

Insurance & Banking Subcommittee

Thursday, January 13, 2022
2:00 PM - 4:00 PM
Morris Hall (17 HOB)

Meeting Packet

Chris Sprowls
Speaker

Nick DiCeglie
Chair

The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

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Meeting Agenda

Thursday, January 13, 2022
2:00 PM – 4:00 PM
Morris Hall (17 HOB)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 139 Motor Vehicle Insurance by Government Operations Subcommittee, Fabricio, Rizo
- HB 275 Loss Run Statements by Fernandez-Barquin
- HB 451 Sufficiency of Description of Security Interests by Robinson, W.
- HB 503 Insurance by Gregory
- HB 695 Property Insurer Reimbursements by Stevenson
- HB 925 Benchmark Replacements for London Interbank Offered Rate by Stevenson
- HB 7013 OGSR/Workers' Compensation/Department of Financial Services by Government Operations Subcommittee, Fabricio

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 139 Motor Vehicle Insurance
SPONSOR(S): Government Operations Subcommittee, Fabricio, Rizo, and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N, As CS	Villa	Toliver
2) Insurance & Banking Subcommittee		Herendeen	Luczynski
3) Judiciary Committee			
4) Appropriations Committee			

SUMMARY ANALYSIS

Chapter 627, part XI, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle insurance coverage requirements. Florida law requires owners of motor vehicles to purchase both $10,000 of personal injury protection (PIP) insurance and $10,000 of property damage (PD) liability insurance. A liability insurer owes two major contractual duties to its insured in exchange for premium payments—the duty to indemnify and the duty to defend.

A vehicle take-home program is a program in which an agency employing a law enforcement officer (employing agency) assigns a vehicle to a law enforcement officer that the officer may take home at the end of each shift. Approximately 90 percent of the state's law enforcement agencies operate a vehicle take-home program. The rationale for and the benefits of such a program are often cited to include an increased police presence and improved emergency response times.

The bill requires an employing agency that operates a vehicle take-home program, which allows the operation of an official law enforcement vehicle outside of the scope of employment, to maintain motor vehicle insurance that covers the time a law enforcement officer spends going to or coming from work or any other agency assignment.

The bill specifies that any suit or action brought or maintained against an employing agency for damages arising out of tort pursuant to the bill are limited to $200,000 per person and $300,000 per incident.

The bill specifies that employing agencies are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance in order to meet the bill's requirements.

The bill will likely have a negative fiscal impact on state government and local governments. *See* Fiscal Comments.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Motor Vehicle Insurance

Chapter 627, part XI, F.S., Motor Vehicle and Casualty Insurance Contracts, and ch. 324, F.S., the Financial Responsibility Law of 1955, establish motor vehicle insurance coverage requirements. Florida's financial responsibility law exists to ensure that the privilege of owning or operating a motor vehicle on the public streets and highways is exercised with due consideration for others and their property, to promote safety, and to provide financial security requirements for the owners or operators of motor vehicles who are responsible to recompense others for injury to person or property caused by a motor vehicle.[1] Florida law requires owners of motor vehicles with four or more wheels to purchase both $10,000 of property damage (PD) liability insurance and $10,000 of personal injury protection (PIP) insurance.[2]

PD liability insurance covers damage to, or destruction of, property of others as a result of a crash.[3] PIP insurance, on the other hand, compensates insureds injured in accidents regardless of fault.[4] Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault.[5] This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.[6]

A driver's license and vehicle registration are subject to suspension for failure to comply with the security requirement to maintain PD and PIP insurance coverage.[7] A driver's license and registration may be reinstated by obtaining a liability policy and by paying a fee to the Department of Highway Safety and Motor Vehicles.[8]

Obligations of Insurer to Insured

A liability insurer generally owes two major contractual duties to its insured in exchange for premium payments–the duty to indemnify and the duty to defend. The duty to indemnify refers to the insurer's obligation to issue payment to either the insured or a beneficiary on a valid claim. The duty to defend refers to the insurer's duty to provide a defense for the insured in court against a third party with respect to a claim within the scope of the insurance contract.[9]

Vehicle Take-Home Programs for Law Enforcement Officers

[1] Section 324.011, F.S.
[2] *See* ss. 627.733, 627.736, and 324.022, F.S. A driver in compliance with the requirement to carry PIP coverage is not required to maintain bodily injury (BI) liability coverage. However, Florida law requires proof of ability to pay monetary damages in the amount of $10,000 because of bodily injury to, or death of, one person in any one crash, and $20,000 for bodily injury to, or death of, two or more persons in any one crash, and $10,000 in the event of damage to property of others, or $30,000 combined BI/PD liability insurance after a motor vehicle accident. *See* ss. 324.011 and 324.051, F.S.
[3] Section 324.022, F.S.
[4] Section 627.733, F.S.
[5] See s. 627.731, F.S.
[6] Section 627.737, F.S.
[7] Section 324.0221(2), F.S.
[8] Section 324.0221(3), F.S.
[9] *See* 16 Williston on Contracts s. 49:105 (4th Ed.).

A vehicle take-home program, also referred to as an assigned vehicle program, is a program in which an agency that employs a law enforcement officer (employing agency) assigns a vehicle to a law enforcement officer that the officer may take home at the end of each shift. Vehicle take-home programs are currently in operation throughout Florida and the country at large. The 2020 Criminal Justice Agency Profile Report by the Florida Department of Law Enforcement shows that about 90 percent of the state's law enforcement agencies operate a vehicle take-home program.[10] This includes all 67 county sheriff's offices, 218 of 232 municipal police departments, 26 of 34 state agencies that employ law enforcement officers, and 32 of 43 school systems and ports that employ law enforcement officers. The often cited rationale for and benefits of such a program include:

- An increased police presence in the community;
- Improved patrol shift transitions;
- Improved operational mobility and flexibility;
- Improved emergency response and control;
- Increased vehicle longevity;
- Lower operating cost; and
- Less down time for vehicle maintenance.[11]

Tort Claims Against Government Agencies

State government and its subdivisions may be liable for the acts of an employee if the employee was acting within the scope of his or her employment; however, the law limits judgments to $200,000 per person and $300,000 per incident unless additional damages are approved by the Legislature.[12] Counties and municipalities are similarly liable for torts committed by employees acting within the scope of their employment, much as private employers may be held liable for the acts committed by employees acting within the scope of their employment.[13]

Courts use a three-part test to determine if an employee's conduct is within the scope of his or her employment: 1) the conduct is of the kind the employee was employed to perform; 2) the conduct occurs substantially within the time and space limits authorized or required by the work to be performed; and 3) The conduct is activated at least in part by a purpose to serve the master.[14]

The assignment of a take-home car does not enlarge the state's liability for tortious acts of an employee committed outside the employee's scope of employment.[15] Merely driving to or from work in a vehicle provided by an employer is an act performed outside of the course of employment, unless the employee is on a special errand for the employer.[16]

The courts have not been persuaded by plaintiffs who cite the "going and coming" rule associated with workers' compensation law as a reason why the government should be liable for accidents involving law enforcement officers driving take-home vehicles owned by their employer. For the purposes of

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[10] Florida Department of Law Enforcement, *Criminal Justice Agency Profile Report,* available at http://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP.aspx (last visited November 17, 2021); *See also* U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, *Sheriffs' Offices, 2007 – Statistical Table* (December 2012), https://bjs.ojp.gov/content/pub/pdf/so07st.pdf (last visited November 17, 2021) (reporting that 93% of sheriffs' departments around the country allow personnel to take department vehicles home).

[11] *See* Pima County Sheriff's Department, *Assigned Vehicle Program*, https://pimasheriff.org/application/files/5415/6346/6464/Assigned_Vehicles_Program.pdf (last visited November 17, 2021). *See also* 05-36 Fla. Op. Att'y Gen. (June 16, 2005).

[12] Art. 10, s. 13, Fla. Const. and s. 768.28(5), F.S.

[13] S. 768.28(2), F.S., and *City of Miami v. Simpson*, 172 So. 2d 435, 437, (Fla. 1965).

[14] *Iglesia Cristiana La Casa Del Señor, Inc. v. L.M.*, 783 So. 2d 353, 357 (Fla. 3d DCA 2001); *Hennagan v. Dep't of Highway Safety & Motor Vehicles*, 467 So. 2d 748, 750 (Fla. 1st DCA 1985).

[15] *Rabideau v. State of Florida*, 409 So. 2d 1045 (Fla. 1982) (The Secretary of State's office was not liable for an investigator who struck and killed two men who had been repairing a motorcycle at the side of a road, even though the investigator was driving a state-issued vehicle, because the investigator caused the fatal accident after consuming six or seven drinks at a bar after completing his shift).

[16] *Robelo v. United Consumers Club, Inc*., 555 So. 2d 395, 396 (Fla. 3d DCA 1989).

worker' compensation benefits, an injury suffered by a law enforcement officer while going or coming from work in a law enforcement vehicle is presumed to be an injury arising out of and in the course of employment unless the injury occurred during a "distinct deviation for a nonessential personal errand" that is not permitted by the employer's take-home vehicle policy or a collective bargaining agreement.[17] This statutory presumption for workers' compensation benefits does not alter the employer's liability for accidents involving a take-home vehicle.[18]

Garcia v. City of Hollywood is the most compelling example in the line of cases involving take-home vehicles provided to law enforcement officers. In a 2007 decision, the Fourth District Court of Appeals held that the city was not liable for a fatal accident involving a sergeant who was driving a marked patrol car that had been assigned to him on a take-home basis. The sergeant, who was reporting to work one hour early so he could study for a lieutenant's exam, struck and killed a child while she attempted to cross a roadway to reach her school bus. The sergeant was required to be in uniform while driving the patrol car, and he was required to stop and take action if he witnessed a crime. The sergeant was not acting within the scope of his employment when the accident occurred, because he was not required to drive to work early, to study before beginning his shift.[19]

As a result of the *Garcia* opinion, various law enforcement agencies recommend or require their law enforcement officers to obtain a "use of non-owned vehicle" insurance policy that provides liability coverage when the officer is operating a vehicle owned by another person or entity (i.e., an official law enforcement vehicle).[20] For example, the Orlando Police Department requires their officers to show proof of non-owned vehicle insurance coverage before issuance of a take-home vehicle. The stated purposes of "this policy is to recognize that certain potential liabilities incurred by employees are not covered by the City's insurance program, and that requiring personal insurance coverage is in the best interest of the City, the employee, and the public."[21]

Effect of the Bill

The bill requires an employing agency of a law enforcement officer[22] that allows a law enforcement officer to operate an agency-owned vehicle outside the course and scope of the officer's employment or function to maintain current and valid motor vehicle insurance – including bodily injury, death, and property damage liability coverage – that covers the time an officer spends while going to or coming from work or any other agency assignment in an official law enforcement vehicle. However, the bill does not require such motor vehicle insurance to provide for coverage in the following events:

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[17] S. 440.092(2), F.S.
[18] *Bencomo v. City of Miami*, 306 So. 3d 268 (Fla. 3d DCA, 2020).
[19] *Garcia v. City of Hollywood*, 966 So. 2d 5 (Fla. 4th DCA 2007).
[20] *See* Collective Bargaining Agreement between the City of Ocala, Florida and Florida State Lodge, Fraternal Order of Police, https://www.ocalafl.org/home/showpublisheddocument/2130/637504395197530000 (last visited November 17, 2021); City of Hollywood, Florida, Take Home Vehicle Policy HB-038:2, http://www.hollywoodfl.org/DocumentCenter/View/11445/038-2-Take-Home-Vehicle?bidId (last visited November 17, 2021); Orlando Police Department Policy and Procedure 1802.17, Use of City Vehicles, https://www.orlando.gov/files/sharedassets/public/documents/opd/policies-and-procedures/city-owned-vehicles/1802.17-use-of-city-vehicles.pdf (Last visited November 17, 2021); Collective Bargaining Agreement between Town of Davie, Florida and Florida State Lodge Fraternal Order of Police, Inc., https://www.davie-fl.gov/DocumentCenter/View/9755/FOP-Collective-Bargaining-Agreement-2019-2022-PDF (last visited November 17, 2021).
[21] Orlando Police Department Policy and Procedure 1802.17, Use of City Vehicles, https://www.orlando.gov/files/sharedassets/public/documents/opd/policies-and-procedures/city-owned-vehicles/1802.17-use-of-city-vehicles.pdf (Last visited November 17, 2021)
[22] The bill specifies that the term "law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

- The officer makes a distinct deviation for a nonessential personal errand unless a provision of an applicable collective bargaining agreement permits such a deviation.
- The officer acts in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

The bill specifies that any suit or action brought or maintained against an agency that employs a law enforcement officer for damages arising out of tort pursuant to the bill are limited to $200,000 per person and $300,000 per incident.

The bill specifies that employing agencies are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance in order to meet the bill's requirements.

Lastly, the bill specifies that the Legislature finds and declares that the act fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1 creates s. 627.7491, F.S., relating to motor vehicle insurance requirements for official law enforcement vehicles.

Section 2 creates an unnumbered section of law providing that the Legislature finds that the act fulfills an important state interest.

Section 3 provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have an indeterminate, positive fiscal impact on the private sector as a result of premiums collected by insurers on the motor vehicle insurance required by the bill to be maintained by employing agencies that operate a vehicle take-home program.

D. FISCAL COMMENTS:

The bill may have a significant, yet indeterminate, negative fiscal impact on state and local government expenditures. The bill requires an employing agency that operates a vehicle take-home program to maintain motor vehicle insurance that covers the time an officer spends traveling to and from work or any other agency assignment in an official law enforcement vehicle. The dollar amount of expenditures required by the bill are dependent upon the insurance selected by the individual agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires an employing agency that operates a vehicle take-home program to maintain motor vehicle insurance that covers the time an officer spends traveling to and from work or any other agency assignment in an official law enforcement vehicle; however, an exemption may apply if the fiscal impact of the bill is insignificant. In addition, an exception may apply because the bill declares it fulfills an important state interest and all similarly situated state and local employing agencies that operate a vehicle take-home program are required to maintain motor vehicle insurance.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority, nor require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 2, 2021, the Government Operations Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from HB 139 in that it:

- Removed a provision amending the definition of "law enforcement officer" providing that service as a law enforcement officer includes time spent on certain activities;
- Removed provisions providing enhanced workers' compensation and death benefits to law enforcement officers injured or killed during defined service time;
- Required an employing agency that operates a vehicle take home program to maintain motor vehicle insurance that covers the time a law enforcement officer spends going to or coming from work or any other agency assignment in an official law enforcement vehicle;
- Specified that any suit or action brought or maintained against an employing agency for damages arising out of tort are limited to $200,000 per person and $300,000 per incident; and
- Specified that employing agencies are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance.

This analysis is drafted to the committee substitute adopted by the Government Operations Subcommittee.

A bill to be entitled

An act relating to motor vehicle insurance; creating s. 627.7491, F.S.; providing definitions; requiring agencies that employ law enforcement officers to maintain motor vehicle insurance under certain circumstances; providing exceptions; providing liability limitations; providing methods in which the employing agency may meet the liability insurance requirements; providing a declaration of important state interest; providing an effective date.

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

Section 1. Section 627.7491, Florida Statutes, is created to read:

627.7491 Official law enforcement vehicles; motor vehicle insurance requirements.—

(1) For purposes of this section, the term:

(a) "Law enforcement officer" has the same meaning as in s. 943.10(1).

(b) "Employing agency" means an agency that employs a law enforcement officer.

(2) If an employing agency authorizes a law enforcement officer to travel to his or her place of residence in an official law enforcement vehicle outside of the course and scope

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

of the officer's employment or function, the employing agency shall maintain current and valid motor vehicle insurance, including bodily injury, death, and property damage liability coverage that covers the period in which a law enforcement officer travels to or from work in an official law enforcement vehicle and covers the time a law enforcement officer travels to and from any other employing agency assignment in an official law enforcement vehicle. However, such motor vehicle insurance is not required to provide for coverage if:

(a) The law enforcement officer makes a distinct deviation for a nonessential personal errand unless a collective bargaining agreement permits such deviation; or

(b) The law enforcement officer acts in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(3) Any suit or action brought or maintained against an employing agency for damages arising out of tort pursuant to this section, including, without limitation, any claim arising upon account of an act causing loss of property, personal injury, or death, shall be subject to the limitations provided in s. 768.28(5).

(4) The requirements of this section may be met by any method authorized by s. 768.28(16).

Section 2. The Legislature finds and declares that this act fulfills an important state interest.

Section 3. This act shall take effect July 1, 2022.

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

HB 275

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 275 Loss Run Statements
SPONSOR(S): Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:** SB 156

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

SUMMARY ANALYSIS

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

Statutes enacted in 2020, established a 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 loss run statements with a five-year loss run history within 15 days of receiving an insured's written request. If an insured requests 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. However, the insured may still ask the insurer for a loss run statement even after receiving information from a consumer reporting agency.

The bill amends the loss run statutes 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 five years to a minimum of three years to reflect the industry practice of routinely providing insureds with a three-year history upon request before the enactment of the 2020 statutes. 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 runs statements, do not apply to life insurers.

The bill also resolves a conflict between the 2020 statutes and an existing statute regarding loss run statements for group health insurance policies by repealing the health-specific statute. Repealing this statute will create a more seamless process for requesting a loss run statement regardless of the type of insurance for which the statement is requested. The bill establishes that, as applied to group health insurance, a loss run statement also includes premiums paid, number of insureds on a monthly basis, and dependent status. Finally, 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.

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

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A loss run statement[1] is a report from an insurer that shows the claims a specific insured has filed under that insured's policy during a particular period of time.[2] This report can be provided to a prospective insurer when an insured is shopping for a new insurance policy.[3] The prospective insurer 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.[4] 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.[5]

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[6] upon cancelation 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.[7] 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 or consumer reporting agencies.

Often, personal lines loss history can be obtained from public sources. A Comprehensive Loss Underwriting Exchange, or CLUE, report is a claims report generated by the consumer-reporting agency, LexisNexis.[8] A CLUE report contains claims information reported by insurers for all personal auto and personal property claims in which they pay money, set up a file for a possible claim, or deny a claim.[9] However, CLUE reports and other publicly available reports, may not be completely accurate.[10] Additionally, commercial and health insurance data are not readily available from public sources.

Statutes enacted in 2020, established a framework regarding when, and how, insurers must provide loss run statements to insureds.[11] These statutes define "loss run statement" as 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.[12] This definition also specifies that a loss run statement does not include supporting claim file documents, such as copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by common law or statutory privilege.[13]

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[1] Loss run statements are also referred to as loss runs or loss run reports.
[2] Insureon, https://www.insureon.com/insurance-glossary/loss-runs (last visited Nov. 22, 2021).
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *See, e.g.*, MSIG Loss Runs, https://www.msigusa.com/loss-runs/ and StarStone, http://myaccount.starstoneworkcomp.com/index.htm (last visited Nov. 22, 2021).
[8] Office of the Insurance Commissioner Washington State, https://www.insurance.wa.gov/clue-comprehensive-loss-underwriting-exchange (last visited Nov. 19, 2021).
[9] *Id.*
[10] Florida Association of Insurance Agents, *Loss Run Statements*, https://www.faia.com/resources-(1)/legislative-summaries/300-worders/2020-300-worders/loss-run-statements (last visited Dec. 16, 2021). *See also* Forbes Advisor, *What is a C.L.U.E. Report for Insurance?*, https://www.forbes.com/advisor/homeowners-insurance/clue-report/ (last visited Dec. 16, 2021).
[11] *See* ss. 626.9202 and 627.444, F.S.
[12] *Id.*
[13] *Id.*

Pursuant to these statutes, for all lines of insurance written on the admitted and surplus lines markets, insurers must provide loss run statements with a five-year loss run history within 15 days of receiving insured's written requests.[14] If an insured requests 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.[15] However, the insured may still ask the insurer for a loss run statement even after receiving information from a consumer reporting agency.[16] An insurer is prohibited from charging an insured for the first loss run statement that an insured requests annually.[17] Additionally, an insurer is not required to provide loss reserve information as part of a loss run statement provided to an insured.[18]

Effect of the Bill

The bill amends the loss run statutes 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 five years to a minimum of three years to reflect the industry practice of routinely providing insureds with a three-year history upon request before the enactment of the 2020 statutes. 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 runs statements, do not apply to life insurers.[19]

The bill also resolves a conflict between the 2020 statutes and an existing statute regarding loss run statements for group health insurance policies by repealing the health-specific statute.[20] Repealing this statute will create a more seamless process for requesting a loss run statement regardless of the type of insurance for which the statement is requested. The bill establishes that, as applied to group health insurance, a loss run statement also includes premiums paid, number of insureds on a monthly basis, and dependent status. Finally, 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.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.9202, F.S., relating to loss run statements for all lines of insurance.

Section 2. Amends s. 627.444, F.S., relating to loss run statements for all lines of insurance.

Section 3. Repeals s. 627.6647, F.S., relating to release of claims experience.

Section 4. Provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

[14] *Id.*
[15] Ss. 626.9202(2)(b) and 627.444(2)(b), F.S.
[16] *Id.*
[17] Ss. 626.9202(6) and 627.444(6), F.S.
[18] Ss. 626.9202(5) and 627.444(5), F.S.
[19] Because loss run statements are used to shop for new insurance, and life insurance claims are only made after the death of an insured, loss run statements are not necessary for this type of policy.
[20] *See* s. 627.6647, F.S.

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:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to loss run statements; amending ss. 626.9202 and 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 within a specified timeframe 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 release of claims experience; providing an effective date.

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

Section 1. 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,

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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 the premiums paid, the number of insureds on a monthly basis, and the dependent status under the reported policy.

(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 shall then provide the 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 2. 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 the premiums paid, the number of insureds on a monthly basis, and the dependent status under the reported policy.

(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 shall then provide the 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 3. Section 627.6647, Florida Statutes, is repealed.

Section 4. This act shall take effect upon becoming a law.

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

HB 451

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 451 Sufficiency of Description of Security Interests
SPONSOR(S): Robinson, W.
TIED BILLS: **IDEN./SIM. BILLS:** SB 406

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	17 Y, 0 N	Mawn	Jones
2) Insurance & Banking Subcommittee		Hinshelwood	Luczynski
3) Judiciary Committee			

SUMMARY ANALYSIS

A security interest arises when, in exchange for a loan, a borrower pledges in a security agreement specified assets he or she owns that the lender may take if the borrower defaults on the loan. A security interest also assures the lender that, if the borrower enters bankruptcy, the lender may be able to recover the loan's value by taking the asset. Under Florida law, a description of an asset, whether or not the description is specific, is sufficient to pledge the asset under a security agreement if it reasonably identifies what is described. However, a description of assets in general terms, such as "all the debtor's assets," "all the debtor's personal property," or similar phrasing, does not sufficiently identify the collateral for purposes of a security interest.

Florida Law protects certain assets from legal process so that they remain out of a creditor's reach, including:

- Funds held in individual retirement accounts ("IRA") and other tax-exempt accounts.
- The cash surrender value of a life insurance policy and the proceeds of an annuity contract.
- Funds held in qualified tuition programs and medical, Coverdell education, and hurricane savings accounts.
- Disability income benefits.
- A deceased person's wages and unemployment compensation benefits.
- Homestead property and certain personal property items.
- Social security benefits; unemployment compensation, or public assistance benefits; veterans' benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances.

Historically, exempt assets not specifically pledged in a security agreement remained exempt from a creditor's reach. However, a recent Eleventh Circuit Court of Appeals decision broke with this rule by holding that a security agreement granting a security interest in "all assets and rights of the Pledgor" pledged the debtor's IRA as security for a loan even though the IRA was not specifically identified in the agreement. This decision may have significant federal tax consequences for Floridians, as the use of certain tax-exempt accounts as security for a loan is considered distribution of the funds to the owner, who then owes federal income tax on the money and may owe a tax penalty for early distribution.

The bill provides that a general description only by type of collateral is an insufficient description to pledge certain statutorily-exempt assets for the purposes of a security agreement. The bill applies retroactively.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Security Interests

A security interest arises when, in exchange for a loan, a borrower pledges in a security agreement[1] specified assets owned by the borrower that the lender may take if the borrower defaults on the loan.[2] A security interest also assures the lender that, if the borrower enters bankruptcy, the lender may be able to recover the loan's value by taking possession of the specified assets.[3]

Under Florida law, a description of personal or real property, whether or not it is specific, is sufficient for the purposes of a security agreement if it reasonably identifies what is described.[4] An effective description of collateral[5] in a security agreement identifies the asset by:

- Specific listing;
- Category;
- Type of collateral;
- Quantity;
- Computational or allocational formula or procedure; or
- Any method under which the identity of the collateral is objectively determinable.[6]

However, a general description of collateral as "all the debtor's assets," "all the debtor's personal property," or similar phraseology, does not sufficiently identify the collateral for purposes of creating a security interest.[7] Further, a description only by type of collateral is an insufficient description of:

- A commercial tort claim;
- In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account; or
- An account consisting of a right to payment of a monetary obligation for the sale of real property that is the debtor's homestead under Florida law.[8]

Asset Exemptions

Florida law protects certain assets from legal process so that they remain out of a creditor's reach, including:

- Funds held in an individual retirement account ("IRA") and other tax-exempt accounts.[9]
- A life insurance policy's proceeds.[10]
- A life insurance policy's cash surrender value and an annuity contract's proceeds.[11]
- Funds held in qualified tuition programs, medical savings accounts, Coverdell education accounts, and hurricane savings accounts.[12]
- Disability income benefits.[13]

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[1] "Security agreement" means an agreement that creates or provides for a security interest. S. 679.1021(1)(uuu), F.S.
[2] Legal Information Institute, *Secured Transactions*, https://www.law.cornell.edu/wex/secured_transactions (last visited Nov. 22, 2021).
[3] *Id.*
[4] S. 679.1081(1), F.S.
[5] "Collateral" means the property subject to a security interest. The term includes proceeds to which a security interest attaches; accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and goods that are the subject of consignment. S. 679.1021(1)(*l*), F.S.
[6] S. 679.1081(2), F.S.
[7] S. 679.1081(3), F.S.
[8] S. 679.1081(5), F.S.
[9] S. 222.21, F.S.
[10] S. 222.13, F.S.
[11] S. 222.14, F.S.
[12] S. 222.22, F.S.
[13] S. 222.18, F.S.

- A deceased person's wages, travel expenses, and reemployment assistance or unemployment compensation payments.[14]
- Homestead property.[15]
- Certain personal property items.[16]
- A debtor's interest in a motor vehicle, up to $1,000 in value, and any professionally prescribed health aides.[17]
- Social security benefits; unemployment compensation, or public assistance benefits; veterans' benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances.[18]

Historically, exempt assets have remained exempt from a creditor's reach unless specifically pledged in a security agreement.[19]

Recent Case Law

In *Kearney Constr. Co., LLC v. Travelers Casualty & Surety Co. of America*, the federal Eleventh Circuit Court of Appeals broke with the historic tradition of maintaining asset exemptions unless the asset is specifically pledged.[20] In *Kearney*, the debtor obtained a line of credit and pledged the following collateral as a security interest:

> [A]ll assets and rights of the Pledgor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof, all goods (including inventory, equipment and any accessories thereto), instruments (including promissory notes)[,] documents, accounts, chattel paper, deposit accounts, letters of credit, rights, securities and all other investment property, supporting obligation[s], and contract or contract rights or rights to the payment of money, insurance claims, and proceeds, and general intangibles.[21]

The Court held that this language was an "unambiguous pledge" of "all assets and rights" of the debtor, including the debtor's IRA, even though the IRA was not specifically identified in the agreement.[22]

Practically speaking, the *Kearney* decision makes it possible for a borrower to inadvertently pledge as a security interest assets historically exempt from the reach of creditors under Florida law.[23] This may affect Florida consumers with security agreements containing general language similar to the language at issue in *Kearney*.

The decision could also have significant federal tax implications, as the use of certain tax-exempt accounts as security for a loan is considered a distribution of the funds in the account to the owner, who then may owe federal income tax on the distribution.[24] The Tax Code also imposes a 10 percent tax penalty for early distributions from certain tax-exempt accounts.[25]

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[14] Ss. 225.15 and 225.16, F.S.
[15] Ss. 222.01-222.05, F.S.; Art. X, Sec. 4, Fla. Const.
[16] S. 222.061, F.S.
[17] S. 222.25, F.S.
[18] Ss. 222.201 and 222.21(1), F.S.
[19] Real Property, Probate, and Trust Law Section of the Florida Bar ("RPPTL"), *White Paper* (Jan. 26, 2021); *see, e.g., Havoco of Am. Ltd. v. Hill*, 790 So. 2d 1018 (Fla. 2001); *Connor v. Seaside Nat'l Bank*, 135 So. 3d 508 (Fla. 5th DCA 2014); *Killian v. Lawson*, 387 So. 2d 960 (Fla. 1980).
[20] 795 Fed. Appx. 671 (11th Cir. 2019). The *Kearney* case is an unpublished opinion of the Federal Court of Appeals for the Eleventh Circuit. Opinions that the Eleventh Circuit's panel of judges believes to have no precedential value are not published. FED. R. APP. P. 36, Internal Operating Procedure 6; *see also* 11th Cir. R. 36-2. Although unpublished opinions may be cited as persuasive authority, they are not considered binding precedent. FED. R. APP. P. 36, Internal Operating Procedure 6; *see also* 11th Cir. R. 36-2.
[21] 795 Fed. Appx. 673-74.
[22] *Id.* at 674. The borrower testified that he did not intend to pledge the IRA; however, the lower court rejected such testimony because it was inconsistent with the borrower's earlier court filings. *Id*.
[23] The exception is homestead property, as a waiver of such rights must be "knowing, voluntary, and intelligent" to have any effect. *See* RPPTL, *supra* note 19; *see also Chames v. DeMayo*, 972 So. 2d 850 (Fla. 2007) (*citing State v. Upton*, 658 So. 2d 86 (Fla. 1995)).
[24] I.R.C. 408(e)(4) and (d)(1); I.R.C. 72(p)(1)(B).
[25] I.R.C. 72(t).

Effect of Proposed Changes

The bill provides that a general description only by type of collateral is an insufficient description to pledge, for the purposes of a security agreement, accounts and other entitlements set forth in ss. 222.13-222.16, 222.18, and 222.201-222.22, F.S. These include:

- Funds held in an IRA and other tax-exempt accounts.
- A life insurance policy's proceeds.
- A life insurance policy's cash surrender value and an annuity contract's proceeds.
- Funds held in qualified tuition programs, medical savings accounts, Coverdell education accounts, and hurricane savings accounts.
- Disability income benefits.
- A deceased person's wages, travel expenses, and reemployment assistance or unemployment compensation payments.
- Social security benefits; unemployment compensation, or public assistance benefits; veterans' benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances.

The bill provides that it is remedial in nature and applies retroactively.

The bill will take effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 679.1081, F.S., relating to sufficiency of description.
Section 2: Provides that the bill is remedial in nature and applies retroactively.
Section 3: Provides an effective date of upon becoming a law.

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 prevent Floridians from inadvertently pledging as security specified exempt assets and suffering any related federal tax consequences.

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:

Impairment of Contracts and Due Process

Both the Florida and the United States Constitutions prohibit the state from passing a law impairing contractual obligations.[26] However, the Legislature may provide that a non-criminal law, including one that affects existing contractual obligations, applies retroactively in certain situations.[27] In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.[28] A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.[29] However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.[30] Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so "would attach new legal consequences to events completed before its enactment."[31]

Moreover, both the Florida and United States Constitutions prohibit the taking of life, liberty, or property without due process of law.[32] The right to contract, as long as no fraud or deception is involved and the contract is otherwise legal, is both a liberty and a property right subject to due process protections, and the impairment of contracts may, in certain instances, be viewed as the taking of property without due process.[33]

The bill contains a statement of legislative intent indicating that the bill is remedial in nature and applies retroactively. Some parties who entered into security agreements after the *Kearney* decision may have used general language to create a security interest with the understanding that such language was sufficient to pledge certain exempt assets. Whether the Legislature's retroactive modification of the meaning of such language is procedural, remedial, or substantive, and whether such modification implicates the constitutional right to contract or the constitutional right to due process, is for the courts to decide.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[26] U.S. Const. art. I, s. 10; Art. I, s. 10, Fla. Const.
[27] U.S. Const. art. I, ss. 9 and 10; Art. 1, s. 10, Fla. Const.
[28] A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).
[29] *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).
[30] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).
[31] *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).
[32] U.S. Const. amends. V and XIV; Art. I, s. 21, Fla. Const.
[33] *Miles v. City of Edgewater Police Dept.*, 190 So. 3d 171 (Fla. 1st DCA 2016); s*ee, e.g., Griffin v. Sharpe*, 65 So. 2d 751 (Fla. 1953) (finding that a statute removing a specific deed restriction's expiration date both impaired contracts and constituted a taking of private property without due process).

A bill to be entitled

An act relating to sufficiency of description of security interests; amending s. 679.1081, F.S.; providing that a description of certain accounts and entitlements by a certain type of collateral is insufficient for the purpose of security agreements; providing retroactive application; providing an effective date.

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

Section 1. Subsection (5) of section 679.1081, Florida Statutes, is amended to read:

679.1081 Sufficiency of description.—

(5) A description only by type of collateral defined in this chapter is an insufficient description of:

(a) A commercial tort claim;

(b) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account; ~~or~~

(c) An account consisting of a right to payment of a monetary obligation for the sale of real property that is the debtor's homestead under the laws of this state; or

(d) Accounts and other entitlements set forth in ss. 222.13-222.16, s. 222.18, and ss. 222.201-222.22.

Section 2. The amendment made by this act to s. 679.1081,

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Florida Statutes, is remedial in nature and applies retroactively.

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

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 503 Insurance
SPONSOR(S): Gregory
TIED BILLS: **IDEN./SIM. BILLS:** SB 468

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

SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

- **Florida Hurricane Catastrophe (FHCF) Coverage** – modifies when a collateral protection insurance policy is eligible for FHCF coverage.
- **Worker's Compensation Payroll Audits** – modifies the requirement that the annual audit for construction businesses be conducted onsite to only be onsite if the estimated annual premium is $10,000 or more.
- **Service of Process** – provides that service of process is perfected on an insurer when process served on the Department of Financial Services (DFS) is delivered to the insurer or DFS has notified the insurer of its availability online.
- **Meeting Requirements** – authorizes associations, trusts, and pools that provide self-insurance for public entities to use communications media technology to establish a quorum and conduct public business.
- **Adjusters and Agents** – adds adjusters employed by an insurer's affiliate to the definition of company employee adjuster; allows licensed general or personal lines agents to sell service agreements or warranties without a salesperson or sales representative license.
- **Hurricane Modeling** – provides that a property insurer may use a weighted or straight average of two or more approved hurricane models in a rate filing.
- **Mitigation Credits in Residential Property Insurance Rate Filings** – allows insurers to give mitigation credit for evaluation by, and compliance with, standards developed by an independent, not-for-profit, scientific research organization.
- **Automatic Withdrawal of Premium** – modifies the notice requirement for a change in the amount of premium by automatic bank withdrawal from an increase of any amount to increases greater than $10.
- **Citizens Property Insurance Corporation (Citizens)** – 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.
- **Policy Documents** – authorizes electronic transmission of policy documents and revises notice requirements for certain automobile insurance policies.
- **Method to Reject/Exclude Certain Property Insurance Deductibles/Coverages** – permits the required statements related to waiving the 10 percent limit on hurricane deductibles, excluding windstorm coverage, and excluding contents coverage, to be either personally written or typed by the policyholder.
- **Assignment Agreements –** adds inspection to the definition of assignment agreement, specifies that the list of services that is specified in the definition of assignment agreement is not exhaustive, specifies that fees charged by a public adjuster are not included in the definition of assignment agreement, and establishes where the pre-suit notice required before filing a suit over a claim with an assignment agreement must be sent, whether sent by certified mail or email.

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

The bill has an effective date of July 1, 2022, except as otherwise provided.

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 insurance losses.[1] 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 losses.[2] The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage of hurricane losses to residential property when those losses exceed the insurer's retention (deductible).[3] As a condition of transacting insurance business in the state, residential property insurers are required to enter reimbursement contracts with the FHCF.

The FHCF reimburses participating insurers for losses under covered polices, subject to limitations.[4] Covered policies include collateral protection[5] insurance policies covering personal residences that protect both the borrower's and the lender's financial interest in an amount at least equal to coverage for the dwelling in place under a lapsed homeowner's policy, if such policies meet certain statutory conditions.[6]

Collateral protection insurance is placed by an insurer when a homeowner'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 under 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 FHCF coverage if it is placed for the amount of the last known coverage, the amount that the homeowner was notified of by the collateral protection insurer, or the amount that the homeowner requests from the collateral protection insurer.

Workers' Compensation – Payroll Audit Procedures

The cost of workers' compensation insurance is based primarily upon an employer's payroll and the types of duties employees perform. Employers pay an estimated premium at the commencement of a workers' compensation policy and receive a refund or a bill for additional premium due at the end of the policy year, based on a payroll audit conducted by the insurance carrier.

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[1] *See* s. 215.555, F.S.

[22] *See id.*

[3] *Id.*

[4] S. 215.555(2)(d), F.S.

[5] "Collateral protection insurance" means commercial property insurance of 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. Ss. 215.555(15) and 624.6085, F.S.

[6] S. 215.555(2)(c), F.S.

The law requires that the Financial Services Commission[7] establish by rule the minimum requirements for audits of payroll and classifications[8] to ensure that the appropriate premium is charged for workers' compensation coverage. The rules shall require payroll audits no less than every other year for non-construction businesses. Businesses in the construction industry that are large enough to have an experience rating factor applied to their premium (meaning the policy is based on Florida estimated annual premium of $5,750 or more[9]) must be audited annually and the audit must take place at the employer's worksite.[10]

The Office of Insurance Regulation (OIR) has promulgated rules for payroll audits that were adopted by the Financial Services Commission. The rules require:

- An annual physical audit for policies with an estimated annual premium of $10,000 or more, regardless of governing classification;
- An annual mail or physical audit for policies with an estimated annual premium of $9,999 to $1;
- A physical audit for all new businesses that have construction classifications, regardless of premium;
- An annual physical audit for renewal policies that have construction classifications if the estimated annual premium is $5,000 or more;[11] and
- A mail or physical audit not less than every other year for per capita policies, which use the number of workers during the policy period to measure exposure.

Audits conducted by telephone are not permitted in lieu of mail or physical audits.[12]

Effect of the Bill

The bill requires in-person audits for construction businesses only if the construction business has an estimated annual premium of $10,000 or more. Passage of the bill would require changes to OIR rules that require physical audits for all new construction businesses and for construction businesses that have an annual premium of $5,000 or more.

Service of Process

In general, 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 the state.[13] However, the state 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) or the Office of Insurance Regulation (OIR).[14] Service of process on the CFO is made by mail, personal service, or via DFS's e-portal.[15]

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.[16] Verifiable means includes making the documents available by electronic transmission from a

[7] The Financial Services Commission (commission) is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S. The commission members are the OIR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.
[8] Classifications, or classification codes, are three- or four-digit codes used to identify types of work so that risk can be estimated when establishing workers' compensation insurance rates. The Hartford, *Workers' Comp Class Codes*, https://www.thehartford.com/workers-compensation/workers-comp-class-codes (last visited Jan. 5, 2022).
[9] OIR, 2020 Workers' Compensation Annual Report, p. 32 (Jan. 15, 2021), 2020WorkersCompensationAnnualReport.pdf (floir.com) (last visited Jan. 5, 2022).
[10] S. 440.381, F.S.
[11] R. 69O-189.003(4)(b)1, F.A.C.
[12] R. 69O-189.003(4)(b)3, F.A.C.
[13] S. 48.151, F.S.
[14] *Id.*
[15] *Id.* DFS, https://myfloridacfo.com/division/generalcounsel/service-of-process (last visited Dec. 16, 2021).
[16] S. 624.423, F.S.

secure website established by DFS.[17] If DFS makes the documents available electronically, the CFO is required to send a notice of receipt of process to the person designated by the insurer being served to receive legal process.[18]

Service is considered perfected on an insurer when the CFO is served with the process.[19] Although an insurer is not required to respond to a lawsuit except until 20 days after the CFO sends or makes a copy of the process available, the triggering date for other legal deadlines is the date the CFO is served with process.[20] This can create problems for an insurer when a delay occurs between the time the CFO is served and the time the CFO notifies the insurer of the service of 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.

Meeting Requirements – Risk Management Mechanisms and Self-Insurance Pools

Current law does not address whether associations, trusts, and pools formed to provide self-insurance for public entities can establish a quorum, and conduct public business, virtually. The authority to conduct business virtually has become a greater issue as COVID-19 has forced private and public entities to work remotely.

Effect of the Bill

The bill authorizes associations, trusts, and pools formed to provide self-insurance for public entities to establish a quorum, and to conduct public business, through communications media technology.

Adjusters and Agents

Company Employee Adjuster

A "company employee adjuster" is a licensed insurance adjuster who is appointed and employed on an insurer's adjusting staff or a wholly owned subsidiary of the insurer.[21] The duties of such an adjuster include determining the amount of a claim, loss, or damage payable under an insurance policy, and settling the claim, loss, or damage.[22]

Effect of the Bill

The bill adds adjusters employed by an insurer's affiliate to the definition of company employee adjuster.

Agent Licensing

General Lines Agent

A general lines agent[23] is one who sells the following lines of insurance: property;[24] casualty,[25] including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance

[17] S. 624.307(9), F.S.
[18] *Id.*
[19] S. 624.423(3), F.S.
[20] S. 624.423(2), F.S.
[21] S. 626.856, F.S.
[22] *Id.*
[23] S. 626.015(5), F.S.
[24] S. 624.604, F.S.
[25] S. 624.605, F.S.

fund,[26] or a workers' compensation self-insurance fund;[27] surety;[28] health;[29] and, marine.[30] 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.[31]

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.[32]

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.[33] 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.[34] 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.[35]

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.[36]

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[26] S. 624.462, F.S.
[27] S. 624.4621, F.S.
[28] S. 626.606, F.S.
[29] Ss. 624.603 and 627.6482, F.S.
[30] S. 624.607, F.S.
[31] S. 626.829, F.S.
[32] S. 626.015(17), F.S.
[33] S. 634.011(8), F.S.
[34] S. 634.401(13).
[35] 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.
[36] 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

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.

Use of Hurricane Models in Residential Property Insurance Rate Filings

The law regarding OIR's review and approval of residential property insurance rate filings requires that a rate filing consider mitigation measures that policyholders undertake to reduce hurricane losses.[37] It sets forth the criteria under which OIR may disapprove rate filings, including disapproval of rates that it determines to be excessive, inadequate, or unfairly discriminatory.[38] 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.[39]

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 the risk of wind damage" in their rate filings that are filed with, and approved by, OIR.[40] Insurers utilize factors from statewide organizations' building code rating factor plans that evaluate how building code enforcement in particular jurisdictions evaluate risk.[41] 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.[42] Mitigation features are construction techniques used or items installed to protect a structure against windstorm damage or loss.[43] Examples of mitigation features include hurricane shutters, a hip roof, or a specific type of roof covering.

Code-plus programs help property owners avoid or reduce damage caused by natural hazards and other risks by implementing additional levels of resilience to hazards beyond those required by building codes.[44] Presently, insurers are unable to submit rating plans for review and approval by OIR that

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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

[37] S. 627.062(2)(j), F.S.

[38] S. 627.062(2)(b), F.S.

[39] Ss. 627.0628-627.06281, F.S.

[40] S. 627.0629(2)(b), F.S.

[41] *See, e.g.*, ISO Mitigation, *ISO's Building Code Effectiveness Grading Schedule (BCEGS)*, https://www.isomitigation.com/bcegs/ (last visited Dec. 16, 2021). BCEGS is a program that provides these rating factors.

[42] *See* s. 627.0629, F.S.

[43] *See id.*

[44] Whole Building Design Guide, *Code-Plus Program for Disaster Resistance*, https://www.wbdg.org/resources/code-plus-programs-disaster-resistance (last visited Dec. 16, 2021).

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.[45]

Effect of the Bill

The bill 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 that meets the requirements of the rate filing statute.

Notification of Automatic Withdrawal of Insurance Premiums

Insurers issuing personal lines residential and commercial property policies are required to provide premium payment options for quarterly and semiannual payments. They may, but are not required to, offer monthly payment plans.[46] Insurers and policyholders may enter into automatic bank withdrawal agreements for paying insurance premiums.[47] Current law requires insurers to provide the policyholder with 15 days advance written notice prior to any automatic bank withdrawal if the premium payment increases from the previous withdrawal period by any amount.

Federal law gives consumers the option of receiving notice of a change in an automatic bank withdrawal only when the withdrawal differs from the most recent withdrawal by more than an agreed-upon amount.[48]

Effect of the Bill

The bill changes the 15-day written notice requirement of any increase in policy premiums to require the notice only if the increase in policy premiums results in the next automatic withdrawal being increased by more than $10.

Citizens Property Insurance Corporation

Citizens is a state-created, not-for-profit, tax-exempt government entity that is an integral part of the state, whose public purpose is to provide property insurance to those unable to find affordable coverage in the private market.[49] 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.[50]

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.

Delivery of Policy Documents

The law requires that an insurance policy be mailed, delivered, or electronically transmitted to an insured or other person entitled to receive the policy (designated person) within 60 days of the policy taking effect.[51] An insurer may allow a personal lines policyholder to elect delivery of policy documents

[45] *See, e.g.,* Insurance Institute of Business & Home Safety, https://ibhs.org/ (last visited Dec. 16, 2021).
[46] S. 627.4035(1)(a), F.S.
[47] S. 627.0665, F.S.
[48] 12 CFR 1005(10)(d).
[49] S. 627.351(6)(a)1., F.S.
[50] S. 627.351(6), F.S.
[51] S. 627.421(1), F.S.

by electronic means instead of by mail.[52] Electronic delivery of commercial risks constitutes delivery to the insured or designated person, unless the insured or designated person notifies the insurer that he or she does not agree to electronic delivery.[53] However, if a policy is delivered electronically, the insurer must include with the policy, a notice of the right to receive the policy by mail rather than electronically.[54] Additionally, an insurer must provide a paper copy of an insurance policy to an insured or designated person upon his or her request.[55]

Effect of the Bill

The bill eliminates the requirement that an insurer provide notice with the policy of the right to receive the policy by mail. It also eliminates the requirement that a paper copy of a policy be provided to the insured or designated person upon request. The proposed change does not prevent an insured or designated person from requesting a paper copy of a policy; the insurer may, but would not be required to, provide a paper copy, unless the insured or designated person communicated to the insurer that he or she no longer agrees to delivery by electronic means.

Method to Reject/Exclude Certain Property Insurance Deductibles/Coverages

With certain exceptions, prior to issuing a personal lines residential property insurance policy, the insurer must offer alternative deductible amounts applicable to hurricane losses equal to $500, 2 percent, 5 percent, and 10 percent of the policy dwelling limits. For such policies covering a risk valued at less than $500,000, a hurricane deductible may not be greater than 10 percent of the policy dwelling limits unless the policyholder personally writes and provides to the insurer, in his or her own handwriting the following statement: "I do not want the insurance on my home to pay for the first (specify dollar value) of the damage from hurricanes. I will pay those costs. My insurance will not."

An insurer issuing a residential property insurance policy must provide windstorm coverage; however, the insurer must also make available, at the option of the policyholder, an exclusion for the windstorm coverage.[56] To exclude windstorm coverage, the policyholder must personally write and provide to the insurer, in his or her own handwriting, the following statement: "I do not want the insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not."[57]

An insurer issuing a residential property insurance policy, except for a condominium unit owner policy or a tenant policy, must make available, at the option of the policyholder, an exclusion of contents coverage.[58] To exclude contents coverage, the policyholder must personally write and provide to the insurer, in his or her own handwriting, the following statement: "I do not want the insurance on my (home/mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not." [59]

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Effect of the Bill

For the above three provisions related to waiving the 10 percent limit on hurricane deductibles, excluding windstorm coverage, and excluding contents coverage, the bill permits the required statements to be either personally written or typed by the policyholder. The proposed change should give insurers and policyholders more options for conducting business electronically.

Assignment Agreements

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[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] S. 627.712(1)-(2), F.S.
[57] S. 627.712(2)(a)1., F.S.
[58] S. 627.712(3), F.S.
[59] *Id.*

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows a 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 (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.[60]

Once an assignment agreement is executed, the assignee can take action to enforce the insurance policy. Accordingly, if an insurer refuses to pay an assignee for a claim submitted under the policy, the assignee may file a lawsuit against the insurer. An assignee must give an insurer and the assignor prior written notice of at least ten business days before filing suit on a claim (pre-suit notice).[61] The pre-suit notice may not be served before the insurer has made a determination of coverage.[62] It 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.[63]

The law requires pre-suit notice to be sent by certified mail, return receipt requested, or by electronic delivery, but does not specify the mailing address or email address where the pre-suit notice must be sent.[64] The lack of a specific address may delay an insurer's or assignor's receipt of the notice, and thus reduce an insurer's time to respond to the notice.

Effect of the Bill

The bill adds inspection to the list of services included in the definition of assignment agreement to address the concern that certain individuals providing services, but who did not otherwise engage in protecting, repairing, restoring, or replacing insured property following a loss, were not subject to the requirements of s. 627.7152, F.S. The bill establishes that the list of services in s. 627.7152, F.S., is not exhaustive. The bill specifies that fees charged by a public adjuster are not included in the definition of assignment agreement. Additionally, the bill requires that the pre-suit notice, if sent by certified mail, be sent to the name and mailing address specified by an insurer in its policy forms, and if sent by email, be sent to the email address specified by an insurer in its policy forms.

Limited Coverage Notice Requirements

Automobile insurance policies that do not contain coverage for bodily injury and property damage[65] must be stamped on the policy declarations page with the following language in a font larger than the largest font otherwise used in the declarations page (notice):

> 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.

The stamping requirement is antiquated and prevents these types of policies from being delivered electronically.

Effect of the Bill

The bill eliminates the requirement that the notice be stamped on the declarations page of limited coverage automobile policies. Instead, the notice must accompany the declarations page and must be typed in a font at least as large as the font used in the declarations page. This change will allow these types of policies to be delivered electronically.

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[60] *S.* 627.7152(1)(b), F.S.
[61] S. 627.7152(9)(b), F.S.
[62] *Id.*
[63] *Id.*
[64] *See id.*
[65] S. 627.7276, F.S. These limited policies are typically issued to certain antique cars.

B. SECTION DIRECTORY:

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

Section 2. Amends s. 440.381, F.S., relating to application for coverage; reporting payroll; payroll audit procedures; penalties.

Section 3. Amends s. 624.423, F.S., relating to serving process.

Section 4. Creates s. 624.46227, F.S., relating to meeting requirements.

Section 5. Amends s. 626.856, F.S., relating to "company employee adjuster" defined.

Section 6. Amends. 627.062, F.S., relating to rate standards.

Section 7. Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.

Section 8. Amends s. 627.0665, F.S., relating to automatic bank withdrawal agreements; notification required.

Section 9. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 10. Amends s. 627.421, F.S., relating to delivery of policy.

Section 11. Amends s. 627.701, F.S., relating to liability of insureds; coinsurance; deductibles.

Section 12. Amends s. 627.712, F.S., relating to residential windstorm coverage required; availability of exclusions for windstorm or contents.

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

Section 14. Amends s. 627.7276, F.S., relating to notice of limited coverage.

Section 15. Amends s. 634.171, F.S., relating to salesperson to be licensed and appointed.

Section 16. Amends s. 634.317, F.S., relating to license and appointment required.

Section 17. Amends s. 634.419, F.S., relating to license and appointment required.

Section 18. Reenacts s. 624.424, F.S., relating to annual statement and other information.

Section 19. Reenacts s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 20. Reenacts s. 626.856, F.S., relating to public adjuster's qualifications, bond.

Section 21. Reenacts s. 627.7153, F.S., relating to policies restricting assignment of post-loss benefits under a property insurance policy.

Section 22. Provides an effective date of July 1, 2022, 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 that the bill may have a positive economic impact for policyholders, who may benefit from lower collateral protection insurance costs if more policies are eligible for coverage from the FHCF.[66]

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 will require modification of the rule related to workers' compensation payroll audit procedures to reflect the changes to audits for businesses with construction classifications.[67]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[66] OIR Agency Analysis of House Bill 815, p. 6 (Feb. 23, 2021). House Bill 815 from the 2021 Legislative Session is largely the same as this bill.

[67] R. 69O-189.003, F.A.C.

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. 440.381, F.S.; revising the annual audit requirement for construction classes to apply to new and renewal policies having estimated annual premiums over a specified threshold; amending s. 624.423, F.S.; specifying when service of process is valid and binding upon insurers; creating s. 624.46227, F.S.; authorizing any association, trust, or pool created for the purpose of forming a risk management mechanism or providing self-insurance for a public entity to establish a quorum and conduct public business through communications media technology; amending s. 626.856, F.S.; revising the definition of the term "company employee adjuster"; amending s. 627.062, F.S.; authorizing the use of a certain modeling indication for residential property insurance rate filings; amending s. 627.0629, F.S.; authorizing insurers to file certain insurance rating plans based on certain windstorm mitigation construction standards, if certain requirements are met; amending s. 627.0665, F.S.; revising notification requirements for insurers

who have automatic bank withdrawal agreements with insureds to include notices when withdrawal amounts increase above a specified threshold; amending s. 627.351, F.S.; revising conditions for determining the ineligibility of condominiums for wind-only coverage; amending s. 627.421, F.S.; deleting a requirement for electronic transmissions of certain documents to include specified notices; deleting a requirement that paper copies of policies be provided upon request; amending ss. 627.701 and 627.712, F.S.; revising policyholder acknowledgment statement requirements for property insurance policies having certain hurricane deductibles or windstorm or contents coverage exclusions, respectively; 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; 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 warranty contracts, respectively, without a

sales representative license; making technical changes; reenacting ss. 624.424(10) and 627.351(6)(v), F.S., relating to annual statements and other information and Citizens Property Insurance Corporation, respectively, to incorporate the amendment made to s. 215.555, F.S., in references thereto; reenacting s. 626.865(1)(e), F.S., relating to public adjuster's qualifications, to incorporate the amendment made to s. 626.856, F.S., in a reference thereto; 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 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, 2023, 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 by the collateral protection insurer, 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 must ~~shall~~ be excluded by rule if the actuarial soundness of the fund is not jeopardized. For this purpose, the term "excess policy" means a policy that provides insurance protection for large commercial property risks and that provides a layer of coverage above a primary layer insured by another insurer.

Section 2. Subsection (3) of section 440.381, Florida Statutes, is amended to read:

440.381 Application for coverage; reporting payroll; payroll audit procedures; penalties.—

(3) The Financial Services Commission, in consultation with the department, shall establish by rule minimum requirements for audits of payroll and classifications ~~in order~~

to ensure that the appropriate premium is charged for workers' compensation coverage. The rules must ~~shall~~ ensure that audits performed by both carriers and employers are adequate to provide that all sources of payments to employees, subcontractors, and independent contractors are ~~have been~~ reviewed and that the accuracy of classification of employees is ~~has been~~ verified. The rules must require ~~shall provide~~ that employers in all classes other than the construction class be audited at least ~~not less frequently than~~ biennially and may provide for more frequent audits of employers in specified classifications based on factors such as amount of premium, type of business, loss ratios, or other relevant factors. ~~In no event shall~~ Employers in the construction class~~,~~ generating more than the amount of premium required to be experience rated must~~,~~ be audited at least ~~less than~~ annually. The annual audits required for construction classes must ~~shall~~ consist of physical onsite audits for new and renewal policies only if the estimated annual premium is $10,000 or more. Payroll verification audit rules must include, but need not be limited to, the use of state and federal reports of employee income, payroll and other accounting records, certificates of insurance maintained by subcontractors, and duties of employees. At the completion of an audit, the employer or officer of the corporation and the auditor must print and sign their names on the audit document and attach proof of identification to the audit document.

Section 3. 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 date on which the insurer is notified that 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 4. 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 communications media technology.

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. 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 7. Subsection (9) is added to section 627.0629, Florida Statutes, to read:

627.0629 Residential property insurance; rate filings.—

(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.

Section 8. Section 627.0665, Florida Statutes, is amended to read:

627.0665 Automatic bank withdrawal agreements; notification required.—Any insurer licensed to issue insurance in this ~~the~~ state who has an automatic bank withdrawal agreement with an insured party for the payment of insurance premiums for any type of insurance shall give the named insured at least 15 days advance written notice of any increase in policy premiums that results in the next automatic bank withdrawal being increased by more than $10. Such notice must be provided before ~~prior to~~ any automatic bank withdrawal containing the ~~of an~~ increased premium amount.

Section 9. 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 this ~~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 10. Subsection (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed, delivered, or electronically transmitted to the insured or to the person entitled thereto not later than 60 days after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy for commercial risks, including, but not limited to, workers' compensation and employers' liability, commercial automobile liability, commercial automobile physical damage, commercial lines

residential property, commercial nonresidential property, farmowners insurance, and the types of commercial lines risks set forth in s. 627.062(3)(d), constitutes delivery to the insured or to the person entitled to delivery, unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. ~~Electronic transmission shall include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.~~

Section 11. Paragraph (d) of subsection (4) of section 627.701, Florida Statutes, is amended to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(4)

(d)1. A personal lines residential property insurance policy covering a risk valued at less than $500,000 may not have a hurricane deductible in excess of 10 percent of the policy dwelling limits, unless the following conditions are met:

a. The policyholder must personally write or type and provide to the insurer the following statement ~~in his or her own handwriting~~ and sign his or her name, which must also be signed by every other named insured on the policy, and dated: "I do not

want the insurance on my home to pay for the first (specify dollar value) of damage from hurricanes. I will pay those costs. My insurance will not."

b. If the structure insured by the policy is subject to a mortgage or lien, the policyholder must provide the insurer with a written statement from the mortgageholder or lienholder indicating that the mortgageholder or lienholder approves the policyholder electing to have the specified deductible.

2. A deductible subject to the requirements of this paragraph applies for the term of the policy and for each renewal thereafter. Changes to the deductible percentage may be implemented only as of the date of renewal.

3. An insurer shall keep the original copy of the signed statement required by this paragraph, electronically or otherwise, and provide a copy to the policyholder providing the signed statement. A signed statement meeting the requirements of this paragraph creates a presumption that there was an informed, knowing election of coverage.

4. The commission shall adopt rules providing appropriate alternative methods for providing the statements required by this section for policyholders who have a handicapping or disabling condition that prevents them from providing a handwritten statement.

Section 12. Paragraph (a) of subsection (2) and subsection (3) of section 627.712, Florida Statutes, are amended to read:

627.712 Residential windstorm coverage required; availability of exclusions for windstorm or contents.—

(2) A property insurer must make available, at the option of the policyholder, an exclusion of windstorm coverage.

(a) The coverage may be excluded only if:

1. When the policyholder is a natural person, the policyholder personally writes or types and provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her name, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not."

2. When the policyholder is other than a natural person, the policyholder provides to the insurer on the policyholder's letterhead the following statement that must be signed by the policyholder's authorized representative and dated: "...(Name of entity)... does not want the insurance on its ...(type of structure)... to pay for damage from windstorms. ...(Name of entity)... will be responsible for these costs. ...(Name of entity's)... insurance will not."

(3) An insurer issuing a residential property insurance policy, except for a condominium unit owner policy or a tenant policy, must make available, at the option of the policyholder, an exclusion of coverage for the contents. The coverage may be

excluded only if the policyholder personally writes or types and provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her signature, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my (home/mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not."

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. This term does not include fees collected by a public adjuster, as defined in s. 626.854(1).

(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 at least 10 business days before filing suit, but not before the insurer has made a determination of coverage under s. 627.70131, by certified mail, return receipt requested, to the name and mailing address designated by the insurer in the policy forms or by electronic delivery to 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 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 declarations ~~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 size at least as large as the type size used on the declarations page ~~larger than the largest type used in the text thereof, as an overprint or by a rubber stamp impression~~.

Section 15. 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 must ~~shall~~ be licensed, appointed, renewed, continued, reinstated, or terminated as prescribed in chapter 626 for insurance representatives in general. However, they are ~~shall be~~ exempt from all other provisions of chapter 626, including those relating to fingerprinting, photo identification, education, and examination ~~provisions~~. Applicable license, appointment, and other fees are as ~~shall be~~

~~those~~ prescribed in s. 624.501. A licensed and appointed salesperson is ~~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 a salesperson of a motor vehicle service agreement company or an 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 16. 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 is ~~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 17. Section 634.419, Florida Statutes, is amended to read:

634.419 License and appointment required; exemptions.—A ~~No~~ person or an 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 are ~~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 warranty contracts.

Section 18. Effective June 1, 2023, for the purpose of incorporating the amendment made by this act to section 215.555, Florida Statutes, in a reference thereto, subsection (10) of section 624.424, Florida Statutes, is reenacted to read:

624.424 Annual statement and other information.—

(10) Each insurer or insurer group doing business in this state shall file on a quarterly basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report shall include the following information for each county on a monthly basis:

(a) Total number of policies in force at the end of each month.

(b) Total number of policies canceled.

(c) Total number of policies nonrenewed.

(d) Number of policies canceled due to hurricane risk.

(e) Number of policies nonrenewed due to hurricane risk.

(f) Number of new policies written.

(g) Total dollar value of structure exposure under policies that include wind coverage.

(h) Number of policies that exclude wind coverage.

Section 19. Effective June 1, 2023, for the purpose of incorporating the amendment made by this act to section 215.555,

Florida Statutes, in a reference thereto, paragraph (v) of subsection (6) of section 627.351, Florida Statutes, is reenacted to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(v)1. Effective July 1, 2002, policies of the Residential Property and Casualty Joint Underwriting Association become policies of the corporation. All obligations, rights, assets and liabilities of the association, including bonds, note and debt obligations, and the financing documents pertaining to them become those of the corporation as of July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

2. Effective July 1, 2002, policies of the Florida Windstorm Underwriting Association are transferred to the corporation and become policies of the corporation. All obligations, rights, assets, and liabilities of the association, including bonds, note and debt obligations, and the financing documents pertaining to them are transferred to and assumed by the corporation on July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

3. The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association

shall take all actions necessary to further evidence the transfers and provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the assumptions or instruments are executed by the corporation. Subject to the relevant financing documents pertaining to their outstanding bonds, notes, indebtedness, or other financing obligations, the moneys, investments, receivables, choses in action, and other intangibles of the Florida Windstorm Underwriting Association shall be credited to the coastal account of the corporation, and those of the personal lines residential coverage account and the commercial lines residential coverage account of the Residential Property and Casualty Joint Underwriting Association shall be credited to the personal lines account and the commercial lines account, respectively, of the corporation.

4. Effective July 1, 2002, a new applicant for property insurance coverage who would otherwise have been eligible for

coverage in the Florida Windstorm Underwriting Association is eligible for coverage from the corporation as provided in this subsection.

5. The transfer of all policies, obligations, rights, assets, and liabilities from the Florida Windstorm Underwriting Association to the corporation and the renaming of the Residential Property and Casualty Joint Underwriting Association as the corporation does not affect the coverage with respect to covered policies as defined in s. 215.555(2)(c) provided to these entities by the Florida Hurricane Catastrophe Fund. The coverage provided by the fund to the Florida Windstorm Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be redesignated as coverage for the coastal account of the corporation. Notwithstanding any other provision of law, the coverage provided by the fund to the Residential Property and Casualty Joint Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be transferred to the personal lines account and the commercial lines account of the corporation. Notwithstanding any other provision of law, the coastal account shall be treated, for all Florida Hurricane Catastrophe Fund purposes, as if it were a separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. Likewise, the personal lines and commercial lines accounts shall be viewed together, for all

fund purposes, as if the two accounts were one and represent a single, separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. The coverage provided by the fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association to the corporation.

Section 20. For the purpose of incorporating the amendment made by this act to section 626.856, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 626.865, Florida Statutes, is reenacted to read:

626.865 Public adjuster's qualifications, bond.—

(1) The department shall issue a license to an applicant for a public adjuster's license upon determining that the applicant has paid the applicable fees specified in s. 624.501 and possesses the following qualifications:

(e) Has been licensed in this state as an all-lines adjuster, and has been appointed on a continual basis for the previous 6 months as a public adjuster apprentice under s. 626.8561, as an independent adjuster under s. 626.855, or as a company employee adjuster under s. 626.856.

Section 21. 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 22. 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, 2022.

INSURANCE & BANKING SUBCOMMITTEE

HB 503 by Rep. Gregory
Insurance

AMENDMENT SUMMARY
January 13, 2022

Amendment 1 by Rep. Gregory (Line 142): The amendment makes the following modifications to the bill:

- Removes the section of the bill addressing service of process on an insurer.
- Adds an additional professional designation to the list of designations under which an applicant to become a licensed all-lines adjuster is exempt from the written examination normally required to be passed in order to receive licensure.
- Makes various formatting and minor technical wording changes for clarity.

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 Gregory offered the following:

Amendment (with title amendment)

Remove lines 142-470 and insert:

audits for policies only if the estimated annual premium is $10,000 or more. Payroll verification audit rules must include, but need not be limited to, the use of state and federal reports of employee income, payroll and other accounting records, certificates of insurance maintained by subcontractors, and duties of employees. At the completion of an audit, the employer or officer of the corporation and the auditor must print and sign their names on the audit document and attach proof of identification to the audit document.

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 use communications media technology to establish a quorum and conduct public business.

Section 4. Paragraph (j) of subsection (2) of section 626.221, Florida Statutes is amended to read:

626.221 Examination Requirement; exemptions.-

(j) An applicant for license as an all-lines adjuster who has the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state, Certified All Lines Adjuster (CALA) from Kaplan, Associate in Claims (AIC) from the Insurance Institute of America, Professional Claims Adjuster (PCA) from the Professional Career Institute, Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy, Certified Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster (CCA) from AE21 Incorporated, Claims Adjuster Certified Professional (CACP) from WebCE, Inc., Accredited Insurance Claims Specialist (AICS) from Encore Claim Services, or Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM) whose curriculum has been approved by the department and which includes comprehensive analysis of basic property and casualty

lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

Section 5. Section 3. For the purpose of incorporating the amendment made by this act to section 626.221, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 626.8734, Florida Statutes, is reenacted to read:

626.8734 Nonresident all-lines adjuster license qualifications.—

(1) The department shall issue a license to an applicant for a nonresident all-lines adjuster license upon determining that the applicant has paid the applicable license fees required under s. 624.501 and:

(b) Has passed to the satisfaction of the department a written Florida all-lines adjuster examination of the scope prescribed in s. 626.241(6); however, the requirement for the examination does not apply to:

1. An applicant who is licensed as an all-lines adjuster in his or her home state if that state has entered into a reciprocal agreement with the department;

2. An applicant who is licensed as a nonresident all-lines adjuster in a state other than his or her home state and a reciprocal agreement with the appropriate official of the state of licensure has been entered into with the department; or

3. An applicant who holds a certification set forth in s. 626.221(2)(j).

Section 6. 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 7. 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 hurricane loss projection 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 8. Subsection (9) is added to section 627.0629, Florida Statutes, to read:

627.0629 Residential property insurance; rate filings.—

(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.

Section 9. Section 627.0665, Florida Statutes, is amended to read:

627.0665 Automatic bank withdrawal agreements; notification required.—Any insurer licensed to issue insurance in this ~~the~~ state who has an automatic bank withdrawal agreement with an insured party for the payment of insurance premiums for any type of insurance shall give the named insured at least 15 days advance written notice of any increase in policy premiums that results in the next automatic bank withdrawal being increased by more than $10. Such notice must be provided before

~~prior to~~ any automatic bank withdrawal containing the ~~of an~~ increased premium amount.

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 this ~~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 (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed, delivered, or electronically transmitted to the insured or to the person entitled thereto not later than 60 days after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy for commercial risks, including, but not limited to, workers' compensation and employers' liability, commercial automobile liability, commercial automobile physical damage, commercial lines residential property, commercial nonresidential property, farmowners insurance, and the types of commercial lines risks set forth in s. 627.062(3)(d), constitutes delivery to the insured or to the person entitled to delivery, unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. ~~Electronic transmission shall include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to~~

~~the insured or to the person entitled to delivery at his or her request.~~

Section 12. Paragraph (d) of subsection (4) of section 627.701, Florida Statutes, is amended to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(4)

(d)1. A personal lines residential property insurance policy covering a risk valued at less than $500,000 may not have a hurricane deductible in excess of 10 percent of the policy dwelling limits, unless the following conditions are met:

a. The policyholder must personally write or type and provide to the insurer the following statement ~~in his or her own handwriting~~ and sign his or her name, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my home to pay for the first (specify dollar value) of damage from hurricanes. I will pay those costs. My insurance will not."

b. If the structure insured by the policy is subject to a mortgage or lien, the policyholder must provide the insurer with a written statement from the mortgageholder or lienholder indicating that the mortgageholder or lienholder approves the policyholder electing to have the specified deductible.

2. A deductible subject to the requirements of this paragraph applies for the term of the policy and for each

renewal thereafter. Changes to the deductible percentage may be implemented only as of the date of renewal.

3. An insurer shall keep the original copy of the signed statement required by this paragraph, electronically or otherwise, and provide a copy to the policyholder providing the signed statement. A signed statement meeting the requirements of this paragraph creates a presumption that there was an informed, knowing election of coverage.

4. The commission shall adopt rules providing appropriate alternative methods for providing the statements required by this section for policyholders who have a handicapping or disabling condition that prevents them from providing a handwritten statement.

Section 12. Paragraph (a) of subsection (2) and subsection (3) of section 627.712, Florida Statutes, are amended to read:

627.712 Residential windstorm coverage required; availability of exclusions for windstorm or contents.—

(2) A property insurer must make available, at the option of the policyholder, an exclusion of windstorm coverage.

(a) The coverage may be excluded only if:

1. When the policyholder is a natural person, the policyholder personally writes <u>or types</u> and provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her name, which must also be signed by every other named insured on the policy, and dated: "I do not want the

insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not."

2. When the policyholder is other than a natural person, the policyholder provides to the insurer on the policyholder's letterhead the following statement that must be signed by the policyholder's authorized representative and dated: "...(Name of entity)... does not want the insurance on its ...(type of structure)... to pay for damage from windstorms. ...(Name of entity)... will be responsible for these costs. ...(Name of entity's)... insurance will not."

(3) An insurer issuing a residential property insurance policy, except for a condominium unit owner policy or a tenant policy, must make available, at the option of the policyholder, an exclusion of coverage for the contents. The coverage may be excluded only if the policyholder personally writes or types and provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her signature, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my (home/mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not."

Section 14. 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, ~~to~~ inspecting, protecting, repairing, restoring, or replacing ~~protect, repair, restore, or replace~~ property or ~~to mitigate~~ mitigating against further damage to the property. The term does

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

Remove lines 7-16 and insert:

requirement for construction classes to apply policies having estimated annual premiums over a specified threshold; creating s. 624.46227, F.S.; authorizing any association, trust, or pool created for the purpose of forming a risk management mechanism or providing self-insurance for a public entity to use communications media technology to establish a quorum and conduct public business; amending s. 626.221, F.S.; exempting certain applicants for licensure as an all-lines adjuster from a required examination; reenacting s. 626.8734(1)(b), F.S., relating to nonresident all-lines adjuster license

qualifications, to incorporate the amendment made to s. 626.221, F.S., in a reference thereto; amending s. 626.856,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 695 Property Insurer Reimbursements
SPONSOR(S): Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1058

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

SUMMARY ANALYSIS

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 catastrophic hurricane losses. As a condition of transacting insurance business in the state, residential property insurers are required to enter contracts with the State Board of Administration (SBA) to purchase reimbursement coverage (reinsurance) on their residential property exposure.

As part of its regulation, the Office of Insurance Regulation (OIR) monitors the solvency of insurers to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. If an insurer is in an unsound financial condition, OIR may refer that insurer to the Department of Financial Services for the filing of a delinquency proceeding in circuit court, which may result in the liquidation of the insurer. If Citizens Property Insurance Corporation (Citizens) assumes policies from such liquidated insurer, Citizens may obtain coverage from the FHCF for these policies under its reimbursement contract with the SBA or by accepting an assignment of the liquidated insurer's reimbursement contract with the SBA. However, current law does not address the transfer of FHCF coverage to Citizens if it assumes policies from an authorized insurer that is in an unsound financial condition, but is not the subject of a delinquency proceeding, or the transfer of FHCF coverage if an authorized private insurer assumes policies from an unsound insurer.

The bill defines "unsound insurer" as an insurer that OIR has determined to be in unsound condition as defined in s. 624.80(2), F.S., or an insurer that has been placed into receivership under ch. 631, F.S. The bill allows any authorized insurer to receive the transfer of FHCF coverage along with policies that it assumes from an unsound insurer, subject to an agreement with the SBA. The bill extends to authorized insurers the requirements that exist when Citizens assumes policies from unsound insurers and wishes to obtain coverage from the FHCF for those policies and establishes additional requirements for both authorized insurers and Citizens. The bill replaces the statutory phrase "placed in liquidation" with the defined term "unsound insurer" so that FHCF coverage can be transferred to Citizens or an authorized insurer with policies that Citizens or such authorized insurer assumes from an unsound insurer or a liquidated insurer.

The bill establishes that if a covered event has occurred before the effective date of the transfer of the policies to the authorized insurer or Citizens, the authorized insurer or Citizens may only obtain coverage from the FHCF subject to an assignment of the remaining term of the unsound insurer's FHCF contract.

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

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Hurricane Catastrophe Fund

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 catastrophic hurricane losses.[1] 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 losses.[2] The FHCF provides insurers a source of reinsurance that is stable and generally less expensive than private reinsurance.

The FHCF is administered by the State Board of Administration (SBA) and reimburses property insurers for a selected percentage of hurricane losses to residential property when those losses exceed the insurer's retention (deductible).[3] The FHCF reimburses participating insurers for losses under covered policies, subject to limitations.[4] A covered policy is defined as "any insurance policy covering residential property" in Florida, including, but not limited to the following types of policies:

- homeowner
- mobile home owner
- farm owner
- condominium association
- condominium unit owner
- tenant
- apartment building policy
- any other policy covering a residential structure or its contents.[5]

Covered policies may be issued by any authorized insurer,[6] a commercial self-insurance fund holding a certificate of authority issued by the Office of Insurance Regulation (OIR), the Citizens Property Insurance Corporation (Citizens), and any joint underwriting association or similar legal entity.[7]

As a condition of transacting insurance business in the state, residential property insurers are required to enter contracts with the SBA to purchase reimbursement coverage (reinsurance) on their residential property exposure.[8] Pursuant its contract with the SBA, each insurer must pay an actuarially-indicated annual premium for the reimbursement.[9] The actuarial basis for the premium includes an analysis of hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology, which is also part of the SBA.

Insurer Financial Condition

[1] *See* s. 215.555, F.S.
[2] *See id.*
[3] *Id.* Retention is defined as the amount of losses below which an insurer is not entitled to reimbursement from the FHCF. It is calculated for each insurer based upon that insurer's proportionate share of overall premiums charged by the FHCF. *See* s. 215.555(2)(e), F.S.
[4] S. 215.555(2)(d), F.S.
[5] S. 215.555(2)(c), F.S.
[6] Authorized insurers are those insurers that have obtained a certificate of authority from OIR to transact insurance business in Florida. S. 624.09(1), F.S.
[7] S. 215.555(2)(c), F.S.
[8] S. 215.555(4), F.S.
[9] S. 215.555(5)(a), F.S.

As part of its regulation, OIR monitors the solvency of insurers to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. OIR considers an insurer to be in an unsound financial condition if:

- the insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law;
- the insurer continues to write new business when it has not maintained the required surplus or capital;
- the insurer attempted to dissolve or liquidate without making provisions for liabilities arising from insurance policies that it issued; or
- the insurer meets one or more of the grounds in s. 631.051, F.S., for appointment of the Department of Financial Services (DFS) as receiver.[10]

Federal law specifies that insurers cannot file for bankruptcy.[11] Instead, insolvent insurers are either rehabilitated or liquidated by the state. In Florida, the Division of Rehabilitation and Liquidation of DFS is responsible for rehabilitating or liquidating insurance companies.[12]

Chapter 631, F.S., relating to insurers insolvency and guaranty payments, governs the receivership process. This process involves the initiation of a delinquency proceeding in circuit court and the placement of in insurer under the control of DFS as the receiver.[13] Depending on the insurer's circumstances, the delinquency proceeding may result in an order of rehabilitation or liquidation.[14]

Assumption of Residential Property Insurance Policies by Citizens

Citizens is a state-created, not-for-profit, tax-exempt government entity that is an integral part of the state, whose public purpose is to provide property insurance to those unable to find affordable coverage in the private market from an authorized insurer.[15] Unlike private insurers, Citizens is not required to hold a certificate of authority from OIR.[16]

A significant portion of Citizens' total policy count consists of residential property insurance policies. These policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and some other similar policies. Pursuant to its enabling statute, s. 627.351(6), F.S., Citizens must enter into a reimbursement contract with the SBA for coverage from the FHCF for its residential property insurance policies.[17] While private carriers may select from various coverage levels available from the FHCF, Citizens is statutorily required to purchase the highest available level of coverage from the FHCF.[18]

Currently, if an insurer is placed in liquidation under ch. 631, F.S., and Citizens assumes policies from such liquidated insurer, Citizens may obtain coverage from the FHCF for these policies under its reimbursement contract with the SBA or by accepting an assignment of the liquidated insurer's reimbursement contract with the SBA.[19] The assignment of the contract must be provided for in the liquidation order or otherwise determined by the court as part of the delinquency proceedings involving

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[10] S. 624.80(2), F.S.

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

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

[13] S. 631.031, F.S.

[14] *See* ss. 631.101 and 631.111, F.S.

[15] S. 627.351(6)(a)1., F.S.

[16] Citizens, *Management Discussion and Analysis for 2017*, https://www.citizensfla.com/documents/20702/6867558/20180411+04E+MDA+2017.pdf/4584208b-1d87-4add-9a11-55e818fe0046?t=1523029712990 (last visited Jan. 10, 2021).

[17] *Id.*

[18] *Id.*

[19] State Board of Administration, Agency Analysis of 2022 Senate Bill 1058, p. 1 (Jan. 6, 2022). 2022 Senate Bill 1058 is identical to this bill. *See also* s. 215.555(5)(e), F.S.

the liquidated insurer.[20] The law does not address the transfer of FHCF coverage to Citizens if it assumes policies from an authorized insurer that is in an unsound financial condition (unsound insurer), but is not the subject of a delinquency proceeding.

Assumption of Residential Property Insurance Policies by Authorized Insurers

Under certain circumstances, OIR may approve the assumption of policies by an authorized insurer (assuming insurer) from an unsound insurer. However, current law does not provide for the assignment of the FHCF coverage that the unsound insurer had on its policies to the assuming insurer.

Effect of the Bill

The bill defines "unsound insurer" as an insurer that OIR has determined to be in unsound condition as defined in s. 624.80(2), F.S., or an insurer that has been placed into receivership under ch. 631, F.S.

The bill allows any authorized insurer to receive the transfer of FHCF coverage along with policies that it assumes from an unsound insurer, subject to an agreement with the SBA. The bill extends to authorized insurers the requirements that exist when Citizens assumes policies from unsound insurers and wishes to obtain coverage from the FHCF for those policies, and also establishes additional requirements for both authorized insurers and Citizens.

The bill replaces the statutory phrase "placed in liquidation" with the defined term "unsound insurer" so that FHCF coverage can be transferred to Citizens or an authorized insurer with policies that Citizens or such authorized insurer assumes from an unsound insurer or a liquidated insurer.

The bill establishes that if a covered event has occurred before the effective date of the transfer of the policies to the authorized insurer or Citizens, the authorized insurer or Citizens may only obtain coverage from the FHCF subject to an assignment of the remaining term of the unsound insurer's FHCF contract.

The bill removes language regarding assignments that becomes obsolete if assignment is no longer limited to policies from insurers that have been placed in liquidation under ch. 631, F.S. Finally, the bill provides that the new language regarding assignment of policies from an unsound insurer does not limit the FHCF's right to receive premium due under the contract between an unsound insurer and the FHCF.

B. SECTION DIRECTORY:

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

Section 2. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[20] S. 215.555(5)(e), F.S.

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:

   None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to property insurer reimbursements; amending s. 215.555, F.S.; defining the term "unsound insurer"; revising requirements for coverage under the Florida Hurricane Catastrophe Fund of certain policies assumed by authorized insurers or the Citizens Property Insurance Corporation; providing construction; providing an effective date.

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

Section 1. Paragraph (e) of subsection (5) of section 215.555, Florida Statutes, is amended, and paragraph (p) is added to subsection (2) of that section, to read:

215.555 Florida Hurricane Catastrophe Fund.—

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

(p) "Unsound insurer" means an insurer determined by the Office of Insurance Regulation to be in unsound condition as defined in s. 624.80(2) or an insurer placed in receivership under chapter 631.

(5) REIMBURSEMENT PREMIUMS.—

(e)1. If an authorized insurer or the Citizens Property Insurance Corporation assumes or otherwise provides coverage for policies of an unsound insurer ~~placed in liquidation under chapter 631 pursuant to s. 627.351(6)~~, the authorized insurer or

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

the Citizens Property Insurance Corporation may, pursuant to conditions mutually agreed to between the authorized insurer or the Citizens Property Insurance Corporation and the State Board of Administration, seek to obtain coverage for such policies under its contract with the fund or accept an assignment of the unsound ~~liquidated~~ insurer's contract with the fund. However, if a covered event has occurred before the effective date of the transfer of the policies, the authorized insurer or the Citizens Property Insurance Corporation may obtain coverage for such policies only through an assignment as provided in subparagraph 3.

2. If an authorized insurer or the Citizens Property Insurance Corporation assumes policies from an unsound insurer and elects to cover these policies under its ~~the corporation's~~ contract with the fund, it shall notify the board of its insured values with respect to such policies within a specified time mutually agreed to between the authorized insurer or the Citizens Property Insurance Corporation and the board~~,~~ after such assumption ~~or other coverage transaction~~, and the fund shall treat such policies as having been in effect as of June 30 of that year.

3. If an authorized insurer or the Citizens Property Insurance Corporation accepts ~~In the event of~~ an assignment of an unsound insurer's contract, the fund shall apply the unsound insurer's ~~that~~ contract to such policies and treat the

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

authorized insurer or the Citizens Property Insurance Corporation as if it ~~the corporation~~ were the unsound ~~liquidated~~ insurer for the remaining term of the contract, with ~~and the corporation shall have~~ all rights and duties of the unsound ~~liquidated~~ insurer beginning on the date it provides coverage for such policies. This subparagraph may not be construed to limit the fund's right to receive the premium due under the unsound insurer's contract~~, but the corporation is not subject to any preexisting rights, liabilities, or duties of the liquidated insurer. The assignment, including any unresolved issues between the liquidated insurer and Citizens Property Insurance Corporation under the contract, shall be provided for in the liquidation order or otherwise determined by the court. However, if a covered event occurs before the effective date of the assignment, the corporation may not obtain coverage for such policies under its contract with the fund and shall accept an assignment of the liquidated insurer's contract as provided in this paragraph~~.

Section 2. This act shall take effect July 1, 2022.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 925 Benchmark Replacements for London Interbank Offered Rate
SPONSOR(S): Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1246

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

SUMMARY ANALYSIS

The London Interbank Offered Rate (LIBOR) is the reference rate at which large banks indicate that they can borrow short-term wholesale funds from one another on an unsecured basis in the interbank market. LIBOR has been 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. Prior to the end of 2021, LIBOR was calculated in five currencies (UK Pound Sterling, the Swiss Franc, the Euro, Japanese Yen, and the U.S. Dollar), and LIBOR was produced in seven maturity terms or "tenors" (overnight/spot next, 1-week, 1-month, 2-month, 3-month, 6-month, and 12-month). In 2017, the entity that regulates LIBOR stated that LIBOR would cease after the end of 2021. However, most U.S. Dollar LIBOR tenors have been extended to the end of June 2023 to enable time for the market to transition away from LIBOR.

In 2014, the Federal Reserve Board and the Federal Reserve Bank of New York convened the Alternative Reference Rates Committee (ARRC) to address already known risks related to the U.S. Dollar LIBOR. In 2017, the ARRC identified the Secured Overnight Financing Rate (SOFR) as its recommended alternative to the U.S. Dollar LIBOR. The Federal Reserve Bank of New York currently publishes SOFR data daily, as well as SOFR Averages and a SOFR Index.

The total exposure to the U.S. Dollar LIBOR, as of the fourth quarter of 2020, was $223 trillion. Although the derivatives market accounts for a large majority of the outstanding value of all financial products referencing the U.S. Dollar LIBOR, LIBOR is also referenced in several trillion dollars of corporate loans, floating-rate mortgages, floating-rate notes, and securitized products. While an estimated 67 percent of current LIBOR exposures will mature before LIBOR ceases at the end of June 2023, an estimated $74 trillion will remain outstanding. This fact underscores the importance of finding solutions for legacy contracts, including legacy LIBOR contracts that have no provisions to replace LIBOR upon its cessation.

For contracts and instruments lacking transition provisions, the bill provides for a transition to SOFR as the replacement rate for LIBOR, provides for conforming changes to be made to the contract or instrument, voids fallback provisions that are based on LIBOR, and provides for construction of rights and duties under contracts affected by the bill. The bill precludes liability, a claim, or a cause of action arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change. The bill provides a statement demonstrating the overpowering public necessity for the bill and a finding that there are no alternative means to meet this public necessity. Additionally, the bill contains a statement of legislative intent indicating that the bill is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021.

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

The bill will take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The London Interbank Offered Rate (LIBOR) is the reference rate at which large banks indicate that they can borrow short-term wholesale funds from one another on an unsecured basis in the interbank market.[1] The origins of LIBOR can be traced back to a loan transaction in 1969 in which multiple banks were joint lenders (i.e., a syndicated loan) on a large loan of $80 million.[2] The interest rate of the loan was based on the weighted average of the funding costs for each of the participating banks plus a spread for profit.[3] The rate was recalculated periodically, hence the rate was variable and reflected market conditions.[4] The idea caught on, and eventually nearly all syndicated loans used LIBOR to calculate the interest charged.[5] Soon the rate was adopted by bankers outside the loan market who were looking for an elegant proxy for bank borrowing costs that was simple, fair, and appeared to be independent.[6]

In addition to providing loans at rates tied to LIBOR, banks whose submissions determined the fixing of LIBOR had also begun to borrow heavily using LIBOR-based contracts by the mid-1980s, creating an incentive to underreport funding costs.[7] As a result, the British Bankers' Association (BBA) took control of the rate in 1986 to formalize the data collection and governance process.[8] In that year, LIBOR settings were calculated for the U.S. dollar, the British pound, and the Japanese yen.[9] Over time, the inclusion of additional currencies and integration of existing ones into the euro left the BBA with oversight of settings for over ten currencies as of 2012.[10] Fifteen maturity terms were reported for each currency, ranging from overnight to a 1 year term.[11]

Today, LIBOR is calculated daily by the Intercontinental Exchange (ICE) Benchmark Administration.[12] 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.[13] The four highest and four lowest submissions are then removed in order to calculate LIBOR.[14] Prior to the end of 2021, the ICE Benchmark Administration calculated the rate in five currencies (UK Pound Sterling, the Swiss Franc, the Euro, Japanese Yen, and the U.S. Dollar), and LIBOR was produced in seven maturity terms or "tenors" (overnight/spot next, 1-week, 1-month, 2-month, 3-month, 6-month, and 12-month).[15]

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[1] David Hou & David Skeie, *LIBOR: Origins, Economics, Crisis, Scandal, and Reform, Federal Reserve Bank of New York Staff Reports* (Mar. 2014), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr667.pdf (last visited Jan. 7, 2022).
[2] *Id.*
[3] Gavin Finch and Liam Vaughan, *The Man Who Invented the World's Most Important Number* (Nov. 29, 2016), https://www.bloomberg.com/news/features/2016-11-29/the-man-who-invented-libor-iw3fpmed (last visited Jan. 7, 2022).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] David Hou & David Skeie, *supra* note 1.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Miranda Marquit and Benjamin Curry, *What Is Libor And Why Is It Being Abandoned?*, Forbes (Dec. 16, 2020), https://www.forbes.com/advisor/investing/what-is-libor/ (last visited Jan. 7, 2022).
[13] *Id.*
[14] *Id.*
[15] *Id.*; Financial Conduct Authority, *About LIBOR Transition*, https://www.fca.org.uk/markets/libor-transition (last visited Jan. 7, 2022).

LIBOR has come under increasing scrutiny from regulators and financial markets alike following the 2008 financial crisis as well as documented patterns of manipulation by participating banks.[16] Others have noted the declining correlations between LIBOR and actual bank funding costs.[17] In 2017, the entity that regulates LIBOR, the Financial Conduct Authority (FCA) of the United Kingdom, stated that LIBOR would cease after the end of 2021.[18] However, most U.S. Dollar LIBOR tenors have been extended to the end of June 2023 to enable time for the market to transition away from LIBOR.[19] The 1-week and 2-month U.S. Dollar LIBOR ended at the end of 2021.[20] The FCA has recommended transitions to alternative rates before these dates.[21]

In 2014, the Federal Reserve Board and the Federal Reserve Bank of New York convened the Alternative Reference Rates Committee (ARRC) to address risks related to the U.S. Dollar LIBOR.[22] The ARRC's initial objectives were to identify risk-free alternative reference rates for the U.S. Dollar LIBOR, identify best practices for contract robustness, and create an implementation plan with metrics of success and a timeline to support an orderly adoption.[23] The ARCC was reconstituted in 2018 with an expanded membership to serve as a forum to coordinate planning across cash and derivatives products as well as market participants currently using the U.S. Dollar LIBOR.[24] The ARRC is comprised of a diverse set of private-sector entities, each with an important presence in markets affected by the U.S. Dollar LIBOR, and a wide array of official-sector entities, including banking and financial sector regulators, as ex-officio members.[25]

In 2017, the ARRC identified the Secured Overnight Financing Rate (SOFR) as its recommended alternative to the U.S. Dollar LIBOR.[26] SOFR is fully-transaction based and is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities.[27] 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.[28] The Federal Reserve Bank of New York currently publishes SOFR data daily, as well as SOFR Averages and a SOFR Index.[29]

LIBOR has been 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.[30] The total exposure to the U.S. Dollar LIBOR, as of the fourth quarter of 2020, was $223 trillion.[31] Although the derivatives market accounts for a large majority of the outstanding value of all financial products referencing the U.S. Dollar LIBOR, LIBOR is also referenced in several trillion dollars of corporate loans, floating-rate mortgages, floating-rate notes, and securitized products.[32]

Financial institutions and other market participants have been in the process of assessing their exposure to the discontinuation of LIBOR, and various financial regulators have discouraged the use of

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[16] Marquit and Curry, *supra* note 12.
[17] 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 Jan. 7, 2022).
[18] Financial Conduct Authority, *supra* note 15.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] Alternative Reference Rates Committee, *Frequently Asked Questions* (Aug. 27, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/ARRC-faq.pdf (last visited Jan. 7, 2021).
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] Marquit and Curry, *supra* note 12.
[31] Alternative Reference Rates Committee, *supra* note 22.
[32] *Id.*

LIBOR as a reference rate in new contracts after December 31, 2021.[33] Some financial contracts that reference 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. While an estimated 67 percent of current LIBOR exposures will mature before LIBOR ceases at the end of June 2023, an estimated $74 trillion will remain outstanding.[34] This fact underscores the importance of finding solutions for legacy contracts, including legacy LIBOR contracts that have no provisions to replace LIBOR upon its cessation.[35] The ARRC believes that legislation is a necessary step to address those contracts.[36]

Similar to the bill, federal legislation (H.R. 4616) has been proposed that would provide for the transition of certain financial contracts away from LIBOR.[37] In the event a contract referencing LIBOR does not have a fallback or replacement rate provision in effect when LIBOR is retired, or a replacement rate is not selected by a determining person as defined by H.R. 4616, H.R. 4616 provides for a transition to SOFR as the replacement rate.[38] H.R. 4616 also provides for conforming changes to these contracts, the continuity and enforceability of these contracts, and protections against liability as a result of such a transition.[39] H.R. 4616 passed the House but has not yet been acted upon in the Senate.[40]

New York[41] and Alabama[42] have passed legislation similar to the bill.

Effect of the Bill

The bill provides the following legislative finding:

> The Legislature finds that the discontinuation of LIBOR[43] as a viable interest rate threatens the continued viability of certain contracts, securities, and instruments and the rights of the parties to those contracts, securities, or instruments. Furthermore, the threat of unknown and potentially unbounded liability and the viability of contracts, securities, and instruments threatens the state's economy and has created an overpowering public necessity to provide an immediate and remedial legislative solution. Therefore, the Legislature intends for parties to certain contracts, securities, or instruments, as provided in [the bill], to enjoy heightened legal protections as a result of the discontinuation of LIBOR. The Legislature also finds that there are no alternative means to meet this public necessity. The Legislature finds that the public interest as a whole is best served by providing certainty to these contracts, securities, and instruments and the parties thereto, so that these contracts, securities, and instruments may remain viable and continue to be enforceable in the state.

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[33] *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 Jan. 7, 2022); 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 Jan. 7, 2022); Rohit Chopra, *Joint Statement on Managing the LIBOR Transition* (Oct. 20, 2021), https://www.consumerfinance.gov/about-us/newsroom/joint-statement-on-managing-the-libor-transition/#note5 (last visited Jan. 7, 2022).

[34] Alternative Reference Rates Committee, *supra* note 22.

[35] *Id.*

[36] *Id.*

[37] Adjustable Interest Rate (LIBOR) Act of 2021, H.R. 4616, 117th Cong., https://www.congress.gov/bill/117th-congress/house-bill/4616/text.

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] Discontinuance of the London interbank offered rate, Assembly Bill 164B, https://legislation.nysenate.gov/pdf/bills/2021/A164B.

[42] Financial transactions, Senate Bill 279, https://legiscan.com/AL/text/SB279/id/2379813.

[43] "LIBOR" means, for purposes of the application of the bill to any particular contract, security, or instrument, the United States Dollar LIBOR, formerly known as the London Interbank Offered Rate, as administered by ICE Benchmark Administration, or any predecessor or successor thereof, or any tenor thereof, as applicable, that is used in making any calculation or determination of benchmark rates.

Under the bill, various LIBOR discontinuance events[44] trigger a LIBOR replacement date[45] for a contract, security, or instrument[46] that uses LIBOR as a benchmark[47] and that:

(a) Does not contain a fallback provision;[48] or

(b) Contains fallback provisions resulting in a benchmark replacement[49] that is based in any way on a LIBOR value.

For such a contract, security, or instrument, on the LIBOR replacement date, the recommended benchmark replacement, will be the benchmark replacement by operation of law. The recommended benchmark is a benchmark replacement based on SOFR[50] and must include any recommended spread adjustment[51] and any benchmark replacement conforming change[52] that have been selected or

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[44] "LIBOR discontinuance event" means the earliest to occur of any of the following:

a. A public statement or publication of information by, or on behalf of, the administrator of LIBOR announcing that the administrator has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

b. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the Federal Reserve System, an insolvency official with jurisdiction over the administrator of LIBOR, a resolution authority with jurisdiction over the administrator of LIBOR, or a court or an entity with similar insolvency or resolution authority over the administrator of LIBOR, announcing that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

c. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

A public statement or publication of information that affects one or more tenors of LIBOR does not constitute a LIBOR discontinuance event with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

[45] "LIBOR replacement date" means:

a. In the case of a LIBOR discontinuance event described in a. or b. (*supra* note 44), the later of:

(I) The date of the public statement or publication of information referenced in a. or b. (*supra* note 44); or

(II) The date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR.

b. In the case of a LIBOR discontinuance event described in c. (*supra* note 44), the date of the public statement or publication of information referenced in c. (*supra* note 44).

2. A date that affects one or more tenors of LIBOR does not constitute a LIBOR replacement date with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

[46] "Contract, security, or instrument" includes, without limitation, any contract, agreement, mortgage, deed of trust, lease, instrument, obligation, or security, whether representing debt or equity, and including any interest in a corporation, partnership, or limited liability company.

[47] "Benchmark" means an index of interest rates or dividend rates that is used, in whole or in part, as the basis of, or as a reference for, calculating or determining a valuation, payment, or other measurement under or in respect of a contract, security, or instrument.

[48] "Fallback provision" means a term in a contract, security, or instrument which sets forth a methodology or procedure for determining a benchmark replacement, including any term relating to the date on which the benchmark replacement becomes effective, without regard to whether a benchmark replacement can be determined in accordance with the methodology or procedure.

[49] "Benchmark replacement" means a benchmark, an interest rate, or a dividend rate that may or may not be based, in whole or in part, on a prior setting of LIBOR, to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or in respect of a contract, security, or instrument.

[50] "SOFR" means, with respect to any day, the secured overnight financing rate published for the day by the Federal Reserve Bank of New York as the administrator of the benchmark, or a successor administrator, on the Federal Reserve Bank of New York's website.

[51] "Recommended spread adjustment" means a spread adjustment, or method for calculating or determining the spread adjustment, which has been selected or recommended by a relevant recommending body for a recommended benchmark replacement for a particular type of contract, security, or instrument and for a particular term to account for the effects of

recommended by a relevant recommending body[53] with respect to the type of contract, security, or instrument.

After the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.

For any contract, security, or instrument that uses LIBOR as a benchmark and that contains fallback provisions allowing or requiring the selection of a benchmark replacement that is based in any way on a LIBOR value or a benchmark replacement that is similar to LIBOR, a determining person[54] may, but is not required to, select the recommended benchmark replacement as the benchmark replacement after the occurrence of a LIBOR discontinuance event. In such case, the selection of the recommended benchmark replacement must be:

1) Irrevocable;
2) Made by the earlier of the LIBOR replacement date or the latest date for selecting a benchmark replacement according to the contract, security, or instrument; and
3) Used in any determination of the benchmark under or with respect to the contract, security, or instrument occurring on and after the LIBOR replacement date.

If a recommended benchmark replacement becomes the benchmark replacement for a contract, security, or instrument under the bill, then all benchmark replacement conforming changes that are applicable to the recommended benchmark replacement must become an integral part of the contract, security, or instrument by operation of law.

The selection or use of a recommended benchmark replacement as a benchmark replacement under or in respect of a contract, security, or instrument by operation of the bill must constitute all of the following:

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the transition or change from LIBOR to a recommended benchmark replacement. This term may be a positive or negative value or zero.

[52] "Benchmark replacement conforming change" means, with respect to any type of contract, security, or instrument, a technical, administrative, or operational change, alteration, or modification that is associated with and reasonably necessary to the use, adoption, calculation, or implementation of a recommended benchmark replacement and that meets the following conditions:

1. The change, alteration, or modification has been selected or recommended by a relevant recommending body.

2. If, in the reasonable judgment of the calculating person, the change, alteration, or modification selected or recommended under subparagraph 1. does not apply to the contract, security, or instrument or is insufficient to allow administration and calculation of the recommended benchmark replacement, the benchmark replacement conforming change must include other changes, alterations, or modifications that, in the reasonable judgment of the calculating person:

a. Are necessary to allow administration and calculation of the recommended benchmark replacement under or in respect of the contract, security, or instrument in a manner consistent with market practice for substantially similar contracts, securities, or instruments and, to the extent practicable, the manner in which the contract, security, or instrument was administered immediately before the LIBOR replacement date; and

b. Would not result in a disposition of the contract, security, or instrument for federal income tax purposes.

"Calculating person" means, with respect to any contract, security, or instrument, a person responsible for calculating or determining a valuation, payment, or other measurement based on a benchmark. This person may be the determining person. See *infra* note 54 for the definition of “determining person”.

[53] "Relevant recommending body" means the Federal Reserve Board, the Federal Reserve Bank of New York, the ARRC, or a successor to any of them.

[54] "Determining person" means, with respect to any contract, security, or instrument, the following persons in decreasing order of priority:

1. A person so specified.

2. A person with the authority, right, or obligation to do any of the following:

a. Determine the benchmark replacement that will take effect on the LIBOR replacement date.

b. Calculate or determine a valuation, payment, or other measurement based on a benchmark.

c. Notify other persons of the occurrence of a LIBOR discontinuance event, a LIBOR replacement date, or a benchmark replacement.

1) A commercially reasonable replacement for and a commercially substantial equivalent to LIBOR.
2) A reasonable, comparable, or analogous term for LIBOR under or in respect of the contract, security, or instrument.
3) A replacement that is based on a methodology or information that is similar or comparable to LIBOR.
4) Substantial performance by any person of any right or obligation relating to or based on LIBOR under or in respect of a contract, security, or instrument.

A LIBOR discontinuance event, a LIBOR replacement date, the selection or use of a recommended benchmark replacement as a benchmark replacement, or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of the bill, may not:

1) Be deemed to impair or affect the right of any person to receive a payment, or affect the amount or timing of the payment, under a contract, security, or instrument;
2) Have the effect of discharging or excusing performance under a contract, security, or instrument for any reason, claim, or defense, including, but not limited to, any force majeure or other provision in a contract, security, or instrument;
3) Have the effect of giving any person the right to unilaterally terminate or suspend performance under a contract, security, or instrument;
4) Have the effect of constituting a breach of a contract, security, or instrument; or
5) Have the effect of voiding or nullifying a contract, security, or instrument.

A person is not liable for damages to any other person, and is not subject to any claim or request for equitable relief, arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of the bill. The selection or use of the recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change may not give rise to any claim or cause of action by any person in law or in equity.

The selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, by operation of the bill, may not be deemed to:

1) Be an amendment or modification of a contract, security, or instrument.
2) Prejudice, impair, or affect a person's rights, interests, or obligations under or in respect of a contract, security, or instrument.

Except as otherwise provided in the bill, the bill may not be interpreted as creating a negative inference or negative presumption regarding the validity or enforceability of any of the following:

1) A benchmark replacement that is not a recommended replacement benchmark.
2) A spread adjustment, or method for calculating or determining a spread adjustment, which is not a recommended spread adjustment.
3) A change, alteration, or modification to or in respect of a contract, security, or instrument which is not a benchmark replacement conforming change.

The bill does not alter or impair any of the following:

1) A written agreement by all requisite parties[55] which, retrospectively or prospectively, provides that a contract, security, or instrument is not subject to the bill without necessarily referring specifically to the statute created by the bill.
2) A contract, security, or instrument that contains fallback provisions that would result in a benchmark replacement that is not based on LIBOR, including, but not limited to, the prime rate or the federal funds rate. However, after the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark

[55] "Requisite parties" means all parties required to amend the terms and provisions of a contract, security, or instrument that would otherwise be altered or affected by the bill.

replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.

3) A contract, security, or instrument as to which a determining person does not elect to use a recommended benchmark replacement or as to which a determining person elects to use a recommended benchmark replacement before the occurrence of a LIBOR discontinuance event. However, after the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.
4) The application to a recommended benchmark replacement of any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a contract, security, or instrument.

Notwithstanding the Uniform Commercial Code[56] or any other law of this state, and except as otherwise provided in the bill, the bill applies to all contracts, securities, and instruments, including contracts with respect to commercial transactions, and may not be superseded by any other law of this state.

The bill provides that this act is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1. Amends s. 687.15, F.S., relating to benchmark replacements for the London Interbank Offered Rate.

Section 2. Provides that this act is remedial in nature and applies retroactively.

Section 3. Provides that this act shall take effect upon becoming a law.

II. FICAL 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:

[56] Chapters 670-680, F.S., comprise the Uniform Commercial Code. s. 671.101, F.S.

The bill has an indeterminate impact on the private sector. The bill may have both positive and negative impacts on private sector entities. Replacing LIBOR with SOFR could result in a different interest rate under the contract or instrument, though the ARCC has recommended spread adjustments for various types of financial contracts and instruments for which SOFR replaces LIBOR. Additionally, the bill could prevent an aggrieved party from bringing a claim in court relating to the replacement of LIBOR with SOFR, as well as accompanying conforming changes; but elimination of such liability and claims may have the effect of quieting financial markets.

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:

Impairment of Contracts and Due Process

Both the Florida and the United States Constitutions prohibit the state from passing a law impairing contractual obligations.[57] However, the Legislature may provide that a non-criminal law, including one that affects existing contractual obligations, applies retroactively in certain situations.[58] In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.[59] A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.[60] However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.[61] Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so "would attach new legal consequences to events completed before its enactment."[62]

Moreover, both the Florida and United States Constitutions prohibit the taking of life, liberty, or property without due process of law.[63] The right to contract, as long as no fraud or deception is involved and the contract is otherwise legal, is both a liberty and a property right subject to due process protections, and the impairment of contracts may, in certain instances, be viewed as the taking of property without due process.[64]

For certain contracts and instruments, the bill provides for a transition to SOFR as the replacement rate for LIBOR, provides for conforming changes to be made to the contract or instrument, voids fallback provisions that are based on LIBOR, and provides for construction of rights and duties under contracts affected by the bill. Additionally, the bill contains a statement of legislative intent indicating

[57] U.S. Const. art. I, s. 10; Art. I, s. 10, Fla. Const.
[58] U.S. Const. art. I, ss. 9 and 10; Art. 1, s. 10, Fla. Const.
[59] A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).
[60] *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).
[61] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).
[62] *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).
[63] U.S. Const. amends. V and XIV; Art. I, s. 21, Fla. Const.
[64] *Miles v. City of Edgewater Police Dept.*, 190 So. 3d 171 (Fla. 1st DCA 2016); s*ee, e.g., Griffin v. Sharpe*, 65 So. 2d 751 (Fla. 1953) (finding that a statute removing a specific deed restriction's expiration date both impaired contracts and constituted a taking of private property without due process).

that the bill is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021. Whether the Legislature's retroactive modification of such contracts and instruments is procedural, remedial, or substantive, and whether such modification implicates the constitutional right to contract or the constitutional right to due process, is for the courts to decide.

Access to Courts

In *Kluger v. White*,[65] the Florida Supreme Court evaluated to what extent the Legislature may alter a civil cause of action. The Court stated that it would not completely prohibit the Legislature from altering a cause of action, but neither would it allow the Legislature "to destroy a traditional and long-standing cause of action upon mere legislative whim . . . ." The takeaway from *Kluger* and other relevant case law is that the Legislature may:

- Reduce the right to bring a cause of action as long as the right is not entirely abolished.[66]
- Abolish a cause of action that is not "traditional and long-standing"—that is, a cause of action that did not exist at common law, and that did not exist in statute before the adoption of the Florida Constitution's Declaration of Rights.[67]
- Abolish a cause of action if the Legislature either:
  - Provides a reasonable commensurate benefit in exchange;[68] or
  - Shows an "overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."[69]

The bill precludes liability, a claim, or a cause of action arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change. The bill also provides a statement demonstrating the overpowering public necessity for the bill and a finding that there are no alternative means to meet this public necessity. Whether an overpowering public necessity truly exists, and whether there truly are no alternative means to meet the public necessity as the Legislature asserts, is for the courts to decide.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The definition of "benchmark replacement conforming change" (lines 68-93) should be clarified to reflect that subparagraph two is permissive rather than a mandatory requirement for every contract, security, or instrument subject to the bill.

The phrase "must constitute" on line 253 should be changed to "constitutes" in order to clarify that the bill deems the subsequent paragraphs (a) – (d) on lines 254-262 to be true.

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[65] *Kluger*, 281 So. 2d 1 (Fla. 1973).
[66] *See Achord v. Osceola Farms Co.*, 52 So. 3d 699 (Fla. 2010).
[67] *See Anderson v. Gannett Comp.*, 994 So. 2d 1048 (Fla. 2008) (false light was not actionable under the common law); *McPhail v. Jenkins*, 382 So. 2d 1329 (Fla. 1980) (wrongful death was not actionable under the common law); *see also Kluger*, 281 So. 2d at 4 ("We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State . . . the Legislature is without power to abolish such a right without providing a reasonable alternative . . . unless the Legislature can show an overpowering public necessity. . .").
[68] *Kluger*, 281 So. 2d at 4; *see Univ. of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993) (upholding statutory cap on medical malpractice damages because the Legislature provided arbitration, which is a "commensurate benefit" for a claimant); *accord Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974); *but see Smith v. Dept. of Ins.*, 507 So. 2d 1080 (Fla. 1992) (striking down noneconomic cap on damages, which, although not wholly abolishing a cause of action, did not provide a commensurate benefit).
[69] *Kluger*, 281 So. 2d at 4-5 (noting that in 1945, the Legislature abolished the right to sue for several causes of action, but successfully demonstrated "the public necessity required for the total abolition of a right to sue") (citing *Rotwein v. Gersten*, 36 So. 2d 419 (Fla. 1948); *see Echarte*, 618 So. 2d at 195 ("Even if the medical malpractice arbitration statutes at issue did not provide a commensurate benefit, we would find that the statutes satisfy the second prong of *Kluger* which requires a legislative finding that an 'overpowering public necessity' exists, and further that 'no alternative method of meeting such public necessity can be shown'").

The phrase “recommended replacement benchmark” on lines 306-307 should be changed to “recommended benchmark replacement”, as “recommended benchmark replacement” is the defined term (lines 187-193).

The sponsor has indicated an intent to amend the bill in order to address these drafting issues.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to benchmark replacements for London Interbank Offered Rate; creating s. 687.15, F.S.; providing legislative findings and intent and a statement of public interest; providing definitions; requiring that recommended benchmark replacements selected or recommended by specified persons be benchmark replacements on the United States dollar London Interbank Offered Rate (LIBOR) replacement date for certain contracts, securities, and instruments; requiring certain fallback provisions in contracts, securities, and instruments providing specified benchmark replacements to be disregarded and void; authorizing specified persons to select benchmark replacements under certain circumstances; providing requirements for such selection; providing applicability; requiring benchmark replacement conforming changes to become an integral part of contracts, securities, and instruments under certain circumstances; providing requirements for selections or uses of recommended benchmark replacements as benchmark replacements; providing construction; providing that a person is not liable for damages and is not subject to claims and requests for equitable relief under certain circumstances; providing

applicability; prohibiting other laws from superseding specified provisions; providing that the act is remedial in nature; providing retroactive applicability; providing an effective date.

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

Section 1. Section 687.15, Florida Statutes, is created to read:

687.15 Benchmark replacements for the London Interbank Offered Rate.—

(1) The Legislature finds that the discontinuation of the London Interbank Offered Rate (LIBOR) as a viable interest rate threatens the continued viability of certain contracts, securities, and instruments and the rights of the parties to those contracts, securities, or instruments. Furthermore, the threat of unknown and potentially unbounded liability and the viability of contracts, securities, and instruments threatens the state's economy and has created an overpowering public necessity to provide an immediate and remedial legislative solution. Therefore, the Legislature intends for parties to certain contracts, securities, or instruments, as provided in this section, to enjoy heightened legal protections as a result of the discontinuation of LIBOR. The Legislature also finds that there are no alternative means to meet this public necessity.

The Legislature finds that the public interest as a whole is best served by providing certainty to these contracts, securities, and instruments and the parties thereto, so that these contracts, securities, and instruments may remain viable and continue to be enforceable in the state.

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

(a) "Benchmark" means an index of interest rates or dividend rates that is used, in whole or in part, as the basis of, or as a reference for, calculating or determining a valuation, payment, or other measurement under or in respect of a contract, security, or instrument.

(b) "Benchmark replacement" means a benchmark, an interest rate, or a dividend rate that may or may not be based, in whole or in part, on a prior setting of LIBOR, to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or in respect of a contract, security, or instrument.

(c) "Benchmark replacement conforming change" means, with respect to any type of contract, security, or instrument, a technical, administrative, or operational change, alteration, or modification that is associated with and reasonably necessary to the use, adoption, calculation, or implementation of a recommended benchmark replacement and that meets the following conditions:

1. The change, alteration, or modification has been

selected or recommended by a relevant recommending body.

2. If, in the reasonable judgment of the calculating person, the change, alteration, or modification selected or recommended under subparagraph 1. does not apply to the contract, security, or instrument or is insufficient to allow administration and calculation of the recommended benchmark replacement, the benchmark replacement conforming change must include other changes, alterations, or modifications that, in the reasonable judgment of the calculating person:

a. Are necessary to allow administration and calculation of the recommended benchmark replacement under or in respect of the contract, security, or instrument in a manner consistent with market practice for substantially similar contracts, securities, or instruments and, to the extent practicable, the manner in which the contract, security, or instrument was administered immediately before the LIBOR replacement date; and

b. Would not result in a disposition of the contract, security, or instrument for federal income tax purposes.

(d) "Calculating person" means, with respect to any contract, security, or instrument, a person responsible for calculating or determining a valuation, payment, or other measurement based on a benchmark. This person may be the determining person.

(e) "Contract, security, or instrument" includes, without limitation, any contract, agreement, mortgage, deed of trust,

lease, instrument, obligation, or security, whether representing debt or equity, and including any interest in a corporation, partnership, or limited liability company.

(f) "Determining person" means, with respect to any contract, security, or instrument, the following persons in decreasing order of priority:

1. A person so specified.

2. A person with the authority, right, or obligation to do any of the following:

a. Determine the benchmark replacement that will take effect on the LIBOR replacement date.

b. Calculate or determine a valuation, payment, or other measurement based on a benchmark.

c. Notify other persons of the occurrence of a LIBOR discontinuance event, a LIBOR replacement date, or a benchmark replacement.

(g) "Fallback provision" means a term in a contract, security, or instrument which sets forth a methodology or procedure for determining a benchmark replacement, including any term relating to the date on which the benchmark replacement becomes effective, without regard to whether a benchmark replacement can be determined in accordance with the methodology or procedure.

(h) "LIBOR" means, for purposes of the application of this section to any particular contract, security, or instrument, the

United States dollar LIBOR, formerly known as the London Interbank Offered Rate, as administered by ICE Benchmark Administration, or any predecessor or successor thereof, or any tenor thereof, as applicable, that is used in making any calculation or determination of benchmark rates.

(i)1. "LIBOR discontinuance event" means the earliest to occur of any of the following:

a. A public statement or publication of information by, or on behalf of, the administrator of LIBOR announcing that the administrator has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

b. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the Federal Reserve System, an insolvency official with jurisdiction over the administrator of LIBOR, a resolution authority with jurisdiction over the administrator of LIBOR, or a court or an entity with similar insolvency or resolution authority over the administrator of LIBOR, announcing that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

c. A public statement or publication of information by the

regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

2. A public statement or publication of information that affects one or more tenors of LIBOR does not constitute a LIBOR discontinuance event with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

(j)1. "LIBOR replacement date" means:

a. In the case of a LIBOR discontinuance event described in sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b., the later of:

(I) The date of the public statement or publication of information referenced in sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b.; or

(II) The date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR.

b. In the case of a LIBOR discontinuance event described in sub-subparagraph (i)1.c., the date of the public statement or publication of information referenced in sub-subparagraph

(i)1.c.

2. A date that affects one or more tenors of LIBOR does not constitute a LIBOR replacement date with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

(k) "Recommended benchmark replacement" means, with respect to any particular type of contract, security, or instrument, a benchmark replacement based on SOFR that must include any recommended spread adjustment and any benchmark replacement conforming change that have been selected or recommended by a relevant recommending body with respect to the type of contract, security, or instrument.

(l) "Recommended spread adjustment" means a spread adjustment, or method for calculating or determining the spread adjustment, which has been selected or recommended by a relevant recommending body for a recommended benchmark replacement for a particular type of contract, security, or instrument and for a particular term to account for the effects of the transition or change from LIBOR to a recommended benchmark replacement. This

term may be a positive or negative value or zero.

(m) "Relevant recommending body" means the Federal Reserve Board, the Federal Reserve Bank of New York, the Alternative Reference Rates Committee, or a successor to any of them.

(n) "SOFR" means, with respect to any day, the secured overnight financing rate published for the day by the Federal Reserve Bank of New York as the administrator of the benchmark, or a successor administrator, on the Federal Reserve Bank of New York's website.

(3) On the LIBOR replacement date, the recommended benchmark replacement, by operation of law, shall be the benchmark replacement for a contract, security, or instrument that uses LIBOR as a benchmark and that:

(a) Does not contain a fallback provision; or

(b) Contains fallback provisions resulting in a benchmark replacement, other than a recommended benchmark replacement, that is based in any way on a LIBOR value.

(4) After the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR shall be void and of no force or effect.

(5)(a) A determining person may, but is not required to,

select the recommended benchmark replacement as the benchmark replacement after the occurrence of a LIBOR discontinuance event. The selection of the recommended benchmark replacement must be:

1. Irrevocable;

2. Made by the earlier of the LIBOR replacement date or the latest date for selecting a benchmark replacement according to the contract, security, or instrument; and

3. Used in any determination of the benchmark under or with respect to the contract, security, or instrument occurring on and after the LIBOR replacement date.

(b) Paragraph (a) applies to a contract, security, or instrument that uses LIBOR as a benchmark and that contains fallback provisions allowing or requiring the selection of a benchmark replacement that is:

1. Based in any way on a LIBOR value; or

2. The substantive equivalent of paragraph (7)(a), paragraph (7)(b), or paragraph (7)(c).

(6) If a recommended benchmark replacement becomes the benchmark replacement for a contract, security, or instrument under this section, then all benchmark replacement conforming changes that are applicable to the recommended benchmark replacement must become an integral part of the contract, security, or instrument by operation of law.

(7) The selection or use of a recommended benchmark

replacement as a benchmark replacement under or in respect of a contract, security, or instrument by operation of this section must constitute all of the following:

(a) A commercially reasonable replacement for and a commercially substantial equivalent to LIBOR.

(b) A reasonable, comparable, or analogous term for LIBOR under or in respect of the contract, security, or instrument.

(c) A replacement that is based on a methodology or information that is similar or comparable to LIBOR.

(d) Substantial performance by any person of any right or obligation relating to or based on LIBOR under or in respect of a contract, security, or instrument.

(8) A LIBOR discontinuance event, a LIBOR replacement date, the selection or use of a recommended benchmark replacement as a benchmark replacement, or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of this section, may not:

(a) Be deemed to impair or affect the right of any person to receive a payment, or affect the amount or timing of the payment, under a contract, security, or instrument;

(b) Have the effect of discharging or excusing performance under a contract, security, or instrument for any reason, claim, or defense, including, but not limited to, any force majeure or other provision in a contract, security, or instrument;

(c) Have the effect of giving any person the right to unilaterally terminate or suspend performance under a contract, security, or instrument;

(d) Have the effect of constituting a breach of a contract, security, or instrument; or

(e) Have the effect of voiding or nullifying a contract, security, or instrument.

(9) A person is not liable for damages to any other person, and is not subject to any claim or request for equitable relief, arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of this section. The selection or use of the recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change may not give rise to any claim or cause of action by any person in law or in equity.

(10) The selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, by operation of this section, may not be deemed to:

(a) Be an amendment or modification of a contract, security, or instrument.

(b) Prejudice, impair, or affect a person's rights, interests, or obligations under or in respect of a contract,

security, or instrument.

(11) Except as provided in subsection (3) or subsection (5), this section may not be interpreted as creating a negative inference or negative presumption regarding the validity or enforceability of any of the following:

(a) A benchmark replacement that is not a recommended replacement benchmark.

(b) A spread adjustment, or method for calculating or determining a spread adjustment, which is not a recommended spread adjustment.

(c) A change, alteration, or modification to or in respect of a contract, security, or instrument which is not a benchmark replacement conforming change.

(12) This section does not alter or impair any of the following:

(a) A written agreement by all requisite parties which, retrospectively or prospectively, provides that a contract, security, or instrument is not subject to this section without necessarily referring specifically to this section. As used in this paragraph, the term "requisite parties" means all parties required to amend the terms and provisions of a contract, security, or instrument that would otherwise be altered or affected by this section.

(b) A contract, security, or instrument that contains fallback provisions that would result in a benchmark replacement

that is not based on LIBOR, including, but not limited to, the prime rate or the federal funds rate. However, the contract, security, or instrument is subject to subsection (4).

(c) A contract, security, or instrument subject to subsection (5) as to which a determining person does not elect to use a recommended benchmark replacement or as to which a determining person elects to use a recommended benchmark replacement before the occurrence of a LIBOR discontinuance event. However, the contract, security, or instrument is subject to subsection (4).

(d) The application to a recommended benchmark replacement of any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a contract, security, or instrument.

(13) Notwithstanding the Uniform Commercial Code or any other law of this state, and except as otherwise provided in this section, this section applies to all contracts, securities, and instruments, including contracts with respect to commercial transactions, and may not be superseded by any other law of this state.

Section 2. This act is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in

existence on December 31, 2021.

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

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

INSURANCE & BANKING SUBCOMMITTEE

HB 925 by Rep. Stevenson
Benchmark Replacements for London Interbank Offered Rate

AMENDMENT SUMMARY
January 13, 2021

Amendment 1 by Rep. Stevenson (lines 73-307): The amendment:

- Clarifies the definition of "benchmark replacement conforming change" (lines 68-93) to reflect that subparagraph 2 is permissive rather than a mandatory requirement for every contract, security, or instrument subject to the bill.
- Changes the phrase "must constitute" on line 253 to "constitutes" in order to clarify that the bill deems the subsequent paragraphs (a) – (d) on lines 254-262 to be true when a recommended benchmark replacement is selected or used.
- Changes the phrase "recommended replacement benchmark" on lines 306-307 to "recommended benchmark replacement", as "recommended benchmark replacement" is the defined term.

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 73-307 and insert:

recommended benchmark replacement and that has been selected or recommended by a relevant recommending body. However, if, in the reasonable judgment of a calculating person, the change, alteration, or modification selected or recommended by a relevant recommending body does not apply to the contract, security, or instrument or is insufficient to allow administration and calculation of the recommended benchmark replacement, the benchmark replacement conforming change may include other changes, alterations, or modifications that, in the reasonable judgment of the calculating person:

1. Are necessary to allow administration and calculation of the recommended benchmark replacement under or in respect of the contract, security, or instrument in a manner consistent with market practice for substantially similar contracts, securities, or instruments and, to the extent practicable, the manner in which the contract, security, or instrument was administered immediately before the LIBOR replacement date; and

2. Would not result in a disposition of the contract, security, or instrument for federal income tax purposes.

(d) "Calculating person" means, with respect to any contract, security, or instrument, a person responsible for calculating or determining a valuation, payment, or other measurement based on a benchmark. This person may be the determining person.

(e) "Contract, security, or instrument" includes, without limitation, any contract, agreement, mortgage, deed of trust, lease, instrument, obligation, or security, whether representing debt or equity, and including any interest in a corporation, partnership, or limited liability company.

(f) "Determining person" means, with respect to any contract, security, or instrument, the following persons in decreasing order of priority:

1. A person so specified.

2. A person with the authority, right, or obligation to do any of the following:

a. Determine the benchmark replacement that will take effect on the LIBOR replacement date.

b. Calculate or determine a valuation, payment, or other measurement based on a benchmark.

c. Notify other persons of the occurrence of a LIBOR discontinuance event, a LIBOR replacement date, or a benchmark replacement.

(g) "Fallback provision" means a term in a contract, security, or instrument which sets forth a methodology or procedure for determining a benchmark replacement, including any term relating to the date on which the benchmark replacement becomes effective, without regard to whether a benchmark replacement can be determined in accordance with the methodology or procedure.

(h) "LIBOR" means, for purposes of the application of this section to any particular contract, security, or instrument, the United States dollar LIBOR, formerly known as the London Interbank Offered Rate, as administered by ICE Benchmark Administration, or any predecessor or successor thereof, or any tenor thereof, as applicable, that is used in making any calculation or determination of benchmark rates.

(i)1. "LIBOR discontinuance event" means the earliest to occur of any of the following:

a. A public statement or publication of information by, or on behalf of, the administrator of LIBOR announcing that the

administrator has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

b. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the Federal Reserve System, an insolvency official with jurisdiction over the administrator of LIBOR, a resolution authority with jurisdiction over the administrator of LIBOR, or a court or an entity with similar insolvency or resolution authority over the administrator of LIBOR, announcing that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

c. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

2. A public statement or publication of information that affects one or more tenors of LIBOR does not constitute a LIBOR discontinuance event with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

(j)1. "LIBOR replacement date" means:

a. In the case of a LIBOR discontinuance event described in sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b., the later of:

(I) The date of the public statement or publication of information referenced in sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b.; or

(II) The date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR.

b. In the case of a LIBOR discontinuance event described in sub-subparagraph (i)1.c., the date of the public statement or publication of information referenced in sub-subparagraph (i)1.c.

2. A date that affects one or more tenors of LIBOR does not constitute a LIBOR replacement date with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the

contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

(k) "Recommended benchmark replacement" means, with respect to any particular type of contract, security, or instrument, a benchmark replacement based on SOFR that must include any recommended spread adjustment and any benchmark replacement conforming change that have been selected or recommended by a relevant recommending body with respect to the type of contract, security, or instrument.

(l) "Recommended spread adjustment" means a spread adjustment, or method for calculating or determining the spread adjustment, which has been selected or recommended by a relevant recommending body for a recommended benchmark replacement for a particular type of contract, security, or instrument and for a particular term to account for the effects of the transition or change from LIBOR to a recommended benchmark replacement. This term may be a positive or negative value or zero.

(m) "Relevant recommending body" means the Federal Reserve Board, the Federal Reserve Bank of New York, the Alternative Reference Rates Committee, or a successor to any of them.

(n) "SOFR" means, with respect to any day, the secured overnight financing rate published for the day by the Federal Reserve Bank of New York as the administrator of the benchmark, or a successor administrator, on the Federal Reserve Bank of New York's website.

(3) On the LIBOR replacement date, the recommended benchmark replacement, by operation of law, shall be the benchmark replacement for a contract, security, or instrument that uses LIBOR as a benchmark and that:

(a) Does not contain a fallback provision; or

(b) Contains fallback provisions resulting in a benchmark replacement, other than a recommended benchmark replacement, that is based in any way on a LIBOR value.

(4) After the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR shall be void and of no force or effect.

(5)(a) A determining person may, but is not required to, select the recommended benchmark replacement as the benchmark replacement after the occurrence of a LIBOR discontinuance event. The selection of the recommended benchmark replacement must be:

1. Irrevocable;

2. Made by the earlier of the LIBOR replacement date or the latest date for selecting a benchmark replacement according to the contract, security, or instrument; and

3. Used in any determination of the benchmark under or with respect to the contract, security, or instrument occurring on and after the LIBOR replacement date.

(b) Paragraph (a) applies to a contract, security, or instrument that uses LIBOR as a benchmark and that contains fallback provisions allowing or requiring the selection of a benchmark replacement that is:

1. Based in any way on a LIBOR value; or

2. The substantive equivalent of paragraph (7)(a), paragraph (7)(b), or paragraph (7)(c).

(6) If a recommended benchmark replacement becomes the benchmark replacement for a contract, security, or instrument under this section, then all benchmark replacement conforming changes that are applicable to the recommended benchmark replacement must become an integral part of the contract, security, or instrument by operation of law.

(7) The selection or use of a recommended benchmark replacement as a benchmark replacement under or in respect of a contract, security, or instrument by operation of this section constitutes all of the following:

(a) A commercially reasonable replacement for and a commercially substantial equivalent to LIBOR.

(b) A reasonable, comparable, or analogous term for LIBOR under or in respect of the contract, security, or instrument.

(c) A replacement that is based on a methodology or information that is similar or comparable to LIBOR.

(d) Substantial performance by any person of any right or obligation relating to or based on LIBOR under or in respect of a contract, security, or instrument.

(8) A LIBOR discontinuance event, a LIBOR replacement date, the selection or use of a recommended benchmark replacement as a benchmark replacement, or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of this section, may not:

(a) Be deemed to impair or affect the right of any person to receive a payment, or affect the amount or timing of the payment, under a contract, security, or instrument;

(b) Have the effect of discharging or excusing performance under a contract, security, or instrument for any reason, claim, or defense, including, but not limited to, any force majeure or other provision in a contract, security, or instrument;

(c) Have the effect of giving any person the right to unilaterally terminate or suspend performance under a contract, security, or instrument;

(d) Have the effect of constituting a breach of a contract, security, or instrument; or

(e) Have the effect of voiding or nullifying a contract, security, or instrument.

(9) A person is not liable for damages to any other person, and is not subject to any claim or request for equitable relief, arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of this section. The selection or use of the recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change may not give rise to any claim or cause of action by any person in law or in equity.

(10) The selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, by operation of this section, may not be deemed to:

(a) Be an amendment or modification of a contract, security, or instrument.

(b) Prejudice, impair, or affect a person's rights, interests, or obligations under or in respect of a contract, security, or instrument.

(11) Except as provided in subsection (3) or subsection (5), this section may not be interpreted as creating a negative inference or negative presumption regarding the validity or enforceability of any of the following:

(a) A benchmark replacement that is not a recommended benchmark replacement.

240
241 ----------
242 **T I T L E A M E N D M E N T**
243 Remove lines 20-22 and insert:
244 circumstances; providing construction;

HB 7013

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7013 PCB GOS 22-04 OGSR/Workers' Compensation/Department of Financial Services
SPONSOR(S): Government Operations Subcommittee, Fabricio
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	13 Y, 0 N	Villa	Toliver
1) Insurance & Banking Subcommittee		Herendeen	Luczynski
2) State Affairs Committee			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Workers' compensation is a required form of employer insurance that provides all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics to employees for work-related injuries. It also provides compensation for disability when the injury causes an employee to miss more than seven days of work. The Department of Financial Services, Division of Workers' Compensation (DWC) administers Florida's workers' compensation system. In carrying out its duties and responsibilities under the workers' compensation law, the DWC receives various documents that contain the personal identifying information of injured workers, including the initial notice of injury or death, copies of medical bills and reports, and wage statements.

Current law provides a public record exemption for the personal identifying information of an injured or deceased employee contained in records held by the DWC pursuant to the workers' compensation law. The term "personal identifying information" means the injured or deceased employee's name, date of birth, home address or mailing address, e-mail address, or telephone number. The exemption authorizes the DWC to disclose the confidential and exempt information to specified parties under certain circumstances; however, the information is required to be maintained as confidential and exempt by the receiving party.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2022 if this bill does not become law.

The bill does not appear to have a fiscal impact on state government or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[2]

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[3]

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Workers' Compensation Law

Chapter 440, F.S., is Florida's workers' compensation law. It is the stated intent of the Legislature that the workers' compensation system be self-executing and for the law to be interpreted to "assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer."[5] Workers' compensation is a required form of employer insurance that provides all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics to employees for work-related injuries.[6] It also provides compensation for disability when the injury causes an employee to miss more than seven days of work.[7] The DWC has the primary responsibility for administering the workers' compensation system.[8]

[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Article I, s. 24(c), FLA. CONST.
[5] Section 440.015, F.S.
[6] Section 440.13(2)(a), F.S.
[7] Section 440.12(1), F.S.
[8] The Office of Insurance Regulation and the Office of Judges of Compensation Claims within the Division of Administrative Hearings are also responsible for administering provisions of the workers' compensation law.

The workers' compensation law sets forth reporting requirements for employees, employers, and insurers.[9] For example, employees must inform their employer of the injury within 30 days after the initial date of manifestation of the injury, except as otherwise specified.[10] Employers are required to report an injury or death to their workers' compensation insurer within seven days of having knowledge of the injury.[11] Insurers must then report the injury to the DWC within 14 days of the employer's receipt of the notice of injury or death.[12]

In addition to the initial notice of injury or death, employers and insurers are required to file subsequent reports with the DWC that contain information that would identify an injured worker. These reports or forms include, but are not limited to the: employee wage statements, notices of action/change, notices of denial, and claim cost reports.[13]

The workers' compensation law provides two other exemptions to the Public Records Law, for records produced as part of a drug-free workplace program[14] and for medical records of injured workers submitted to the DWC as part of a reimbursement dispute or utilization review.[15]

Public Record Exemption under Review

In 2017, the Legislature created a public record exemption for the personal identifying information of an injured or deceased employee contained in records held by the DWC pursuant to the workers' compensation law.[16] The term "personal identifying information" means the injured or deceased employee's name, date of birth, home address or mailing address, e-mail address, or telephone number.[17] The exemption allows the DWC to disclose the confidential and exempt[18] information:

- To the injured employee, the surviving spouse or dependents of a deceased employee, the spouse or dependent of the injured employee (if authorized by the employee), or the legal representative of the deceased employee's estate;
- To participants in workers' compensation claims litigation at Division of Administrative Hearings;
- To an anti-fraud unit of an insurer;
- In an aggregate reporting format, subject to certain content limitations;
- Pursuant to a court order or subpoena;
- To a state agency for purposes of anti-fraud investigations; and
- To other state or federal agencies in the furtherance of those agencies' official duties and responsibilities.[19]

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[9] *See* s. 440.185, F.S. The term "insurer" means a group self-insurers' fund authorized by s. 624.4621, F.S., an individual self-insurer authorized by s. 440.38, F.S., a commercial self-insurance fund authorized by s. 624.462, F.S., an assessable mutual insurer authorized by s. 628.6011, F.S., and an insurer licensed to write workers' compensation and employer's liability insurance in this state. Section 440.02(38), F.S.

[10] Section 440.185(1), F.S.

[11] Section 440.185(2), F.S.

[12] *Id.*

[13] *See* r. 69L-3.025, F.A.C.

[14] S. 440.102(8), F.S.

[15] S. 440.13, F.S. Health care providers who treat injured workers are subject to the privacy rules of the Health Insurance Portability and Accountability Act enacted by Congress in 1996, but the federal law does not apply to insurers, workers' compensation administrative agencies, or employers. *See*, U.S. Department of Health and Human Services, HIPAA Guidance Materials, *Disclosures for Workers' Compensation Purposes, www.hhs.gov/hipaa/for-professionals/privacy/guidance/disclosures-workers-compensation/index.html* (last visited Dec. 16, 2021).

[16] Section 440.1851, F.S.

[17] Section 440.1851(1)(a), F.S.

[18] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 04- 09 (2004).

[19] Section 440.1851(1)(b), F.S.

An employer, insurer, agency, or governmental entity receiving an injured or deceased employee's personal identifying information from the DWC must maintain its confidential and exempt status. The knowing and willful disclosure of the confidential and exempt information to an unauthorized person or entity is a first degree misdemeanor.[20]

The 2017 public necessity statement[21] for the exemption provides that:

> [Personal identifying] information is of a sensitive, personal nature, and disclosure of such information about an injured or deceased employee is an invasion of that employee's privacy or the privacy of his or her family. . . . Public records requests for this information have resulted in unwanted solicitation of injured workers and their families. Further, the release of such information could lead to discrimination against the employee by coworkers, potential employers, and others because of perceived social stigma related to injuries or disabilities.[22]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2022, unless reenacted by the Legislature.

During the 2021 interim, the House Government Operations Subcommittee staff conducted an interview with staff from the DWC as part of its review under the Open Government Sunset Review Act. The DWC staff indicated that the exemption is functioning well and that it has not received any complaints regarding the exemption. The DWC staff emphasized the importance of the exemption as it mitigates unnecessary litigation between injured workers and insurers on claim disputes. As such, the DWC recommended the exemption be reenacted in its current form.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for the personal identifying information of an injured or deceased employee contained in records held by the DWC pursuant to the workers' compensation law.

B. SECTION DIRECTORY:

Section 1 amends s. 440.1851, F.S., relating to a public record exemption for the personal identifying information of an injured or deceased employee.

Section 2 provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[20] Section 440.1851(2), F.S. A first degree misdemeanor is punishable by a term of imprisonment not to exceed one year and a $1,000 fine. *See* ss. 775.082 and 775.083, F.S.
[21] Article I, s. 24(c), FLA. CONST., requires each public record exemption state with specificity the public necessity justifying the exemption.
[22] Chapter 2017-185, L.O.F.

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:
   None.

B. RULE-MAKING AUTHORITY:
   The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:
   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 440.1851, F.S., which provides an exemption from public records requirements for personal identifying information of an injured or deceased employee contained in certain records held by the Department of Financial Services pursuant to the Workers' Compensation Law; making technical changes; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 440.1851, Florida Statutes, is amended to read:

440.1851 Personal identifying information of an injured or deceased employee; public records exemption.—

(1) The personal identifying information of an injured or deceased employee which is contained in reports, notices, records, or supporting documentation held by the department pursuant to this chapter is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This public records exemption applies to personal identifying information held by the department before, on, or after the effective date of this exemption.

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

~~(a) As used in this section, the term "personal identifying information" means the injured or deceased employee's name, date of birth, home address or mailing address, e-mail address, or telephone number.~~

(2)(a)~~(b)~~ The department may disclose confidential and exempt personal identifying information ~~made confidential and exempt under this section only~~:

1. To the injured employee, to the spouse or a dependent of the deceased employee, to the spouse or a dependent of the injured employee if authorized by the injured employee, or to the legal representative of the deceased employee's estate;

2. To a party litigant, or his or her authorized representative, in matters pending before the Office of the Judges of Compensation Claims;

3. To a carrier or an employer for the purpose of investigating the compensability of a claim or for the purpose of administering its anti-fraud investigative unit established pursuant to s. 626.9891;

4. In an aggregate reporting format that does not reveal the personal identifying information of any employee;

5. Pursuant to a court order or subpoena;

6. To an agency for administering its anti-fraud investigative function or in the furtherance of the agency's official duties and responsibilities; or

7. To a federal governmental entity in the furtherance of

the entity's official duties and responsibilities.

(b) A carrier, employer, agency, or governmental entity receiving confidential and exempt personal identifying information from the department shall maintain the confidential and exempt status of the information.

~~(c) This public records exemption applies to personal identifying information held by the department before, on, or after the effective date of this exemption.~~

(3)~~(2)~~ A person who willfully and knowingly discloses personal identifying information made confidential and exempt under this section to an unauthorized person or entity commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) As used in this section, the term "personal identifying information" means the injured or deceased employee's name, date of birth, home address or mailing address, e-mail address, or telephone number.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2022.