. 69.031, F.S., provides that a court may nevertheless order that part or all of the personal assets of the estate be placed with a financial institution designated by the court.[4] This may occur if the size of the bond required is burdensome, or for other cause.[5] After the assets have been placed with the financial institution, and receipt for the assets is given by the financial institution, the court must waive the bond or reduce it so that the bond only applies to the estate remaining in the hands of the individual appointed to assist with administration of the estate.[6]

Currently, the financial institutions where a court may order assets placed are "a bank, trust company, or savings and loan association *(which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state)*."[7]

The Federal Savings and Loan Insurance Corporation (FSLIC) was created by the National Housing Act of 1934 in order to insure deposits of savings and loan associations.[8] Savings and loan associations may be chartered both under federal authority[9] or state authority[10] and were created to primarily provide depository services and make home loans. Today, the rights and privileges of savings and loan associations are substantially similar to, and in some cases the same as, commercial banks.[11] The Federal Deposit Insurance Corporation now insures savings and loan associations, as well as commercial banks.[12] The FSLIC, the entity that initially insured savings and loan associations, was abolished in 1989 on the heels of the savings and loan crisis of the 1980s.[13]

As previously stated, s. 69.031, F.S., permits a court to place assets in a savings and loan association *that is a member of the FSLIC*, a now obsolete entity.

Effect of the Bill

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[1] Probate is a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent's debts, and distributing the decedent's assets to his or her beneficiaries. The Florida Bar, *Consumer Pamphlet: Probate in Florida*, https://www.floridabar.org/public/consumer/pamphlet026/ (last visited Mar. 6, 2021).
[2] A guardianship is a legal proceeding in the circuit courts of Florida in which a guardian is appointed to exercise the legal rights of an incapacitated person. The Florida Bar, *Consumer Pamphlet: What is Guardianship?*, https://www.floridabar.org/public/consumer/pamphlet030/ (last visited Mar. 6, 2021).
[3] *See, e.g.*, fiduciary bonds in formal probate proceedings (ss. 733.402 – 733.406, F.S.); fiduciary bonds in guardianship (ss. 744.2003, 744.351, and 744.619, F.S.).
[4] S. 69.031(1), F.S.
[5] *Id.*
[6] S. 69.031(1) and (2), F.S.
[7] S. 69.031(1), F.S. (emphasis added).
[8] Pub.L. 73–479, https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/48/STATUTE-48-Pg1246.pdf.
[9] Home Owners' Loan Act, 12 U.S.C. § 1461 *et seq*.
[10] In Florida, chs. 665 and 667, F.S., comprise authority to charter a savings and loan association. However, Florida currently has no savings and loan associations chartered under its authority.
[11] Office of the Comptroller of the Currency, *Interpretive Letter #1169* (June 30, 2020), https://www.occ.treas.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1169.pdf (last visited Mar. 6, 2021).
[12] 12 U.S.C. § 1814(a).
[13] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub.L. 101-73, https://www.govinfo.gov/content/pkg/STATUTE-103/pdf/STATUTE-103-Pg183.pdf (last visited Mar. 6, 2021).

The bill removes a statutory reference to the FSLIC along with other obsolete language.

B. SECTION DIRECTORY:

Section 1. Amends s. 69.031, F.S., relating to designated financial institutions for assets in hands of guardians, curators, administrators, trustees, receivers, or other officers.

Section 2. 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 broadens access to financial services by allowing a court to place assets of an estate in a savings and loan association without reference to the savings and loan association having insurance through the FSLIC, a now obsolete entity. The impact to the private sector, while likely positive, is indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to assets of an estate in administration; amending s. 69.031, F.S.; deleting a requirement that assets of an estate in administration may only be placed in a savings and loan association if it is a member of the Federal Savings and Loan Insurance Corporation; providing an effective date.

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

Section 1. Subsection (1) of section 69.031, Florida Statutes, is amended to read:

69.031 Designated financial institutions for assets in hands of guardians, curators, administrators, trustees, receivers, or other officers.—

(1) When it is expedient in the judgment of any court having jurisdiction of any estate in process of administration by any guardian, curator, executor, administrator, trustee, receiver, or other officer, because the size of the bond required of the officer is burdensome or for other cause, the court may order part or all of the personal assets of the estate placed with a bank, trust company, or savings and loan association ~~(which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state)~~ designated by the court, consideration

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

being given to any bank, trust company or savings and loan association proposed by the officer. When the assets are placed with the designated financial institution, it shall file a receipt therefor in the name of the estate and give the officer a copy. Such receipt shall acknowledge the assets received by the financial institution. All interest, dividends, principal and other debts collected by the financial institution on account thereof shall be held by the financial institution in safekeeping, subject to the instructions of the officer authorized by order of the court directed to the financial institution.

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