

Insurance & Banking Subcommittee

Thursday, February 1, 2024
8:00 AM - 11:00 AM
Morris Hall (17 HOB)

Meeting Packet

Paul Renner
Speaker

Wyman Duggan
Chair

The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

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Meeting Agenda

Thursday, February 1, 2024
8:00 am – 11:00 am
Morris Hall (17 HOB)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

HB 29 Value of Motor Vehicles Exempt from Legal Process by Benjamin

HB 515 Protection of Specified Adults by Silvers

HB 1029 My Safe Florida Condominium Pilot Program by Lopez, V., Hunschofsky

HB 1093 Florida Uniform Fiduciary Income and Principal Act by Caruso

HB 1219 Dental Insurance Claims by Black

HB 1263 My Safe Florida Home Program by LaMarca

HB 1305 Florida Banking Institutions by Maggard

HB 1465 Pet Insurance and Wellness Programs by Tuck

HB 1611 Insurance by Stevenson

CS/HB 1639 Gender and Biological Sex by Select Committee on Health Innovation, Bankson, Black

V. Consideration of the following proposed committee substitute(s):

PCS for HB 1503 -- Citizens Property Insurance Corporation

VI. Closing Remarks

VII. Adjournment

HB 29

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 29 Value of Motor Vehicles Exempt from Legal Process
SPONSOR(S): Benjamin
TIED BILLS: **IDEN./SIM. BILLS:** SB 158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Mathews	Jones
2) Insurance & Banking Subcommittee		Herrera	Lloyd
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Constitution allows a debtor to exempt a homestead property, regardless of value, from the claims of creditors as long as it is used as a residence. In addition to this constitutional exemption of homestead property and other personal property, Florida law protects certain assets from legal process so that they also remain beyond 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.
- Wages, unless the debtor agrees to waive the exemption in writing.
- Social security benefits; unemployment compensation, or public assistance benefits; veterans' benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances.
- A debtor's interest in any professionally prescribed health aids for the debtor or for a debtor's dependent.
- A debtor's interest in a refund or a credit received or to be received pursuant to the Internal Revenue Code; however, this exemption is not applicable to a debt owed for child support or spousal support.
- A debtor's interest in personal property, not to exceed $4,000, if the debtor does not claim or receive the benefits of a homestead exemption; however, this exemption is not applicable to a debt owed for child support or spousal support.
- A debtor's interest, not to exceed $1,000 in value, in a single motor vehicle.

HB 29 increases the maximum value of an exempt motor vehicle from $1,000 to $5,000.

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

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Constitutional Exemptions

The Florida Constitution allows a debtor to exempt a homestead property, regardless of value, from the claims of creditors as long as it is used as a residence, as well as up to $1,000 in personal property.[1]

Other Asset Exemptions

In addition to the exemption of homestead property and personal property provided by the Florida Constitution, chapter 222, F.S., 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.[2]
- A life insurance policy's proceeds.[3]
- A life insurance policy's cash surrender value and an annuity contract's proceeds.[4]
- Funds held in qualified tuition programs and medical, Coverdell education, and hurricane savings accounts.[5]
- Disability income benefits.[6]
- Wages, unless the debtor agrees to waive the exemption in writing.[7]
- Certain personal property items.[8]
- Any professionally prescribed health aides.[9]
- Social security benefits; unemployment compensation, or public assistance benefits; veterans' benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances.[10]
- A debtor's interest in a motor vehicle, up to $1,000 in value.[11]

Effect of Proposed Changes

HB 29 amends section 222.25, F.S., to increase the maximum value for a single exempt motor vehicle from $1,000 to $5,000. The maximum value has not been amended since s. 222.25, F.S., was created in 1993.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 222.25, F.S., relating to other individual property of natural persons exempt from legal process.

Section 2: Provides an effective date of July 1, 2024.

[1] Art. X, s. 4, Fla. Const.
[2] S. 222.21, F.S.
[3] S. 222.13, F.S.
[4] S. 222.14, F.S.
[5] S. 222.22, F.S.
[6] S. 222.18, F.S.
[7] Ss. 222.11 and 225.15, F.S.
[8] S. 222.061, F.S.
[9] S. 222.25, F.S.
[10] S. 222.201, F.S.
[11] S. 222.25(1), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

During the 2022 session, the Legislature passed CS/HB 265. CS/HB 265 was substantively similar to HB 29, except that it contained a provision limiting the exemption to bankruptcy proceedings. The Governor vetoed the bill due to the limitation of the exemption to only Floridians in bankruptcy. However, the Governor noted in his veto message that the exemption value is likely ripe for an increase.[12]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[12] *See* Veto Letter of Ron DeSantis, Governor (May 20, 2022), https://www.flgov.com/wp-content/uploads/2022/05/5.20.22-Transmittal-Letters.pdf (last visited Nov. 29, 2024).

A bill to be entitled

An act relating to value of motor vehicles exempt from legal process; amending s. 222.25, F.S.; revising upward the value of a motor vehicle owned by a natural person which is exempt from legal process; providing an effective date.

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

Section 1. Subsection (1) of section 222.25, Florida Statutes, is amended to read:

222.25 Other individual property of natural persons exempt from legal process.—The following property is exempt from attachment, garnishment, or other legal process:

(1) A debtor's interest, not to exceed $5,000 ~~$1,000~~ in value, in a single motor vehicle as defined in s. 320.01(1) ~~s. 320.01~~.

Section 2. This act shall take effect July 1, 2024.

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

HB 515

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 515 Protection of Specified Adults
SPONSOR(S): Silvers
TIED BILLS: **IDEN./SIM. BILLS:** SB 556

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fletcher	Lloyd
2) Children, Families & Seniors Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Florida has been a destination state for senior citizens over the years and has the second highest percentage of senior residents in the nation. In 2022, Florida had an estimated 4.7 million people age 65 and older, approximately 21percent of the state's population. By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state's population and will account for most of the state's growth.

Elder populations are particularly vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation. Common types of elder abuse include neglect, physical abuse, psychological abuse, and financial abuse. Up to 5 million older Americans are abused every year, and the annual loss by victims of financial abuse is estimated to be at least $36.5 billion.

The Adult Protective Services Act, ch. 415, F.S. (Act), codifies Florida's laws relating to the protection of vulnerable adults. The bill amends the Act to, among other things:

- Create definitions for certain terms;
- Provide that if a financial institution reports suspected financial exploitation of a specified adult, it may delay a disbursement or transaction from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner, provided certain conditions are met;
- Require financial institutions to:
  - Create and maintain for at least 5 years after the date of the delayed disbursement or transaction a written or electronic record of the delayed disbursement or transaction that includes certain information,
  - Make the required information available for review upon request by DCF, any law enforcement agency, or any state or federal agency with regulatory authority over the financial institution, and
  - Develop certain trainings and policies reasonably designed to educate employees on issues pertaining to financial exploitation of specified adults before placing a delay on any disbursement or transaction; and
- Provide that a financial institution that acts in good faith and exercises reasonable care in complying with the bill's provisions is immune from any administrative or civil liability that might otherwise arise from a delay in a disbursement or transaction.

The bill has no impact on state government or local government revenues and expenses. It has an indeterminate positive and negative impact on the private sector.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Elder Population in Florida

As the country's "baby-boom" population reaches retirement age and life expectancy increases, the nation's elder population is projected to increase from 54.1 million in 2019[1] to 80.8 million by 2040.[2] Florida has long been a destination state for senior citizens and has the second highest percentage of senior residents in the nation.[3] In 2022, Florida had an estimated 4.7 million people age 65 and older, approximately 21percent of the state's population.[4] By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state's population and will account for most of the state's growth.[5]

Adult Protective Services Act

The Adult Protective Services Act, ch. 415, F.S. (Act), codifies Florida's laws relating to the protection of vulnerable adults. The Act defines "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability, or brain damage, or the infirmities of aging.[6] The term implicitly includes elderly persons, but also incorporates disabled adults and other adults whom the Legislature has determined to be at risk of abuse, neglect, and exploitation, and in need of protective services.[7]

The Department of Children and Families (DCF) protects vulnerable adults from abuse, neglect, and exploitation through mandatory reporting and investigation of suspected abuse pursuant to the Act.[8] In 2022, DCF received 30,581 reports of abuse, neglect, or exploitation of persons aged 60 or older.[9]

Financial Abuse in Elder Populations

Elder populations are particularly vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.[10] Common types of elderly abuse include neglect, physical abuse, psychological abuse, and financial abuse.[11] Up to 5 million older

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[1] U.S. Census Bureau, *65 and Older Population Grows Rapidly as Baby Boomers Age* (June 25, 2020), Release Number: CB20-99, https://www.census.gov/newsroom/press-releases/2020/65-older-population-grows.html (last visited Jan. 10, 2024).
[2] U.S. Department of Health and Human Services Administration on Aging, *2020 Profile of Older Americans* (May 2021), https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2020ProfileOlderAmericans.Final_.pdf (last visited Jan. 10, 2024)
[3] *Id.*
[4] U.S. Census Bureau, *Quick Facts – Florida,* https://www.census.gov/quickfacts/fact/table/FL# (last visited Jan. 10, 2024).
[5] [5] Florida Office of Economic & Demographic Research, *Florida Population by Age Group.* Available at http://edr.state.fl.us/Content/population-demographics/data/pop_census_day-2020.pdf (last visited Jan. 10, 2024).
[6] S. 415.102(28), F.S.
[7] S. 415.101(2), F.S.
[8] *Id.*
[9] Email from Tarah Yeager, Gubernatorial Fellow, Department of Children and Families, Re: APS Statistics Info Request (March 22, 2023). On file with the Health and Human Services Committee.
[10] U.S. Department of Justice, *About Elder Abuse,* https://www.justice.gov/elderjustice/about-elder-abuse (last visited Jan. 10, 2024)..
[11] U.S. Department of Justice, *Types of Elder Abuse*, https://www.justice.gov/elderjustice/about-elder-abuse (last visited Jan. 10, 2024).

Americans are abused every year, and the annual loss by victims of financial abuse is estimated to be at least $36.5 billion.[12]

Financial abuse occurs when someone takes or misuses another person's money or property for the benefit of someone other than that person.[13] For example, neighbors, caregivers, professionals, and even family or friends may take money without permission, fail to repay the money they owe, charge too much for services, or not even do what they were paid to do.[14]

FINANCIAL SCAMS

Fraudulent scams that target elderly individuals are on the rise.[15] The most common fraudulent scams targeting these populations include:

- ***Government impersonation scams***, in which scammers call unsuspecting older adults and pretend to be from the Internal Revenue Service, Social Security Administration, or Medicare. They may say the older adult has unpaid taxes and threaten arrest if they do not pay immediately. Alternatively, the scammers may say Social Security or Medicare benefits will be cut off if the older adult does not provide personal identifying information, which can later be used to commit identity theft.[16]
- ***Sweepstakes scams***, in which scammers call an older adult to tell them have won a lottery or prize of some kind. If the older adult wants to claim their winnings, the older adult must send money, cash, or gift cards to cover supposed taxes and processing fees, or the older adult must send their bank account information to receive the alleged winnings.[17]
- ***Computer tech support scams***, which prey on older people's lack of knowledge about computers and cybersecurity. A pop-up message or blank screen usually appears on a computer or phone, telling the user their device is damaged and needs fixing. When the older person calls the support number for help, the scammer may either request remote access to the older person's computer and/or demand they pay a fee to have it repaired.[18]
- ***"Grandparent" scams***, in which a scammer calls a would-be grandparent and says something along the lines of: "Hi, Grandma, do you know who this is?" When the unaware grandparent guesses the name of the grandchild the scammer most sounds like, the scammer is able to instantly secure their trust. The fake grandchild then asks for money to solve some urgent financial problem (such as overdue rent, car repairs, or jail bond).[19]

In 2022, there were 88,262 complaints of fraud from people aged 60 years or older, resulting in $3.1 billion in losses.[20] This was a 82.35percent increase in losses compared to 2021.[21] Financial scams are devastating to many older adults and can leave them in a vulnerable position, with limited ability to recover their losses.[22]

Regulation of Financial Institutions in Florida

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[12] National Council on Aging, *Get the Facts on Elder Abuse*, https://www.ncoa.org/article/get-the-facts-on-elder-abuse (last visited Jan. 10, 2024).
[13] Consumer Financial Protection Bureau, Reporting Elder Financial Abuse, https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/reporting-elder-financial-abuse-guide/ (last visited Jan. 10, 2024).
[14] *Id.*
[15] U.S. Department of Justice: Office of Victims of Crime, *National Elder Fraud Hotline*, https://ovc.ojp.gov/program/stop-elder-fraud/providing-help-restoring-hope#financial-scams-and-abuses-that-target-older-people-are-happenin (last visited Jan. 29, 2024).
[16] National Council on Aging, *supra* note 12.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] Federal Bureau of Investigation Internet Crime Complaint Center, *2022 Internet Crime Report*, https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3Report.pdf (last visited Jan. 10, 2024). *See also*, National Council on Aging, *supra* note 12.
[21] *Id.*
[22] National Council on Aging, *supra* note 12.

The Office of Financial Regulation is responsible for all activities of the Financial Services Commission (Commission)[23] relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.[24] OFR has four divisions: the Division of Consumer Finance, the Division of Financial Institutions, the Division of Securities, and the Bureau of Financial Investigations.[25]

Florida law broadly defines the term "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.[26]

Banks and credit unions in the United States are chartered and regulated under a dual banking system.[27] These institutions may elect to have a national charter and a federal primary regulator, or they may choose to be chartered and regulated by the state in which they are headquartered.[28] OFR's Division of Financial Institutions:

- Conducts periodic risk-based examinations and ensures that each state-chartered financial institution meets state and federal requirements for safety and soundness;[29] and
- Administers Florida's financial institutions codes,[30] which apply to all state-authorized and state-chartered financial institutions and to the enforcement of all laws relating to such institutions.[31]

Under Florida law, the books and records of a financial institution are confidential and shall be made available for inspection and examination only:

- To OFR or its duly authorized representative;
- To any person duly authorized to act for the financial institution;
- To any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured financial institution;
- With respect to an international banking corporation or international trust entity, to the home-country supervisor of the international banking corporation or international trust entity, provided certain conditions are met;
- As compelled by legislative subpoena as provided by law;
- As compelled by a court of competent jurisdiction, pursuant to a subpoena issued pursuant to certain rules,[32] or pursuant to a subpoena issued in accordance with state or federal law;[33]
- Pursuant to a subpoena, to any federal or state law enforcement or prosecutorial instrumentality authorized to investigate suspected criminal activity;
- As authorized pursuant to the board of directors of the financial institution;

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[23] OFR is housed within the Financial Services Commission (Commission). The Commission is comprised of four members: the Governor, Attorney General, Chief Financial Officer, and the Commissioner of Agriculture. *See* Office of Financial Regulation, *Financial Services Commission*, https://flofr.gov/sitepages/financialservicescommission.htm (last visited Jan. 26, 2024).

[24] S. 20.121(3)(a)2., F.S.

[25] Office of Financial Regulation, *Our Agency Divisions*, https://flofr.gov/default.htm (last visited Jan. 26, 2024).

[26] S. 655.005(1)(i), F.S.

[27] Office of Financial Regulation, Agency Analysis of 2024 House Bill 515, p. 2 (Jan. 4, 2025).

[28] *Id.*

[29] Office of Financial Regulation, *Division of Financial Institutions: What We Do*, https://flofr.gov/sitePages/DivisionOfFinancialInstitutions.htm (last visited Jan. 26, 2024).

[30] Chs. 655-667, F.S.

[31] Ss. 655.001(1) and 655.012(1), F.S.

[32] Specifically, the Florida Rules of Civil Procedure, the Florida Rules of Criminal Procedure, or the Federal Rules of Civil Procedure. *See* s. 655.059(1)(e), F.S.

[33] Before the production of the books and records of a financial institution under these circumstances, the party seeking production must reimburse the financial institution for the reasonable costs and fees incurred in compliance with the production. If the parties disagree regarding the amount of reimbursement, the party seeking the records may request the court or agency having jurisdiction to set the amount of reimbursement.

- As otherwise provided by law.[34]

A person who willfully violates the provisions of Florida law described above relating to unlawful disclosure of confidential information is guilty of a felony of the third degree, punishable as provided by Florida's criminal laws.[35]

Effect of the Bill

The bill amends the Act to create definitions for the following terms:

- "Financial exploitation" means the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a specified adult; or any or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship of a specified adult, to:
  - Obtain control over the specified adult's money, assets, or property through deception, intimidation, or undue influence to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property; or
  - Divert the specified adult's money, assets, or property to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property.
- "Financial institution" means a state financial institution or a federal financial institution as those terms are defined under s. 655.005(1), F.S.[36]
- "Specified adult" means a natural person 65 years of age or older, or a vulnerable adult as defined in s. 415.102, F.S.[37]
- "Trusted contact" means a natural person 18 years of age or older whom the account owner has expressly identified and recorded in a financial institution's books and records as the person who may be contacted about the account.

The bill provides that if a financial institution reports suspected financial exploitation of a specified adult pursuant to s. 415.1034, F.S.,[38] it may delay a disbursement or transaction from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if two conditions are met. First, the financial institution must immediately initiate an internal review of the facts and circumstances that caused the employee of the financial institution to report the suspected financial exploitation.

Second, not later than 3 business days after the date on which the delay was first placed, the financial institution must:

- Notify in writing all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided for the account, with the exception of any party an employee of the financial institution reasonably believes has engaged in, is engaging in, has attempted to engage in, or will attempt to engage in the suspected

[34] S. 655.059(1), F.S. *See* s. 655.059(2) for a list of other persons that are authorized by Florida law to inspect the books and records of a financial institution.
[35] S. 655.059(1)(c), F.S. The specific provisions of Florida's criminal laws under which a person may be punished for a violation includes ss. 755.802, 755.083, and 755.084, F.S.
[36] S. 655.005(1) defines "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq. "State financial institution" means a state-chartered or state-organized financial institution, and "federal financial institution" means a federally or nationally chartered or organized financial institution. *See* ss. 655.005(1)(h), (i), and (w), F.S.
[37] S. 415.102, F.S., defines "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.
[38] S. 415.1034, F.S., relates to mandatory reporting of abuse, neglect, or exploitation of vulnerable adults, and other mandatory reports of death.

financial exploitation of the specified adult (the notice, which may be provided electronically, must provide the reason for the delay); and

- Create and maintain for at least 5 years after the date of the delayed disbursement or transaction a written or electronic record of the delayed disbursement or transaction that includes, at a minimum, the following information:
    - The date on which the delay was first placed;
    - The name and address of the specified adult;
    - The business location of the financial institution;
    - The name and title of the employee who reported suspected financial exploitation of the specified adult pursuant to s. 415.1034, F.S.;[39] and
    - The facts and circumstances that caused the employee to report suspected financial exploitation.

The financial institution must make the required information available for review upon request by DCF, any law enforcement agency conducting an investigation under s. 417.104, F.S., or any state or federal agency with regulatory authority over the financial institution. This proposed requirement appears to eliminate the necessity for a subpoena under certain circumstances.[40] While law enforcement is generally required to obtain a subpoena to access books and records,[41] the bill requires financial institutions to make these records available for review by law enforcement agencies that are engaged in an investigation under s. 417.104, F.S., regardless of whether the law enforcement agency has a subpoena or search warrant.[42]

The bill provides that a delay on a disbursement or transaction expires 15 business days after the date on which the delay was first placed. However, the financial institution may extend the delay for up to 10 additional business days if the financial institution's review of the available facts and circumstances continues to support the reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. However, a financial institution is not prevented from terminating a delay after communicating with the parties authorized to transact business on the account and any trusted contact on the account.

The bill provides that a financial institution that acts in good faith and exercises reasonable care in complying with the bill's provisions is immune from any administrative or civil liability that might otherwise arise from a delay in a disbursement or transaction. Further, the immunity provided by the bill does not supersede or diminish any immunity granted elsewhere in the Act.

Before placing a delay on ***any*** disbursement or transaction pursuant to the bill, a financial institution must:

- Develop training policies or programs reasonably designed to educate employees on issues pertaining to financial exploitation of specified adults;
- Conduct training for all employees at least annually and maintain a written record of all trainings conducted; and
- Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

The bill provides that, absent a reasonable belief of financial exploitation, a financial institution's obligations to parties authorized to transact business on an account or any trusted contact named on such account are not otherwise altered. Further, the bill does not create new rights for or impose new obligations on financial institutions under other applicable law.

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[39] S. 415.104, F.S., relates to protective investigations of cases of abuse, neglect, or exploitation of vulnerable adults, and the transmittal of records to state attorneys pursuant to such investigations.
[40] Office of Financial Regulation, *supra* note 27, p. 4.
[41] *See* s. 655.059(1)(e), F.S.
[42] Office of Financial Regulation, *supra* note 27, p. 4.

The bill also provides legislative intent.

B. SECTION DIRECTORY:

Section 1. Creates s. 415.10341, F.S., relating to protection of specified adults.

Section 2. Provides an effective date of July 1, 2024.

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 has an indeterminate positive impact on specified adults to the extent the bill allows financial institutions to delay a financial transaction if an employee at the institution reasonably suspects financial abuse of a specified adult. Accordingly, it is foreseeable that fewer specified adults will be able to effectuate a financial transaction procured by improper methods.

The bill has an indeterminate negative impact on financial institutions to the extent that such institutions decide to delay disbursements as provided by the bill. Further, if the financial institution does decide to delay disbursements, the institution must first comply with the conditions provided by the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable. The rule does not amend or create rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 49-77: The language relating to legislative intent may be used unfavorably by courts in statutory interpretation. An amendment could address this possibility by removing the language from the bill.

Lines 98-99: The requirement that a financial institution create and maintain for at least 5 years after the date of a delayed disbursement or transaction a written or electronic record of certain information seemingly creates a future obligation to a condition precedent. An amendment could address this issue by moving the requirement to maintain the records for 5 years to a new subsection of proposed s. 415.10341, F.S.

Lines 110-114: The provisions of the bill authorize a financial institution to make the name and address of a specified adult available to "any law enforcement agency" conducting an investigation under s. 415.104, F.S. The following issues were pointed out by OFR in their formal analysis of these lines of the bill:

- The information required to be made available may be protected by the Right to Financial Privacy Act (RFPA),12 U.S.C. § 3401 et seq.[43] Pursuant to RFPA, a federal government authority generally must seek a subpoena to access such books and records, and may only request financial records pursuant to a formal written request under certain conditions, one of which includes serving a copy of the request upon the customer.[44] As the bill is drafted to govern "any law enforcement agency," it may be read to expand the powers of federal law enforcement agencies to the extent they may be involved with such an investigation.[45] Further, state-chartered banks and credit unions are subject to federal regulation from the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA), respectively.[46] The lack of a subpoena requirement in lines 110-114 may conflict with various regulations of FDIC and NCUA governing confidentiality.[47] As such, state-chartered banks and credit unions may be forced to determine whether to comply with federal law or state law upon a request from a law enforcement agency which is unaccompanied by a subpoena.[48]
- It is unclear whether the "request" referenced in these lines of the bill must be in writing and whether, and how, the financial institution should maintain the request as a record.[49] As such, it may be difficult or impossible for an OFR examiner to make a determination about which law should apply to the release of records pertaining to specified adults, and whether the financial institution acted in compliance.[50]

An amendment could address the first issue by removing the requirement that the financial institution make the information available for review by the specified entities. An amendment could address the second issue by clarifying how the referenced request should be made.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[43] Office of Financial Regulation, *supra* note 27, p. 7.
[44] *See* 12 U.S.C. s. 3408. *See also*, Office of Financial Regulation, *supra* note 27, p. 7.
[45] Office of Financial Regulation, *supra* note 27, p. 7.
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*

A bill to be entitled

An act relating to protection of specified adults; creating s. 415.10341, F.S.; defining terms; providing legislative findings and intent; authorizing financial institutions, under certain circumstances, to delay a disbursement or transaction from an account of a specified adult; requiring the financial institution to make certain information available upon request by certain entities; specifying that a delay on a disbursement or transaction expires on a certain date; authorizing the financial institution to extend the delay under certain circumstances; authorizing a court of competent jurisdiction to shorten or extend the delay; providing construction; granting financial institutions immunity from certain liability; providing construction; requiring financial institutions to take certain actions before placing a delay on a disbursement or transaction; providing construction; providing an effective date.

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

Section 1. Section 415.10341, Florida Statutes, is created to read:

415.10341 Protection of specified adults.—

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

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

(a) "Financial exploitation" means the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a specified adult; or any act or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship of a specified adult, to:

1. Obtain control over the specified adult's money, assets, or property through deception, intimidation, or undue influence to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property; or

2. Divert the specified adult's money, assets, or property to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property.

(b) "Financial institution" means a state financial institution or a federal financial institution as those terms are defined under s. 655.005(1).

(c) "Specified adult" means a natural person 65 years of age or older, or a vulnerable adult as defined in s. 415.102.

(d) "Trusted contact" means a natural person 18 years of age or older whom the account owner has expressly identified and recorded in a financial institution's books and records as the person who may be contacted about the account.

(2) The Legislature finds that many persons in this state, because of age or disability, are at increased risk of financial

exploitation and loss of their assets, funds, investments, and investment accounts. The Legislature further finds that specified adults in this state are at a statistically higher risk of being targeted for financial exploitation, regardless of diminished capacity or other disability, because of their accumulation of substantial assets and wealth compared to younger age groups. In enacting this section, the Legislature recognizes the freedom of specified adults to manage their assets, make investment choices, and spend their funds, and intends that such rights may not be infringed absent a reasonable belief of financial exploitation as provided in this section. The Legislature therefore intends to provide for the prevention of financial exploitation of such persons. The Legislature intends to encourage the constructive involvement of financial institutions that take action based upon the reasonable belief that specified adults who have accounts with such financial institutions have been or are the subject of financial exploitation, and to provide financial institutions and their employees immunity from liability for taking actions as authorized herein. The Legislature intends to balance the rights of specified adults to direct and control their assets, funds, and investments and to exercise their constitutional rights consistent with due process with the need to provide financial institutions the ability to place narrow, time-limited restrictions on these rights in an effort to decrease specified

adults' risk of loss due to abuse, neglect, or financial exploitation.

(3) If a financial institution reports suspected financial exploitation of a specified adult pursuant to s. 415.1034, it may delay a disbursement or transaction from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if all of the following apply:

(a) The financial institution immediately initiates an internal review of the facts and circumstances that caused an employee of the financial institution to report suspected financial exploitation.

(b) Not later than 3 business days after the date on which the delay was first placed, the financial institution:

1. Notifies in writing all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided for the account, with the exception of any party an employee of the financial institution reasonably believes has engaged in, is engaging in, has attempted to engage in, or will attempt to engage in the suspected financial exploitation of the specified adult. The notice, which may be provided electronically, must provide the reason for the delay.

2. Creates and maintains for at least 5 years after the date of the delayed disbursement or transaction a written or electronic record of the delayed disbursement or transaction

that includes, at minimum, the following information:

a. The date on which the delay was first placed.

b. The name and address of the specified adult.

c. The business location of the financial institution.

d. The name and title of the employee who reported suspected financial exploitation of the specified adult pursuant to s. 415.1034.

e. The facts and circumstances that caused the employee to report suspected financial exploitation.

(4) The financial institution must make the information required in subparagraph (3)(b)2. available for review upon request by the department, any law enforcement agency conducting an investigation under s. 415.104, or any state or federal agency with regulatory authority over the financial institution.

(5) A delay on a disbursement or transaction under subsection (3) expires 15 business days after the date on which the delay was first placed. However, the financial institution may extend the delay for up to 10 additional business days if the financial institution's review of the available facts and circumstances continues to support the reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. This subsection does not prevent a financial institution from terminating a delay after

communication with the parties authorized to transact business on the account and any trusted contact on the account.

(6) A financial institution that acts in good faith and exercises reasonable care to comply with this section is immune from any administrative or civil liability that might otherwise arise from such delay in a disbursement or transaction in accordance with this section. This subsection does not supersede or diminish any immunity granted elsewhere in this chapter.

(7) Before placing a delay on a disbursement or transaction pursuant to this section, a financial institution must do all of the following:

(a) Develop training policies or programs reasonably designed to educate employees on issues pertaining to financial exploitation of specified adults.

(b) Conduct training for all employees at least annually and maintain a written record of all trainings conducted.

(c) Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

(8) Absent a reasonable belief of financial exploitation as provided in this section, this section does not otherwise alter a financial institution's obligations to all parties authorized to transact business on an account and any trusted

contact named on such account.

(9) This section does not create new rights for or impose new obligations on a financial institution under other applicable law.

Section 2. This act shall take effect July 1, 2024.

INSURANCE & BANKING SUBCOMMITTEE

HB 515 by Rep. Silvers
Protection of Specified Adults

AMENDMENT SUMMARY
February 1, 2024

Amendment 1 by Rep. Silvers (Line 43): The amendment makes the following changes:

- Changes the definition of a "specified adult" to mean a natural person 70 years of age or older, rather than 65 years of age or older;
- Provides that a delay on a disbursement or transaction expires 5 business days after date on which the delay was first placed, rather than 15 business days;
- Allows a financial institution to extend a delay for up to 7 additional calendar days under certain circumstances, rather than 10 additional business days; and
- Removes the proposed grant of administrative and civil immunity to a financial institution based on certain circumstances.

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 Silvers offered the following:

Amendment

Remove lines 43-152 and insert:

(c) "Specified adult" means a natural person 70 years of age or older, or a vulnerable adult as defined in s. 415.102.

(d) "Trusted contact" means a natural person 18 years of age or older whom the account owner has expressly identified and recorded in a financial institution's books and records as the person who may be contacted about the account.

(2) The Legislature finds that many persons in this state, because of age or disability, are at increased risk of financial exploitation and loss of their assets, funds, investments, and investment accounts. The Legislature further finds that

specified adults in this state are at a statistically higher risk of being targeted for financial exploitation, regardless of diminished capacity or other disability, because of their accumulation of substantial assets and wealth compared to younger age groups. In enacting this section, the Legislature recognizes the freedom of specified adults to manage their assets, make investment choices, and spend their funds, and intends that such rights may not be infringed absent a reasonable belief of financial exploitation as provided in this section. The Legislature therefore intends to provide for the prevention of financial exploitation of such persons. The Legislature intends to encourage the constructive involvement of financial institutions that take action based upon the reasonable belief that specified adults who have accounts with such financial institutions have been or are the subject of financial exploitation. The Legislature intends to balance the rights of specified adults to direct and control their assets, funds, and investments and to exercise their constitutional rights consistent with due process with the need to provide financial institutions the ability to place narrow, time-limited restrictions on these rights in an effort to decrease specified adults' risk of loss due to abuse, neglect, or financial exploitation.

(3) If a financial institution reports suspected financial exploitation of a specified adult pursuant to s. 415.1034, it

may delay a disbursement or transaction from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if all of the following apply:

(a) The financial institution immediately initiates an internal review of the facts and circumstances that caused an employee of the financial institution to report suspected financial exploitation.

(b) Not later than 3 business days after the date on which the delay was first placed, the financial institution:

1. Notifies in writing all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided for the account, with the exception of any party an employee of the financial institution reasonably believes has engaged in, is engaging in, has attempted to engage in, or will attempt to engage in the suspected financial exploitation of the specified adult. The notice, which may be provided electronically, must provide the reason for the delay.

2. Creates and maintains for at least 5 years after the date of the delayed disbursement or transaction a written or electronic record of the delayed disbursement or transaction that includes, at minimum, the following information:

a. The date on which the delay was first placed.

b. The name and address of the specified adult.

c. The business location of the financial institution.

d. The name and title of the employee who reported suspected financial exploitation of the specified adult pursuant to s. 415.1034.

e. The facts and circumstances that caused the employee to report suspected financial exploitation.

(4) The financial institution must make the information required in subparagraph (3)(b)2. available for review upon request by the department, any law enforcement agency conducting an investigation under s. 415.104, or any state or federal agency with regulatory authority over the financial institution.

(5) A delay on a disbursement or transaction under subsection (3) expires 5 business days after the date on which the delay was first placed. However, the financial institution may extend the delay for up to 7 additional calendar days if the financial institution's review of the available facts and circumstances continues to support the reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. This subsection does not prevent a financial institution from terminating a delay after communication with the parties authorized to transact business on the account and any trusted contact on the account.

(6) Before placing a delay on a disbursement or transaction pursuant to this section, a financial institution

must do all of the following:

(a) Develop training policies or programs reasonably designed to educate employees on issues pertaining to financial exploitation of specified adults.

(b) Conduct training for all employees at least annually and maintain a written record of all trainings conducted.

(c) Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

(7) Absent a reasonable belief of financial exploitation as provided in this section, this section does not otherwise alter a financial institution's obligations to all parties authorized to transact business on an account and any trusted contact named on such account.

(8) This section does not create new rights for or impose

HB 1029

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1029 My Safe Florida Condominium Pilot Program
SPONSOR(S): Lopez, V. and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1366

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

SUMMARY ANALYSIS

The My Safe Florida Home (MSFH) Program was created in 2006 within the Department of Financial Services (DFS) to perform mitigation inspections of site-built, single-family, residential properties (inspections), and mitigation grants (grants) to eligible applicants to make their homes less vulnerable to hurricane damage. The MSFH Program received $250 million in appropriations for the Fiscal Year 2006-2007, but was not funded again until 2022. Since then, the Legislature has provided approximately $433 million in subsequent additional funding to the MSFH Program.

Mitigation inspections are limited to homesteaded properties. Funds may be used to inspect townhouses to determine if opening protection mitigation would help decrease the risk of hurricane damage and grant funds may be used to pay for such opening protection mitigation if warranted. The value of the mitigation grant-eligible homes is currently $700,000. While initially limited to homes within the wind-borne debris region, the MSFH Program is currently a statewide program.

The bill establishes within DFS the My Safe Florida Condominium Pilot Program (MSFCP Program), with the intent that the Program provide licensed inspectors to perform inspections for and grants to eligible associations, as funding allows. Under the MSFCP Program, DFS must provide fiscal accountability, contract management, and strategic leadership for the MSFCP Program, consistent with the bill's provisions. The MSFCP Program must be implemented pursuant to appropriations, and is subject to annual legislative appropriations thereafter.

Essentially, the bill provides to condominium owners a program similar to that of the MSFH Program in regards to requirements for participation, hurricane mitigation inspectors and inspections, eligibility for mitigation grants, contract management by DFS, and required annual reports.

The bill has no impact on state or local government revenues and expenditures. The implementation of the MSFCP Program is subject to funding separate from the bill. The bill may have a positive direct economic impact on the private sector.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2006, the Legislature created the My Safe Florida Home (MSFH) Program within the Department of Financial Services (DFS) with the intent that the Program provide trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties (mitigation inspections) and grants to eligible applicants, subject to funding availability.[1] The purpose of the MSFH Program was to "develop and implement a comprehensive and coordinated approach for hurricane damage mitigation."[2] The MSFH program allowed DFS to undertake a public outreach and advertising campaign to inform consumers of the availability, and benefits, of the mitigation inspections and grants.[3] It required the development of brochures for distribution to general contractors, roofing contractors, and real estate brokers and sales associates to explain the benefits of residential hurricane damage mitigation to homeowners.[4]

Hurricane Mitigation Inspections

The purpose of the mitigation inspections was to determine:

- What mitigation measures were needed;
- What insurance premium discounts might have been available; and
- What improvements to existing residential properties were needed to reduce the properties' susceptibility to hurricane damage.[5]

The mitigation inspections had to include, at a minimum:

- A report that summarized the results and identified recommended improvements the homeowner could take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Insurer-specific information regarding premium discounts correlated to current and recommended hurricane mitigation improvements.[6]

DFS was required to maintain a list of hurricane mitigation inspectors who were authorized to conduct the mitigation inspections for the MSFH Program.[7] DFS entered contracts with wind certification entities to provide mitigation inspections. In order to be eligible for the contracts, the entities had to use hurricane mitigation inspectors who, at a minimum:

- Were certified building inspectors;
- Were licensed as general or residential contractors;
- Were licensed and professional engineers and had passed the appropriate equivalency test of the building code training program;
- Were licensed professional architects; or
- Had at least two years of experience in residential construction or residential building inspection and had received specialized training in hurricane mitigation procedures.[8]

Mitigation Grants

The purpose of the mitigation grants component of the MSFH Program was to retrofit single-family

[1] S. 215.5586, F.S.
[2] *Id.*
[3] S. 215.5586(3), F.S.
[4] S. 215.5586(7), F.S.
[5] S. 215.5586(1)(a), F.S.
[6] *Id.*
[7] S. 215.55186(6), F.S.
[8] S. 215.5586(1)(b), F.S.

homes to make them less vulnerable to hurricane damage.[9] To be eligible for a grant, the following criteria must have been met:

- The homeowner must have had a homestead exemption on the home to be retrofitted;
- The home must have had an insured value of $300,000 or less, unless the homeowner was classified as a low-income person;
- The home must have undergone an acceptable hurricane mitigation inspection after May 1, 2007;
- The home must have been located in the "wind-borne debris region" as defined in the International Building Code; and
- The building permit application for initial construction of the home must have been made before March 1, 2002.[10]

In addition, the homeowner had to match the grant award on a dollar-for-dollar basis up to $10,000, for the actual cost of the mitigation project, and the state's contribution could not exceed $5,000.[11] Low-income homeowners were eligible for grants of up to $5,000, and were not required to provide a matching amount to receive a grant.[12] Matching fund grants were also available to local governments and nonprofit entities for projects to reduce hurricane damages to single-family homes.[13]

Grants could be used on previously-inspected existing structures or on rebuilds.[14] If recommended by a hurricane mitigation inspection, grants could be used for the following improvements:

- Opening protection.
- Upgrading exterior doors, including garage doors.
- Bracing gable ends.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Upgrading roof coverings from code to code plus.
- Installing secondary water barrier for roofs.[15]

DFS was required to issue an annual report on the activities of the MSFH Program that accounted for the use of any appropriated state funds, the number of inspections requested and performed, the number of grant applications received, and the number and value of grants approved.[16]

The MSFH Program was appropriated $250 million in Fiscal Year 2006-07.[17] As of May 2009, approximately $93 million in MSFH grants were allocated to 32,000 homes, and approximately 400,000 homes received a MSFH home inspection.[18] DFS requested that Risk Management Solutions (RMS), conduct an impact analysis of the MSFH program, and RMS released a report of the impact analysis on May 14, 2009 (report).[19] In the report, RMS concluded that the MSFH grants were beneficial to the State of Florida, individual homeowners, and the insurance industry.[20] RMS indicated that the predicted reduction in loss as a result of the grant projects completed far exceeded the grant money spent.[21] While the MSFH Program was never repealed from law, additional funding was not provided until May 2022.

2022 Renewal of the MSFH Program

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[9] S. 215.5586(2), F.S.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Rebuilds were defined as site-built, single-family dwellings under construction to replace homes that were destroyed or significantly damaged by hurricanes and deemed unlivable by a regulatory authority. S. 215.5586(2)(e), F.S.
[15] S. 215.5586(2)(e), F.S.
[16] S. 215.5586(10), F.S.
[17] Risk Management Solutions, *Analyzing the Effects of the My Safe Florida Home Program on Florida Insurance Risk*, May 14, 2009, https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=5036 (last visited Jan. 26, 2024).
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

During the 2022D Special Session, the Legislature passed a property insurance bill (SB 2-D), in which it renewed the funding for the MSFH Program by appropriating $150 million in nonrecurring funds from General Revenue (GR) to DFS for the Program for the 2022-2023 fiscal year. The funds appropriated were allocated as follows:

- $115 million for mitigation grants.
- $25 million for hurricane mitigation inspections.
- $4 million for education and consumer awareness.
- $1 million for public outreach for contractors and estate brokers and sales associates.
- $5 million for administrative costs.

SB 2-D reappropriated any unexpended balance of funds from the appropriation remaining on June 30, 2023, to DFS for the 2023-2024 fiscal year to be used for the MSFH Program. The appropriation will expire on October 1, 2024. SB 2-D gave DFS the authority to adopt emergency rules to implement the MSFH Program.

SB 2-D made additional modifications to the MSFH Program. It required that an application for a mitigation grant include a provision that requires an applicant to make his or her home available for inspection once a mitigation project is completed. The bill changed the monetary limits for eligibility for mitigation grants so that homes with an insured value of $500,000, or less, qualify for the program.

SB 2-D required that homes that receive mitigation grants have undergone home mitigation inspections after July 1, 2008, and have received permits for initial construction before January 1, 2008. The homeowner must also match grant funds on the basis of $1 from the homeowner for every $2 provided by the state up to a maximum state contribution of $10,000 towards the actual cost of the mitigation project undertaken on the eligible home.

The bill enhanced the reporting requirements for DFS under the MSFH Program by requiring that the report include the following received by homeowners from insurers as a result of the mitigation funded by the program:

- The average annual amount of insurance premium discounts; and
- The total annual amount of insurance premium discounts.

2022 MSFH Program Implementation

Following the passage of SB 2-D, DFS procured a vendor to administer the MSFH Program, qualified inspectors to conduct mitigation inspections, and qualified contractors who agreed to provide mitigation repairs and retrofitting under the grant portion of the Program.[22] DFS compiled a list of approved vendors that homeowners participating in the MSFH Program may choose for inspections and mitigation work.[23]

On November 18, 2022, a web-based application for homeowners to request mitigation inspections and grant funds went live.[24] Between May 26, 2022 and February 28, 2023, 16,724 mitigation inspections were completed and 2,979 grant applications were approved.[25]

Inspectors completing mitigation inspections under the MSFH Program must complete the Uniform Mitigation Verification Inspection Form (Inspection Form), as revised by the Office of Insurance Regulation on January 12, 2023.[26] The mitigation inspection report provided to the homeowner includes the completed Inspection Form, as well as the information already required by statute,[27] including:

- A summary of the results of the mitigation inspection identifying recommended improvements a homeowner may undertake;

[22] Florida Department of Financial Services, Agency Analysis of 2023 House Bill 881, p. 1 (Mar. 1, 2023).
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] S. 215.5586(1)(a), F.S.

- A range of cost estimates regarding the recommended improvements; and
- Estimated property insurance premium discounts based on the mitigation measures the homeowner has completed.[28]

2023 Developments to the MSFH Program

Following the significant interest in the program in 2022 and early 2023, the Legislature made additional changes to the statutory framework for the MSFH Program during the 2023 Regular Session. These changes included changes to the inspection and grant eligibility requirements, and program management changes.

Single-family home eligibility for mitigation inspections was limited only to homesteaded properties.[29] Funds from the MSFH Program may now be used to inspect townhouses to determine if opening protection mitigation would help decrease the risk of hurricane damage.[30] If an inspection determines that opening protection mitigation would decrease such risk, grant funds from the MSFH Program may be used to pay for the mitigation.[31] The value of the mitigation grant-eligible homes was also increased from $500,000 to $700,000.[32]

The designation of a specific portion of the grant funds for low-income recipients was removed, but increases the overall grant award for low-income recipients from $5,000 to $10,000.[33] The program's geographic eligibility area was broadened to include otherwise in eligible homes outside the wind-borne debris region, in effect making it a statewide program.

Among the project management changes implemented, home inspectors must be licensed, in addition to certified.[34] This requirement conforms with other statutory chapters that address home inspectors.

Funding for the MSFH Program

As of December 2023, the Legislature has appropriated a total of $433 million for the MSFH Program since May 2022.[35] In addition to the $150 million appropriated during the 2022D Special Session, this includes $100 million in grant funding appropriated during the 2023 Regular Session and an additional $176 million in grant funding appropriated during the 2023C Special Session.[36]

Results of the MSFH Program

Between November 2022, and December 2023, the MSFH Program has provided more than 94,000 homeowners with hurricane mitigation inspections and approved more than 23,000 grant applications.[37] Over 73 percent of those homeowners who have completed participation in the grant component of the MSFH Program have seen their homeowners insurance premiums drop or stabilize, and many are paying premiums at or below the state average.[38] According to DFS, upon applying to the MSFH Program, the average premium of the applicants was 55.1 percent higher than the average Florida homeowner's premium.[39] Based upon the decrease in premium following participation, DFS has concluded that the MSFH Program participation is comprised of higher-than-average risk homeowners,

[28] Department of Financial Services, *supra* note 22, at 2.
[29] The homestead requirement was already in place for the grant portion of the MSFH Program under s. 215.5586(2), F.S., prior to the 2023 Regular Session.
[30] S. 215.5586(1)(a), F.S.
[31] S. 215.5586(2)(f), F.S.
[32] S. 215.5586(2)(e)2., F.S.
[33] S. 215.5586(2)(h), F.S.
[34] S. 215.5586, F.S.
[35] Department of Financial Services, *2023 Annual Report of My Safe Florida Home*, p. 1.
[36] *Id.* at p. 6. The mitigation grant funding is by far the largest component of the MSFH Program.
[37] *Id.* at p. 1. Because the grant portion of the MSFH Program is fulfilled based on reimbursement to homeowners after proof of completion of mitigation projects, the money to fulfill these grants has been reserved, but not all of it has been paid to the homeowners yet.
[38] *Id.*
[39] *Id.* at p. 2.

which is consistent with the goal of helping those with homes at greatest risk.[40]

Condominiums

While the current MSFH Program provides for the inspections of, and some mitigation projects to, townhouses, Florida law does not currently provide a program for condominium owners similar to the MSFH Program.

Effect of the Bill

The bill establishes within DFS the My Safe Florida Condominium Pilot Program (MSFCP Program), with the intent that the Program provide licensed inspectors to perform inspections for and grants to eligible associations, as funding allows. Under the MSFCP Program, DFS must provide fiscal accountability, contract management, and strategic leadership for the MSFCP Program, consistent with the bill's provisions.

The MSFCP Program must be implemented pursuant to appropriations, and is subject to annual legislative appropriations thereafter. The bill provides that its provisions do not create an entitlement for associations or unit owner or obligate the state in any way to fund the inspection or retrofitting of condominiums in Florida.

Essentially, the bill provides to condominium owners a program similar to that of the MSFH Program.

Definitions

The bill creates definitions for the following terms:

- "Association" means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.[41]
- "Association property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.[42]
- "Board of administration" means the board of directors or other representative body which is responsible for administration of the association.[43]
- "Condominium" means that form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.[44]
- "Property" means association property and condominium property, as applicable.
- "Rebuild" means property under construction to replace a structure that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority.
- "Unit" means a part of the condominium property which is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in an association's declaration.[45]
- "Unit owner" means a record owner of legal title to a condominium parcel.[46]

Participation

The bill provides that, to apply for an inspection or grant for association property or condominium

[40] *Id.*
[41] *See* s. 718.103(3), F.S.
[42] *See* s. 718.103(4), F.S.
[43] *See* s. 718.103(5), F.S.
[44] *See* s. 718.103(12), F.S.
[45] *See* s. 718.103(29), F.S.
[46] *See* s. 718.103(30), F.S.

property, an association must receive approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in the pilot program.

Additionally, to apply for a grant which improves one or more units within a condominium, an association must receive both of the following:

- Approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in a mitigation inspection.
- A unanimous vote of all unit owners within the structure or building that is the subject of the mitigation grant.

The votes required by this section of the bill may take place at the annual budget meeting of the association or at a unit owner meeting called for the purpose of taking such vote. However, before a vote of the unit owners can be taken, the association must provide to the unit owners a clear disclosure of the MSFCP Program on form created by DFS. The bill further provides that:

- The president and the treasurer of the board of administration must sign the disclosure form indicating that a copy of the form was provided to each unit owner of the association;
- The signed disclosure form and the minutes from the meeting at which the unit owners voted to participate in the MSFCP Program must be maintained as part of the official records of the association;
- Within 14 days after an affirmative vote to participate in the MSFCP Program, the association must provide written notice in the same manner as required under s. 718.112(2)(d), F.S.,[47] to all unit owners of the decision to participation in the MSFCP Program.

The bill provides that a unit owner may participate in the MSFCP Program through a mitigation grant awarded to the association, but a unit owner may not participate individually in the MSFCP Program.

Hurricane Mitigation Inspectors

Licensed inspectors under the MSFCP Program are to provide inspections of the property to determine the mitigation measures that are needed, the insurance premium discounts that may be available to the association, and the improvements to existing properties of the association that are needed to reduce a property's vulnerability to hurricane damage.

The bill requires DFS to contract with wind certification entities to provide hurricane mitigation inspections. To qualify for selection by DFS as a wind certification entity to provide hurricane mitigation inspections, the entity must, at a minimum, meet all of the following requirements:

- Use hurricane mitigation inspectors who are licensed or certified as a:
    - Building inspector,
    - General, building, or residential contractor,
    - A professional engineer,
    - A professional architect, or
    - A home inspector who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam;
- Use hurricane mitigation inspectors who have undergone drug testing and a background screening;[48] and
- Provide a quality assurance program including a reinspection component.

Hurricane Mitigation Inspections

[47] Section 718.112(2)(d), F.S., are Florida's laws relating to unit owner meetings of condominium associations.

[48] The bill provides that DFS may conduct criminal record checks of inspectors used by wind certification entities. Under the bill, inspectors must submit a set of fingerprints to DFS for state and national criminal history checks and must pay a fingerprint processing fee. The fingerprints must be sent by DFS to the Department of Law Enforcement and forwarded to the Federal Bureau of Investigation for processing. The results must be returned to DFS for screening. The fingerprints must be taken by a law enforcement agency, designated examination center, or other DFS-approved entity.

The bill provides that the inspections provided to an association under the MSFCP Program must, at a minimum, include all of the following:

- An inspection of the property, and a report that summarizes the results and identifies recommended improvements the association may take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Information regarding estimated insurance premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains. Additionally, an association may apply for an deceive an inspection without also applying for a grant.

Mitigation Grants

Financial grants under the MSFCP Program may be used to encourage associations to retrofit the property the association operates and maintains in order to make such property less vulnerable to hurricane damage. The bill provides that an application for a mitigation grant must:

- Contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains;
- Include a notarized statement from the president of the board of administration containing the name and license number of the contractor the association intends to use for the mitigation project; and
- Include a notarized statement from the president of the board of administration which commits to DFS that the association will complete the mitigation improvements.[49]

An association may select its own contractor for the mitigation project, provided such contractor meets all qualification, certification, or licensing requirements in general law. A mitigation project must be performed by a properly licensed contractor who has secured all required local permits necessary for the project. DFS must electronically verify that the contractor's state license number is accurate and up to date before approving a grant application.

An association awarded a grant must complete the entire mitigation project to receive the final grant award and must agree to make the property available for a final inspection once the mitigation project is finished to ensure the mitigation improvements are completed in a matter consistent with the intent of the MSFCP Program and meet or exceed the applicable Florida Building Code requirements.

Construction must be completed and the association must submit a request to DFS for a final inspection, or request an extension of time, within 1 year after receiving grant approval. If the association fails to comply with these provisions, the application is deemed abandoned and the grant money reverts back to DFS.

All grants must be matched on the basis of $1 provided by the association for $2 provided by the state, up to a maximum contribution as provided in the General Appropriations Act. When recommended by a hurricane mitigation inspection report, grants for eligible associations may be used for the following improvements:

- Opening protection.
- Exterior doors, including garage doors.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Secondary water barrier for roof.

[49] If the grant will be used to improve units, the application must also include an acknowledged statement from each unit owner who is required to provide approval for a grant under the other applicable provision of the bill.

On the other hand, the association may not use a mitigation grant to install the same type of improvements that were previously installed or pay a deductible for a pending insurance claim for damage that is part of the property for which grant funds are being received. However, grants may be used for a previously inspected existing structure on the property or for a rebuild.

If improvements to protect the property which complied with the current applicable building code at the time have been previously installed, the association must use a mitigation grant to install improvements that do both of the following:

- Comply with or exceed the applicable building code in effect at the time the association applied for the grant.
- Provide more hurricane protection than the improvements that the association previously installed.

The bill requires DFS to develop a process that ensures the most efficient means to collect and verify grant applications to determine eligibility and may direct hurricane mitigation inspectors to collect and verify grant application information or use the internet or other electronic means to collect information and determine eligibility.

Contract Management

The bill allows DFS to contract with third parties for grants management, inspection services, contractor services, information technology, educational outreach, and auditing services. Such contracts are considered direct costs of the MSFCP Program and are not subject to administrative cost limits. DFS must contract with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and must ensure the highest accountability for use of state funds, consistent with the bill's provisions.

Further, the bill requires DFS to implement a quality assurance and reinspection program that determines whether initial inspections and mitigation improvements are completed in a manner consistent with the intent of the MSFCP Program. DFS may use a valid random sampling in order to perform the quality assurance portion of the MSFCP Program.

Reports

By February 1 of each year, DFS must submit a report to the President of the Senate and the Speaker of the House of Representatives on the activities of the MSFCP Program and the use of state funds. The report must include all of the following information:

- The number of inspections requested;
- The number of inspections performed;
- The number of grant applications received;
- The number of grants approved and the monetary value of each grant;
- The estimated average annual amount of insurance premium discounts each association received and the total estimated annual amount of insurance premium discounts received by all associations participating in the MSFCP Program; and
- The estimated average annual amount of insurance premium discounts each unit owner received as a result of the improvements to the building or structure.

B. SECTION DIRECTORY:

Section 1. Creates s. 215.5587, F.S., relating to My Safe Florida Condominium Pilot Program.

Section 2. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that homes that participate in the MSFCP Program receive mitigation credits or premium discounts under their property insurance policies and are less exposed to risk as a result of mitigation retrofitting using grant funds, the MSFCP Program may have a positive direct economic impact on homeowners. Hurricane mitigation inspectors and contractors may also see an increase in activity.

D. FISCAL COMMENTS:

The bill has no direct impact on state government expenditures. Instead, the bill establishes that the MSFCP Program will be implements subject to separate funding.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize DFS to adopt rules to administer the MSFCP Program. However, rulemaking authority should be considered to align this program with the rulemaking authority for the MSFH Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

See Rule-making Authority.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the My Safe Florida Condominium Pilot Program; creating s. 215.5587, F.S.; establishing the My Safe Florida Condominium Pilot Program within the Department of Financial Services; providing legislative intent; providing definitions; providing requirements for associations and unit owners to participate in the pilot program; providing voting requirements; requiring the department to contract with specified entities for certain inspections; providing requirements for such entities; authorizing the department to conduct criminal record checks of certain inspectors; requiring inspectors to submit fingerprints and processing fees to the department; providing requirements for hurricane mitigation inspectors and inspections; requiring applications for inspections and grants to include specified statements; authorizing an association to receive an inspection without applying for a mitigation grant; providing mitigation grants for a specified purpose; providing requirements for an association receiving a mitigation grant; authorizing an association to select is own contractor if such contractor meets certain requirements; requiring the department to electronically verify a contractor's

state license; requiring construction to be completed and the association to submit a request for a final inspection within a specified time period; requiring mitigation grants to be matched by the association; providing a maximum state contribution based on the General Appropriations Act; providing requirements for mitigation projects; providing how mitigation grants may be used; requiring the department to develop a specified process to ensure efficiency; authorizing the department to contract for certain services; providing requirements for such contracts; requiring the department to implement a quality assurance and reinspection program; requiring the department to submit to the Legislature an annual report with specified information; providing an effective date.

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

Section 1. Section 215.5587, Florida Statutes, is created to read:

215.5587 My Safe Florida Condominium Pilot Program.—There is established within the Department of Financial Services the My Safe Florida Condominium Pilot Program to be implemented pursuant to appropriations. The department shall provide fiscal accountability, contract management, and strategic leadership

for the pilot program, consistent with this section. This section does not create an entitlement for associations or unit owners or obligate the state in any way to fund the inspection or retrofitting of condominiums in the state. Implementation of this pilot program is subject to annual legislative appropriations. It is the intent of the Legislature that the My Safe Florida Condominium Pilot Program provide licensed inspectors to perform inspections for and grants to eligible associations as funding allows.

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

(a) "Association" has the same meaning as in s. 718.103.

(b) "Association property" has the same meaning as in s. 718.103.

(c) "Board of administration" has the same meaning as in s. 718.103.

(d) "Condominium" has the same meaning as in s. 718.103.

(e) "Condominium property" has the same meaning as in s. 718.103.

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

(g) "Property" means association property and condominium property, as applicable.

(h) "Rebuild" means property under construction to replace a structure that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority.

(i) "Unit" has the same meaning as in s. 718.103.

(j) "Unit owner" has the same meaning as in s. 718.103.

(2) PARTICIPATION.—

(a) In order to apply for an inspection under subsection (4) or a grant under subsection (5) for association property or condominium property, an association must receive approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in the pilot program.

(b) In order to apply for a grant under subsection (5) which improves one or more units within a condominium, an association must receive both of the following:

1. Approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in a mitigation inspection.

2. A unanimous vote of all unit owners within the structure or building that is the subject of the mitigation grant.

(c) A unit owner may participate in the pilot program through a mitigation grant awarded to the association but may not participate individually in the pilot program.

(d) The votes required under this subsection may take place at the annual budget meeting of the association or at a unit owner meeting called for the purpose of taking such vote. Before a vote of the unit owners may be taken, the association

must provide to the unit owners a clear disclosure of the pilot program on a form created by the department. The president and the treasurer of the board of administration must sign the disclosure form indicating that a copy of the form was provided to each unit owner of the association. The signed disclosure form and the minutes from the meeting at which the unit owners voted to participate in the pilot program must be maintained as part of the official records of the association. Within 14 days after an affirmative vote to participate in the pilot program, the association must provide written notice in the same manner as required under s. 718.112(2)(d) to all unit owners of the decision to participate in the pilot program.

(3) HURRICANE MITIGATION INSPECTORS.—

(a) Licensed inspectors are to provide inspections of the property to determine the mitigation measures that are needed, the insurance premium discounts that may be available to the association, and the improvements to existing properties of the association that are needed to reduce a property's vulnerability to hurricane damage.

(b) The department shall contract with wind certification entities to provide hurricane mitigation inspections. To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections, the entity must, at a minimum, meet all of the following requirements:

1. Use hurricane mitigation inspectors who are licensed or

certified as:

a. A building inspector under s. 468.607;

b. A general, building, or residential contractor under s. 489.111;

c. A professional engineer under s. 471.015;

d. A professional architect under s. 481.213; or

e. A home inspector under s. 468.8314 who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam.

2. Use hurricane mitigation inspectors who have undergone drug testing and a background screening. The department may conduct criminal record checks of inspectors used by wind certification entities. Inspectors must submit a set of fingerprints to the department for state and national criminal history checks and must pay the fingerprint processing fee set forth in s. 624.501. The fingerprints must be sent by the department to the Department of Law Enforcement and forwarded to the Federal Bureau of Investigation for processing. The results must be returned to the department for screening. The fingerprints must be taken by a law enforcement agency, designated examination center, or other department-approved entity.

3. Provide a quality assurance program including a reinspection component.

(4) HURRICANE MITIGATION INSPECTIONS.—

(a) The inspections provided to an association under this section must, at a minimum, include all of the following:

1. An inspection of the property, and a report that summarizes the results and identifies recommended improvements the association may take to mitigate hurricane damage.

2. A range of cost estimates regarding the recommended mitigation improvements.

3. Information regarding estimated insurance premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

(b) An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains.

(c) An association may apply for and receive an inspection without also applying for a grant under subsection (5).

(5) MITIGATION GRANTS.—Financial grants may be used to encourage associations to retrofit the property the association operates and maintains in order to make such property less vulnerable to hurricane damage.

(a) An application for a mitigation grant must:

1. Contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains.

2. Include a notarized statement from the president of the board of administration containing the name and license number of the contractor the association intends to use for the mitigation project.

3. Include a notarized statement from the president of the board of administration which commits to the department that the association will complete the mitigation improvements. If the grant will be used to improve units, the application must also include an acknowledged statement from each unit owner who is required to provide approval for a grant under paragraph (2)(b).

(b) An association may select its own contractor for the mitigation project as long as such contractor meets all qualification, certification, or licensing requirements in general law. A mitigation project must be performed by a properly licensed contractor who has secured all required local permits necessary for the project. The department must electronically verify that the contractor's state license number is accurate and up to date before approving a grant application.

(c) An association awarded a grant must complete the

entire mitigation project in order to receive the final grant award and must agree to make the property available for a final inspection once the mitigation project is finished to ensure the mitigation improvements are completed in a matter consistent with the intent of the pilot program and meet or exceed the applicable Florida Building Code requirements. Construction must be completed and the association must submit a request to the department for a final inspection, or request an extension of time, within 1 year after receiving grant approval. If the association fails to comply with this paragraph, the application is deemed abandoned and the grant money reverts back to the department.

(d) All grants must be matched on the basis of $1 provided by the association for $2 provided by the state up to a maximum contribution as provided in the General Appropriations Act.

(e) When recommended by a hurricane mitigation inspection report, grants for eligible associations may be used for the following improvements:

1. Opening protection.

2. Exterior doors, including garage doors.

3. Reinforcing roof-to-wall connections.

4. Improving the strength of roof-deck attachments.

5. Secondary water barrier for roof.

(f) Grants may be used for a previously inspected existing structure on the property or for a rebuild.

(g)1. If improvements to protect the property which complied with the current applicable building code at the time have been previously installed, the association must use a mitigation grant to install improvements that do both of the following:

a. Comply with or exceed the applicable building code in effect at the time the association applied for the grant.

b. Provide more hurricane protection than the improvements that the association previously installed.

2. The association may not use a mitigation grant to:

a. Install the same type of improvements that were previously installed; or

b. Pay a deductible for a pending insurance claim for damage that is part of the property for which grant funds are being received.

(h) The department shall develop a process that ensures the most efficient means to collect and verify grant applications to determine eligibility and may direct hurricane mitigation inspectors to collect and verify grant application information or use the Internet or other electronic means to collect information and determine eligibility.

(6) CONTRACT MANAGEMENT.—

(a) The department may contract with third parties for grants management, inspection services, contractor services, information technology, educational outreach, and auditing

services. Such contracts are considered direct costs of the pilot program and are not subject to administrative cost limits. The department shall contract with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and shall ensure the highest accountability for use of state funds, consistent with this section.

(b) The department shall implement a quality assurance and reinspection program that determines whether initial inspections and mitigation improvements are completed in a manner consistent with the intent of the pilot program. The department may use a valid random sampling in order to perform the quality assurance portion of the pilot program.

(7) REPORTS.—By February 1 of each year, the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives on the activities of the pilot program and the use of state funds. The report must include all of the following information:

(a) The number of inspections requested.

(b) The number of inspections performed.

(c) The number of grant applications received.

(d) The number of grants approved and the monetary value of each grant.

(e) The estimated average annual amount of insurance premium discounts each association received and the total

estimated annual amount of insurance premium discounts received by all associations participating in the pilot program.

(f) The estimated average annual amount of insurance premium discounts each unit owner received as a result of the improvements to the building or structure.

Section 2. This act shall take effect July 1, 2024.

INSURANCE & BANKING SUBCOMMITTEE

HB 1029 by Rep. Lopez, V.
My Safe Florida Condominium Pilot Program

AMENDMENT SUMMARY
February 1, 2024

Amendment 1 by Rep. Rep. Lopez, V. (Line 62): The amendment:

- Defines a “service area” for the program that is the area of the state 15 miles inward of the coastline; making the pilot project statewide in this coastal zone.
- Clarifies the fingerprinting requirement to comport with a recommendation by FDLE.

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 Lopez, V. offered the following:

Amendment

Remove lines 62-150 and insert:

(b) "Association property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members and is located in the service area.

(c) "Board of administration" has the same meaning as in s. 718.103.

(d) "Condominium" has the same meaning as in s. 718.103.

(e) "Condominium property" means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements

thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium and is located in the service area.

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

(g) "Property" means association property and condominium property, as applicable, located in the service area.

(h) "Rebuild" means property under construction to replace a structure that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority.

(i) "Service area" means the area of the state with 15 miles inward of a coastline as defined in s. 376.031.

(j) "Unit" has the same meaning as in s. 718.103.

(k) "Unit owner" has the same meaning as in s. 718.103.

(2) PARTICIPATION.—

(a) In order to apply for an inspection under subsection (4) or a grant under subsection (5) for association property or condominium property, an association must receive approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in the pilot program.

(b) In order to apply for a grant under subsection (5) which improves one or more units within a condominium, an association must receive both of the following:

1. Approval by a majority vote of the board of

administration or a majority vote of the total voting interests of the association to participate in a mitigation inspection.

2. A unanimous vote of all unit owners within the structure or building that is the subject of the mitigation grant.

(c) A unit owner may participate in the pilot program through a mitigation grant awarded to the association but may not participate individually in the pilot program.

(d) The votes required under this subsection may take place at the annual budget meeting of the association or at a unit owner meeting called for the purpose of taking such vote. Before a vote of the unit owners may be taken, the association must provide to the unit owners a clear disclosure of the pilot program on a form created by the department. The president and the treasurer of the board of administration must sign the disclosure form indicating that a copy of the form was provided to each unit owner of the association. The signed disclosure form and the minutes from the meeting at which the unit owners voted to participate in the pilot program must be maintained as part of the official records of the association. Within 14 days after an affirmative vote to participate in the pilot program, the association must provide written notice in the same manner as required under s. 718.112(2)(d) to all unit owners of the decision to participate in the pilot program.

(3) HURRICANE MITIGATION INSPECTORS.—

(a) Licensed inspectors are to provide inspections of the property to determine the mitigation measures that are needed, the insurance premium discounts that may be available to the association, and the improvements to existing properties of the association that are needed to reduce a property's vulnerability to hurricane damage.

(b) The department shall contract with wind certification entities to provide hurricane mitigation inspections. To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections, the entity must, at a minimum, meet all of the following requirements:

1. Use hurricane mitigation inspectors who are licensed or certified as:

a. A building inspector under s. 468.607;

b. A general, building, or residential contractor under s. 489.111;

c. A professional engineer under s. 471.015;

d. A professional architect under s. 481.213; or

e. A home inspector under s. 468.8314 who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam.

2. Use hurricane mitigation inspectors who have undergone

drug testing and a background screening. The department may conduct criminal record checks of inspectors used by wind certification entities. Inspectors must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Fees for state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e).The results must be returned to the department for screening. The fingerprints must be taken by a law enforcement agency, designated examination center, or other department-approved entity.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1093 Florida Uniform Fiduciary Income and Principal Act
SPONSOR(S): Caruso
TIED BILLS: **IDEN./SIM. BILLS:** SB 1316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N	Mawn	Jones
2) Insurance & Banking Subcommittee		Fletcher	Lloyd
3) Judiciary Committee			

SUMMARY ANALYSIS

A trust is a relationship in which one party, the "settlor," gives another party, the "trustee," the right to hold title to the settlor's property or assets for a third party's benefit ("beneficiary"). Traditionally, many trust beneficiaries were entitled to receive either income earned by trust investments ("income beneficiary") or a share of trust principal when an income interest ended ("remainder beneficiary"). In such a scenario, the trustee's allocation of receipts and expenditures to income or principal had a direct effect on a beneficiary's financial interests, and the financial interests of an income beneficiary were often at odds with those of the remainder beneficiary.

In 1931, the National Conference of Commissioners on Uniform State Laws ("NCCUSL") adopted the first Uniform Principal and Income Act ("UPIA"), which, in pertinent part, governed the allocation of trust and estate receipts and disbursements between income and principal where the terms of the trust did not provide for such allocation. Forty-seven states, including Florida, subsequently adopted some form of the UPIA; Florida's version, known as the Florida Uniform Principal and Income Act ("FUPIA"), is codified in ch. 783, F.S. However, in recent decades, the distinction between income and principal has become less important, for two reasons. First, the "modern portfolio theory" allows trustees to invest for the maximum total return, whether the return is in the form of income or principal growth. This has led to the rise in popularity of the "unitrust," which has reduced the likelihood that the financial interests of the income beneficiary and the remainder beneficiary will be at odds, as such a trust allows the income beneficiary to receive income from the trust at a set percentage of the trust's fair market value while the remainder beneficiary receives a fair disbursement after the income interest ends. Second, modern trusts are often drafted with more flexible terms, giving trustees discretion to accumulate income or invade principal when advantageous to further the trust's purposes.

In 2018, the NCCUSL adopted the Uniform Fiduciary Income and Principal Act ("UFIPA") to account for these more recent developments. In response to UFIPA's adoption, the Real Property, Probate and Trust Law Section of the Florida Bar convened a committee ("Committee") to review UFIPA and consider whether Florida should adopt the new model law. The Committee ultimately proposed a revision to FUPIA that would incorporate UFIPA language wherever possible while preserving certain public policy choices found in existing Florida law. This proposed revision is the Florida Uniform Fiduciary Income and Principal Act ("FUFIPA").

HB 1093 codifies FUFIPA into ch. 783, F.S., replacing FUPIA as the law governing the allocation of trust and estate receipts and disbursements between principal and interest where a Florida trust does not provide its own terms for such an allocation. FUFIPA would, in addition to modernizing trust law generally:

- Allow for total-return investing under the "modern portfolio theory."
- Provide for the conversion of an existing trust into a unitrust.
- Provide flexibility for more individualized estate planning.
- Provide a governing law provision to reduce jurisdictional disputes.

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

The bill provides an effective date of January 1, 2025.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Trusts

A trust is a relationship in which one party (the "settlor")[1] gives another party (the "trustee") the right to hold title to the settlor's assets for a third party's benefit (the "beneficiary"). A trust may be created and take effect during a settlor's lifetime ("a living trust") or may be created by a will and take effect when the settlor dies ("testamentary trust").[2] A trust may also be revocable (so that the terms may be changed at any time before the settlor's death) or irrevocable (so that the terms cannot be modified after the trust's creation absent consent of the beneficiaries).[3] Most trusts are generally governed by the Florida Trust Code, codified in chapter 736, F.S. However, additional provisions of Florida law may apply if the trust has special attributes.

Uniform Fiduciary Income and Principal Act

Traditionally, many trust beneficiaries were entitled to receive either income earned by trust investments ("income beneficiary") or a share of trust principal when an income interest ended ("remainder beneficiary").[4] In such a scenario, the trustee's allocation of receipts and disbursements to income or principal had a direct effect on a beneficiary's financial interests, and, thus, the financial interests of an income beneficiary were often at odds with those of the remainder beneficiary.[5]

In 1931, the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission ("ULC")[6] adopted the first Uniform Principal and Income Act ("UPIA"), which, in pertinent part, governed the allocation of trust and estate receipts and disbursements between income and principal where the terms of the trust or will did not provide for such allocation or give the fiduciary a discretionary power of administration. Forty-seven states, including Florida, subsequently adopted some form of UPIA; Florida's version, adopted in 2002 and known as the Florida Uniform Principal and Income Act ("FUPIA"), is codified in ch. 783, F.S.

However, in recent decades, the distinction between income and principal has lost some significance, for two reasons. First, the "modern portfolio theory" allows trustees to invest for the maximum total return, whether the return is in the form of income or principal growth.[7] This has led to the rise in popularity of the "unitrust," which trust allows the income beneficiary to receive income from the trust at a set percentage of the trust's fair market value while the remainder beneficiary receives a fair disbursement after the income interest ends, thereby reducing the likelihood that the financial interests of the income beneficiary and the remainder beneficiary will be at odds.[8] In other words, under a unitrust, both the income beneficiary and remainder beneficiary benefit from an increase in the value of

[1] "Settlor" means a person, including a testator, who creates or contributes property to a trust. S. 736.0103(18), F.S.
[2] *See* "inter vivos trust" and "testamentary trust," Black's Law Dictionary (11th ed. 2019).
[3] Greg Depersio, Investopedia (Apr. 30, 2023), *Revocable Trust v. Irrevocable Trust: What's the Difference*, https://www.investopedia.com/ask/answers/071615/what-difference-between-revocable-trust-and-living-trust.asp (last visited Jan. 25, 2024).
[4] For example, a trust may require that all trust income be distributed to the settlor's surviving spouse, but that trust principal be held and accumulated for the settlor's surviving children, to be paid after the surviving spouse's death. Uniform Law Commission, *The Uniform Fiduciary Income and Principal Act: A Summary*, https://www.uniformlaws.org/viewdocument/enactment-kit-74?CommunityKey=1105f9bb-eb93-4d4d-a1ab-a535ef73de0c&tab=librarydocuments (last visited Jan. 25, 2024).
[5] *Id.*
[6] The NCCUSL is an association of commissioners appointed by each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands, that discusses and debates which areas of the law require uniformity among the states and territories and drafts uniform acts accordingly. Legal Information Institute, *National Conference of Commissioners on Uniform State Laws*, https://www.law.cornell.edu/wex/national_conference_of_commissioners_on_uniform_state_laws_(nccusl) (last visited Jan. 25, 2024).
[7] Uniform Law Commission, *supra* note 4.
[8] *Id.;* Rod Fluck, *What is a Unitrust and Why is it Used*, http://buteralaw.com/newsletters/estate/what-is-a-unitrust-and-why-is-it-used/ (last visited Jan. 25, 2024).

a trust's assets.[9] Second, modern trusts are often drafted with more flexible terms, thereby giving trustees discretion to accumulate income or invade principal when advantageous to further the trust's overall purposes.[10]

Thus, in 2018, the ULC adopted the Uniform Fiduciary Income and Principal Act ("UFIPA") to account for these developments, provide additional flexibility in tailoring individual trusts to meet a settlor's specific needs, provide for the conversion of older trusts into unitrusts, and provide a governing law section to help avoid jurisdictional disputes.[11] Seven states have since enacted some form of UFIPA.[12]

In response to UFIPA's adoption, the Real Property, Probate and Trust Law Section of the Florida Bar convened a Principal and Income Committee ("Committee") to review UFIPA and consider whether Florida should adopt the new model law. The Committee ultimately proposed a revision to FUPIA, known as the Florida Uniform Fiduciary Income and Principal Act ("FUFIPA"), that would incorporate UFIPA language wherever possible while preserving certain public policy choices found in existing Florida law that continue to make sense for the State.

Effect of Proposed Changes

HB 1093 codifies FUFIPA into ch. 783, F.S., replacing FUPIA as the law governing the allocation of trust and estate receipts and disbursements between principal and interest where a Florida trust does not provide its own terms for such an allocation. FUFIPA would, in addition to modernizing Florida trust law generally:

- Allow for total-return investing under the "modern portfolio theory."
- Provide for the conversion of an older trust into a unitrust.
- Provide flexibility for more individualized estate planning.
- Provide a governing law provision to reduce jurisdictional disputes.

Definitions

The bill revises s. 738.102, F.S., to modify existing definitions and provide new definitions to incorporate UFIPA terminology and concepts. Under the bill, the definitions of "accounting period," "income," "mandatory income interest," and "person" remain unchanged, while definitions for new terms, including "court," "estate," "personal representative," and "record," were added without impacting current policy. However, the bill modifies the following definitions in a substantive way:

- "Beneficiary" is redefined to distinguish between current income beneficiaries and current remainder beneficiaries, as well as to encompass persons holding life estates or term interests.
- "Fiduciary" is broadened to apply not only to the personal representative and trustee, as under current law, but also to those with a power to direct, those under a fiduciary's delegation, and those holding property for a successor beneficiary who may be impacted by principal or income allocations.
- "Income interest" is redefined as a right of a current income beneficiary and includes a current beneficiary's use of property held by a fiduciary.
- "Net income" is broadened to include application to a unitrust and an income to principal adjustment.
- "Principal" is modified from meaning that which is distributed to a remainder beneficiary to that which is held for distribution to, for production of income for, or for use by, a current or successor beneficiary.
- "Terms of the trust" is broadened to extend to wills, life estates, and term interests, and thus more closely follows the definition of the term in the Florida Trust Code.

[9] Fluck, *supra* note 8.
[10] Uniform Law Commission, *supra* note 4.
[11] *Id.*
[12] These states are Arkansas, California, Colorado, Kansas, Utah, Virginia, and Washington State. Uniform Law Commission, *Fiduciary Income and Principal Act: Legislative Bill Tracking*, https://www.uniformlaws.org/committees/community-home?communitykey=1105f9bb-eb93-4d4d-a1ab-a535ef73de0c#LegBillTrackingAnchor (last visited Jan. 25, 2024).

Additionally, the bill adds the following new definitions, which definitions modify Florida law in a substantive way:

- "Distribution," meaning a payment or transfer by a fiduciary to a beneficiary in the beneficiary's capacity as a beneficiary, without consideration other than the beneficiary's right to receive the payment or transfer under the terms of the trust, will, life estate, or term interest.
- "Independent person," meaning a person that is not:
  - For a trust, a qualified beneficiary; a settlor; an individual whose legal obligation to support a beneficiary may be satisfied by a trust distribution; or any trustee whom an interested distributee may remove and replace with a related or subordinate party.
  - For an estate, a beneficiary; a spouse, parent, brother, sister, or issue of specified persons; a corporation, partnership, limited liability company, or other entity in which specified persons have voting control; or an employee of a specified person.
- "Personal representative," meaning an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person's status.
- "Record," meaning information that is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.
- "Settlor," meaning a person, including a testator, that creates or contributes property to a trust.
- "Special tax benefit," meaning the annual gift tax exclusion,[13] qualified subchapter S status,[14] federal marital tax deduction,[15] and generation-skipping transfer tax exemption.[16]
- "Successive interest," meaning the interest of a successor beneficiary.
- "Successor beneficiary," meaning a person entitled to receive income or principal or to use property when an income interest or other current interest ends.
- "Trust," meaning an express trust, whether private or charitable, with additions to the trust, wherever and however created, and a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.
- "Trustee," meaning a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary.
- "Will," meaning any testamentary instrument recognized by applicable law which makes a legally effective disposition of an individual's property, effective at the individual's death, and includes a codicil or other amendment to a testamentary instrument.

[13] The Internal Revenue Service allows individuals to give away up to a specific amount of assets each year tax-free under the annual gift tax exclusion. Jean Gordon Carter and Janice L. Davies, Gift Tax, *the Annual Exclusion and Estate Planning*, https://www.actec.org/resource-center/video/gift-tax-the-annual-exclusion-and-estate-planning/ (last visited Jan. 25, 2024)

[14] A trust with qualified subchapter S status is eligible to own stock in an S corporation. A settlor can use this type of trust to make a gift of all or a part of the S corporation stock and retain voting power while the beneficiary receives the income and the tax burden. Rebecca C. Bowen, *Trusts as Eligible Shareholders of an S Corporation*, https://www.t-mlaw.com/commentary/trusts-as-eligible-shareholders-of-an-s-corporation/ (last visited Jan. 25, 2024).

[15] The Internal Revenue Service allows a spouse to leave property of unlimited value to his or her surviving spouse tax-free. Such assets may be distributed by a direct transfer from the decedent to the surviving spouse or by an indirect transfer to a qualifying trust for the surviving spouse's benefit. Peter B. von Stein, *Basic Estate Tax Planning for Married Couples: Opportunities for Use of Estate Tax Exemptions*, https://www.wardandsmith.com/articles/basic-estate-tax-planning-married-couples-use-estate-tax-exemptions (last visited Jan. 25, 2024).

[16] The generation-skipping transfer tax is a federal tax on a gift or an inheritance that prevents the donor from avoiding estate taxes by skipping over children in favor of grandchildren. However, the Internal Revenue Service allows a person to give up to a certain amount to a qualified recipient to avoid this tax. Troy Segal, *What is the Generation-Skipping Transfer Tax*, Investopedia (Feb. 7, 2023), https://www.investopedia.com/terms/g/generation-skipping-transfer-tax.asp (last visited Jan. 25, 2024).

Scope

The bill amends s. 738.103, F.S., to provide FUFIPA's scope. Specifically, the bill states that, except as otherwise provided by the terms of a trust or FUFIPA, FUFIPA applies to a trust or estate and to a life estate or other term interest in which someone's interest will be succeeded by another's interest under s. 738.508, F.S.

Governing Law

The bill adds a new governing law provision to renumbered s. 738.104, F.S. Specifically, the bill provides that, if the principal place of administration of a trust or estate or the situs of property not held in trust or an estate is Florida, the trustee is governed by FUFIPA, except as otherwise provided in the terms of the trust or elsewhere in that chapter.

General Principles of Fiduciary Duties

The bill renumbers from s. 738.103, F.S., to s. 738.201, F.S., a provision setting forth a trustee's fiduciary duties, including the duty to administer a trust or estate impartially based on what is fair and reasonable to all beneficiaries. Current law also establishes the general principles for allocating receipts and disbursements to or between principal and income, specifying that, generally speaking, receipts and disbursements must be allocated to principal, and establishes a presumption that a determination made in accordance with ch. 738 is fair and reasonable.

The bill substantially preserves current law, with four exceptions. Specifically, the bill:

- Incorporates the revised definition of "terms of the trust."
- Adds an express requirement that a fiduciary act in good faith.
- Requires a fiduciary to add undistributed income to principal within a specified time period.
- Incorporates the factors currently set out in s. 738.104(2), F.S., applicable in exercising the adjustment power, and making such factors applicable to all fiduciary decisions under FUFIPA.

The factors incorporated from s. 738.104(2), F.S., remain largely the same as in current law, except that the bill substitutes the objective "terms of the trust" factor for the subjective "intent of the grantor" factor, in keeping with changes made by UFIPA.

Judicial Review

The bill renumbers from s. 738.105, F.S., to s. 738.202, F.S., a provision governing judicial review of a trustee's exercise of or failure to exercise any discretionary power under FUFIPA, as it relates to a decision to transfer principal to income, or vice versa. Under current law, a court may not determine that a trustee abused its discretion merely because the court would have exercised the discretion differently, but, once an abuse of discretion is found, the court must take certain actions to restore the beneficiaries to the positions they would have been in had the trustee not abused its discretion.

The bill substantially preserves current law, with four exceptions. Specifically, the bill:

- Updates the term "trustee" in this provision to "fiduciary," thus broadening this section's scope.
- Defines "fiduciary decisions" to expressly include the fiduciary's allocation between income and principal and the exercise or failure to exercise any power under FUFIPA.
- Expressly adds to the remedies available when a fiduciary abuses his or her discretion "all remedies authorized by law," including remedies and damages for breach of trust as set out in the Florida Trust Code in ss. 736.1001 and 736.1002, F.S.
- Removes an unnecessary provision prohibiting the court from substituting its discretion for that of the fiduciary.

Fiduciary's Adjustment Powers

The bill renumbers from s. 738.104, F.S., to s. 738.203, F.S., a provision authorizing a trustee to adjust between income and principal if specified conditions are met, including the consideration of enumerated factors, and a determination that an adjustment is necessary to administer the trust impartially, based on what is fair and reasonable. Under current law, a trustee is prohibited from exercising the adjustment power under certain circumstances where adverse tax consequences would result but may release all or part of the power for any time period. Further, current law expressly negates any inference of impropriety simply because a trustee declines to exercise the power.

The bill makes several changes to current law. Specifically, the bill:

- Expands the scope of this section from trustees to all fiduciaries.
- Relocates the conditions limiting when a fiduciary may adjust between principal and income to a different section, making such conditions applicable to all fiduciary decisions.
- Replaces the standard of "impossibility" with a standard of "assistance," thereby authorizing a fiduciary to exercise the adjustment power if the fiduciary determines that doing so will assist the fiduciary in administering the trust or estate impartially.
- Authorizes the appointment of a co-fiduciary to exercise the adjustment power under specified circumstances.
- Includes a presumption that a release or delegation of the adjustment power is a release or delegation of the entire power, and that such a release or delegation is permanent.
- Clarifies that the exercise of the adjustment power may apply to the immediately preceding period, current period, and one or more subsequent periods.
- Adds new accountability procedures, including a requirement that the exercise of the adjustment power be included in the annual accounting report or communicated at least annually to the trust's qualified beneficiaries.

Unitrusts

The bill replaces s. 738.1041, F.S., which specifically authorizes the express creation of a unitrust, provides that the unitrust amount is considered to be the trust's net income for purposes of allowing or requiring income distributions, and provides for the conversion of an income trust to a unitrust, or vice versa, with ss. 738.301-738.310, F.S.

The bill makes several changes to current law. Specifically, the bill:

- Separates provisions relating to unitrusts into distinct sections, making them more visible.
- Specifies that these sections apply to estates only where a trust is a beneficiary of an estate.
- Adds definitions applicable to a unitrust, including "applicable value," "express unitrust," "net fair market value of a trust," "unitrust," "unitrust policy," and "unitrust rate."
- Modernizes but does not substantially alter provisions relating to a fiduciary's authority and duties as they relate to unitrusts; the method for determining the unitrust rate; and the method for determining an asset's fair market value for the purpose of determining the unitrust amount.
- Ensures that the unitrust provisions remain within the safe harbor standards of the Treasury Regulations (as they are under current law) but allows for future modification of the relevant provisions should the Treasury relax those standards.

Character of Receipts

The bill amends s. 738.401, F.S., which currently characterizes receipts from entities, applies a "lookback period"[17] of unlimited duration, and establishes rules applicable to receipts from public entities; provisions regarding private trustees administering investment entities; treating as principal money received from specified sources; and treating as income dividends a fiduciary elects to reinvest. Current law favors objective calculations over the exercise of fiduciary discretion in such matters.

The bill modifies current law by:

[17] Florida's "lookback period" applies a portion of large receipts to income, at a rate of three percent per year.

- Limiting the lookback period to three accounting periods to simplify trust administration.
- Restructuring the law to more closely match UFIPA's overall organization.
- Amending or adding definitions, including "capital distribution," "entity," and "entity distribution," to clarify certain concepts incorporated into this section.

Allocations

Deferred Compensation Accounts, Annuities, and Similar Arrangements

The bill renumbers from s. 738.602, F.S., to s. 738.409, F.S., a section of law characterizing receipts from deferred compensation accounts, annuities, and other similar arrangements. Under current law, the "income of the fund" is determined in a specified manner, and such amount is compared to payments actually received from the fund; the lesser of such amounts is then allocated to income, while the remainder is allocated to principal.

The bill modifies this section by:

- Changing the phrase "income of the fund" to the more customary "internal income."
- Adding an accounting period concept to balance the allocation of intra-period receipts between principal and income.
- Specifically authorizing fiduciaries to transfer assets from principal to income as necessary to fully fund the internal income of the fund and distribute such income to the beneficiary.

Minerals, Water, and Other Natural Resources

The bill renumbers from s. 738.604, F.S., to s. 738.411, F.S., a provision allocating receipts from an interest in minerals, water, or other natural resources as 90 percent to principal and ten percent to income. The bill modifies this section by removing the 90/10 allocation standard and replacing it with a fact-specific standard.

Marital Deduction Property Not Productive of Income

The bill renumbers from s. 738.606, F.S., to s. 738.413, F.S., a provision providing a safe harbor to ensure that a trust intending to qualify for the estate tax marital deduction allows the surviving spouse to require the trustee to make property income-producing where the trust assets do not otherwise provide the spouse with sufficient income to qualify for the deduction. Current law also allows the surviving spouse to require the trustee to make property income-producing where trust assets have been used in whole or in part to satisfy the spouse's elective share under s. 732.2125, F.S.,[18] and the property, in the aggregate, does not provide the spouse with sufficient income.

The bill substantially preserves current law but provides that this section may be overridden only if the terms of the trust explicitly reference this section.

Derivatives and Options

The bill renumbers from s. 738.607, F.S., to s. 738.414, F.S., a provision providing for the allocation of all amounts received from derivatives and options to principal. The bill also modifies this section to provide for the allocation of 10 percent of receipts from the transaction and 10 percent of disbursements made in connection with the transaction to income, with the remaining balance allocated to principal.

Asset-Backed Securities

[18] This section allows the surviving spouse of a decedent to claim up to 30 percent of the decedent's estate, regardless of the terms of the decedent's will. Practically speaking, this prevents a surviving spouse from being disinherited and potentially left destitute.

The bill renumbers from s. 738.608, F.S., to s. 738.415, F.S., a provision for the allocation of payments received in exchange for the trust's or estate's entire interest in an asset-backed security[19] during a single accounting period entirely to principal. Current law also provides that, for payments that are part of a series of payments that will result in the liquidation of the trust's or estate's interest in the security over more than a single accounting period, the fiduciary must allocate 10 percent of the payment to income and the balance to principal.[20]

The bill modifies the definition of an "asset-backed security" to more closely align with the definition used by the Securities and Exchange Commission[21] and extends the 90/10 distribution rule to all receipts from or related to such a security.

Other Financial Instruments or Arrangements

The bill creates s. 738.416, F.S., to be a "catch-all" provision for the allocation of receipts and disbursements arising from or related to financial instruments or arrangements not specifically mentioned in FUFIPA. Under the bill, allocation must be 90 percent to principal and 10 percent to income, making the allocation standard the same as for derivatives, options, and asset-backed securities.

Disbursements

Disbursements from Income and Principal

The bill amends s. 738.501, F.S., which currently directs that one-half of certain forms of compensation and expenses be disbursed from income, along with all of the ordinary expenses incurred in connection with a trust property that primarily concerns the income interest.

The bill modifies this section to address what happens where there is insufficient income to disburse the full amount charged and to give the fiduciary the discretion to disburse specified amounts charged if the fiduciary is an independent person and the disbursement would be in the beneficiaries' interest.

The bill also amends s. 738.502, F.S., which currently directs that the remaining one-half of certain forms of compensation and expenses be disbursed from principal, along with all of the trustee's compensation for preparing property for sale; payments on the principal of trust debt; and expenses of proceedings that primarily concern trust principal.

The bill modifies this section to provide that principal must be disbursed in an amount equal to the remaining balance of the compensation and expenses provided for in s. 738.501, F.S., and to allow a fiduciary to use income to disburse the balance of such amounts charged to income before using principal. Further, the bill incorporates certain tax provisions found elsewhere in current law into this section.

Transfers from Income to Principal for Depreciation

The bill amends s. 738.503, F.S., which currently allows a fiduciary to transfer a reasonable amount of the net cash receipts from a principal asset from income to principal, subject to depreciation to such principal, with restrictions.
The bill substantially preserves current law, with three exceptions. Specifically, the bill:

[19] Under current law, an "asset-backed security" is an asset, the value of which is based upon the right given to the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. S. 738.608, F.S.
[20] See s. 738.608(3), F.S.
[21] 17 C.F.R. Sec. 229.1101(c)(1) defines "asset-backed security" as a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of the physical property underlying such leases. *See* 17 C.F.R. Sec. 229.1101(c)(1)(2) for other conditions that must apply for a security to be considered as an "asset-backed security."

- Replaces the term "fixed asset" with the term "tangible asset" to conform to changes made elsewhere in FUFIPA.
- Excludes depreciation for assets accounted for as a liquidating asset.
- Removes a safe harbor specifying that any amount of depreciation taken for an asset must be presumed to be a reasonable amount of depreciation.

Reimbursements

The bill amends s. 738.504, F.S., which currently relates to allocations from insurance policies and similar contracts, to create a provision authorizing a fiduciary to reimburse income from principal. Such reimbursement is not presently authorized under Florida law.

The bill also renumbers from s. 738.704, F.S., to s. 738.505, F.S., a provision authorizing a fiduciary to transfer an appropriate amount of income to principal to either reimburse or provide a reserve in specified situations. The bill modifies this section by clarifying that, when a current income interest of a principal asset ends and a successive income interest remains, the fiduciary may continue to transfer those appropriate amounts from income to principal as specified in this section. The bill also authorizes fiduciaries to transfer an appropriate amount from income to principal for the cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, and for a periodic payment on an obligation secured by a principal asset, in specified circumstances.

Income Taxes

The bill renumbers from s. 738.705, F.S., to s. 738.506, F.S., a provision specifying that, with respect to income tax, the fiduciary must disburse from income those amounts allocated to income and from principal those amounts allocated to principal. Current law also specifies that the same allocation rules must be followed on the trust's or estate's share of an entity's taxable income, except that principal must be used to disburse amounts exceeding total receipts from the entity; however, the fiduciary must also adjust income or principal receipts, pursuant to a specified formula, to the extent the trust's or estate's income taxes are reduced, but not eliminated, due to a deduction for beneficiary payments.

The bill substantially retains current law but makes several changes. Specifically, the bill:
- Removes the phrase "but not eliminated," as it created confusion.
- Removes the formula outlining the amount distributable to a beneficiary.
- Adds a provision allowing a fiduciary to reimburse the "owner" of a "grantor trust"[22] for income taxes paid.

Adjustments Between Principal and Income Because of Taxes

The bill renumbers from s. 738.706, F.S., to s. 738.507, F.S., a provision authorizing a fiduciary to adjust between principal and income to offset the shifting of economic interests or tax benefits between income and remainder beneficiaries due to elections and decisions made by a fiduciary; a tax imposed on the fiduciary or beneficiary due to a distribution from the trust or estate; or the taxable income of an entity owned by the trust or estate includable in the taxable income of the trust, estate, or beneficiary. This section also provides that, when an estate tax marital deduction or charitable contribution deduction is reduced due to a fiduciary deducting an amount paid from principal for income tax purposes, resulting in the amount of income tax paid by the trust or estate decreasing, the income tax payor must reimburse principal for the amount of tax not paid, with limitations ("deduction adjustment").

The bill substantially preserves current law but modifies this section to specify that a fiduciary that charges a beneficiary under the deduction adjustment may offset the charge by obtaining payment from

[22] A "grantor trust" is a type of trust that allows the settlor, in this case known as the "grantor," to retain some control over trust assets. For tax purposes, the grantor is considered the owner of the trust and is liable for any taxes on trust income. Christopher R. Callahan and Scott M. Snyder, *Foreign Grantor Trust Planning: A Flexible Planning Structure for U.S. Income Tax*, Fla. Bar Journal Vol. 97, No. 6 (Nov./Dec. 2023), https://www.floridabar.org/the-florida-bar-journal/foreign-grantor-trust-planning-a-flexible-planning-structure-for-u-s-income-tax/ (last visited Jan. 25, 2024).

the beneficiary, withholding future distributions to the beneficiary, or adopting another method or combination of methods.

Apportionment when Income Interest Ends

The bill amends s. 738.703, F.S., to incorporate the substance of former s. 738.303, F.S., which provides for the apportionment of income after an income interest ends. The bill also removes a provision for the proration of the unitrust amount under this section, as this concept is covered elsewhere in FUFIPA.

Relation to Electronic Signatures in Global and National Commerce Act

The bill amends s. 738.802, F.S., to replace existing law relocated elsewhere in the bill with a provision, not found in current law, specifying that FUFIPA modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act ("GNCA"),[23] with exceptions, but does not authorize electronic delivery of specified notices described in the GNCA.

Non-Substantive Changes

The bill makes non-substantive, technical changes to what are now numbered as ss. 738.402, 738.403, 738.501, 738.502, 738.503, 738.504, 738.508, 738.601, 738.602, 738.603, 738.605, 738.701, 738.702, and 738.801, F.S.

Severability

The bill amends s. 738.803, F.S., to provide for severability. Specifically, the bill states that if any provision of FUFIPA or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of FUFIPA which can be given effect without the invalid provisions or application.

Applicability

The bill amends s. 738.804, F.S., to provide that, except as otherwise provided by a trust's terms or the bill itself, the bill applies to any receipt or expense received or incurred and any disbursement made after January 1, 2025, by any trust or estate, regardless of when the trust or estate was established or the asset involved was acquired.

Effective Date

The bill provides an effective date of January 1, 2025.

B. SECTION DIRECTORY:

Section 1: Amends s. 738.101, F.S., relating to short title.
Section 2: Amends s. 738.102, F.S., relating to definitions.
Section 3: Amends s. 738.103, F.S., relating to fiduciary duties; general principles.
Section 4: Amends s. 738.104, F.S., relating to trustee's power to adjust.
Section 5: Repeals s. 738.1041, F.S., relating to total return unitrust.
Section 6: Repeals s. 738.105, F.S., relating to judicial control of discretionary powers.
Section 7: Amends s. 738.201, F.S., relating to determination and distribution of net income.
Section 8: Amends s. 738.202, F.S., relating to distribution to residuary and remainder beneficiaries.
Section 9: Creates s. 738.203, F.S., relating to fiduciary's power to adjust.
Section 10: Amends s. 738.301, F.S., relating to when right to income begins and ends.

[23] See 15. U.S.C. s. 7001(c). The GNCA provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce, allowing the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing.

Section 11: Amends s. 738.302, F.S., relating to apportionment of receipts and disbursements when decedent dies or income interest begins.
Section 12: Amends s. 738.303, F.S., relating to apportionment when income interest ends.
Section 13: Creates s. 738.304, F.S., relating to notice.
Section 14: Creates s. 738.305, F.S., relating to unitrust policy.
Section 15: Creates s. 738.306, F.S., relating to unitrust rate.
Section 16: Creates s. 738.307, F.S., relating to applicable value.
Section 17: Creates s. 738.308, F.S., relating to period.
Section 18: Creates s. 738.309, F.S., relating to express unitrust.
Section 19: Creates s. 738.310, F.S., relating to other rules.
Section 20: Amends s. 738.401, F.S., relating to character of receipts.
Section 21: Amends s. 738.402, F.S., relating to distribution from trust or estate.
Section 22: Amends s. 738.403, F.S., relating to business and other activities conducted by fiduciary.
Section 23: Creates s. 738.404, F.S., relating to principal receipts.
Section 24: Creates s. 738.405, F.S., relating to rental property.
Section 25: Creates s. 738.406, F.S., relating to receipt on obligation to be paid in money.
Section 26: Creates s. 738.407, F.S., relating to insurance policy on contracts.
Section 27: Creates s. 738.408, F.S., relating to insubstantial allocation not required.
Section 28: Creates s. 738.409, F.S., relating to deferred compensation, annuity, or similar payment.
Section 29: Renumbers and amends s. 738.603, F.S., relating to liquidating asset.
Section 30: Renumbers and amends s. 738.604, F.S., relating to minerals, water, and other natural resources.
Section 31: Renumbers and amends s. 738.605, F.S., relating to timber.
Section 32: Renumbers and amends s. 738.606, F.S., relating to property not productive of income.
Section 33: Renumbers and amends s. 738.607, F.S., relating to derivatives and options.
Section 34: Renumbers and amends s. 738.608, F.S., relating to asset-backed securities.
Section 35: Creates s. 738.416, F.S., relating to other financial instrument or arrangement.
Section 36: Amends. s. 738.501, F.S., relating to principal receipts.
Section 37: Amends s. 738.502, F.S., relating to rental property.
Section 38: Amends s. 738.503, F.S., relating to obligation to pay money.
Section 39: Amends s. 738.504, F.S., relating to insurance policies and similar contracts.
Section 40: Renumbers and amends s. 738.704, F.S., relating to transfers from income to reimburse principal.
Section 41: Renumbers and amends s. 738.705, F.S., relating to income taxes.
Section 42: Renumbers and amends s. 738.706, F.S., relating to adjustments between principal and income because of taxes.
Section 43: Creates s. 738.508, F.S., relating to apportionment of property expenses between tenant and remainderman.
Section 44: Amends s. 738.601, F.S., relating to insubstantial allocations not required.
Section 45: Amends s. 738.602, F.S., relating to payments from deferred compensation plans, annuities, and retirement plans or accounts.
Section 46: Amends s. 738.701, F.S., relating to disbursements from income.
Section 47: Amends s. 738.702, F.S., relating to disbursements from principal.
Section 48: Amends s. 738.703, F.S., relating to transfers from income to principal for depreciation.
Section 49: Amends s. 738.801, F.S., relating to apportionment of expenses; improvements.
Section 50: Amends s. 738.802, F.S., relating to uniformity of application and construction.
Section 51: Amends s. 738.803, F.S., relating to severability.

Section 52: Amends s. 738.804, F.S., relating to application.
Section 53: Provides an effective date of January 1, 2025.

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 will likely have a positive economic impact on the private sector to the extent that it provides more flexibility for individualized estate planning, allows for total-return investing under the "modern portfolio theory," and otherwise gives Floridians advantages that benefit their financial interests.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable.

2. Other:

   Federalism

   The framers of the United States Constitution allocated power among the federal and state governments, seeking to establish a unified national government of limited powers while carving out for the states a distinct sphere of autonomy for the exercise of general police powers.[24] Although the Constitution does not clearly delineate many of the boundaries between federal and state government powers, the Supreme Court has invoked certain constitutional provisions when determining whether a government has exceeded its constitutional authority.[25]

   One such provision is the Supremacy Clause, found in Article IV of the United States Constitution, which clause gives federal law supremacy over state law where the laws conflict.[26] Put another way,

[24] Library of Congress, *Constitution Annotated: Federalism and the Constitution*, https://constitution.congress.gov/browse/essay/intro.7-3/ALDE_00000032/ (last visited Jan. 25, 2024).
[25] *Id.*
[26] *Id.*

under the Supremacy Clause, a federal law preempts any conflicting state laws.[27] Another such provision is the Commerce Clause, found in Article I, section 8, clause 3 of the United States Constitution, which clause gives Congress broad power to regulate interstate and foreign commerce and restricts the states from impairing such commerce through the enactment of state laws.[28]

The bill amends s. 738.802, F.S., to specify that FUFIPA modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act ("GNCA"), using language similar to language already appearing elsewhere in Florida law. The GNCA is a federal law, codified at 15 U.S.C. s. 7001, which law provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce, allowing the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing. To the extent that, in a particular case, FUFIPA could conflict with the GNCA, or its application thereto otherwise could impair interstate or foreign commerce, a court may find the GNCA controls over the amendment to s. 738.802, F.S.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[27] *Id.*

[28] Library of Congress, *Constitution Annotated: Overview of Commerce Clause*, https://constitution.congress.gov/browse/essay/artI-S8-C3-1/ALDE_00013403/ (last visited Jan. 25, 2024).

A bill to be entitled

An act relating to the Florida Uniform Fiduciary Income and Principal Act; amending s. 738.101, F.S.; revising a short title; amending s. 738.102, F.S.; revising and providing definitions governing ch. 738, F.S.; amending s. 738.103, F.S.; specifying the scope of ch. 738, F.S.; amending s. 738.104, F.S.; specifying circumstances under which ch. 738, F.S., applies to a trust; repealing s. 738.1041, F.S., relating to total return unitrusts; repealing s. 738.105, F.S., relating to judicial control of discretionary powers; amending s. 738.201, F.S.; specifying the duties of a fiduciary; providing that a fiduciary's allocation, determination, or exercise of discretion is presumed to be fair and reasonable to all beneficiaries; requiring a fiduciary to take specified actions; authorizing a fiduciary to exercise discretionary power of administration under specified circumstances; requiring the fiduciary to consider specified factors before exercising such discretionary power; providing for applicability; amending s. 738.202, F.S.; defining the term "fiduciary decision"; prohibiting a court from ordering a fiduciary to change his or her decision unless the decision was an abuse of discretionary power; prohibiting a court from

determining that a fiduciary abused its discretion under specified conditions; authorizing a court to order a specified remedy; authorizing a court to determine whether a proposed fiduciary decision will result in an abuse of discretion; providing that a beneficiary who opposes a proposed decision has the burden to establish that such decision is an abuse of discretion; requiring that any attorney fees incurred in defending an action related to the abuse of a fiduciary's discretion be paid from trust assets; creating s. 738.203, F.S.; authorizing a fiduciary to adjust between income and principal if such adjustment assists in administering the trust or estate impartially; providing construction; providing that a fiduciary is not liable to another for an adjustment, or failure to adjust, between income and principal made in good faith; requiring a fiduciary to consider certain relevant factors when considering such adjustment; prohibiting a fiduciary from exercising or considering such adjustment if certain conditions exist; revising applicability; authorizing a fiduciary to release or delegate to a cofiduciary specified powers to adjust under specified conditions; providing requirements and powers for any such releases and delegations; providing applicability; requiring that

the description of an exercise of the power to adjust between income and principal contain specified information; amending s. 738.301, F.S.; defining terms; amending s. 738.302, F.S.; specifying applicability of specified provisions; authorizing the conversion of an income trust to a unitrust; restricting provisions to trusts that are beneficiaries of an estate; providing construction; providing that a fiduciary acting in good faith is not liable to a person affected by a certain action or inaction; amending s. 738.303, F.S.; specifying the authority of a fiduciary with respect to the administration of certain trusts; providing the circumstances under which a fiduciary may perform such actions; authorizing a beneficiary or a fiduciary to request the court to allow the beneficiary or fiduciary to take a specified action; requiring a fiduciary to inform specified persons of a decision to take action; authorizing a beneficiary to request a court to direct the fiduciary to take the requested action under specified circumstances; requiring fiduciaries to consider specified factors before taking a certain action; authorizing a fiduciary to release or delegate the power to take certain actions; creating s. 738.304, F.S.; requiring a certain notice

to be sent to specified parties; providing applicability; authorizing a person to consent to a specified action in a record; providing that such person does not need to be sent notice of such action; providing requirements for such notices; creating s. 738.305, F.S.; requiring a fiduciary of a unitrust to follow a certain policy; providing rules for a unitrust policy; providing additional actions a unitrust policy may contain; creating s. 738.306, F.S.; requiring a unitrust rate to be within a specified range; authorizing a unitrust policy to provide for specified limits within such range; requiring a fiduciary who is a non-independent person to use a specified unitrust rate; creating s. 738.307, F.S.; requiring a unitrust policy to provide a specified method for determining fair market value of an asset in determining a unitrust amount; authorizing specified unitrust policies to provide methods for determining a certain net fair market value; prohibiting certain property from being included in the determination of the value of a trust; creating s. 738.308, F.S.; requiring a unitrust policy to provide a specified period; specifying that such period must be a calendar year; authorizing a unitrust policy to provide certain standards for periods; creating s.

738.309, F.S.; providing applicability; authorizing a trustee of an express unitrust to determine the unitrust amount by reference to the net fair market value of the unitrust's assets in a specified timeframe; providing that distribution of a unitrust amount is considered a distribution of all the net income of an express unitrust and is considered an income interest; specifying that the unitrust amount is considered a reasonable apportionment of the total return of the express unitrust; providing that an express unitrust that allows a distribution in excess of a specified unitrust rate is considered a distribution of all of the income of the unitrust; authorizing an express unitrust to provide a mechanism for changing the unitrust rate and for conversion from a unitrust to an income trust or from an income trust to a unitrust; specifying that unless an express unitrust prohibits the power to change the rate or convert the trust, the trustee has such power; authorizing the governing instrument of an express unitrust to grant the trustee discretion to adopt a certain practice; specifying that unless an express unitrust provides otherwise, the distribution of an amount is considered a distribution from specified sources in a specified order of priority; authorizing

a governing instrument of an express unitrust to allow exclusion of specified assets; providing that the use of such assets may be considered equivalent to income or to the unitrust amount; creating s. 738.310, F.S.; requiring a trustee, after the conversion of an income trust to a unitrust, to consider the unitrust amount paid from certain sources in a specified order of priority; amending s. 738.401, F.S.; defining terms; specifying that an attribute or action of an entity includes an attribute or action from any other entity in which the initial entity has an ownership interest or holds another interest; requiring a fiduciary to allocate certain money and tangible personal property to income; requiring a fiduciary to allocate specified property and money to principal; providing that certain money received in an entity distribution is a capital distribution in specified circumstances; specifying that in cases of capital distribution, the amount received in an entity distribution must be reduced to the extent that cumulative distributions from the entity to the fiduciary are within certain ranges; authorizing a fiduciary to consider additional information before deciding to make or change a decision to make a payment to a beneficiary; providing that if a fiduciary receives specified additional

information after a distribution to a beneficiary, the fiduciary is not required to change or recover the payment; authorizing a fiduciary in such a situation to exercise other specified powers; revising definitions; requiring a fiduciary to allocate certain money and property to principal; providing the mechanism for such allocation; defining the term "public entity"; conforming provisions to changes made by the act; amending s. 738.402, F.S.; conforming provisions to changes made by the act; amending s. 738.403, F.S.; providing applicability; authorizing a fiduciary to make certain determinations separately and differently from the decisions concerning distributions of income or principal; conforming provisions to changes made by the act; making technical changes; creating s. 738.404, F.S.; specifying receipts that a fiduciary must allocate to principal; creating s. 738.405, F.S.; providing for the allocation of income from rental property; creating s. 738.406, F.S.; specifying applicability; requiring a fiduciary to allocate to income certain amounts received as interest; requiring a fiduciary to allocate to income increments in value of certain bonds or other obligations; creating s. 738.407, F.S.; specifying applicability; requiring a fiduciary to

allocate proceeds from insurance policies or contracts to principal in a specified manner; creating s. 738.408, F.S.; specifying circumstances under which a fiduciary may allocate an insubstantial allocation to principal, subject to certain conditions and limitations; creating s. 738.409, F.S.; defining terms; specifying the manner in which a fiduciary may determine incomes of separate funds; providing duties of a fiduciary of a marital trust and other trusts; requiring a fiduciary of a nonseparate fund to calculate internal income in a specified manner; providing construction; transferring, renumbering, and amending s. 738.603, F.S.; revising the definition of the term "liquidating asset"; providing applicability; requiring a fiduciary to allocate to income and principal the receipts produced by liquidating assets in a certain manner; transferring, renumbering, and amending s. 738.604, F.S.; requiring a fiduciary to allocate the receipts from interests in minerals, water, or other natural resources to income, principal, or between income and principal under specified conditions; revising applicability; providing that an allocation between income and principal from a receipt from a natural resource is presumed equitable under a specified condition;

providing construction; transferring, renumbering, and amending s. 738.605, F.S.; requiring a fiduciary to allocate receipts from timber to income, principal, or between income and principal under specified conditions; revising applicability; transferring, renumbering, and amending s. 738.606, F.S.; authorizing a settlor's spouse to require the trustee of a trust that receives certain property to make such property produce income under specified conditions; authorizing the trustee to take specified actions if directed by such spouse; providing that the trustee decides whether to take one or a combination of such actions; revising applicability; providing construction; transferring, renumbering, and amending s. 738.607, F.S.; revising the definition of the term "derivative"; requiring a fiduciary to allocate specified percentages of certain receipts and disbursements to income and allocate the balance to principal; providing construction; requiring certain fiduciaries to allocate a specified percentage to income and allocate the balance to principal of certain amounts; transferring, renumbering, and amending s. 738.608, F.S.; requiring a fiduciary to allocate to income a receipt from or related to asset-backed securities under a specified condition;

requiring a fiduciary to allocate to income a specified percentage of receipts from the transaction and the disbursement of a payment received as a result of an interest in an asset-backed security; conforming provisions to changes made by the act; creating s. 738.416, F.S.; requiring a fiduciary to make specified allocations from receipts from other financial instruments or arrangements; providing construction; amending s. 738.501, F.S.; specifying the manner by which a fiduciary must make disbursements from income; amending s. 738.502, F.S.; specifying the manner by which a fiduciary must make disbursements from principal; amending s. 738.503, F.S.; defining the term "depreciation"; specifying the manner by which a fiduciary may make transfers from income to principal to account for depreciation; amending s. 738.504, F.S.; specifying the manner by which a fiduciary may make transfers from principal to income for reimbursements; transferring, renumbering, and amending s. 738.704, F.S.; providing that a fiduciary that makes or expects to make a certain principal disbursement may transfer an appropriate amount from income to principal in one or more accounting periods; providing applicability; making technical changes; deleting a provision relating to payments necessary to

avoid defaulting on a mortgage or security interest on certain property; transferring, renumbering, and amending s. 738.705, F.S.; revising the sources from which a fiduciary must pay a tax required by a share of an entity's taxable income; requiring a fiduciary to adjust income or principal receipts if the taxes paid are reduced due to a deduction for a payment made to a beneficiary; providing construction; making technical changes; transferring, renumbering, and amending s. 738.706, F.S.; revising the circumstances under which a fiduciary may make adjustments between income and principal to offset shifts in the economic interests or tax benefits of specified beneficiaries; requiring a fiduciary to charge a beneficiary to reimburse the principal if the beneficiary benefits from an applicable tax deduction; requiring the share of reimbursement for each fiduciary or beneficiary to be the same as its share of the decrease in income tax; authorizing such fiduciary to charge a beneficiary to offset the estate tax by obtaining payment from the beneficiary, withholding an amount from future distributions, or adopting another method or combination of methods; creating s. 738.508, F.S.; defining terms; specifying the manner by which property expenses are apportioned between a tenant and

remainderman; providing applicability and construction; amending s. 738.601, F.S.; providing applicability; specifying the manner by which a fiduciary determines and distributes net income; providing circumstances under which a fiduciary may not reduce certain principal or income receipts; amending s. 738.602, F.S.; providing that certain beneficiaries of non-unitrusts are entitled to receive a specified share of net income; providing that certain requirements apply in determining a beneficiary's share of net income; providing construction; amending s. 738.701, F.S.; providing that an income beneficiary is entitled to net income when an asset is subject to a certain trust or successive interest; providing that an asset becomes subject to a specified trust on certain dates; amending s. 738.702, F.S.; specifying the manner by which a fiduciary allocates certain receipts and makes disbursements when a decedent dies or income interest begins; providing construction; amending s. 738.703, F.S.; defining the term "undistributed income"; specifying the manner by which a fiduciary makes allocations of undistributed income when income interest ends; amending s. 738.801, F.S.; providing for uniform application and construction of the act;

amending s. 738.802, F.S.; providing construction in relation to federal law; amending s. 738.803, F.S.; making a technical change; amending s. 738.804, F.S.; revising application of ch. 738, F.S., to conform to changes made by the act; providing an effective date.

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

Section 1. Section 738.101, Florida Statutes, is amended to read:

738.101 Short title.—This chapter may be cited as the "Florida Uniform Fiduciary Income and Principal ~~and Income~~ Act."

Section 2. Section 738.102, Florida Statutes, is amended to read:

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

(1) "Accounting period" means a calendar year unless ~~another 12-month period is selected by~~ a fiduciary selects another period of 12 calendar months or approximately 12 calendar months. The term includes a part ~~portion~~ of a calendar year or another period of 12 calendar months or approximately 12 calendar months which ~~other 12-month period that begins when an income interest~~ begins or ends when an income interest ends.

(2) "Asset-backed security," as provided in s. 738.415, means a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other

financial assets that by their terms convert to cash within a finite time. The term includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security. The term does not include an asset to which s. 738.401, s. 738.409, or s. 738.414 applies.

(3) "Beneficiary" includes:

(a) For a trust:

1. A current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;

2. A remainder beneficiary; and

3. Any other successor beneficiary;

(b) For an estate, an heir, and a devisee; and

(c) For a life estate or term interest, a person who holds a life estate, a term interest, or a remainder or other interest following a life estate or term interest ~~means, in the case of a decedent's estate, an heir or devisee and, in the case of a trust, an income beneficiary or a remainder beneficiary~~.

(4)~~(3)~~ "Carrying value" means the fair market value at the time the assets are received by the fiduciary. For an estate and for a trust ~~the estates of decedents and trusts~~ described in s. 733.707(3), after the grantor's death, the assets are considered received as of the date of the settlor's death. If there is a change in fiduciaries, a majority of the continuing fiduciaries may elect to adjust the carrying values to reflect the fair market value of the assets at the beginning of their

administration. If such election is made, it must be reflected on the first accounting filed after the election. For assets acquired during the administration of the estate or trust, the carrying value is equal to the acquisition costs of the asset. Carrying value of assets should not be arbitrarily "written up" or "written down." In some circumstances, including, but not limited to, those described in ss. 738.410 and 738.602, carrying value may be adjusted with proper disclosure to reflect changes in carrying value applied in a consistent manner.

(5) "Court" means a circuit court of this state.

(6) "Current income beneficiary" means a beneficiary to which a fiduciary may distribute net income, regardless of whether the fiduciary also distributes principal to the beneficiary.

(7) "Distribution," "distribute," "distributed," or "distributee" means a payment or transfer by a fiduciary to a beneficiary in the beneficiary's capacity as a beneficiary, without consideration other than the beneficiary's right to receive the payment or transfer under the terms of the trust as defined in this section, or in a will, a life estate, or a term interest.

(8) "Estate" means a decedent's estate, including the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration.

(9) ~~(4)~~ "Fiduciary" includes ~~means~~ a trustee, a trust director as defined in s. 736.0103, or a personal representative, and a person acting under a delegation from a fiduciary ~~or a trustee~~. The term also includes a person that holds property for a successor beneficiary whose interest may be affected by an allocation of receipts and expenditures between income and principal. If there are two or more cofiduciaries, the term includes all cofiduciaries acting under the terms of the trust and applicable law ~~an executor, administrator, successor personal representative, special administrator, or a person performing substantially the same function~~.

(10) ~~(5)~~ "Income" means money or other property ~~that~~ a fiduciary receives as current return from ~~a~~ principal ~~asset~~. The term includes a part ~~portion~~ of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in ss. 738.401-738.416 ~~ss. 738.401-738.403 and s. 738.503~~.

~~(6) "Income beneficiary" means a person to whom net income of a trust is or may be payable.~~

(11) ~~(7)~~ "Income interest" means the right of a current ~~an~~ income beneficiary to receive all or part of net income, whether the terms of the trust require the net income to be distributed or authorize the net income to be distributed in the fiduciary's ~~trustee's~~ discretion. The term includes the right of a current beneficiary to use property held by a fiduciary.

(12) "Independent person" means a person who is not:

(a) For a trust:

1. A qualified beneficiary as defined in s. 736.0103;

2. A settlor of the trust;

3. An individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust; or

4. Any trustee whom an interested distributee has the power to remove and replace with a related or subordinate party.

(b) For an estate, a beneficiary;

(c) A spouse, a parent, a brother, a sister, or an issue of an individual described in paragraph (a) or paragraph (b);

(d) A corporation, a partnership, a limited liability company, or another entity in which persons described in paragraphs (a), (b), and (c), in the aggregate, have voting control; or

(e) An employee of a person described in paragraph (a), paragraph (b), paragraph (c), or paragraph (d).

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(14) ~~(8)~~ "Mandatory income interest" means the right of a current ~~an~~ income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(15) ~~(9)~~ "Net income" means the total allocations ~~receipts allocated to income~~ during an accounting period to income under the terms of a trust and this chapter minus the disbursements

~~made from income~~ during the period, other than distributions, allocated to income under the terms of the trust and this chapter. To the extent that the trust is a unitrust under ss. 738.301-738.310, the term means the unitrust amount determined under ss. 738.301-738.310. The term includes the amount of an adjustment from principal to income under s. 738.203. The term does not include the amount of an adjustment ~~plus or minus transfers under this chapter to or~~ from income to principal under s. 738.203 ~~during the period~~.

(16) ~~(10)~~ "Person" means an individual, a business or a nonprofit entity, ~~corporation, business trust,~~ an estate, a trust, ~~partnership, limited liability company, association, joint venture,~~ a public corporation, ~~or any other legal or commercial entity or~~ a government or governmental subdivision, agency, or instrumentality, or other legal entity.

(17) "Personal representative" means an executor, an administrator, a successor personal representative, a special administrator, or a person that performs substantially the same function with respect to an estate under the law governing the person's status.

(18) ~~(11)~~ "Principal" means property held in trust for distribution to, production of income for, or use by a current or successor ~~a remainder~~ beneficiary ~~when the trust terminates~~.

(19) "Record" means information inscribed on a tangible medium or stored in an electronic or other medium and is

retrievable in perceivable form.

(20) "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, the term includes each person, to the extent of the trust property attributable to that person's contribution, except to the extent that another person has the power to revoke or withdraw that portion.

(21) "Special tax benefit" means:

(a) Exclusion of a transfer to a trust from gifts described in s. 2503(b) of the Internal Revenue Code because of the qualification of an income interest in the trust as a present interest in property;

(b) Status as a qualified subchapter S trust described in s. 1361(d)(3) of the Internal Revenue Code at a time the trust holds stock of an S corporation described in s. 1361(a)(1) of the Internal Revenue Code;

(c) An estate or gift tax marital deduction for a transfer to a trust under s. 2056 or s. 2523 of the Internal Revenue Code which depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust;

(d) Exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by s. 2601 of the Internal Revenue Code because the trust was irrevocable on September 25, 1985, if there is any possibility that:

1. A taxable distribution as defined in s. 2612(b) of the Internal Revenue Code could be made from the trust; or

2. A taxable termination as defined in s. 2612(a) of the Internal Revenue Code could occur with respect to the trust; or

(e) An inclusion ratio as defined in s. 2642(a) of the Internal Revenue Code of the trust which is less than one, if there is any possibility that:

1. A taxable distribution as defined in s. 2612(b) of the Internal Revenue Code could be made from the trust; or

2. A taxable termination as defined in s. 2612(a) of the Internal Revenue Code could occur with respect to the trust.

(22) "Successive interest" means the interest of a successor beneficiary.

(23) ~~(12)~~ "Successor ~~Remainder~~ beneficiary" means a person entitled to receive income or principal or to use property when an income interest or other current interest ends.

(24) ~~(13)~~ "Terms of a trust" means:

(a) Except as otherwise provided in paragraph (b), the manifestation of the settlor's intent regarding a trust's provisions as:

1. Expressed in the will or trust instrument; or

2. Established by other evidence that would be admissible in a judicial proceeding.

(b) The trust's provisions as established, determined, or amended by:

1. A trustee or trust director in accordance with the applicable law;

2. A court order; or

3. A nonjudicial settlement agreement under s. 736.0111.

(c) For an estate, a will; or

(d) For a life estate or term interest, the corresponding manifestation of the rights of the beneficiaries to the extent provided in s. 738.508 ~~the manifestation of the intent of a grantor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct~~.

(25) "Trust" includes an express trust, whether private or charitable, with additions to the trust, wherever and however created; and a trust created or determined by a judgment or decree under which the trust is to be administered. The term does not include a constructive trust; a resulting trust; a conservatorship; a custodial arrangement under the Florida Uniform Transfers to Minors Act; a business trust providing for certificates to be issued to beneficiaries; a common trust fund; a land trust under s. 689.071; a trust created by the form of the account or by the deposit agreement at a financial institution; a voting trust; a security arrangement; a liquidation trust; a trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, retirement benefits, or employee benefits of any kind; or an

arrangement under which a person is a nominee, an escrowee, or an agent for another.

(26) ~~(14)~~ "Trustee" means a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary. The term includes an original, additional, or successor trustee, regardless of whether they are ~~or not~~ appointed or confirmed by a court.

(27) "Will" means any testamentary instrument recognized under applicable law which makes a legally effective disposition of an individual's property, effective at the individual's death. The term includes a codicil or other amendment to a testamentary instrument.

Section 3. Section 738.103, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.103, F.S., for present text.)

738.103 Scope.—Except as otherwise provided in the terms of a trust or this chapter, this chapter applies to all of the following:

(1) A trust or an estate.

(2) A life estate or other term interest in which the interest of one or more persons will be succeeded by the interest of one or more other persons to the extent provided in s. 738.508.

Section 4. Section 738.104, Florida Statutes, is amended

to read:

(Substantial rewording of section. See s. 738.104, F.S., for present text.)

738.104 Governing law.—Except as otherwise provided in the terms of a trust or this chapter, this chapter applies when this state is the principal place of administration of a trust or estate or the situs of property that is not held in a trust or estate and is subject to a life estate or other term interest described in s. 738.103(2). By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration of a trust to this state, the trustee submits to the application of this chapter to any matter within the scope of this chapter involving the trust.

Section 5. Section 738.1041, Florida Statutes, is repealed.

Section 6. Section 738.105, Florida Statutes, is repealed.

Section 7. Section 738.201, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.201, F.S., for present text.)

738.201 Fiduciary duties; general principles.—

(1) In making an allocation or determination or exercising discretion under this chapter, a fiduciary shall do all of the following:

(a) Act in good faith, based on what is a fair and reasonable fee to all beneficiaries;

(b) Administer a trust or estate impartially, except to the extent that the terms of the trust manifest an intent that the fiduciary favors one or more beneficiaries;

(c) Administer the trust or estate in accordance with the terms of the trust, even if there is a different provision in this chapter.

(d) Administer the trust or estate in accordance with this chapter, except to the extent that the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

(2) A fiduciary's allocation, determination, or exercise of discretion under this chapter is presumed to be fair and reasonable to all beneficiaries. A fiduciary may exercise a discretionary power of administration given to the fiduciary by the terms of the trust, and an exercise of the power that produces a result different from a result required or permitted by this chapter does not create an inference that the fiduciary abused the fiduciary's discretion.

(3) A fiduciary shall:

(a) Add a receipt to principal, to the extent that the terms of the trust and this chapter do not allocate the receipt between income and principal;

(b) Charge a disbursement to principal, to the extent that

the terms of the trust and this chapter do not allocate the disbursement between income and principal; and

(c) Within 65 days after the fiscal year ends, add any undistributed income to principal, unless otherwise provided by the terms of the trust.

(4) A fiduciary may exercise the power to adjust under s. 738.203(1), convert an income trust to a unitrust under ss. 738.301-738.310, change the percentage or method used to calculate a unitrust amount under ss. 738.301-738.310, or convert a unitrust to an income trust under ss. 738.301-738.310 if the fiduciary determines the exercise of the power will assist the fiduciary to administer the trust or estate impartially.

(5) The fiduciary must consider the following factors in making the determination in subsection (4), including:

(a) The terms of the trust.

(b) The nature, distribution standards, and expected duration of the trust.

(c) The effect of the allocation rules, including specific adjustments between income and principal, under ss. 738.301-738.416.

(d) The desirability of liquidity and regularity of income.

(e) The desirability of the preservation and appreciation of principal.

(f) The extent to which an asset is used or may be used by a beneficiary.

(g) The increase or decrease in the value of principal assets, reasonably determined by the fiduciary.

(h) Whether and to what extent the terms of the trust give the fiduciary power to accumulate income or invade principal or prohibit the fiduciary from accumulating income or invading principal.

(i) The extent to which the fiduciary has accumulated income or invaded principal in preceding accounting periods.

(j) The effect of current and reasonably expected economic conditions.

(k) The reasonably expected tax consequences of the exercise of the power.

(l) The identities and circumstances of the beneficiaries.

(6) Except as provided in ss. 738.301-738.310, this chapter pertains to the administration of a trust and is applicable to any trust that is administered in this state or under its law. This chapter also applies to any estate that is administered in this state unless the provision is limited in application to a trustee, rather than a fiduciary.

Section 8. Section 738.202, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.202, F.S., for present text.)

738.202 Judicial review of exercise of discretionary power; request for instruction.—

(1) As used in this section, the term "fiduciary decision" means any of the following:

(a) A fiduciary's allocation between income and principal or other determination regarding income and principal required or authorized by the terms of the trust or this chapter.

(b) The fiduciary's exercise or nonexercise of a discretionary power regarding income and principal granted by the terms of the trust or this chapter, including the power to adjust under s. 738.203, convert an income trust to a unitrust under ss. 738.301-738.310, change the percentage of method used to calculate a unitrust amount under ss. 738.301-738.310, convert a unitrust to an income trust under ss. 738.301-738.310, or the method used to make property productive of income under s. 738.413.

(c) The fiduciary's implementation of a decision described in paragraph (a) or paragraph (b).

(2) The court may not order a fiduciary to change a fiduciary decision unless the court determines that the fiduciary decision was an abuse of the fiduciary's discretion. A court may not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(3) If the court determines that a fiduciary decision was

an abuse of the fiduciary's discretion, the court may order a remedy authorized by law, including those prescribed under ss. 736.1001 and 736.1002. Following such a determination by the court, the remedy is to place the beneficiaries in the positions the beneficiaries would have occupied if the fiduciary had not abused its discretion, as follows:

(a) The court may order the fiduciary to exercise or refrain from exercising the power to adjust under s. 738.203;

(b) The court may order the fiduciary to exercise or refrain from exercising the power to convert an income trust to a unitrust under ss. 738.301-738.310, change the percentage or method used to calculate a unitrust amount under ss. 738.301-738.310, or convert a unitrust to an income trust under ss. 738.301-738.310;

(c) The court may compel the fiduciary to take any of the actions listed under s. 738.413;

(d) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute from the trust to the beneficiary an amount the court determines will restore the beneficiary, in whole or in part, to his or her appropriate position;

(e) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries, the trust, or both,

in whole or in part, to their appropriate positions by requiring the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary to return some or all of the distribution to the trust; or

(f) To the extent that the court is unable, after applying paragraphs (a)-(e), to restore the beneficiaries or the trust, or both, to the positions they would have occupied if the fiduciary had not abused its discretion, the court may require the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

(4) On petition by the fiduciary for instruction, the court may determine whether a proposed fiduciary decision will result in an abuse of the fiduciary's discretion. If the petition describes the proposed decision, contains sufficient information to inform the beneficiary of the reasons for making the proposed decision and the facts on which the fiduciary relies, and explains how the beneficiary will be affected by the proposed decision, a beneficiary who opposes the proposed decision has the burden to establish that it will result in an abuse of the fiduciary's discretion.

(5) If an action is instituted alleging an abuse of discretion in the exercise or nonexercise of the fiduciary's discretion under this chapter and the court determines no abuse of discretion has occurred, the fiduciary's costs and attorney

fees incurred in defending the action shall be paid from the trust assets.

Section 9. Section 738.203, Florida Statutes, is created to read:

738.203 Fiduciary's power to adjust.—

(1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record without court approval, may adjust between income and principal if the fiduciary determines that the exercise of the power to adjust will assist the fiduciary in administering the trust or estate impartially.

(2) This section does not create a duty to exercise or consider the power to adjust under subsection (1) or to inform a beneficiary about the applicability of this section.

(3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under subsection (1) is not liable to a person affected by the exercise or failure to exercise.

(4) In deciding whether and to what extent to exercise the power to adjust under subsection (1), a fiduciary shall consider all factors the fiduciary considers relevant, including relevant factors in s. 738.201(5) and ss. 738.408 and 738.413.

(5) A fiduciary may not exercise the power under subsection (1) to make an adjustment or under s. 738.408 to make a determination that an allocation is insubstantial if:

(a) The adjustment or determination would reduce the

amount payable to a current income beneficiary from a trust that qualifies for a special tax benefit, except to the extent that the adjustment is made to provide for a reasonable apportionment of the total return of the trust between the current income beneficiary and successor beneficiaries;

(b) The adjustment or determination would change the amount payable to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

(c) The adjustment or determination would reduce an amount that is permanently set aside for a charitable purpose under the terms of the trust unless both income and principal are set aside for the charitable purpose;

(d) Possessing or exercising the power would cause a person to be treated as the owner of all or part of the trust for federal income tax purposes and the person would not be treated as the owner if the fiduciary did not possess the power to adjust;

(e) Possessing or exercising the power would cause all or part of the value of the trust assets to be included in the gross estate of an individual for federal real estate tax purposes and the assets would not be included in the gross estate of the individual if the fiduciary did not possess the power to adjust;

(f) Possessing or exercising the power would cause an

individual to be treated as making a gift for federal gift tax purposes;

(g) The fiduciary is not an independent person;

(h) The trust is irrevocable and provides for income to be paid to the settlor, and possessing or exercising the power would cause the adjusted principal or income to be considered an available resource or available income under a public-benefit program; or

(i) The trust is a unitrust under ss. 738.301-738.310.

(6) If paragraph (5)(d), paragraph (5)(e), paragraph (5)(f), or paragraph (5)(g) applies to a fiduciary:

(a) A cofiduciary to which paragraphs (5)(d)-(g) do not apply may exercise the power to adjust, unless the exercise of the power by the remaining cofiduciary or cofiduciaries is not permitted by the terms of the trust or law other than this chapter; or

(b) If there is no cofiduciary to which paragraphs (5)(d)-(g) do not apply, the fiduciary may appoint a cofiduciary to which paragraphs (5)(d)-(g) do not apply which may be a special fiduciary with limited powers, and the appointed cofiduciary may exercise the power to adjust under subsection (1), unless the appointment of a cofiduciary or the exercise of the power by a cofiduciary is not permitted by the terms of the trust or law other than this chapter.

(7) A fiduciary may release or delegate to a cofiduciary

the power to adjust under subsection (1) if the fiduciary determines that the fiduciary's possession or exercise of the power will or may:

(a) Cause a result described in paragraph (5)(a), paragraph (5)(b), paragraph (5)(c), paragraph (5)(d), paragraph (5)(e), paragraph (5)(f), or paragraph (5)(h); or

(b) Deprive the trust of a tax benefit or impose a tax burden not described in paragraph (5)(a), paragraph (5)(b), paragraph (5)(c), paragraph (5)(d), paragraph (5)(e), or paragraph (5)(f).

(8) A fiduciary's release or delegation to a cofiduciary under subsection (7) of the power to adjust under subsection (1):

(a) Must be in a record;

(b) Applies to the entire power, unless the release or delegation provides a limitation, which may be a limitation to the power to adjust:

1. From income to principal;

2. From principal to income;

3. For specified property; or

4. In specified circumstances.

(c) For a delegation, may be modified by a redelegation under this subsection by the cofiduciary to which the delegation is made; and

(d) Subject to paragraph (c), is permanent, unless the

release or delegation provides a specified period, including a period measured by the life of an individual or the lives of more than one individual.

(9) Terms of a trust that deny or limit the power to adjust between income and principal do not affect the application of this section, unless the terms of the trust expressly deny or limit the power to adjust under subsection (1).

(10) The exercise of the power to adjust under subsection (1) in any accounting period may apply to the current period, the immediately preceding period, and one or more subsequent periods.

(11) A description of the exercise of the power to adjust under subsection (1) must be:

(a) Included in a report, if any, sent to beneficiaries under s. 736.0813; or

(b) Communicated at least annually to the qualified beneficiaries as defined in s. 736.0103 other than the Attorney General.

(12) With respect to a trust in existence on January 1, 2003:

(a) A fiduciary may not have the power to adjust under this section until the statement required in subsection (13) is provided and either no objection is made or any objection which is made has been terminated.

1. An objection is made if, within 60 days after the date of the statement required in subsection (13), a super majority of the eligible beneficiaries deliver to the fiduciary a written objection to the application of this section to such trust. An objection shall be deemed to be delivered to the fiduciary on the date the objection is mailed to the mailing address listed in the notice provided in subsection (13).

2. An objection is terminated upon the earlier of the receipt of consent from a super majority of eligible beneficiaries of the class that made the objection, or the resolution of the objection under paragraph (c).

(b) An objection or consent under this section may be executed by a legal representative or natural guardian of a beneficiary without the filing of any proceeding or approval of any court.

(c) If an objection is delivered to the fiduciary, then the fiduciary may petition the circuit court for an order quashing the objection and vesting in such fiduciary the power to adjust under this section. The burden will be on the objecting beneficiaries to prove that the power to adjust would be inequitable, illegal, or otherwise in contravention of the grantor's intent. The court may award costs and attorney fees relating to the fiduciary's petition in the same manner as in chancery actions. When costs and attorney fees are to be paid out of the trust, the court may, in its discretion, direct from

which part of the trust they shall be paid.

(d) If no timely objection is made or if the fiduciary is vested with the power to adjust by court order, the fiduciary may thereafter exercise the power to adjust without providing notice of its intent to do so unless, in vesting the fiduciary with the power to adjust, the court determines that unusual circumstances require otherwise.

(e)1. If a fiduciary makes a good faith effort to comply with the notice provisions of subsection (13), but fails to deliver notice to one or more beneficiaries entitled to such notice, neither the validity of the notice required under this subsection nor the fiduciary's power to adjust under this section shall be affected until the fiduciary has actual notice that one or more beneficiaries entitled to notice were not notified. Until the fiduciary has actual notice of the notice deficiency, the fiduciary shall have all of the powers and protections granted a fiduciary with the power to adjust under this chapter.

2. When the fiduciary has actual notice that one or more beneficiaries entitled to notice under subsection (13) were not notified, the fiduciary's power to adjust under this section shall cease until all beneficiaries who are entitled to such notice, including those who were previously provided with such notice, are notified and given the opportunity to object as provided for under this subsection.

(f) The objection of a super majority of eligible beneficiaries under this subsection shall be valid for a period of 1 year after the date of the notice set forth in subsection (13). Upon expiration of the objection, the fiduciary may thereafter give a new notice under subsection (13).

(g) This section is not intended to create or imply a duty of the fiduciary of a trust existing on January 1, 2003, to seek a power to adjust under this subsection or to give the notice described in subsection (13) if the fiduciary does not desire to have a power to adjust under this section, and no inference of impropriety shall be made as the result of a fiduciary not seeking a power to adjust under this subsection.

(13)(a) A fiduciary of a trust in existence on January 1, 2003, that is not prohibited under subsection (5) from exercising the power to adjust shall, any time before initially exercising the power, provide to all eligible beneficiaries a statement containing the following:

1. The name, telephone number, street address, and mailing address of the fiduciary and of any person who may be contacted for further information;

2. A statement that unless a super majority of the eligible beneficiaries objects to the application of this section to the trust within 60 days after the date the statement pursuant to this subsection was served, this section shall apply to the trust; and

3. A statement that, if this section applies to the trust, the fiduciary will have the power to adjust between income and principal and that such a power may have an effect on the distributions to such beneficiary from the trust.

(b) The statement may contain information regarding a fiduciary's obligation with respect to the power to adjust between income and principal under this section.

(c) The statement shall be served informally, in the manner provided in the Florida Rules of Civil Procedure relating to service of pleadings subsequent to the initial pleading. The statement may be served on a legal representative or natural guardian of a beneficiary without the filing of any proceeding or approval of any court.

(14) For purposes of subsections (12) and (13), the term:

1. "Eligible beneficiaries" means:

a. If at the time the determination is made there are one or more beneficiaries described in s. 736.0103(19)(c), the beneficiaries described in s. 736.0103(19)(a) and (c); or

b. If there is no beneficiary described in s. 736.0103(19)(c), the beneficiaries described in s. 736.0103(19)(a) and (b).

2. "Super majority of the eligible beneficiaries" means:

a. If at the time the determination is made there are one or more beneficiaries described in s. 736.0103(19)(c), at least two-thirds in interest of the beneficiaries described in s.

736.0103(19)(a) or two-thirds in interest of the beneficiaries described in s. 736.0103(19)(c), if the interests of the beneficiaries are reasonably ascertainable; otherwise, it means two-thirds in number of either such class; or

b. If there is no beneficiary described in s. 736.0103(19)(c), at least two-thirds in interest of the beneficiaries described in s. 736.0103(19)(a) or two-thirds in interest of the beneficiaries described in s. 736.0103(19)(b), if the interests of the beneficiaries are reasonably ascertainable, otherwise, two-thirds in number of either such class.

(15) A trust exists on January 1, 2003, if it is not revocable on January 1, 2003. A trust is revocable if revocable by the grantor alone or in conjunction with any other person. A trust is not revocable for purposes of this section if revocable by the grantor only with the consent of all persons having a beneficial interest in the property.

Section 10. Section 738.301, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.301, F.S., for present text).

738.301 Definitions.—For purposes of this section and ss. 738.302-738.310:

(1) "Applicable value" means the amount of the net fair market value of a trust taken into account under s. 738.307.

(2) "Express unitrust" means a trust for which, under the terms of the trust without regard to this section and ss. 738.302-738.310, net income must be calculated as a unitrust amount.

(3) "Income trust" means a trust, created by an inter vivos or testamentary instrument, that directs or permits the trustee to distribute the net income of the trust to one or more persons, in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

(4) "Net fair market value of a trust" means the fair market value of the assets of the trust, less the reasonably known noncontingent liabilities of the trust.

(5) "Unitrust" means a trust for which net income is a unitrust amount. The term includes an express unitrust.

(6) "Unitrust amount" means an amount computed by multiplying a determined value of a trust by a determined percentage. For a unitrust administered under a unitrust policy, the term means the applicable value multiplied by the unitrust rate.

(7) "Unitrust policy" means a policy described in ss. 738.301-738.310 and adopted under s. 738.303.

(8) "Unitrust rate" means the rate used to compute the unitrust amount for a unitrust administered under a unitrust

policy.

Section 11. Section 738.302, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.302, F.S., for present text.)

738.302 Applications; duties and remedies.—

(1) Except as otherwise provided in subsection (2), ss. 738.301-738.310 apply to all of the following:

(a) An income trust, unless the terms of the trust expressly prohibit the use of ss. 738.301-738.310 by a specific reference to this paragraph or corresponding provision of prior law, or an explicit expression of intent that net income not be calculated as a unitrust amount.

(b) An express unitrust, except to the extent that the terms of the trust explicitly:

1. Prohibit the use of ss. 738.301-738.310 by a specific reference to this paragraph or corresponding provision of prior law;

2. Prohibit conversion to an income trust; or

3. Limit changes to the method of calculating the unitrust amount.

(c) A unitrust that had been converted from an income trust.

(2) The provisions of ss. 738.301-738.310 do not apply to a trust described in s. 170(f)(2)(B), s. 642(c)(5), s. 664(d),

s. 2702(a)(3)(A)(ii) or (iii), or s. 2702(b) of the Internal Revenue Code.

(3) An income trust to which ss. 738.301-738.310 apply under paragraph (1)(a) may be converted to a unitrust under ss. 738.301-738.310 regardless of the terms of the trust concerning distributions. Conversion to a unitrust under ss. 738.301-738.310 does not affect other terms of the trust concerning distributions of income or principal.

(4) Sections 738.301-738.310 apply to an estate only to the extent that a trust is a beneficiary of the estate. To the extent of the trust's interest in the estate, the estate may be administered as a unitrust, the administration of the estate as a unitrust may be discontinued, or the percentage or method used to calculate the unitrust amount may be changed, in the same manner as for a trust under those sections.

(5) The provisions of ss. 738.301-738.310 do not create a duty to take or consider action under ss. 738.301-738.310 or to inform a beneficiary about the applicability of ss. 738.301-738.310.

(6) A fiduciary that in good faith takes or fails to take an action under ss. 738.301-738.310 is not liable to a person affected by the action or inaction.

Section 12. Section 738.303, Florida Statutes, is amended to read:

(Substantial rewording of section. See

s. 738.303, F.S., for present text.)

738.303 Authority of fiduciary.—

(1) By complying with subsections (2) and (6), and without court approval, a fiduciary may do any of the following:

(a) Convert an income trust to a unitrust if the fiduciary adopts in a record a unitrust policy for the trust which provides:

1. That in administering the trust, the net income of the trust will be a unitrust amount rather than net income determined without regard to ss. 738.301-738.310; and

2. The percentage and method used to calculate the unitrust amount.

(b) Change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing charges in the percentage or method used to calculate the unitrust amount.

(c) Convert a unitrust to an income trust if the fiduciary adopts in a record a determination that, in administering the trust, the net income of the trust will be net income determined without regard to ss. 738.301-738.310 rather than a unitrust amount.

(2) A fiduciary may take an action under subsection (1) if all of the following apply:

(a) The fiduciary determines that the action will assist

the fiduciary to administer a trust impartially.

(b) The fiduciary sends a notice in a record to the qualified beneficiaries determined under ss. 736.0103 and 736.0110 in the manner required by s. 738.304, describing and proposing to take the action.

(c) The fiduciary sends a copy of the notice under paragraph (b) to each settlor of the trust which is:

1. If an individual, living; or

2. If not an individual, in existence.

(d) At least one member of each class of the qualified beneficiaries determined under ss. 736.0103 and 736.0110, other than the Attorney General, receiving the notice under paragraph (b) is:

1. If an individual, legally competent;

2. If not an individual, in existence; or

3. Represented in the manner provided in s. 738.304(2).

(e) The fiduciary does not receive, by the date specified in the notice under s. 738.304(4)(e), an objection in a record to the action proposed under paragraph (b) from a person to which the notice under paragraph (b) is sent.

(3) If a fiduciary receives, not later than the date stated in the notice under s. 738.304(4)(e), an objection in a record described in s. 738.304(4)(d) to a proposed action, the fiduciary or a beneficiary may request the court to have the action taken as proposed, taken with modifications, or

prevented. A person described in s. 738.304(1) may oppose the proposed action in the proceeding under this subsection regardless of whether the person:

(a) Consented under s. 738.304(3); or

(b) Objected under s. 738.304(4)(d).

(4) If, after sending a notice under paragraph (2)(b), a fiduciary decides not to take the action proposed in the notice, the fiduciary must notify in a record each person described in s. 738.304(1) of the decision not to take the action and the reasons for the decision.

(5) If a beneficiary requests in a record that a fiduciary take an action described in subsection (1) and the fiduciary declines to act or does not act within 60 days after receiving the request, the beneficiary may request the court to direct the fiduciary to take the action requested.

(6) In deciding whether and how to take an action authorized in subsection (1), or whether and how to respond to a request by a beneficiary under subsection (5), a fiduciary must consider all factors relevant to the trust and beneficiaries, including the relevant factors listed in s. 738.201(5).

(7) A fiduciary may release or delegate the power to convert an income trust to a unitrust under paragraph (1)(a), change the percentage or method used to calculate a unitrust amount under paragraph (1)(b), or convert a unitrust to an income trust under paragraph (1)(c), for a reason described in

s. 738.203(7) and in the manner described in s. 738.203(8).

Section 13. Section 738.304, Florida Statutes, is created to read:

738.304 Notice.—

(1) A notice required by s. 738.303(2)(b) must be sent in a manner authorized under s. 736.0109 to all of the following:

(a) The qualified beneficiaries as defined in s. 736.0103, other than the Attorney General.

(b) Each person that is granted a power over the trust by the terms of the trust, to the extent that the power is exercisable when the person is not then serving as a trustee:

1. Including all of the following:

a. Power over the investment, management, or distribution of trust property or other matters of trust administration.

b. Power to appoint or remove a trustee or person described in this paragraph.

2. Excluding all of the following:

a. Power of appointment.

b. Power of a beneficiary over the trust, to the extent that the exercise or nonexercise of the power affects the beneficial interest of the beneficiary or another beneficiary represented by the beneficiary under ss. 736.0301-736.0306 with respect to the exercise or nonexercise of the power.

c. Power over the trust if the terms of the trust provide that the power is held in a nonfiduciary capacity and the power

must be held in a nonfiduciary capacity to achieve a tax objective under the Internal Revenue Code.

(c) Each person that is granted a power by the terms of the trust to appoint or remove a trustee or person described in paragraph (b) to the extent that the power is exercisable when the person that exercises the power is not serving as a trustee or person described in paragraph (b).

(2) The representation provisions of ss. 736.0301-736.0306 apply to notice under this section.

(3) A person may consent in a record at any time to action proposed under s. 738.303(2)(b). A notice required by s. 738.303(2)(b) need not be sent to a person that consents under this subsection.

(4) A notice required under s. 738.303(2)(b) must include all of the following:

(a) The action proposed under s. 738.303(2)(b).

(b) For a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under s. 738.303(1)(a).

(c) For a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under s. 738.303(1)(b).

(d) A statement that the person to which the notice is sent may object to the proposed action by stating in a record the basis for the objection and sending or delivering the record

to the fiduciary.

(e) The date by which an objection under paragraph (d) must be received by the fiduciary, which must be at least 30 days after the date the notice is sent.

(f) The date on which the action is proposed to be taken and the date on which the action is proposed to take effect.

(g) The name and contact information of the fiduciary.

(h) The name and contact information of a person that may be contacted for additional information.

Section 14. Section 738.305, Florida Statutes, is created to read:

738.305 Unitrust policy.—

(1) In administering a unitrust under ss. 738.301-738.310, a fiduciary shall follow a unitrust policy adopted under s. 738.303(1)(a) or (b) or amended or replaced under s. 738.303(1)(b).

(2) A unitrust policy must provide all of the following:

(a) The unitrust rate or method for determining the unitrust rate under s. 738.306.

(b) The method for determining the applicable value under s. 738.307.

(c) The rules described in ss. 738.306-738.310 which apply in the administration of the unitrust, whether the rules are:

1. Mandatory as provided in ss. 738.307(1) and (3), 738.308(1), and 738.310; or

2. Optional as provided in ss. 738.306, 738.307(2), and 738.308(2), to the extent that the fiduciary elects to adopt those rules.

(3) A unitrust policy may do any of the following:

(a) Provide methods and standards for:

1. Determining the timing of the distributions;

2. Making distributions in cash or in kind or partly in cash and partly in kind; or

3. Correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating the unitrust amount.

(b) Specify sources and the order of sources, including categories of income for federal income tax purposes, from which distributions of a unitrust amount are paid.

(c) Provide other standards and rules that the fiduciary determines serve the interests of the beneficiaries.

Section 15. Section 738.306, Florida Statutes, is created to read:

738.306 Unitrust rate.—

(1) A unitrust rate must be at least 3 percent and not more than 5 percent. Within those limits, the unitrust rate may be:

(a) A fixed unitrust rate; or

(b)1. A unitrust rate that is determined for each period using:

a. A market index or other published data; or

b. A mathematical blend of market indices or other published data over a stated number of preceding periods.

2. If the rate calculated under this paragraph would be less than 3, the rate is 3; and if the rate calculated would be more than 5, the rate is 5.

(2) Within the limits of subsection (1), a unitrust policy may provide for any of the following:

(a) A limit on how much the unitrust rate determined under paragraph (1)(b) may increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods.

(b) A limit on how much the unitrust rate determined under paragraph (1)(b) may decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods.

(c) A mathematical blend of any of the unitrust rates determined under paragraph (1)(b) and paragraphs (a) and (b).

(3) If the fiduciary is not an independent person, the percentage used to calculate the unitrust amount is the rate determined under s. 7520(a)(2) of the Internal Revenue Code in effect for the month the conversion under this section becomes effective and for each January thereafter; however, if the rate determined under s. 7520(a)(2) of the Internal Revenue Code exceeds 5 percent, the unitrust rate is 5 percent, and if the

rate determined under s. 7520(a)(2) of the Internal Revenue Code is less than 3 percent, the unitrust rate is 3 percent.

Section 16. Section 738.307, Florida Statutes, is created to read:

738.307 Applicable value.—

(1) A unitrust policy must provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including all of the following:

(a) The frequency of valuing the asset, which need not require a valuation in every period.

(b) The date for valuing the asset in each period in which the asset is valued.

(2) Except as otherwise provided in s. 738.309, a unitrust policy may provide methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value, including any of the following:

(a) Obtaining an appraisal of an asset for which fair market value is not readily available.

(b) Excluding specific assets or groups or types of assets in addition to those described in subsection (3).

(c) Making other exceptions or modifications of the treatment of specific assets or groups or types of assets.

(d) Including identification and treatment of cash or property held for distribution.

(e) Using an average of fair market values over a stated number of preceding periods, not to exceed 3 calendar years.

(f) Determining the reasonable known liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under paragraphs (a)-(e).

(3) The following property may not be included in determining the value of the trust:

(a) Any residential property or any tangible personal property that, as of the first business day of the current valuation year, one or more current beneficiaries of the trust have or have had the right to occupy or have or have had the right to possess or control, other than in his or her capacity as trustee of the trust. Instead, the right of occupancy or the right to possession and control is the unitrust amount with respect to such property; however, the unitrust amount must be adjusted to take into account partial distributions from or receipt into the trust of such property during the valuation year;

(b) Any asset specifically given to a beneficiary and the return on investment on such property, which return on investment must be distributable to the beneficiary; and

(c) Any asset while held in an estate.

Section 17. Section 738.308, Florida Statutes, is created to read:

738.308 Period.—

(1) A unitrust policy must provide the period used under ss. 738.306 and 738.307. The period must be the calendar year.

(2) A unitrust policy may provide standards for:

(a) Using fewer preceding periods under s. 738.306(1)(b)1. or (2)(a) or (b) if:

1. The trust was not in existence in a preceding period; or

2. Market indices or other published data are not available for a preceding period;

(b) Using fewer preceding periods under 738.307(2)(e) if:

1. The trust was not in existence in a preceding period; or

2. Fair market values are not available for a preceding period; and

(c) Prorating a unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates.

Section 18. Section 738.309, Florida Statutes, is created to read:

738.309 Express unitrust.—

(1) This section applies to a trust that, by its governing instrument, requires or allows income or net income to be calculated as a unitrust amount.

(2) The trustee of an express unitrust may determine the

unitrust amount by reference to the net fair market value of the unitrust's assets in 1 or more years.

(3) Distribution of a unitrust amount is considered a distribution of all of the net income of an express unitrust and is considered to be an income interest.

(4) The unitrust amount is considered to be a reasonable apportionment of the total return of an express unitrust.

(5) An express unitrust that provides or allows a distribution based on a unitrust rate in excess of 5 percent per year of the net fair market value of the unitrust assets is considered a distribution of all of the income of the unitrust to the extent that the distribution exceeds 5 percent per year and a distribution of principal of the unitrust.

(6) An express unitrust may provide a mechanism for changing the unitrust rate, similar to the mechanism provided under s. 738.306, based upon the factors noted in that section, and may provide for a conversion from a unitrust to an income trust or a reconversion of an income trust to a unitrust under s. 738.303.

(7) If an express unitrust does not specifically or by reference to s. 738.306 prohibit a power to change the unitrust rate or to convert to an income trust under s. 738.303, the trustee must have such power.

(8) The governing instrument of an express unitrust may grant the trustee discretion to adopt a consistent practice of

treating capital gains as part of the unitrust amount to the extent that the unitrust amount exceeds the income determined as if the trust were not an express unitrust, or the governing instrument may specify the ordering of classes of income.

(9) Unless the terms of the express unitrust specifically provide otherwise as provided in subsection (8), the distribution of a unitrust amount is considered a distribution made from the following sources, which are listed in order of priority:

(a) Net accounting income determined under this chapter as if the trust were not a unitrust;

(b) Ordinary income not allocable to net accounting income;

(c) Net realized short-term capital gains;

(d) Net realized long-term capital gains; and

(e) The principal of the trust.

(10) The governing instrument of an express unitrust may provide that the trustee may exclude assets used by the unitrust's beneficiary, including, but not limited to, a residence property or tangible personal property, from the net fair market value of the unitrust's assets for the purposes of computing the unitrust amount. The use of these assets may be considered equivalent to income or to the unitrust amount.

Section 19. Section 738.310, Florida Statutes, is created to read:

738.310 Other rules.—Following the conversion of an income trust to a unitrust, the trustee shall consider the unitrust amount as paid from the following sources, which are listed in order of priority:

(1) Net accounting income determined under this chapter as if the trust were not a unitrust;

(2) Ordinary income not allocable to net accounting income;

(3) Net realized short-term capital gains;

(4) Net realized long-term capital gains; and

(5) The principal of the trust.

Section 20. Section 738.401, Florida Statutes, is amended to read:

738.401 Character of receipts from entity.—

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

(a) "Capital distribution" means an entity distribution of money which is a:

1. Return of capital; or

2. Distribution in total or partial liquidation of the entity.

(b) "Entity":

1. Means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization or arrangement in which a fiduciary owns or holds ~~has~~ an interest,

regardless of whether the entity is a taxpayer for federal income tax purposes; and

2. Does not include:

a. A trust or estate to which s. 738.402 applies;

b. A business or other activity to which s. 738.403 applies which is not conducted by an entity described in subparagraph 1.;

c. An asset-backed security; or

d. An instrument or arrangement to which s. 738.416 applies ~~other than a trust or estate to which s. 738.402 applies, a business or activity to which s. 738.403 applies, or an asset-backed security to which s. 738.608 applies~~.

(c) "Entity distribution" means a payment or transfer by an entity to a person in the person's capacity as an owner or holder of an interest in the entity.

(d) "Lookback period" means the accounting period and the preceding two accounting periods or, if less, the number of accounting periods, or portion of accounting periods, that the interest in the entity has been held by the fiduciary.

(2) In this section, an attribute or action of an entity includes an attribute or action of any other entity in which the initial entity owns or holds an interest, including an interest owned or held indirectly through another entity.

(3) Except as otherwise provided in paragraphs (4)(b), (c), and (d) ~~this section~~, a fiduciary shall allocate to income:

(a) Money received in an entity distribution; and

(b) Tangible personal property of nominal value received from the ~~money received from an~~ entity.

(4)~~(3)~~ ~~Except as otherwise provided in this section,~~ A fiduciary shall allocate the following ~~receipts from an entity~~ to principal:

(a) Property received in an entity distribution which is not:

1. ~~other than~~ Money; or

2. Tangible personal property of nominal value.

(b) Money received in an entity ~~one~~ distribution ~~or a series of related distributions~~ in an exchange for part or all of the fiduciary's ~~a trust's or estate's~~ interest in the entity to the extent that the entity distribution reduces the fiduciary's interest in the entity relative to the interest of other persons that own or hold interests in the entity.

(c) Money received in an entity distribution that is a capital distribution, to the extent not allocated to income ~~total or partial liquidation of the entity~~.

(d) Money received in an entity distribution from an entity that is a regulated investment company or a real estate investment trust if the money received represents short-term or long-term capital gain realized within the entity.

~~(e) Money received from an entity listed on a public stock exchange during any year of the trust or estate which exceeds 10~~

~~percent of the fair market value of the trust's or estate's interest in the entity on the first day of that year. The amount to be allocated to principal must be reduced to the extent that the cumulative distributions from the entity to the trust or estate allocated to income do not exceed a cumulative annual return of 3 percent of the fair market value of the interest in the entity at the beginning of each year or portion of a year for the number of years or portion of years in the period that the interest in the entity has been held by the trust or estate. If a trustee has exercised a power to adjust under s. 738.104 during any period the interest in the entity has been held by the trust, the trustee, in determining the total income distributions from that entity, must take into account the extent to which the exercise of that power resulted in income to the trust from that entity for that period. If the income of the trust for any period has been computed under s. 738.1041, the trustee, in determining the total income distributions from that entity for that period, must take into account the portion of the unitrust amount paid as a result of the ownership of the trust's interest in the entity for that period.~~

(5) ~~(4)~~ If a fiduciary elects, or continues an election made by its predecessor, to reinvest dividends in shares of stock of a distributing corporation or fund, whether evidenced by new certificates or entries on the books of the distributing entity, the new shares retain their character as income.

(6)~~(5)~~ Except as otherwise provided in subsections (10) and (11), money received in an entity distribution is a capital distribution ~~Money is received in partial liquidation~~:

(a) To the extent that the entity, at or near the time of the entity ~~a~~ distribution, indicates that such money is a capital distribution ~~in partial liquidation~~; or

(b) To the extent that the total amount of money and property received by the fiduciary in the entity ~~in a~~ distribution or a series of related entity distributions is or will be greater than ~~from an entity that is not listed on a public stock exchange exceeds~~ 20 percent of the fiduciary's ~~trust's or estate's~~ pro rata share of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

~~This subsection does not apply to an entity to which subsection (7) applies.~~

(7)~~(6)~~ In the case of a capital distribution, the amount received in an entity distribution allocated to principal must be reduced to the extent that the cumulative distributions from the entity to the fiduciary ~~Money may not be taken into account in determining any excess under paragraph (5)(b), to the extent that the cumulative distributions from the entity to the trust or the estate~~ allocated to income do not exceed the greater of:

(a) A cumulative annual return of 3 percent of the

entity's carrying value computed at the beginning of each accounting period, or portion of an accounting period, during the lookback period ~~for the number of years or portion of years that the entity was held by the fiduciary~~. If a fiduciary ~~trustee~~ has exercised a power to adjust under s. 738.203 during the lookback period, the fiduciary ~~s. 738.104 during any period the interest in the entity has been held by the trust, the trustee~~, in determining the total income distributions from that entity, must take into account the extent to which the exercise of the power resulted in income to the fiduciary ~~trust~~ from that entity for that period. If the income of a fiduciary during the lookback ~~trust for any~~ period has been computed under ss. 738.301-738.310, the fiduciary ~~pursuant to s. 738.1041, the trustee~~, in determining the total income distributions from the entity for that period, must take into account the portion of the unitrust amount paid as a result of the ownership of the trust's interest in the entity for that period; or

(b) In ~~If~~ the case of an entity ~~is~~ treated as a partnership, subchapter S corporation, or ~~a~~ disregarded entity under ~~pursuant to~~ the Internal Revenue Code ~~of 1986, as amended~~, the amount of income tax attributable to the fiduciary's ~~trust's or estate's~~ ownership share of the entity, based on its pro rata share of the taxable income of the entity that distributes the money, during the lookback period ~~for the number of years or portion of years that the interest in the entity was held by the~~

~~fiduciary~~, calculated as if all of the ~~that~~ tax was incurred by the fiduciary.

(8) If a fiduciary receives additional information about the application of this section to an entity distribution before the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary may consider the additional information before making the payment to the beneficiary and may change a decision to make the payment to the beneficiary.

(9) If a fiduciary receives additional information about the application of this section to an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary is not required to change or recover the payment to the beneficiary but may consider that information in determining whether to exercise its other powers, including but not limited to the power to adjust under s. 738.203.

(10) ~~(7)~~ The following applies to money or property received by a private trustee as a distribution from an investment entity described in this subsection:

(a) The trustee shall first treat as income of the trust all of the money or property received from the investment entity in the current accounting period ~~year~~ which would be considered income under this chapter if the trustee had directly held the trust's pro rata share of the assets of the investment entity. For this purpose, all distributions received in the current accounting period ~~year~~ must be aggregated.

(b) The trustee shall next treat as income of the trust any additional money or property received in the current accounting period ~~year~~ which would have been considered income in the prior 2 accounting periods ~~years~~ under paragraph (a) if additional money or property had been received from the investment entity in any of those prior 2 accounting periods ~~years~~. The amount to be treated as income must ~~shall~~ be reduced by any distributions of money or property made by the investment entity to the trust during the current and the prior 2 accounting periods ~~years~~ which were treated as income under this paragraph.

(c) The remainder of the distribution, if any, is treated as principal.

(d) As used in this subsection, the term:

1. "Investment entity" means an entity, other than a business activity conducted by the trustee described in s. 738.403 or an entity that is listed on a public stock exchange, which is treated as a partnership, subchapter S corporation, or disregarded entity under ~~pursuant to~~ the Internal Revenue Code ~~of 1986, as amended,~~ and which normally derives 50 percent or more of its annual cumulative net income from interest, dividends, annuities, royalties, rental activity, or other passive investments, including income from the sale or exchange of such passive investments.

2. "Private trustee" means a trustee who is a natural

person, but is not an independent person as set forth in s. 738.102 ~~only if the trustee is unable to use the power to adjust between income and principal with respect to receipts from entities described in this subsection pursuant to s. 738.104~~. ~~A bank, trust company, or other commercial trustee is not considered a private trustee.~~

(11) A fiduciary shall allocate to principal any money and property the fiduciary receives in a distribution or series of related distributions from a public entity which are greater than 10 percent of the fair market value of the fiduciary's interest in the public entity on the first day of the accounting period. The amount to be allocated to principal must be reduced to the extent that the cumulative distributions from the entity to the fiduciary allocated to income do not exceed a cumulative annual return of 3 percent of the fair market value of the interest in the entity at the beginning of each accounting period, or portion of an accounting period, during the lookback period. If a fiduciary has exercised a power to adjust under s. 738.203 during the lookback period, the fiduciary, in determining the total income distributions from that entity, must take into account the extent to which the exercise of that power resulted in income to the fiduciary from that entity for that period. If the income of the fiduciary during the lookback period has been computed under ss. 738.301-738.310, the fiduciary, in determining the total income distribution from

that entity for that period, must take into account the portion of the unitrust amount paid as a result of the ownership of the trust's interest in the entity for that period. As used in this subsection, the term "public entity" means an entity listed on a public stock exchange.

(12) ~~(8)~~ This section must ~~shall~~ be applied before ss. 738.506 and 738.507 ~~ss. 738.705 and 738.706~~ and does not modify or change any of the provisions of those sections.

Section 21. Section 738.402, Florida Statutes, is amended to read:

738.402 Distribution from trust or estate.—A fiduciary shall allocate to income an amount received as a distribution of income, including a unitrust distribution under ss. 738.301-738.310, from a trust or an estate in which the fiduciary ~~trust~~ has an interest, other than an interest ~~a~~ purchased in a trust that is an investment entity, and shall ~~interest and~~ allocate to principal an amount received as a distribution of principal from the ~~such a~~ trust or estate. If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an investment entity, ~~or a decedent or donor transfers an interest in such a trust to a fiduciary,~~ s. 738.401, s. 738.415, or s. 738.416 ~~or s. 738.608~~ applies to a receipt from the trust.

Section 22. Section 738.403, Florida Statutes, is amended to read:

738.403 Business and other activity ~~activities~~ conducted

by fiduciary.—

(1) This section applies to ~~If a fiduciary who conducts~~ a business or other activity conducted by a fiduciary if the fiduciary determines that it is in the best interests of ~~interest of all~~ the beneficiaries to account separately for the business or other activity instead of:

(a) Accounting for the business or other activity as part of the fiduciary's ~~trust's or estate's~~ general accounting records; or

(b) Conducting the business or other activity through an entity described in s. 738.401(1)(b). ~~, the~~

(2) A fiduciary may account separately under this section ~~maintain separate accounting records~~ for the transactions of a ~~the~~ business or another ~~other~~ activity, regardless of whether ~~or not the~~ assets of the ~~such~~ business or other activity are segregated from other ~~trust or estate~~ assets held by the fiduciary.

(3) ~~(2)~~ A fiduciary who accounts separately under this section for a business or other activity:

(a) May determine:

1. The extent to which the net cash receipts of the business or other activity must be retained for:

a. Working capital;

b. The acquisition or replacement of fixed assets; and

c. Other reasonably foreseeable needs of the business or

other activity; and ~~working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and~~

2. The extent to which the remaining net cash receipts are accounted for as principal or income in the fiduciary's ~~trust's or estate's~~ general accounting records for the trust.

(b) May make a determination under paragraph (a) separately and differently from the fiduciary's decisions concerning distributions of income or principal; and

(c) Shall account for the net amount received from the sale of an asset of ~~If a fiduciary sells assets of~~ the business or other activity, other than a sale in the ordinary course of the business or other activity, ~~the fiduciary must account for the net amount received~~ as principal in the fiduciary's ~~trust's or estate's~~ general accounting records for the trust, to the extent the fiduciary determines that the net amount received is no longer required in the conduct of the business or other activity.

(4)~~(3)~~ Activities for which a fiduciary may account separately under this section ~~maintain separate accounting records~~ include:

(a) Retail, manufacturing, service, and other traditional business activities.

(b) Farming.

(c) Raising and selling livestock and other animals.

(d) Managing ~~Management of~~ rental properties.

(e) Extracting ~~Extraction of~~ minerals and other natural resources.

(f) Growing and cutting timber ~~operations~~.

(g) An activity ~~Activities~~ to which s. 738.414, s. 738.415, or s. 738.416 ~~s. 738.607~~ applies.

(h) Any other business conducted by the fiduciary.

Section 23. Section 738.404, Florida Statutes, is created to read:

738.404 Principal receipts.—A fiduciary shall allocate to principal:

(1) To the extent not allocated to income under this chapter, an asset received from any of the following:

(a) An individual during the individual's lifetime.

(b) An estate.

(c) A trust on termination of an income interest.

(d) A payor under a contract naming the fiduciary as beneficiary.

(2) Except as otherwise provided in ss. 738.401-738.416, money or other property received from the sale, exchange, liquidation, or change in the form of a principal asset.

(3) An amount recovered from a third party to reimburse the fiduciary because of a disbursement described in s. 738.502(1) or for another reason to the extent not based on the loss of income.

(4) Proceeds of property taken by eminent domain except that proceeds awarded for loss of income in an accounting period are income if a current income beneficiary had a mandatory income interest during the period.

(5) Net income received in an accounting period during which there is no beneficiary to which a fiduciary may or must distribute income.

(6) Other receipts as provided in ss. 738.408-738.416.

Section 24. Section 738.405, Florida Statutes, is created to read:

738.405 Rental property.—To the extent that a fiduciary does not account for the management of rental property as a business under s. 738.403, the fiduciary shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods:

(1) Must be added to principal and held subject to the terms of the lease, except as otherwise provided by law other than this chapter; and

(2) Is not allocated to income or available for distribution to a beneficiary until the fiduciary's contractual obligations have been satisfied with respect to that amount.

Section 25. Section 738.406, Florida Statutes, is created

to read:

738.406 Receipt on obligation to be paid in money.—

(1) This section does not apply to an obligation to which s. 738.409, s. 738.410, s. 738.411, s. 738.412, s. 738.414, s. 738.415, or s. 738.416 applies.

(2) A fiduciary shall allocate to income, without provision for amortization of premium, an amount received as interest on an obligation to pay money to the fiduciary, including an amount received as consideration for prepaying principal.

(3) A fiduciary shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the fiduciary.

(4) A fiduciary shall allocate to income the increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable or redeemable, at maturity or another future time, in an amount that exceeds the amount in consideration of which it was issued. If the increment in value accrues and becomes payable pursuant to a fixed schedule of appreciation, it may be distributed to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when the increment is realized by sale, redemption, or other disposition. If unrealized increment is distributed as income but out of principal, the principal must be reimbursed

for the increment when realized. If, in the reasonable judgment of the fiduciary, exercised in good faith, the ultimate payment of the bond principal is in doubt, the fiduciary may withhold the payment of incremental interest to the income beneficiary.

Section 26. Section 738.407, Florida Statutes, is created to read:

738.407 Insurance policy or contract.—

(1) This section does not apply to a contract to which s. 738.409 applies.

(2) Except as otherwise provided in subsection (3), a fiduciary shall allocate to principal the proceeds of a life insurance policy or other contract received by the fiduciary as beneficiary, including a contract that insures against damage to, destruction of, or loss of title to an asset. The fiduciary shall allocate dividends on an insurance policy to income to the extent that premiums on the policy are paid from income and to principal to the extent premiums on the policy are paid from principal.

(3) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary against loss of:

(a) Occupancy or other use by a current income beneficiary;

(b) Income; or

(c) Subject to s. 738.403, profits from a business.

Section 27. Section 738.408, Florida Statutes, is created

to read:

738.408 Insubstantial allocation not required.—

(1) If a fiduciary determines that an allocation between income and principal required by s. 738.409, s. 738.410, s. 738.411, s. 738.412, or s. 738.415 is insubstantial, the fiduciary may allocate the entire amount to principal, unless s. 738.203(5) applies to the allocation.

(2) A fiduciary may presume an allocation is insubstantial under subsection (1) if:

(a) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; and

(b) The asset producing the receipt to be allocated has a carrying value less than 10 percent of the total carrying value of the assets owned or held by the fiduciary at the beginning of the accounting period.

(3) The power to make a determination under subsection (1) may be:

(a) Exercised by a cofiduciary in the manner described in s. 738.203(6); or

(b) Released or delegated for a reason described in s. 738.203(7) and in the manner described in s. 738.203(8).

Section 28. Section 738.409, Florida Statutes, is created to read:

738.409 Deferred compensation, annuity, or similar

payment.—

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

(a) "Internal income of the separate fund" means the amount determined under subsection (2).

(b) "Marital trust" means a trust:

1. Of which the settlor's surviving spouse is the only current income beneficiary and is entitled to a distribution of all the current net income of the trust; and

2. That qualifies for a marital deduction with respect to the settlor's estate under the Internal Revenue Code or comparable law of any state because:

a. An election to qualify for a marital deduction under s. 2056(b)(7) of the Internal Revenue Code has been made;

b. The trust qualified for a marital deduction under s. 2056(b)(5) of the Internal Revenue Code; or

c. The trust otherwise qualifies for a marital deduction.

(c) "Nonseparate fund" means an annuity, a deferred compensation plan, a pension plan, or other fund for which the value of the participant's or account owner's right to receive benefits can be determined only by the occurrence of a date or event as defined in the instrument governing the fund.

(d) "Payment" means an amount a fiduciary may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future amounts the fiduciary may

receive. The term includes an amount received in money or property from the payor's general assets or from a separate fund created by the payor.

(e) "Percent calculated" means a percent equal to the rate determined under s. 7520 of the Internal Revenue Code in effect for the month preceding the beginning of the accounting period; however, if the percent calculated exceeds 5 percent, it must be reduced to 5 percent, and if the percent calculated is less than 3 percent, it must be increased to 3 percent. Notwithstanding the preceding sentence, a fiduciary who is an independent person as defined in s. 738.102 may set the percent calculated at a percentage no less than 3 percent and no greater than 5 percent.

(f) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, stock ownership plan, or other deferred compensation fund holding assets exclusively for the benefit of a participant or account owner.

(2) For each accounting period, the following rules apply to a separate fund:

(a) The fiduciary may determine the internal income of the separate fund as if the separate fund were a trust subject to this chapter.

(b) Alternatively, the fiduciary may deem the internal income of the separate fund to equal the percent calculated of the value of the separate fund according to the most recent

statement of value preceding the beginning of the accounting period. The fiduciary is not liable for good faith reliance upon any valuation supplied by the person or persons in possession of the fund. If the fiduciary makes or terminates an election under this paragraph, the fiduciary must make such disclosure in a trust disclosure document that satisfies the requirements of s. 736.1008(4)(c).

(c) If the fiduciary cannot determine the value of the separate fund under paragraph (b), the value of the separate fund is deemed to equal the present value of s. 7520 of the Internal Revenue Code for the month preceding the beginning of the accounting period for which the computation is made.

(d) The fiduciary may elect the method of determining the income of the fund pursuant to this subsection and may change the method of determining income of the fund for any future accounting period.

(3) A fiduciary shall allocate a payment received from a separate fund during an accounting period to income, to the extent of the internal income of the separate fund during the period, and allocate the balance to principal.

(4) The fiduciary of a marital trust shall:

(a) Withdraw from a separate fund the amount the current income beneficiary of the trust requests the fiduciary to withdraw, not greater than the amount by which the internal income of the separate fund during the accounting period exceeds

the amount the fiduciary otherwise receives from the separate fund during the period.

(b) Transfer from principal to income the amount the current income beneficiary requests the fiduciary to transfer, but not greater than the amount by which the internal income of the separate fund during the period exceeds the amount the fiduciary receives from the separate fund during the period after the application of paragraph (a).

(c) Distribute to the current income beneficiary as income:

1. The amount of the internal income of the separate fund received or withdrawn during the period; and

2. The amount transferred from principal to income under paragraph (b).

(5) For a trust, other than a marital trust, of which one or more current income beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall transfer from principal to income the amount by which the internal income of the separate fund during the accounting period exceeds the amount the fiduciary receives from the separate fund during the period.

(6) The fiduciary of a nonseparate fund shall calculate internal income of the fund as the percent calculated of the present value of the right to receive the remaining payments as determined under s. 7520(a)(2) of the Internal Revenue Code for

the month preceding the beginning of the accounting period.

(7) If a fiduciary owns a separate fund or a nonseparate fund before January 1, 2025, the fiduciary may determine internal income, allocate payments, and account for unwithdrawn internal income as provided in this section or in the manner used by the fiduciary before January 1, 2025. Such fiduciary is not required to consider subsection (5). If the fiduciary acquires a separate fund or a nonseparate fund on or after January 1, 2025, the fiduciary must calculate internal income, allocate payments, and account for unwithdrawn internal income as provided in this section.

Section 29. Section 738.603, Florida Statutes, is transferred, renumbered as section 738.410, Florida Statutes, and amended to read:

738.410 ~~738.603~~ Liquidating asset.—

(1) As used in ~~For purposes of~~ this section, the term "liquidating asset" means an asset whose value ~~the value of which~~ will diminish or terminate because the asset is expected to produce receipts for a ~~period of~~ limited time ~~duration~~. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of ~~for~~ more than 1 year under an arrangement that does not provide for the payment of interest on the unpaid balance. ~~The term does not include a payment subject to s. 738.602, resources subject to s. 738.604, timber subject to s. 738.605, an activity subject to s. 738.607,~~

~~an asset subject to s. 738.608, or any asset for which the fiduciary establishes a reserve for depreciation under s. 738.703.~~

(2) This section does not apply to a receipt that is subject to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s. 738.414, s. 738.415, s. 738.416, or s. 738.503.

(3) A fiduciary shall allocate to income a receipt produced by a liquidating asset to the extent that the receipt does not exceed 5 percent of the ~~receipts from the~~ carrying value of the asset at the beginning of the accounting period and allocate ~~a liquidating asset and the balance~~ to principal the balance of the receipt.

(4) The amount ~~Amounts~~ allocated to principal shall reduce the carrying value of the liquidating asset, but not below zero. Amounts received in excess of the remaining carrying value must be allocated to principal.

Section 30. Section 738.604, Florida Statutes, is transferred, renumbered as section 738.411, Florida Statutes, and amended to read:

738.411 ~~738.604~~ Minerals, water, and other natural resources.—

(1) To the extent that ~~If~~ a fiduciary does not account for a receipt ~~accounts for receipts~~ from an interest in minerals, water, or other natural resources as a business under s. 738.403 ~~pursuant to this section~~, the fiduciary shall allocate the

receipt ~~such receipts as follows~~:

(a) To income, to the extent received:

1. ~~If received~~ As ~~nominal~~ delay rental or ~~nominal~~ annual rent on a lease;

2. As a factor for interest or the equivalent of interest under an agreement creating a production payment; or

3. On account of an interest in renewable water;~~, a receipt shall be allocated to income.~~

(b) To principal, if received from a production payment, ~~a receipt shall be allocated to income if and~~ to the extent that subparagraph (a)2. does not apply; or ~~the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.~~

(c) Between income and principal equitably, to the extent received:

1. On account of an interest in nonrenewable water;

2. ~~If an amount received~~ As a royalty, shut-in-well payment, take-or-pay payment, or bonus; or~~, or delay rental is more than nominal, 90 percent shall be allocated to principal and the balance to income.~~

3.~~(d)~~ ~~If an amount is received~~ From a working interest or any other interest not provided for in paragraph (a) or~~,~~ paragraph (b) or subparagraph 1. or subparagraph 2.~~, or paragraph (c), 90 percent of the net amount received shall be allocated to principal and the balance to income.~~

~~An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, 90 percent of the amount shall be allocated to principal and the balance to income.~~

~~(3)~~ This section ~~chapter~~ applies to an interest owned or held by a fiduciary regardless of whether ~~or not~~ a settlor ~~decedent or donor~~ was extracting minerals, water, or other natural resources before the fiduciary owned or held the interest ~~became subject to the trust or estate~~.

(3) An allocation of a receipt under paragraph (1)(c) is presumed to be equitable if the amount allocated to principal is equal to the amount allowed by the Internal Revenue Code as a deduction for depletion of the interest.

(4) If a fiduciary ~~trust or estate~~ owns or holds an interest in minerals, water, or other natural resources before January 1, 2025 ~~on January 1, 2003~~, the fiduciary may allocate receipts from the interest as provided in this section ~~chapter~~ or in the manner used by the fiduciary before January 1, 2025 ~~January 1, 2003~~. If the fiduciary ~~trust or estate~~ acquires an interest in minerals, water, or other natural resources on or after January 1, 2025 ~~January 1, 2003~~, the fiduciary must ~~shall~~ allocate receipts from the interest as provided in this section ~~chapter~~.

Section 31. Section 738.605, Florida Statutes, is transferred, renumbered as section 738.412, Florida Statutes,

and amended to read:

738.412 ~~738.605~~ Timber.—

(1) To the extent that ~~If~~ a fiduciary does not account ~~accounts~~ for receipts from the sale of timber and related products as a business under s. 738.403 ~~pursuant to this section~~, the fiduciary shall allocate the ~~such~~ net receipts ~~as follows~~:

(a) To income, to the extent that the amount of timber cut ~~removed~~ from the land does not exceed the rate of growth of the timber ~~during the accounting periods in which a beneficiary has a mandatory income interest~~;

(b) To principal, to the extent that the amount of timber cut ~~removed~~ from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(c) ~~To or~~ Between income and principal if the net receipts are from the lease of land used for growing and cutting timber ~~timberland~~ or from a contract to cut timber from land ~~owned by a trust or estate~~ by determining the amount of timber cut ~~removed~~ from the land under the lease or contract and applying the rules in paragraphs (a) and (b); or

(d) To principal, to the extent that advance payments, bonuses, and other payments are not allocated under ~~pursuant to~~ paragraph (a), paragraph (b), or paragraph (c).

(2) In determining net receipts to be allocated under ~~pursuant to~~ subsection (1), a fiduciary shall deduct and

transfer to principal a reasonable amount for depletion.

(3) This section ~~chapter~~ applies to land owned or held by a fiduciary regardless of whether ~~or not~~ a settlor ~~decedent or donor~~ was cutting ~~harvesting~~ timber from the land ~~property~~ before the fiduciary owned or held the property ~~became subject to the trust or estate~~.

(4) If a fiduciary ~~trust or estate~~ owns or holds an interest in land used for growing and cutting timber before January 1, 2025 ~~timberland on January 1, 2003~~, the fiduciary may allocate net receipts from the sale of timber and related products as provided in this section ~~chapter~~ or in the manner used by the fiduciary before January 1, 2025 ~~January 1, 2003~~. If the fiduciary ~~trust or estate~~ acquires an interest in land used for growing and cutting timber on or after January 1, 2025 ~~timberland after January 1, 2003~~, the fiduciary must ~~shall~~ allocate net receipts from the sale of timber and related products as provided in this section ~~chapter~~.

Section 32. Section 738.606, Florida Statutes, is transferred, renumbered as section 738.413, Florida Statutes, and amended to read:

738.413 ~~738.606~~ Marital deduction property not productive of income.—

(1) If a trust received property for which a gift or estate tax marital deduction was ~~under the Internal Revenue Code or comparable law of any state is~~ allowed, ~~for all~~ or if ~~part of~~

a trust received property satisfying~~, or if assets are transferred to a trust that satisfies~~ the requirements of s. 732.2025(2)(a) and (c), and such property has ~~assets have~~ been used in whole or in part to satisfy an election by a surviving spouse under s. 732.2125, and the settlor's spouse holds a mandatory income interest in the trust, the spouse may require the trustee, to the extent that the trust assets otherwise do ~~consist of property that, in the aggregate, does~~ not provide the spouse with sufficient income from or use of the trust assets to qualify for the deduction, or to satisfy an election by a surviving spouse under s. 732.2125, to make the property productive of income within a reasonable time. The trustee may:

(a) Convert property to property productive of income within a reasonable time;

(b) Exercise the power to adjust under s. 738.203;

(c) Exercise the power to convert to or from a unitrust under s. 738.303; or

(d) Exercise the fiduciary's authority under the terms of the trust to otherwise provide the surviving spouse with sufficient income from the trust assets, or the use of the trust assets, to qualify for the marital deduction, or to satisfy an election by a surviving spouse under s. 732.2125.

(2) The trustee may decide which action or combination of actions listed in subsection (1) to take.

(3) Subsection (1) shall apply~~, and if amounts the trustee~~

~~transfers from principal to income under s. 738.104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction,~~ even though, in the case of an elective share trust under s. 732.2025(2), a marital deduction is not made or is only partially made~~, the spouse may require the trustee of such marital trust or elective share trust to make property productive of income, convert property within a reasonable time, or exercise the power conferred by ss. 738.104 and 738.1041~~.

(4) The terms of a trust as defined in s. 738.102 may not supersede this section unless such terms explicitly reference this section ~~The trustee may decide which action or combination of actions to take~~.

~~(2) In cases not governed by subsection (1), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.~~

Section 33. Section 738.607, Florida Statutes, is transferred, renumbered as section 738.414, Florida Statutes, and amended to read:

738.414 ~~738.607~~ Derivatives or ~~and~~ options.—

(1) As used in ~~For purposes of~~ this section, the term "derivative" means a contract, an ~~or financial~~ instrument, or other arrangement, or ~~a~~ combination of contracts, ~~and financial~~

instruments, or other arrangements, of which the value, rights, and obligations are, in whole or in part, dependent on or derived from an underlying ~~which gives a trust the right or obligation to participate in some or all changes in the price of a~~ tangible or intangible asset, a ~~or~~ group of tangible or intangible assets, an index, or an occurrence of an event. The term includes stocks, fixed income securities, and financial instruments and arrangements based on indices, commodities, interest rates, weather-related events, and credit-default events ~~assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets~~.

(2) To the extent that a fiduciary does not account for a transaction in derivatives as a business under s. 738.403 ~~for transactions in derivatives~~, the fiduciary shall allocate 10 percent of ~~to principal~~ receipts from the transaction and 10 percent of ~~and~~ disbursements made in connection with the transaction to income and allocate the balance to principal ~~those transactions~~.

(3) Subsection (4) applies if:

(a) A fiduciary:

1. ~~If a fiduciary~~ Grants an option to buy property from a ~~the~~ trust, regardless of ~~or estate~~ whether ~~or not~~ the trust ~~or estate~~ owns the property when the option is granted;~~,~~

2. Grants an option that permits another person to sell

property to the trust; or

3. ~~estate, or~~ Acquires an option to buy property for the trust or ~~estate or~~ an option to sell an asset owned by the trust ~~or estate;,~~ and

(b) The fiduciary or other owner of the asset is required to deliver the asset if the option is exercised~~, an amount received for granting the option shall be allocated to principal~~. ~~An amount paid to acquire the option shall be paid from principal.~~

(4) If this subsection applies, the fiduciary must allocate 10 percent to income and allocate the balance to principal of the following amounts:

(a) An amount received for granting the option;

(b) An amount paid to acquire the option; and

(c) ~~A~~ Gain or loss realized on ~~upon~~ the exercise, exchange, settlement, offset, closing, or expiration of the option ~~of an option, including an option granted to a grantor of the trust or estate for services rendered, shall be allocated to principal~~.

Section 34. Section 738.608, Florida Statutes, is transferred, renumbered as section 738.415, Florida Statutes, and amended to read:

738.415 ~~738.608~~ Asset-backed securities.—

(1) Except as otherwise provided in subsection (2), a fiduciary shall allocate to income a receipt from or related to

an asset-backed security, as defined in s. 738.102, to the extent that the payor identifies the payment as being from ~~For purposes of this section, "asset-backed security" means an asset the value of which is based upon the right given the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the~~ interest or other current return and allocate to principal the balance of the receipt ~~or only the proceeds other than interest or current return~~. ~~The term does not include an asset to which s. 738.401 or s. 738.602 applies.~~

(2) If a fiduciary receives one or more payments in exchange for part or all of the fiduciary's interest in an asset-backed security, including a liquidation or redemption of the fiduciary's interest in the security ~~trust or estate receives a payment from interest or other current return and from other proceeds of the collateral financial assets~~, the fiduciary must ~~shall~~ allocate to income 10 percent of receipts from the transaction and 10 percent of disbursements made in connection with the transaction, and allocate to principal ~~the portion of the payment which the payor identifies as being from interest or other current return and allocate~~ the balance of the receipts and disbursements ~~payment to principal~~.

~~(3) If a trust or estate receives one or more payments in exchange for the trust's or estate's entire interest in an~~

~~asset-backed security during a single accounting period, the fiduciary shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's or estate's interest in the security over more than a single accounting period, the fiduciary shall allocate 10 percent of the payment to income and the balance to principal.~~

Section 35. Section 738.416, Florida Statutes, is created to read:

738.416 Other financial instrument or arrangement.—A fiduciary shall allocate receipts from or related to a financial instrument or arrangement not otherwise addressed by this chapter. The allocation must be consistent with ss. 738.414 and 738.415.

Section 36. Section 738.501, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.501, F.S., for present text.)

738.501 Disbursement from income.—Subject to s. 738.504, and except as otherwise provided in s. 738.601(3)(b) or (c), a fiduciary shall disburse from income:

(1) One-half of:

(a) The regular compensation of the fiduciary and of any person providing investment advisory, custodial, or other services to the fiduciary to the extent that income is

sufficient; and

(b) An expense for an accounting, judicial or nonjudicial proceeding, or other matter that involves both income and successive interests to the extent income is sufficient.

(2) The balance of the disbursements described in subsection (1), to the extent that a fiduciary who is an independent person determines that making those disbursements from income would be in the interests of the beneficiaries.

(3) Any other ordinary expense incurred in connection with administration, management, or preservation of property and distribution of income, including interest, an ordinary repair, a regularly recurring tax assessed against principal, and an expense of an accounting, judicial or nonjudicial proceeding, or other matter that involves primarily an income interest, to the extent that income is sufficient.

(4) A premium on insurance covering loss of a principal asset or income from or use of the asset.

Section 37. Section 738.502, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.502, F.S., for present text.)

738.502 Disbursement from principal.—

(1) Subject to s. 738.505, and except as otherwise provided in s. 738.601(3)(b), a fiduciary shall disburse all of the following from principal:

(a) The balance of the disbursements described in s. 738.501(1) and (3), after application of s. 738.501(2).

(b) The fiduciary's compensation calculated on principal as a fee for acceptance, distribution, or termination.

(c) A payment of an expense to prepare for or execute a sale or other disposition of property.

(d) A payment on the principal of a trust debt.

(e) A payment of an expense of an accounting, judicial or nonjudicial proceeding, or other matter that involves primarily principal, including a proceeding to construe the terms of the trust or protect property.

(f) A payment of a premium for insurance, including title insurance, not described in s. 738.501(4) of which the fiduciary is the owner and beneficiary.

(g) A payment of estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust.

(h) A payment related to environmental matters including:

1. Reclamation;

2. Assessing environmental conditions;

3. Remedying and removing environmental contamination;

4. Monitoring remedial activities and the release of substances;

5. Preventing future releases of substances;

6. Collecting amounts from persons liable or potentially liable for the costs of the activities described in

subparagraphs 1.-5.;

7. Penalties imposed under environmental laws or regulations;

8. Other actions to comply with environmental laws or regulations;

9. Statutory or common law claims by third parties; and

10 Defending claims based on environmental matters.

(i) A payment of a premium for insurance for matters described in paragraph (h).

(2) If a principal asset is encumbered with an obligation that requires income from the asset to be paid directly to a creditor, the fiduciary must transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

Section 38. Section 738.503, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.503, F.S., for present text.)

738.503 Transfers from income to principal for depreciation.—

(1) For purposes of this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a tangible asset having a useful life of more than 1 year.

(2) A fiduciary may transfer to principal a reasonable

amount of the net cash receipts from a principal asset that is subject to depreciation but may not transfer any amount for depreciation:

(a) Of the part of real property used or available for use by a beneficiary as a residence;

(b) Of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or

(c) Under this section, to the extent that the fiduciary accounts:

1. Under s. 738.410 for the asset; or

2. Under s. 738.403 for the business or other activity in which the asset is used.

(3) An amount transferred to principal under this section need not be separately held.

Section 39. Section 738.504, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.504, F.S., for present text.)

738.504 Reimbursement of income from principal.—

(1) If a fiduciary makes or expects to make an income disbursement described in subsection (2), the fiduciary may transfer an appropriate amount from principal to income in one or more accounting periods to reimburse income.

(2) To the extent that the fiduciary has not been and does not expect to be reimbursed by a third party, income

disbursements to which subsection (1) applies include:

(a) An amount chargeable to principal but paid from income because principal is illiquid;

(b) A disbursement made to prepare property for sale, including improvements and commissions; and

(c) A disbursement described in s. 738.502(1).

(3) If an asset whose ownership gives rise to an income disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection (1).

Section 40. Section 738.704, is transferred, renumbered as section 738.505, Florida Statutes, and amended to read:

738.505 ~~738.704~~ Reimbursement of principal from income ~~Transfers from income to reimburse principal~~.—

(1) If a fiduciary makes or expects to make a principal ~~a principal~~ disbursement described in subsection (2) ~~this section~~, the fiduciary may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(2) ~~Principal disbursements to which subsection (1) applies include the following, but only~~ To the extent that a ~~the~~ fiduciary has not been and does not expect to be reimbursed by a third party, principal disbursements to which subsection (1) applies include:

(a) An amount chargeable to income but paid from principal because income is not sufficient; ~~the amount is unusually large.~~

(b) The cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, including a special assessment; ~~Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions.~~

(c) A disbursement made to prepare property for rental, including tenant allowances, leasehold improvements, and commissions; ~~Disbursements described in s. 738.702(1)(g)~~.

(d) A periodic payment on an obligation secured by a principal asset, to the extent the amount transferred from income to principal for depreciation is less than the periodic payment; and

(e) A disbursement described in s. 738.502(1).

(3) If an ~~the~~ asset whose ~~the~~ ownership ~~of which~~ gives rise to a principal disbursement ~~the disbursements~~ becomes subject to a successive ~~income~~ interest after an income interest ends, the ~~a~~ fiduciary may ~~continue to~~ make transfers under ~~transfer amounts from income to principal as provided in~~ subsection (1).

~~(4) To the extent principal cash is not sufficient to pay the principal balance of payments due on mortgaged property, income may be applied to such payment in order to avoid a default on any mortgage or security interest securing the~~

~~property. Income shall be reimbursed for such payments out of the first available principal cash. If the asset the ownership of which gives rise to the disbursements described in this subsection becomes subject to a successive income interest after an income interest ends, all rights of the initial income interest shall lapse, and amounts remaining due from principal shall not be a lien on the assets of the trust.~~

Section 41. Section 738.705, Florida Statutes, is transferred, renumbered as section 738.506, Florida Statutes, and amended to read:

738.506 ~~738.705~~ Income taxes.—

(1) A tax required to be paid by a fiduciary which is based on receipts allocated to income must ~~shall~~ be paid from income.

(2) A tax required to be paid by a fiduciary which is based on receipts allocated to principal must ~~shall~~ be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) Subject to subsection (4) and ss. 738.504, 738.505, and 738.507, a tax required to be paid by a fiduciary on a ~~the trust's or estate's~~ share of an entity's taxable income in an accounting period must ~~shall~~ be paid from ~~proportionately~~:

(a) ~~From~~ Income and principal proportionately to the allocation between income and principal of ~~to the extent~~ receipts from the entity in the period ~~are allocated to income~~.

~~(b) From principal to the extent receipts from the entity are allocated to principal.~~

~~(c) From~~ Principal to the extent that the tax exceeds the ~~income taxes payable by the trust or estate exceed the total~~ receipts from the entity in the period.

(4) After applying subsections (1), (2), and (3), a fiduciary shall adjust income or principal receipts, to the extent the taxes that the fiduciary pays are reduced because of a deduction for a payment made to a beneficiary.

(5) Subject to the limitations and excluded assets provided under s. 736.08145, a reimbursement of state or federal income tax elected to be made by a fiduciary pursuant to s. 736.08145 must be allocated and paid under paragraphs (3)(a) and (b) ~~After applying subsections (1)-(3), the fiduciary shall adjust income or principal receipts to the extent that the trust's or estate's income taxes are reduced, but not eliminated, because the trust or estate receives a deduction for payments made to a beneficiary~~. ~~The amount distributable to that beneficiary as income as a result of this adjustment shall be equal to the cash received by the trust or estate, reduced, but not below zero, by the entity's taxable income allocable to the trust or estate multiplied by the trust's or estate's income tax rate. The reduced amount shall be divided by the difference between 1 and the trust's or estate's income tax rate in order to determine the amount distributable to that beneficiary as~~

~~income before giving effect to other receipts or disbursements allocable to that beneficiary's interest.~~

Section 42. Section 738.706, Florida Statutes, is transferred, renumbered as section 738.507, Florida Statutes, and amended to read:

738.507 ~~738.706~~ Adjustment ~~Adjustments~~ between principal and income because of taxes.—

(1) A fiduciary may make an adjustment ~~adjustments~~ between ~~principal and~~ income and principal to offset the shifting of economic interests or tax benefits between current income beneficiaries and successor ~~remainder~~ beneficiaries which arises ~~arise~~ from:

(a) An election or decision ~~Elections and decisions, other than those described in paragraph (b), that~~ the fiduciary makes ~~from time to time~~ regarding a tax matter, other than a decision to claim an income tax deduction to which subsection (2) applies ~~matters~~;

(b) An income tax or ~~any~~ other tax ~~that is~~ imposed on ~~upon~~ the fiduciary or a beneficiary as a result of a transaction involving the fiduciary or a distribution by ~~from~~ the fiduciary ~~estate or trust~~; ~~or~~

(c) ~~The~~ Ownership by the fiduciary ~~an estate or trust~~ of an interest in an entity a part of whose taxable income, regardless of whether ~~or not~~ distributed, is includable in the taxable income of the fiduciary ~~estate, trust,~~ or a beneficiary;

or

(d) An election or decision a fiduciary makes to reimburse any tax under s. 736.08145.

(2) If the amount of an estate tax marital ~~deduction~~ or charitable ~~contribution~~ deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it ~~such amount~~ for estate tax purposes~~,~~ and, as a result, estate taxes paid from principal are increased and income taxes paid by a fiduciary or a ~~an estate, trust, or~~ beneficiary are decreased, the fiduciary shall charge each ~~estate, trust, or~~ beneficiary that benefits from the decrease in income tax to ~~shall~~ reimburse the principal from which the increase in estate tax is paid. The total reimbursement must ~~shall~~ equal the increase in the estate tax, to the extent that the principal used to pay the increase would have qualified for a marital ~~deduction~~ or charitable ~~contribution~~ deduction but for the payment. The ~~proportionate~~ share of the reimbursement for each fiduciary ~~estate, trust,~~ or beneficiary whose income taxes are reduced must ~~shall~~ be the same as its ~~such estate's, trust's, or beneficiary's proportionate~~ share of the total decrease in income tax. ~~An estate or trust shall reimburse principal from income.~~

(3) A fiduciary that charges a beneficiary under subsection (2) may offset the charge by obtaining payment from the beneficiary, withholding an amount from future distributions

to the beneficiary, or adopting another method or combination of methods.

Section 43. Section 738.508, Florida Statutes, is created to read:

738.508 Apportionment of property expenses between tenant and remainderman.—

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

(a) "Remainderman" means the holder of the remainder interests after the expiration of a tenant's estate in property.

(b) "Tenant" means the holder of an estate for life or term of years in real property or personal property, or both.

(2) If a trust has not been created, expenses shall be apportioned between the tenant and remainderman as follows:

(a) The following expenses are allocated to and shall be paid by the tenant:

1. All ordinary expenses incurred in connection with the administration, management, or preservation of the property, including interest, ordinary repairs, regularly recurring taxes assessed against the property, and expenses of a proceeding or other matter that concerns primarily the tenant's estate or use of the property.

2. Recurring premiums on insurance covering the loss of the property or the loss of income from or use of the property.

3. Any of the expenses described in subparagraph (b)3. which are attributable to the use of the property by the tenant.

(b) The following expenses are allocated to and shall be paid by the remainderman:

1. Payments on the principal of a debt secured by the property, except to the extent that the debt is for expenses allocated to the tenant.

2. Expenses of a proceeding or other matter that concerns primarily the title to the property, other than title to the tenant's estate.

3. Except as provided in subparagraph (a)3., expenses related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of such activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

4. Extraordinary repairs.

(c) If the tenant or remainderman incurred an expense for the benefit of his or her own estate without consent or agreement of the other, he or she must pay such expense in full.

(d) Except as provided in paragraph (c), the cost of, or special taxes or assessments for, an improvement representing an

addition of value to property forming part of the principal shall be paid by the tenant if the improvement is not reasonably expected to outlast the estate of the tenant. In all other cases, only a part shall be paid by the tenant while the remainder shall be paid by the remainderman. The part payable by the tenant is ascertainable by taking that percentage of the total that is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant, except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made by using the rate determined under s. 7520(a)(2) of the Internal Revenue Code then in effect and, in the case of an estate for life, the official mortality tables then in effect under s. 7520 of the Internal Revenue Code. Other evidence of duration or expectancy may not be considered.

(3) This section does not apply to the extent that it is inconsistent with the instrument creating the estates, the agreement of the parties, or the specific direction of the Internal Revenue Code taxing or other applicable law.

(4) The common law applicable to tenants and remaindermen supplements this section, except as modified by this section or other laws.

Section 44. Section 738.601, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.601, F.S., for present text.)

738.601 Determination and distribution of net income.—

(1) This section applies when:

(a) The death of an individual results in the creation of an estate or trust; or

(b) An income interest in a trust terminates, whether the trust continues or is distributed.

(2) A fiduciary of an estate or trust with an income interest that terminates shall determine, under subsection (6) and ss. 738.401-738.508 and 738.701-738.703, the amount of net income and net principal receipts received from property specifically given to a beneficiary. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(3) A fiduciary shall determine the income and net income of an estate or income interest in a trust which terminates, other than the amount of net income determined under subsection (2), under ss. 738.401-738.508 and 738.701-738.703, and by:

(a) Including in net income all income from property used or sold to discharge liabilities.

(b) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on estate and inheritance taxes and other taxes imposed because

of the decedent's death, but the fiduciary may pay the expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction under the Internal Revenue Code or comparable law of any state only to the extent that:

1. The payment of the those expenses from income will not cause the reduction or loss of the deduction; or

2. The fiduciary makes an adjustment under s. 738.507(2); and

(c) Paying from principal other disbursements made or incurred in connection with the settlement of the estate or the winding up of an income interest that terminates, including:

1. To the extent authorized by the decedent's will, the terms of the trust, or applicable law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance taxes, and other taxes imposed because of the decedent's death; and

2. Related penalties apportioned by the decedent's will, the terms of the trust, or applicable law to the estate or income interest that terminates.

(4) If a decedent's will or the terms of a trust provide for the payment of interest or the equivalent of interest to a beneficiary who receives a pecuniary amount outright, the fiduciary shall make the payment from net income determined under subsection (3) or from principal to the extent that net

income is insufficient.

(5) A fiduciary shall distribute net income remaining after payments required by subsection (4) in the manner described in s. 738.602 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(6) A fiduciary may not reduce principal or income receipts from property described in subsection (2) because of a payment described in s. 738.501 or s. 738.502 to the extent that the decedent's will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property must be determined by including the amount the fiduciary receives or pays regarding the property, whether the amount accrued or became due before, on, or after the date of the decedent's death or an income interest's terminating event, and making a reasonable provision for an amount the estate or income interest may become obligated to pay after the property is distributed.

Section 45. Section 738.602, Florida Statutes, is amended to read:

(Substantial rewording of section. See

s. 738.602, F.S., for present text.)

738.602 Distribution to successor beneficiary.—

(1) Except to the extent that ss. 738.301-738.310 apply for a beneficiary that is a trust, each beneficiary described in s. 738.601(5) is entitled to receive a share of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using carrying values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to which this section applies, each beneficiary, including a beneficiary who does not receive part of the distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary received after the decedent's death, an income interest's other terminating event, or the preceding distribution by the fiduciary.

(2) In determining a beneficiary's share of net income under subsection (1), the following rules apply:

(a) The beneficiary is entitled to receive a share of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date.

(b) The beneficiary's fractional interest under paragraph (a) must be calculated:

1. On the aggregate carrying value of the assets as of the distribution date; and

2. Reduced by:

a. Any liabilities of the estate or trust;

b. Property specifically given to a beneficiary under the decedent's will or the terms of the trust; and

c. Property required to pay pecuniary amounts not in trust.

(c) If a disproportionate distribution of principal is made to any beneficiary, the respective fractional interests of all beneficiaries in the undistributed principal assets must be recomputed by:

1. Adjusting the carrying value of the principal assets to their fair market value before the distribution;

2. Reducing the fractional interest of the recipient of the disproportionate distribution in the remaining principal assets by the fair market value of the principal distribution; and

3. Recomputing the fractional interests of all beneficiaries in the remaining principal assets based upon the now restated carrying values.

(d) The distribution date under paragraph (a) may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which the assets are distributed. All distributions to a beneficiary must be valued based on the assets' fair market value on the date of the distribution.

(3) To the extent that a fiduciary does not distribute

under this section all the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain records showing the interest of each beneficiary in the net income.

(4) If this section applies to income from an asset, a fiduciary may apply the requirements in this section to net gain or loss realized from the disposition of the asset after the decedent's date of death, an income interest's terminating event, or the preceding distribution by the fiduciary.

(5) The carrying value or fair market value of trust assets shall be determined on an asset-by-asset basis and is conclusive if reasonable and determined in good faith. Determinations of fair market value based on appraisals performed within 2 years before or after the valuation date are presumed reasonable. The values of trust assets are conclusively presumed to be reasonable and determined in good faith unless proven otherwise in a proceeding commenced by or on behalf of a person interested in the trust within the time provided in s. 736.1008.

Section 46. Section 738.701, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.701, F.S., for present text.)

738.701 When right to income begins and ends.—

(1) An income beneficiary is entitled to net income in

accordance with the terms of the trust from the date an income interest begins. The income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to:

(a) The trust for the current income beneficiary; or

(b) A successive interest for a successor beneficiary.

(2) An asset becomes subject to a trust under paragraph (1)(a):

(a) For an asset that is transferred to the trust during the settlor's life, on the date the asset is transferred;

(b) For an asset that becomes subject to the trust because of a decedent's death, on the date of the decedent's death, even if there is an intervening period of administration of the decedent's estate; or

(c) For an asset that is transferred to a fiduciary by a third party because of a decedent's death, on the date of the decedent's death.

(3) An asset becomes subject to a successive interest under paragraph (1)(b) on the day after the preceding income interest ends, as determined under subsection (4), even if there is an intervening period of administration to wind up the preceding income interest.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to

which a fiduciary may or must distribute income.

Section 47. Section 738.702, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.702, F.S., for present text.)

738.702 Apportionment of receipts and disbursements when decedent dies or income interest begins.—

(1) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to which s. 738.601(2) applies, to principal if its due date occurs before the date on which:

(a) For an estate, the decedent died; or

(b) For a trust or successive interest, an income interest begins.

(2) If the due date of a periodic income receipt or disbursement occurs on or after the date on which a decedent died or an income interest begins, a fiduciary must allocate the receipt or disbursement to income.

(3) If an income receipt or disbursement is not periodic or has no due date, a fiduciary must treat the receipt or disbursement under this section as accruing from day to day. The fiduciary shall allocate to principal the portion of the receipt or disbursement accruing before the date on which a decedent died or an income interest begins, and shall allocate to income the balance.

(4) A receipt or disbursement is periodic under subsections (2) and (3) if:

(a) The receipt or disbursement must be paid at regular intervals under an obligation to make payments; or

(b) The payor customarily makes payments at regular intervals.

(5) An item of income or an obligation is due under this section on the date the payor is required to make a payment. If a payment date is not stated, there is no due date.

(6) Distributions to shareholders or other owners from an entity to which s. 738.401 applies are due:

(a) On the date fixed by or on behalf of the entity for determining the persons entitled to receive the distribution;

(b) If no date is fixed, on the date of the decision by or on behalf of the entity to make the distribution; or

(c) If no date is fixed and the fiduciary does not know the date of the decision by or on behalf of the entity to make the distribution, on the date the fiduciary learns of the decision.

(7) Section 733.817 controls over any provision of this chapter to the contrary.

Section 48. Section 738.703, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.703, F.S., for present text.)

738.703 Apportionment when income interest ends.—

(1) As used in this section, the term "undistributed income" means net income received on or before the date on which an income interest ends. The term does not include an item of income or expense which is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(2) Except as otherwise provided in subsection (3), when a mandatory income interest of a beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust to the beneficiary or, if the beneficiary does not survive the date the interest ends, to the beneficiary's estate.

(3) If a beneficiary has an unqualified power to withdraw more than 5 percent of the value of a trust immediately before an income interest ends:

(a) The fiduciary shall allocate to principal the undistributed income from the portion of the trust which may be withdrawn; and

(b) Subsection (2) applies only to the balance of the undistributed income.

(4) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value of assets ends, the fiduciary shall prorate the final payment as required to preserve income tax, gift tax, estate tax, or other tax benefits.

Section 49. Section 738.801, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.801, F.S., for present text.)

738.801 Uniformity of application and construction.—In applying and construing this act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 50. Section 738.802, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.802, F.S., for present text.)

738.802 Relation to Electronic Signatures in Global and National Commerce Act.—This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7003(b). This chapter does not modify, limit, or supersede s. 117.285.

Section 51. Section 738.803, Florida Statutes, is amended to read:

738.803 Severability.—If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does ~~shall~~ not affect other provisions or

applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Section 52. Section 738.804, Florida Statutes, is amended to read:

738.804 Application.—Except as provided in the terms of the trust ~~instrument, the will,~~ or this chapter, this chapter shall apply to any receipt or expense received or incurred and any disbursement made after January 1, 2025 ~~January 1, 2003~~, by any trust or ~~decedent's~~ estate, whether established before or after January 1, 2025 ~~January 1, 2003~~, and whether the asset involved was acquired by the trustee or personal representative before or after January 1, 2025 ~~January 1, 2003~~. Receipts or expenses received or incurred and disbursements made before January 1, 2025, must ~~January 1, 2003, shall~~ be governed by the law of this state in effect at the time of the event, except as otherwise expressly provided in the ~~will or~~ terms of the trust or in this chapter.

Section 53. This act shall take effect January 1, 2025.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1219 Dental Insurance Claims
SPONSOR(S): Black
TIED BILLS: **IDEN./SIM. BILLS:** SB 892

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Herrera	Lloyd
2) Select Committee on Health Innovation			
3) Commerce Committee			

SUMMARY ANALYSIS

Health insurance serves a vital role in protecting individuals from financial hardships caused by accidents, illnesses, or disabilities. Managed care, often utilized by health insurers through preferred provider organizations (PPOs) and health maintenance organizations (HMOs), integrates healthcare delivery and financing to provide cost-effective medical services within controlled networks.

In Florida, the Office of Insurance Regulation (OIR), overseen by the Financial Services Commission (FSC), supervises insurance entities, examining insurers and ensuring compliance with regulations, including market conduct examinations. Both HMOs and Prepaid Limited Health Service Organizations (PLHSOs) operate within this regulatory framework.

Dental insurance is subject to regulation by OIR and the Department of Financial Services, guaranteeing adherence to laws and fair practices. Dental plans typically cover preventive care and common procedures, available through individual or group plans.

The bill, applicable to health insurers, PLHSOs, and HMOs, introduces the following changes:

- Prohibits mandating credit card payments as the sole means of reimbursement for dental services, along with requirements for insurers to provide written notice before electronic fund transfers, and setting limits on associated fees.
- Provides criteria for claims denial under prior authorizations, including circumstances such as benefit limitations, inadequate documentation, and changes in patient condition.
- Mandates enforcement by the OIR, stating certain specified provisions cannot be waived, and any conflicting clauses are voided.

The bill may have a positive impact on state government revenue and local governments. It has an indeterminate positive and negative direct economic impact on the private sector and state government expenditures.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Health Insurance

Health insurance is the insurance of human beings against bodily injury or disablement by accident or sickness, including the expenses associated with such injury, disablement, or sickness.[1] Individuals purchase health insurance coverage with the purpose of managing anticipated expenses related to health or protecting themselves from unexpected medical bills or large health care costs. Managed care is the most common delivery system for medical care today by health insurers.[2] Managed care systems combine the delivery and financing of health care services by limiting the choice of doctors and hospitals.[3] In return for this limited choice, however, medical care is less costly due to the managed care network's ability to control health care services. Some common forms of managed care are preferred provider organizations[4] (PPO) and health maintenance organizations[5] (HMO).

Office of Insurance Regulation

The Office of Insurance Regulation (OIR) regulates specified insurance products, insurers and other risk bearing entities in Florida.[6] The Financial Services Commission (FSC), composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as the OIR agency head for purposes of rulemaking. Further, the FSC appoints the OIR Commissioner.

As part of their regulatory oversight, the OIR may suspend or revoke an insurer's certificate of authority under certain conditions.[7] The OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.[8] As part of the examination process, all persons being examined must make available to the OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.[9] The OIR is also authorized to conduct market conduct examinations to determine compliance with applicable provisions of the Insurance Code.[10]

The Agency for Health Care Administration

The Agency for Health Care Administration (AHCA) is the chief health policy and planning entity for the state.[11] AHCA is responsible for health facilities licensure, inspection, and regulatory enforcement; investigation of consumer complaints related to health care facilities and managed care plans; the implementation of the Certificate of Need program; the operation of the Florida Center for Health Information and Policy Analysis; the administration of the Medicaid program; the administration of the contracts with the Florida Healthy Kids Corporation; the certification of health maintenance organizations and prepaid health clinics; and other duties prescribed by statute or agreement.[12] The head of AHCA is the Secretary, who is appointed by the Governor, subject to confirmation by the Senate.[13]

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[1] S. 624.603, F.S.
[2] Florida Department of Financial Services, *Health Insurance and Health Maintenance Organizations, A Guide for Consumers,* available at: https://www.myfloridacfo.com/docs-sf/consumer-services-libraries/ (last visited Jan. 26, 2024).
[3] *Id*.
[4] S. 627.6471, F.S.
[5] Part I of ch. 641, F.S.
[6] S. 20.121(3)(a), F.S.
[7] S. 624.418, F.S
[8] S. 624, 316(1)(a), F.S.
[9] S. 624.318(2), F.S.
[10] The Code is comprised of chs. 624-632, 634-636, 641, 642, 648, and 651, F.S. *See* S. 624.3161, F.S.
[11] AHCA, *About the Agency for Health Care Administration*, https://ahca.myflorida.com/about-the-agency-for-health-care-administration (last visited Jan. 26, 2024).
[12] *Id*.
[13] *Id*.

Health Maintenance Organizations

Health Maintenance Organizations (HMOs) in Florida operate within a regulatory framework overseen by OIR. To offer health insurance plans in Florida, HMOs must obtain a license from the OIR.[14] Managed care plans are the primary offerings of HMOs in Florida. These plans provide comprehensive healthcare services to members for a fixed monthly premium.[15] Members typically select a primary care physician from within the HMO's network, who serves as the main point of contact for all healthcare needs and referrals to specialists.[16]

HMOs maintain networks of healthcare providers, including primary care physicians, specialists, hospitals, and other healthcare facilities.[17] Members are generally required to receive care from within the HMO's network, with exceptions for emergencies or authorized out-of-network care.[18]

Florida law provides various consumer protections for individuals enrolled in HMO plans, including guaranteed access to emergency services, coverage for essential health benefits mandated by the Affordable Care Act, and the right to appeal coverage decisions made by the HMO.[19]

Prepaid Limited Health Service Organizations Contracts

Prepaid limited health service organizations (PLHSO) provide limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment authorized under ch. 636, F.S. Limited health services include:

- Ambulance;
- Dental;
- Vision;
- Mental health;
- Substance abuse;
- Chiropractic;
- Podiatric; and
- Pharmaceutical.

Provider arrangements for prepaid limited health service organizations are authorized in s. 636.035, F.S., and must comply with the requirements in that section.

Regulation of Dental Practice in Florida

Dental insurance in Florida operates within a regulatory framework overseen by state agencies such as the OIR and the Florida Department of Financial Services (DFS). These agencies ensure that dental insurance plans comply with state laws and regulations to protect consumers and ensure fair practices within the industry.

Dental insurance typically covers a portion of the cost of preventive care, such as routine cleanings and check-ups, as well as restorative treatments like fillings and extractions.[20] Some plans may also offer coverage for more extensive procedures like root canals, crowns, and orthodontic treatment, although coverage levels and limitations can vary widely depending on the specific plan.[21]

[14] S. 641.21(1), F.S.
[15] Medicare, What's an HMO? https://www.medicare.gov/health-drug-plans/health-plans/. (last visited Jan. 26, 2024).
[16] *Id*.
[17] S. 641.19(12), F.S.
[18] Medicare, *What's an HMO?*, https://www.medicare.gov/health-drug-plans/health-plans/. (last visited Jan. 26, 2024).
[19] Consumer Services, *Health Insurance & HMO Overview*, https://www.myfloridacfo.com/division/consumers/understanding-insurance/health-insurance-and-hmo-overview (last visited Jan. 26, 2024).
[20] HealthPartners, *What Does Dental Insurance Cover?*, https://www.healthpartners.com/blog/what-does-dental-insurance-cover/ (last visited Jan. 26, 2024).
[21] *Id*.

Consumers in Florida have the option to purchase dental insurance plans on the individual market or through group plans offered by employers or other organizations.[22] The availability and cost of dental insurance coverage can vary depending on factors such as age, location, and the extent of coverage desired.[23] In addition to traditional dental insurance plans, some Florida residents may also have access to dental discount plans or health savings accounts (HSAs) that can help offset the cost of dental care.[24]

Dentists

A dentist is licensed to examine, diagnose, treat, and care for conditions within the human oral cavity and its adjacent tissues and structures.[25] Dentists may delegate certain tasks[26] to dental hygienists and dental assistants, but a patient's "dentist of record" retains primary responsibility for all dental treatment on the patient.[27]

Any person wishing to practice dentistry in this state must meet specified requirements and apply to the Department of Health (DOH) for licensure. Applicants must sit for and pass three examinations prior to licensure:[28]

- The National Board of Dental Examiners dental examination (NBDE);
- A practical examination, which is the American Dental Licensing Examination developed by the American Board of Dental Examiners, Inc.;[29] and
- A written examination on Florida laws and rules regulating the practice of dentistry and dental hygiene.

To qualify to take the Florida dental licensure examination, an applicant must be 18 years of age or older, be a graduate of a dental school accredited by the American Dental Association or be a student in the final year of a program at an accredited institution, and have successfully completed the NBDE dental examination.[30]

Dentists must maintain professional liability insurance or provide proof of professional responsibility. If the dentist obtains professional liability insurance, the coverage must be at least $100,000 per claim, with a minimum annual aggregate of at least $300,000.[31] Alternatively, a dentist may maintain an unexpired, irrevocable letter of credit in the amount of $100,000 per claim, with a minimum aggregate availability of credit of at least $300,000.[32] The professional liability insurance must provide coverage for the actions of any dental hygienist supervised by the dentist.[33] However, a dentist may be exempt from maintaining professional liability insurance if he or she:[34]

- Practices exclusively for the federal government or the State of Florida or its agencies or subdivisions;
- Is not practicing in this state;
- Practices only in conjunction with his or her teaching duties at an accredited school of dentistry or in its main teaching hospitals; or
- Demonstrates to the Board that he or she has no malpractice exposure in this state.

[22] Health Care, *Dental Coverage in the Marketplace*, https://www.healthcare.gov/coverage/dental-coverage/ (last visited Jan. 26, 2024).
[23] *Id*.
[24] MyBenefits, *Health Savings Account*, https://www.mybenefits.myflorida.com/health/savings_and_spending_accounts (last visited Jan. 26, 2024).
[25] S. 466.003(2)-(3), F.S.
[26] S. 466.024, F.S.
[27] S. 466.018, F.S.
[28] S. 466.006, F.S.
[29] Rule 64B5-2.013, F.A.C.
[30] S. 466.006(2), F.S.
[31] Rule 64B5-17.011(1), F.A.C.
[32] Rule 64B5-17.011(2), F.A.C.
[33] Rule 64B5-17.011(4), F.A.C.
[34] Rule 64B5-17.011(3), F.A.C.

There are currently 17,193 dentists with active licenses to practice in Florida.[35] There are 41 out-of-state registered telehealth dentists.[36]

Effect of the bill

The bill, which applies to health insurers, Prepaid Limited Health Service Organizations, and Health Maintenance Organizations (HMOs), regulates payment methods, claims denials, and provider contracts related to dental insurance reimbursement in Florida.

Regulation of Payment Methods and Notification Requirements

The bill prohibits these entities from mandating credit card payment as the sole method of reimbursing dentists for services provided to insured individuals. Additionally, it establishes a requirement for insurers to provide written notice to dentists at least ten days prior to making payments through electronic funds transfer, outlining any associated fees and presenting alternative payment methods with clear instructions for selection. The bill imposes limitations on the fees that insurers can charge dentists for transmitting payments through Automated Clearing House transfers, while permitting reasonable fees for related value-added services.

Criteria for Denial of Subsequently Submitted Claims under Prior Authorization

The bill prohibits denials on any claim subsequently submitted by a dentist licensed under ch. 466 for procedures specifically included in a prior authorization, unless certain circumstances apply for each denied procedure. These circumstances include:

- benefit limitations being reached subsequent to the issuance of the prior authorization;
- inadequate documentation to support the originally authorized claim;
- changes in the patient's condition or provision of new procedures post-authorization that render the prior authorized procedure medically unnecessary;
- changes in the patient's condition or provision of new procedures that would have required disapproval under the terms and conditions of the patient's plan at the time of prior authorization; or
- denial due to reasons such as responsibility of another payor for payment, prior payment to the dentist for the procedures in question, fraudulent claim submission, or patient ineligibility at the time of service.

Regulation of Fee Determination and Definition of Covered Services in Provider Contracts

The bill clarifies the term “covered services” to improve readability and understandability.

Enforcement and Non-Waiver Provisions

Additionally, the bill specifies that these provisions cannot be waived or nullified by contract, and any contractual clause conflicting with it is considered null and void. Enforcement authority is granted to the OIR, and the FSC may adopt rules for implementation.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.6131, F.S., relating to payment of claims.

Section 2: Amends s. 627.6474, F.S., relating to provider contracts.

Section 3: Amends s. 636.032, F.S., relating to acceptable payments.

[35] *See*, Department of Health *License Verification* web search. Available at https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders (last visited January 26, 2024).
[36] *Id*.

Section 4: Amends s. 636.035, F.S., relating to provider agreements

Section 5: Amends s. 641.315, F.S., relating to provider contracts.

Section 6: Providing an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may positively affect state government expenditures by potentially reducing administrative costs associated with overseeing dental insurance reimbursement and managing disputes related to claims denials.

   However, there could also be negative impacts on state government expenditures. For example, if the bill increases regulatory oversight or enforcement activities by state agencies such as OIR, it could result in additional administrative costs for the government. Moreover, if the provisions lead to an increase in appeals or legal challenges related to denied claims, it could necessitate additional resources for adjudication processes, potentially adding to state expenditures.

   Furthermore, an increase in premium costs for state agencies providing primary dental coverage, resulting from reimbursement requirements stipulated in the bill, could adversely affect state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill could negatively impact local government expenditures due to potential increases in premium costs for state agencies providing primary dental coverage, resulting from the reimbursement requirements outlined in the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate economic impact on the private sector. While the bill establishes specific criteria for claims denial and service coverage, which could improve clarity for providers, compliance may result in costs. These costs include investments in systems and staff training by insurers, PLHSOs, and HMOs to ensure compliance.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to dental insurance claims; amending s. 627.6131, F.S.; prohibiting a contract between a health insurer and a dentist from containing certain restrictions on payment methods; requiring a health insurer to make certain notifications before paying a claim to a dentist through electronic funds transfer; prohibiting a health insurer from charging a fee to transmit a payment to a dentist through ACH transfer unless the dentist has consented to such fee; authorizing a health insurer to charge reasonable fees for other value-added services related to the ACH transfer; providing construction; authorizing the Office of Insurance Regulation of the Financial Services Commission to enforce certain provisions; authorizing the commission to adopt rules; prohibiting a health insurer from denying claims for procedures included in a prior authorization; providing exceptions; providing construction; authorizing the office to enforce certain provisions; authorizing the commission to adopt rules; amending s. 627.6474, F.S.; revising the definition of the term "covered services"; amending s. 636.032, F.S.; prohibiting a contract between a prepaid limited health service organization and a dentist from containing certain

restrictions on payment methods; requiring the prepaid limited health service organization to make certain notifications before paying a claim to a dentist through electronic funds transfer; prohibiting a prepaid limited health service organization from charging a fee to transmit a payment to a dentist through ACH transfer unless the dentist has consented to such fee; authorizing the prepaid limited health service organization to charge reasonable fees for other value-added services related to the ACH transfer; providing construction; authorizing the office to enforce certain provisions; authorizing the commission to adopt rules; amending s. 636.035, F.S.; revising the definition of the term "covered services"; prohibiting a prepaid limited health service organization from denying claims for procedures included in a prior authorization; providing exceptions; providing construction; authorizing the office to enforce certain provisions; authorizing the commission to adopt rules; amending s. 641.315, F.S.; revising the definition of the term "covered service"; prohibiting a contract between a health maintenance organization and a dentist from containing certain restrictions on payment methods; requiring the health maintenance organization to make

certain notifications before paying a claim to a dentist through electronic funds transfer; prohibiting a health maintenance organization from charging a fee to transmit a payment to a dentist through ACH transfer unless the dentist has consented to such fee; authorizing the health maintenance organization to charge reasonable fees for other value-added services related to the ACH transfer; providing construction; authorizing the office to enforce certain provisions; authorizing the commission to adopt rules; prohibiting a health maintenance organization from denying claims for procedures included in a prior authorization; providing exceptions; providing construction; authorizing the office to enforce certain provisions; authorizing the commission to adopt rules; providing an effective date.

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

Section 1. Subsections (20) and (21) are added to section 627.6131, Florida Statutes, to read:

627.6131 Payment of claims.—

(20)(a) A contract between a health insurer and a dentist licensed under chapter 466 for the provision of services to an insured may not specify credit card payment as the only

acceptable method for payments from the health insurer to the dentist.

(b) At least 10 days before a health insurer pays a claim to a dentist through electronic funds transfer, including, but not limited to, virtual credit card payments, the health insurer shall notify the dentist in writing of all of the following:

1. The fees, if any, associated with the electronic funds transfer.

2. The available methods of payment of claims by the health insurer, with clear instructions to the dentist on how to select an alternative payment method.

(c) A health insurer that pays a claim to a dentist through Automated Clearing House (ACH) transfer may not charge a fee solely to transmit the payment to the dentist unless the dentist has consented to the fee. A health insurer may charge reasonable fees for other value-added services related to the ACH transfer, including, but not limited to, transaction management, data management, and portal services.

(d) This subsection may not be waived, voided, or nullified by contract, and any contractual clause in conflict with this subsection or which purports to waive any requirements of this subsection is null and void.

(e) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(f) The commission may adopt rules to implement this

subsection.

(21)(a) A health insurer may not deny any claim subsequently submitted by a dentist licensed under chapter 466 for procedures specifically included in a prior authorization unless at least one of the following circumstances applies for each procedure denied:

1. Benefit limitations, such as annual maximums and frequency limitations not applicable at the time of the prior authorization, are reached subsequent to issuance of the prior authorization.

2. The documentation provided by the person submitting the claim fails to support the claim as originally authorized.

3. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the condition of the patient occurs such that the prior authorized procedure would no longer be considered medically necessary, based on the prevailing standard of care.

4. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the patient's condition occurs such that the prior authorized procedure would at that time have required disapproval pursuant to the terms and conditions for coverage under the patient's plan in effect at the time the prior authorization was issued.

5. The denial of the claim was due to one of the following:

a. Another payor is responsible for payment.

b. The dentist has already been paid for the procedures identified in the claim.

c. The claim was submitted fraudulently, or the prior authorization was based in whole or material part on erroneous information provided to the health insurer by the dentist, patient, or other person not related to the insurer.

d. The person receiving the procedure was not eligible to receive the procedure on the date of service and the health insurer did not know, and with the exercise of reasonable care could not have known, of his or her ineligibility.

(b) This subsection may not be waived, voided, or nullified by contract, and any contractual clause in conflict with this subsection or which purports to waive any requirements of this subsection is null and void.

(c) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(d) The commission may adopt rules to implement this subsection.

Section 2. Subsection (2) of section 627.6474, Florida Statutes, is amended to read:

627.6474 Provider contracts.—

(2) A contract between a health insurer and a dentist licensed under chapter 466 for the provision of services to an insured may not contain a provision that requires the dentist to

provide services to the insured under such contract at a fee set by the health insurer unless such services are covered services under the applicable contract. As used in this subsection, the term "covered services" means dental care services for which a reimbursement is available under the insured's contract, notwithstanding ~~or for which a reimbursement would be available but for~~ the application of contractual limitations, such as deductibles, coinsurance, waiting periods, annual or lifetime maximums, frequency limitations, alternative benefit payments, or any other limitation.

Section 3. Section 636.032, Florida Statutes, is amended to read:

636.032 Acceptable payments.—

(1) Each prepaid limited health service organization may accept from government agencies, corporations, groups, or individuals payments covering all or part of the cost of contracts entered into between the prepaid limited health service organization and its subscribers.

(2)(a) A contract between a prepaid limited health service organization and a dentist licensed under chapter 466 for the provision of services to a subscriber may not specify credit card payment as the only acceptable method for payments from the prepaid limited health service organization to the dentist.

(b) At least 10 days before a limited health service organization pays a claim to a dentist through electronic funds

transfer, including, but not limited to, virtual credit card payments, the prepaid limited health service organization shall notify the dentist in writing of all of the following:

1. The fees, if any, that are associated with the electronic funds transfer.

2. The available methods of payment of claims by the prepaid limited health service organization, with clear instructions to the dentist on how to select an alternative payment method.

(c) A prepaid limited health service organization that pays a claim to a dentist through Automatic Clearing House (ACH) transfer may not charge a fee solely to transmit the payment to the dentist unless the dentist has consented to the fee. A prepaid limited health service organization may charge reasonable fees for other value-added services related to the ACH transfer, including, but not limited to, transaction management, data management, and portal services.

(d) This subsection may not be waived, voided, or nullified by contract, and any contractual clause in conflict with this subsection or which purports to waive any requirements of this subsection is null and void.

(e) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(f) The commission may adopt rules to implement this subsection.

Section 4. Subsection (13) of section 636.035, Florida Statutes, is amended, and subsection (15) is added to that section, to read:

636.035 Provider arrangements.—

(13) A contract between a prepaid limited health service organization and a dentist licensed under chapter 466 for the provision of services to a subscriber of the prepaid limited health service organization may not contain a provision that requires the dentist to provide services to the subscriber of the prepaid limited health service organization at a fee set by the prepaid limited health service organization unless such services are covered services under the applicable contract. As used in this subsection, the term "covered services" means dental care services for which a reimbursement is available under the subscriber's contract, notwithstanding ~~or for which a reimbursement would be available but for~~ the application of contractual limitations such as deductibles, coinsurance, waiting periods, annual or lifetime maximums, frequency limitations, alternative benefit payments, or any other limitation.

(15)(a) A prepaid limited health service organization may not deny any claim subsequently submitted by a dentist licensed under chapter 466 for procedures specifically included in a prior authorization unless at least one of the following circumstances applies for each procedure denied:

1. Benefit limitations, such as annual maximums and frequency limitations not applicable at the time of the prior authorization, are reached subsequent to issuance of the prior authorization.

2. The documentation provided by the person submitting the claim fails to support the claim as originally authorized.

3. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the condition of the patient occurs such that the prior authorized procedure would no longer be considered medically necessary, based on the prevailing standard of care.

4. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the patient's condition occurs such that the prior authorized procedure would at that time have required disapproval pursuant to the terms and conditions for coverage under the patient's plan in effect at the time the prior authorization was issued.

5. The denial of the dental service claim was due to one of the following:

a. Another payor is responsible for payment.

b. The dentist has already been paid for the procedures identified in the claim.

c. The claim was submitted fraudulently, or the prior authorization was based in whole or material part on erroneous information provided to the prepaid limited health service

organization by the dentist, patient, or other person not related to the organization.

d. The person receiving the procedure was not eligible to receive the procedure on the date of service and the prepaid limited health service organization did not know, and with the exercise of reasonable care could not have known, of his or her ineligibility.

(b) This subsection may not be waived, voided, or nullified by contract, and any contractual clause in conflict with this subsection or which purports to waive any requirements of this subsection is null and void.

(c) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(d) The commission may adopt rules to implement this subsection.

Section 5. Subsection (11) of section 641.315, Florida Statutes, is amended, and subsections (13) and (14) are added to that section, to read:

641.315 Provider contracts.—

(11) A contract between a health maintenance organization and a dentist licensed under chapter 466 for the provision of services to a subscriber of the health maintenance organization may not contain a provision that requires the dentist to provide services to the subscriber of the health maintenance organization at a fee set by the health maintenance organization

unless such services are covered services under the applicable contract. As used in this subsection, the term "covered services" means dental care services for which a reimbursement is available under the subscriber's contract, notwithstanding ~~or for which a reimbursement would be available but for~~ the application of contractual limitations such as deductibles, coinsurance, waiting periods, annual or lifetime maximums, frequency limitations, alternative benefit payments, or any other limitation.

(13)(a) A contract between a health maintenance organization and a dentist licensed under chapter 466 for the provision of services to a subscriber of the health maintenance organization may not specify credit card payment as the only acceptable method for payments from the health maintenance organization to the dentist.

(b) At least 10 days before a health maintenance organization pays a claim to a dentist through electronic funds transfer, including, but not limited to, virtual credit card payments, the health maintenance organization shall notify the dentist in writing of all of the following:

1. The fees, if any, that are associated with the electronic funds transfer.

2. The available methods of payment of claims by the health maintenance organization, with clear instructions to the dentist on how to select an alternative payment method.

(c) A health maintenance organization that pays a claim to a dentist through Automated Clearing House (ACH) transfer may not charge a fee solely to transmit the payment to the dentist unless the dentist has consented to the fee. A health maintenance organization may charge reasonable fees for other value-added services related to the ACH transfer, including, but not limited to, transaction management, data management, and portal services.

(d) This subsection may not be waived, voided, or nullified by contract, and any contractual clause in conflict with this subsection or which purports to waive any requirements of this subsection is null and void.

(e) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(f) The commission may adopt rules to implement this subsection.

(14)(a) A health maintenance organization may not deny any claim subsequently submitted by a dentist licensed under chapter 466 for procedures specifically included in a prior authorization unless at least one of the following circumstances applies for each procedure denied:

1. Benefit limitations, such as annual maximums and frequency limitations not applicable at the time of the prior authorization, are reached subsequent to issuance of the prior authorization.

2. The documentation provided by the person submitting the claim fails to support the claim as originally authorized.

3. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the condition of the patient occurs such that the prior authorized procedure would no longer be considered medically necessary, based on the prevailing standard of care.

4. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the patient's condition occurs such that the prior authorized procedure would at that time have required disapproval pursuant to the terms and conditions for coverage under the patient's plan in effect at the time the prior authorization was issued.

5. The denial of the claim was due to one of the following:

a. Another payor is responsible for payment.

b. The dentist has already been paid for the procedures identified in the claim.

c. The claim was submitted fraudulently, or the prior authorization was based in whole or material part on erroneous information provided to the health maintenance organization by the dentist, patient, or other person not related to the organization.

d. The person receiving the procedure was not eligible to receive the procedure on the date of service and the health

maintenance organization did not know, and with the exercise of reasonable care could not have known, of his or her ineligibility.

(b) The subsection may not be waived, voided, or nullified by contract, and any contractual clause in conflict with this subsection or which purports to waive any requirements of this subsection is null and void.

(c) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(d) The commission may adopt rules to implement this subsection.

Section 6. This act shall take effect July 1, 2024.

INSURANCE & BANKING SUBCOMMITTEE

HB 1219 by Rep. Black
Dental Insurance Claims

AMENDMENT SUMMARY
February 1, 2024

Amendment 1 by Rep. Black (Line 90): The amendment removes a proposed authorization for health insurers to charge a fee for value-added services related to ACH transfers.

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 Black offered the following:

Amendment (with title amendment)

Remove lines 90-308 and insert:

dentist has consented to the fee.

(d) This subsection may not be waived, voided, or nullified by contract, and any contractual clause in conflict with this subsection or which purports to waive any requirements of this subsection is null and void.

(e) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(f) The commission may adopt rules to implement this subsection.

(21)(a) A health insurer may not deny any claim subsequently submitted by a dentist licensed under chapter 466 for procedures specifically included in a prior authorization unless at least one of the following circumstances applies for each procedure denied:

1. Benefit limitations, such as annual maximums and frequency limitations not applicable at the time of the prior authorization, are reached subsequent to issuance of the prior authorization.

2. The documentation provided by the person submitting the claim fails to support the claim as originally authorized.

3. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the condition of the patient occurs such that the prior authorized procedure would no longer be considered medically necessary, based on the prevailing standard of care.

4. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the patient's condition occurs such that the prior authorized procedure would at that time have required disapproval pursuant to the terms and conditions for coverage under the patient's plan in effect at the time the prior authorization was issued.

5. The denial of the claim was due to one of the following:

a. Another payor is responsible for payment.

b. The dentist has already been paid for the procedures identified in the claim.

c. The claim was submitted fraudulently, or the prior authorization was based in whole or material part on erroneous information provided to the health insurer by the dentist, patient, or other person not related to the insurer.

d. The person receiving the procedure was not eligible to receive the procedure on the date of service and the health insurer did not know, and with the exercise of reasonable care could not have known, of his or her ineligibility.

(b) This subsection may not be waived, voided, or nullified by contract, and any contractual clause in conflict with this subsection or which purports to waive any requirements of this subsection is null and void.

(c) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(d) The commission may adopt rules to implement this subsection.

Section 2. Subsection (2) of section 627.6474, Florida Statutes, is amended to read:

627.6474 Provider contracts.—

(2) A contract between a health insurer and a dentist licensed under chapter 466 for the provision of services to an insured may not contain a provision that requires the dentist to provide services to the insured under such contract at a fee set

by the health insurer unless such services are covered services under the applicable contract. As used in this subsection, the term "covered services" means dental care services for which a reimbursement is available under the insured's contract, notwithstanding ~~or for which a reimbursement would be available but for~~ the application of contractual limitations, such as deductibles, coinsurance, waiting periods, annual or lifetime maximums, frequency limitations, alternative benefit payments, or any other limitation.

Section 3. Section 636.032, Florida Statutes, is amended to read:

636.032 Acceptable payments.—

(1) Each prepaid limited health service organization may accept from government agencies, corporations, groups, or individuals payments covering all or part of the cost of contracts entered into between the prepaid limited health service organization and its subscribers.

(2)(a) A contract between a prepaid limited health service organization and a dentist licensed under chapter 466 for the provision of services to a subscriber may not specify credit card payment as the only acceptable method for payments from the prepaid limited health service organization to the dentist.

(b) At least 10 days before a limited health service organization pays a claim to a dentist through electronic funds transfer, including, but not limited to, virtual credit card

payments, the prepaid limited health service organization shall notify the dentist in writing of all of the following:

1. The fees, if any, that are associated with the electronic funds transfer.

2. The available methods of payment of claims by the prepaid limited health service organization, with clear instructions to the dentist on how to select an alternative payment method.

(c) A prepaid limited health service organization that pays a claim to a dentist through Automatic Clearing House (ACH) transfer may not charge a fee solely to transmit the payment to the dentist unless the dentist has consented to the fee.

(d) This subsection may not be waived, voided, or nullified by contract, and any contractual clause in conflict with this subsection or which purports to waive any requirements of this subsection is null and void.

(e) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(f) The commission may adopt rules to implement this subsection.

Section 4. Subsection (13) of section 636.035, Florida Statutes, is amended, and subsection (15) is added to that section, to read:

636.035 Provider arrangements.—

(13) A contract between a prepaid limited health service organization and a dentist licensed under chapter 466 for the provision of services to a subscriber of the prepaid limited health service organization may not contain a provision that requires the dentist to provide services to the subscriber of the prepaid limited health service organization at a fee set by the prepaid limited health service organization unless such services are covered services under the applicable contract. As used in this subsection, the term "covered services" means dental care services for which a reimbursement is available under the subscriber's contract, notwithstanding ~~or for which a reimbursement would be available but for~~ the application of contractual limitations such as deductibles, coinsurance, waiting periods, annual or lifetime maximums, frequency limitations, alternative benefit payments, or any other limitation.

(15)(a) A prepaid limited health service organization may not deny any claim subsequently submitted by a dentist licensed under chapter 466 for procedures specifically included in a prior authorization unless at least one of the following circumstances applies for each procedure denied:

1. Benefit limitations, such as annual maximums and frequency limitations not applicable at the time of the prior authorization, are reached subsequent to issuance of the prior authorization.

2. The documentation provided by the person submitting the claim fails to support the claim as originally authorized.

3. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the condition of the patient occurs such that the prior authorized procedure would no longer be considered medically necessary, based on the prevailing standard of care.

4. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the patient's condition occurs such that the prior authorized procedure would at that time have required disapproval pursuant to the terms and conditions for coverage under the patient's plan in effect at the time the prior authorization was issued.

5. The denial of the dental service claim was due to one of the following:

a. Another payor is responsible for payment.

b. The dentist has already been paid for the procedures identified in the claim.

c. The claim was submitted fraudulently, or the prior authorization was based in whole or material part on erroneous information provided to the prepaid limited health service organization by the dentist, patient, or other person not related to the organization.

d. The person receiving the procedure was not eligible to receive the procedure on the date of service and the prepaid

limited health service organization did not know, and with the exercise of reasonable care could not have known, of his or her ineligibility.

(b) This subsection may not be waived, voided, or nullified by contract, and any contractual clause in conflict with this subsection or which purports to waive any requirements of this subsection is null and void.

(c) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(d) The commission may adopt rules to implement this subsection.

Section 5. Subsection (11) of section 641.315, Florida Statutes, is amended, and subsections (13) and (14) are added to that section, to read:

641.315 Provider contracts.—

(11) A contract between a health maintenance organization and a dentist licensed under chapter 466 for the provision of services to a subscriber of the health maintenance organization may not contain a provision that requires the dentist to provide services to the subscriber of the health maintenance organization at a fee set by the health maintenance organization unless such services are covered services under the applicable contract. As used in this subsection, the term "covered services" means dental care services for which a reimbursement is available under the subscriber's contract, notwithstanding ~~or~~

~~for which a reimbursement would be available but for~~ the application of contractual limitations such as deductibles, coinsurance, waiting periods, annual or lifetime maximums, frequency limitations, alternative benefit payments, or any other limitation.

(13)(a) A contract between a health maintenance organization and a dentist licensed under chapter 466 for the provision of services to a subscriber of the health maintenance organization may not specify credit card payment as the only acceptable method for payments from the health maintenance organization to the dentist.

(b) At least 10 days before a health maintenance organization pays a claim to a dentist through electronic funds transfer, including, but not limited to, virtual credit card payments, the health maintenance organization shall notify the dentist in writing of all of the following:

1. The fees, if any, that are associated with the electronic funds transfer.

2. The available methods of payment of claims by the health maintenance organization, with clear instructions to the dentist on how to select an alternative payment method.

(c) A health maintenance organization that pays a claim to a dentist through Automated Clearing House (ACH) transfer may not charge a fee solely to transmit the payment to the dentist unless the dentist has consented to the fee.

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

Remove lines 11-58 and insert:

providing construction; authorizing the Office of Insurance Regulation of the Financial Services Commission to enforce certain provisions; authorizing the commission to adopt rules; prohibiting a health insurer from denying claims for procedures included in a prior authorization; providing exceptions; providing construction; authorizing the office to enforce certain provisions; authorizing the commission to adopt rules; amending s. 627.6474, F.S.; revising the definition of the term "covered services"; amending s. 636.032, F.S.; prohibiting a contract between a prepaid limited health service organization and a dentist from containing certain restrictions on payment methods; requiring the prepaid limited health service organization to make certain notifications before paying a claim to a dentist through electronic funds transfer; prohibiting a prepaid limited health service organization from charging a fee to transmit a payment to a dentist through ACH transfer unless the dentist has consented to such fee; providing construction; authorizing the office to enforce certain provisions; authorizing the commission to adopt rules; amending s. 636.035, F.S.; revising the definition of the term "covered services"; prohibiting a prepaid limited health service organization from

denying claims for procedures included in a prior authorization; providing exceptions; providing construction; authorizing the office to enforce certain provisions; authorizing the commission to adopt rules; amending s. 641.315, F.S.; revising the definition of the term "covered service"; prohibiting a contract between a health maintenance organization and a dentist from containing certain restrictions on payment methods; requiring the health maintenance organization to make certain notifications before paying a claim to a dentist through electronic funds transfer; prohibiting a health maintenance organization from charging a fee to transmit a payment to a dentist through ACH transfer unless the dentist has consented to such fee; providing construction;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1263 My Safe Florida Home Program
SPONSOR(S): LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** SB 7028

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

SUMMARY ANALYSIS

The My Safe Florida Home (MSFH) Program was created in 2006 within the Department of Financial Services (DFS) to perform mitigation inspections of site-built, single-family, residential properties (inspections), and mitigation grants (grants) to eligible applicants to make their homes less vulnerable to hurricane damage. The MSFH Program received $250 million in appropriations for the Fiscal Year 2006-2007, but was not funded again until 2022. Since then, the Legislature has provided approximately $433 million in subsequent additional funding to the MSFH Program.

Mitigation inspections are limited to homesteaded properties. Funds may be used to inspect townhouses to determine if opening protection mitigation would help decrease the risk of hurricane damage and grant funds may be used to pay for such opening protection mitigation if warranted. The value of the mitigation grant-eligible homes is currently $700,000. While initially limited to homes within the wind-borne debris region, the MSFH Program is currently a statewide program.

The bill makes additional changes to the MSFH Program. It allows homeowners to submit subsequent mitigation inspection and grant applications for the same home if certain criteria are met. Pursuant to the bill, DFS may request that an applicant provide additional information if the application contains errors or omissions. An application is considered withdrawn if an applicant does not respond to a request for additional information within 60 days.

In order to receive grant funds, homeowners must agree to provide DFS with information from their homeowners' insurers that identifies discounts in premiums have received as a result of improvements made with grant funds.

The bill eliminates the requirement that DFS maintain a list of participating contractors for the grant portion of the MSFH Program. Participants in the program may choose any properly licensed contractor to perform the improvements.

The bill specifies that grant-funded opening protection improvements includes exterior doors, garage doors, windows, and skylights. Current law allows DFS to require that improvements be made to all openings, including exterior doors, and garage doors as a condition of reimbursing a homeowner approved for a grant. The bill adds windows and skylights to the list of openings that must be improved in their entirety for a homeowner to be reimbursed.

The bill requires that, for the first 60 days DFS accepts inspection and grant applications following any legislative appropriation, DFS must prioritize the review and approval of applications by low- and moderate-income persons and those applicants who are at least 60 years old.

The bill has no impact on local government revenues or expenditures or state government revenues. It has a significant impact on state expenditures. The bill may have a positive direct economic impact on the private sector.

The bill is effective on July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2006, the Legislature created the My Safe Florida Home (MSFH) Program within the Department of Financial Services (DFS) with the intent that the Program provide trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties (mitigation inspections) and grants to eligible applicants, subject to funding availability.[1] The purpose of the MSFH Program was to "develop and implement a comprehensive and coordinated approach for hurricane damage mitigation."[2] The MSFH program allowed DFS to undertake a public outreach and advertising campaign to inform consumers of the availability, and benefits, of the mitigation inspections and grants.[3] It required the development of brochures for distribution to general contractors, roofing contractors, and real estate brokers and sales associates to explain the benefits of residential hurricane damage mitigation to homeowners.[4]

Hurricane Mitigation Inspections

The purpose of the mitigation inspections was to determine:

- What mitigation measures were needed;
- What insurance premium discounts might have been available; and
- What improvements to existing residential properties were needed to reduce the properties' susceptibility to hurricane damage.[5]

The mitigation inspections had to include, at a minimum:

- A report that summarized the results and identified recommended improvements the homeowner could take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Insurer-specific information regarding premium discounts correlated to current and recommended hurricane mitigation improvements.[6]

DFS was required to maintain a list of hurricane mitigation inspectors who were authorized to conduct the mitigation inspections for the MSFH Program.[7] DFS entered contracts with wind certification entities to provide mitigation inspections. In order to be eligible for the contracts, the entities had to use hurricane mitigation inspectors who, at a minimum:

- Were certified building inspectors;
- Were licensed as general or residential contractors;
- Were licensed and professional engineers and had passed the appropriate equivalency test of the building code training program;
- Were licensed professional architects; or
- Had at least two years of experience in residential construction or residential building inspection and had received specialized training in hurricane mitigation procedures.[8]

[1] S. 215.5586, F.S.
[2] *Id.*
[3] S. 215.5586(3), F.S.
[4] S. 215.5586(7), F.S.
[5] S. 215.5586(1)(a), F.S.
[6] *Id.*
[7] S. 215.55186(6), F.S.
[8] S. 215.5586(1)(b), F.S.

Mitigation Grants

The purpose of the mitigation grants component of the MSFH Program was to retrofit single-family homes to make them less vulnerable to hurricane damage.[9] To be eligible for a grant, the following criteria must have been met:

- The homeowner must have had a homestead exemption on the home to be retrofitted;
- The home must have had an insured value of $300,000 or less, unless the homeowner was classified as a low-income person;
- The home must have undergone an acceptable hurricane mitigation inspection after May 1, 2007;
- The home must have been located in the "wind-borne debris region" as defined in the International Building Code; and
- The building permit application for initial construction of the home must have been made before March 1, 2002.[10]

In addition, the homeowner had to match the grant award on a dollar-for-dollar basis up to $10,000, for the actual cost of the mitigation project, and the state's contribution could not exceed $5,000.[11] Low-income homeowners were eligible for grants of up to $5,000, and were not required to provide a matching amount to receive a grant.[12] Matching fund grants were also available to local governments and nonprofit entities for projects to reduce hurricane damages to single-family homes.[13]

Grants could be used on previously-inspected existing structures or on rebuilds.[14] If recommended by a hurricane mitigation inspection, grants could be used for the following improvements:

- Opening protection.
- Upgrading exterior doors, including garage doors.
- Bracing gable ends.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Upgrading roof coverings from code to code plus.
- Installing secondary water barrier for roofs.[15]

DFS was required to issue an annual report on the activities of the MSFH Program that accounted for the use of any appropriated state funds, the number of inspections requested and performed, the number of grant applications received, and the number and value of grants approved.[16]

The MSFH Program was appropriated $250 million in Fiscal Year 2006-07.[17] As of May 2009, approximately $93 million in MSFH grants were allocated to 32,000 homes, and approximately 400,000 homes received a MSFH home inspection.[18] DFS requested that Risk Management Solutions (RMS), conduct an impact analysis of the MSFH program, and RMS released a report of the impact analysis on May 14, 2009 (report).[19] In the report, RMS concluded that the MSFH grants were beneficial to the State of Florida, individual homeowners, and the insurance industry.[20] RMS indicated that the predicted reduction in loss as a result of the grant projects completed far exceeded the grant money spent.[21]

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[9] S. 215.5586(2), F.S.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Rebuilds were defined as site-built, single-family dwellings under construction to replace homes that were destroyed or significantly damaged by hurricanes and deemed unlivable by a regulatory authority. S. 215.5586(2)(e), F.S.
[15] S. 215.5586(2)(e), F.S.
[16] S. 215.5586(10), F.S.
[17] Risk Management Solutions, *Analyzing the Effects of the My Safe Florida Home Program on Florida Insurance Risk*, May 14, 2009, https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=5036 (last visited Jan. 26, 2024).
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

While the MSFH Program was never repealed from law, additional funding was not provided until May 2022.

2022 Renewal of the MSFH Program

During the 2022D Special Session, the Legislature passed a property insurance bill (SB 2-D), in which it renewed the funding for the MSFH Program by appropriating $150 million in nonrecurring funds from General Revenue (GR) to DFS for the Program for the 2022-2023 fiscal year. The funds appropriated were allocated as follows:

- $115 million for mitigation grants.
- $25 million for hurricane mitigation inspections.
- $4 million for education and consumer awareness.
- $1 million for public outreach for contractors and estate brokers and sales associates.
- $5 million for administrative costs.

SB 2-D reappropriated any unexpended balance of funds from the appropriation remaining on June 30, 2023, to DFS for the 2023-2024 fiscal year to be used for the MSFH Program. The appropriation will expire on October 1, 2024. SB 2-D gave DFS the authority to adopt emergency rules to implement the MSFH Program.

SB 2-D made additional modifications to the MSFH Program. It required that an application for a mitigation grant include a provision that requires an applicant to make his or her home available for inspection once a mitigation project is completed. The bill changed the monetary limits for eligibility for mitigation grants so that homes with an insured value of $500,000, or less, qualify for the program.

SB 2-D required that homes that receive mitigation grants have undergone home mitigation inspections after July 1, 2008, and have received permits for initial construction before January 1, 2008. The homeowner must also match grant funds on the basis of $1 from the homeowner for every $2 provided by the state up to a maximum state contribution of $10,000 towards the actual cost of the mitigation project undertaken on the eligible home.

The bill enhanced the reporting requirements for DFS under the MSFH Program by requiring that the report include the following received by homeowners from insurers as a result of the mitigation funded by the program:

- The average annual amount of insurance premium discounts; and
- The total annual amount of insurance premium discounts.

2022 MSFH Program Implementation

Following the passage of SB 2-D, DFS procured a vendor to administer the MSFH Program, qualified inspectors to conduct mitigation inspections, and qualified contractors who agreed to provide mitigation repairs and retrofitting under the grant portion of the Program.[22] DFS compiled a list of approved vendors that homeowners participating in the MSFH Program may choose for inspections and mitigation work.[23]

On November 18, 2022, a web-based application for homeowners to request mitigation inspections and grant funds went live.[24] Between May 26, 2022 and February 28, 2023, 16,724 mitigation inspections were completed and 2,979 grant applications were approved.[25]

Inspectors completing mitigation inspections under the MSFH Program must complete the Uniform Mitigation Verification Inspection Form (Inspection Form), as revised by the Office of Insurance

[22] Florida Department of Financial Services, Agency Analysis of 2023 House Bill 881, p. 1 (Mar. 1, 2023).
[23] *Id.*
[24] *Id.*
[25] *Id.*

Regulation on January 12, 2023.[26] The mitigation inspection report provided to the homeowner includes the completed Inspection Form, as well as the information already required by statute,[27] including:

- A summary of the results of the mitigation inspection identifying recommended improvements a homeowner may undertake;
- A range of cost estimates regarding the recommended improvements; and
- Estimated property insurance premium discounts based on the mitigation measures the homeowner has completed.[28]

2023 Developments to the MSFH Program

Following the significant interest in the program in 2022 and early 2023, the Legislature made additional changes to the statutory framework for the MSFH Program during the 2023 Regular Session. These changes included changes to the inspection and grant eligibility requirements, and program management changes.

Single-family home eligibility for mitigation inspections was limited only to homesteaded properties.[29] Funds from the MSFH Program may now be used to inspect townhouses to determine if opening protection mitigation would help decrease the risk of hurricane damage.[30] If an inspection determines that opening protection mitigation would decrease such risk, grant funds from the MSFH Program may be used to pay for the mitigation.[31] The value of the mitigation grant-eligible homes was also increased from $500,000 to $700,000.[32]

The designation of a specific portion of the grant funds for low-income recipients was removed, but increases the overall grant award for low-income recipients from $5,000 to $10,000.[33] The program's geographic eligibility area was broadened to include otherwise in eligible homes outside the wind-borne debris region, in effect making it a statewide program.

Among the project management changes implemented, home inspectors must be licensed, in addition to certified.[34] This requirement conforms with other statutory chapters that address home inspectors.

Funding for the MSFH Program

As of December 2023, the Legislature has appropriated a total of $433 million for the MSFH Program since May 2022.[35] In addition to the $150 million appropriated during the 2022D Special Session, this includes $100 million in grant funding appropriated during the 2023 Regular Session and an additional $176 million in grant funding appropriated during the 2023C Special Session.[36]

[26] *Id.*
[27] S. 215.5586(1)(a), F.S.
[28] Department of Financial Services, *supra* note 22, at 2.
[29] The homestead requirement was already in place for the grant portion of the MSFH Program under s. 215.5586(2), F.S., prior to the 2023 Regular Session.
[30] S. 215.5586(1)(a), F.S.
[31] S. 215.5586(2)(f), F.S.
[32] S. 215.5586(2)(e)2., F.S.
[33] S. 215.5586(2)(h), F.S.
[34] S. 215.5586, F.S.
[35] Department of Financial Services, *2023 Annual Report of My Safe Florida Home*, p. 1.
[36] *Id.* at p. 6. The mitigation grant funding is by far the largest component of the MSFH Program.

Results of the MSFH Program

Between November 2022, and December 2023, the MSFH Program has provided more than 94,000 homeowners with hurricane mitigation inspections and approved more than 23,000 grant applications.[37] Over 73 percent of those homeowners who have completed participation in the grant component of the MSFH Program have seen their homeowners insurance premiums drop or stabilize, and many are paying premiums at or below the state average.[38] According to DFS, upon applying to the MSFH Program, the average premium of the applicants was 55.1 percent higher than the average Florida homeowner's premium.[39] Based upon the decrease in premium following participation, DFS has concluded that the MSFH Program participation is comprised of higher-than-average risk homeowners, which is consistent with the goal of helping those with homes at greatest risk.[40]

Effect of the Bill

The bill makes additional changes to improve the operation and effectiveness of the MSFH Program. It allows homeowners to submit subsequent mitigation inspection and grant applications for the same home if the following criteria are met:

- The original application was denied or withdrawn due to errors or omissions in the application;
- The original application was denied or withdrawn because the home did not meet the eligibility criteria at the time of application, and the homeowner reasonably believes the home is now eligible for an inspection or grant; or
- The MSFH Program's eligibility requirements have changed since the date of the original application, and the homeowner reasonably believes the home is now eligible for an inspection or grant.

Pursuant to the bill, DFS may request that an applicant provide additional information if the application contains errors or omissions. DFS may consider an application withdrawn if it does not receive a response to its request for additional information within 60 days of notifying the applicant of errors or omissions.

The bill provides additional criteria for homes to be eligible for mitigation grants. Homeowners must agree to provide DFS with information from their homeowners' insurers that identifies premium discounts received as a result of improvements made with grant funds.

The bill eliminates the requirement that DFS maintain a list of participating contractors for the grant portion of the MSFH Program. Instead, participants in the program may choose any properly licensed contractor to perform the improvements.

The bill specifies that opening protection that may be improved with grant funds from the MSFH Program includes exterior doors, garage doors, windows, and skylights. Current law allows DFS to require that improvements be made to all openings, including exterior doors, and garage doors as a condition of reimbursing a homeowner approved for a grant.[41] The bill adds windows and skylights to the list of openings that must be improved in their entirety for a homeowner to be reimbursed.

The bill requires that, for the first 60 days DFS accepts inspection and grant applications following any legislative appropriation, DFS must prioritize the review and approval of applications in the following order:

- Low-income persons who are at least 60 years old;
- All other low-income persons;
- Moderate-income persons who are at least 60 years old;

[37] *Id.* at p. 1. Because the grant portion of the MSFH Program is fulfilled based on reimbursement to homeowners after proof of completion of mitigation projects, the money to fulfill these grants has been reserved, but not all of it has been paid to the homeowners yet.
[38] *Id.*
[39] *Id.* at p. 2.
[40] *Id.*
[41] S. 215.5586(2)(f), F.S.

- All other moderate-income persons;[42] and
- All other applicants.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.5586, F.S., relating to the My Safe Florida Home Program.

Section 2. Provides an appropriation for the MSFH Program of $100 million in grants and $7 million in administrative costs.

Section 3. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill contains significant state expenditures. It appropriates the following nonrecurring funds from General Revenue to DFS for the MSFH Program:
   - $100 million for mitigation grants; and
   - $7 million for administrative costs related to the mitigation grants.

   It also provides that DFS may not continue to accept grant applications or create a waiting list in anticipation of additional funding unless the Legislature provides express authority to do so.

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that homes that participate in the MSFH Program receive mitigation credits or premium discounts under their property insurance policies and are less exposed to risk as a result of mitigation retrofitting using grant funds, the MSFH Program will have a positive direct economic impact on homeowners. Hurricane mitigation contractors may also see an increase in project activity.

[42] The relevant definitions of low- and moderate-income persons are found in s. 420.0004, F.S.

D. FISCAL COMMENTS:

While the bill contains appropriations of $100 million for mitigation grants and $7 million for administrative costs related to the implementation of the grants, the House's proposed General Appropriations Act (GAA) for Fiscal Year 2024-2025,[43] includes $200 million for mitigation grants, approximately $17 million for mitigation inspections, and approximately $7 million for administrative costs related to both components of the MSFH Program. Consideration could be given to eliminating the appropriations in the bill and funding the program through the GAA.

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:

Lines 292–305: The bill may contain an invalid delegation of legislative authority. It directs DFS to prioritize inspection and grant applications from low-income persons and those who are at least 60 years old for the first 60 days that the application period is open following any appropriation of funds for the MSFH Program. While the bill provides details on the categories of applicants to be prioritized, it does not give any instructions to DFS about how it is to accomplish the prioritization process. Consideration should be given to either amending the bill to instruct DFS on how to complete the process or to expressly give DFS rulemaking authority to create a prioritization process.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking. However, *see* III.A.2., Other Constitutional Issues.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 183-184 and 189-190: These lines provide redundant requirements for homes to undergo mitigation inspections in order to be eligible for mitigation grants. An amendment is suggested to eliminate the redundancy.

See also III.A.2., Other Constitutional Issues.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[43] *See* PCB APC 24-01 (2024).

A bill to be entitled

An act relating to the My Safe Florida Home Program; amending s. 215.5586, F.S.; revising legislative intent; specifying eligibility requirements for hurricane mitigation inspections under the program; specifying requirements for a hurricane mitigation inspection application; authorizing an applicant to submit a subsequent hurricane mitigation inspection application under certain conditions; authorizing the Department of Financial Services to request certain information; providing that an application is considered withdrawn under certain circumstances; authorizing an applicant to receive a home inspection under the program without being eligible for a grant or applying for a grant; specifying eligibility requirements for hurricane mitigation grants; revising application requirements for hurricane mitigation grants; authorizing an applicant to submit a subsequent hurricane mitigation grant application under certain conditions; authorizing the department to request certain information; providing that an application is considered withdrawn under certain circumstances; deleting and revising provisions relating to the selection of hurricane mitigation inspectors and contractors; authorizing, rather than

requiring, matching fund grants to be made available to certain entities; revising the improvements for which grants may be used; requiring the department to develop a process that ensures the most efficient means to collect and verify inspection applications; requiring the department, for a specified timeframe, to prioritize applications in a specified order; revising provisions regarding the development of brochures; requiring the Citizens Property Insurance Corporation to distribute such brochures to specified persons; providing appropriations; providing an effective date.

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

Section 1. Section 215.5586, Florida Statutes, as amended by section 5 of chapter 2023-349, Laws of Florida, is amended to read:

215.5586 My Safe Florida Home Program.—There is established within the Department of Financial Services the My Safe Florida Home Program. The department shall provide fiscal accountability, contract management, and strategic leadership for the program, consistent with this section. This section does not create an entitlement for property owners or obligate the state in any way to fund the inspection or retrofitting of

residential property in this state. Implementation of this program is subject to annual legislative appropriations. It is the intent of the Legislature that, subject to the availability of funds, the My Safe Florida Home Program provide licensed inspectors to perform hurricane mitigation inspections of eligible homes ~~for owners of site-built, single-family, residential properties~~ and grants to ~~eligible~~ fund hurricane mitigation projects on those homes ~~applicants~~. The department shall implement the program in such a manner that the total amount of funding requested by accepted applications, whether for inspections, grants, or other services or assistance, does not exceed the total amount of available funds. If, after applications are processed and approved, funds remain available, the department may accept applications up to the available amount. The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation pursuant to ~~that may include~~ the ~~following~~ requirements provided in this section.~~:~~

(1) HURRICANE MITIGATION INSPECTIONS.—

(a) To be eligible for an inspection under the program:

1. A home must be a single-family, site-built, detached residential property or a townhouse as defined in s. 481.203; and

2. The homeowner must have been granted a homestead exemption on the home under chapter 196.

(b)1. An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only one inspection application on the home or that the application is allowed under subparagraph 2., and must have documents attached to the application which demonstrate that the applicant meets the requirements of paragraph (a).

2. An applicant may submit a subsequent hurricane mitigation inspection application for the same home only if:

a. The original hurricane mitigation inspection application has been denied or withdrawn because of errors or omissions in the application;

b. The original hurricane mitigation inspection application was denied or withdrawn because the home did not meet the eligibility criteria for an inspection at the time of the previous application, and the homeowner reasonably believes the home now is eligible for an inspection; or

c. The program's eligibility requirements for an inspection have changed since the original application date, and the applicant reasonably believes the home is eligible under the new requirements.

3. The department may request that the applicant provide additional information if the application contains apparent errors or omissions. An application is considered withdrawn by the applicant if the department does not receive a response to

its request for additional information within 60 days after the department notifies the applicant of any apparent errors or omissions.

(c) An applicant meeting the requirements of this subsection may receive an inspection of a home under the program without being eligible for a grant under subsection (2) or applying for such grant.

(d) Licensed inspectors are to provide home inspections of homes meeting the requirements of this subsection ~~site-built, single-family, residential properties for which a homestead exemption has been granted,~~ to determine what mitigation measures are needed, what insurance premium discounts may be available, and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. An inspector may inspect a townhouse as defined in s. 481.203 to determine if opening protection mitigation as listed in subparagraph (2)(f)1. ~~paragraph (2)(c)~~ would provide improvements to mitigate hurricane damage.

(e)~~(b)~~ The department ~~of Financial Services~~ shall contract with wind certification entities to provide hurricane mitigation inspections. The inspections provided to homeowners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies recommended improvements a homeowner may take to mitigate hurricane damage.

2. A range of cost estimates regarding the recommended mitigation improvements.

3. Information regarding estimated premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

(f) ~~(c)~~ To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections, the entity must, at a minimum, meet the following requirements:

1. Use hurricane mitigation inspectors who are licensed or certified as:

a. A building inspector under s. 468.607;

b. A general, building, or residential contractor under s. 489.111;

c. A professional engineer under s. 471.015;

d. A professional architect under s. 481.213; or

e. A home inspector under s. 468.8314 and who have completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which training must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam.

2. Use hurricane mitigation inspectors who also have undergone drug testing and a background screening. The

department may conduct criminal record checks of inspectors used by wind certification entities. Inspectors must submit a set of fingerprints to the department for state and national criminal history checks and must pay the fingerprint processing fee set forth in s. 624.501. The fingerprints must be sent by the department to the Department of Law Enforcement and forwarded to the Federal Bureau of Investigation for processing. The results must be returned to the department for screening. The fingerprints must be taken by a law enforcement agency, designated examination center, or other department-approved entity.

3. Provide a quality assurance program including a reinspection component.

~~(d) An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only a single application for that home.~~

~~(e) The owner of a site-built, single-family, residential property or townhouse as defined in s. 481.203, for which a homestead exemption has been granted, may apply for and receive an inspection without also applying for a grant pursuant to subsection (2) and without meeting the requirements of paragraph (2)(a).~~

(2) HURRICANE MITIGATION GRANTS.—Financial grants shall be used by homeowners ~~to encourage single-family, site-built,~~

~~owner-occupied, residential property owners~~ to make improvements recommended by an inspection which increase resistance ~~retrofit their properties to make them less vulnerable~~ to hurricane damage.

(a) ~~For~~ A homeowner is ~~to be~~ eligible for a hurricane mitigation grant if all of~~,~~ the following criteria are ~~must be~~ met:

1. The home must be eligible for an inspection under subsection (1) ~~The homeowner must have been granted a homestead exemption on the home under chapter 196~~.

2. The home must be a dwelling with an insured value of $700,000 or less. Homeowners who are low-income persons, as defined in s. 420.0004(11), are exempt from this requirement.

3. The home must undergo an acceptable hurricane mitigation inspection as provided in subsection (1).

4. The building permit application for initial construction of the home must have been made before January 1, 2008.

5. The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.

6. The homeowner must agree to provide to the department information received from the homeowner's insurer identifying the discounts realized by the homeowner because of the mitigation improvements funded through the program.

(b)1. An application for a grant must contain a signed or

electronically verified statement made under penalty of perjury that the applicant has submitted only one grant ~~a single~~ application or that the application is allowed under subparagraph 2., and must have ~~attached~~ documents attached demonstrating the applicant meets the requirements of ~~this~~ paragraph (a).

2. An applicant may submit a subsequent grant application if:

a. The original grant application was denied or withdrawn because the application contained errors or omissions;

b. The original grant application was denied or withdrawn because the home did not meet the eligibility criteria for a grant at the time of the previous application, and the homeowner reasonably believes that the home now is eligible for a grant; or

c. The program's eligibility requirements for a grant have changed since the original application date, and the applicant reasonably believes that he or she is an eligible homeowner under the new requirements.

3. The department may request that the applicant provide additional information if the application contains apparent errors or omissions. An application is considered withdrawn by the applicant if the department does not receive a response to its request for additional information within 60 days after the department notifies the applicant of any apparent errors or

omissions.

(c) ~~(b)~~ All grants must be matched on the basis of $1 provided by the applicant for $2 provided by the state up to a maximum state contribution of $10,000 toward the actual cost of the mitigation project, except as provided in paragraph (j).

(d) ~~(c) The program shall create a process in which contractors agree to participate and homeowners select from a list of participating contractors.~~ All hurricane mitigation performed under the program must be based upon the securing of all required local permits and inspections and must be performed by properly licensed contractors. ~~Hurricane mitigation inspectors qualifying for the program may also participate as mitigation contractors as long as the inspectors meet the department's qualifications and certification requirements for mitigation contractors.~~

(e) ~~(d)~~ Matching fund grants may ~~shall~~ also be made available to local governments and nonprofit entities for projects that will reduce hurricane damage to eligible homes ~~single-family, site-built, owner-occupied, residential property~~. The department shall liberally construe those requirements in favor of availing the state of the opportunity to leverage funding for the My Safe Florida Home Program with other sources of funding.

(f) ~~(e)~~ When recommended by a hurricane mitigation inspection, grants for eligible homes may be used for the

following improvements:

1. Opening protection, including exterior doors, garage doors, windows, and skylights.

2. ~~Exterior doors, including garage doors.~~

~~3.~~ Reinforcing roof-to-wall connections.

3.~~4.~~ Improving the strength of roof-deck attachments.

4.~~5.~~ Secondary water resistance barrier for roof.

(g)~~(f)~~ When recommended by a hurricane mitigation inspection, grants for townhouses, as defined in s. 481.203, may only be used for opening protection.

(h) The department may require that improvements be made to all openings, including exterior doors, ~~and~~ garage doors, windows, and skylights, as a condition of reimbursing a homeowner approved for a grant. The department may adopt, by rule, the maximum grant allowances for any improvement allowable under paragraph (f) or paragraph (g) ~~(e) or this paragraph~~.

(i)~~(g)~~ Grants may be used on a previously inspected existing structure or on a rebuild. A rebuild is defined as a site-built, single-family dwelling under construction to replace a home that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority. The homeowner must be a low-income homeowner as defined in paragraph (j) ~~(h)~~, must have had a homestead exemption for that home before the hurricane, and must be intending to rebuild the home as that homeowner's homestead.

(j)~~(h)~~ Low-income homeowners, as defined in s. 420.0004(11), who otherwise meet the applicable requirements of this subsection ~~paragraphs (a), (c), (e), and (g)~~ are eligible for a grant of up to $10,000 and are not required to provide a matching amount to receive the grant. ~~The program may accept a certification directly from a low-income homeowner that the homeowner meets the requirements of s. 420.0004(11) if the homeowner provides such certification in a signed or electronically verified statement made under penalty of perjury.~~

(k)1.~~(i)~~ The department shall develop a process that ensures the most efficient means to collect and verify inspection applications and grant applications to determine eligibility. The department ~~and~~ may direct hurricane mitigation inspectors to collect and verify grant application information or use the Internet or other electronic means to collect information and determine eligibility.

2. The department, for the first 60 days it accepts inspection applications and grant applications after any legislative appropriation funding inspections and grants, must prioritize the review and approval of such applications in the following order:

a. First, applications from low-income persons, as defined in s. 420.0004, who are at least 60 years old;

b. Second, applications from all other low-income persons, as defined in s. 420.0004;

c. Third, applications from moderate-income persons, as defined in s. 420.0004, who are at least 60 years old;

d. Fourth, applications from all other moderate-income persons, as defined in s. 420.0004; and

e. Last, all other applications.

3. The program may accept a certification directly from a low-income homeowner or moderate-income homeowner who meets the requirements of s. 420.0004(11) or s. 420.0004(12) if the homeowner provides such certification in a signed or electronically verified statement made under penalty of perjury.

(3) EDUCATION, CONSUMER AWARENESS, AND OUTREACH.—

(a) The department may undertake a statewide multimedia public outreach and advertising campaign to inform consumers of the availability and benefits of hurricane inspections and of the safety and financial benefits of residential hurricane damage mitigation. The department may seek out and use local, state, federal, and private funds to support the campaign.

(b) The program may develop brochures for distribution to Citizens Property Insurance Corporation and other licensed entities or nonprofits that work with the department to educate the public on the benefits of the program~~, general contractors, roofing contractors, and real estate brokers and sales associates who are licensed under part I of chapter 475 which provide information on the benefits to homeowners of residential hurricane damage mitigation~~. Citizens Property Insurance

Corporation must ~~is encouraged to~~ distribute the brochure to policyholders of the corporation each year the program is funded. ~~Contractors are encouraged to distribute the brochures to homeowners at the first meeting with a homeowner who is considering contracting for home or roof repair or contracting for the construction of a new home. Real estate brokers and sales associates are encouraged to distribute the brochure to clients before the purchase of a home.~~ The brochures may be made available electronically.

(4) FUNDING.—The department may seek out and leverage local, state, federal, or private funds to enhance the financial resources of the program.

(5) RULES.—The department ~~of Financial Services~~ shall adopt rules pursuant to ss. 120.536(1) and 120.54 to govern the program; implement the provisions of this section; including rules governing hurricane mitigation inspections and grants, mitigation contractors, and training of inspectors and contractors; and carry out the duties of the department under this section.

(6) HURRICANE MITIGATION INSPECTOR LIST.—The department shall develop and maintain as a public record a current list of hurricane mitigation inspectors authorized to conduct hurricane mitigation inspections pursuant to this section.

(7) CONTRACT MANAGEMENT.—

(a) The department may contract with third parties for

grants management, inspection services, contractor services for low-income homeowners, information technology, educational outreach, and auditing services. Such contracts are considered direct costs of the program and are not subject to administrative cost limits. The department shall contract with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and shall ensure the highest accountability for use of state funds, consistent with this section.

(b) The department shall implement a quality assurance and reinspection program that determines whether initial inspections and home improvements are completed in a manner consistent with the intent of the program. The department may use valid random sampling in order to perform the quality assurance portion of the program.

(8) INTENT.—It is the intent of the Legislature that grants made to residential property owners under this section shall be considered disaster-relief assistance within the meaning of s. 139 of the Internal Revenue Code of 1986, as amended.

(9) REPORTS.—The department shall make an annual report on the activities of the program that shall account for the use of state funds and indicate the number of inspections requested, the number of inspections performed, the number of grant applications received, the number and value of grants approved,

and the estimated average annual amount of insurance premium discounts and total estimated annual amount of insurance premium discounts homeowners received from insurers as a result of mitigation funded through the program. The report must be delivered to the President of the Senate and the Speaker of the House of Representatives by February 1 of each year.

Section 2. (1) For the 2024-2025 fiscal year, the sum of $100 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Financial Services to provide mitigation grants pursuant to s. 215.5586(2), Florida Statutes, under the My Safe Florida Home Program. The department may not continue to accept applications or to create a waiting list in anticipation of additional funding unless the Legislature provides express authority to implement such actions.

(2) For the 2024-2025 fiscal year, the sum of $7 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Financial Services for administrative costs related to implementation of mitigation grants pursuant to s. 215.5586(2), Florida Statutes, under the My Safe Florida Home Program.

Section 3. This act shall take effect July 1, 2024.

INSURANCE & BANKING SUBCOMMITTEE

HB 1263 by Rep. LaMarca
My Safe Florida Home Program

AMENDMENT SUMMARY
February 1, 2024

Amendment 1 by Rep. LaMarca (Line 70): The amendment:

- requires a grant applicant to identify the project contractor by name and license number and the program to verify the status of the contractor's license.
- clarifies the process for prioritization of low-income grant applicants.
- specifies that a grant-funded project must be completed within 1 year, subject to a one-time six month extension, or the grant is deemed abandoned and the funds revert to DFS.
- makes other technical and grammatical changes.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative LaMarca offered the following:

Amendment (with title amendment)

Remove lines 70-310 and insert:

(a) To be eligible for a hurricane mitigation inspection under the program:

1. A home must be a single-family, detached residential property or a townhouse as defined in s. 481.203;

2. A home must be site-built and owner-occupied; and

3. The homeowner must have been granted a homestead exemption on the home under chapter 196.

(b)1. An application for a hurricane mitigation inspection must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only

one inspection application on the home or that the application is allowed under subparagraph 2., and the application must have documents attached which demonstrate that the applicant meets the requirements of paragraph (a).

2. An applicant may submit a subsequent hurricane mitigation inspection application for the same home only if:

a. The original hurricane mitigation inspection application has been denied or withdrawn because of errors or omissions in the application;

b. The original hurricane mitigation inspection application was denied or withdrawn because the home did not meet the eligibility criteria for an inspection at the time of the previous application, and the homeowner reasonably believes the home now is eligible for an inspection; or

c. The program's eligibility requirements for an inspection have changed since the original application date, and the applicant reasonably believes the home is eligible under the new requirements.

(c) An applicant meeting the requirements of paragraph (a) may receive an inspection of a home under the program without being eligible for a grant under subsection (2) or applying for such grant.

(d) Licensed inspectors are to provide home inspections of eligible homes ~~site-built, single-family, residential properties for which a homestead exemption has been granted,~~ to determine

what mitigation measures are needed, what insurance premium discounts may be available, and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. An inspector may inspect a townhouse as defined in s. 481.203 to determine if opening protection mitigation as listed in subparagraph (2)(e)1. ~~paragraph (2)(e)~~ would provide improvements to mitigate hurricane damage.

(e) ~~(b)~~ The department ~~of Financial Services~~ shall contract with wind certification entities to provide hurricane mitigation inspections. The inspections provided to homeowners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies recommended improvements a homeowner may take to mitigate hurricane damage.

2. A range of cost estimates regarding the recommended mitigation improvements.

3. Information regarding estimated premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

(f) ~~(c)~~ To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections, the entity must, at a minimum, meet the following requirements:

1. Use hurricane mitigation inspectors who are licensed or certified as:

a. A building inspector under s. 468.607;

b. A general, building, or residential contractor under s. 489.111;

c. A professional engineer under s. 471.015;

d. A professional architect under s. 481.213; or

e. A home inspector under s. 468.8314 and who have completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which training must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam.

2. Use hurricane mitigation inspectors who also have undergone drug testing and a background screening. The department may conduct criminal record checks of inspectors used by wind certification entities. Inspectors must submit a set of fingerprints to the department for state and national criminal history checks and must pay the fingerprint processing fee set forth in s. 624.501. The fingerprints must be sent by the department to the Department of Law Enforcement and forwarded to the Federal Bureau of Investigation for processing. The results must be returned to the department for screening. The fingerprints must be taken by a law enforcement agency, designated examination center, or other department-approved

entity.

3. Provide a quality assurance program including a reinspection component.

~~(d) An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only a single application for that home.~~

~~(c) The owner of a site-built, single-family, residential property or townhouse as defined in s. 481.203, for which a homestead exemption has been granted, may apply for and receive an inspection without also applying for a grant pursuant to subsection (2) and without meeting the requirements of paragraph (2)(a).~~

(2) HURRICANE MITIGATION GRANTS.—Financial grants shall be used by homeowners ~~to encourage single-family, site-built, owner-occupied, residential property owners~~ to make improvements recommended by an inspection which increase resistance ~~retrofit their properties to make them less vulnerable~~ to hurricane damage.

(a) ~~For~~ A homeowner is ~~to be~~ eligible for a hurricane mitigation grant if all of~~,~~ the following criteria are ~~must be~~ met:

1. The home must be eligible for an inspection under subsection (1) ~~The homeowner must have been granted a homestead exemption on the home under chapter 196~~.

2. The home must be a dwelling with an insured value of $700,000 or less. Homeowners who are low-income persons, as defined in s. 420.0004(11), are exempt from this requirement.

3. The home must undergo an acceptable hurricane mitigation inspection as provided in subsection (1).

4. The building permit application for initial construction of the home must have been made before January 1, 2008.

5. The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.

6. The homeowner must agree to provide to the department information received from the homeowner's insurer identifying the discounts realized by the homeowner because of the mitigation improvements funded through the program.

(b)1. An application for a grant must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only one grant ~~a single~~ application or that the application is allowed under subparagraph 2., and the application must have ~~attached~~ documents attached demonstrating that the applicant meets the requirements of ~~this~~ paragraph (a).

2. An applicant may submit a subsequent grant application if:

a. The original grant application was denied or withdrawn because the application contained errors or omissions;

b. The original grant application was denied or withdrawn because the home did not meet the eligibility criteria for a grant at the time of the previous application, and the homeowner reasonably believes that the home now is eligible for a grant; or

c. The program's eligibility requirements for a grant have changed since the original application date, and the applicant reasonably believes that he or she is an eligible homeowner under the new requirements.

3. A grant application must include a statement from the homeowner which contains the name and state license number of the contractor that the homeowner acknowledges as the intended contractor for the mitigation work. The program must electronically verify that the contractor's state license number is accurate and up to date before grant approval.

(c) ~~(b)~~ All grants must be matched on the basis of $1 provided by the applicant for $2 provided by the state up to a maximum state contribution of $10,000 toward the actual cost of the mitigation project, except as provided in paragraph (h).

(d) ~~(c) The program shall create a process in which contractors agree to participate and homeowners select from a list of participating contractors.~~ All hurricane mitigation performed under the program must be based upon the securing of all required local permits and inspections and must be performed by properly licensed contractors. ~~Hurricane mitigation~~

~~inspectors qualifying for the program may also participate as mitigation contractors as long as the inspectors meet the department's qualifications and certification requirements for mitigation contractors.~~

~~(d) Matching fund grants shall also be made available to local governments and nonprofit entities for projects that will reduce hurricane damage to single-family, site-built, owner-occupied, residential property. The department shall liberally construe those requirements in favor of availing the state of the opportunity to leverage funding for the My Safe Florida Home Program with other sources of funding.~~

(e) When recommended by a hurricane mitigation inspection, grants for eligible homes may be used for the following improvements:

1. Opening protection, including exterior doors, garage doors, windows, and skylights.

2. ~~Exterior doors, including garage doors.~~

~~3.~~ Reinforcing roof-to-wall connections.

3.~~4.~~ Improving the strength of roof-deck attachments.

4.~~5.~~ Secondary water resistance barrier for roof.

(f) When recommended by a hurricane mitigation inspection, grants for townhouses, as defined in s. 481.203, may only be used for opening protection.

(g) The department may require that improvements be made to all openings, including exterior doors, ~~and~~ garage doors,

windows, and skylights, as a condition of reimbursing a homeowner approved for a grant. The department may adopt, by rule, the maximum grant allowances for any improvement allowable under paragraph (e) or paragraph (f) ~~(e) or this paragraph~~.

~~(g) Grants may be used on a previously inspected existing structure or on a rebuild. A rebuild is defined as a site-built, single-family dwelling under construction to replace a home that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority. The homeowner must be a low-income homeowner as defined in paragraph (h), must have had a homestead exemption for that home before the hurricane, and must be intending to rebuild the home as that homeowner's homestead.~~

(h) Low-income homeowners, as defined in s. 420.0004(11), who otherwise meet the applicable requirements of this subsection ~~paragraphs (a), (c), (e), and (g)~~ are eligible for a grant of up to $10,000 and are not required to provide a matching amount to receive the grant. ~~The program may accept a certification directly from a low-income homeowner that the homeowner meets the requirements of s. 420.0004(11) if the homeowner provides such certification in a signed or electronically verified statement made under penalty of perjury.~~

(i)1. The department shall develop a process that ensures the most efficient means to collect and verify inspection applications and grant applications to determine eligibility.

The department ~~and~~ may direct hurricane mitigation inspectors to collect and verify grant application information or use the Internet or other electronic means to collect information and determine eligibility.

2. The department shall prioritize the review and approval of such inspection applications and grant applications in the following order:

a. First, applications from low-income persons, as defined in s. 420.0004, who are at least 60 years old;

b. Second, applications from all other low-income persons, as defined in s. 420.0004;

c. Third, applications from moderate-income persons, as defined in s. 420.0004, who are at least 60 years old;

d. Fourth, applications from all other moderate-income persons, as defined in s. 420.0004; and

e. Last, all other applications.

3. The department shall start accepting inspection applications and grant applications no earlier than the effective date of a legislative appropriation funding inspections and grants, as follows:

a. Initially, from applicants prioritized under sub-subparagraph 2.a.;

b. From applicants prioritized under sub-subparagraph 2.b., beginning 15 days after the program initially starts accepting applications;

c. From applicants prioritized under sub-subparagraph 2.c., beginning 30 days after the program initially starts accepting applications;

d. From applicants described in sub-subparagraph 2.d., beginning 45 days after the program initially starts accepting applications; and

e. From all other applicants, beginning 60 days after the program initially starts accepting applications.

4. The program may accept a certification directly from a low-income homeowner or moderate-income homeowner who meets the requirements of s. 420.0004(11) or (12), respectively, if the homeowner provides such certification in a signed or electronically verified statement made under penalty of perjury.

(j) A homeowner who receives a grant shall finalize construction and request a final inspection, or request an extension for an additional 6 months, within 1 year after grant approval. If a homeowner fails to comply with this paragraph, his or her application is deemed abandoned and the grant money reverts to the department.

(3) REQUESTS FOR INFORMATION.—The department may request that an applicant provide additional information. An application is deemed withdrawn by the applicant if the department does not receive a response to its request for additional information within 60 days after the notification of any apparent error or omission.

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

Remove lines 9-32 and insert:

application under certain conditions; authorizing applicants who meet specified requirements to receive a home inspection under the program without being eligible for, or applying for, a grant; specifying eligibility requirements for hurricane mitigation grants; revising application requirements for hurricane mitigation grants; authorizing an applicant to submit a subsequent hurricane mitigation grant application under certain conditions; requiring that a grant application include certain information; deleting and revising provisions relating to the selection of hurricane mitigation inspectors and contractors; deleting the requirement that matching fund grants be made available to certain entities; revising improvements that grants for eligible homes may be used; deleting the authorization to use grants on rebuilds; requiring the Department of Financial Services to develop a process that ensures the most efficient means to collect and verify inspection applications; requiring the department to prioritize the review and approval of inspection and grant applications in a specified order; requiring the department to start accepting inspection and grant applications as specified in the act; requiring homeowners to finalize construction and make certain

requests within a specified time; providing that an application is deemed abandoned under certain circumstances; authorizing the department to request certain information; providing that an application is considered withdrawn under certain circumstances

HB 1305

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1305 Florida Banking Institutions
SPONSOR(S): Maggard
TIED BILLS: **IDEN./SIM. BILLS:** SB 1466

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

SUMMARY ANALYSIS

The Residential Landlord and Tenant Act (Act), codified in part II of ch. 93, F.S., governs the rental of a dwelling unit in Florida. The Act provides that whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord has the option of holding such money in a separate account in a "Florida banking institution" for the benefit of the tenant. The Act, however, does not define what constitutes a "Florida banking institution."

In a recent court filing alleging violations of the Act (the Palm Beach County Case), the plaintiff relied on a repealed definition of the term "Florida banking institution." The plaintiff was a limited liability company that had been assigned the rights to a security deposit by the defendant landlord's former tenants. The plaintiff cited to the repealed statutory definition and alleged that the defendant landlord had violated the Act by depositing the tenants' security deposit with JPMorgan Chase Bank, which is not a Florida chartered bank nor headquartered in Florida.

Although the definition of "Florida banking institution" relied upon by the plaintiff in the Palm Beach County Case has been repealed, a similar definition still exists in chapter 658, F.S. This fact, combined with the fact that the Act does not define "Florida banking institution," suggests that similar lawsuits may be filed again in the future.

The bill amends the Act to define "Florida banking institution" as any bank, industrial savings bank, savings and loan association, or trust company organized under the laws of this state, another state, or the United States and doing business in this state. The effect of this change is to expressly permit landlords to comply with the Act by depositing their tenants' security deposits in any bank doing business in Florida, regardless of where the bank is chartered or headquartered.

The bill has an indeterminate positive impact on state and local government expenses but no impact on state and local government revenues. It has indeterminate positive impact on the private sector.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Residential Landlord and Tenant Act

The Residential Landlord and Tenant Act (Act), codified in part II of ch. 83, F.S., governs the rental of a dwelling unit in Florida. A "dwelling unit" is defined as:

- A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household;
- A mobile home rented by a tenant; or
- A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.

The Act provides that whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord has the option of holding such money in a separate account in a "Florida banking institution" for the benefit of the tenant.[1] The Act, however, does not define what constitutes a "Florida banking institution."

Litigation Over Violations of the Act

In a recent court filing in Palm Beach County alleging violations of the Act (the Palm Beach County Case), the plaintiff relied on a statutory definition of the term "Florida banking institution" that existed in ch. 658, F.S., relating to the regulation of banks and trust companies in Florida.[2] The statute relied upon, however, was repealed over a decade ago.[3]

The repealed statute defined "Florida banking institution" as "a bank whose home is this state,"[4] and defined "home state" as:

- With respect to a state bank, the state by which the bank is chartered;
- With respect to a national bank, the state in which the main office of the bank is located; and
- With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. s. 3103(c).[5]

The plaintiff in the Palm Beach case was a limited liability company that had been assigned the rights to a $500 deposit by the defendant landlord's former tenants.[6] The plaintiff cited to the repealed statutory definition of "Florida banking institution" and alleged that the defendant landlord had violated the Act by depositing the tenants' security deposit with JPMorgan Chase Bank, which is not a Florida chartered bank nor headquartered in Florida.[7] JPMorgan Chase, however, is the largest financial institution in the United States and has numerous branches in Florida.[8] Based upon the alleged violation, the plaintiff

[1] Ss. 83.49(1)(a)-(b), F.S.
[2] *KAC 2021-1 LLC, as Assignee to Erole Emmanuel and Marie Joseph, v. Eatmira II LLC d/b/a Catalina at Miramar*, Uniform Case No. 50-2023-SC-005770-XXXX-WB (Small Claims Court for the Fifteenth Judicial Circuit, Palm Beach County, Apr. 13, 2023) (hereinafter referred to as the Palm Beach County Case).
[3] *See* ch. 2011-194, s. 24, Laws of Fla. (repealing s. 658.295, F.S. (2010)).
[4] S. 658.295(2)(m), F.S. (2010).
[5] S. 658.295(2)(o), F.S. (2010).
[6] Palm Beach County Case, *supra* note 2, Count II.
[7] *Id.*
[8] As of September 30, 2023, JPMorgan Chase had $3.38 trillion in assets, 80 million customer accounts, and 4,700 branches. *See* Christopher Murray, *The Biggest Banks in 2024*, Market Watch Guides (updated Jan. 16, 2024), https://www.marketwatch.com/guides/banking/largest-banks-in-the-us/ (last visited Jan. 27, 2024).

sought to recover its attorney fees and court costs from the defendant landlord as permitted under the Act.[9] As of January 29, 2024, the case is still pending resolution.[10]

Although the definition of "Florida banking institution" relied upon by the plaintiff in the Palm Beach County Case has been repealed, a similar definition still exists in chapter 658, F.S.[11] This fact, combined with the fact that the Act does not define "Florida banking institution," suggests that similar lawsuits may be filed again in the future.

Effect of the Bill

The bill amends the "Definitions" section of the Act to create a definition for "Florida banking institution." Under the bill, "Florida banking institution" is defined as a bank, industrial savings bank, savings and loan association, or trust company organized under the laws of this state, another state, or the United States and doing business in this state.[12]

The effect of this change is to expressly permit landlords to comply with the Act by depositing their tenants' security deposits in any bank doing business in Florida, regardless of where the bank is chartered or headquartered.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1. Amends s. 84.43, F.S., relating to definitions.

Section 2. Amends s. 83.491, F.S., relating to fee in lieu of security deposit.

Section 3. Amends s. 553.895, F.S., relating to firesafety.

Section 4. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate positive impact on state courts' expenses to the extent the proposed definition of "Florida banking institution" decreases the amount of litigation over the rights to security deposits in Florida. As a result, the bill is likely to reduce the caseload burden on circuit courts.[13]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[9] Palm Beach County Case, *supra* note 2, Count II. *See also* s. 83.48, F.S., which entitles prevailing parties to recover attorney fees and court costs in civil actions to enforce the provisions of the Act.
[10] *See* Clerk of the Circuit Court & Comptroller for Palm Beach County, *Case Info: Uniform Case No. 50-2023-SC-005770-XXXX-WB*, https://appsgp.mypalmbeachclerk.com/eCaseView/search.aspx (last visited Jan. 29, 2024).
[11] S. 658.2953(3)(c), F.S., defines "Florida bank" as "a bank whose home state in this state."
[12] The addition of the proposed definition changes the numbering of other defined terms. As such, the bill updates certain cross-references to conform with such changes.
[13] Under Florida law, circuit courts have concurrent jurisdiction with county courts to consider cases involving landlord-tenant disputes. S. 34.011(1), F.S.

None.

2. Expenditures:

The bill has an indeterminate positive impact on local courts' expenses to the extent the proposed definition of "Florida banking institution" decreases the amount of litigation over the rights to security deposits in Florida. As a result, the bill is likely to reduce the caseload burden on small claims and county courts.[14]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate positive impact on the private sector to the extent the proposed definition of "Florida banking institution" decreases the amount of litigation over the rights to security deposits in Florida. The decrease in litigation will reduce costs to both plaintiffs and defendants in landlord-tenant disputes. Further, banking institutions that are not chartered or headquartered in Florida may benefit from receiving additional security deposits.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable. The bill does not amend or create rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 17-20: The bill defines "Florida banking institution" as any bank, industrial savings bank, savings and loan association, or trust company organized under the laws of this state, another state, or the United States and doing business in this state. The bill does not specify that the accounts or deposits of these entities must be insured by the Federal Deposit Insurance Corporation[15] or the National Credit Union Share Insurance Fund.[16] Additionally, the proposed definition does not include credit unions,

[14] Under Florida law, county courts have concurrent jurisdiction with circuit courts to consider cases involving landlord-tenant disputes. County courts have exclusive jurisdiction of proceedings relating to the right of possession of real property and to the forcible or unlawful detention of lands and tenements, except that the circuit court also has jurisdiction if the amount in controversy exceeds the jurisdictional limits of the county court or the circuit court otherwise has jurisdiction. S. 34.011(1), F.S.

[15] The Federal Deposit Insurance Corporation (FDIC) protects the money that depositors place in banks insured by the FDIC, in the unlikely event of an insured-bank failure. *See* Federal Deposit Insurance Corporation, *Deposit Insurance*, https://www.fdic.gov/resources/deposit-insurance/ (last visited Jan. 27, 2024).

[16] The National Credit Union Share Insurance Fund (Fund) insures deposits of up to at $250,000 per individual depositor. The National Credit Union Administration is a federal agency that regulates and supervises credit unions and administers the Fund. *See* National Credit Union Administration, *Share Insurance Fund Overview*, https://ncua.gov/support-services/share-insurance-fund (last visited Jan. 27, 2024).

savings associations or thrift associations, each of which are included in the current definition of the term "financial institution" in Florida's financial institutions codes.[17]

Line 56: Given the potential for additional litigation over the lack of a definition of "Florida banking institution" and the apparent use of national banks for required deposits, it is recommended that the bill become effective upon becoming law, rather than waiting until July 1, 2024.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[17] *See* s. 655.005(i), F.S. Florida's financial institutions codes are codified in chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.

A bill to be entitled

An act relating to Florida banking institutions; amending s. 83.43, F.S.; defining the term "Florida banking institution"; amending ss. 83.491 and 553.895, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (7) through (17) of section 83.43, Florida Statutes, are renumbered as subsections (8) through (18), respectively, and a new subsection (7) is added to that section to read:

83.43 Definitions.—As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(7) "Florida banking institution" means a bank, industrial savings bank, savings and loan association, or trust company organized under the laws of this state, another state, or the United States and doing business in this state.

Section 2. Subsection (6) of section 83.491, Florida Statutes, is amended to read:

83.491 Fee in lieu of security deposit.—

(6) A fee collected under this section, or an insurance product or a surety bond accepted, by a landlord in lieu of a

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

security deposit is not a security deposit as defined in s. 83.43(13) ~~s. 83.43(12)~~.

Section 3. Subsection (1) of section 553.895, Florida Statutes, is amended to read:

553.895 Firesafety.—

(1) Any transient public lodging establishment, as defined in chapter 509 and used primarily for transient occupancy as defined in s. 83.43(18) ~~s. 83.43(17)~~, or any timeshare unit of a timeshare plan as defined in chapters 718 and 721, which is of three stories or more and for which the construction contract has been let after September 30, 1983, with interior corridors which do not have direct access from the guest area to exterior means of egress and on buildings over 75 feet in height that have direct access from the guest area to exterior means of egress and for which the construction contract has been let after September 30, 1983, shall be equipped with an automatic sprinkler system installed in compliance with the provisions prescribed in the National Fire Protection Association publication NFPA No. 13 (1985), "Standards for the Installation of Sprinkler Systems." Each guest room and each timeshare unit shall be equipped with an approved listed single-station smoke detector meeting the minimum requirements of NFPA 74 (1984) "Standards for the Installation, Maintenance and Use of Household Fire Warning Equipment," powered from the building electrical service, notwithstanding the number of stories in the

structure, if the contract for construction is let after September 30, 1983. Single-station smoke detectors shall not be required when guest rooms or timeshare units contain smoke detectors connected to a central alarm system which also alarms locally.

Section 4. This act shall take effect July 1, 2024.

HB 1465

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1465 Pet Insurance and Wellness Programs
SPONSOR(S): Tuck
TIED BILLS: **IDEN./SIM. BILLS:** SB 1338

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

SUMMARY ANALYSIS

Pet insurance offers coverage for accidents and illnesses primarily for household pets, notably dogs and cats. While classified and regulated as Property and Casualty (P/C) insurance, it parallels human health insurance in providing annual coverage subject to predetermined rates and conditions.

In response to the growing significance of pet insurance and the need for standardized regulations, the National Association of Insurance Commissioners (NAIC) introduced the Pet Insurance Model Act during its Summer 2022 National Meeting. This model act addresses key aspects of the rapidly expanding pet insurance industry, which, as of 2017, saw only approximately 1.5 million dogs and 300,000 cats insured in the U.S., representing less than 2% of dogs and less than 0.5% of cats owned nationwide. Despite these relatively low rates of coverage, the total premium volume for pet insurance policies in the U.S. reached approximately $3.2 billion by the end of 2022. The model act encompasses provisions related to pet wellness programs, preexisting conditions, consumer protections, and training requirements for insurance producers.

Pet insurance policies typically cover various veterinary expenses, including:

- Accidents: coverage for injuries resulting from accidents, such as broken bones or ingesting foreign objects.
- Illnesses: coverage for treatments related to illnesses such as cancer, diabetes, or infections.
- Routine Care: some policies offer optional coverage for routine care, including vaccinations, wellness exams, and dental cleanings.
- Hereditary and Congenital Conditions: certain policies may cover hereditary and congenital conditions, although these often have specific limitations and waiting periods.

Currently, several companies offer pet insurance in Florida; however, Florida law does not separately regulate pet insurance.

The bill creates necessary regulatory statutes to facilitate the production of pet insurance policies for sale within the state. The bill defines pet insurance and provides specific disclosure requirements for policy terms and conditions, including coverage exclusions, waiting periods, and renewal provisions. Additionally, it regulates the marketing and sales of wellness programs, ensuring they are distinct from pet insurance and transparently disclosed to consumers. The bill also imposes training requirements for agents and brokers selling pet insurance policies. Enforcement measures include penalties for violations, as provides for in the Florida Insurance Code, and the bill provides for applicability and regulatory authority.

The bill provides an effective date of January 1, 2025.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

National Association of Insurance Commissioners

The National Association of Insurance Commissioners (NAIC) serves as the insurance standard-setting and regulatory support body in the United States.[1] Comprised of insurance regulators from all 50 states, the District of Columbia, and five U.S. territories, the NAIC aids state regulators in fulfilling their public service mandate.[2] It achieves this by setting standards and regulatory best practices, facilitating the exchange of information, offering regulatory support services, and educating consumers, industry professionals, and government stakeholders on the state-based insurance regulatory framework of the United States.[3]

Office of Insurance Regulation

The Office of Insurance Regulation (OIR) regulates specified insurance products, insurers, and other risk bearing entities in Florida.[4] The Financial Services Commission (FSC), composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of the OIR for purposes of rulemaking. Further, the FSC appoints the OIR commissioner.

As part of their regulatory oversight, the OIR may suspend or revoke an insurer's certificate of authority under certain conditions.[5] The OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.[6] As part of the examination process, all persons being examined must make available to the OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.[7] The OIR is also authorized to conduct market conduct examinations to determine compliance with applicable provisions of the Insurance Code.[8]

Current Situation - Pet Insurance

Pet insurance offers coverage for accidents and illnesses primarily for household pets, notably dogs and cats.[9] While classified and regulated as Property and Casualty (P/C) insurance[10], it parallels human health insurance in providing annual coverage subject to predetermined rates and conditions.[11] Originating in the U.S. in 1980, pet insurance has experienced significant expansion since its inception.[12]

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[1] NAIC, *Our Story*, https://content.naic.org/about (last visited Jan. 27, 2024).
[2] *Id*.
[3] *Id*.
[4] S. 20.121(3)(a), F.S.
[5] S. 624.418, F.S
[6] S. 624, 316(1)(a), F.S.
[7] S. 624.318(2), F.S.
[8] The Code is comprised of chs. 624-632, 634-636, 641, 642, 648, and 651, F.S. *See* S. 624.3161, F.S.
[9] National Association of Insurance Commissioners, *A Regulator's Guide to Pet Insurance*, p. 1 https://content.naic.org/sites/default/files/publication-pin-op-pet-insurance.pdf (last visited Jan. 27, 2024).
[10] Casualty insurance is a broad category of insurance coverage for individuals, employers, and businesses against loss of property, damage, or other liabilities. Casualty insurance includes vehicle insurance, liability insurance, and theft insurance. Liability losses are losses that occur as a result of the insured's interactions with others or their property. *See* Investopedia, *Casualty Insurance: Definition, Types, and Examples,* https://www.investopedia.com/terms/c/casualtyinsurance.asp (last visited Jan. 27, 2024).
[11] *Id*.
[12] *Id*.

The North American Pet Health Insurance Association (NAPHIA) serves as the leading advocacy group, representing over 99 percent of the U.S. and Canada pet health insurance industry.[13] Notably, in 2017, NAPHIA members witnessed growth, with total premium volume reaching approximately $1.03 billion in the U.S., marking a substantial 23.2 percent increase from the previous year.[14] In the U.S. and its territories, direct written premiums amounted to roughly $640 billion.[15] Despite the rapid growth, pet insurance still represents a small percentage of the total P/C market.[16]

Pet insurance policies typically cover various veterinary expenses, including[17]:

- Accidents: coverage for injuries resulting from accidents, such as broken bones or ingesting foreign objects.
- Illnesses: coverage for treatments related to illnesses such as cancer, diabetes, or infections.
- Routine Care: some policies offer optional coverage for routine care, including vaccinations, wellness exams, and dental cleanings.
- Hereditary and Congenital Conditions: certain policies may cover hereditary and congenital conditions, although these often have specific limitations and waiting periods.

In 2017, a survey by the American Pet Products Association revealed that approximately 68 percent of U.S. households, totaling around 84.65 million families, had at least one pet, including dogs, cats, or other animals.[18] Of these households, about 60 million owned at least one dog, and 47 million had at least one cat.[19] Despite this large number of pet owners, there's considerable room for growth in the pet insurance sector.[20] However, only about 1.5 million dogs and 300,000 cats were insured in 2017, representing less than 2 percent of dogs and less than 0.5 percent of cats owned in the country.[21] In the U.S., there are roughly 90 million household dogs and 95 million household cats, indicating a substantial potential market for pet insurance coverage.[22]

Pet insurance coverage in the U.S. has seen consistent annual growth rates of 15 percent to 20 percent over the past five years.[23] The distribution of pet insurance is notably concentrated in larger urban areas, with California and New York emerging as the primary markets.[24] For a visual representation of the distribution of pets and Gross Written Premiums (GWP) by state, please refer to the chart below.[25] According to data from NAPHIA members, the total premium volume in the U.S. reached approximately $3.2 billion by the end of 2022, with a slight slowdown in growth observed in 2022, marking the lowest growth rate in recent periods.[26]

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[13] *Id*.
[14] *Id*.
[15] *Id*.
[16] *Id*.
[17] Forbes, *What Does Pet Insurance Cover?*, https://www.forbes.com/advisor/pet-insurance/what-does-pet-insurance-cover/ (last visited Jan. 27, 2024).
[18] National Association of Insurance Commissioners, *A Regulator's Guide to Pet Insurance*, p. 2 https://content.naic.org/sites/default/files/publication-pin-op-pet-insurance.pdf (last visited Jan. 27, 2024).
[19] *Id*.
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] *Id*. at 5.
[24] *Id*.
[25] NAPHIA, *State of the Industry Report 2023 Highlights*, p. 24, https://naphia.org/wp-content/uploads/2023/05/NAPHIA-SOI2023-Report-Highlights_Public-May9.pdf (last visited Jan. 27, 2024).
[26] *Id*. at 10.

U.S. Market (Full) Pets and GWP Distribution by State (2022)

STATE	PETS	GWP
California	18.6%	21.0%
New York	7.0%	8.4%
Florida	6.2%	6.3%
Texas	5.7%	4.9%
New Jersey	4.6%	4.9%
Pennsylvania	4.5%	4.3%
Massachusetts	4.1%	4.5%
Washington	4.0%	4.1%
Colorado	3.0%	3.0%
Illinois	2.9%	3.1%
Virginia	2.7%	2.9%
North Carolina	2.4%	2.1%
Maryland	2.2%	2.3%
Ohio	2.1%	1.9%
Georgia	2.1%	1.7%
Connecticut	2.0%	2.2%
Michigan	1.8%	1.5%
Oregon	1.7%	1.6%

STATE	PETS	GWP
Arizona	1.6%	1.6%
Indiana	1.3%	1.0%
Minnesota	1.2%	1.0%
Nevada	1.2%	1.2%
South Carolina	1.1%	0.9%
North Dakota	1.1%	1.0%
Tennessee	1.1%	0.9%
Maine	1.1%	1.0%
New Mexico	1.0%	0.9%
Wisconsin	0.9%	0.8%
Missouri	0.8%	0.6%
New Hampshire	0.8%	0.8%
Utah	0.7%	0.5%
Nebraska	0.6%	0.5%
Vermont	0.6%	0.6%
Louisiana	0.6%	0.5%
Hawaii	0.6%	0.6%
Iowa	0.6%	0.4%

STATE	PETS	GWP
Rhode Island	0.6%	0.5%
Alabama	0.5%	0.4%
Kentucky	0.5%	0.4%
Arkansas	0.5%	0.4%
West Virginia	0.4%	0.3%
District of Columbia	0.4%	0.4%
Kansas	0.4%	0.3%
Oklahoma	0.4%	0.3%
Idaho	0.4%	0.3%
Delaware	0.4%	0.3%
Alaska	0.3%	0.3%
Mississippi	0.3%	0.2%
Montana	0.2%	0.2%
Wyoming	0.1%	0.1%
Other: Puerto Rico	0.1%	0.1%
South Dakota	0.1%	0.1%

As the lifespans of companion animals increase, veterinary care costs are expected to rise for consumers, leading them to seek out pet insurance to help manage the expenses associated with preventive care, acute and chronic illnesses, and emergency medical treatments for their pets.[27] Data from NAPHIA indicates that consumers generally prefer "comprehensive" insurance plans for their pets.[28] In the U.S., the majority (92.8 percent) of pets are covered by Accident & Illness plans or Embedded Wellness plans, while 7 percent have Endorsements (riders such as wellness or cancer treatments), and the remaining 0.2 percent have Accident Only plans.[29]

Development of Regulatory Standards for the Pet Insurance Industry

In April 2019, the Pet Insurance Working Group was tasked with reviewing NAIC's "A Regulator's Guide to Pet Insurance" to determine if a model law or guideline was necessary to establish appropriate regulatory standards for the pet insurance industry.[30] Subsequently, a request for Model Law development related to pet insurance was adopted during the NAIC 2019 Spring National Meeting, addressing various aspects such as definitions, disclosures, violations, producer licensing, preexisting conditions, reimbursement benefits, and regulations.[31] During the NAIC's Summer 2022 National Meeting in members voted to adopt the Pet Insurance Model Act, which includes key provisions concerning pet wellness programs, preexisting conditions, consumer protections, and training for insurance producers.[32] Currently, only Maine has adopted a substantially similar version of the NAIC model.[33]

Current Situation – Florida

[27] NAIC, *Pet Insurance*, https://content.naic.org/cipr-topics/pet-insurance (last visited Jan. 27, 2024).
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] NAIC, *Pet Insurance Model Act*, https://content.naic.org/sites/default/files/model-law-state-page-633.pdf (last visited Jan. 27, 2024).

Currently, several companies offer pet insurance in Florida; however, Florida law does not separately regulate pet insurance. Below are companies that provide pet insurance:[34]

Companies	Average Monthly Cost	Waiting Periods	Maximum Annual Coverage
Pets Best	• $30 for dogs • $20 for cats	14 days for illnesses, two days for injuries, six months for orthopedic conditions	$5,000 - $100,000
Spot Pet Insurance	• $78 for dogs • $34 for cats	14 days for illnesses, two days for injuries	$2,500 - Unlimited
Embrace	• $63 for dogs • $37 for cats	48 hours for accidents, 14 days for illnesses, six months for orthopedic conditions	$5,000 - $100,000
ASPCA Pet Health Insurance	• $47 for dogs • $19 for cats	14 days for illnesses	$3,000 - $10,000

Effect of the bill

The bill creates necessary regulatory statutes to facilitate the production of pet insurance policies for sale within the state. The bill applies to policies issued to residents of the state, those sold or offered within the state's boundaries, as well as policies delivered or issued for delivery in the state.

Pet Insurance Definitions and Usage

The bill defines pet insurance as coverage designed for accidents and illnesses or diseases of pets, facilitating reimbursement for expenses linked to veterinary medical advice, diagnosis, care, or treatment, encompassing prescribed medications. Additionally, it introduces definitions for various terms, including chronic condition, congenital anomaly or disorder, hereditary disorder, orthopedic condition, pet insurance policy, preexisting condition, renewal, veterinarian, waiting period, and wellness program.

The bill mandates that if pet insurers incorporate the defined terms within a pet insurance policy, they must adhere to the provided definition verbatim. Additionally, the pet insurer is required to ensure accessibility of these definitions to policyholders.

Disclosure Requirements for Pet Insurance Policies

The bill requires pet insurers to disclose coverage exclusions for chronic conditions, congenital anomalies, hereditary disorders, and preexisting conditions, along with any other applicable exclusions. Additionally, they must disclose policy provisions limiting coverage, changes in coverage or premiums, and differentiate between the underwriting company and the marketed brand.

Pet insurers must allow a 30-day review period for policyholders to return policies for a refund if unsatisfied, provided no claims have been filed. They must also disclose the basis for determining

[34] Market Watch, *The Best Pet Insurance Companies in Florida (2024),* https://www.marketwatch.com/guides/pet-insurance/pet-insurance-florida/ (last visited Jan. 27, 2024).

claim payments, including benefit schedules and fee limitations, and any required medical examinations before policy purchase.

Further, the bill requires pet insurers to clearly disclose waiting periods and their requirements to applicants. Pet insurers must provide a summary of policy provisions and written disclosures including contact details for regulatory offices and the insurer or agent. These disclosures are in addition to any other disclosures required by law or regulation.

Preexisting Conditions, Waiting Periods, and Policy Renewals

The bill allows pet insurers to issue policies excluding coverage for preexisting conditions, provided that appropriate disclosure is made to the applicant or policyholder, with the burden of proving the applicability of the exclusion resting on the insurer. Additionally, pet insurers are permitted to impose waiting periods before the effective date of a new policy, not exceeding 30 days for certain conditions,[35] with provisions for waiving the waiting period upon completion of a medical examination, the costs of which are typically paid by the policyholder. These waiting periods and their requirements must be clearly disclosed to applicants before policy purchase.

The bill prohibits pet insurers from requiring medical examinations for policy renewals and mandates compliance with the Florida Insurance Code for additional benefits included in policies. Furthermore, it ensures that an applicant's eligibility for pet insurance is not tied to participation in a wellness program.

Marketing and Sales of Wellness Programs

The bill prohibits pet insurers and their agents from misrepresenting wellness programs as pet insurance. It mandates that if wellness programs are offered alongside pet insurance, they must be separate and not required for pet insurance purchase. Additionally, the costs, terms, and products of wellness programs must be distinct from pet insurance. Clear disclosures must be provided to applicants and policyholders regarding the nature of wellness programs, and wellness benefits within pet insurance policies are recognized as insurance.

Agent and Broker Training Requirements

The bill requires specific training for agents and brokers involved in selling pet insurance policies. Agents and brokers must obtain appropriate licensing and complete specified training before engaging in the sale, solicitation, or negotiation of pet insurance policies. Pet insurers are responsible for ensuring that their agents and brokers receive training on preexisting conditions, waiting periods, and the distinctions between pet insurance and wellness programs. Additionally, training must cover chronic conditions, congenital anomalies, hereditary disorders, and administrative aspects of pet insurance policies. Satisfaction of training requirements from other states with substantially similar provisions is recognized as meeting the training standards in the state.

Enforcement, Applicability, and Rulemaking Authority

A violation of the bill's requirements will be a violation of the Florida Insurance Code. Additionally, it clarifies that while all other relevant insurance laws apply to pet insurance, the specific regulations outlined in this bill take precedence over any conflicting general provisions. The bill does not restrict the types of exclusions pet insurers can employ in their policies nor does it mandate the inclusion of any specific limitations or exclusions. Furthermore, the bill grants the commission the authority to adopt rules and regulations essential for the effective administration of this section.

The bill provides an effective date of January 1, 2025.

B. SECTION DIRECTORY:

[35] "Certain conditions" referenced in this sentence include illnesses, diseases, or orthopedic conditions not resulting from an accident, as specified within the context of the bill

Section 1: Amends s. 627.4435, F.S., relating pet insurance; noninsurance wellness programs.

Section 2: Providing an effective date of January 1, 2025.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill necessitates the incorporation of pet insurance into the information technology systems of OIR, resulting in a one-time impact. However, OIR existing resources have the capacity to absorb this impact.[36]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may positively impact the private sector if the regulatory efficiency it establishes results in lower production costs for pet insurance providers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Sufficient rulemaking authority for the FSC and OIR to administer the bill's provisions is provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[36] Email from Kevin James, Deputy Legislative Affairs Director, Department of Management Services, HB 1465 Bill Analysis (Jan. 25, 2024).

A bill to be entitled

An act relating to pet insurance and wellness programs; creating s. 627.4435, F.S.; providing a short title; providing purpose and applicability; providing definitions; requiring pet insurers to use the definitions of the terms and include the definitions in insurance policies under certain circumstances; requiring pet insurers to make certain disclosures to pet insurance applicants and policyholders; authorizing pet insurance applicants and policyholders to return insurance policies and riders under certain circumstances; authorizing premiums to be refunded under certain circumstances; requiring pet insurance policies and riders to have a notice on return policies; requiring pet insurers to post a summary of certain provisions on a website and to provide new policyholders with a copy of the summary; providing that certain required disclosures are in addition to disclosures required by law or regulation; authorizing exclusions, waiting periods, and medical examinations provisions in pet insurance policies; providing requirements for such provisions; requiring that certain benefits comply with certain provisions of the Florida Insurance Code; prohibiting insurance applicants' eligibility from being based on

participation or lack of participation in wellness programs; providing sales practices for wellness programs; providing that coverages in pet insurance policies described as wellness benefits are insurance; prohibiting insurance agents and brokers from transacting in pet insurance without license and specified training; providing requirements for pet insurance training for insurance agents and brokers; providing that similar pet insurance training in other states satisfy the training requirements in this state; providing penalties; providing that certain insurance laws apply to pet insurance; providing that specific provisions of law supersede general applicable provisions of law; providing construction; providing rulemaking authority; providing an effective date.

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

Section 1. Section 627.4435, Florida Statutes, is created to read:

627.4435 Pet insurance; noninsurance wellness programs.—

(1) SHORT TITLE.—This section may be cited as the "Pet Insurance Act."

(2) PURPOSE AND SCOPE.—

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

(b) This section applies to pet insurance policies that are:

1. Issued to a resident of the state;

2. Sold, solicited, negotiated, or offered in the state; or

3. Delivered or issued for delivery in the state.

(3) DEFINITIONS.—

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

1. "Chronic condition" means a condition that can be treated or managed, but not cured.

2. "Congenital anomaly or disorder" means a condition that is present from birth, whether inherited or caused by the environment, and that may cause or contribute to illness or disease.

3. "Hereditary disorder" means an abnormality that is genetically transmitted from parent to offspring and may cause illness or disease.

4. "Orthopedic" refers to a condition that affects the bones, skeletal muscle, cartilage, tendons, ligaments, or joints. The condition includes, but is not limited to, elbow dysplasia, hip dysplasia, intervertebral disc degeneration, patellar luxation, and cranial cruciate ligament rupture. The

condition does not include any cancer or metabolic, hematopoietic, or autoimmune disease.

5. "Pet insurance" means an insurance that provides coverage for accidents and for illnesses or diseases of pets. Such insurance reimburses a policyholder for expenses associated with medical advice, diagnosis, care, or treatment provided by a veterinarian, including, but not limited to, the cost of drugs prescribed by the veterinarian.

6. "Pet insurance policy" or "policy" includes pet insurance certificate.

7. "Preexisting condition" means a condition for which any of the following are true before the effective date or during a waiting period of a pet insurance policy:

a. A veterinarian provided medical advice.

b. The pet received previous treatment.

c. Based on information from verifiable sources, the pet had signs or symptoms directly related to the condition for which a claim is being made.

A condition for which coverage is afforded on a policy is not deemed to be a preexisting condition on any renewal of the policy.

8. "Renewal" means the issuance and delivery at the end of an insurance policy period a policy that supersedes the policy previously issued and delivered by the same pet insurer or

affiliated pet insurer and that provides types and limits of coverage substantially similar to those contained in the policy being superseded.

9. "Veterinarian" means an individual who holds a valid license to practice veterinary medicine from the appropriate licensing entity in the jurisdiction in which he or she practices.

10. "Waiting period" means the period specified in a pet insurance policy which is required to transpire before some or all of the coverage in the policy may begin. This period may not be applied to renewals of existing coverage.

11. "Wellness program" means a subscription or reimbursement-based program that is separate from an insurance policy and that provides goods and services to promote the general health, safety, or well-being of the pet. If the subscription or program includes language such as "undertakes to indemnify another," "pays a specified amount upon determinable contingencies," or "provides coverage for a fortuitous event," the subscription or program is transacting in the business of insurance and is subject to the Florida Insurance Code. This definition is not intended to classify a contract directly between a service provider and a pet owner which involves only the two parties as being the business of insurance, unless other indications of insurance also exist.

(b) If a pet insurer uses any of the terms defined in

paragraph (a) in a pet insurance policy, the pet insurer must use the definition of each term as provided in paragraph (a) and include the definition of each term in the policy. The pet insurer must also make the definition available through a clear and conspicuous link on the main page of the website of the pet insurer or the pet insurer's program administrator.

(4) DISCLOSURES.—

(a) A pet insurer transacting pet insurance shall disclose the following to pet insurance applicants and policyholders:

1. A coverage exclusion due to any of the following:

a. A chronic condition;

b. A congenital anomaly or disorder;

c. A hereditary disorder; or

d. A preexisting condition.

2. Any other exclusions in the following statement: "Other exclusions may apply. Please refer to the exclusions section of the policy for more information."

3. A policy provision that limits coverage through a waiting period, a deductible, a coinsurance, or an annual or lifetime policy limit.

4. A reduction of coverage or an increase in premium based on the policyholder's claim history, the age of the covered pet, or a change in the geographic location of the policyholder.

5. Any difference between the underwriting company and the brand name used to market and sell the pet insurance.

(b)1. Unless the policyholder has filed a claim under the pet insurance policy, a pet insurance applicant or policyholder may examine and return the policy or rider to the pet insurer or pet insurance agent or broker within 30 days after the applicant or policyholder obtains the receipt and have the premium refunded if, after examining the policy or rider, the applicant or policyholder is not satisfied for any reason.

2. A pet insurance policy and rider must have a notice prominently printed on or attached to the first page which includes specific instructions to accomplish a return, in type at least as large as any type appearing on the policy or rider contract, in substantially the following language:

You have 30 days from the day you receive this policy, certificate, or rider to review it and return it to the company if you decide not to keep it. You do not have to tell the company why you are returning it. If you decide not to keep it, simply return it to the company at its administrative office or you may return it to the insurance agent or broker that you bought it from as long as you have not filed a claim. You must return it within 30 days after the day you first received it. The company will refund the full amount of any premium paid within 30 days after it receives the returned policy, certificate, or rider. The

premium refund will be sent directly to the person who paid it. The policy, certificate, or rider will be void as if it had never been issued.

(c) A pet insurer shall clearly disclose in a summary description in the pet insurance policy the basis or formula on which the pet insurer determines claim payments. This disclosure must be provided before the policy issuance and through a clear and conspicuous link on the main page of the website of the pet insurer or the pet insurer's program administrator.

(d) A pet insurer that uses a benefit schedule to determine claim payment under a pet insurance policy shall:

1. Clearly disclose the applicable benefit schedule in the policy; and

2. Disclose all benefit schedules used by the pet insurer under its pet insurance policies through a clear and conspicuous link on the main page of the website of the pet insurer or the pet insurer's program administrator.

(e) A pet insurer that determines claim payments under a pet insurance policy based on usual and customary fees, or any other reimbursement limitation based on prevailing veterinary service provider charges, shall do the following:

1. Include a usual and customary fee limitation provision in the policy which clearly describes the pet insurer's basis for determining usual and customary fees and how that basis is

applied in calculating claim payments; and

2. Disclose the pet insurer's basis for determining usual and customary fees through a clear and conspicuous link on the main page of the website of the pet insurer or the pet insurer's program administrator.

(f) If any medical examination by a licensed veterinarian is required to bring about coverage, the pet insurer shall clearly and conspicuously disclose the required aspects of the examination before a policy purchase and disclose that examination documentation may result in a preexisting condition exclusion.

(g) Waiting periods and the requirements applicable to waiting periods must be clearly and prominently disclosed to applicants before a policy purchase.

(h) The pet insurer shall make a summary of all policy provisions required in paragraphs (a) through (g) in a separate document titled "Insurer Disclosure of Important Policy Provisions" and shall post on the main page of the website of the pet insurer or the pet insurer's program administrator a clear and conspicuous link to the document.

(i) At the time a new pet insurance policy is issued, the pet insurer shall provide to the policyholder a copy of the "Insurer Disclosure of Important Policy Provisions" document required under paragraph (h). The document must be printed in at least 12-point type.

(j) At the time a pet insurance policy is issued or delivered, the pet insurer shall include a written disclosure with the following information, printed in 12-point boldface type:

1. The mailing address, toll-free telephone number, and website address of the Office of Insurance Regulation.

2. The address and customer service telephone number of the pet insurer or the agent or broker of record.

3. If the policy is issued or delivered by an agent or broker, a statement advising the policyholder to contact the agent or broker for assistance.

(k) The disclosures required in this subsection must be in addition to any other disclosure required by law or regulation.

(5) POLICY CONDITIONS.—

(a) A pet insurer may issue a policy that excludes coverage on the basis of one or more preexisting conditions with appropriate disclosure to the applicant or policyholder. The pet insurer has the burden of proving that the preexisting condition exclusion applies to the condition for which a claim is being made.

(b) A pet insurer may issue a policy imposing a waiting period before the effective date of a new policy which does not exceed 30 days for illnesses or diseases or for orthopedic conditions not resulting from an accident. A waiting period for accidents is prohibited.

1. A pet insurer issuing a policy that imposes a waiting period shall include a provision in its contract which allows the waiting period to be waived upon completion of a medical examination. The pet insurer may require the examination to be conducted by a licensed veterinarian after the purchase of the policy.

a. A medical examination under this subparagraph shall be paid for by the policyholder, unless the policy specifies that the pet insurer will pay for the examination.

b. A pet insurer may specify elements to be included as part of the examination and require documentation thereof, provided that the specifications do not unreasonably restrict the ability of the applicant or policyholder to waive the waiting period.

2. A waiting period, and the requirements applicable to a waiting period, must be clearly and prominently disclosed to an applicant before the policy purchase.

(c) A pet insurer may not require a medical examination of the covered pet for the policyholder to renew a policy.

(d) If a pet insurer includes any prescriptive, wellness, or noninsurance benefit in the policy form, the benefit is made part of the policy contract and must comply with all of the applicable provisions of the Florida Insurance Code.

(e) An applicant's eligibility to purchase a pet insurance policy must not be based on participation, or lack of

participation, in a separate wellness program.

(6) SALES PRACTICES FOR WELLNESS PROGRAMS.—

(a) A pet insurer or a pet insurance agent or broker may not market a wellness program as pet insurance.

(b) If a wellness program is sold by a pet insurer or a pet insurance agent or broker:

1. The purchase of the wellness program must not be a requirement to the purchase of pet insurance;

2. The costs of the wellness program must be separate and identifiable from any pet insurance policy sold by a pet insurer or a pet insurance agent or broker;

3. The terms and conditions for the wellness program must be separate from any pet insurance policy sold by a pet insurer or an agent or broker;

4. The products or coverages available through the wellness program may not duplicate the products or coverages available through the pet insurance policy;

5. The advertising of the wellness program must not be misleading and must be in accordance with this paragraph; and

6. A pet insurer or a pet insurance agent or broker shall clearly disclose the following information to applicants and policyholders, printed in 12-point boldface type:

a. That wellness programs are not insurance;

b. The address and customer service telephone number of the pet insurer or the pet insurance agent or broker of record;

and

c. The mailing address, toll-free telephone number, and website address of the Office of Insurance Regulation.

(c) Coverages included in the pet insurance policy contract described as wellness benefits are insurance.

(7) AGENT AND BROKER TRAINING.—

(a) An agent or broker may not sell, solicit, or negotiate a pet insurance policy until after the agent or broker is appropriately licensed and has completed the required training specified in paragraph (c).

(b) Pet insurers shall ensure that its agents and brokers are trained on the topics specified in paragraph (c) and that its agents and brokers have been appropriately trained on the coverages and conditions of its pet insurance products.

(c) The training required under this subsection must include information on all of the following topics:

1. Preexisting conditions and waiting periods.

2. The differences between pet insurance and noninsurance wellness programs.

3. Chronic conditions, congenital anomalies or disorders, and hereditary disorders and the way pet insurance policies interact with those conditions or disorders.

4. Rating, underwriting, renewal, and other related administrative topics.

(d) The satisfaction of the training requirements of

another state which are substantially similar to the provisions of paragraph (c) are deemed to satisfy the training requirements in this state.

(8) VIOLATIONS.—A violation of this section may subject the party committing the violation to penalties under the Florida Insurance Code.

(9) SUPERSEDED PROVISIONS; CONSTRUCTION.—

(a) All other applicable provisions of the insurance laws apply to pet insurance, except that the specific provisions of this section supersede any general provisions of law which would otherwise apply to pet insurance.

(b) This section does not in any way:

1. Prohibit or limit the types of exclusions that pet insurers may use in their policies; or

2. Require pet insurers to have any of the limitations or exclusions described in this section.

(10) RULES AND REGULATIONS.—The commission may adopt rules and regulations necessary to administer this section.

Section 2. This act shall take effect January 1, 2025.

INSURANCE & BANKING SUBCOMMITTEE

HB 1465 by Rep. Tuck
Pet Insurance and Wellness Programs

AMENDMENT SUMMARY
February 1, 2024

Amendment 1 by Rep. Tuck (strike-all): The amendment revises the bill to better integrate its provisions within the framework of the Florida Insurance Code.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Tuck offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 624.604, Florida Statutes, is amended to read:

624.604 "Property insurance" defined.—"Property insurance" is insurance on real or personal property of every kind and of every interest therein, whether on land, water, or in the air, against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage. Property insurance includes pet insurance that provides coverage for accidents and for illnesses or diseases of pets. Property

insurance may contain a provision for accidental death or injury as part of a multiple peril homeowner's policy. Such insurance, which is incidental to the property insurance, is not subject to the provisions of this code applicable to life or health insurance. Property insurance does not include title insurance, as defined in s. 624.608.

Section 2. Paragraph (hh) is added to subsection (1) of section 626.9541, Florida Statutes, to read:

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

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

(hh) *Sales practices for pet wellness programs.*—

1. A pet insurance agent may not market a wellness program as pet insurance.

2. If a wellness program is sold by a pet insurance agent:

a. The purchase of the wellness program may not be a prerequiste to the purchase of pet insurance;

b. The costs of the wellness program must be separate and identifiable from any pet insurance policy sold by the pet insurance agent;

c. The terms and conditions of the wellness program must be separate from any pet insurance policy sold by the agent;

d. The products or coverages available through the wellness program may not duplicate the products or coverages available

through the pet insurance policy; and

e. The advertising of the wellness program must not be misleading.

Section 3. Section 627.71545, Florida Statutes, is created to read:

627.71545 Pet insurance; noninsurance wellness programs.—

(1) This section may be cited as the "Pet Insurance Act."

(2) The purpose of this section is to promote the public welfare by creating a comprehensive regulatory framework within which pet insurance may be sold in this state.

(3) This section applies to all of the following:

(a) Pet insurance policies that are issued to any resident of this state or that are sold, solicited, negotiated, or offered in this state.

(b) Pet insurance policies or certificates that are delivered or issued for delivery in the state.

(4)(a) This section may not be construed to prohibit or limit the types of exclusions pet insurers may use in their policies or to require pet insurers to include in such policies any of the limitations or exclusions specified in subsection (9).

(b) All other applicable provisions of the Florida Insurance Code apply to pet insurance, except that this section supersedes any general provisions of the Florida Insurance Code which otherwise apply to pet insurance.

(5)(a) As used in this section, the term:

1. "Chronic condition" means a condition that can be treated or managed, but not cured.

2. "Congenital anomaly or disorder" means a condition that is present from birth, whether inherited or caused by the environment, and that may cause or contribute to illness or disease.

3. "Hereditary disorder" means an abnormality that is genetically transmitted from parent to offspring and may cause illness or disease.

4. "Orthopedic" refers to a condition that affects the bones, skeletal muscle, cartilage, tendons, ligaments, or joints. Orthopedic conditions include, but are not limited to, elbow dysplasia, hip dysplasia, intervertebral disc degeneration, patellar luxation, and cranial cruciate ligament rupture but do not include any cancer or any metabolic, hematopoietic, or autoimmune disease.

5. "Pet insurance" means an insurance policy that provides coverage for accidents and for illnesses and diseases of pets. Such insurance reimburses a policyholder for expenses associated with medical advice, diagnosis, care, or treatment provided by a veterinarian, including, but not limited to, the cost of drugs prescribed by the veterinarian.

6. "Pet insurance policy" or "policy" includes pet insurance certificates.

7. "Preexisting condition" means a condition for which any of the following is true before the effective date or during a

waiting period applicable to a pet insurance policy:

a. A veterinarian provided medical advice.

b. The pet received previous treatment.

c. Based on information from verifiable sources, the pet had signs or symptoms directly related to the condition for which a claim is being made.

A condition for which coverage is afforded on a policy is not deemed to be a preexisting condition on any renewal of the policy.

8. "Renewal" means the issuance and delivery at the end of an insurance policy period of a policy that supersedes the policy previously issued and delivered by the same pet insurer or affiliated pet insurer and that provides types and limits of coverage substantially similar to those contained in the policy being superseded.

9. "Veterinarian" means a health care practitioner who is licensed to engage in the practice of veterinary medicine in Florida under chapter 474.

10. "Waiting period" means the period of time specified in a pet insurance policy which is required to run before some or all of the coverage in the policy may begin. This period may not be applied to renewals of existing coverage.

11. "Wellness program" means a subscription or reimbursement-based program that is separate from an insurance policy and that provides goods and services to promote the

general health, safety, or well-being of the covered pet. If the subscription or program includes language such as "undertakes to indemnify another," "pays a specified amount upon determinable contingencies," or "provides coverage for a fortuitous event," the subscription or program is transacting in the business of insurance and is subject to the Florida Insurance Code. This definition is not intended to classify a contract directly between a service provider and a pet owner which involves only the two parties as being the business of insurance, unless other indications of insurance also exist.

(b) If a pet insurer uses any of the terms defined in paragraph (a) in a pet insurance policy, the pet insurer must use the definition of each term as provided in paragraph (a) and must include each such definition in the policy. The pet insurer must also make such definitions available through a clear and conspicuous link on the main page of the website of the pet insurer or the pet insurer's program administrator.

(6)(a) A pet insurer transacting pet insurance must disclose the following to pet insurance applicants and policyholders:

1. Whether the policy excludes coverage due to any of the following:

a. A chronic condition;

b. A congenital anomaly or disorder;

c. A hereditary disorder; or

d. A preexisting condition.

2. If the policy includes any other exclusions not listed in subparagraph 1., the pet insurer must state the following in the disclosure: "Other exclusions may apply. Please refer to the exclusions section of the policy for more information."

3. Any policy provision that limits coverage through a waiting period, a deductible, a coinsurance payment, or an annual or lifetime policy limit. Waiting periods and applicable requirements must be clearly and prominently disclosed to applicants before the policy purchase.

4. Whether the pet insurer reduces coverage or increases premium based on the policyholder's claim history, the age of the covered pet, or a change in the geographic location of the policyholder.

5. Whether the underwriting company differs from the brand name used to market and sell the pet insurance.

(b) Before issuing a pet insurance policy, a pet insurer shall, through a clear and conspicuous link on the main page of the pet insurer's or the pet insurer's program administrator's website, provide a summary description of the basis or formula for the pet insurer's determination of claim payments under the policy.

1. A pet insurer that uses a benefit schedule to determine claim payments under a pet insurance policy must clearly disclose both of the following:

a. The applicable benefit schedule in the policy.

b. All benefit schedules used by the pet insurer under its

pet insurance policies through a clear and conspicuous link on the main page of the pet insurer's or pet insurer's program administrator's website.

2. A pet insurer that determines claim payments under a pet insurance policy based on usual and customary fees, or any other reimbursement limitation based on prevailing veterinary service provider charges, shall do both of the following:

a. Include a usual and customary fee limitation provision in the policy which clearly describes the pet insurer's basis or formula for determining usual and customary fees and the manner in which that basis or formula is applied in calculating claim payments.

b. Disclose the pet insurer's basis for determining usual and customary fees through a clear and conspicuous link on the main page of the pet insurer's or pet insurer's program administrator's website.

(c) If any medical examination of the pet by a veterinarian is required to effectuate coverage, the pet insurer must clearly and conspicuously disclose any requirement for the examination before the policy is purchased and must disclose that examination documentation may result in a preexisting condition exclusion.

(d) A pet insurer shall create a summary of all policy disclosures required in paragraphs (a), (b), and (c) in a separate document titled "Insurer Disclosure of Important Policy Provisions." The pet insurer shall post the document through a

clear and conspicuous link on the main page of the pet insurer's or pet insurer's program administrator's website.

(e) At the time a pet insurance policy is issued or delivered to a policyholder, the pet insurer shall provide the policyholder with a copy of the Insurer Disclosure of Important Policy Provisions document required under paragraph (d), in at least 12-point type. At such time, the pet insurer shall also include a written disclosure with all of the following:

1. Contact information for the Division of Consumer Services of the department, including a link and toll-free telephone number, for consumers to submit inquiries and complaints relating to pet insurance products regulated by the department or office.

2. The address and customer service telephone number of the pet insurance agent.

(f) The disclosures required in this subsection are in addition to any other disclosures required by the insurance code or rules prescribed by the commission.

(7) Unless the policyholder has filed a claim under the pet insurance policy, a pet insurance applicant or policyholder may examine and return the policy or rider to the pet insurer or pet insurance agent or broker within 30 days after the applicant or policyholder obtains the receipt and is entitled to the premium refunded if, after examining the policy or rider, he or she is not satisfied for any reason.

(8) A pet insurance policy and rider must have a notice

prominently printed on or attached to the first page which includes specific instructions to accomplish a return, in type at least as large as any type appearing on the policy or rider contract and in substantially the following language:

You have 30 days from the day you receive this policy, certificate, or rider to review it and return it to the company if you decide not to keep it. You do not have to tell the company why you are returning it. If you decide not to keep policy, certificate, or rider, simply return it to the company at its administrative office or return it to the insurance agent or broker who you bought it from as long as you have not filed a claim. You must return policy, certificate, or rider within 30 days after the day you first received it in order to receive a refund. The company must refund the full amount of any premium paid within 30 days after it receives the returned policy, certificate, or rider. The premium refund will be sent directly to the person who paid it. The policy, certificate, or rider will be void as if it had never been issued.

(9)(a) A pet insurer may issue a policy that excludes coverage on the basis of one or more preexisting conditions with appropriate written disclosure to the applicant or policyholder. The pet insurer has the burden of proving that the preexisting

condition exclusion applies to the condition for which a claim is being made.

(b)1. A pet insurer may issue a policy imposing a waiting period before the effective date of a new policy which does not exceed 30 days for illnesses or diseases or for orthopedic conditions not resulting from an accident. A pet insurer may not issue a policy imposing a waiting period for accidents.

2. A pet insurer issuing a policy that imposes a waiting period must include a provision in its contract which allows the waiting period to be waived upon completion of a medical examination of the pet by a veterinarian. The pet insurer may require the examination to be conducted by a veterinarian after the purchase of the policy.

a. A medical examination required under this subparagraph must be paid for by the policyholder, unless the policy specifies that the pet insurer will pay for the examination.

b. A pet insurer may specify requirements for the examination and require documentation that the requirements have been satisfied, provided that the specifications do not unreasonably restrict the ability of the applicant or policyholder to waive the waiting period.

(c) A pet insurer may not require a medical examination of the covered pet for the policyholder to renew a policy.

(d) If a pet insurer includes any prescriptive, wellness, or noninsurance benefit in the policy form, the benefit is made part of the policy contract and must comply with all of the

applicable provisions of the Florida Insurance Code.

(e) An applicant's eligibility to purchase a pet insurance policy may not be based on his or her participation, or lack of participation, in a separate wellness program.

(10)(a) Pet insurers must ensure that its agents are trained on the topics specified in paragraph (b) and that its agents have been appropriately trained on the coverages and conditions of its pet insurance products.

(b) The training required under this subsection must include information on all of the following topics:

1. Preexisting conditions and waiting periods.

2. The differences between pet insurance and noninsurance wellness programs.

3. Chronic conditions, congenital anomalies or disorders, and hereditary disorders and the way pet insurance policies address those conditions or disorders.

4. Rating, underwriting, renewal, and other related administrative topics.

(11) The commission may adopt rules necessary to administer this section.

Section 4. This act shall take effect January 1, 2025.

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

Remove lines 3-41 and insert:

programs; amending s. 624.604, F.S.; revising the definition of the term "property insurance"; amending s. 626.9541, F.S.; providing that certain practices related to pet wellness programs are unfair methods of competition and unfair or deceptive acts or practices; creating s. 627.71545, F.S.; providing a short title; providing the purpose of the act; providing applicability; providing construction; defining terms; requiring pet insurers that use such defined terms in their pet insurance policies to use the statutory definition in their policies; requiring pet insurers to also make such definitions available on their website or their program administrator's website; requiring pet insurers to make certain disclosures to pet insurance applicants and policyholders; requiring pet insurers to provide a summary of their bases or formulas for determination of claim payments under a pet insurance policy on their website or their program administrator's website; requiring pet insurers to disclose certain requirements for required medical examinations of a pet by a veterinarian; requiring pet insurers to create a document with a summary of certain disclosures, to post such document on their website or their program administrator's website, and, upon issuance or delivery of a policy to a policyholder, to provide the disclosure document to the policyholder; requiring additional written disclosures; providing that certain required disclosures are in addition to disclosures required by the insurance code or

Financial Services Commission rule; authorizing pet insurance applicants and policyholders to examine and return insurance policies and riders under certain circumstances; requiring that premiums be refunded under certain circumstances; requiring that pet insurance policies and riders have a specified notice printed on or attached to the first page; authorizing pet insurers to issue policies that exclude coverage on the basis of preexisting conditions with appropriate written disclosure to the applicant or policyholder; providing that the pet insurer has a specified burden of proof with regard to such exclusions; authorizing pet insurers to issue policies that impose a waiting period of up to a specified period of time for specified illnesses, diseases, or conditions; prohibiting pet insurers from issuing policies imposing a waiting period for accidents; requiring pet insurers who issue a policy that imposes a waiting period to include a provision allowing for waiver of the waiting period upon completion of a medical examination of the covered pet by a veterinarian; authorizing pet insurers to require an examination to be conducted by a veterinarian after the purchase of the policy; imposing a requirement and making an authorization related to such examination; prohibiting a pet insurer from requiring a medical examination of the covered pet to renew a policy; requiring that certain benefits comply with certain provisions of the Florida Insurance Code; prohibiting insurance applicants' eligibility from being based on

participation or lack of participation in wellness programs; requiring pet insurers to ensure that its agents are trained on specified topics; providing rulemaking authority; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1611 Insurance
SPONSOR(S): Stevenson and others
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Among the variety of changes regarding insurance, the bill:

- **Data reporting:** requires that the information that property insurers were reporting to the Office of Insurance Regulation (OIR) on a quarterly basis be reported on a monthly basis; and, that the data must be reported based on zip code rather than county.

- **Property insurance policy nonrenewals:** provides the Financial Services Commission with express rulemaking authority to adopt rules and forms to regulate how, and in what format, insurers will provide notice to OIR of nonrenewal of more than 10,000 residential property insurance policies within a 12-month period.

- **Public housing authority (PHA) self-insurance trust funds:** revises the maximum per-loss occurrence amount that a PHA self-insurance fund may retain from $350,000 to an amount that the fund can withstand, as long as it maintains a continuing program of excess insurance coverage and reinsurance to protect the stability of the fund, and meets certain additional criteria.

- **Prohibition on cancellation of surplus lines property insurance policies:** restricts the ability for surplus lines insurers to cancel or nonrenew personal and commercial lines residential insurance policies due to unrepaired damage after a hurricane.

- **Hurricane modeling:** specifies that if an insurer uses the average of two or more models in its rate filing, the same average model must be used throughout the state. However, if the insurer uses a weighted average, it must provide OIR with a justification for using the weighted average, which shows that it results in a rate that is reasonable, adequate, and fair.

- **Citizens Property Insurance Corporation:** eliminates the statutory provision that allows Citizens to charge up to 50 percent above the established Citizens rate for policyholders whose coverage was last provided by an insurer determined to be unsound or place into receivership.

- **Reciprocal Insurers:** updates the statutory chapter regarding reciprocal insurers to align it with OIR's existing authority to license and regulate other types of insurers, including significant changes to the application and acquisition processes.

The bill has no impact on local or state government revenues. It may have positive impact on local government expenditures, a negative impact on state government expenditures, and an indeterminate negative direct economic impact on the private sector.

The bill is effective on July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

DATA REPORTING

Background

Each insurer doing business in Florida must file a report containing certain information with the Office of Insurance Regulation (OIR) on a quarterly basis.[1] The report must contain premium information for each of the property lines of business.[2] It must also contain the following information for each county on a monthly basis:

- Total number of policies in force at the end of each month.
- Total number of policies canceled.
- Number of policies canceled due to hurricane risk.
- Number of policies nonrenewed due to hurricane risk.
- Number of new policies written.
- Total dollar value of structure exposure under policies that include wind coverage.
- Number of policies that exclude wind coverage.
- Number of claims open each month.
- Number of claims closed each month.
- Number of claims pending each month.
- Number of claims in which either the insurer or insured invoked any form of alternative dispute resolution (ADR), and specifying which form of ADR was invoked. [3]

OIR is required to aggregate this data on a statewide basis and make it available to the public on its website.[4] OIR uses this data to track market trends and shares it with the Florida Division of Emergency Management after natural disasters to help determine where emergency response is most necessary.[5]

While the data is reported on a county-by-county basis, insurers already collect data that would allow them to report on a zip-code basis instead.[6]

Effect of the Bill

Pursuant to the bill, the information that property insurers were reporting to OIR on a quarterly basis must be reported on a monthly basis instead. Additionally, the bill requires that the data is reported based on zip code rather than county. These changes will allow OIR to receive more accurate data on an expedited basis.[7]

[1] S. 624.424(10)(a), F.S. For the purpose of these reports, the property insurance lines include personal and commercial residential property insurance.
[2] *Id.*
[3] *Id.*
[4] S. 624.424(10)(b), F.S.
[5] Office of Insurance Regulation (OIR), Agency Analysis of 2024 House Bill 1611, p. 2 (Jan. 21, 2024).
[6] *Id.*
[7] OIR has indicated that the data is constantly changing and that it is outdated by the time they receive it on a quarterly basis.

PROPERTY INSURANCE POLICY NONRENEWALS

Background

Any property insurer planning to nonrenew more than 10,000 residential property insurance policies in Florida within a 12-month period must give written notice to OIR 90 days before the issuance of any notices of nonrenewal.[8] While the notice is for informational purposes only, it must include:

- the insurer's reasons for the action;
- the effective dates of nonrenewal; and
- any arrangements the insurer has made for other insurers to offer coverage to the affected policyholders.[9]

The law regarding this notice does not contain a grant of rulemaking authority to allow the Financial Services Commission (FSC)[10] to adopt rules and forms to administer it.

Effect of the Bill

The bill provides the FSC with express rulemaking authority to adopt rules and forms to regulate how, and in what format, insurers will provide notice to OIR of nonrenewal of more than 10,000 residential property insurance policies within a 12-month period.

PUBLIC HOUSING SELF-INSURANCE TRUST FUND

Background

Florida law provides for a public housing authority (PHA) in each city and county in the state where the local governing body has declared the need for such an authority based upon the lack of safe or sanitary dwellings within the city or county.[11] Two or more PHAs in Florida may form a self-insurance fund to pool and spread their members' casualty and real or personal property risks, as long as the self-insurance fund:[12]

- has annual premiums that exceed $5 million;
- uses a qualified actuary:
    - to determine rates and submits an annual certification to OIR that the rates are actuarially sound and not inadequate;
    - to establish loss and loss adjustment expense reserves and submits an annual certification to OIR that such reserves are adequate; and
    - maintains a continuing program of excess insurance coverage and reserve evaluation to protect the self-insurance fund's financial stability, as determined by the actuary.

At a minimum, the PHA self-insurance program must purchase excess insurance from authorized insurance carriers or eligible surplus lines carriers, but cannot retain liability of more $350,000, per occurrence. However, if the excess insurance is not available at such terms or is especially costly, a PHA self-insurance fund has limited ability to comply with the statute.

Effect of the Bill

The bill revises the maximum per-loss occurrence amount that a PHA self-insurance fund may retain from $350,000 to an amount that the fund can withstand, as long as it maintains a continuing program of excess insurance coverage and reinsurance to protect the stability of the fund, and, at a minimum:

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[8] S. 624.4305, F.S.

[9] *Id.*

[10] The Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of OIR for the purposes of rulemaking.

[11] Ss. 421.04 and 421.27, F.S.

[12] S. 624.46226, F.S.

- includes a net retention selected by the fund administrator, ratified by the fund's governing body, and certified by a qualified actuary;
- includes reinsurance or excess insurance from authorized insurance carriers or eligible surplus lines insurers; and
- is certified by a qualified, independent actuary as to the program's adequacy.

PROHIBITION ON CANCELLATION OF SURPLUS LINES PROPERTY INSURANCE POLICIES

Background

An authorized insurer may not cancel or nonrenew any personal residential or commercial residential property insurance policy covering a dwelling or residential property in Florida, including but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents:

- For 90 days after the dwelling or residential property has been repaired, if the property has been damaged as a result of a hurricane or wind loss that is the subject of a declaration of emergency and the filing of an order by the Insurance Commissioner.[13]
- Until the earlier of when the dwelling or residential property has been repaired or one year after the insurer issues the final claim payment, if the property was damaged by a covered peril, but not a hurricane or wind loss.[14]

However, an authorized insurer or agent may cancel or nonrenew a policy before the dwelling or residential property has been repaired:

- Upon 10 days' notice for nonpayment of premium; or
- Upon 45 days' notice for:
  - A material misstatement or fraud related to the claim;
  - If the insurer determines that the insured has unreasonably caused a delay in the repair; or
  - If the insurer has paid policy limits.[15]

If an insurer elects to nonrenew a policy covering a property that has been damaged, the insurer must provide at least 90 days' notice that the insurer intends to nonrenew the policy 90 days after the property has been repaired.[16] A structure is considered repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer writing policies in Florida.[17]

Section 626.9201, F.S., governs the cancellation or nonrenewal of personal and commercial residential property insurance policies issued by surplus lines insurers, but it does not include specific language regarding cancellation following a declared state of emergency.

Effect of the Bill

The bill amends s. 626.9201, F.S., to better align the cancellation and nonrenewal requirements with those currently in law for admitted insurers. Upon a declaration of emergency and the issuance of an order by the Insurance Commissioner, a surplus lines insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property in Florida that has been damaged as a result of a hurricane that is the subject of the declaration of emergency for 90 days after the dwelling or residential property has been repaired. The bill establishes that a dwelling or residential property is deemed repaired when it is substantially completed and restored such that it is insurable by another insurer writing policies in Florida.

[13] S. 627.4133(2)(e)1.a., F.S.
[14] S. 627.4133(2)(e)1.b., F.S.
[15] S. 627.4133(2)(e)2., F.S.
[16] S. 627.4133(2)(e)3., F.S.
[17] S. 627.4133(2)(e)5., F.S.

Additionally, a surplus lines insurer or agent may cancel or nonrenew a policy before the dwelling or residential property has been repaired:

- with 10 days' notice for nonpayment of premium; or
- with 45 days' notice:
  - for a material misstatement or fraud related to the claim;
  - if the insurer determines that the insured has unreasonably cause a delay in the repair of the dwelling or residential property; or
  - if the insurer has paid policy limits.

Pursuant to the bill, if the surplus lines insurer elects to nonrenew a policy covering a dwelling or residential property that has been damaged, the insurer must provide at least 90 days' notice to the insurer that it intends to nonrenew the policy 90 days after the dwelling or residential property has been repaired.

HURRICANE MODEL AVERAGES

Background

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.[18] It sets forth the criteria under which OIR may disprove rate filings, including disproval of rates that it determines to be excessive, inadequate, or unfairly discriminatory.[19] The law also establishes criteria for the Commission's consideration, and approval, of hurricane loss models and prescribes how those models affect OIR's approval of property insurance rate filings.[20] 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 hurricane loss models found to be accurate or reliable by the Commission.[21] The law does not require consistency in the model used, which potentially allows insurers to use different models to produce rates in various parts of the state.[22]

Effect of the Bill

The bill specifies that if an insurer uses the average of two or more models in its rate filing, the same average model must be used throughout the state. However, if the insurer uses a weighted average, it must provide OIR with a justification for using the weighted average, which shows that it results in a rate that is reasonable, adequate, and fair.

CITIZENS PROPERTY INSURANCE CORPORATION

Background

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under this glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. In 2021, the Legislature revised this glidepath to increase it one percent per year to 15 percent, as follows:[23]

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.
- 14 percent for 2025.

[18] S. 627.062(2)(j), F.S.
[19] S. 627.062(2)(b), F.S.
[20] Ss. 627.0628-627.06281, F.S.
[21] S. 627.062(2)(j), F.S.
[22] OIR, *supra* note 5, at 3.
[23] S. 627.351(6)(n)5., F.S.

- 15 percent for 2026 and all subsequent years.

The "glidepath," which functions as a rate cap, is not closing the gap between Citizens rates and private market rates. Instead, because of the rate cap and the increasing rates of private property insurance, the gap is growing and making Citizens more like a competitor to private insurers than an insurer of last resort. Because Citizens' rates are often well below those of private carriers, Citizens may be more competitive than otherwise intended. Due to Citizens' structure, its rates do not contain certain elements that the rates of private insurers contain. Citizens does not pay taxes like private insurers and does not need to purchase as much reinsurance as private insurers because of Citizens' higher levels of capital and surplus.[24]

Until December 2022, Citizens' rates did not differ based upon whether the property is a policyholder's primary residence, a policyholder's second home (e.g., a vacation home), or occupied by a long-term tenant.[25] During Special Session 2022A, the Legislature removed the glidepath rate limitations for any new or renewal personal lines policy for non-primary residences written on or after November 1, 2023. The rate for these residences must be no more than 50 percent above, but not less than, the established rate for Citizens which was in effect one year before the date of the application for coverage.[26]

In addition to non-primary residences, the "glidepath" normally imposed on Citizens year-to-year rate growth does not apply to policies where coverage for the risk insured by Citizens was last provided by an insurer determined by OIR to be unsound or placed into receivership due to impairment or insolvency.[27] Instead, these risks must be no more than 50 percent above, but not less than, the established rate for Citizens which was in effect one year before the date of the application for coverage.[28] The limitation on Citizens rate increases for non-primary residences and policies assumed from unsound insurers applies on a year-over-year basis, rather than being attached to a fixed date (i.e., the rate in effect the year before the date of application for coverage).

Effect of the Bill

The bill eliminates the statutory provision that allows Citizens to charge up to 50 percent above the established Citizens rate for policyholders whose coverage was last provided by an insurer determined to be unsound or place into receivership.[29] The applicable rate would thus be subject to the glidepath limitation on rates.

RECIPROCAL INSURERS

Reciprocal insurance exchanges are a form of insurance organization in which businesses and individuals exchange insurance contracts and spread the risks associated with such contracts among themselves.[30] Policyholders of a reciprocal insurance exchange are known as "subscribers."[31]

Chapter 629, F.S., governs the regulation of reciprocal insurers in Florida. A reciprocal insurer may transact any kind of insurance other than title insurance in Florida.[32]

[24] S. 627.351(6)(t), F.S. *See also* s. 627.351(6)(c)9. for information regarding Citizens purchase of reinsurance.
[25] Citizens would not issue a personal lines policy to someone using a home as a short-term vacation rental as that is considered a business use of the home.
[26] S. 627.351(n)8., F.S.
[27] *Id.* In practical effect, this means that such policyholders might continue to pay the premium amount that they paid their prior insurer, not a lower premium that they might otherwise be charged by Citizens if subject to the rate increase limitations.
[28] *Id.*
[29] OIR maintains that treating these policyholders differently because they were previously insured by an unsound, impaired, or insolvent insurer is unfairly discriminatory and, therefore, does not meet the rating standards in s. 627.062, F.S.
[30] Julia Kagan and Eric Estevez, *Reciprocal Insurance Exchange: Definition, How It Works, Example* (last updated Sep. 28, 2023), Investopedia, https://www.investopedia.com/terms/r/reciprocal-insurance-exchange.asp (last visited Jan. 29, 2024).
[31] *Id.*

Typically, an advisory board manages a reciprocal insurance company.[33] The board is responsible for choosing and monitoring the attorney-in-fact, approving rates, and providing oversight of the operations of the reciprocal.[34] Surpluses from premiums are held in separate surplus accounts devoted to a specific purpose, though the accounts can be commingled and used to pay claims against the policies.[35]

Florida law provides that the advisory committee of a domestic reciprocal insurer exercising the subscribers' rights must be selected under such rules as the subscribers adopt.[36] Not less than two-thirds of such committee may be subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.[37]

The committee must:
- Supervise the finances of the insurer;
- Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;
- Procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and
- Have such additional powers and functions as may be conferred by the subscribers' agreement.[38]

Definitions

Background

The term "reciprocal insurance" is currently defined under ch. 629, F.S., as insurance resulting from an interexchange among subscribers of reciprocal agreements of indemnity, with the interexchange being effectuated through an "attorney in fact" common to all such parties.[39]

Additionally, the term "reciprocal insurer" is currently defined under ch. 629, F.S., as an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.[40]

Effect of the Bill

The bill creates definitions for the following terms in ch. 629, F.S.:
- "Affiliated person" of another person means any of the following:
  - The spouse of the other person.
  - The parents of the other person and their lineal descendants, or the parents of the other person's spouse and their lineal descendants.
  - A person who directly or indirectly owns or controls, or holds with the power to vote, 10 percent or more of the outstanding voting securities of the other person.
  - A person who directly or indirectly owns 10 percent or more of the outstanding voting securities that are directly or indirectly owned or controlled, or held with the power to vote, by the other person.
  - A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person.

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[32] S. 629.041(1), F.S. Such an insurer may purchase reinsurance and may grant reinsurance as to any kind of insurance it is authorized to transact directly. *See* s. 629.041(2), F.S.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] S. 629.201(1), F.S.
[37] S. 629.201(2), F.S.
[38] S. 629.201(3), F.S.
[39] S. 629.011, F.S.
[40] S. 629.021, F.S.

    - A person who is a director, officer, trustee, partner, owner, manager, joint venturer, or an employee, or another person who is performing duties similar to those of a person in one of the aforementioned positions.
    - If the other person is an investment company, any investment adviser of such company or any member of an advisory board of such company.
    - If the other person is an unincorporated investment company not having a board of directors, the depositor of such company.
    - A person who has entered into an agreement, written or unwritten, to act in concert with the other person in acquiring or limiting the disposition of:
        - Securities of an attorney in fact or controlling company that is a stock corporation; or
        - An ownership interest of an attorney in fact of a reciprocal insurer. The attorney in fact may be an individual, a corporation, or another person.
- "Controlling company" means any person, corporation, trust, limited liability company, association, or other entity owning, directly or indirectly, 10 percent or more of the voting securities of one or more attorneys in fact that are stock corporations, or 10 percent or more of the ownership interest of one or more attorneys in fact that are not stock corporations.

The bill amends the current definition of "reciprocal insurer" to mean an insurer that is an incorporated aggregation of subscribers domiciled in this state operating individually and collectively through an attorney in fact to provide reciprocal insurance to such subscribers. A domestic reciprocal insurer must be licensed as an assessable or a nonassessable reciprocal insurer. The bill also provides that:

- An assessable reciprocal insurer may require that its subscribers make up any shortfall in capital and surplus to cover claims and expenses, either jointly or severally.
- A nonassessable reciprocal insurer has no recourse against subscribers for any shortfall in capital and surplus to cover claims and expenses.

The bill retains the current definition of "reciprocal insurance."

Name of Reciprocal Insurer

Background

Under Florida law, a reciprocal insurer must have and use a business name.[41] The name must include the word "reciprocal," "interinsurer," "interinsurance," "exchange," "underwriters," or "underwriting," but the requirement currently does not apply to any insurer holding a certificate of authority to transact business in Florida immediately prior to the effective date of the Florida Insurance Code.[42] Currently, a reciprocal insurer must sue and be sued in its own name.[43]

Effect of the Bill

The bill requires insurers holding a certificate of authority to transact business in Florida to have and use a business name, and requires such an insurer to have the word "reciprocal," "interinsurer," "interinsurance," "exchange," "underwriters," or "underwriting" in its name.

Additionally, the provides that a foreign or alien reciprocal insurer transacting business in Florida, whose name does not include the word "reciprocal," "interinsurer," "interinsurance," "exchange," "underwriters," or "underwriting," must use a fictitious name, registered in accordance with applicable law, which includes one of those words when transacting business in Florida.

The bill also provides that a reciprocal may sue and be sued in its own name, rather than "must."

Premium Reserves

[41] S. 629.051(1), F.S.
[42] Chs. 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code." *See* s. 624.01, F.S.
[43] S. 629.051(2), F.S.

Background

Florida law does not currently require reciprocal insurers to maintain unearned premium reserves.

Effect of the Bill

The bill requires reciprocal insurers to maintain at all times unearned premium reserves equal to 50 percent of the net written premiums of the subscribers on policies having 1 year or less to run, and pro rata on policies running for longer periods, except that all premiums on any marine or transportation insurance trip risk are deemed unearned until the trip is terminated.

For purposes of this new requirement, the term "net written premiums" means the premium payments made by subscribers plus the premiums due from subscribers, after deducting the amounts specifically provided in the subscribers' agreements for expenses, including reinsurance costs and fees paid to the attorney in fact, provided that the power of attorney agreement contains an explicit provision requiring the attorney in fact to refund any unearned subscriber fees on a pro rata basis for cancelled policies.

In the absence of such a provision, the bill requires that the unearned premium reserves be calculated without any adjustment for fees paid to the attorney in fact. If the unearned premium reserves at any time are less than $300,000, the bill requires that additional funds in cash or eligible securities be maintained on deposit at the exchange at all times which, together with the unearned premium reserves, equal $300,000.

In calculating the reserves, the amount of the attorney in fact's bond filed with OIR must be included in such reserves. If at any time the unearned premium reserves are less than those required, the subscribers, or the attorney in fact, must advance funds to cover the deficiency. Such advances may only be repaid out of the surplus of the exchange and only after receiving written approval from OIR.

Surplus Funds Required

Background

Under current law, a domestic reciprocal insurer formed under ch. 629, F.S. (if it has otherwise complied with the applicable provisions of the Florida Insurance Code) may be authorized to transact insurance if it has and thereafter maintains surplus funds of not less than $250,000.[44] In addition to the required $200,000 in surplus funds, the insurer currently must have, when first so authorized, an expendable surplus of not less than $750,000.[45]

Effect of the Bill

The bill provides that the surplus required of a reciprocal insurer is as required in s. 624.407, F.S., as to the kind of insurance proposed to be transacted. The referenced s. 624.407, F.S., relates to minimum surplus required of new insurers based on the type of insurance proposed to be transacted.

Organization of Reciprocal Insurer

Background

Twenty-five or more persons domiciled in Florida may organize a domestic reciprocal insurer and apply to OIR for a certificate of authority to transact insurance.[46] The proposed attorney must fulfill the requirements of, and must execute and file with OIR when applying for a certificate of authority, a declaration that sets forth:

[44] S. 629.071(1), F.S.
[45] S. 629.071(2), F.S.
[46] S. 629.081, F.S.

- The name of the insurer;
- The location of the insurer's principal office, which must be the same as that of the attorney and must be maintained within Florida;
- The kinds of insurance proposed to be transacted;
- The names and addresses of the original subscribers;
- The designation and appointment of the proposed attorney and a copy of the power of attorney;
- The names and addresses of the officers and directors of the attorney, if a corporation, or of its members, if other than a corporation;
- The powers of the subscribers' advisory committee, and the names and terms of office of the members thereof;
- That all moneys paid to the reciprocal must, after deducting any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
- A copy of the subscribers' agreement;
- A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate that has been filed with and approved by OIR;
- A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as described above is on hand; and
- A copy of each policy, endorsement, and application form it then proposes to issue or use.[47]

Effect of the Bill

The bill clarifies that twenty-five or more persons domiciled in Florida who wish to organize as a domestic reciprocal insurer may make an application to OIR for a permit to do so. The bill provides that a domestic reciprocal insurer may not be formed unless the persons so proposing have received a permit from OIR. Additionally, the permit application must be in writing and made in accordance with forms prescribed by the Commission.

The bill provides that the following information must be included in an application for a permit in addition to the current required information (which is in also in addition to any applicable requirements of s. 628.051, F.S.,[48] or other relevant statutes):

- The background information as specified in the proposed s. 629.227, F.S., for all officers, directors, managers, and those in equivalent positions of the proposed attorney in fact as well as for any person with an ownership interest of 10 percent or more in the proposed attorney in fact.
- The articles of incorporation and bylaws, or equivalent documents, of the proposed attorney in fact, dated within the last year and appropriately certified.
- The proposed charter of the subscribers' advisory committee, and the names and terms of office of the members thereof, as well as the background information for each proposed member.
- A copy of the required bond.

The bill removes certain other information currently required to be included in permit application and relocates such information to the provision of Florida law relating to certificates of authority for reciprocal insurers.

The bill requires that a filed application must be accompanied by the application fee[49] and such other pertinent information and documents as reasonably requested by OIR. The bill provides that OIR must evaluate and grant or deny permit applications in accordance with ss. 628.061,[50] 628.071,[51] F.S., and other relevant provisions of the Florida Insurance Code.

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[47] S. 629.081(2), F.S.

[48] S. 628.051, F.S., codifies Florida's laws governing domestic stock insurers, mutual insurers, and captive insurers. *See* s. 628.011, F.S.

[49] The application fee is $1,500. *See* s. 624.501(1)(a), F.S.

[50] S. 628.061, F.S., relates to the investigation of proposed domestic stock insurers, mutual insurers, and captive insurers.

Certificate of, and Continued Eligibility for, Certificate of Authority

Background

Current law provides that the certificate of authority of a reciprocal insurer must be issued to its attorney in the name of the insurer.[52]

Effect of the Bill

The bill provides that, in applying for a certificate of authority as a domestic reciprocal insurer, the attorney in fact of an applicant who has previously received a permit from OIR may file an application in accordance with forms prescribed by the Commission which, in addition to applicable requirements of other relevant statutes, consists of all of the following:

- Executed copies of any proposed documents required as part of the permit application.
- A statement affirming that all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney in fact, be held in the name of the insurer and for the purposes specified in the subscribers' agreement.
- A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at the rate that was filed with and approved by OIR.
- A copy of the required bond.
- A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the required surplus is on hand.
- Such other pertinent information or documents as reasonably requested by OIR.

The bill clarifies that the reciprocal certificate of authority must be issued in the name of the reciprocal insurer to its attorney in fact.

To maintain its eligibility for a certificate authority, the bill requires that a domestic reciprocal insurer continue to meet all conditions required to be met under the Florida Insurance Code and the rules adopted thereunder for the initial applications for a permit and certificate of authority.

Power of Attorney

Background

Under Florida law, the rights and powers of the attorney of a reciprocal insurer are as provided in the power of attorney given to it by the subscribers.[53] The power of attorney must set forth:

- The powers of the attorney;
- That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;
- The general services to be performed by the attorney;
- The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and
- Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount shall be not less than 5 times nor more than 10 times the premium or premium deposit stated in the policy.[54]

Currently, the power of attorney may:

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[51] S. 628.061, F.S., relates to the granting and denial of permits for proposed domestic stock insurers, mutual insurers, and captive insurers.
[52] S. 629.091, F.S.
[53] S. 629.101(1), F.S.
[54] S. 629.101(2), F.S.

- Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;
- Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;
- Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and
- Contain other lawful provisions deemed advisable.[55]

The terms of any power of attorney or agreement collateral must be reasonable and equitable, and no such power or agreement may be used or be effective in Florida unless filed with OIR.[56]

Effect of the Bill

The bill moves the provisions of law relating to what a power of attorney *may* set forth and adds them to the provisions of law relating to what a power of attorney *must* set forth. In addition to those changes, the bill requires that a power of attorney must also set forth the place where the office of the attorney in fact is maintained.

Modifications to Organizing Documents or Power of Attorney

Background

Current law provides that modifications to the terms of a subscribers' agreement or to the power of attorney of a domestic reciprocal insurer must be made jointly by the attorney and the subscribers' advisory committee.[57] Further, no such modification can be made effective retroactively, nor as to any insurance contract issued prior thereto.[58]

Effect of the Bill

The bill provides that, in addition to modifications to the terms of a subscriber's agreement or the power of attorney, modifications to the terms of the subscribers' advisory committee must be made jointly by the attorney and the subscribers' advisory committee. The bill also provides that no modification can take effect until filed with, and approved in writing by, OIR.

Attorney in Fact's Bond

Background

Concurrently with the filing of a permit application, an attorney in fact is currently required to file with OIR a $100,000 bond in favor of the state of Florida for the benefit of all persons damaged as a result of breach by the attorney of the conditions of such bond.[59] Specifically, the bond must be conditioned on the fact that the attorney will faithfully account for all moneys and other property of the insurer coming into its hands, and that it will not withdraw or appropriate to its own use from the funds of the insurer any moneys or property to which it is not entitled under the power of attorney.[60]

The bond must provide that it is not subject to cancellation unless 30 days' advance written notice is given to both the attorney and OIR.[61]

Effect of the Bill

[55] S. 629.101(3), F.S.
[56] S. 629.101(4), F.S.
[57] S. 629.111, F.S.
[58] *Id.*
[59] Ss. 629.121(1)-(2), F.S.
[60] S. 629.121(2), F.S.
[61] S. 629.121(3), F.S.

The bill increases the amount of the bond to be filed with a permit application from $100,000 to $300,000. The bill otherwise retains current law relating to an attorney in fact's bond.

Contributions to Insurer

Background

Current law provides that the attorney in fact or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations.[62] Sums so advanced may not be treated as a liability of the insurer and, except upon liquidation of the insurer, may not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus.[63]

Additionally, no such withdrawal or repayment may be made without the advance approval of OIR.[64] This provision does not apply as to bank loans or to loans made upon security.[65]

Effect of the Bill

The bill provides parameters for reciprocal insurers to obtain loans that are not obtained in the ordinary course of business from banks or other financial institutions, or to loans secured by a mortgage or assets. The bill establishes that a reciprocal insurer may obtain loans, other than those described above, to do any of the following:

- Defray expenses of creating the insurer:
- Providing itself with surplus funds; or
- For any business purpose.

However, the insurer must agree that any money borrowed will be repaid only out of the surplus in excess of that stipulated in a written agreement to borrow the money. Any money borrowed, plus any interest on that money, may not be considered part of the insurer's legal liabilities.

OIR must approve the issuance of, and rate of interest on, any loans taken out by a reciprocal insurer. OIR will disapprove such loans if it finds that:

- The loan is unnecessary or excessive for the purpose intended;
- The terms of the loan agreement are not fair and equitable to the parties and other similar lenders; or
- The information the reciprocal insurer provides regarding the loan is inadequate.

The reciprocal insurer must repay a substantial portion of the loan, if not the entire loan, when the loan is no longer reasonably necessary for the purpose for which it was originally intended. However, before paying back the loan or any interest on the loan, the insurer must receive approval from OIR.

[62] S. 629.161, F.S.
[63] *Id.*
[64] *Id.*
[65] *Id.*

Annual Statement

Background

Under current law, the annual statement of a reciprocal insurer must be made and filed by its attorney in fact.[66]

Effect of the Bill

The bill clarifies that the requirement that the annual statement of a reciprocal insurer must be made by its attorney in fact *in the same manner* as domestic stock insurers under s. 624.424, F.S., which relates to annual statements and other information filed in accordance with Florida's Insurance Code.

Acquisitions

Background

Florida law does not currently provide specific statutory authority for the acquisition of a reciprocal insurer.

Effect of the Bill

The bill creates a new statutory section providing details regarding the acquisition of a reciprocal insurer. No one may, individually or in conjunction with an affiliated person, directly or indirectly acquire 10 percent or more of the ownership interest in a reciprocal insurer unless all of the following conditions are met:

- The person or affiliated person must file with OIR and send to the reciprocal insurer and its attorney in fact a letter notifying them of the transaction no later than five days after the offer is proposed or no later than five days after the acquisition of securities or ownership interest if no offer is involved.
- The person or affiliated person must file an application with OIR within 30 days after the offer is proposed or the acquisition occurs.
- OIR has approved the offer or acquisition.

If there is no change in the ultimate controlling shareholders, no change in the ownership percentages of the ultimate controlling shareholders, and no acquisition of direct or indirect interest in the attorney in fact, OIR may waive the filing of the letter of notification and the application upon request.

The application, if required, must contain all of the following information and any other information that OIR deems necessary to determine the character, experience, ability, and other qualifications of the applicant:

- identity and background information of each person by whom, or on whose behalf the acquisition is being made, and any other persons who control these individuals;
- the source and amount of funds or other consideration used in making the acquisition;
- plans or proposals that applicants may have to liquidate the attorney in fact or controlling company, to sell any of their assets or merge or consolidate them with any person, or to make other major changes in the business, business structure, or management;
- the nature and extent of the controlling interest which the person, or affiliated person, proposes to acquire;
- the number of shared or other security that the person, or affiliated person, proposed to acquire; and
- information as to any contract, arrangement, or understanding with any party relating to the transfer of any of the securities, option arrangements, puts or calls, or giving or withholding of proxies.

[66] S. 629.171, F.S.

The bill requires that an application be accompanied by an application fee.[67] If any material change occurs in the facts provided in the application or the background information, an amendment must be filed with OIR immediately and sent to the principal offices of the reciprocal and its attorney in fact.

OIR must review the application in accordance with the Administrative Procedures Act.[68] Pursuant to the bill, while OIR is reviewing the acquisition, the acquiring person may not make any material change to the operation of the attorney in fact or controlling company unless OIR specifically approves the change. Additionally, the acquiring person may not make any change in the management of the attorney in fact unless advance notice is provided to OIR. The bill provides relevant definitions of material change in the operation and the management of the attorney in fact.

The bill permits OIR to disapprove any acquisition of the interest in a reciprocal by any person, or affiliated person, who:

- willfully violates the law regarding acquisition of interest in a reciprocal; or
- fails to divest himself or herself of interest in a reciprocal acquired in violation of the law, when ordered to do so by OIR.

The bill places the burden of proof regarding an acquisition application on the applicant. However, the bill provides criteria, which, if met, require OIR to approve the application as long as no administrative proceeding has been requested under ch. 120, F.S.

The bill establishes that any vote by a stockholder that acquired stock in a reciprocal in violation of the acquisition statute created by the bill is not valid. Additionally, any acquisition contrary to the same statute is void. The circuit court for the county in which the principal office of the attorney in fact for the reciprocal insurer may order an injunction or issue another order to enforce the statute. The bill also creates a private right of action for the attorney in fact and the controlling company to enforce the acquisition statute.

The bill provides that approval of an acquisition application by OIR does not constitute a recommendation of an acquisition or an offer for an acquisition. It is third-degree felony for anyone to represent that OIR has made such a recommendation.

According to the bill, any person may rebut the presumption of having control of a reciprocal insurer by filing a disclaimer of control with OIR on a form prescribed by the FSC or by filing a copy of a Schedule 13G filed with the Securities and Exchange Commission.

The bill gives OIR the authority to suspend or revoke a reciprocal insurer's certificate of authority if necessary to protect the public interest when the interest was acquired in violation of the acquisition statute. If a reciprocal insurer is subject to suspension or revocation on this basis, the attorney in fact is deemed to be in such a condition, or to be using or have been subject to methods or practices as to render its further transaction or insurance hazardous. OIR may offer the reciprocal insurer the ability to cure any suspension or revocation by procuring another attorney in fact acceptable to OIR.

Filing of Background Information

Background

Florida law does not currently provide for filing of background information on reciprocal insurers, their attorneys in fact, nor their subscribers.

Effect of the Bill

[67] The current fee for acquisition is $1,500. S. 624.501(1)(a), F.S.
[68] Chapter 120, F.S., codifies Florida's Administrative Procedure Act, which provides uniform procedures for the exercise of specified authority.

The bill creates statutory criteria for background information that must be submitted to OIR regarding certain individuals involved in the creation or acquisition of reciprocal insurers. The information must include, but is not limited to:

- A sworn biographical statement with information for the past ten years regarding:
  - occupations, positions of employment, and offices held;
  - convictions of crimes other than traffic violations;
  - license revocation proceedings;
  - bankruptcy proceedings, either personal or of a business where the individual held a significant position; and
  - injunction proceedings involving federal or state law regulating insurance, securities, or banking.
- Each individual's fingerprints;
- Authorizations allowing background investigations regarding each individual; and
- Any other information that OIR deems necessary to determine the character, experience, ability, and other qualifications of the individual.

Assessments

Background

Currently, assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and OIR, or by DFS as receiver of the insurer.[69]

Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his or her aggregate contingent liability as computed in accordance with s. 629.251, F.S., must be computed by applying, to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.[70]

In computing the earned premiums for the purposes of these provisions, the gross premium received by the insurer for the policy must be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.[71] No subscriber may have an offset against any assessment for which he or she is liable, on account of any claim for unearned premium or losses payable.[72]

Effect of the Bill

The bill clarifies that assessments may from time to time be levied upon subscribers of an assessable domestic reciprocal insurer who are liable for such assessments therefor under the terms of their policies by the attorney in fact. Any such assessment must be approved upon approval in advance by the subscribers' advisory committee and OIR, or by DFS as receiver of the insurer.

The bill also provides that upon impairment of surplus of a nonassessable reciprocal insurer, OIR must revoke the authorization under s. 629.291(5), F.S., to convert to a nonassessable reciprocal insurer. After such revocation, any policy in force at the time the revocation occurs remains in force for the remainder of the period for which the premium has been paid, but the reciprocal insurer may not issue new policies without requiring contingent assessment liability from the new subscriber.

Merger or Conversion

Background

[69] S. 629.231(1), F.S.
[70] S. 629.231(2), F.S.
[71] S. 629.231(3), F.S.
[72] S. 629.231(4), F.S.

Current law provides that a domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice and the approval of OIR of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.[73] Such a stock or mutual insurer is subject to the same capital or surplus requirements and have the same rights as a like domestic insurer transacting like kinds of insurance.[74]

OIR may not approve any plan for such merger or conversion which is inequitable to subscribers or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his or her interest in the reciprocal insurer, as determined in accordance with applicable law, and a reasonable length of time within which to exercise such right.[75]

Reinsurance of all or substantially all of the insurance in force of a domestic reciprocal insurer in another insurer is considered to be a merger for the purposes of these provisions.[76]

Effect of the Bill

The bill requires that all plans to merge a reciprocal insurer with another reciprocal insurer or to convert a reciprocal insurer to a stock or mutual insurer must be filed with OIR on forms adopted by the FSC and must contain all information that OIR reasonably requires to evaluate the merger or conversion.

The bill provides that an assessable reciprocal insurer may be converted to a nonassessable reciprocal insurer if all of the following conditions are met:

- the subscriber's advisory committee approves the conversion application;
- the attorney in fact submits the application on the required form; and
- OIR finds that the application meets the minimum statutory requirements.

If OIR approves the application, the assessable reciprocal insurer may be converted to a nonassessable reciprocal insurer by:

- extinguishing the contingent liability of subscribers under all policies in force in Florida at the time of the conversion;
- omitting contingent liability provisions in all policies delivery or issued in Florida after the conversion; and
- otherwise extinguishing the contingent liability of all subscribers.

However, if the reciprocal insurer is transacting insurance in another state that requires the issuance of policies with contingent liability provisions, the insurer may continue to issue policies with those provisions in the other state.

Additionally, if a reciprocal insurer's surplus becomes impaired, the insurer may no longer issue nonassessable policies or convert assessable policies to nonassessable policies.

The bill also prohibits a domestic stock insurer from being converted into a reciprocal insurer.

Rule-Making Authority

Background

Currently, the FSC does not have rule-making authority to administer ch. 629, F.S.

Effect of the Bill

[73] S. 629.291(1), F.S.
[74] S. 629.291(2), F.S.
[75] S. 629.201(3), F.S.
[76] S. 629.201(4), F.S.

The bill grants rule-making authority to the FSC to adopt, amend, and repeal rules pursuant to ch. 120, F.S., which are necessary to implement ch. 629, F.S.

Participation of Financial Institutions in Reinsurance and Insurance Exchanges

Background

Currently, subject to applicable laws relating to financial institutions and to any other applicable provision of the Florida Insurance Code, any financial institution or aggregation of such institutions may own or control, directly or indirectly, any insurer which is authorized or approved by OIR, which insurer transacts only reinsurance in this state and which actively engages in reinsuring risks located in this state.[77]

Additionally, subject to the same provisions described above, any financial institution or aggregation of such institutions may participate, directly or indirectly, as an underwriting member or as an investor in an underwriting member of any insurance exchange authorized in accordance with s. 629.401, F.S., which underwriting member transacts only aggregate or specific excess insurance over underlying self-insurance coverage for self-insurance organizations authorized under the Florida Insurance Code, for multiple-employer welfare arrangements, or for workers' compensation self-insurance trusts, in addition to any reinsurance the underwriting member may transact.[78]

Effect of the Bill

The bill eliminates a financial institution's, or aggregation of such institutions' participation as an underwriting member or an investor in an underwriting member of the insurance exchange authorized under 629.401, F.S., and described above, because the existence of that type of exchange is being eliminated by the bill.

Miscellaneous

Pursuant to the changes made by the bill, the bill relocates the following sections of ch. 629, F.S., and, where applicable, relocates the provisions elsewhere:

- S. 629.021, F.S., relating to "reciprocal insurer" defined;
- S. 629.031, F.S., relating to scope of chapter;
- S. 629.061, F.S., relating to attorney;
- S. 629.261, F.S., relating to nonassessable policies;
- S. 629.401, F.S., relating to insurance exchange; and
- S. 629.520, F.S., relating to authority of a limited reciprocal insurer.

The bill provides an effective date of July 1, 2025. However, the bill requires reciprocal insurers licensed before July 1, 2025, to increase their surplus as required by the bill by January 1, 2026. Additionally, the attorney in fact of a reciprocal insurer licensed before July 1, 2025, must increase its bond as required by the bill by January 1, 2026.

B. SECTION DIRECTORY:

Section 1. Amends s. 624.3161, F.S., relating to market conduct examinations.
Section 2. Amends s. 624.424, F.S., relating to annual statement and other information.
Section 3. Amends s. 624.4305, F.S., relating to nonrenewal of residential property insurance policies.
Section 4. Amends s. 624.46226, F.S., relating to public housing authority self-insurance funds; exemption for taxation and assessments.
Section 5. Amends s. 626.9201, F.S., relating to notice of cancellation and nonrenewal.
Section 6. Amends 627.062, F.S., relating to rate standards.
Section 7. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

[77] S. 624.45(1), F.S.
[78] S. 624.45(2), F.S.

Section 8. Amends s. 628.011, F.S., relating to scope of part.
Section 9. Amends s. 628.061, F.S., relating to investigation of proposed organization.
Section 10. Amends s. 628.801, F.S., relating to insurance holding companies; registration; regulation.
Section 11. Amends s. 629.011, F.S., relating to "reciprocal insurance" defined.
Section 12. Repeals s. 629.021, F.S., relating to "reciprocal insurer" defined.
Section 13. Repeals s. 629.031, F.S., relating to scope of chapter.
Section 14. Amends s. 629.051, F.S., relating to name; suits.
Section 15. Creates s. 629.056, F.S., relating to premium reserves.
Section 16. Repeals s. 629.061, F.S., relating to attorney.
Section 17. Amends s. 627.071, F.S., relating to surplus funds required.
Section 18. Amends s. 629.081, F.S., relating to organization of reciprocal insurer.
Section 19. Amends s. 629.091, F.S., relating to certificate of authority.
Section 20. Creates s. 629.094, F.S., relating to continued eligibility for certificate of authority.
Section 21. Amends s. 629.101, F.S., relating to power of attorney.
Section 22. Amends s. 629.111, F.S., relating to modifications.
Section 23. Amends s. 629.121, F.S., relating to attorney's bond.
Section 24. Amends s. 629.131, F.S., relating to deposit in lieu of bond.
Section 25. Amends s. 629.141, F.S., relating to action on bond.
Section 26. Amends s. 629.161, F.S., relating to contributions to insurer.
Section 27. Amends s. 629.171, F.S., relating to annual statement.
Section 28. Amends s. 629.191, F.S., relating to who may be subscribers.
Section 29. Amends s. 629.201, F.S., relating to subscribers' advisory committee.
Section 30. Creates s. 629.225, F.S., relating to acquisitions.
Section 31. Creates s. 629.227, F.S., relating to background information.
Section 32. Amends s. 629.231, F.S., relating to assessments.
Section 33. Amends s. 629.241, F.S., relating to time limit for assessments.
Section 34. Amends s. 629.251, F.S., relating to aggregate liability.
Section 35. Repeals s. 629.261, F.S., relating to nonassessable policies.
Section 36. Amends s. 629.271, F.S., relating to distribution of assets.
Section 37. Amends s. 629.281, F.S., relating to subscribers' share in assets.
Section 38. Amends s. 629.291, F.S., relating to merger or conversion.
Section 39. Amends s. 629.301, F.S., relating to impaired reciprocal insurers.
Section 40. Repeals s. 629.401, F.S., relating to insurance exchange.
Section 41. Repeals s. 629.520, F.S., relating to authority of a limited reciprocal insurer.
Section 42. Creates s. 629.525, F.S., relating to rulemaking authority.
Section 43. Amends s. 163.01, F.S., relating to Florida Interlocal Cooperation Act of 1969.
Section. 44. Amends s. 624.413, F.S., relating to application for certificate of authority.
Section 45. Amends s. 624.45, F.S., relating to participation of financial institutions in reinsurance and in insurance exchanges.
Section 46. Amends s. 626.9531, F.S., relating to identification of insurers, agents, and insurance contractors.
Section 47. Provides undirected language regarding reciprocal insurers' surplus requirements.
Section 48. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative impact on state expenditures to the extent that OIR incurs additional costs related to licensing and regulating reciprocal insurers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The changes to the law regarding PHA self-insurance funds may have a positive impact on local government expenditures if the funds no longer have to purchase the same amount of excess insurance or reinsurance.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative impact on property insurers that incur additional administrative costs due to increasing reporting requirements from quarterly to monthly.

The bill may have a negative fiscal impact on reciprocal insurers licensed before July 1, 2025, as they must increase their surplus as required by the bill by January 1, 2026. This fiscal impact may also affect the attorney in fact of a reciprocal insurer licensed before July 1, 2025, as they must increase its bond as required by the bill by January 1, 2026.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides authority for the FSC to adopt rules:

- to administer the statutory section regarding residential property insurers that are planning to nonrenew more than 10,000 residential property insurance policies within a 12-month period.
- for filing the annual enterprise risk report in accordance with the IHCS Regulation and Model Act as adopted by the NAIC in December 2020.
- to implement the statutory restrictions on the cancellation and nonrenewal of property insurance policies by surplus lines insurers following a hurricane.
- to adopt, amend, or repeal rules necessary to implement ch. 629, F.S., regarding reciprocal insurers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to insurance; amending s. 624.3161, F.S.; revising the entities for which the Office of Insurance Regulation is required to conduct market conduct examinations; revising the purpose of the examination; amending s. 624.424, F.S.; requiring insurers and insurer groups to file a specified supplemental report on a monthly basis; requiring that such report include certain information for each zip code for which policies are written; amending s. 624.4305, F.S.; authorizing the Financial Services Commission to adopt rules related to notice of nonrenewal of residential property insurance policies; amending s. 624.46226, F.S.; revising the requirements for public housing authority self-insurance funds; amending s. 626.9201, F.S.; prohibiting insurers from canceling or nonrenewing certain insurance policies under certain circumstances; providing exceptions; providing construction; authorizing the commission to adopt rules and the Commissioner of Insurance Regulation to issue orders; amending s. 627.062, F.S.; specifying requirements for rate filings if certain models are used; amending s. 627.351, F.S.; revising requirements for certain policies that are not subject to certain rate increase limitations; amending ss.

628.011 and 628.061, F.S.; conforming provisions to changes made by the act; amending s. 628.801, F.S.; revising requirements for rules adopted for insurers that are members of an insurance holding company; deleting an obsolete date; authorizing the commission to adopt rules; amending s. 629.011, F.S.; defining terms; revising the definition of the term "reciprocal insurance"; repealing s. 629.021, F.S., relating to the definition of the term "reciprocal insurer"; repealing s. 629.031, F.S., relating to the scope of ch. 629, F.S.; amending s. 629.051, F.S.; requiring a domestic reciprocal insurer to have and use certain names; requiring certain foreign or alien reciprocal insurers to use a fictitious name; creating s. 629.056, F.S.; requiring a reciprocal insurer to maintain a certain unearned premium reserves; defining the term "net written premiums"; requiring certain actions if the unearned premium reserves are less than a certain amount; repealing s. 629.061, F.S., relating to the term "attorney"; amending s. 629.071, F.S.; revising the surplus funds required of a reciprocal insurer; amending s. 629.081, F.S.; revising the procedure for persons to organize as a domestic reciprocal insurer; specifying requirements for the permit application; requiring that the application be

accompanied by a specified fee; requiring the office to evaluate and grant or deny the permit application in accordance with specified provisions; amending s. 629.091, F.S.; providing requirements for the application for a certificate of authority to operate as a domestic reciprocal insurer; requiring that such certificate of authority be issued in the name of the reciprocal insurer to its attorney in fact; creating s. 629.094, F.S.; requiring a domestic reciprocal insurer to meet certain requirements to maintain its eligibility for a certificate of authority; amending s. 629.101, F.S.; revising requirements for the power of attorney given by subscribers of a domestic reciprocal insurer to the attorney in fact; conforming provisions to changes made by the act; amending s. 629.111, F.S.; requiring that modifications of the terms of certain agreements, charters, and powers of attorney be made jointly by the attorney in fact and the subscribers' advisory committee; prohibiting such modifications from taking effect until approval in writing by the office; amending s. 629.121, F.S.; conforming provisions to changes made by the act; revising the amount of the bond the attorney in fact of a reciprocal insurer must file with the office; amending ss. 629.131 and 629.141, F.S.; conforming

provisions to changes made by the act; amending s. 629.161, F.S.; revising the requirements for a reciprocal insurer that borrows money; providing applicability; amending s. 629.171, F.S.; revising the manner of making and filing the annual statement of a reciprocal insurer; amending s. 629.191, F.S.; conforming provisions to changes made by the act; amending s. 629.201, F.S.; conforming provisions to changes made by the act; creating s. 629.225, F.S.; prohibiting persons from acquiring certain securities or ownership interests of certain attorneys in fact and controlling companies of certain attorneys in fact; providing an exception; authorizing certain persons to request that the office waive certain requirements; providing that the office may waive certain requirements if specified determinations are made; specifying the requirements of an application to the office relating to certain acquisitions; requiring that such application be accompanied by a specified fee; requiring that amendments be filed with the office under certain circumstances; specifying the manner in which the acquisition application must be reviewed; authorizing the office, and requiring the office if a request for a proceeding is filed, to conduct a proceeding within a specified timeframe to

consider the appropriateness of such application; requiring that certain time periods be tolled; requiring that written requests for a proceeding be filed within a certain timeframe; authorizing certain persons to take all steps to conclude the acquisition during the pendency of the proceeding or review period; requiring the office to order a proposed acquisition disapproved and that actions to conclude the acquisition be ceased under certain circumstances; prohibiting certain persons from making certain changes during the pendency of the office's review of an acquisition; providing an exception; defining the terms "material change in the operation of the attorney in fact" and "material change in the management of the attorney in fact"; requiring the office to approve or disapprove certain changes upon making certain findings; requiring that a proceeding be conducted within a certain timeframe; requiring that recommended orders and final orders be issued within a certain timeframe; specifying the circumstances under which the office may disapprove an acquisition; specifying that certain persons have the burden of proof; requiring the office to approve an acquisition upon certain findings; specifying that certain votes are not valid and that certain

acquisitions are void; specifying that certain provisions may be enforced by an injunction; creating a private right of action in favor of the attorney in fact or the controlling company to enforce certain provisions; providing that a certain demand upon the office is not required before certain legal actions; providing that the office is not a necessary party to certain actions; specifying the persons who are deemed designated for service of process and who have submitted to the administrative jurisdiction of the office; providing that approval by the office does not constitute a certain recommendation; providing that certain actions are unlawful; providing criminal penalties; providing a statute of limitations; authorizing a person to rebut a presumption of control by filing certain disclaimers; specifying the contents of such disclaimer; specifying that, after a disclaimer is filed, the attorney in fact is relieved of a certain duty; authorizing the office to order certain persons to cease acquisition of the attorney in fact or controlling company and divest themselves of any stock or ownership interest under certain circumstances; requiring the office to suspend or revoke the reciprocal certificate of authority under certain circumstances; specifying that the attorney in

fact is deemed to be hazardous to its policyholders if the reciprocal insurer is subject to suspension or revocation; authorizing the office to offer the reciprocal insurer the ability to cure any suspension or revocation under certain circumstances; providing applicability; creating s. 629.227, F.S.; specifying the information as to the background and identity of certain persons which must be furnished by such persons; amending s. 629.231, F.S.; authorizing the levy of assessments upon subscribers of certain assessable reciprocal insurers; requiring that assessments be approved in advance by certain entities; requiring the office to revoke the authorization to convert upon impairment of a surplus of a nonassessable reciprocal insurer; providing for policies that remain in force after such revocation and prohibiting reciprocal insurers from issuing new policies that do not require contingent assessment liability from new subscribers; amending ss. 629.241 and 629.251, F.S.; conforming provisions to changes made by the act; repealing s. 629.261, F.S., relating to nonassessable policies; amending ss. 629.271 and 629.281, F.S.; conforming provisions to changes made by the act; amending s. 629.291, F.S.; providing that certain insurers that merge are governed by the

insurance code; prohibiting domestic stock insurers from being converted to reciprocal insurers; requiring that specified plans be filed with the office and that such plans contain certain information; authorizing the conversion of assessable reciprocal insurers to nonassessable reciprocal insurers under certain circumstances; providing certain procedures when certain reciprocal insurers convert; prohibiting a reciprocal insurer that becomes impaired from issuing or converting certain policies; providing applicability; amending s. 629.301, F.S.; conforming provisions to changes made by the act; revising the procedures that apply when an insurer becomes insolvent; repealing s. 629.401, F.S., relating to insurance exchanges; repealing s. 629.520, F.S., relating to the authority of limited reciprocal insurers; creating s. 629.525, F.S.; requiring the commission to adopt, amend, or repeal certain rules; amending ss. 163.01, 624.413, 624.45, and 626.9531, F.S.; conforming provisions to changes made by the act; requiring compliance by reciprocal insurers and attorneys in fact with increased surplus requirements and bond requirements, respectively, imposed by the act by a specified date; providing an effective date.

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

Section 1. Subsection (1) of section 624.3161, Florida Statutes, is amended to read:

624.3161 Market conduct examinations.—

(1) ~~As often as it deems necessary,~~ The office shall, as often as it deems necessary, examine each licensed rating organization, each advisory organization, each group, association, carrier, as defined in s. 440.02, or other organization of insurers which engages in joint underwriting or joint reinsurance, the attorney in fact of each reciprocal insurer, and each authorized insurer transacting in this state any class of insurance to which ~~the provisions of~~ chapter 627 is ~~are~~ applicable. The examination must ~~shall~~ be for the purpose of ascertaining compliance by the person examined with the applicable provisions of chapters 440, 624, 626, 627, 629, and 635.

Section 2. Paragraph (a) of subsection (10) of section 624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(10)(a) Each insurer or insurer group doing business in this state shall file, on a monthly ~~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 must ~~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 must ~~shall~~ include the following information for each zip code for which policies are written ~~county on a monthly basis~~:

1. Total number of policies in force at the end of each month.

2. Total number of policies canceled.

3. Total number of policies nonrenewed.

4. Number of policies canceled due to hurricane risk.

5. Number of policies nonrenewed due to hurricane risk.

6. Number of new policies written.

7. Total dollar value of structure exposure under policies that include wind coverage.

8. Number of policies that exclude wind coverage.

9. Number of claims open each month.

10. Number of claims closed each month.

11. Number of claims pending each month.

12. Number of claims in which either the insurer or insured invoked any form of alternative dispute resolution, and specifying which form of alternative dispute resolution was

used.

Section 3. Section 624.4305, Florida Statutes, is amended to read:

624.4305 Nonrenewal of residential property insurance policies.—Any insurer planning to nonrenew more than 10,000 residential property insurance policies in this state within a 12-month period shall give notice in writing to the Office of Insurance Regulation for informational purposes 90 days before the issuance of any notices of nonrenewal. The notice provided to the office must set forth the insurer's reasons for such action, the effective dates of nonrenewal, and any arrangements made for other insurers to offer coverage to affected policyholders. The commission may adopt rules to administer this section.

Section 4. Paragraph (d) of subsection (1) of section 624.46226, Florida Statutes, is amended to read:

624.46226 Public housing authorities self-insurance funds; exemption for taxation and assessments.—

(1) Notwithstanding any other provision of law, any two or more public housing authorities in the state as defined in chapter 421 may form a self-insurance fund for the purpose of pooling and spreading liabilities of its members as to any one or combination of casualty risk or real or personal property risk of every kind and every interest in such property against loss or damage from any hazard or cause and against any loss

consequential to such loss or damage, provided the self-insurance fund that is created:

(d) Maintains a continuing program of excess insurance coverage and reinsurance ~~reserve evaluation~~ to protect the financial stability of the fund ~~in an amount and manner determined by a qualified and independent actuary~~. The program must, at a minimum~~, this program must~~:

1. Include a net retention in an amount and manner selected by the administrator, ratified by the governing body, and certified by a qualified actuary;

2. Include reinsurance or ~~Purchase~~ excess insurance from authorized insurance carriers or eligible surplus lines insurers; and~~.~~

3. Be certified by a qualified and independent actuary as to the program's adequacy. This certification must be submitted simultaneously with the certifications required under paragraphs (b) and (c).

~~2. Retain a per-loss occurrence that does not exceed $350,000.~~

A for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8) may join a self-insurance fund formed under this section in which such public housing authority

participates. Such for-profit or not-for-profit corporation, limited liability company, or other similar business entity may join the self-insurance fund solely to insure risks related to public housing.

Section 5. Subsection (2) of section 626.9201, Florida Statutes, is amended to read:

626.9201 Notice of cancellation or nonrenewal.—

(2) An insurer issuing a policy providing coverage for property, casualty, surety, or marine insurance must give the named insured written notice of cancellation or termination other than nonrenewal at least 45 days before the effective date of the cancellation or termination, including in the written notice the reasons for the cancellation or termination, except that:

(a) If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason for cancellation must be given. As used in this paragraph, the term "nonpayment of premium" means the failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy or an installment of such a premium, whether the premium or installment is payable directly to the insurer or its agent or indirectly under any plan for financing premiums or extension of credit or the failure of the named insured to maintain membership in an organization if such membership is a condition

precedent to insurance coverage. The term also includes the failure of a financial institution to honor the check of an applicant for insurance which was delivered to a licensed agent for payment of a premium, even if the agent previously delivered or transferred the premium to the insurer. If a correctly dishonored check represents payment of the initial premium, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and, if the contract is void, any premium received by the insurer from a third party must ~~shall~~ be refunded to that party in full; ~~and~~

(b) If cancellation or termination occurs during the first 90 days during which the insurance is in force and if the insurance is canceled or terminated for reasons other than nonpayment, at least 20 days' written notice of cancellation or termination accompanied by the reason for cancellation or termination must be given, except if there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer; and~~.~~

(c)1. Upon a declaration of an emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of Insurance Regulation, an insurer may not cancel or nonrenew a personal residential or commercial residential property

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

insurance policy covering a dwelling or residential property located in this state which has been damaged as a result of a hurricane that is the subject of the declaration of emergency for a period of 90 days after the dwelling or residential property has been repaired. A dwelling or residential property is deemed to be repaired when substantially completed and restored to the extent that the dwelling or residential property is insurable by another insurer that is writing policies in this state.

2. An insurer or agent may cancel or nonrenew such a policy before the repair of the dwelling or residential property:

a. Upon 10 days' notice for nonpayment of premium; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the claim;

(II) If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling or residential property; or

(III) If the insurer has paid policy limits.

3. If the insurer elects to nonrenew a policy covering a dwelling or residential property that has been damaged, the insurer must provide at least 90 days' notice to the insured that the insurer intends to nonrenew the policy 90 days after the dwelling or residential property has been repaired.

4. This paragraph does not prevent the insurer from canceling or nonrenewing the policy 90 days after the repairs are complete for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for the limitation imposed in subparagraph 1.

5. The commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

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 and windstorm 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 Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable pursuant to s. 627.0628. If an averaged model is used under this subparagraph, the same averaged model must be used throughout this state. If a weighted average is used, the insurer must provide the office with a justification for using the weighted average which shows that it results in a rate that is reasonable, adequate, and fair.

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

Section 7. Paragraph (n) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(n)1. Rates for coverage provided by the corporation must be actuarially sound pursuant to s. 627.062 and not competitive with approved rates charged in the admitted voluntary market so that the corporation functions as a residual market mechanism to provide insurance only when insurance cannot be procured in the voluntary market, except as otherwise provided in this paragraph. The office shall provide the corporation such information as would be necessary to determine whether rates are competitive. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant

to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Twelve percent for 2023.

b. Thirteen percent for 2024.

c. Fourteen percent for 2025.

d. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraphs 5. and 8. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing that is not competitive with approved rates in the admitted voluntary market for each commercial and personal line of business the corporation writes.

8. ~~The following~~ New or renewal personal lines policies that do not cover a primary residence ~~written on or after November 1, 2023,~~ are not subject to the rate increase limitations in subparagraph 5., but may not be charged more than 50 percent above, nor less than, the prior year's established rate for the corporation~~:~~

~~a. Policies that do not cover a primary residence;~~

~~b. New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631;~~ ~~or~~

~~c. Subsequent renewals of those policies, including the~~

~~new policies in sub-subparagraph b., under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631~~.

9. As used in this paragraph, the term "primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

Section 8. Section 628.011, Florida Statutes, is amended to read:

628.011 Scope of part.—This part applies only to domestic ~~stock~~ insurers, mutual insurers, and captive insurers, except that s. 628.341(2) applies also as to foreign and alien insurers.

Section 9. Section 628.061, Florida Statutes, is amended to read:

628.061 Investigation of proposed organization.—In connection with any proposal to organize ~~incorporate~~ a domestic insurer, the office shall make an investigation of:

(1) The character, reputation, financial standing, and motives of the organizers, incorporators, and subscribers organizing the proposed insurer.

(2) The character, financial responsibility, insurance

experience, and business qualifications of its proposed officers.

(3) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors.

Section 10. Subsections (1), (2), and (5) of section 628.801, Florida Statutes, are amended to read:

628.801 Insurance holding companies; registration; regulation.—

(1) An insurer that is authorized to do business in this state and that is a member of an insurance holding company shall, on or before April 1 of each year, register with the office and file a registration statement and be subject to regulation with respect to its relationship to the holding company as provided by law or rule. The commission shall adopt rules establishing the information and statement form required for registration and the manner in which registered insurers and their affiliates are regulated. The rules apply to domestic insurers, foreign insurers, and commercially domiciled insurers, except for foreign insurers domiciled in states that are currently accredited by the NAIC. Except to the extent of any conflict with this code, the rules must include all requirements and standards of the Insurance Holding Company System Model Regulation and ss. 4 and 5 of the Insurance Holding Company System Regulatory Act ~~and the Insurance Holding Company System~~

~~Model Regulation~~ of the NAIC, as adopted in December 2020 ~~2010~~. The commission may adopt subsequent amendments thereto if the methodology remains substantially consistent. The rules may include a prohibition on oral contracts between affiliated entities. Material transactions between an insurer and its affiliates must ~~shall~~ be filed with the office as provided by rule.

(2) ~~Effective January 1, 2015,~~ The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report on or before April 1. As used in this subsection, the term "ultimate controlling person" means a person who is not controlled by any other person. The report must, to the best of the ultimate controlling person's knowledge and belief, ~~must~~ identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report must ~~shall~~ be filed with the lead state office of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC and is confidential and exempt from public disclosure as provided in s. 624.4212.

(a) An insurer may satisfy this requirement by providing the office with the most recently filed parent corporation reports that have been filed with the Securities and Exchange Commission which provide the appropriate enterprise risk information.

(b) The term "enterprise risk" means an activity, a circumstance, an event, or a series of events involving one or more affiliates of an insurer which, if not remedied promptly, are likely to have a materially adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in s. 624.4085 or would cause the insurer to be in a hazardous financial condition.

(c) The commission may adopt rules for filing the annual enterprise risk report in accordance with the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the NAIC, as adopted in December 2020.

(5) ~~Effective January 1, 2015,~~ The failure to file a registration statement, or a summary of the registration statement, or the enterprise risk filing report required by this section within the time specified for filing is a violation of this section.

Section 11. Section 629.011, Florida Statutes, is amended to read:

629.011 Definitions ~~"Reciprocal insurance" defined~~.—As used in this part, the term:

(1) "Affiliated person" of another person means any of the following:

(a) The spouse of the other person.

(b) The parents of the other person and their lineal descendants, or the parents of the other person's spouse and their lineal descendants.

(c) A person who directly or indirectly owns or controls, or holds with the power to vote, 10 percent or more of the outstanding voting securities of the other person.

(d) A person who directly or indirectly owns 10 percent or more of the outstanding voting securities that are directly or indirectly owned or controlled, or held with the power to vote, by the other person.

(e) A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person.

(f) A person who is a director, an officer, a trustee, a partner, an owner, a manager, a joint venturer, or an employee, or another person who is performing duties similar to those of a person in one of the aforementioned positions.

(g) If the other person is an investment company, any investment adviser of such company or any member of an advisory board of such company.

(h) If the other person is an unincorporated investment company not having a board of directors, the depositor of such company.

(i) A person who has entered into an agreement, written or

unwritten, to act in concert with the other person in acquiring or limiting the disposition of:

1. Securities of an attorney in fact or controlling company that is a stock corporation; or

2. An ownership interest of an attorney in fact or controlling company that is not a stock corporation.

(2) "Attorney in fact" means the attorney in fact of a reciprocal insurer. The attorney in fact may be an individual, a corporation, or another person.

(3) "Controlling company" means any person, corporation, trust, limited liability company, association, or other entity owning, directly or indirectly, 10 percent or more of the voting securities of one or more attorneys in fact that are stock corporations, or 10 percent or more of the ownership interest of one or more attorneys in fact that are not stock corporations.

(4) "Reciprocal insurance" means ~~is that resulting from~~ an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all such persons.

(5) "Reciprocal insurer" means an insurer that is an unincorporated aggregation of subscribers domiciled in this state operating individually and collectively through an attorney in fact to provide reciprocal insurance to such subscribers. A domestic reciprocal insurer must be licensed as

an assessable or a nonassessable reciprocal insurer.

(a) An assessable reciprocal insurer may require that its subscribers make up any shortfall in capital and surplus to cover claims and expenses, either jointly or severally.

(b) A nonassessable reciprocal insurer has no recourse against subscribers for any shortfall in capital and surplus to cover claims and expenses.

Section 12. Section 629.021, Florida Statutes, is repealed.

Section 13. Section 629.031, Florida Statutes, is repealed.

Section 14. Section 629.051, Florida Statutes, is amended to read:

629.051 Name; suits.—~~A reciprocal insurer shall:~~

(1) A domestic reciprocal insurer shall have and use a ~~business~~ name that must~~. The name shall~~ include the word "reciprocal," ~~or~~ "interinsurer," ~~or~~ "interinsurance," ~~or~~ "exchange," ~~or~~ "underwriters," or "underwriting.~~,~~" ~~but this requirement shall not apply as to any insurer holding a certificate of authority to transact insurance in this state immediately prior to the effective date of this code.~~

(2) A foreign or alien reciprocal insurer transacting business in this state, whose name does not include the word "reciprocal," "interinsurer," "interinsurance," "exchange," "underwriters," or "underwriting," shall use a fictitious name,

registered in accordance with s. 865.09, which includes one of those words when transacting business in this state.

(3) A reciprocal insurer may sue and be sued in its own name.

Section 15. Section 629.056, Florida Statutes, is created to read:

629.056 Premium reserves.—A reciprocal insurer shall at all times maintain unearned premium reserves equal to 50 percent of the net written premiums of the subscribers on policies having 1 year or less to run, and pro rata on policies running for longer periods, except that all premiums on any marine or transportation insurance trip risk are deemed unearned until the trip is terminated. For the purpose of this section, the term "net written premiums" means the premium payments made by subscribers plus the premiums due from subscribers, after deducting the amounts specifically provided in the subscribers' agreements for expenses, including reinsurance costs and fees paid to the attorney in fact, provided that the power of attorney agreement contains an explicit provision requiring the attorney in fact to refund any unearned subscriber fees on a pro rata basis for canceled policies. In the absence of such a provision, the unearned premium reserves must be calculated without any adjustment for fees paid to the attorney in fact. If the unearned premium reserves at any time are less than $300,000, additional funds in cash or eligible securities must

be maintained on deposit at the exchange at all times which, together with the unearned premium reserves, equal $300,000. In calculating these reserves, the amount of the attorney in fact's bond, as filed with the office and as required by s. 629.121, must be included in such reserves. If at any time the unearned premium reserves are less than those required, the subscribers, or the attorney in fact, must advance funds to cover the deficiency. Such advances may only be repaid out of the surplus of the exchange and only after receiving written approval from the office.

Section 16. Section 629.061, Florida Statutes, is repealed.

Section 17. Section 629.071, Florida Statutes, is amended to read:

629.071 Surplus funds required.—The surplus required of a reciprocal insurer is as required in s. 624.407 as to the kind of insurance proposed to be transacted.

~~(1) A domestic reciprocal insurer hereunder formed, if it has otherwise complied with the applicable provisions of this code, may be authorized to transact insurance if it has and thereafter maintains surplus funds of not less than $250,000.~~

~~(2) In addition to the surplus required to be maintained under subsection (1), the insurer shall have, when first so authorized, an expendable surplus of not less than $750,000.~~

Section 18. Section 629.081, Florida Statutes, is amended

to read:

629.081 Organization of reciprocal insurer.—

(1) Twenty-five or more persons domiciled in this state who wish to organize as a domestic reciprocal insurer may make application to the office for a permit to do so. A domestic reciprocal insurer may not be formed unless the persons so proposing have first received a permit from the office ~~may organize a domestic reciprocal insurer and make application to the office for a certificate of authority to transact insurance~~.

(2) The permit application, to be filed by the organizers or the proposed attorney in fact, must be in writing and made in accordance with forms prescribed by the commission. In addition to any applicable requirements of s. 628.051 or other relevant statutes, the application must include all of the following ~~shall fulfill the requirements of and shall execute and file with the office, when applying for a certificate of authority, a declaration setting forth~~:

(a) The name of the proposed reciprocal insurer, which must be in accordance with s. 629.051.~~;~~

(b) The location of the insurer's principal office, which must ~~shall~~ be the same as that of the proposed attorney in fact and must ~~shall~~ be maintained within this state.~~;~~

(c) The kinds of insurance proposed to be transacted.~~;~~

(d) The names and addresses of the original 25 or more subscribers.~~;~~

(e) The proposed designation and appointment of the proposed attorney in fact and a copy of the power of attorney.~~;~~

(f) The names and addresses of the officers and directors of the proposed attorney in fact, if a corporation, or of its members, if other than a corporation.~~;~~

(g) The background information as specified in s. 629.227 for all officers, directors, managers, and those in equivalent positions of the proposed attorney in fact as well as for any person with an ownership interest of 10 percent or more in the proposed attorney in fact.

(h) The articles of incorporation and bylaws, or equivalent documents, of the proposed attorney in fact, dated within the last year and appropriately certified.

(i) The proposed charter ~~powers~~ of the subscribers' advisory committee, and the names and terms of office of the members thereof, as well as the background information as specified in s. 629.227 for each proposed member.~~;~~

~~(h) That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;~~

(j)~~(i)~~ A copy of the proposed subscribers' agreement.~~;~~

~~(j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such~~

~~subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the office;~~

(k) ~~A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand; and~~

~~(l)~~ A copy of each policy, endorsement, and application form it then proposes to issue or use.

(l) A copy of the bond required under s. 629.121.

(3) The filing must be accompanied by the application fee required by s. 624.501(1)(a) and such other pertinent information and documents as reasonably requested by the office.

(4) The office shall evaluate and grant or deny the permit application in accordance with ss. 628.061, 628.071, and other relevant provisions of the code.

~~Such declaration shall be acknowledged by the attorney before an officer authorized to take acknowledgments.~~

Section 19. Section 629.091, Florida Statutes, is amended to read:

629.091 Reciprocal certificate of authority.—

(1) To apply for a certificate of authority as a domestic reciprocal insurer, the attorney in fact of an applicant who has previously received a permit from the office may file an application in accordance with forms prescribed by the

commission which, in addition to applicable requirements of ss. 624.404, 624.411, 624.413, and other relevant statutes, consists of all of the following:

(a) Executed copies of any proposed or draft documents required as part of the permit application.

(b) A statement affirming that all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney in fact, be held in the name of the insurer and for the purposes specified in the subscribers' agreement.

(c) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at the rate that was filed with and approved by the office.

(d) A copy of the bond required under s. 629.121.

(e) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand.

(f) Such other pertinent information or documents as reasonably requested by the office.

(2) The reciprocal certificate of authority must ~~of a reciprocal insurer shall~~ be issued ~~to its attorney~~ in the name of the reciprocal insurer to its attorney in fact.

Section 20. Section 629.094, Florida Statutes, is created

to read:

629.094 Continued eligibility for certificate of authority.-In order to maintain its eligibility for a certificate of authority, a domestic reciprocal insurer must continue to meet all conditions required to be met under this code and the rules adopted thereunder for the initial applications for a permit and certificate of authority.

Section 21. Section 629.101, Florida Statutes, is amended to read:

629.101 Power of attorney.—

(1) The rights and powers of the attorney in fact of a domestic reciprocal insurer are ~~shall be~~ as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth all of the following:

(a) The powers of the attorney in fact.~~;~~

(b) That the attorney in fact is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged.~~;~~

(c) The place where the office of the attorney in fact is maintained.

(d) The general services to be performed by the attorney in fact.~~;~~

(e)~~(d)~~ The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney in fact and the

general items of expense in addition to losses, to be paid by the insurer.~~; and~~

(f)~~(e)~~ Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount may ~~shall be~~ not be less than 5 times nor more than 10 times the premium or premium deposit stated in the policy.

~~(3) The power of attorney may:~~

(g)~~(a) Provide for~~ The right of substitution of the attorney in fact and revocation of the power of attorney and rights thereunder.~~;~~

(h)~~(b) Impose such~~ Restrictions upon the exercise of the power as are agreed upon by the subscribers.~~;~~

(i)~~(c) Provide for~~ The exercise of any right reserved to the subscribers directly or through their advisory committee.~~;~~ ~~and~~

(3)~~(d)~~ The power of attorney may contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto must ~~shall~~ be reasonable and equitable, and no such power or agreement may ~~shall~~ be used or be effective in this state unless filed with the office.

Section 22. Section 629.111, Florida Statutes, is amended to read:

629.111 Modifications.—Modifications of the terms of the

subscribers' agreement, charter of the subscribers' advisory committee, or of the power of attorney of a ~~domestic~~ reciprocal insurer must ~~shall~~ be made jointly by the attorney in fact and the subscribers' advisory committee. No such modification may ~~shall~~ be effective retroactively, nor as to any insurance contract issued prior thereto. A modification may not take effect until filed with, and approved in writing by, the office.

Section 23. Section 629.121, Florida Statutes, is amended to read:

629.121 Attorney in fact's ~~Attorney's~~ bond.—

(1) Concurrently with the filing of the permit application ~~declaration~~ provided for in s. 629.081, the attorney in fact of a domestic reciprocal insurer shall file with the office a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney in fact of the conditions of its ~~his or her~~ bond as set forth in subsection (2). The bond must ~~shall~~ be executed by the attorney in fact and by an authorized corporate surety and is ~~shall be~~ subject to the approval of the office.

(2) The bond must ~~shall~~ be in the sum of $300,000 ~~$100,000~~, aggregate in form, the bond conditioned that the attorney in fact will faithfully account for all moneys and other property of the insurer coming into its ~~his or her~~ hands, and that it ~~he or she~~ will not withdraw or appropriate to its ~~his or her~~ own use from the funds of the insurer any moneys or

property to which it ~~he or she~~ is not entitled under the power of attorney.

(3) The bond must ~~shall~~ provide that it is not subject to cancellation unless 30 days' advance notice in writing of cancellation is given both the attorney in fact and the office.

Section 24. Section 629.131, Florida Statutes, is amended to read:

629.131 Deposit in lieu of bond.—In lieu of the bond required under s. 629.121, the attorney in fact may maintain on deposit with the department a like amount in value of securities qualified for deposit under s. 625.52 and subject to the same conditions as the bond.

Section 25. Section 629.141, Florida Statutes, is amended to read:

629.141 Action on bond.—Action on the attorney in fact's ~~attorney's~~ bond or to recover against any such deposit made in lieu thereof may be brought at any time by one or more subscribers suffering loss through a violation of its conditions or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of such bond.

Section 26. Section 629.161, Florida Statutes, is amended to read:

629.161 Contributions to insurer.—

(1) A reciprocal insurer may borrow money to defray the expenses of its organization, to provide itself with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. Any interest stipulated in such agreement may not constitute a liability of the insurer as to its funds other than such excess of surplus. Commission or promotion expense may not be paid in connection with any such loan.

(2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, may not form a part of the insurer's legal liabilities, except as to its surplus in excess of the amount stipulated in the agreement, or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer must show as a footnote to such statement the amount of the unpaid loan together with any interest accrued but unpaid.

(3) Any such loan to a reciprocal insurer is subject to the approval of the office for the issue and the rate of interest to be paid. The reciprocal insurer shall, in advance of the loan, file with the office a statement of the purpose of the loan and a copy of the proposed loan agreement. The office shall disapprove any proposed loan or agreement if it finds that the loan is unnecessary or excessive for the purpose intended; that the terms of the loan agreement are not fair and equitable to

the parties and to other similar lenders, if any, to the reciprocal insurer; or that the information so filed by the reciprocal insurer is inadequate.

(4) Any such loan to a reciprocal insurer, or a substantial portion of such loan, must be repaid by the reciprocal insurer when no longer reasonably necessary for the purpose originally intended. A reciprocal insurer may not repay such loan or any interest on such loan unless repayment is approved in advance by the office.

(5) This section does not apply to loans obtained by the reciprocal insurer in the ordinary course of business from banks and other financial institutions, or to loans secured by pledge or mortgage of assets ~~The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the office. This section does not apply as to bank loans or to loans made upon security~~.

Section 27. Subsection (1) of section 629.171, Florida Statutes, is amended to read:

629.171 Annual statement.—

(1) The annual statement of a reciprocal insurer must ~~shall~~ be made and filed by its attorney in fact in the same manner as domestic stock insurers under s. 624.424.

Section 28. Section 629.191, Florida Statutes, is amended to read:

629.191 Who may be subscribers.—Individuals, partnerships, and corporations of this state may make applications for, enter into agreements for, and hold policies or contracts in or with, and be subscribers of, any ~~domestic, foreign, or alien~~ reciprocal insurer.

Section 29. Section 629.201, Florida Statutes, is amended to read:

629.201 Subscribers' advisory committee.—

(1) The advisory committee of a ~~domestic~~ reciprocal insurer exercising the subscribers' rights must ~~shall~~ be selected under such rules as the subscribers adopt.

(2) Not less than two-thirds of such committee may ~~shall~~ be subscribers other than the attorney in fact, or any person appointed by, employed by, representing, or having a financial interest in the attorney in fact.

(3) The committee shall do all of the following:

(a) Supervise the finances of the insurer.~~;~~

(b) Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney.~~;~~

(c) Procure the audit of the accounts and records of the insurer and of the attorney in fact at the expense of the insurer.~~; and~~

(d) Have such additional powers and functions as may be conferred by the subscribers' agreement.

Section 30. Section 629.225, Florida Statutes, is created to read:

629.225 Acquisitions.—

(1) A person may not, individually or in conjunction with an affiliated person of such person, directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire 10 percent or more of the outstanding voting securities of an attorney in fact that is a stock corporation or of a controlling company of an attorney in fact that is a stock corporation; or conclude an acquisition of, or otherwise finally acquire, 10 percent or more of the ownership interest of an attorney in fact that is not a stock corporation or of a controlling company of an attorney in fact that is not a stock corporation, unless all of the following conditions are met:

(a) The person or affiliated person has filed with the office and sent to the principal office of the attorney in fact, any controlling company of the attorney in fact, and the reciprocal insurer a letter of notification regarding the transaction or proposed transaction no later than 5 days after

any form of tender offer or exchange offer is proposed, or no later than 5 days after the acquisition of the securities or ownership interest if no tender offer or exchange offer is involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved.

(b) The person or affiliated person has filed with the office an application, signed under oath and prepared on forms prescribed by the commission, which contains the information specified in subsection (3). The application must be completed and filed within 30 days after any form of tender offer or exchange offer is proposed, or after the acquisition of the securities if no tender offer or exchange offer is involved.

(c) The office has approved the tender offer or exchange offer, or acquisition if no tender offer or exchange offer is involved.

(2) The person or affiliated person filing the notice required in paragraph (1)(a) may additionally request that the office waive the requirements of paragraph (1)(b), provided that there is no change in the ultimate controlling shareholders, no change in the ownership percentages of the ultimate controlling shareholders, and no unaffiliated parties acquire any direct or indirect interest in the attorney in fact. The office may waive the filing if it determines that there is no change in the

ultimate controlling shareholders, no change in the ownership percentages of the ultimate controlling shareholders, and no unaffiliated parties will acquire any direct or indirect interest in the attorney in fact.

(3) The application to be filed with the office and furnished to the attorney in fact and controlling company must contain all of the following information and any additional information as the office deems necessary to determine the character, experience, ability, and other qualifications of the person, or the affiliated person of such person, for the protection of the reciprocal insurer's subscribers and of the public:

(a) The identity and background information specified in s. 629.227 of:

1. Each person by whom, or on whose behalf, the acquisition is to be made; and

2. Any person who controls, either directly or indirectly, such other person, including each director, officer, trustee, partner, owner, manager, or joint venturer, or another person performing duties similar to those of persons in the aforementioned positions for the person.

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

(c) Any plans or proposals that such persons may have made to liquidate the attorney in fact or controlling company, to

sell any of their assets or merge or consolidate them with any person, or to make any other major change in their business or corporate structure or management, and any plans or proposals that such persons may have made to liquidate any controlling company of the attorney in fact, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management.

(d) The nature and the extent of the controlling interest which the person, or the affiliated person of such person, proposes to acquire, the terms of the proposed acquisition, and the manner in which the controlling interest is to be acquired of an attorney in fact or controlling company which is not a stock corporation.

(e) The number of shares or other securities that the person, or the affiliated person of such person, proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired.

(f) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the attorney in fact or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, which information names the party with whom the contract, arrangement,

or understanding has been entered into and gives the details thereof.

(4) The acquisition application must be accompanied by the fee required under s. 624.501(1)(a).

(5) If any material change occurs in the facts provided in the application filed with the office pursuant to this section, or the background information required under s. 629.227, an amendment specifying such changes must be immediately filed with the office, and a copy of the amendment must be sent to the principal office of the attorney in fact and to the principal office of the controlling company.

(6)(a) The acquisition application must be reviewed in accordance with chapter 120. The office may conduct, or, if requested to do so in writing by a substantially affected person, shall conduct, a proceeding to consider the appropriateness of the proposed application. Time periods for purposes of chapter 120 are tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the office within 10 days after the date notice of the filing is given. During the pendency of the proceeding or review period by the office, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition so long as finalization of the acquisition is conditioned upon obtaining office approval. However, at any time it finds an immediate

danger to the public health, safety, and welfare of the reciprocal insurer's subscribers exists, the office shall immediately order, pursuant to s. 120.569(2)(n), the proposed acquisition disapproved and any further steps to conclude the acquisition ceased.

(b) During the pendency of the office's review of any acquisition subject to this section, the acquiring person may not make any material change in the operation of the attorney in fact or controlling company unless the office has specifically approved the change, and the acquiring person may not make any material change in the management of the attorney in fact unless advance written notice of the change in management is furnished to the office. The term "material change in the operation of the attorney in fact" means a transaction that disposes of or obligates 5 percent or more of the capital and surplus of the attorney in fact. The term "material change in the management of the attorney in fact" means any change in management involving officers or directors of the attorney in fact or any person of the attorney in fact or controlling company having authority to dispose of or obligate 5 percent or more of the attorney in fact's capital or surplus. The office must approve a material change in the operation of the attorney in fact if it finds the applicable provisions of subsection (7) have not been met. The office may disapprove a material change in management of the attorney in fact if it finds that the applicable provisions of

subsection (7) have been met, and in such case the attorney in fact shall promptly change management as acceptable to the office.

(c) If a request for a proceeding is filed, the proceeding must be conducted within 60 days after the date the written request for a proceeding is received by the office. A recommended order must be issued within 20 days after the date of the close of the proceedings. A final order must be issued within 20 days after the date of the recommended order or, if exceptions to the recommended order are filed, within 20 days after the date the exceptions are filed.

(7) The office may disapprove any acquisition subject to this section by any person, or any affiliated person of such person, who:

(a) Willfully violates this section;

(b) In violation of an order issued by the office pursuant to subsection (11), fails to divest himself or herself of any stock or ownership interest obtained in violation of this section or fails to divest himself or herself of any direct or indirect control of such stock or ownership interest, within 25 days after such order; or

(c) In violation of an order issued by the office pursuant to subsection (11), acquires an additional stock or ownership interest in an attorney in fact or controlling company or direct or indirect control of such stock or ownership interest, without

complying with this section.

(8) The person filing the application required by this section has the burden of proof. The office must approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed application if no proceeding is conducted, that:

(a) The financial condition of the acquiring person will not jeopardize the financial stability of the attorney in fact or prejudice the interests of the reciprocal insurer's subscribers or the public.

(b) Any plan or proposal that the acquiring person has made:

1. To liquidate the attorney in fact, sell its assets, or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management, is fair and free of prejudice to the reciprocal insurer's subscribers or to the public; or

2. To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the attorney in fact, is fair and free of prejudice to the reciprocal insurer's subscribers or to the public.

(c) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of

the attorney in fact indicate that the acquisition is in the best interest of the reciprocal insurer's subscribers and in the public interest.

(d) The natural persons for whom background information is required to be furnished pursuant to this section have such backgrounds as to indicate that it is in the best interests of the reciprocal insurer's subscribers and in the public interest to permit such persons to exercise control over the attorney in fact.

(e) The directors and officers, if such attorney in fact or controlling company is a stock corporation, or the trustees, partners, owners, managers, or joint venturers, or other persons performing duties similar to those of persons in the aforementioned positions, if such attorney in fact or controlling company is not a stock corporation, to be employed after the acquisition have sufficient insurance experience and ability to ensure reasonable promise of successful operation.

(f) The management of the attorney in fact after the acquisition will be competent and trustworthy and will possess sufficient managerial experience so as to make the proposed operation of the attorney in fact not hazardous to the insurance-buying public.

(g) The management of the attorney in fact after the acquisition will not include any person who has directly or indirectly through ownership, control, reinsurance transactions,

or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or otherwise acted in bad faith with respect thereto.

(h) The acquisition is not likely to be hazardous or prejudicial to the reciprocal insurer's subscribers or to the public.

(i) The effect of the acquisition would not substantially lessen competition in the line of insurance for which the reciprocal insurer is licensed or certified in this state or would not tend to create a monopoly therein.

(9) A vote by the stockholder of record, or by any other person, of any security acquired in contravention of this section is not valid. Any acquisition contrary to this section is void. Upon the petition of the attorney in fact, the controlling company, or the reciprocal insurer, the circuit court for the county in which the principal office of the attorney in fact is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce this section. There is a private right of action in favor of the attorney in fact or controlling company to enforce this section. A demand upon the office that it perform its functions is not required as a prerequisite to any legal action by the attorney in fact or controlling company against another person, and the office may not be deemed a necessary party to any action by the attorney in fact or

controlling company to enforce this section. Any person who makes or proposes an acquisition requiring the filing of an application pursuant to this section, or who files such an application, is deemed to have designated the Chief Financial Officer, or his or her assistant or deputy or another person in charge of his or her office, as such person's agent for service of process under this section and is deemed to have submitted himself or herself to the administrative jurisdiction of the office and to the jurisdiction of the circuit court.

(10) Any approval under this section by the office does not constitute a recommendation by the office of the tender offer or exchange offer, or the acquisition, if no tender offer or exchange offer is involved. It is unlawful for a person to represent that the office's approval constitutes a recommendation. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute-of-limitations period for the prosecution of an offense committed under this subsection is 5 years.

(11) A person may rebut a presumption of control by filing with the office a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the attorney in fact as well as the basis for disclaiming the affiliation. In lieu of such form, a person

or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the attorney in fact is relieved of any duty to register or report under this section which may arise out of the attorney in fact's relationship with the person unless the office disallows the disclaimer.

(12) If the office determines that any person, or any affiliated person of such person, has acquired 10 percent or more of the outstanding voting securities of an attorney in fact or controlling company that is a stock corporation, or 10 percent or more of the ownership interest of an attorney in fact or controlling company that is not a stock corporation, without complying with this section, the office may order that the person, and any affiliated person of such person, cease acquisition of the attorney in fact or controlling company and, if appropriate, divest itself of any stock or ownership interest acquired in violation of this section.

(13)(a) The office shall, if necessary to protect the public interest, suspend or revoke the reciprocal certificate of authority of the reciprocal insurer whose attorney in fact or controlling company is acquired in violation of this section.

(b) If a reciprocal insurer is subject to suspension or revocation pursuant to paragraph (a), the attorney in fact is

deemed to be in such condition, or to be using or to have been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance hazardous to its subscribers, creditors, or stockholders or to the public. In such case, the office may offer the reciprocal insurer, through its subscriber representatives, the ability to cure any suspension or revocation by procuring another attorney in fact acceptable to the office.

(14) This section does not apply to any acquisition of voting securities or ownership interest of an attorney in fact or of a controlling company by any person who is the owner of a majority of the voting securities or ownership interest with the approval of the office under this section or s. 629.091.

Section 31. Section 629.227, Florida Statutes, is created to read:

629.227 Background information.—The information as to the background and identity of each person for whom information is required to be furnished pursuant to s. 629.081 or s. 629.225 must include, but need not be limited to, all of the following:

(1) A sworn biographical statement, on forms adopted by the commission, which must include, but need not be limited to, the following information:

(a) Occupations, positions of employment, and offices held during the past 10 years, including the principal business and address of any business, corporation, or organization where each

occupation, position of employment, or office occurred.

(b) Whether, during such 10-year period, the person was convicted of any crime other than a traffic violation.

(c) Whether, during such 10-year period, the person has been the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and the disposition of the proceeding.

(d) Whether, during such 10-year period, the person has been the subject of any proceeding under the bankruptcy code.

(e) Whether, during such 10-year period, any person or other business or organization in which the person was a director, officer, trustee, partner, owner, manager, or other official has been subject to any proceeding under the bankruptcy code, either during the time of that person's tenure with the business or organization or within 12 months thereafter.

(f) Whether, during such 10-year period, the person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details as to any such event.

(2) The fingerprints of each person.

(3) An authorization for release of information necessary to investigate such person's background.

(4) Any additional information that the office deems necessary to determine the character, experience, ability, and other qualifications of the person, or affiliated person of such person, for the protection of the reciprocal insurer's subscribers and of the public.

Section 32. Subsection (1) of section 629.231, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

629.231 Assessments.—

(1) Assessments may ~~from time to time~~ be levied upon subscribers of an assessable ~~a domestic~~ reciprocal insurer who are liable for such assessments ~~therefor~~ under the terms of their policies by the attorney in fact. Any such assessment must be approved ~~upon approval~~ in advance by the subscribers' advisory committee and the office, or by the department as receiver of the insurer.

(5) Upon impairment of surplus of a nonassessable reciprocal insurer, the office shall revoke the authorization under s. 629.291(5) to convert to a nonassessable reciprocal insurer. After such revocation, any policy in force at the time the revocation occurs remains in force for the remainder of the period for which the premium has been paid, but the reciprocal insurer may not issue new policies without requiring contingent assessment liability from the new subscriber.

Section 33. Section 629.241, Florida Statutes, is amended

to read:

629.241 Time limit for assessments.—Every subscriber of a ~~domestic~~ reciprocal insurer having contingent liability shall be liable for, and shall pay his or her share of, any assessment, as computed and limited in accordance with this chapter, if:

(1) While his or her policy is in force or within 4 years after its termination, the subscriber is notified by either the attorney in fact or the office of its intentions to levy such assessment; or

(2) An order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued while the subscriber's policy is in force or within 4 years after its termination.

Section 34. Section 629.251, Florida Statutes, is amended to read:

629.251 Aggregate liability.—No one policy or subscriber as to such policy shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a ~~domestic~~ reciprocal insurer in any one calendar year in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on such policy during that year.

Section 35. Section 629.261, Florida Statutes, is repealed.

Section 36. Subsection (2) of section 629.271, Florida

Statutes, is amended to read:

629.271 Distribution of savings.—

(2) In addition to the option provided in subsection (1), a ~~domestic~~ reciprocal insurer may, upon the prior written approval of the office, pay to its subscribers a portion of unassigned funds of up to 10 percent of surplus, with distribution limited to 50 percent of net income from the previous calendar year. Such distribution may not unfairly discriminate between classes of risks or policies, or between subscribers, but may vary as to classes of subscribers based on the experience of the classes.

Section 37. Section 629.281, Florida Statutes, is amended to read:

629.281 Subscribers' share in assets.—Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney in fact or other persons to its surplus made as provided in s. 629.161, and the return of any unused premium, savings, or credits then standing on subscribers' accounts shall be distributed to its subscribers who were such within the 12 months prior to the last termination of its reciprocal certificate of authority, according to such reasonable formula as the office approves.

Section 38. Subsections (1), (2), and (4) of section 629.291, Florida Statutes, are amended, and subsection (5) is

added to that section, to read:

629.291 Merger or conversion.—

(1) A ~~domestic~~ reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice, subject to ~~and the~~ approval by ~~of~~ the office of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer, to be thereafter governed by the applicable sections of the Florida Insurance Code. However, a domestic stock insurer may not be converted to a reciprocal insurer.

(2) Any such plan to merge a reciprocal insurer with another reciprocal insurer or for conversion of the reciprocal insurer to a stock or mutual insurer must be filed with the office on forms adopted by the commission and must contain such information as the office reasonable requires to evaluate the transaction ~~Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance~~.

(4) Reinsurance of all or substantially all of the insurance in force of a domestic reciprocal insurer in another insurer is ~~shall be~~ deemed to be a merger for the purposes of this section.

(5)(a) An assessable reciprocal insurer may be converted to a nonassessable reciprocal insurer if:

1. The subscriber's advisory committee approves the application for conversion;

2. The attorney in fact submits the application on the required application form; and

3. The office finds that the application meets the minimum statutory requirements.

(b) If the office approves the application, the assessable reciprocal insurer may be converted to a nonassessable reciprocal insurer by:

1. Extinguishing the contingent liability of subscribers under all policies then in force in this state;

2. Omitting contingent liability provisions in all policies delivered or issued in this state after the conversion; and

3. Otherwise extinguishing the contingent liability of all of its subscribers. However, if the reciprocal insurer is transacting insurance as an authorized insurer in another state and that state's laws require the insurer to issue policies with contingent liability provisions, the insurer may issue contingent liability policies in that other state.

(c) If the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue nonassessable policies or convert assessable policies to nonassessable policies, and s. 629.301 applies.

Section 39. Subsections (1) and (2) of section 629.301,

Florida Statutes, are amended to read:

629.301 Impaired reciprocal insurers.—

(1) If the assets of a ~~domestic~~ reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney in fact or others, and to maintain the required surplus, its attorney in fact shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency, but subject to the limitation set forth in the power of attorney or policy.

(2) If the attorney in fact fails to make up such deficiency or to make the assessment within 30 days after the office orders him or her to do so, or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer must ~~shall~~ be deemed insolvent and ~~shall~~ be proceeded against in the same manner as any other domestic insurer under chapter 631 and the insurance ~~as authorized by this~~ code.

Section 40. Section 629.401, Florida Statutes, is repealed.

Section 41. Section 629.520, Florida Statutes, is repealed.

Section 42. Section 629.525, Florida Statutes, is created to read:

629.525 Rulemaking authority.—The commission shall adopt,

amend, or repeal rules pursuant to chapter 120 which are necessary to implement this chapter.

Section 43. Paragraph (h) of subsection (3) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(3) As used in this section:

(h) "Local government liability pool" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~ or any self-insurance program created pursuant to s. 768.28(16), formed and controlled by counties or municipalities of this state to provide liability insurance coverage for counties, municipalities, or other public agencies of this state, which pool may contract with other parties for the purpose of providing claims administration, processing, accounting, and other administrative facilities.

Section 44. Paragraph (c) of subsection (1) of section 624.413, Florida Statutes, is amended to read:

624.413 Application for certificate of authority.—

(1) To apply for a certificate of authority, an insurer shall file its application therefor with the office, upon a form adopted by the commission and furnished by the office, showing its name; location of its home office and, if an alien insurer, its principal office in the United States; kinds of insurance to be transacted; state or country of domicile; and such additional information as the commission reasonably requires, together with

the following documents:

(c) If a foreign or alien reciprocal insurer, a copy of the power of attorney of its attorney in fact and of its subscribers' agreement, if any, certified by the attorney in fact; and, if a domestic reciprocal insurer, the permit application ~~declaration~~ provided for in s. 629.081.

Section 45. Section 624.45, Florida Statutes, is amended to read:

624.45 Participation of financial institutions in reinsurance and in insurance exchanges.—Subject to applicable laws relating to financial institutions and to any other applicable provision of the Florida Insurance Code, any financial institution or aggregation of such institutions may÷

~~(1)~~ own or control, directly or indirectly, any insurer that ~~which~~ is authorized or approved by the office, that ~~which insurer~~ transacts only reinsurance in this state, and that ~~which~~ actively engages in reinsuring risks located in this state.

~~(2) Participate, directly or indirectly, as an underwriting member or as an investor in an underwriting member of any insurance exchange authorized in accordance with s. 629.401, which underwriting member transacts only aggregate or specific excess insurance over underlying self-insurance coverage for self-insurance organizations authorized under the Florida Insurance Code, for multiple-employer welfare arrangements, or for workers' compensation self-insurance~~

~~trusts, in addition to any reinsurance the underwriting member may transact.~~

~~Nothing in~~ However, this section may not ~~shall~~ be deemed to prohibit a financial institution from engaging in any presently authorized insurance activity.

Section 46. Subsection (3) of section 626.9531, Florida Statutes, is amended to read:

626.9531 Identification of insurers, agents, and insurance contracts.—

(3) For the purposes of this section, the term "risk bearing entity" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~, a commercial self-insurance fund as defined in s. 624.462, a group self-insurance fund as defined in s. 624.4621, a local government self-insurance fund as defined in s. 624.4622, a self-insured public utility as defined in s. 624.46225, or an independent educational institution self-insurance fund as defined in s. 624.4623. For the purposes of this section, the term "risk bearing entity" does not include an authorized insurer as defined in s. 624.09.

Section 47. Reciprocal insurers licensed before July 1, 2025, shall increase their surplus as required by the amendments made by this act to s. 629.071, Florida Statutes, by January 1, 2026. The attorney in fact of a reciprocal insurer licensed before July 1, 2025, shall increase its bond as required by the amendments made by this act to s. 629.121, Florida Statutes, by

January 1, 2026.

Section 48. This act shall take effect July 1, 2025.

INSURANCE & BANKING SUBCOMMITTEE

HB 1611 by Rep. Stevenson
Insurance

AMENDMENT SUMMARY
February 1, 2024

Amendment 1 by Rep. Stevenson (Stike-all): The amendment makes the following changes to the bill as filed:

- Adds wind storm to the causes of loss for which an insurer may not cancel a policy for 90 days after repair.
- Adds an insured's failure to respond within 30 days to a written inquiry by the insurer regarding the status of repairs to the list of reasons why an insurer may cancel a policy with unrepaired damage.
- Requires that the biographical statements required for certain individuals involved in the creation or acquisition of a reciprocal insurer provide a 20-year history rather than the 10-year history required in the bill as filed.
- Eliminates some provisions proposed by the bill, preserves certain current law, and makes other technical changes regarding reciprocal insurers to better streamline the Office of Insurane Regulation's authority to license and regulate these types of insurers.
- Changes the effective date of the bill from July 1, 2025, to July 1, 2024.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Stevenson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 624.3161, Florida Statutes, is amended to read:

624.3161 Market conduct examinations.—

(1) As often as it deems necessary, The office shall examine each licensed rating organization, each advisory organization, each group, association, carrier, as defined in s. 440.02, or other organization of insurers which engages in joint underwriting or joint reinsurance, the attorney in fact of each reciprocal insurer, and each authorized insurer transacting in this state any class of insurance to which ~~the provisions of~~

chapter 627 is ~~are~~ applicable. The examination must ~~shall~~ be for the purpose of ascertaining compliance by the person examined with the applicable provisions of chapters 440, 624, 626, 627, and 635.

Section 2. Paragraph (a) of subsection (10) of section 624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(10)(a) Each insurer or insurer group doing business in this state shall file, on a monthly ~~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 must ~~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 must ~~shall~~ include the following information for each zip code ~~county on a monthly basis~~:

1. Total number of policies in force at the end of each month.

2. Total number of policies canceled.

3. Total number of policies nonrenewed.

4. Number of policies canceled due to hurricane risk.

5. Number of policies nonrenewed due to hurricane risk.

6. Number of new policies written.

7. Total dollar value of structure exposure under policies that include wind coverage.

8. Number of policies that exclude wind coverage.

9. Number of claims open each month.

10. Number of claims closed each month.

11. Number of claims pending each month.

12. Number of claims in which either the insurer or insured invoked any form of alternative dispute resolution, and specifying which form of alternative dispute resolution was used.

Section 3. Section 624.4305, Florida Statutes, is amended to read:

624.4305 Nonrenewal of residential property insurance policies.—Any insurer planning to nonrenew more than 10,000 residential property insurance policies in this state within a 12-month period shall give notice in writing to the Office of Insurance Regulation for informational purposes 90 days before the issuance of any notices of nonrenewal. The notice provided to the office must set forth the insurer's reasons for such action, the effective dates of nonrenewal, and any arrangements made for other insurers to offer coverage to affected policyholders. <u>The commission may adopt rules to administer this section.</u>

Section 4. Paragraph (d) of subsection (1) of section 624.46226, Florida Statutes, is amended to read:

624.46226 Public housing authorities self-insurance funds; exemption for taxation and assessments.—

(1) Notwithstanding any other provision of law, any two or more public housing authorities in the state as defined in chapter 421 may form a self-insurance fund for the purpose of pooling and spreading liabilities of its members as to any one or combination of casualty risk or real or personal property risk of every kind and every interest in such property against loss or damage from any hazard or cause and against any loss consequential to such loss or damage, provided the self-insurance fund that is created:

(d) Maintains a continuing program of excess insurance coverage and reinsurance ~~reserve evaluation~~ to protect the financial stability of the fund ~~in an amount and manner determined by a qualified and independent actuary~~. The program must, at a minimum~~, this program must~~:

1. Include a net retention in an amount and manner selected by the administrator, ratified by the governing body, and certified by a qualified actuary;

2. Include reinsurance or ~~Purchase~~ excess insurance from authorized insurance carriers or eligible surplus lines insurers; and~~.~~

3. Be certified by a qualified and independent actuary as to the program's adequacy. This certification must be submitted simultaneously with the certifications required under paragraphs (b) and (c).

~~2. Retain a per-loss occurrence that does not exceed $350,000.~~

A for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8) may join a self-insurance fund formed under this section in which such public housing authority participates. Such for-profit or not-for-profit corporation, limited liability company, or other similar business entity may join the self-insurance fund solely to insure risks related to public housing.

Section 5. Subsection (2) of section 626.9201, Florida Statutes, is amended to read:

626.9201 Notice of cancellation or nonrenewal.—

(2) An insurer issuing a policy providing coverage for property, casualty, surety, or marine insurance must give the named insured written notice of cancellation or termination other than nonrenewal at least 45 days before the effective date of the cancellation or termination, including in the written

notice the reasons for the cancellation or termination, except that:

(a) If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason for cancellation must be given. As used in this paragraph, the term "nonpayment of premium" means the failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy or an installment of such a premium, whether the premium or installment is payable directly to the insurer or its agent or indirectly under any plan for financing premiums or extension of credit or the failure of the named insured to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also includes the failure of a financial institution to honor the check of an applicant for insurance which was delivered to a licensed agent for payment of a premium, even if the agent previously delivered or transferred the premium to the insurer. If a correctly dishonored check represents payment of the initial premium, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and, if the contract is void,

any premium received by the insurer from a third party must ~~shall~~ be refunded to that party in full; ~~and~~

(b) If cancellation or termination occurs during the first 90 days during which the insurance is in force and if the insurance is canceled or terminated for reasons other than nonpayment, at least 20 days' written notice of cancellation or termination accompanied by the reason for cancellation or termination must be given, except if there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer; and~~.~~

(c)1. Upon a declaration of an emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of Insurance Regulation, an insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state which has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency for 90 days after the dwelling or residential property has been repaired. A dwelling or residential property is deemed to be repaired when substantially completed and restored to the extent that the dwelling or residential property is insurable by another insurer that is writing policies in this state.

2. An insurer or agent may cancel or nonrenew such a policy before the repair of the dwelling or residential property:

a. Upon 10 days' notice for nonpayment of premium; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the claim;

(II) If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling or residential property;

(III) If the insurer or its agent has made a reasonable written inquiry to the insured as to the status of the repair and the insured has failed within 30 calendar days to provide information that is responsive to the inquiry to either the address or e-mail account designated by the insurer or its agent; or

(IV) If the insurer has paid policy limits.

3. If the insurer elects to nonrenew a policy covering a dwelling or residential property that has been damaged, the insurer must provide at least 90 days' notice to the insured that the insurer intends to nonrenew the policy 90 days after the property has been repaired.

4. This paragraph does not prevent the insurer from canceling or nonrenewing the policy 90 days after the repair is completed for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for the limitations imposed in subparagraph 1.

5. The commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

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 and windstorm 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 Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable pursuant to s. 627.0628. If an averaged model is used under this section, the same averaged model must be used throughout this state. If a weighted average is used, the insurer must provide the office with a justification for using the weighted average which shows that the weighted average results in a rate that is reasonable, adequate, and fair.

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

Section 7. Paragraph (n) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(n)1. Rates for coverage provided by the corporation must be actuarially sound pursuant to s. 627.062 and not competitive with approved rates charged in the admitted voluntary market so that the corporation functions as a residual market mechanism to provide insurance only when insurance cannot be procured in the voluntary market, except as otherwise provided in this paragraph. The office shall provide the corporation such information as would be necessary to determine whether rates are competitive. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Twelve percent for 2023.

b. Thirteen percent for 2024.

c. Fourteen percent for 2025.

d. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraphs 5. and 8. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing that is not competitive with approved rates in the admitted voluntary market for each commercial and personal line of business the corporation writes.

8. ~~The following~~ New or renewal personal lines policies that do not cover a primary residence ~~written on or after November 1, 2023,~~ are not subject to the rate increase limitations in subparagraph 5., but may not be charged more than 50 percent above, nor less than, the prior year's established rate for the corporation~~:~~

~~a. Policies that do not cover a primary residence;~~

~~b. New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631; or~~

~~c. Subsequent renewals of those policies, including the new policies in sub-subparagraph b., under which the coverage~~

~~for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631~~.

9. As used in this paragraph, the term "primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

Section 8. Section 628.011, Florida Statutes, is amended to read:

628.011 Scope of part.—This part applies only to domestic ~~stock~~ insurers, mutual insurers, and captive insurers, except that s. 628.341(2) applies also as to foreign and alien insurers.

Section 9. Section 628.061, Florida Statutes, is amended to read:

628.061 Investigation of proposed organization.—In connection with any proposal to organize or incorporate a domestic insurer, the office shall make an investigation of:

(1) The character, reputation, financial standing, and motives of the organizers, incorporators, and subscribers organizing the proposed insurer or any attorney in fact.

(2) The character, financial responsibility, insurance experience, and business qualifications of its proposed

officers, members of its subscribers' advisory committee, or officers of its attorney in fact.

(3) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, including the stockholders and directors of any attorney in fact.

Section 10. Subsections (1), (2), and (5) of section 628.801, Florida Statutes, are amended to read:

628.801 Insurance holding companies; registration; regulation.—

(1) An insurer that is authorized to do business in this state and that is a member of an insurance holding company shall, on or before April 1 of each year, register with the office and file a registration statement and be subject to regulation with respect to its relationship to the holding company as provided by law or rule. The commission shall adopt rules establishing the information and statement form required for registration and the manner in which registered insurers and their affiliates are regulated. The rules apply to domestic insurers, foreign insurers, and commercially domiciled insurers, except for foreign insurers domiciled in states that are currently accredited by the NAIC. Except to the extent of any conflict with this code, the rules must include all requirements and standards of the Insurance Holding Company System Model Regulation and ss. 4 and 5 of the Insurance Holding Company

System Regulatory Act ~~and the Insurance Holding Company System Model Regulation~~ of the NAIC, as adopted in December 2020 ~~2010~~. The commission may adopt subsequent amendments thereto if the methodology remains substantially consistent. The rules may include a prohibition on oral contracts between affiliated entities. Material transactions between an insurer and its affiliates must ~~shall~~ be filed with the office as provided by rule.

(2) ~~Effective January 1, 2015,~~ The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report on or before April 1. As used in this subsection, the term "ultimate controlling person" means a person who is not controlled by any other person. The report must, to the best of the ultimate controlling person's knowledge and belief, ~~must~~ identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report must ~~shall~~ be filed with the lead state office of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC and is confidential and exempt from public disclosure as provided in s. 624.4212.

(a) An insurer may satisfy this requirement by providing the office with the most recently filed parent corporation reports that have been filed with the Securities and Exchange

Commission which provide the appropriate enterprise risk information.

(b) The term "enterprise risk" means an activity, circumstance, event, or series of events involving one or more affiliates of an insurer which, if not remedied promptly, are likely to have a materially adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in s. 624.4085 or would cause the insurer to be in a hazardous financial condition.

(c) The office may adopt rules for filing the annual enterprise risk report in accordance with the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the NAIC, as adopted in December 2020.

(5) ~~Effective January 1, 2015,~~ The failure to file a registration statement, or a summary of the registration statement, or the enterprise risk filing report required by this section within the time specified for filing is a violation of this section.

Section 11. Section 629.011, Florida Statutes, is amended to read:

629.011 Definitions ~~"Reciprocal insurance" defined~~.—As used in this part, the term:

(1) "Affiliated person" of another person means any of the following:

(a) The spouse of the other person.

(b)1. The parents of the other person or their lineal descendants.

2. The parents of the other person's spouse or their lineal descendants.

(c) A person who directly or indirectly owns or controls, or holds with the power to vote, 10 percent or more of the outstanding voting securities of the other person.

(d) A person who directly or indirectly owns 10 percent or more of the outstanding voting securities that are directly or indirectly owned or controlled, or held with the power to vote, by the other person.

(e) A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person.

(f) A director, officer, trustee, partner, owner, manager, joint venturer, or employee, or another person who is performing duties similar to those of persons in such positions, of the other person.

(g) If the other person is an investment company, any investment adviser of such company or any member of an advisory board of such company.

(h) If the other person is an unincorporated investment company not having a board of directors, the depositor of such company.

(i) A person who has entered into an agreement, written or unwritten, to act in concert with the other person in acquiring, or limiting the disposition of:

1. Securities of an attorney in fact or controlling company that is a stock corporation; or

2. An ownership interest of an attorney in fact or controlling company that is not a stock corporation.

(2) "Attorney in fact" or "attorney" means the attorney in fact of a reciprocal insurer. The attorney in fact may be an individual, a corporation, or another person.

(3) "Controlling company" means a person, corporation, trust, limited liability company, association, or other entity owning, directly or indirectly, 10 percent or more of the voting securities of one or more attorneys in fact that are stock corporations, or 10 percent or more of the ownership interest of one or more attorneys in fact that are not stock corporations.

(4) "Reciprocal insurance" means ~~is that resulting from~~ an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all such persons.

(5) "Reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.

Section 12. Section 629.021, Florida Statutes, is repealed.

Section 13. Section 629.061, Florida Statutes, is repealed.

Section 14. Section 629.081, Florida Statutes, is amended to read:

629.081 Organization of reciprocal insurer.—

(1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer by applying ~~and make application~~ to the office for a permit to do so. A domestic reciprocal insurer may not be formed unless the persons so proposing have first received a permit from the office ~~a certificate of authority to transact insurance~~.

(2) The permit application, to be filed by the organizers or the proposed attorney in fact, must be in writing and made in accordance with forms prescribed by the commission. In addition to any applicable requirements of s. 628.051 and other relevant statutes, the application must include all of the following ~~shall fulfill the requirements of and shall execute and file with the office, when applying for a certificate of authority, a declaration setting forth~~:

(a) The name of the proposed reciprocal insurer, which must be in accordance with s. 629.051.~~;~~

(b) The location of the insurer's principal office, which must ~~shall~~ be the same as that of the proposed attorney in fact and must ~~shall~~ be maintained within this state.~~;~~

(c) The kinds of insurance proposed to be transacted.~~;~~

(d) The names and addresses of the original 25 or more subscribers.~~;~~

(e) The proposed designation and appointment of the proposed attorney in fact and a copy of the proposed power of attorney.~~;~~

(f) The names and addresses of the officers and directors of the proposed attorney in fact, if a corporation, or of its members, if other than a corporation.~~;~~

(g) The background information as specified in s. 629.227 for all officers, directors, managers, and those in equivalent positions of the proposed attorney in fact as well as for any person with an ownership interest of 10 percent or more in the proposed attorney in fact.

(h) The articles of incorporation and bylaws, or equivalent documents, of the proposed attorney in fact, dated within the last year and appropriately certified.

(i) The proposed charter ~~powers~~ of the subscribers' advisory committee, and the names and terms of office of the

members thereof, as well as the background information as specified in s. 629.227 for each proposed member.~~;~~

~~(h) That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;~~

(j)~~(i)~~ A copy of the proposed subscribers' agreement.~~;~~

~~(j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the office;~~

(k) ~~A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand; and~~

~~(l)~~ A copy of each policy, endorsement, and application form it then proposes to issue or use.

(l) Any other pertinent information and documents as reasonably requested by the office.

(3) The filing must be accompanied by the application fee required by s. 624.501(1)(a).

(4) The office shall evaluate and grant or deny the permit application in accordance with ss. 628.061, 628.071, and other relevant provisions of the code.

~~Such declaration shall be acknowledged by the attorney before an officer authorized to take acknowledgments.~~

Section 15. Section 629.091, Florida Statutes, is amended to read:

629.091 Reciprocal certificate of authority.—

(1) A domestic reciprocal insurer may seek a certificate of authority only after obtaining a permit.

(2) To apply for a certificate of authority as a domestic reciprocal insurer, the attorney in fact of an applicant who has previously received a permit from the office may file an application for a certificate of authority in accordance with forms prescribed by the commission which, in addition to applicable requirements of ss. 624.404, 624.411, 624.413, and other relevant statutes, consists of all of the following:

(a) Executed copies of any proposed or draft documents required as part of the permit application.

(b) A statement affirming that all moneys paid to the reciprocal insurer shall, after deducting therefrom any sum payable to the attorney in fact, be held in the name of the insurer and for the purposes specified in the subscribers' agreement.

(c) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such

subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate that was filed with and approved by the office.

(d) A copy of the bond required under s. 629.121.

(e) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand.

(f) Such other pertinent information or documents as reasonably requested by the office.

(3) If the reciprocal insurer intends to issue nonassessable policies upon receipt of a certificate of authority and if the office determines that the reciprocal insurer meets the legal requirements to issue nonassessable policies, including the surplus requirements, the office shall grant the authorization. If the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue or renew nonassessable policies or convert assessable policies to nonassessable policies, and s. 629.301 applies.

(4) The certificate of authority must ~~of a reciprocal insurer shall~~ be issued ~~to its attorney~~ in the name of the reciprocal insurer to its attorney in fact.

Section 16. Section 629.094, Florida Statutes, is created to read:

629.094 Continued eligibility for certificate of authority.-In order to maintain its eligibility for a

certificate of authority, a domestic reciprocal insurer must continue to meet all applicable conditions required for receiving the initial permit and certificate of authority under the insurance code and the rules adopted thereunder.

Section 17. Section 629.101, Florida Statutes, is amended to read:

629.101 Power of attorney in fact.—

(1) The rights and powers of the attorney of a reciprocal insurer are ~~shall be~~ as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth all of the following:

(a) The powers of the attorney.~~;~~

(b) That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged.~~;~~

(c) The general services to be performed by the attorney.~~;~~

(d) That the attorney has a fiduciary duty to the subscribers of the reciprocal insurer.

(e)~~(d)~~ The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer.~~; and~~

(f)~~(e)~~ Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a

specified amount, which amount may ~~shall be~~ not be less than 5 nor more than 10 times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder.~~;~~

(b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers.~~;~~

(c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee.~~; and~~

(d) Contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto must ~~shall~~ be reasonable and equitable, and no such power or agreement may ~~shall~~ be used or be effective in this state unless filed with the office.

Section 18. Section 629.225, Florida Statutes, is created to read:

629.225 Acquisitions.—

(1) A person may not, individually or in conjunction with an affiliated person of such person, directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire 10 percent or more of the outstanding voting securities of an attorney in fact that is a stock corporation or of a controlling company of an attorney in fact that is a stock

corporation; or conclude an acquisition of, or otherwise finally acquire, 10 percent or more of the ownership interest of an attorney in fact that is not a stock corporation or of a controlling company of an attorney in fact that is not a stock corporation, unless all of the following conditions are met:

(a)1. The person or affiliated person has filed with the office and sent to the principal office of the attorney in fact, any controlling company of the attorney in fact, the subscribers' advisory committee, and the domestic reciprocal insurer a letter of notification regarding the transaction or proposed transaction no later than 5 days after any form of tender offer or exchange offer is proposed, or no later than 5 days after the acquisition of the securities or ownership interest if a tender offer or exchange offer is not involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved.

2. The subscribers' advisory committee must provide the notification to the subscribers of the reciprocal insurer within 3 business days. Such notification must be provided on a form prescribed by the commission explaining what the notification is and letting the subscribers know of the filing deadlines for objecting to the acquisition.

(b) The person or affiliated person has filed with the office an application, signed under oath and prepared on forms prescribed by the commission, which contains the information specified in subsection (3). The application must be completed and filed within 30 days after any form of tender offer or exchange offer is proposed, or after the acquisition of the securities if a tender offer or exchange offer is not involved.

(c) The office has approved the tender offer or exchange offer, or acquisition if a tender offer or exchange offer is not involved.

(2) The person or affiliated person filing the notice required in paragraph (1)(a) may additionally request the office to waive the requirements of paragraph (1)(b), provided that there is no change in the ultimate controlling shareholders and no change in the ownership percentages of the ultimate controlling shareholders, and no unaffiliated parties acquire any direct or indirect interest in the attorney in fact. The office may waive the filing required in paragraph (1)(b) if it determines that in fact there is no change in the ultimate controlling shareholders and no change in the ownership percentages of the ultimate controlling shareholders, and no unaffiliated parties will acquire any direct or indirect interest in the attorney in fact.

(3) The application to be filed with the office and furnished to the attorney in fact must contain all of the

following information and any additional information as the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the reciprocal insurer's subscribers and of the public:

(a) The identity and background information specified in s. 629.227 of:

1. Each person by whom, or on whose behalf, the acquisition is to be made; and

2. Any person who controls, directly or indirectly, such other person, including each director, officer, trustee, partner, owner, manager, or joint venturer, or another person performing duties similar to those of persons in such positions, for the person.

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

(c) Any plans or proposals that such persons may have made to liquidate the attorney in fact or controlling company, to sell any of their assets or merge or consolidate them with any person, or to make any other major change in their business or corporate structure or management.

(d) The nature and the extent of the controlling interest which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the controlling interest is to be acquired of an

attorney in fact or controlling company which is not a stock corporation.

(e) The number of shares or other securities that the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired.

(f) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the attorney in fact or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof.

(4) The filing must be accompanied by the fee required under s. 624.501(1)(a).

(5) If any material change occurs in the facts provided in the application filed with the office pursuant to this section, or the background information required under s. 629.227, an amendment specifying such changes must be filed immediately with the office, and a copy of the amendment must be sent to the principal office of the attorney in fact and to the principal office of the controlling company.

(6)(a) The acquisition application must be reviewed in accordance with chapter 120. The office may, on its own initiative, or, if requested to do so in writing by a substantially affected person, shall conduct a proceeding to consider the appropriateness of the proposed filing. Time periods for purposes of chapter 120 are tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the office within 10 days after the date on which notice of the filing is given, or 10 days after the date on which notice of the filing is sent to the subscribers by the subscribers' advisory committee, whichever is later. During the pendency of the proceeding or review period by the office, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition as long as the acquisition's becoming final is conditioned upon obtaining office approval. However, at any time that the office finds that an immediate danger to the public health, safety, and welfare of the reciprocal insurer's subscribers exists, the office shall immediately order, pursuant to s. 120.569(2)(n), the proposed acquisition disapproved and any further steps to conclude the acquisition ceased.

(b) During the pendency of the office's review of any acquisition subject to this section, the acquiring person may not make any material change in the operation of the attorney in

fact or controlling company unless the office has specifically approved the change, and the acquiring person may not make any material change in the management of the attorney in fact unless advance written notice of the change in management is furnished to the office. As used in this paragraph, the term "material change in the operation of the attorney in fact" means a transaction that disposes of or obligates 5 percent or more of the capital and surplus of the attorney in fact or of any domestic reciprocal insurer. The term "material change in the management of the attorney in fact" means any change in management involving officers or directors of the attorney in fact or any person of the attorney in fact or controlling company having authority to dispose of or obligate 5 percent or more of the attorney in fact's capital or surplus. The office must approve a material change in operations if it finds the applicable provisions of subsection (7) have been met. The office may disapprove a material change in management if it finds that the applicable provisions of subsection (7) have not been met, and, in such case, the attorney in fact shall promptly change management as acceptable to the office.

(c) If a request for a proceeding is filed, the proceeding must be conducted within 60 days after the date the written request for a proceeding is received by the office. A recommended order must be issued within 20 days after the date of the close of the proceedings. A final order must be issued

within 20 days after the date of the recommended order or, if exceptions to the recommended order are filed, within 20 days after the date the exceptions are filed.

(7) The office may disapprove any acquisition subject to this section by any person, or any affiliated person of such person, who:

(a) Willfully violates this section;

(b) In violation of an order issued by the office pursuant to subsection (12), fails to divest himself or herself of any stock or ownership interest obtained in violation of this section or fails to divest himself or herself of any direct or indirect control of such stock or ownership interest, within 25 days after such order; or

(c) In violation of an order issued by the office pursuant to subsection (12), acquires an additional stock or ownership interest in an attorney in fact or controlling company or direct or indirect control of such stock or ownership interest, without complying with this section.

(8) The person filing the application required by this section has the burden of proof. The office must approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed application if no proceeding is conducted, that:

(a) The financial condition of the acquiring person will not jeopardize the financial stability of the attorney in fact

or prejudice the interests of the reciprocal insurer's subscribers or the public.

(b) Any plan or proposal that the acquiring person has made:

1. To liquidate the attorney in fact, sell its assets, or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; or

2. To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the attorney in fact,

is fair and free of prejudice to the reciprocal insurer's subscribers or to the public.

(c) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the attorney in fact indicate that the acquisition is in the best interest of the reciprocal insurer's subscribers and in the public interest.

(d) The natural persons for whom background information is required to be furnished pursuant to this section have such backgrounds as to indicate that it is in the best interests of the reciprocal insurer's subscribers and in the public interest

to permit such persons to exercise control over the attorney in fact.

(e) The directors and officers, if such attorney in fact or controlling company is a stock corporation, or the trustees, partners, owners, managers, joint venturers, or other persons performing duties similar to those of persons in such positions, if such attorney in fact or controlling company is not a stock corporation, to be employed after the acquisition have sufficient insurance experience and ability to ensure reasonable promise of successful operation.

(f) The management of the attorney in fact after the acquisition will be competent and trustworthy and will possess sufficient managerial experience so as to make the proposed operation of the attorney in fact not hazardous to the insurance-buying public.

(g) The management of the attorney in fact after the acquisition will not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or otherwise acted in bad faith with respect thereto.

(h) The acquisition is not likely to be hazardous or prejudicial to the reciprocal insurer's subscribers or to the public.

(i) The effect of the acquisition would not substantially lessen competition in the line of insurance for which the reciprocal insurer is licensed or certified in this state or would not tend to create a monopoly therein.

(9) A vote by the stockholder of record, or by any other person, of any security acquired in contravention of this section is not valid. Any acquisition contrary to this section is void. Upon the petition of the attorney in fact, the controlling company, or the reciprocal insurer, the circuit court for the county in which the principal office of the attorney in fact is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce this section. There is a private right of action in favor of the attorney in fact or controlling company to enforce this section. A demand upon the office that it perform its functions is not required as a prerequisite to any suit by the attorney in fact or controlling company against another person, and in no case is the office deemed a necessary party to any action by the attorney in fact or controlling company to enforce this section. Any person who makes or proposes an acquisition requiring the filing of an application pursuant to this section, or who files such an application, is deemed thereby to have designated the Chief Financial Officer, or his or her assistant or deputy or another person in charge of his or her office, as such person's agent for service of process

under this section and is deemed thereby to have submitted himself or herself to the administrative jurisdiction of the office and to the jurisdiction of the circuit court.

(10) Any approval by the office under this section does not constitute a recommendation by the office of the tender offer or exchange offer, or the acquisition if a tender offer or exchange offer is not involved. It is unlawful for a person to represent that the office's approval constitutes a recommendation. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute-of-limitations period for the prosecution of an offense committed under this subsection is 5 years.

(11) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the attorney in fact as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the attorney in fact is relieved of any duty to register or report under this section which may arise out of the attorney in fact's

relationship with the person unless the office disallows the disclaimer.

(12) If the office determines that any person or any affiliated person of such person has acquired 10 percent or more of the outstanding voting securities of an attorney in fact or controlling company that is a stock corporation, or 10 percent or more of the ownership interest of an attorney in fact or controlling company that is not a stock corporation, without complying with this section, the office may order that the person and any affiliated person of such person cease acquisition of the attorney in fact or controlling company and, if appropriate, divest itself of any stock or ownership interest acquired in violation of this section.

(13)(a) The office shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of the reciprocal insurer whose attorney in fact or controlling company is acquired in violation of this section.

(b) If a reciprocal insurer is subject to suspension or revocation pursuant to paragraph (a), any other reciprocal insurer using the same attorney in fact is also subject to suspension or revocation. In such case, the office may offer any affected reciprocal insurer, through its subscriber representatives, the ability to cure any suspension or revocation by procuring another attorney in fact acceptable to

the office or by taking any other action agreed to by the office.

(14) This section applies to domestic reciprocal insurers and the attorney in fact of domestic reciprocal insurers. This section does not apply to any acquisition of voting securities or ownership interest of an attorney in fact or of a controlling company by any person who is the owner of a majority of the voting securities or ownership interest with the approval of the office under this section or s. 629.091.

Section 19. Section 629.227, Florida Statutes, is created to read:

629.227 Background information.—The information as to the background and identity of each person about whom information is required to be furnished pursuant to s. 629.081 or s. 629.225 must include, but need not be limited to, all of the following:

(1) A sworn biographical statement, on forms adopted by the commission, which must include, but need not be limited to, the following information:

(a) Occupations, positions of employment, and offices held during the past 20 years, including the principal business and address of any business, corporation, or organization where each occupation, position of employment, or office occurred.

(b) Whether, at any time during such 20-year period, the person was convicted of any crime other than a traffic violation.

(c) Whether, during such 20-year period, the person has been the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and the disposition of the proceeding.

(d) Whether, during such 20-year period, the person has been the subject of any proceeding under the federal Bankruptcy Act.

(e) Whether, during such 20-year period, any person or other business or organization in which the person was a director, officer, trustee, partner, owner, manager, or other official has been the subject of any proceeding under the federal Bankruptcy Act, either during the time of that person's tenure with the business or organization or within 12 months thereafter.

(f) Whether, during such 20-year period, the person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details as to any such event.

(g) Whether, during such 20-year period, the person has served as the attorney in fact, a subscribers' advisory committee member, or any other manager or officer of a

reciprocal insurer or insurer that became insolvent or had its certificate of authority suspended or revoked.

(2) Fingerprints of each person.

(3) An authorization for release of information in regard to the investigation of such person's background.

(4) Any additional information that the office deems necessary to determine the character, experience, ability, and other qualifications of the person, or affiliated person of such person, for the protection of the reciprocal insurer's subscribers and of the public.

Section 20. Section 629.229, Florida Statutes, is created to read:

629.229 Attorneys in fact, officers, and directors of insolvent reciprocal insurers or other insurers.—A person who served as an attorney in fact, or as an officer, director, or manager of an attorney in fact, a member of a subscribers' advisory committee of a reciprocal insurer doing business in this state, or an officer or director of any other insurer doing business in this state, and who served in that capacity within the 2-year period before the date the insurer or reciprocal insurer became insolvent, for an insolvency that occurs on or after July 1, 2024, may not thereafter:

(1) Serve as an attorney in fact, or as an officer, director, or manager of an attorney in fact; a member of a subscribers' advisory committee of a reciprocal insurer doing

business in this state; or an officer or director of any other insurer doing business in this state; or

(2) Have direct or indirect control over the selection or appointment of an attorney in fact, or of an officer, director, or manager of an attorney in fact; or a member of the subscribers' advisory committee of a reciprocal insurer doing business in this state; or an officer or director of any insurer doing business in this state, through contract or trust or by operation of law,

unless the person demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Section 21. Section 629.261, Florida Statutes, is amended to read:

629.261 Nonassessable policies.—Upon the impairment of the surplus of a nonassessable reciprocal insurer, the office shall revoke the authorization issued under s. 629.091(3) or s. 629.291(5).

~~(1) If a reciprocal insurer has a surplus as to policyholders required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the office shall issue its certificate authorizing the insurer to extinguish the contingent liability of subscribers under its~~

~~policies then in force in this state and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.~~

~~(2) Upon impairment of such surplus, the office shall forthwith revoke the certificate.~~ Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but, after such revocation, no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

~~(3) The office shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it; except that, if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.~~

Section 22. Subsections (1), (2), and (4) of section 629.291, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

629.291 Merger or conversion.—

(1) A ~~domestic~~ reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice, and subject to ~~the~~ approval by ~~of~~ the office of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer, to be thereafter governed by the applicable sections of the Florida Insurance Code. However, a domestic stock insurer may not convert to a reciprocal insurer.

(2) A plan to merge a reciprocal insurer with another reciprocal insurer or for conversion of the reciprocal insurer to a stock or mutual insurer must be filed with the office on forms adopted by the office and must contain such information as the office reasonable requires to evaluate the transaction ~~Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance~~.

(4) Reinsurance of all or substantially all of the insurance in force of a domestic reciprocal insurer in another insurer is ~~shall be~~ deemed to be a merger for the purposes of this section.

(5)(a) An assessable reciprocal insurer may convert to a nonassessable reciprocal insurer if:

1. The subscribers' advisory committee approves the conversion;

2. The attorney in fact submits the application for conversion on the required application form; and

3. The office finds that the application for conversion meets the minimum statutory requirements.

(b) If the office approves the application for conversion, the assessable reciprocal insurer may convert to a nonassessable reciprocal insurer by:

1. Extinguishing the contingent liability of subscribers under all policies then in force in this state;

2. Omitting contingent liability provisions in all policies delivered or issued in this state after the conversion; and

3. Otherwise extinguishing the contingent liability of all of its subscribers. However, if the reciprocal insurer is transacting insurance as an authorized insurer in another state and that state's laws require the insurer to issue policies with contingent liability provisions, the insurer may issue contingent liability policies in that other state.

(c) If the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue nonassessable policies

or convert assessable policies to nonassessable policies, and s. 629.301 applies.

Section 23. Section 629.525, Florida Statutes, is created to read:

629.525 Rulemaking authority.—The commission shall adopt, amend, or repeal rules pursuant to chapter 120 which are necessary to implement this chapter.

Section 24. Paragraph (h) of subsection (3) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(3) As used in this section:

(h) "Local government liability pool" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~ or any self-insurance program created pursuant to s. 768.28(16), formed and controlled by counties or municipalities of this state to provide liability insurance coverage for counties, municipalities, or other public agencies of this state, which pool may contract with other parties for the purpose of providing claims administration, processing, accounting, and other administrative facilities.

Section 25. Subsection (3) of section 626.9531, Florida Statutes, is amended to read:

626.9531 Identification of insurers, agents, and insurance contracts.—

(3) For the purposes of this section, the term "risk bearing entity" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~, a commercial self-insurance fund as defined in s. 624.462, a group self-insurance fund as defined in s. 624.4621, a local government self-insurance fund as defined in s. 624.4622, a self-insured public utility as defined in s. 624.46225, or an independent educational institution self-insurance fund as defined in s. 624.4623. For the purposes of this section, the term "risk bearing entity" does not include an authorized insurer as defined in s. 624.09.

Section 26. This act shall take effect July 1, 2024.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to insurance; amending s. 624.3161, F.S.; revising the entities for which the Office of Insurance Regulation is required to conduct market conduct examinations; amending s. 624.424, F.S.; requiring insurers and insurer groups to file a specified supplemental report on a monthly basis; requiring that such report include certain information for each zip code; amending s. 624.4305, F.S.; authorizing the Financial Services Commission to adopt rules related to notice of nonrenewal of residential property insurance policies; amending

s. 624.46226, F.S.; revising the requirements for public housing authority self-insurance funds; amending s. 626.9201, F.S.; prohibiting insurers from canceling or nonrenewing certain insurance policies under certain circumstances; providing exceptions; providing construction; authorizing the commission to adopt rules and the Commissioner of Insurance Regulation to issue orders; amending s. 627.062, F.S.; specifying requirements for rate filings if certain models are used; amending s. 627.351, F.S.; revising requirements for certain policies that are not subject to certain rate increase limitations; amending ss. 628.011 and 628.061, F.S.; conforming provisions to changes made by the act; amending s. 628.801, F.S.; revising requirements for rules adopted for insurers that are members of an insurance holding company; deleting an obsolete date; authorizing the office to adopt rules; amending s. 629.011, F.S.; defining terms; repealing s. 629.021, F.S., relating to the definition of the term "reciprocal insurer"; repealing s. 629.061, F.S., relating to the term "attorney"; amending s. 629.081, F.S.; revising the procedure for persons to organize as a domestic reciprocal insurer; specifying requirements for the permit application; requiring that the application be accompanied by a specified fee; requiring the office to evaluate and grant or deny the permit application in accordance with specified provisions; amending s. 629.091, F.S.; providing requirements for the application for a certificate of authority

to operate as a domestic reciprocal insurer; requiring the office to grant the authorization for reciprocal insurers to issue certain policies under certain circumstances; prohibiting insurers from issuing and renewing certain policies under a specified circumstance; requiring that such certificate of authority be issued in the name of the reciprocal insurer to its attorney in fact; creating s. 629.094, F.S.; requiring a domestic reciprocal insurer to meet certain requirements to maintain its eligibility for a certificate of authority; amending s. 629.101, F.S.; revising requirements for the power of attorney given by subscribers of a domestic reciprocal insurer to the attorney in fact; conforming provisions to changes made by the act; creating s. 629.225, F.S.; prohibiting persons from acquiring certain securities or ownership interests of certain attorneys in fact and controlling companies of certain attorneys in fact; providing an exception; authorizing certain persons to request that the office waive certain requirements; providing that the office may waive certain requirements if specified determinations are made; specifying the requirements of an application to the office relating to certain acquisitions; requiring that such application be accompanied by a specified fee; requiring that amendments be filed with the office under certain circumstances; specifying the manner in which the acquisition application must be reviewed; authorizing the office, and requiring the office if a

request for a proceeding is filed, to conduct a proceeding within a specified timeframe to consider the appropriateness of such application; requiring that certain time periods be tolled; requiring that written requests for a proceeding be filed within a certain timeframe; authorizing certain persons to take all steps to conclude the acquisition during the pendency of the proceeding or review period; requiring the office to order a proposed acquisition disapproved and that actions to conclude the acquisition be ceased under certain circumstances; prohibiting certain persons from making certain changes during the pendency of the office's review of an acquisition; providing an exception; defining the terms "material change in the operation of the attorney in fact" and "material change in the management of the attorney in fact"; requiring the office to approve or disapprove certain changes upon making certain findings; requiring that a proceeding be conducted within a certain timeframe; requiring that recommended orders and final orders be issued within a certain timeframe; specifying the circumstances under which the office may disapprove an acquisition; specifying that certain persons have the burden of proof; requiring the office to approve an acquisition upon certain findings; specifying that certain votes are not valid and that certain acquisitions are void; specifying that certain provisions may be enforced by an injunction; creating a private right of action in favor of the attorney in fact or the

controlling company to enforce certain provisions; providing that a certain demand upon the office is not required before certain legal actions; providing that the office is not a necessary party to certain actions; specifying the persons who are deemed designated for service of process and who have submitted to the administrative jurisdiction of the office; providing that approval by the office does not constitute a certain recommendation; providing that certain actions are unlawful; providing criminal penalties; providing a statute of limitations; authorizing a person to rebut a presumption of control by filing certain disclaimers; specifying the contents of such disclaimer; specifying that, after a disclaimer is filed, the attorney in fact is relieved of a certain duty; authorizing the office to order certain persons to cease acquisition of the attorney in fact or controlling company and divest themselves of any stock or ownership interest under certain circumstances; requiring the office to suspend or revoke the reciprocal certificate of authority under certain circumstances; specifying that the attorney in fact is deemed to be hazardous to its policyholders if the reciprocal insurer is subject to suspension or revocation; authorizing the office to offer the reciprocal insurer the ability to cure any suspension or revocation under certain circumstances; providing applicability and nonapplicability; creating s. 629.227, F.S.; specifying the information as to the background and identity of

certain persons which must be furnished by such persons; creating s. 629.229, F.S.; prohibiting certain persons from serving in specified positions of reciprocal insurers or insurers under certain circumstances; amending s. 629.261, F.S.; removing provisions relating to certain authorizations for reciprocal insurers; amending s. 629.291, F.S.; providing that certain insurers that merge are governed by the insurance code; prohibiting domestic stock insurers from converting to reciprocal insurers; requiring that specified plans be filed with the office and that such plans contain certain information; authorizing the conversion of assessable reciprocal insurers to nonassessable reciprocal insurers under certain circumstances; providing certain procedures when certain reciprocal insurers convert; prohibiting a reciprocal insurer that becomes impaired from issuing or converting certain policies; providing applicability; creating s. 629.525, F.S.; requiring the commission to adopt, amend, or repeal certain rules; amending ss. 163.01 and 626.9531, F.S.; conforming provisions to changes made by the act; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1639 Gender and Biological Sex
SPONSOR(S): Select Committee on Health Innovation, Bankson and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Health Innovation	10 Y, 5 N, As CS	Lloyd	Calamas
2) Insurance & Banking Subcommittee		Fortenberry	Lloyd
3) Infrastructure Strategies Committee			

SUMMARY ANALYSIS

Gender dysphoria is a behavioral health disorder diagnosable by a health care practitioner in which a person experiences incongruence between one's experienced or expressed gender and birth sex, and meets age-specific diagnostic sub-criteria. Treatment for gender dysphoria has evolved from a behavioral health approach focused on helping patients become comfortable with their biological sex, to an affirmation-focused approach potentially involving puberty blocking medication for minors and potentially cross-hormone medication and surgical interventions. Current law prohibits these services for minors, and requires informed consent for adults.

Health insurers and health maintenance organizations (HMOs) are regulated by the Office of Insurance Regulation and the Agency for Health Care Administration, respectively. Current law does not regulate insurance coverage of sex-reassignment prescriptions or procedures.

CS/HB 1639 requires any health insurer or health maintenance organization coverage policy delivered in the state after July 1, 2024, which covers sex-reassignment prescriptions or procedures, to also provide coverage for treatment to de-transition from such prescriptions or procedures, for an appropriate additional premium. In addition, insurers and HMOs that offer policies with coverage for sex-reassignment prescriptions or procedures must also offer a policy that does not provide that coverage. The bill also forbids all health insurers and HMOs from prohibiting coverage of mental health or therapeutic services to treat a person's perception that his or her sex is inconsistent with the person's sex at birth by affirming the insured's sex at birth.

Current law requires driver licenses and identification cards issued by the Department of Highway Safety and Motor Vehicles (DHSMV) to include the licensee's gender, among other information; however, current law does not define "gender" or outline procedures relating to the identification of a person's gender. CS/HB 1639 requires a driver's license or identification card to state the applicant's sex at birth, rather than gender.

The bill has an insignificant negative fiscal impact on the DHSMV and no fiscal impact on local government. The bill may have an indeterminate, negative fiscal impact on health insurers and HMOs, depending on their current coverage options and offerings.

The bill has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Gender Dysphoria

Transgender and gender nonconforming are general terms for individuals whose gender identity, role, or expression differ from their biological sex at birth.[1]

Gender dysphoria refers to the significant discomfort or distress felt as a result of the gender incongruency.[2] Gender dysphoria is a behavioral health disorder diagnosable by a health care practitioner. The American Psychiatric Association's Diagnostic Statistical Manual of Mental Disorders (DSM) classification of gender dysphoria denote a "marked incongruence between one's experienced/expressed gender and assigned[3] gender, of at least six months' duration" and manifestation of sub-criteria that differs based on age.[4]

Treatment

Treatment of gender dysphoria has evolved. Traditionally, gender identity issues were treated as a mental illness, with treatment primarily provided through psychotherapy to help patients become comfortable with their sex at birth.[5]

In the late 1990's, treatment began shifting to an "affirmative care model" after physicians in the Netherlands published a report on positive psychological outcomes for a transgender adolescent treated with hormones.[6] Those physicians suppressed puberty in the early stages followed by cross-sex hormone therapy starting at age 16. This treatment model became known as the "Dutch Protocol".

The "Dutch Protocol", as well as the re-categorization of gender identity issues in the DSM, created a profound shift in the medically accepted treatment for gender issues. In 2013, the authors of the DSM replaced the term "gender identity disorder" with "gender dysphoria in children" and "gender dysphoria in adolescence and adults" to diagnose and treat the distress individuals felt by the incongruency between their gender identities and their bodies.[7] The medical community stopped classifying gender identity issues as a mental illness. The "Dutch Protocol" was subsequently incorporated into the widely adopted standards of care for the treatment of transgender patients.[8]

The treatment goal now focuses on affirming the patient's gender identity rather than affirming the gender of the patient's sex at birth. Treatment for gender dysphoria now primarily addresses the

[1] Coleman, E., Radix, A.E., Bouman, W.P., Brown, G.R., de Vries, A.L.C., et al, (2022), Standards of Care for the Health of Transgender and Gender Diverse People, Version 8, *International Journal of Transgender Health*, 23(S1), S1-S260.
[2] *Id*.
[3] The DSM uses "assigned" to refer to the delivery physician's assessment and notation of the child's biological sex, usually based on external genitalia. *See* American Psychiatric Association, *Gender Dysphoria*, available at, https://www.psychiatry.org/patients-families/gender-dysphoria (last visited Jan. 23, 2024).
[4] American Psychiatric Association, (2013), Diagnostic and Statistical Manual of Mental Disorders (5th ed.), Arlington, VA: American Psychiatric Publishing.
[5] *See* Diagnostic and statistical manual of mental disorders. 3rd ed. Washington, DC: American Psychiatric Publishing; 1980; Diagnostic and statistical manual of mental disorders. 4th ed. Washington, DC; American Psychiatric Publishing; 1994.
[6] Cohen-Kettenis P.T., van Goozen S.H., (1998), Pubertal delay as an aid in diagnosis and treatment of a transsexual adolescent, *Eur Child Adolsc. Psychiatry*, 7(4):246-8.
[7] The American Psychiatric Association stated that "it is important to note that gender nonconformity is not itself a mental disorder". *Supra* note 4.
[8] *Supra* note 2; Hembree, W., Cohen-Kettenis, P., et al, (2017), Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline, *Journal of Clinical Endocrinology & Metabolism*, 102(11):2896-3903.

incongruency with psychotherapy and medical interventions that align the body with the mind, rather than the mind with the body. This treatment may include:[9]

- Psychotherapy to address the negative impact of gender dysphoria and mental health, which includes social transitioning to affirm an individual's felt gender identity, role, and expression.
- Puberty blockers to suppress the release of testosterone or estrogen and stop the onset of secondary sex characteristics.
- Cross-sex hormone therapy to feminize or masculinize the body.
- Sex reassignment surgery to change primary and/or secondary sex characteristics (e.g., breasts/chest, external and/or internal genitalia, facial features, and body contouring).

Concerns with Treatment

Clinicians and academics have raised concerns with the appropriateness of medical interventions for minors based on the lack of rigorous scientific research on the issue. Various issues bring the value of gender treatment research into question, specifically: many lack randomized control trials, use small sample sizes, and have a medium to high risk of bias due to recruitment design.[10] From the perspective of some clinicians, there are no studies that sufficiently evaluate the long-term impact of medical treatments, so the long-term effects on physical developments, fertility, sexual function and brain development is unknown.[11]

Limited research suggests access to puberty blockers and gender-affirming hormones may improve mental health outcomes, including reduced anxiety, depression, self-harm, and suicidality, in the short-term.[12] On the other hand, other research found a higher rate of suicide attempts and suicide completion in the short term, and much higher rates of suicide compared to the general population beginning 10 years post-transition.[13]

Researchers are just beginning to understand the unintended physical effects of transgender treatment. Puberty is a time of complex chemical changes that direct the development of many bodily functions. Taking puberty blockers at that time can prevent that development, with the possibility of significant future harms as an adult. For example, recent studies document the effect of puberty-blocking medications on bone development, causing severe lack of density, which may be irreversible.[14] The long-term effect of puberty blockers and cross-sex hormone treatment on sexual function in adulthood requires further research. One literature review noted both positive and negative effects, but also noted that there is no valid tool to accurately measure sexual health outcomes.[15] Similarly, researchers are beginning to express concerns about the impact on the brain, including permanent alterations to neurodevelopment. [16]

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[9] *Supra* note 3.
[10] *See* Hruz, P., (2019), Deficiencies in Scientific Evidence for Medical Management of Gender Dysphoria, *The Linacre Quarterly* 87:1, 34-42.; Abbruzzese, E., Levine, S., Mason, J., (2023), The Myth of "Reliable Research" in Pediatric Gender Medicine: A critical evaluation of the Dutch Studies – and research that has followed, *Journal of Sex & Martial Therapy* DOI: 10.1080/0092623X.2022.2150346.
[11] *Supra* note 9.
[12] *See* Allen, L. R., Watson, L. B., Egan, A. M., Moser, C. N., (2019), Well-being and suicidality among transgender youth after gender-affirming hormones, *Clinical Practice in Pediatric Psychology*, 7(3), 302.
[13] Dhejne C., Lichtenstein, P., Boman M., Johansson A., Långström N., Landén, M., (2011), Long-term follow-up of transsexual persons undergoing sex reassignment surgery: cohort study in Sweden, *PLoS One*, vol. 6, issue 2.
[14] See, e.g., Joseph T, Ting J, Butler G. The effect of GnRH analogue treatment on bone mineral density in young adolescents with gender dysphoria: Findings from a large national cohort. *J Pediatr Endocrinol Metab*. 2019; 10: 1077– 1081; Lee J., et al, (2020), Low bone mineral density in early pubertal transgender/gender diverse youth: findings from the trans youth care study, *J Endocr Soc*. Sep 1; 4(9): bvaa065. In 2022, the Endocrine Society took the position that more research is needed in this area to properly address bone health in young patients. Endocrine Society, "Longer treatment with puberty-delaying medication in transgender youth leads to lower bone mineral density", June 12, 2022, available at https://admin.endocrine.org/news-and-advocacy/news-room/2022/longer-treatment-with-puberty-delaying-medication-leads-to-lower-bone-mineral-density (last visited Jan. 20, 2024).
[15] Mattawanon N., Charoenkwan K., Tangpricha V., (2021), Sexual dysfunction in transgender people: a systematic review, *Urol Clin N Am* 48 (2021) 437–460. See, Shirazi TN, Self H, Dawood K, et al., Pubertal timing predicts adult psychosexuality: Evidence from typically developing adults and adults with isolated GnRH deficiency, *Psychoneuroendocrinology*. 2020; 104733:104733;
[16] See, e.g.,Chen D, Strang JF, Kolbuck VD, et al. Consensus parameter: Research methodologies to evaluate neurodevelopmental effects of pubertal suppression in transgender youth. *Transgender Health*. 2020; 4: 246– 257.

Regulation of Sex-Reassignment Prescriptions and Procedures in Florida

Current law regulates sex-reassignment prescriptions and procedures as a matter of practitioner licensure. These prescriptions and procedures include:[17]

- Puberty blockers prescribed to stop or delay normal puberty in order to affirm a person's perception of his or her sex if that perception is inconsistent with the person's sex;[18]
- Hormones or hormone antagonists prescribed to affirm a person's perception of his or her sex if that perception is inconsistent with the person's sex; and
- Medical procedures to affirm a person's perception of his or her sex if that perception is inconsistent the person's sex.

Current law prohibits sex-reassignment prescriptions and procedures for patients under age 18, with exceptions for minors actively receiving this treatment at the time the law was enacted in 2023. For adults, physicians must obtain specified informed consent on a form adopted by the Boards of Medicine and Osteopathic Medicine.[19]

Regulation of Insurers and Health Maintenance Organizations

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk bearing entities in Florida.[20] The Agency for Health Care Administration (AHCA) regulates the quality of care by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from AHCA.[21]

All persons who transact insurance in this state must comply with the Florida Insurance Code (Code).[22] The OIR has the authority to collect, propose, publish, and disseminate any information relating to the subject matter of the Code,[23] and may investigate any matter relating to insurance.[24]

A health insurance mandate is a legal requirement that an insurance company or health plan cover specific benefits, or services by particular health care providers, or specific patient groups. A contingent coverage mandate requires coverage of a service, condition, or provider's care *only if* coverage is provided for a certain other service, condition, or provider's care. In general, coverage mandates increase the cost of health coverage in varying amounts depending on the cost of the mandated care and the amount of patient utilization of that care.

Mandated offerings, on the other hand, do not mandate that certain benefits be provided. Rather, a mandated offering law requires that insurers offer an option for coverage for a particular benefit or specific patient groups, which may require an additional premium and which the consumer is free to accept or reject.

Current Florida law requires every person or organization seeking consideration of a legislative proposal which would mandate a health coverage or the offering of a health coverage by an insurer, to submit to the Agency for Health Care Administration and the legislative committees having jurisdiction, a report that assesses the social and financial impacts of the proposed coverage.[25] To the extent information is available, the report should address:

[17] S. 456.08, F.S.
[18] Under current law, a person's sex is indicated by a person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth. S. 456.001(8), F.S.
[19] S. 456.52, F.S.
[20] S. 20.121(3)(a), F.S.
[21] S. 641.21(1)(1), F.S.
[22] S. 624.11, F.S. The Code is comprised of chs. 624-632, 634-636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.
[23] S. 624.307(4), F.S.
[24] S. 624.307(3), F.S.
[25] S. 624.215, F.S.

- The extent to which the treatment or service is generally used by a significant portion of the population.
- The extent to which insurance coverage is generally available; or, if not generally available, results in persons avoiding necessary health care treatment.
- The extent to which lack of coverage results in unreasonable financial hardship.
- The level of public demand for the treatment or service.
- The level of public demand for insurance coverage of the treatment or service.
- The level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.
- The extent to which coverage will increase or decrease the cost of the treatment or service.
- The extent to which coverage will increase the appropriate uses of the treatment or service.
- The extent to which the treatment or service will be a substitute for a more expensive treatment or service.
- The extent to which the coverage will increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders.
- The impact of this coverage on the total cost of health care.

The House Health and Human Services Committee has not received a report for CS/HB 1639.

Currently, the Code does not regulate coverage of sex-reassignment prescriptions or procedures. The extent to which health insurers and HMOs provide coverage for sex-reassignment prescriptions or procedures is unknown.

State Driver Licenses and Identification Cards

Under Florida law, an application for the issuance of an identification card or a driver license from the Department of Highway Safety and Motor Vehicles (DHSMV) must include certain information, including the applicant's gender.[26] Additionally, a printed driver license issued by DHSMV to a driver must include, among other requirements, a licensee's gender and a space upon which the licensee shall affix his or her usual signature.[27] Florida law does not define "gender" in the context of driver license and identification card issuance.

Although not expressed in Florida law, the DHSMV Driver License Operations Manual governs how gender is determined for purposes of driver licenses and identification cards. Primarily, an applicant's gender is taken from the primary identification document, such as a birth certificate or a valid and non-expired United States passport. If a primary identification document does not list a gender, then the customer would specify which gender they most closely identify with for the use of the credential. Similarly, if the primary identification document indicates "nonbinary X" for gender, and the applicant presents no other primary resource documentation indicating gender, then the applicant would specify the gender they must closely identify with on the application.[28]

To change a gender on a driver license or identification card,[29] an applicant can present a credential from another state with the desired gender, a certified court order, or a signed statement on official letterhead from a physician or advanced practice nurse meeting certain criteria. The statement must include language stating that the applicant is undergoing clinical treatment for gender transition, and language declaring under penalty of perjury that the statement is true and correct.[30] The DHSMV follows standards established by the World Professional Association for Transgender Health.[31]

Effect of the Bill

Regulation of Insurers and Health Maintenance Organizations

[26] Ss. 322.051(1), F.S. and 322.08(2)(a), F.S.
[27] S. 322.14(1)(a), F.S.
[28] Florida Department of Highway Safety and Motor Vehicles, *Driver License Operations Manual, IR08.3 - Establishing Gender*.
[29] Other than for a clerical error.
[30] Florida Department of Highway Safety and Motor Vehicles, *Driver License Operations Manual, IR08.4 - Gender Change.*
[31] *Id*. at p. 2

The bill authorizes insurers and HMOs to cover sex-reassignment prescriptions and procedures, for an additional premium, but imposes a contingent coverage mandate related to sex-reassignment coverage: a health insurer or HMO which covers sex-reassignment prescriptions or procedures must also cover treatment to treatments to de-transition from such prescriptions or procedures.

The impact of this provision is unclear, because the extent of sex-reassignment prescriptions or procedures coverage, and de-transition coverage, is unknown. Health insurers and HMOs providing both types of coverage will not be affected by the bill; similarly, those not providing covering for sex-reassignment prescriptions or procedures will be unaffected. Insurers and HMOs providing coverage for sex-reassignment prescriptions or procedures only, without de-transition coverage, may comply with the conditional mandate by either providing de-transition coverage, for an additional cost, or by eliminating coverage for sex-reassignment prescriptions or procedures (thereby eliminating the pre-condition that triggers the contingent mandate).

The bill also imposes a mandated offering: an insurer or HMO which issues a policy that provides coverage for sex-reassignment prescriptions and procedures must also offer a policy that does not provide such coverage. Again, it is unknown how many health insurers and HMOs issue policies that provide this coverage and so would be subject to the requirement to offer policies that do not cover it.

Finally, the bill forbids health insurers and HMOs from prohibiting coverage of mental health and therapeutic services to treat a person's perception that his or her sex is inconsistent with sex at birth by affirming the person's sex at birth.

State Driver Licenses and Identification Cards

The bill replaces the statutory term "gender" with the term "sex", as it relates to driver license and identification card issuance. Specifically, the bill provides that an application for the issuance of an identification card or a driver license from DHSMV must include the applicant's sex. The bill defines "sex" as a person's sex indicated at birth using a definition consistent with that used in health care practitioner licensure laws.[32] DHSMV will be required to amend operational policies to reflect these changes..

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 322.01, F.S., relating to definitions.
Section 2: Amends 322.051, F.S., relating to identification cards.
Section 3: Amends 322.08, F.S., relating to application for licenses and identification cards.
Section 4: Amends 322.14, F.S.; relating to licenses issued to drivers.
Section 5: Creates 627.411, F.S.; relating to coverage for sex-assignment prescriptions or procedures.
Section 6: Amends 627.657, F.S; relating to provisions of group health insurance policies.
Section 7: Amends 627.6699, F.S.; relating to Employee Health Care Access Act.
Section 8: Amends 641.31, F.S; relating to health maintenance contracts.
Section 9: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[32] *See* s. 456.001, F.S.

2. Expenditures:

The bill has an insignificant fiscal impact on DHSMV for administrative costs to update driver license and identification card applications and printed driver licenses to refer to "sex" instead of "gender" and updating the operational manual, which can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate, negative fiscal impact on health insurers and HMOs, depending on their current coverage options and offerings. Practitioners and facilities may experience an increase or decrease in demand for such services, depending on the extent of current coverage and the market response of health insurers and HMOs to the bill's provisions.

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:

The bill appears to make the contingent coverage mandate provision effective July 1, 2024, which may implicate the impairment of contract provisions of Art. 1 Sec. X of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

Current law provides sufficient rulemaking authority for OIR, AHCA and DHSMV to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

To avoid implicating the provisions of Art. 1 Sec. X of the Florida Constitution, the bill could be amended to make the insurance provisions effective for contracts entered into or renewed after January 1, 2025.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 22, 2024, the Select Committee on Health Innovation adopted an amendment and reported the bill favorably as a committee substitute.

The amendment adds a definition of “sex” for application throughout chapter 322 relating to state driver licenses and identification cards.

The analysis is drafted to the committee substitute as passed by the Select Committee on Health Innovation.

A bill to be entitled

An act relating to gender and biological sex; amending s. 322.01, F.S.; defining the term "sex"; amending ss. 322.051, 322.08, and 322.14, F.S.; requiring applications for driver licenses and identification cards, as well as printed driver licenses, to indicate a person's sex instead of his or her gender; creating s. 627.6411, F.S.; requiring health insurance policies that include coverage for sex-reassignment prescriptions or procedures to also provide coverage for certain detransition treatments; requiring health insurers providing such coverage to also offer insurance policies that do not provide such coverage; prohibiting health insurance policies from prohibiting coverage of certain mental health and therapeutic services; amending ss. 627.657, 627.6699, and 641.31, F.S.; requiring group health insurance policies, health benefit plans, and health maintenance contracts that include coverage for sex-reassignment prescriptions or procedures to also provide coverage for certain detransition treatments; requiring group health insurers, carriers, and health maintenance organizations providing such coverage to also offer insurance policies that do not provide such coverage; prohibiting group health insurance policies, health

benefit plans, and health maintenance contracts from prohibiting coverage of certain mental health and therapeutic services; providing an effective date.

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

Section 1. Subsection (49) is added to section 322.01, Florida Statutes, to read:

322.01 Definitions.—As used in this chapter:

(49) "Sex" means the classification of a person as either male or female based on the organization of the human body of such person for a specific reproductive role as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth.

Section 2. Paragraph (a) of subsection (1) of section 322.051, Florida Statutes, is amended to read:

322.051 Identification cards.—

(1) Any person who is 5 years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking permit under s. 320.0848, may be issued an identification card by the department upon completion of an application and payment of an application fee.

(a) The application must include the following information regarding the applicant:

1. Full name (first, middle or maiden, and last), sex

~~gender~~, proof of social security card number satisfactory to the department, which may include a military identification card, county of residence, mailing address, proof of residential address satisfactory to the department, country of birth, and a brief description.

2. Proof of birth date satisfactory to the department.

3. Proof of identity satisfactory to the department. Such proof must include one of the following documents issued to the applicant:

a. A driver license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required under sub-subparagraph b., sub-subparagraph c., sub-subparagraph d., sub-subparagraph e., sub-subparagraph f., sub-subparagraph g., or sub-subparagraph h.;

b. A certified copy of a United States birth certificate;

c. A valid, unexpired United States passport;

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

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

f. A Consular Report of Birth Abroad provided by the United States Department of State;

g. An unexpired employment authorization card issued by the United States Department of Homeland Security; or

h. Proof of nonimmigrant classification provided by the United States Department of Homeland Security, for an original identification card. In order to prove nonimmigrant classification, an applicant must provide at least one of the following documents. In addition, the department may require applicants to produce United States Department of Homeland Security documents for the sole purpose of establishing the maintenance of, or efforts to maintain, continuous lawful presence:

(I) A notice of hearing from an immigration court scheduling a hearing on any proceeding.

(II) A notice from the Board of Immigration Appeals acknowledging pendency of an appeal.

(III) A notice of the approval of an application for adjustment of status issued by the United States Citizenship and Immigration Services.

(IV) An official documentation confirming the filing of a petition for asylum or refugee status or any other relief issued by the United States Citizenship and Immigration Services.

(V) A notice of action transferring any pending matter from another jurisdiction to Florida, issued by the United States Citizenship and Immigration Services.

(VI) An order of an immigration judge or immigration officer granting relief that authorizes the alien to live and work in the United States, including, but not limited to,

asylum.

(VII) Evidence that an application is pending for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States, if a visa number is available having a current priority date for processing by the United States Citizenship and Immigration Services.

(VIII) On or after January 1, 2010, an unexpired foreign passport with an unexpired United States Visa affixed, accompanied by an approved I-94, documenting the most recent admittance into the United States.

An identification card issued based on documents required in sub-subparagraph g. or sub-subparagraph h. is valid for a period not to exceed the expiration date of the document presented or 1 year, whichever occurs first.

Section 3. Paragraph (a) of subsection (2) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license; requirements for license and identification card forms.—

(2) Each such application shall include the following information regarding the applicant:

(a) Full name (first, middle or maiden, and last), sex ~~gender~~, proof of social security card number satisfactory to the department, which may include a military identification card,

county of residence, mailing address, proof of residential address satisfactory to the department, country of birth, and a brief description.

Section 4. Paragraph (a) of subsection (1) of section 322.14, Florida Statutes, is amended to read:

322.14 Licenses issued to drivers.—

(1)(a) The department shall, upon successful completion of all required examinations and payment of the required fee, issue to every qualified applicant a printed driver license that must bear a color photograph or digital image of the licensee; the name of the state; a distinguishing number assigned to the licensee, which, beginning November 1, 2023, must have a minimum of four randomly generated digits on each original, renewal, or replacement driver license; and the licensee's full name, date of birth, and residence address; a brief description of the licensee, including, but not limited to, the licensee's sex ~~gender~~ and height; and the dates of issuance and expiration of the license. A space shall be provided upon which the licensee shall affix his or her usual signature. A license is invalid until it has been signed by the licensee except that the signature of the licensee is not required if it appears thereon in facsimile or if the licensee is not present within the state at the time of issuance.

Section 5. Section 627.6411, Florida Statutes, is created to read:

627.6411 Coverage for sex-reassignment prescriptions or procedures.—

(1) A health insurance policy that is delivered or issued to a person in the state may offer, for an appropriate additional premium, coverage for sex-reassignment prescriptions or procedures, as defined in s. 456.001, only if the same health insurance policy also provides coverage for treatment to detransition from the sex-reassignment prescriptions or procedures.

(2) A health insurer that delivers or issues a health insurance policy that provides coverage described under subsection (1) must also offer a health insurance policy that does not provide such coverage.

(3) A health insurance policy that is delivered or issued to a person in the state may not prohibit the coverage of mental health or therapeutic services to treat a person's perception that his or her sex, as defined in s. 456.001, is inconsistent with such person's sex at birth by affirming the insured's sex.

Section 6. Subsections (4) and (5) are added to section 627.657, Florida Statutes, to read:

627.657 Provisions of group health insurance policies.—

(4)(a) A group health insurance policy that is delivered or issued to any group in the state may offer, for an appropriate additional premium, coverage for sex-reassignment prescriptions or procedures, as defined in s. 456.001, only if

the same group health insurance policy also provides coverage for treatment to detransition from the sex-reassignment prescriptions or procedures.

(b) A group health insurer that delivers or issues a group health insurance policy that provides coverage described under paragraph (a) must also offer a group health insurance policy that does not provide such coverage.

(5) A group health insurance policy that is delivered or issued to any group in the state may not prohibit the coverage of mental health or therapeutic services to treat a person's perception that his or her sex, as defined in s. 456.001, is inconsistent with such person's sex at birth by affirming the insured's sex.

Section 7. Paragraphs (h) and (i) are added to subsection (5) of section 627.6699, Florida Statutes, to read:

627.6699 Employee Health Care Access Act.—

(5) AVAILABILITY OF COVERAGE.—

(h)1. A health benefit plan that is delivered or issued to an individual or a group in the state may offer, for an appropriate additional premium, coverage for sex-reassignment prescriptions or procedures, as defined in s. 456.001, only if the same health benefit plan also provides coverage for treatment to detransition from the sex-reassignment prescriptions or procedures.

2. A carrier that delivers or issues a health benefit plan

that provides coverage described under subparagraph 1. must also offer a health benefit plan that does not provide such coverage.

(i) A health benefit plan that is delivered or issued to an individual or a group in the state may not prohibit the coverage of mental health or therapeutic services to treat a person's perception that his or her sex, as defined in s. 456.001, is inconsistent with such person's sex at birth by affirming the insured's sex.

Section 8. Subsections (48) and (49) are added to section 641.31, Florida Statutes, to read:

641.31 Health maintenance contracts.—

(48)(a) A health maintenance contract that is delivered or issued to a subscriber or group in the state may offer, for an appropriate additional premium, coverage for sex-reassignment prescriptions or procedures, as defined in s. 456.001, only if the same health maintenance contract also provides coverage for treatment to detransition from the sex-reassignment prescriptions or procedures.

(b) A health maintenance organization that delivers or issues a health maintenance contract that provides coverage described under paragraph (a) must also offer a health maintenance contract that does not provide such coverage.

(49) A health maintenance contract that is delivered or issued to a subscriber or group in the state may not prohibit the coverage of mental health or therapeutic services to treat a

person's perception that his or her sex, as defined in s. 456.001, is inconsistent with such person's sex at birth by affirming the insured's sex.

Section 9. This act shall take effect July 1, 2024.

INSURANCE & BANKING SUBCOMMITTEE

CS/HB 1639 by Bankson
Gender and Bioloical Sex

AMENDMENT SUMMARY
February 1, 2024

Amendment 1 by Rep. Bankson (Line 169): provides that the health insurance contingent mandate in the bill is applicable to policies delivered, issued, or renewed on or after January 1, 2025.

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 Bankson offered the following:

Amendment (with title amendment)

Between lines 168 and 169, insert:

(4) The provisions of this section are applicable to policies delivered, issued, or renewed on or after January 1, 2025.

Between lines 188 and 189, insert:

(6) The provisions of this section are applicable to group health insurance policies delivered, issued, or renewed on or after January 1, 2025.

Between lines 208 and 209, insert:

(ii) The provisions of this section are applicable to health benefit plans delivered, issued, or renewed on or after January 1, 2025.

Between lines 228 and 229, insert:

(50) The provisions of this section are applicable to health maintenance organization contracts delivered, issued, or renewed on or after January 1, 2025.

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

Remove line 16 and insert:

services; requiring health insurance policies, group health insurance plans, and health maintenance organizations to meet certain contract and policy deadlines; amending ss. 627.657, 627.6699. and 641.31,

PCS for HB 1503

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1503 Citizens Property Insurance Corporation
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The bill makes various changes to Citizens Property Insurance Corporation (Citizens), including:

- **Eligibility:** increases the maximum home value eligible for Citizens coverage from $700,000 to $1 million throughout the state; with the exception of homes in counties that lack a reasonable degree of competition (currently Miami-Dade and Monroe), policyholders with homes between $700,000 and $1 million will be charged a rate that is actuarially sound and noncompetitive; properties in Miami-Dade and Monroe counties, and any others in counties that the Office of Insurance Regulation determines lack a reasonable degree of competition, will continue to be charged a premium within the glidepath.

- **Surplus Lines:** permits surplus lines insurers to take out commercial residential policies from Citizens; provides definitions to accomplish these take outs; establishes that new and renewal commercial lines residential risks are not eligible for Citizens' coverage if the risk is offered coverage by a surplus lines insurer at the insurer's approved rate under a policy including wind coverage.

- **Flood coverage:** effective upon becoming law, requires Citizens' policyholders who must purchase flood insurance as a condition of eligibility for Citizens' coverage to purchase only dwelling coverage for a flood loss rather than dwelling and contents coverage.

- **Combining Accounts:** eliminates a significant amount of statutory language that is no longer needed because Citizens has combined the Personal Lines Account, the Commercial Lines Account, and the Coastal Account, into one Citizens Account, as of January 1, 2024.

- **Operations and Management:** allows Citizens' executive director to appoint a designee to act as its agency head; allows Citizens to share information with NICB to assist in efforts to fight insurance fraud; allows Citizens to obtain patents, copyrights, and trademarks, and to enforce related rights.

The bill has no impact on local or state government revenues or expenditures. It has a likely indeterminate positive and negative direct economic impact on the private sector.

Except as otherwise expressly provided, the bill is effective on July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Background

Citizens Property Insurance Corporation (Citizens) is a not-for-profit, tax-exempt government entity that provides property insurance to those who are unable to find affordable coverage in the private market. Citizens was created to serve as Florida's property insurer of last resort.[1] Applicants are eligible for coverage if no admitted private carrier[2] will write them a policy for a premium that is within 20 percent greater than what Citizens would offer for comparable coverage.[3]

The policies that Citizens writes include the following:

- Standard Personal Lines Policies – comprehensive multiperil policies providing full coverage of residential property equivalent to the coverage provided in the private insurance market;
- Basic Personal Lines Policies – similar to dwelling fire policies that provide coverage meeting the requirements of the secondary mortgage market, but are more limited in coverage than under a standard policy;
- Commercial Lines Residential and Nonresidential Policies – generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the private market;
- Personal Lines and Commercial Lines Residential Property Insurance Policies – cover the peril of wind only;
- Commercial Lines Nonresidential Property Insurance Policies – cover the peril of wind only.[4]

Citizens' Rates

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, did not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. In 2021, the Legislature revised this glidepath to increase it one percentage point per year to 15 percent, as follows: [5]

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

Citizens' rate cap, also known as the "glidepath," is not closing the gap between Citizens rates and private market rates. Instead, because of the rate cap and the increasing rates of private property insurance, the gap is growing and making Citizens more like a competitor to private insurers than an insurer of last resort. Because Citizens' rates are often well below those of private carriers, Citizens may be more competitive than otherwise intended. Due to Citizens' structure, its rates do not contain certain elements that the rates of private insurers contain. Citizens does not pay taxes like private insurers and does not need to purchase as much reinsurance as private insurers because of Citizens' higher levels of capital and surplus.[6]

[1] Citizens Property Insurance Corporation (Citizens), *Programs*, https://www.citizensfla.com/programs (last visited Jan. 30, 2024).
[2] The admitted market is comprised of insurance companies licenses to transact insurance in Florida.
[3] S. 627.351(6)(c)5.a, F.S.
[4] S. 627.351(6)(c)1., F.S.
[5] S. 627.351(6)(n)5., F.S.
[6] S. 627.351(6)(t), F.S. *See also* s. 627.351(6)(c)9. for information regarding Citizens purchase of reinsurance.

The implementation of this increase ceases when Citizens has achieved actuarially sound rates.[7] In addition to the overall glidepath rate increase, Citizens can increase its rates to recover the additional reimbursement premium it pays to the Florida Hurricane Catastrophe Fund (FHCF) as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage, pursuant to s. 215.555(5)(b), F.S.[8]

In addition to eventually being actuarially sound, Citizens' rates must not be competitive with approved rates charged by admitted insurers so that Citizens functions as a residual market to provide insurance only when it cannot be obtained from admitted insurers.[9] This eliminates localized rate reductions among Citizens policies. Additionally, OIR must provide Citizens with the information necessary to determine whether Citizens' rates are competitive.[10]

Until Special Session 2022A, in December 2022, Citizens' rates did not differ based upon whether the property insured is a policyholders' primary residence, a policyholder's second home (e.g. a vacation home,) or occupied by a long-term tenant.[11] However, the Legislature removed the glidepath rate limitations for any new or renewal personal lines policy for non-primary residences written on or after November 1, 2023.[12] The rate for these residences rate must be no more than 50% above, but not less than, the established rate for Citizens which was in effect one year before the date of the application for coverage.[13]

Eligibility for Coverage

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for coverage from Citizens, and specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens also has additional eligibility requirements set out in their underwriting rules. These rules are approved by OIR and set out in Citizens' underwriting manuals.[14]

Citizens may cover homes if the cost of replacing the dwelling, or the dwelling and its' contents, is no more than $700,000. In Miami-Dade and Monroe counties, Citizens may insure structures valued up to $1 million as long as the Office of Insurance Regulation (OIR) continues to determine that these counties are not competitive.[15]

Eligibility for Personal and Commercial Lines Residential Coverage at Renewal

When Citizens' personal lines residential or commercial lines residential policyholders receive offers of coverage at renewal from authorized insurers, the risks are not eligible for coverage from Citizens unless the premiums from the authorized insurers are more than 20 percent greater than the rate for comparable coverage from Citizens, inclusive of surcharges and assessments being levied on the policy by Citizens.[16] The bill also establishes that policies removed from Citizens under an assumption agreement may remain on Citizen's policy forms through the end of the policy term, but policy administration and liability transfers to the assuming insurer.[17]

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[7] S. 627.351(6)(n)7., F.S.
[8] S. 627.351(6)(n)6., F.S.
[9] S. 627.351(6)(n)1., F.S.
[10] *Id.*
[11] Citizens would not issue a personal lines policy to someone using a home as a short-term vacation rental as that is considered a business use of the home. Citizens is currently prohibited from issuing wind-only policies to commercial lines residential condominiums when 50 percent or more of the units in the condominium are rented more than eight times per calendar year for less than 30 days in each rental period. S. 627.351(6)(a)6., F.S.
[12] S. 627.351(6)(n)8., F.S.
[13] *Id.*
[14] *See* Citizens, *Revised Underwriting Manuals*, https://www.citizensfla.com/-/20160329-revised-underwriting-manuals (last visited Jan. 28, 2024).
[15] S. 627.351(6)(a)3, F.S. If OIR makes a finding that other counties are not competitive, Citizens would be able to insure properties up to $1 million in value in those counties, as well.
[16] S. 627.351(6)(c)5., F.S.
[17] *Id.*

Effect of the Bill – Eligibility

The bill increases the maximum home value eligible for Citizens coverage from $700,000 to $1 million throughout the state. With the exception of homes in counties that lack a reasonable degree of competition (currently Miami-Dade and Monroe), policyholders with homes between $700,000 and $1 million will be charged a rate that is actuarially sound and noncompetitive. Policyholders with properties in Miami-Dade and Monroe counties, and any others in counties that OIR determines lack a reasonable degree of competition, will continue to be charged a premium within the glidepath.

Eligibility after a Take-out Offer

Florida law requires that Citizens create programs to help return its policyholders to the private property insurance market and to reduce the risk of additional assessments for all Floridians in the event that Citizens is unable to meet its obligations.[18] In 2016, the Legislature passed requirements that by January 1, 2017, Citizens amend its operations relating to take-out agreements, whereby private insurers remove policies from Citizens.[19] As part of these requirements, a policy may not be taken out of Citizens, unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer requests to take out;[20]
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take out a policy; the list must include a description of the coverage offered and the estimated premium for each take-out request;
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with Citizens. The notice must be in a format prescribed by Citizens and include, for each take-out offer:
    - The amount of the estimated premium;
    - A description of coverage; and
    - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by Citizens.[21]

When Citizens' policyholders receive take-out offers from authorized insurers that include premiums that are not more than 20 percent greater than Citizens' renewal premium for comparable coverage, inclusive of surcharges and assessments being levied on the policy by Citizens, they are no longer eligible for Citizens' coverage.[22] Citizens' must notify policyholders that they have received a take-out offer and that the offer renders their risks ineligible for Citizens' coverage.[23]

Effect of the Bill – Surplus Lines

The bill permits surplus lines insurers to take out commercial residential policies from Citizens.[24] The bill includes various definitions to assist Citizens with these take outs. While surplus lines insurers do not ordinarily have their rates approved by OIR, the definition of approved rate in the bill requires these insurers to have rates approved for the purposes of their planned Citizens' take outs.

The bill also establishes that new and renewal commercial lines residential risks are not eligible for Citizens' coverage if the risk is offered coverage by a surplus lines insurer at the insurer's approved rate under a policy including wind coverage.

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[18] S. 627.351(6)(q)3.a., F.S.
[19] Ch. 2016-229, Laws of Fla.
[20] These requests from insurers must include a description of the coverage offered and an estimated premium for it and must be submitted to Citizens in a form prescribed by Citizens.
[21] S. 627.351(6)(ii), F.S.
[22] *Id.*
[23] *Id.*
[24] Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.

Flood Coverage Requirements

Until Special Session 2022A, in December 2022, Citizens could not require a policyholder or applicant to obtain flood insurance as a condition of coverage from Citizens if a policyholder or applicant signs a form affirming that Citizens does not provide flood insurance coverage, and that, if the policyholder or applicant does not obtain flood coverage in addition to a policy from Citizens, the risk is not covered for flood damage.[25] A Citizens policyholder who did not obtain flood coverage and executed such a form, and who made a claim for water damage against Citizens, had the burden of proving the damage was not caused by flooding.[26]

Under s. 627.715, F.S., authorized insurers may issue personal lines residential flood coverage. Such coverage includes, but is not limited to, standard flood insurance, which is equivalent to that provided by the National Flood Insurance Program (NFIP), and preferred and customized flood insurance, which provide additional coverage from that provided by standard flood coverage.[27]

In April 2023, Citizens began to require personal lines residential policyholders and applicants purchase and maintain flood insurance coverage that is at least equivalent to the coverage provided by the NFIP.[28] The policyholder or applicant must execute a form affirming that Citizens does not provide flood insurance and that if the policyholder or applicant does not obtain flood insurance, his or her risk will not be eligible for coverage from Citizens.[29] Citizens may deny coverage to a personal lines residential policyholder or applicant who refuses to purchase and maintain flood insurance.[30]

The purchase of flood coverage by personal lines residential policyholders and applicants has been implemented as follows:[31]

- The following Citizens' policyholders are not required to purchase flood overage as a condition of maintain their Citizens policies:
    - policyholders whose Citizens policies do not provide wind coverage; and
    - policyholders whose Citizens policies provide coverage under a condominium unit owners form.
- All policyholders whose Citizens-insured property is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:
    - At the time of initial policy issuance for all new policies issued by Citizens on or after April 1, 2023.
    - By the time of policy renewal for all personal lines residential policies renewing on or after July 1, 2023.
- All other policyholders must have flood coverage in place for policies effective on or after:
    - January 1, 2024, for property valued at $600,000 or more.
    - January 1, 2025, for property valued at $500,000 or more.
    - January 1, 2026, for property valued at $400,000 or more.
    - January 1, 2027, for all other personal lines residential property insured by Citizens.

The law requiring certain Citizens' policyholders to purchase flood coverage has been interpreted to require the purchase of both dwelling and contents coverage for flood losses. When policyholders with existing flood policies have added contents coverage to policies that covered the dwelling only, this has triggered huge premium increases under the NFIP's newly-implemented Risk Rating 2.0 pricing approach.[32]

Effect of the Bill – Flood Coverage Requirements

[25] *See* ch. 2022-271, Laws of Fla.
[26] *Id.*
[27] Current NFIP personal lines flood policies have limits of $250,000 per claim.
[28] S. 627.351(6)(aa), F.S.
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *See* Federal Emergency Management Agency, *NFIP's Pricing Approach*, https://www.fema.gov/flood-insurance/risk-rating (last visited Jan. 29, 2024).

The bill requires Citizens' policyholders who must purchase flood insurance as a condition of eligibility for Citizens' coverage to purchase only dwelling coverage for a flood loss rather than dwelling and contents coverage. This will eliminate or avoid flood insurance rate increases triggered solely by the purchase of contents coverage under a flood insurance policy in order to maintain eligibility for Citizens' coverage.

Combining of Accounts

Three Accounts

Until very recently, Citizens had three different accounts through which it offered property insurance: a personal lines account (PLA), a commercial lines account (CLA), and a Coastal Account. The PLA offered personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also wrote policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners', mobile home owners', dwellings, tenants', and condominium unit owners' policies.[33]

The CLA offered commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also wrote policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.[34]

The Coastal Account offered personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.[35]

Financial Resources

Citizens' financial resources include:

- Insurance premiums
- Investment income and operating surplus from prior years
- FHCF reimbursements
- Private reinsurance
- Policyholder surcharges
- Regular assessments
- Emergency assessments

Non-weather water losses, reinsurance costs and litigation are currently the major determinants of insurance rates.[36] In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.[37] Under Florida law, if the Citizens' Board of Directors determines a Citizens' account has a projected deficit, Citizens is authorized to levy assessments[38] on its policyholders and on each line of property and casualty line of business other

[33] *See* s. 627.351(6)(b)2.a., F.S., and *Account History and Characteristics*, Citizens Property Insurance Corporation, https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563 (March 2016) (last visited Jan. 28, 2024).
[34] *Id.*
[35] *Id.*
[36] Citizens Property Insurance Corporation, *2022 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548 (last visited Jan. 28, 2024).
[37] Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, https://www.citizensfla.com/assessments (last visited Jan. 28, 2024).
[38] Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.

than workers' compensation insurance and medical malpractice insurance.[39] Citizens could impose three assessment tiers.[40]

A surcharge of up to 15 percent of premium on all Citizens' policies, collected upon issuance or renewal. When Citizens had three separate accounts, this 15 percent assessment could be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account— that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.[41]

If the Citizens' surcharge was insufficient to cure the deficit for the Coastal Account, Citizens could require an assessment against all other insurers except medical malpractice and workers' compensation. The assessment may be recouped from policyholders through a rate filing process of up to two percent of premium or two percent of the deficit, whichever is greater.[42] This assessment is not levied against Citizens' policyholders.

An emergency assessment provision requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders, except medical malpractice and workers' compensation, but including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, *or* 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.[43] The assessments may be cumulative.

During Special Session 2022A, the Legislature gave Citizens the authority to combine its three accounts into a single account upon Citizens eliminating all outstanding financing obligations.[44] A single account structure allows Citizens to access its entire surplus to pay claims. Previously, surplus in a particular account could only be used to pay claims in that account.

OIR approved changes to "Citizens' underwriting guidelines and application statements regarding possible assessment and surcharge amounts to support the merging of Citizens' three accounts. . ." into the Citizens Account.[45] The Citizens policyholder surcharge imposed in the event of a deficit has been revised from 15 percent per account (maximum 45 percent total) to 25 percent for the single account (an initial assessment of up to 15 percent plus a potential emergency assessment of up to 10 percent).[46] Effective January 1, 2024, Citizens combined the three accounts into the Citizens Account.[47]

Effect of the Bill – Combining Accounts

The bill eliminates a significant amount of statutory language that is no longer needed because Citizens has combined its three accounts into one account. These statutory deletions include references to the PLA, CLA, and Coastal Account. Citizens is now permitted to use its entire surplus to pay claims. The bill does not make any additional changes regarding assessments beyond those that were enacted during Special Session 2022A.

Citizens' Operations and Management

[39] Accident and health insurance and policies written under the NFIP or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. S. 627.351.(6)(b)3.f.-h., F.S.
[40] Citizens Property Insurance Corporation, *Citizens Property Insurance Corporation: General Overview and Recent Issues*, p. 14 7,https://myfloridahouse.gov/api/document/house?Leaf=HouseContent/Lists/LegislatorUResources/Attachments/75/Citizens%20General%20Overview%20and%20Recent%20Issues%20Presentation%2020221206.pdf (last visited Jan. 28, 2024).
[41] Sections 627.351.(6)(b)3.i.(I) and 627.351.(6)(c)21., F.S. (2021).
[42] S. 627.351(6)(b)3.a., F.S.
[43] S. 627.351(6)(b)3.d., F.S.
[44] S. 627.351(b)(b)2.b., F.S. The PLA, CLA, and coastal accounts combined to form one account known as the Citizens account.
[45] Citizens, *Combined Assessments and Surcharge Amounts*, https://www.citizensfla.com/-/20231103-combined-assessments-and-surcharge-amounts (last visited Jan. 28, 2024).
[46] S. 627.351(6)b.5., F.S. While the text of SB 2-A (2022A) appeared to authorize Citizens to collect new, or additional surcharges, it did not. Due to drafting requirements it establishes a new surcharge framework within the law to become effective upon the combining of the accounts, but does not actually authorize higher surcharges than those presently in law. *See also* Citizens, *supra* note 42.
[47] Citizens, *supra* note 42.

Citizens is overseen by a board and operated by an executive director. Citizens' board consists of nine individuals who must be residents of different geographical areas of Florida.[48] The Governor, Chief Financial Officer, President of the Senate, and Speaker of the House, each appoint two members of the board.[49] The Governor appoints one additional member who serves solely to advocate on behalf of consumers.[50] At least one of the two members appointed by each appointing officer must have demonstrated experience in insurance.[51]

Citizens' executive director, often referred to as its president or chief executive officer, is engaged by the board and serves "at the pleasure of the board."[52] The executive director is subject to confirmation by the Senate.[53] He or she is responsible for employing other staff as Citizens requires, subject to review and agreement by the board.[54] However, current law does not specify the experience, character, or qualifications that an individual must have in order to be qualified to serve as Citizens' executive director.

The special investigative units of private insurers typically share information with the National Insurance Crime Bureau (NICB) to help fight insurance fraud.[55] However, current law does not allow Citizens to share information with NICB.

In addition, current law does not permit Citizens to obtain patents, copyrights, or trademarks, and to enforce its related rights.

Effect of the Bill – Operations and Management

The bill makes the following changes regarding Citizens' operations and management:

- Allows Citizens' executive director to appoint a designee to act as its agency head.[56]
- Allows Citizens to share information with NICB to assist in efforts to fight insurance fraud.
- Allows Citizens to obtain patents, copyrights, and trademarks, and to enforce related rights to the same.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 2. Amends s. 627.3511, F.S., relating to depopulation of Citizens Property Insurance Corporation.

Section 3. Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.

Section 4. Provides an effective date of July 1, 2024, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[48] S. 627.351(6)(c)4., F.S.
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *See* National Insurance Crime Bureau, *Member Benefits*, https://www.nicb.org/membership/member-benefits (last visited Jan. 28, 2024).
[56] Allowing Citizens' executive director to appoint a designee is consistent with the permission granted to state agency heads to appoint designees that is found throughout ch. 287, F.S.

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 will likely have an indeterminate positive and negative effect on the private sector. Citizens' policyholders who are required to purchase flood coverage will likely see a decrease in their flood insurance premiums as a result of only having to buy dwelling coverage.

It may have a negative effect on commercial residential policyholders who must take an offer from a surplus lines carrier and end up paying more in premium than they were paying for a Citizens policy.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

B. RULE-MAKING AUTHORITY:

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 Citizens Property Insurance Corporation; amending s. 627.351, F.S.; removing obsolete language; providing that certain accounts for Citizens Property Insurance Corporation revenues, assets, liability, losses, and expenses are now maintained as the Citizens account; revising the requirements for certain coverages by the corporation; raising the dwelling replacement cost of properties eligible for coverage by the corporation under certain circumstances; requiring the inclusion of quota share primary insurance in certain policies; removing provisions relating to legislative goals; conforming provisions to changes made by the act; revising the definition of the term "assessments"; removing provisions relating to surcharges and emergency assessments upon determination of projected deficits; removing provisions relating to funds available to the corporation as sources of revenue and bonds; removing definitions; removing provisions relating to the duties of the Florida Surplus Lines Service Office; removing provisions relating to disposition of excess amounts of assessments and surcharges; providing definitions; providing nonapplicability of certain

provisions relating to personal lines residential risks coverage by the corporation; requiring insurers to pay, under certain circumstances, producing agents a certain amount or fee if the agents are unable to accept appointment due to failure to be licensed as surplus lines agents; providing nonapplicability of such payment requirement; revising eligibility for commercial lines residential risks coverage by the corporation; providing that commercial lines residential risks are not eligible for coverage by the corporation under certain circumstances; providing that comparisons of comparable coverages under certain personal lines residential risks and commercial lines residential risks do not apply to policies that do not cover primary residences; revising the corporation's plan of operation; revising the required statements from applicants for coverage; revising the duties of the executive director of the corporation; authorizing the executive director to assign and appoint designees; removing a nonapplicability provision relating to bond requirements; authorizing assessed insureds of certain insurers to be relieved from assessments under certain circumstances; removing provisions relating to certain insurer assessment deferments; removing provisions relating to the

intangibles of and coverage by the Florida Windstorm Underwriting Association and the corporation coastal account; authorizing the corporation and certain persons to make specified information obtained from underwriting files and confidential claims files available to licensed surplus lines agents; prohibiting such agents from using such information for specified purposes; providing nonapplicability of provisions relating to take-out offers that are part of applications to participate in depopulation; authorizing the corporation to share its claims data with a specified entity; amending s. 627.3511, F.S.; conforming provisions to changes made by the act; conforming cross-references; amending s. 627.3518, F.S.; providing nonapplicability of provisions relating to noneligibility for coverage by the corporation; revising the flood coverage requirements for personal lines residential policyholders; providing effective dates.

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

Section 1. Subsection (7) of section 627.351, Florida Statutes, is renumbered as subsection (8), paragraph (b) of subsection (2) and subsection (6) are amended, and a new

subsection (7) is added to that section, to read:

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(b) The department shall require all insurers holding a certificate of authority to transact property insurance on a direct basis in this state, other than joint underwriting associations and other entities formed pursuant to this section, to provide windstorm coverage to applicants from areas determined to be eligible pursuant to paragraph (c) who in good faith are entitled to, but are unable to procure, such coverage through ordinary means; or it shall adopt a reasonable plan or plans for the equitable apportionment or sharing among such insurers of windstorm coverage, which may include formation of an association for this purpose. As used in this subsection, the term "property insurance" means insurance on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and including liability coverages on all such insurance, but excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1)(a) other than insurance on mobile homes used as permanent dwellings. The department shall adopt rules that provide a formula for the recovery and repayment of any deferred assessments.

1. For the purpose of this section, properties eligible

for such windstorm coverage are defined as dwellings, buildings, and other structures, including mobile homes which are used as dwellings and which are tied down in compliance with mobile home tie-down requirements prescribed by the Department of Highway Safety and Motor Vehicles pursuant to s. 320.8325, and the contents of all such properties. An applicant or policyholder is eligible for coverage only if an offer of coverage cannot be obtained by or for the applicant or policyholder from an admitted insurer at approved rates.

2.a.(I) All insurers required to be members of such association shall participate in its writings, expenses, and losses. Surplus of the association shall be retained for the payment of claims and shall not be distributed to the member insurers. Such participation by member insurers shall be in the proportion that the net direct premiums of each member insurer written for property insurance in this state during the preceding calendar year bear to the aggregate net direct premiums for property insurance of all member insurers, as reduced by any credits for voluntary writings, in this state during the preceding calendar year. For the purposes of this subsection, the term "net direct premiums" means direct written premiums for property insurance, reduced by premium for liability coverage and for the following if included in allied lines: rain and hail on growing crops; livestock; association direct premiums booked; National Flood Insurance Program direct

premiums; and similar deductions specifically authorized by the plan of operation and approved by the department. A member's participation shall begin on the first day of the calendar year following the year in which it is issued a certificate of authority to transact property insurance in the state and shall terminate 1 year after the end of the calendar year during which it no longer holds a certificate of authority to transact property insurance in the state. The commissioner, after review of annual statements, other reports, and any other statistics that the commissioner deems necessary, shall certify to the association the aggregate direct premiums written for property insurance in this state by all member insurers.

(II) Effective July 1, 2002, the association shall operate subject to the supervision and approval of a board of governors who are the same individuals that have been appointed by the Treasurer to serve on the board of governors of the Citizens Property Insurance Corporation.

(III) The plan of operation shall provide a formula whereby a company voluntarily providing windstorm coverage in affected areas will be relieved wholly or partially from apportionment of a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

(IV) A company which is a member of a group of companies under common management may elect to have its credits applied on a group basis, and any company or group may elect to have its

credits applied to any other company or group.

(V) There shall be no credits or relief from apportionment to a company for emergency assessments collected from its policyholders under sub-sub-subparagraph d.(III).

(VI) The plan of operation may also provide for the award of credits, for a period not to exceed 3 years, from a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II) as an incentive for taking policies out of the Residential Property and Casualty Joint Underwriting Association. In order to qualify for the exemption under this sub-sub-subparagraph, the take-out plan must provide that at least 40 percent of the policies removed from the Residential Property and Casualty Joint Underwriting Association cover risks located in Miami-Dade, Broward, and Palm Beach Counties or at least 30 percent of the policies so removed cover risks located in Miami-Dade, Broward, and Palm Beach Counties and an additional 50 percent of the policies so removed cover risks located in other coastal counties, and must also provide that no more than 15 percent of the policies so removed may exclude windstorm coverage. With the approval of the department, the association may waive these geographic criteria for a take-out plan that removes at least the lesser of 100,000 Residential Property and Casualty Joint Underwriting Association policies or 15 percent of the total number of Residential Property and Casualty Joint Underwriting Association policies, provided the

governing board of the Residential Property and Casualty Joint Underwriting Association certifies that the take-out plan will materially reduce the Residential Property and Casualty Joint Underwriting Association's 100-year probable maximum loss from hurricanes. With the approval of the department, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association.

b. Assessments to pay deficits in the association under this subparagraph shall be included as an appropriate factor in the making of rates as provided in s. 627.3512.

c. The Legislature finds that the potential for unlimited deficit assessments under this subparagraph may induce insurers to attempt to reduce their writings in the voluntary market, and that such actions would worsen the availability problems that the association was created to remedy. It is the intent of the Legislature that insurers remain fully responsible for paying regular assessments and collecting emergency assessments for any deficits of the association; however, it is also the intent of the Legislature to provide a means by which assessment liabilities may be amortized over a period of years.

d.(I) When the deficit incurred in a particular calendar year is 10 percent or less of the aggregate statewide direct written premium for property insurance for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the deficit.

(II) When the deficit incurred in a particular calendar year exceeds 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for member insurers. Any remaining deficit shall be recovered through emergency assessments under sub-sub-subparagraph (III).

(III) Upon a determination by the board of directors that a deficit exceeds the amount that will be recovered through regular assessments on member insurers, pursuant to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the board shall levy, after verification by the department, emergency assessments to be collected by member insurers and by underwriting associations created pursuant to this section which write property insurance, upon issuance or renewal of property insurance policies other than National Flood Insurance policies in the year or years following levy of the regular assessments.

The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for property insurance for all member insurers and underwriting associations, excluding National Flood Insurance policy premiums, as annually determined by the board and verified by the department. The department shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, each member insurer and each underwriting association created pursuant to this section shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. The emergency assessments so collected shall be transferred directly to the association on a periodic basis as determined by the association. The aggregate amount of emergency assessments levied under this sub-sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for property insurance written by member insurers and underwriting associations for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit. The board may

pledge the proceeds of the emergency assessments under this sub-sub-subparagraph as the source of revenue for bonds, to retire any other debt incurred as a result of the deficit or events giving rise to the deficit, or in any other way that the board determines will efficiently recover the deficit. The emergency assessments under this sub-sub-subparagraph shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the document governing such bonds or other indebtedness. Emergency assessments collected under this sub-sub-subparagraph are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium.

(IV) Each member insurer's share of the total regular assessments under sub-sub-subparagraph (I) or sub-sub-subparagraph (II) shall be in the proportion that the insurer's net direct premium for property insurance in this state, for the year preceding the assessment bears to the aggregate statewide net direct premium for property insurance of all member insurers, as reduced by any credits for voluntary writings for that year.

(V) If regular deficit assessments are made under sub-sub-

subparagraph (I) or sub-sub-subparagraph (II), ~~or by the Residential Property and Casualty Joint Underwriting Association under sub-subparagraph (6)(b)3.a.,~~ the association shall levy upon the association's policyholders, as part of its next rate filing, or by a separate rate filing solely for this purpose, a market equalization surcharge in a percentage equal to the total amount of such regular assessments divided by the aggregate statewide direct written premium for property insurance for member insurers for the prior calendar year. Market equalization surcharges under this sub-sub-subparagraph are not considered premium and are not subject to commissions, fees, or premium taxes; however, failure to pay a market equalization surcharge shall be treated as failure to pay premium.

e. The governing body of any unit of local government, any residents of which are insured under the plan, may issue bonds as defined in s. 125.013 or s. 166.101 to fund an assistance program, in conjunction with the association, for the purpose of defraying deficits of the association. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the association, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds may not be issued until validated pursuant to chapter 75, unless

a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and the protection and preservation of the economic stability of insurers operating in this state, and declaring it an essential public purpose to permit certain municipalities or counties to issue bonds as will provide relief to claimants and policyholders of the association and insurers responsible for apportionment of plan losses. Any such unit of local government may enter into such contracts with the association and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this sub-subparagraph shall be payable from and secured by moneys received by the association from assessments under this subparagraph, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the department shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of

the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the department determines that the purchase would endanger or impair the solvency of the insurer. The authority granted by this sub-subparagraph is additional to any bonding authority granted by subparagraph 6.

3. The plan shall also provide that any member with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the department, within the first 90 days of each calendar year, to qualify as a limited apportionment company. The apportionment of such a member company in any calendar year for which it is qualified shall not exceed its gross participation, which shall not be affected by the formula for voluntary writings. In no event shall a limited apportionment company be required to participate in any apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds $50 million after payment of available plan funds in any calendar year. However, a limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-sub-subparagraph 2.d.(III). The plan shall provide that, if the department determines that any regular assessment will result in an impairment of the surplus of a limited

apportionment company, the department may direct that all or part of such assessment be deferred. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-sub-subparagraph 2.d.(III).

4. The plan shall provide for the deferment, in whole or in part, of a regular assessment of a member insurer under sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not for an emergency assessment collected from policyholders under sub-sub-subparagraph 2.d.(III), if, in the opinion of the commissioner, payment of such regular assessment would endanger or impair the solvency of the member insurer. In the event a regular assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

5.a. The plan of operation may include deductibles and rules for classification of risks and rate modifications consistent with the objective of providing and maintaining funds sufficient to pay catastrophe losses.

b. It is the intent of the Legislature that the rates for coverage provided by the association be actuarially sound and not competitive with approved rates charged in the admitted voluntary market such that the association functions as a

residual market mechanism to provide insurance only when the insurance cannot be procured in the voluntary market. The plan of operation shall provide a mechanism to assure that, beginning no later than January 1, 1999, the rates charged by the association for each line of business are reflective of approved rates in the voluntary market for hurricane coverage for each line of business in the various areas eligible for association coverage.

c. The association shall provide for windstorm coverage on residential properties in limits up to $10 million for commercial lines residential risks and up to $1 million for personal lines residential risks. If coverage with the association is sought for a residential risk valued in excess of these limits, coverage shall be available to the risk up to the replacement cost or actual cash value of the property, at the option of the insured, if coverage for the risk cannot be located in the authorized market. The association must accept a commercial lines residential risk with limits above $10 million or a personal lines residential risk with limits above $1 million if coverage is not available in the authorized market. The association may write coverage above the limits specified in this subparagraph with or without facultative or other reinsurance coverage, as the association determines appropriate.

d. The plan of operation must provide objective criteria and procedures, approved by the department, to be uniformly

applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

(I) Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

(II) Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the association pursuant to such criteria and procedures must be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

e. If the risk accepts an offer of coverage through the market assistance program or through a mechanism established by the association, either before the policy is issued by the association or during the first 30 days of coverage by the association, and the producing agent who submitted the application to the association is not currently appointed by the insurer, the insurer shall:

(I) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy

written or a fee equal to the usual and customary commission of the association; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the association's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I). Subject to the provisions of s. 627.3517, the policies issued by the association must provide that if the association obtains an offer from an authorized insurer to cover the risk at its approved rates under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the department, a basic policy including wind coverage, the risk is no longer eligible for coverage through the association. Upon termination of eligibility, the association shall provide written notice to the policyholder and agent of record stating that the association policy must be canceled as of 60 days after the date of the notice because of the offer of coverage from an authorized insurer. Other provisions of the insurance code relating to cancellation and notice of cancellation do not apply to actions under this sub-subparagraph.

f. When the association enters into a contractual agreement for a take-out plan, the producing agent of record of the association policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(I) Pay to the producing agent of record of the association policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the association; or

(II) Offer to allow the producing agent of record of the association policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the association's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

6.a. The plan of operation may authorize the formation of a private nonprofit corporation, a private nonprofit unincorporated association, a partnership, a trust, a limited liability company, or a nonprofit mutual company which may be empowered, among other things, to borrow money by issuing bonds or by incurring other indebtedness and to accumulate reserves or funds to be used for the payment of insured catastrophe losses.

The plan may authorize all actions necessary to facilitate the issuance of bonds, including the pledging of assessments or other revenues.

b. Any entity created under this subsection, or any entity formed for the purposes of this subsection, may sue and be sued, may borrow money; issue bonds, notes, or debt instruments; pledge or sell assessments, market equalization surcharges and other surcharges, rights, premiums, contractual rights, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, and other assets as security for such bonds, notes, or debt instruments; enter into any contracts or agreements necessary or proper to accomplish such borrowings; and take other actions necessary to carry out the purposes of this subsection. The association may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (6)(q)2., in the absence of a hurricane or other weather-related event, upon a determination by the association subject to approval by the department that such action would enable it to efficiently meet the financial obligations of the association and that such financings are reasonably necessary to effectuate the requirements of this subsection. Any such entity may accumulate reserves and retain surpluses as of the end of any association year to provide for the payment of losses incurred by the association during that year or any future year. The association

shall incorporate and continue the plan of operation and articles of agreement in effect on the effective date of chapter 76-96, Laws of Florida, to the extent that it is not inconsistent with chapter 76-96, and as subsequently modified consistent with chapter 76-96. The board of directors and officers currently serving shall continue to serve until their successors are duly qualified as provided under the plan. The assets and obligations of the plan in effect immediately prior to the effective date of chapter 76-96 shall be construed to be the assets and obligations of the successor plan created herein.

c. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness issued or incurred by the association or any other entity created under this subsection.

7. On such coverage, an agent's remuneration shall be that amount of money payable to the agent by the terms of his or her contract with the company with which the business is placed. However, no commission will be paid on that portion of the premium which is in excess of the standard premium of that company.

8. Subject to approval by the department, the association may establish different eligibility requirements and operational

procedures for any line or type of coverage for any specified eligible area or portion of an eligible area if the board determines that such changes to the eligibility requirements and operational procedures are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the association. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

9. Notwithstanding any other provision of law:

a. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the association created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the association shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the association under the laws of this state or any other applicable laws.

b. No such proceeding shall relieve the association of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, market equalization or other surcharges, projected recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or any other rights, revenues, or other assets of the association pledged.

c. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, emergency assessments, market equalization or renewal surcharges, projected recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of or after any such proceeding shall continue unaffected by such proceeding.

d. As used in this subsection, the term "financing documents" means any agreement, instrument, or other document now existing or hereafter created evidencing any bonds or other indebtedness of the association or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the association are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other

obligation of the association related to such bonds or indebtedness.

e. Any such pledge or sale of assessments, revenues, contract rights or other rights or assets of the association shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, contract, or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the association or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, contract, or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

f. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, agents or employees of the association, members of the board of directors of the association, or the department or its representatives, for any action taken by them in the performance of their duties or

responsibilities under this subsection. Such immunity does not apply to actions for breach of any contract or agreement pertaining to insurance, or any willful tort.

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

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

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

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

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services

Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

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

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

~~such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.~~

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

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

~~d.~~ Except in the counties in which the office determines there is not a reasonable degree of competition, effective January 1, 2025 ~~2017~~, a structure that has a dwelling replacement cost of $1 million ~~$700,000~~ or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million ~~$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 shall be deemed ineligible for coverage 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.

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers; however, insureds who procure one or more subject

lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.~~a.~~ All revenues, assets, liabilities, losses, and expenses of the corporation shall be maintained in the Citizens account. The Citizens account may provide ~~divided into three separate accounts as follows~~:

a.~~(I)~~ ~~A personal lines account for~~ Personal residential policies that provide ~~issued by the corporation which provides~~ comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

b.~~(II)~~ ~~A commercial lines account for~~ Commercial residential and commercial nonresidential policies that provide ~~issued by the corporation which provides~~ coverage for basic property perils on risks that are not located in areas eligible

for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

c.~~(III) A Coastal account for~~ Personal residential policies and commercial residential and commercial nonresidential property policies that provide ~~issued by the corporation which provides~~ coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002 ~~in the coastal account~~. ~~Effective July 1, 2014,~~ The corporation may not offer ~~shall cease offering~~ new commercial residential policies providing multiperil coverage but ~~and~~ shall ~~instead~~ continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. However, the corporation may~~, however,~~ continue to renew a commercial residential multiperil policy on a building that was ~~is~~ insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage under this sub-subparagraph, the corporation may use its

approved policy forms and rates for risks located in areas not eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas ~~the personal lines account~~. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. The following policies, which provide coverage only for the peril of wind, must also include quota share primary insurance under subparagraph (c)2.:

(I) Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January

1, 2002;

(II) Policies that provide multiperil coverage, if offered by the corporation, and policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002;

(III) Commercial residential wind-only policies;

(IV) Commercial residential policies excluding wind, if offered by the corporation; and

(V) Commercial residential multiperil policies on a building that was insured by the corporation on June 30, 2014 ~~It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share primary insurance under subparagraph (c)2~~.

The area eligible for coverage with the corporation under this sub-subparagraph ~~under the coastal account also~~ includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

3. With respect to a deficit in the Citizens account:

a. Upon a determination by the board of governors that the Citizens account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

~~b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance~~

~~with the terms of the corresponding financing documents. If no such financing obligations remain outstanding or if the financing documents allow for combining of accounts, the corporation may consolidate the three separate accounts into a new account, to be known as the Citizens account, for all revenues, assets, liabilities, losses, and expenses of the corporation. The Citizens account, if established by the corporation, is authorized to provide coverage to the same extent as provided under each of the three separate accounts. The authority to provide coverage under the Citizens account is set forth in subparagraph 4. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan for consolidating the three separate accounts into a single account. Once the accounts are combined into one account, this subparagraph and subparagraph 3. shall be replaced in their entirety by subparagraphs 4. and 5.~~

~~c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting~~

~~Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).~~

~~d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.~~

~~e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.~~

~~f. The income of the corporation may not inure to the benefit of any private person.~~

~~3. With respect to a deficit in an account:~~

~~a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph j., if the remaining projected deficit incurred in the coastal account in a particular calendar year:~~

~~(I) Is not greater than 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.~~

~~(II) Exceeds 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior~~

~~calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 percent of the projected deficit or 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph e.~~

~~b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the~~

~~surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.~~

~~c. The corporation may not levy regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. if the three separate accounts in sub-sub-subparagraphs 2.a.(I)-(III) have been consolidated into the Citizens account pursuant to sub-subparagraph 2.b. However, the outstanding balance of any regular assessment levied by the corporation before establishment of the Citizens account remains payable to the corporation.~~

b.~~d.~~ After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph a. ~~j.~~, the remaining projected deficits in the Citizens ~~personal lines~~ account ~~and in the commercial lines account~~ in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph c. ~~e.~~

c.~~e.~~ Upon a determination by the board of governors that a projected deficit in the Citizens ~~an~~ account exceeds the amount that is expected to be recovered through surcharges ~~regular assessments~~ under sub-subparagraph a., ~~plus the amount that is expected to be recovered through surcharges under sub-subparagraph j.,~~ the board, after verification by the office,

shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance Program policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and the Citizens account ~~all accounts of the corporation~~, ~~excluding~~ National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other ~~provision of~~ law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the

surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the Citizens ~~applicable~~ account. The aggregate amount of emergency assessments levied for the Citizens ~~an~~ account in any calendar year may be less than but may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and the Citizens account ~~all accounts~~ of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

d.~~f.~~ The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this

subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes emergency ~~regular~~ assessments under sub-subparagraph c. ~~a. or subparagraph (q)1. and emergency assessments under sub-subparagraph c.~~ Emergency assessments collected under sub-subparagraph c. ~~e.~~ are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

e.~~g.~~ As used in this subsection and for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including

workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

f.~~h.~~ The Florida Surplus Lines Service Office shall annually determine ~~annually~~ the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

g.~~i.~~ The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for ~~regular assessments and~~ emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

~~j. Upon determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.~~

~~(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.~~

~~(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.~~

~~(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.~~

~~(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.~~

h.~~k.~~ If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the

corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

~~4. The Citizens account, if established by the corporation pursuant to sub-subparagraph 2.b., is authorized to provide:~~

~~a. Personal residential policies that provide comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;~~

~~b. Commercial residential and commercial nonresidential policies that provide coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and~~

~~c. Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002. The corporation may offer policies that provide~~

~~multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002. The corporation may not offer new commercial residential policies providing multiperil coverage, but shall continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. However, the corporation may continue to renew a commercial residential multiperil policy on a building that was insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage under this sub-subparagraph, the corporation may use its approved policy forms and rates for risks located in areas not eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also~~

~~purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. The following policies, which provide coverage only for the peril of wind, must also include quota share primary insurance under subparagraph (c)2.: Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002; policies that provide multiperil coverage, if offered by the corporation, and policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002; commercial residential wind-only policies; commercial residential policies excluding wind, if offered by the corporation; and commercial residential multiperil policies on a building that was insured by the corporation on June 30, 2014. The area eligible for coverage with the corporation under this sub-subparagraph includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.~~

~~5. With respect to a deficit in the Citizens account:~~

~~a. Upon a determination by the board of governors that the Citizens account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.~~

~~(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.~~

~~(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.~~

~~(III) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.~~

~~b. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph a., the remaining projected deficit incurred in the Citizens account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph c.~~

~~c. Upon a determination by the board of governors that a projected deficit in the Citizens account exceeds the amount that is expected to be recovered through surcharges under sub-subparagraph a., the board, after verification by the office,~~

~~shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance Program policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and the Citizens account, National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax~~

~~required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the Citizens account. The aggregate amount of emergency assessments levied for the Citizens account in any calendar year may be less than, but may not exceed the greater of, 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit or 10 percent of the aggregate statewide direct written premium for subject lines of business and the Citizens accounts for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.~~

~~d. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection; or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines~~

~~will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes emergency assessments under sub-subparagraph c. Emergency assessments collected under sub-subparagraph c. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.~~

~~c. As used in this subsection and for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required~~

~~of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.~~

~~f. The Florida Surplus Lines Service Office shall annually determine the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.~~

~~g. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.~~

~~h. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and~~

~~retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.~~

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. The corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Approved rate" means:

(A) With respect to an authorized insurer that holds a certificate of authority, such insurer's filed and approved rate.

(B) With respect to an authorized insurer that is an eligible surplus lines insurer, the rate approved by the office as part of such insurer's take-out plan.

(II) "Authorized insurer" means:

(A) An insurer holding a certificate of authority; or

(B) An eligible surplus lines insurer that is rated "A-" or higher by A.M. Best Company and whose Florida personal lines residential risk or commercial lines residential risk program is managed by a Florida resident surplus lines broker.

(IV) "Primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

(V)~~(I)~~ "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized

insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(III) ~~(II)~~ "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level

may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of

operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to

issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to

the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a

technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is

insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at

renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation for policies that renew before April 1, 2023; for policies that renew on or after that date, the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the corporation's renewal premium for comparable coverage. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation after the end of the policy term. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term. However, notwithstanding any other provision of law, this sub-subparagraph does not apply to a

policy that does not cover a primary residence.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment for any reason, including the failure of such agent to be licensed as a surplus lines agent, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual

agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment for any reason, including the failure of such agent to be licensed as a surplus lines agent, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A). This sub-sub-subparagraph does not apply to an authorized insurer that is an eligible surplus lines insurer.

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an admitted ~~authorized~~ insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the admitted ~~authorized~~ insurer is

more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an admitted ~~authorized~~ insurer, the risk is not eligible for coverage with the corporation unless the premium for coverage from the admitted ~~authorized~~ insurer is more than 20 percent greater than the corporation's renewal premium for comparable coverage. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. A policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the policy term. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term. With respect to commercial lines residential risks for a new application to the corporation for coverage, if the risk is offered coverage from an eligible surplus lines insurer at the insurer's approved rate under a policy including wind coverage, the risk is not eligible for a policy issued by the corporation. If an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation by an eligible surplus lines insurer at renewal, the risk is not eligible for coverage with the corporation.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment for any reason, including the failure of such agent to be licensed as a surplus lines agent, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A). This sub-sub-subparagraph does not apply to an authorized insurer that is an eligible surplus lines insurer.

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment for any reason, including the failure of such agent to be licensed as a surplus lines agent, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A). This sub-sub-subparagraph does not apply to an authorized insurer that is an eligible surplus lines insurer.

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the

application to the corporation, made in the agent's capacity as the corporation's agent. For purposes of comparing the premium for comparable coverage under sub-subparagraphs a. and b., premium includes any surcharge or assessment that is actually applied to such policy. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same Coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage on a risk that is located in an area eligible for coverage by the Florida Windstorm Underwriting Association, as that area was defined on January 1, 2002, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the

premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate. However, notwithstanding any other provision of law, this sub-subparagraph does not apply to a policy that does not cover a primary residence.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income~~:~~

~~a.~~ for the Citizens ~~an~~ account, which are attributable to a particular calendar year are in excess of projected losses and expenses for the Citizens account attributable to that year, such excess shall be held in surplus in the Citizens account. Such surplus must be available to defray deficits in the Citizens ~~that~~ account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year~~; or~~

~~b. For the Citizens account, if established by the corporation, which are attributable to a particular calendar~~

~~year are in excess of projected losses and expenses for the Citizens account attributable to that year, such excess shall be held in surplus in the Citizens account. Such surplus must be available to defray deficits in the Citizens account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year~~.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not

available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe reinsurance.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain

insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

~~13. Must provide that:~~

~~a. With respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.c. The plan must~~

~~provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.c. may not be limited or deferred; or~~

~~b. With respect to the Citizens account, if established by the corporation pursuant to sub-subparagraph (b)2.b., any assessable insurer with a surplus as to policyholders of $25 million or less and writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)5.c. An emergency assessment to be collected from policyholders under sub-subparagraph (b)5.c. may not be limited or deferred.~~

13.~~14.~~ Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by at least three insurers ~~an insurer~~ who are ~~is~~ authorized to write and are ~~is~~ actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within

the state.

14.~~15.~~ Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

15.~~16.~~ Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

16.~~17.~~ Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

17.~~18.~~ May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

18.~~19.~~ May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

19.~~20.~~ Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

20.a.~~21.a.~~ ~~As of January 1, 2012, unless the Citizens account has been established pursuant to sub-subparagraph (b)2.b.,~~ Must require that the agent obtain from an applicant for coverage from the corporation the following ~~an~~ acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,

MY POLICY COULD BE SUBJECT TO SURCHARGES AND ASSESSMENTS, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES AND ASSESSMENTS COULD BE AS HIGH AS 25 ~~45~~ PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 15 ~~45~~ PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

~~b. The corporation must require, if it has established the Citizens account pursuant to sub-subparagraph (b)2.b., that the agent obtain from an applicant for coverage from the corporation the following acknowledgment signed by the applicant, which includes, at a minimum, the following statement:~~

~~ACKNOWLEDGMENT OF POTENTIAL SURCHARGE~~

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

~~AND ASSESSMENT LIABILITY:~~

~~1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES AND ASSESSMENTS, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES AND ASSESSMENTS COULD BE AS HIGH AS 25 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.~~

~~2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 15 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.~~

~~3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.~~

~~4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.~~

b.~~c.~~ The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment

and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of sub-subparagraph a. ~~or sub-subparagraph b., as applicable~~.

c.~~d.~~ The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(d)1. All prospective employees for senior management positions, as defined by the plan of operation, are subject to background checks as a prerequisite for employment. The office shall conduct the background checks pursuant to ss. 624.34, 624.404(3), and 628.261.

2. On or before July 1 of each year, employees of the corporation must sign and submit a statement attesting that they do not have a conflict of interest, as defined in part III of chapter 112. As a condition of employment, all prospective employees must sign and submit to the corporation a conflict-of-interest statement.

3. The executive director, senior managers, and members of the board of governors are subject to part III of chapter 112, including, but not limited to, the code of ethics and public disclosure and reporting of financial interests, pursuant to s. 112.3145. For purposes of applying part III of chapter 112 to activities of the executive director, senior managers, and members of the board of governors, those persons shall be

considered public officers or employees and the corporation shall be considered their agency. Notwithstanding s. 112.3143(2), a board member may not vote on any measure that would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the assembly the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. Senior managers and board members are also required to file such disclosures with the Commission on Ethics and the Office of Insurance Regulation. The executive director of the corporation or his or her designee shall notify each existing and newly appointed member of the board of governors and senior managers of their duty to comply with the reporting requirements of part III of chapter 112. At least quarterly, the executive director or his or her designee shall submit to the Commission on Ethics

a list of names of the senior managers and members of the board of governors who are subject to the public disclosure requirements under s. 112.3145.

4. Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law, an employee or board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the corporation or who is under consideration for a contract. An employee or board member who fails to comply with subparagraph 3. or this subparagraph is subject to penalties provided under ss. 112.317 and 112.3173.

5. Any senior manager of the corporation who is employed on or after January 1, 2007, regardless of the date of hire, who subsequently retires or terminates employment is prohibited from representing another person or entity before the corporation for 2 years after retirement or termination of employment from the corporation.

6. The executive director, members of the board of governors, and senior managers of the corporation are prohibited from having any employment or contractual relationship for 2 years after retirement from or termination of service to the corporation with an insurer that has entered into a take-out bonus agreement with the corporation.

(e) The corporation is subject to s. 287.057 for the

purchase of commodities and contractual services except as otherwise provided in this paragraph. Services provided by tradepersons or technical experts to assist a licensed adjuster in the evaluation of individual claims are not subject to the procurement requirements of this section. Additionally, the procurement of financial services providers and underwriters must be made pursuant to s. 627.3513. Contracts for goods or services valued at or more than $100,000 are subject to approval by the board.

1. The corporation is an agency for purposes of s. 287.057, except that, for purposes of s. 287.057(24), the corporation is an eligible user.

a. The authority of the Department of Management Services and the Chief Financial Officer under s. 287.057 extends to the corporation as if the corporation were an agency.

b. The executive director of the corporation is the agency head under s. 287.057~~, except for resolution of bid protests for which the board would serve as the agency head~~. The executive director may assign or appoint a designee to act on his or her behalf.

2. The corporation must provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. Such notice must contain the following statement: "Failure to file a protest within the time prescribed in this section constitutes a waiver

of proceedings."

a. A person adversely affected by the corporation's decision or intended decision to award a contract pursuant to s. 287.057(1) or (3)(c) who elects to challenge the decision must file a written notice of protest with the executive director of the corporation within 72 hours after the corporation posts a notice of its decision or intended decision. For a protest of the terms, conditions, and specifications contained in a solicitation, including provisions governing the methods for ranking bids, proposals, replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest must be filed in writing within 72 hours after posting the solicitation. Saturdays, Sundays, and state holidays are excluded in the computation of the 72-hour time period.

b. A formal written protest must be filed within 10 days after the date the notice of protest is filed. The formal written protest must state with particularity the facts and law upon which the protest is based. Upon receipt of a formal written protest that has been timely filed, the corporation must stop the solicitation or contract award process until the subject of the protest is resolved by final board action unless the executive director sets forth in writing particular facts and circumstances that require the continuance of the solicitation or contract award process without delay in order to

avoid an immediate and serious danger to the public health, safety, or welfare.

(I) The corporation must provide an opportunity to resolve the protest by mutual agreement between the parties within 7 business days after receipt of the formal written protest.

(II) If the subject of a protest is not resolved by mutual agreement within 7 business days, the corporation's board must transmit the protest to the Division of Administrative Hearings and contract with the division to conduct a hearing to determine the merits of the protest and to issue a recommended order. The contract must provide for the corporation to reimburse the division for any costs incurred by the division for court reporters, transcript preparation, travel, facility rental, and other customary hearing costs in the manner set forth in s. 120.65(9). The division has jurisdiction to determine the facts and law concerning the protest and to issue a recommended order. The division's rules and procedures apply to these proceedings~~; the division's applicable bond requirements do not apply~~. The protest must be heard by the division at a publicly noticed meeting in accordance with procedures established by the division.

c. In a protest of an invitation-to-bid or request-for-proposals procurement, submissions made after the bid or proposal opening which amend or supplement the bid or proposal may not be considered. In protesting an invitation-to-negotiate

procurement, submissions made after the corporation announces its intent to award a contract, reject all replies, or withdraw the solicitation that amends or supplements the reply may not be considered. Unless otherwise provided by law, the burden of proof rests with the party protesting the corporation's action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge must conduct a de novo proceeding to determine whether the corporation's proposed action is contrary to the corporation's governing statutes, the corporation's rules or policies, or the solicitation specifications. The standard of proof for the proceeding is whether the corporation's action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended corporation action to reject all bids, proposals, or replies, the standard of review by the board is whether the corporation's intended action is illegal, arbitrary, dishonest, or fraudulent.

d. Failure to file a notice of protest or failure to file a formal written protest constitutes a waiver of proceedings.

3. The ~~board, acting as~~ agency head or his or her designee~~,~~ shall consider the recommended order of an administrative law judge ~~in a public meeting~~ and take final action on the protest. Any further legal remedy lies with the First District Court of Appeal.

(f) The corporation is subject to the provisions of

chapter 255.

(g) The board shall determine whether it is more cost-effective and in the best interests of the corporation to use legal services provided by in-house attorneys employed by the corporation rather than contracting with outside counsel. In making such determination, the board shall document its findings and shall consider: the expertise needed; whether time commitments exceed in-house staff resources; whether local representation is needed; the travel, lodging and other costs associated with in-house representation; and such other factors that the board determines are relevant.

(h) The corporation may not retain a lobbyist to represent it before the legislative branch or executive branch. However, full-time employees of the corporation may register as lobbyists and represent the corporation before the legislative branch or executive branch.

(i)1. The Office of the Internal Auditor is established within the corporation to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency to the policyholders and to the taxpayers of this state. The internal auditor shall be appointed by the board of governors, shall report to and be under the general supervision of the board of governors, and is not subject to supervision by an employee of the corporation. Administrative staff and support shall be provided by the

corporation. The internal auditor shall be appointed without regard to political affiliation. It is the duty and responsibility of the internal auditor to:

a. Provide direction for, supervise, conduct, and coordinate audits, investigations, and management reviews relating to the programs and operations of the corporation.

b. Conduct, supervise, or coordinate other activities carried out or financed by the corporation for the purpose of promoting efficiency in the administration of, or preventing and detecting fraud, abuse, and mismanagement in, its programs and operations.

c. Submit final audit reports, reviews, or investigative reports to the board of governors, the executive director, the members of the Financial Services Commission, and the President of the Senate and the Speaker of the House of Representatives.

d. Keep the board of governors informed concerning fraud, abuses, and internal control deficiencies relating to programs and operations administered or financed by the corporation, recommend corrective action, and report on the progress made in implementing corrective action.

e. Cooperate and coordinate activities with the corporation's inspector general.

2. On or before February 15, the internal auditor shall prepare an annual report evaluating the effectiveness of the internal controls of the corporation and providing

recommendations for corrective action, if necessary, and summarizing the audits, reviews, and investigations conducted by the office during the preceding fiscal year. The final report shall be furnished to the board of governors and the executive director, the President of the Senate, the Speaker of the House of Representatives, and the Financial Services Commission.

(j) All records of the corporation, except as otherwise provided by law, are subject to the record retention requirements of s. 119.021.

(k)1. The corporation shall establish and maintain a unit or division to investigate possible fraudulent claims by insureds or by persons making claims for services or repairs against policies held by insureds; or it may contract with others to investigate possible fraudulent claims for services or repairs against policies held by the corporation pursuant to s. 626.9891. The corporation must comply with reporting requirements of s. 626.9891. An employee of the corporation shall notify the corporation's Office of the Inspector General and the Division of Investigative and Forensic Services within 48 hours after having information that would lead a reasonable person to suspect that fraud may have been committed by any employee of the corporation.

2. The corporation shall establish a unit or division responsible for receiving and responding to consumer complaints, which unit or division is the sole responsibility of a senior

manager of the corporation.

(l) The office shall conduct a comprehensive market conduct examination of the corporation every 2 years to determine compliance with its plan of operation and internal operations procedures. The first market conduct examination report shall be submitted to the President of the Senate and the Speaker of the House of Representatives no later than February 1, 2009. Subsequent reports shall be submitted on or before February 1 every 2 years thereafter.

(m) The Auditor General shall conduct an operational audit of the corporation every 3 years to evaluate management's performance in administering laws, policies, and procedures governing the operations of the corporation in an efficient and effective manner. The scope of the review shall include, but is not limited to, evaluating claims handling, customer service, take-out programs and bonuses, financing arrangements, procurement of goods and services, internal controls, and the internal audit function. The initial audit must be completed by February 1, 2009.

(n)1. Rates for coverage provided by the corporation must be actuarially sound pursuant to s. 627.062 and not competitive with approved rates charged in the admitted voluntary market so that the corporation functions as a residual market mechanism to provide insurance only when insurance cannot be procured in the voluntary market, except as otherwise provided in this

paragraph. The office shall provide the corporation such information as would be necessary to determine whether rates are competitive. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within—45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially

sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

~~a. Twelve percent for 2023.~~

a.~~b.~~ Thirteen percent for 2024.

b.~~c.~~ Fourteen percent for 2025.

c.~~d.~~ Fifteen percent for 2026 and all subsequent years.

With the exception of counties in which the office determines there is not a reasonable degree of competition, this subparagraph does not apply to a personal lines residential 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.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraphs 5. and 8. shall cease for any line of business written by the corporation upon the corporation's implementation

of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing that is not competitive with approved rates in the admitted voluntary market for each commercial and personal line of business the corporation writes.

8. The following new or renewal personal lines policies written on or after November 1, 2023, are not subject to the rate increase limitations in subparagraph 5., but may not be charged more than 50 percent above, and may not be charged ~~nor~~ less than, the prior year's established rate for the corporation:

a. Policies that do not cover a primary residence;

b. New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631; or

c. Subsequent renewals of those policies, including the new policies in sub-subparagraph b., under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631.

9. As used in this paragraph, the term "primary residence" means the dwelling that is the policyholder's primary home or is

a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

(o) If coverage in ~~an account, or~~ the Citizens account ~~if established by the corporation,~~ is deactivated pursuant to paragraph (p), coverage through the corporation shall be reactivated by order of the office only under one of the following circumstances:

1. If the market assistance plan receives a minimum of 100 applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less for residential coverage, unless the market assistance plan provides a quotation from authorized ~~admitted~~ carriers at their approved ~~filed~~ rates for at least 90 percent of such applicants. Any market assistance plan application that is rejected because an individual risk is so hazardous as to be uninsurable using the criteria specified in subparagraph (c)8. shall not be included in the minimum percentage calculation provided herein. In the event that there is a legal or administrative challenge to a determination by the office that the conditions of this subparagraph have been met for eligibility for coverage in the corporation, any eligible risk may obtain coverage during the pendency of such challenge.

2. In response to a state of emergency declared by the Governor under s. 252.36, the office may activate coverage by

order for the period of the emergency upon a finding by the office that the emergency significantly affects the availability of residential property insurance.

(p)1. The corporation shall file with the office quarterly statements of financial condition, an annual statement of financial condition, and audited financial statements in the manner prescribed by law. In addition, the corporation shall report to the office monthly on the types, premium, exposure, and distribution by county of its policies in force, and shall submit other reports as the office requires to carry out its oversight of the corporation.

2. The activities of the corporation shall be reviewed at least annually by the office to determine whether coverage shall be deactivated ~~in an account, or~~ in the Citizens account ~~if established by the corporation,~~ on the basis that the conditions giving rise to its activation no longer exist.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated, if authority to levy exists, as provided in paragraph (b). The corporation shall take all reasonable and prudent steps

necessary to collect the amount of assessments due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within

or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.c. ~~(b)3.c.~~, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of

bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments ~~under sub-subparagraph (b)3.a~~. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy,

for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer for any reason, including to the failure of such agent to be licensed as surplus lines agent, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.c. ~~(b)3.c. or sub-subparagraph (b)5.c~~.

~~4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.c. or sub-subparagraph (b)5.c., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).~~

4.~~5.~~ Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

5.~~6.~~ Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

6.~~7.~~ For a policy taken out, assumed, or removed from the

corporation, the insurer may, for a period of no more than 3 years, continue to use any of the corporation's policy forms or endorsements that apply to the policy taken out, removed, or assumed without obtaining approval from the office for use of such policy form or endorsement.

(r) Nothing in this subsection shall be construed to preclude the issuance of residential property insurance coverage pursuant to part VIII of chapter 626.

(s)1. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any assessable insurer or its agents or employees, the corporation or its agents or employees, members of the board of governors or their respective designees at a board meeting, corporation committee members, or the office or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to:

a. Any of the foregoing persons or entities for any willful tort;

b. The corporation or its producing agents for breach of any contract or agreement pertaining to insurance coverage;

c. The corporation with respect to issuance or payment of debt;

d. Any assessable insurer with respect to any action to enforce an assessable insurer's obligations to the corporation

under this subsection; or

e. The corporation in any pending or future action for breach of contract or for benefits under a policy issued by the corporation.

2. The corporation shall manage its claim employees, independent adjusters, and others who handle claims to ensure they carry out the corporation's duty to its policyholders to handle claims carefully, timely, diligently, and in good faith, balanced against the corporation's duty to the state to manage its assets responsibly to minimize its assessment potential.

(t) For the purposes of s. 199.183(1), the corporation shall be considered a political subdivision of the state and shall be exempt from the corporate income tax. The premiums, assessments, investment income, and other revenue of the corporation are funds received for providing property insurance coverage as required by this subsection, paying claims for Florida citizens insured by the corporation, securing and repaying debt obligations issued by the corporation, and conducting all other activities of the corporation, and shall not be considered taxes, fees, licenses, or charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government. Bonds and other debt obligations issued by or on behalf of the corporation are not to be considered "state bonds" within the meaning of s. 215.58(8). The corporation is subject to the procurement provisions of

chapter 287 as provided in paragraph (e), and policies and decisions of the corporation relating to incurring debt, levying of assessments and the sale, issuance, continuation, terms and claims under corporation policies, and all services relating thereto, are not subject to the provisions of chapter 120. The corporation is not required to obtain or to hold a certificate of authority issued by the office, nor is it required to participate as a member insurer of the Florida Insurance Guaranty Association. However, the corporation is required to pay, in the same manner as an authorized insurer, assessments levied by the Florida Insurance Guaranty Association. It is the intent of the Legislature that the tax exemptions provided in this paragraph will augment the financial resources of the corporation to better enable the corporation to fulfill its public purposes. Any debt obligations issued by the corporation, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state and any political subdivision or local unit or other instrumentality thereof; however, this exemption does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations other than the corporation.

(u) Upon a determination by the office that the conditions giving rise to the establishment and activation of the corporation no longer exist, the corporation is dissolved. Upon

dissolution, the assets of the corporation shall be applied first to pay all debts, liabilities, and obligations of the corporation, including the establishment of reasonable reserves for any contingent liabilities or obligations, and all remaining assets of the corporation shall become property of the state and shall be deposited in the Florida Hurricane Catastrophe Fund. However, no dissolution shall take effect as long as the corporation has bonds or other financial obligations outstanding unless adequate provision has been made for the payment of the bonds or other financial obligations pursuant to the documents authorizing the issuance of the bonds or other financial obligations.

(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, unless the corporation has established the Citizens account, 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, unless the corporation has established the Citizens account, 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, unless the corporation has established the Citizens 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, unless the corporation has established the Citizens account, 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.

(w) Notwithstanding any other provision of law:

1. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the corporation created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation

of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the corporation under the laws of this state.

2. The proceeding does not relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, policyholder surcharges or other surcharges ~~under sub-subparagraph (b)3.j.~~, or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, policyholder surcharges or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used in this subsection, the term "financing documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure

the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the corporation related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the corporation shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the corporation or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

5. As long as the corporation has any bonds outstanding, the corporation may not file a voluntary petition under chapter

9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, and a public officer or any organization, entity, or other person may not authorize the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

6. If ordered by a court of competent jurisdiction, the corporation may assume policies or otherwise provide coverage for policyholders of an insurer placed in liquidation under chapter 631, under such forms, rates, terms, and conditions as the corporation deems appropriate, subject to approval by the office.

(x)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident,

although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and

retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a file is transferred to an insurer, that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and

confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, a licensed surplus lines agent, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed surplus lines agent or a licensed general lines insurance agent may not use such information for the direct

solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record

the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(y) It is the intent of the Legislature that the amendments to this subsection enacted in 2002 should, over time, reduce the probable maximum windstorm losses in the residual markets and the potential assessments to be levied on property insurers and policyholders statewide.

(z) In enacting the provisions of this section, the Legislature recognizes that both the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association have entered into financing arrangements that obligate each entity to service its debts and maintain the capacity to repay funds secured under these financing arrangements. It is the intent of the Legislature that nothing in this section be construed to compromise, diminish, or interfere with the rights of creditors under such financing arrangements. It is further the intent of

the Legislature to preserve the obligations of the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association with regard to outstanding financing arrangements, with such obligations passing entirely and unchanged to the corporation and, specifically, to the Citizens ~~applicable~~ account of the corporation. So long as any bonds, notes, indebtedness, or other financing obligations of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association are outstanding, under the terms of the financing documents pertaining to them, the governing board of the corporation shall have and shall exercise the authority to levy, charge, collect, and receive all premiums, assessments, surcharges, charges, revenues, and receipts that the associations had authority to levy, charge, collect, or receive under the provisions of subsection (2) and this subsection, respectively, as they existed on January 1, 2002, to provide moneys, without exercise of the authority provided by this subsection, in at least the amounts, and by the times, as would be provided under those former provisions of subsection (2) or this subsection, respectively, so that the value, amount, and collectability of any assets, revenues, or revenue source pledged or committed to, or any lien thereon securing such outstanding bonds, notes, indebtedness, or other financing obligations will not be diminished, impaired, or adversely

affected by the amendments made by this act and to permit compliance with all provisions of financing documents pertaining to such bonds, notes, indebtedness, or other financing obligations, or the security or credit enhancement for them, and any reference in this subsection to bonds, notes, indebtedness, financing obligations, or similar obligations, of the corporation shall include like instruments or contracts of the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association to the extent not inconsistent with the provisions of the financing documents pertaining to them.

(aa) Except as otherwise provided in this paragraph, the corporation shall require the securing and maintaining of flood insurance as a condition of coverage of a personal lines residential risk. The insured or applicant must execute a form approved by the office affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured from an insurer other than the corporation and in addition to coverage by the corporation, the risk will not be eligible for coverage by the corporation. The corporation may deny coverage of a personal lines residential risk to an applicant or insured who refuses to secure and maintain flood insurance. The requirement to purchase flood insurance shall be implemented as follows:

1. Except as provided in subparagraphs 2. and 3., all

personal lines residential policyholders must have flood coverage in place for policies effective on or after:

a. January 1, 2024, for a structure that has a dwelling replacement cost of $600,000 or more.

b. January 1, 2025, for a structure that has a dwelling replacement cost of $500,000 or more.

c. January 1, 2026, for a structure that has a dwelling replacement cost of $400,000 or more.

d. January 1, 2027, for all other personal lines residential property insured by the corporation.

2. All personal lines residential policyholders whose property insured by the corporation is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:

a. At the time of initial policy issuance for all new personal lines residential policies issued by the corporation on or after April 1, 2023.

b. By the time of the policy renewal for all personal lines residential policies renewing on or after July 1, 2023.

3. Policyholders are not required to purchase flood insurance as a condition for maintaining the following policies issued by the corporation:

a. Policies that do not provide coverage for the peril of wind.

b. Policies that provide coverage under a condominium unit

owners form.

The flood insurance required under this paragraph must meet, at a minimum, the coverage available from the National Flood Insurance Program or the requirements of subparagraphs s. 627.715(1)(a)1., 2., and 3.

(bb) A salaried employee of the corporation who performs policy administration services subsequent to the effectuation of a corporation policy is not required to be licensed as an agent under the provisions of s. 626.112.

(cc) There shall be no liability on the part of, and no cause of action of any nature shall arise against, producing agents of record of the corporation or employees of such agents for insolvency of any take-out insurer.

(dd) The assets of the corporation may be invested and managed by the State Board of Administration.

(ee) The office may establish a pilot program to offer optional sinkhole coverage in one or more counties or other territories of the corporation for the purpose of implementing s. 627.706, as amended by s. 30, chapter 2007-1, Laws of Florida. Under the pilot program, the corporation is not required to issue a notice of nonrenewal to exclude sinkhole coverage upon the renewal of existing policies, but may exclude such coverage using a notice of coverage change.

(ff) In establishing replacement costs for coverage on a

dwelling insured by the corporation, the corporation must accept a valuation from any of the following sources and must use the lowest valuation as the insured value of the dwelling, excluding land value, provided the valuation was completed within the 12 months before the application or renewal date of coverage:

1. A replacement cost valuation software that is specifically designed for use in establishing insurance replacement costs and that includes an itemized calculation of the cost of reconstruction;

2. A replacement cost valuation prepared by a certified or licensed real estate appraiser under part II of chapter 475 that is specifically formulated to establish insurance replacement cost, rather than market value, and which includes an itemized calculation of the cost of reconstruction; or

3. A replacement cost valuation prepared by a general, building, or residential contractor licensed under s. 489.113, or a professional engineer licensed under s. 471.015, which includes an itemized calculation of the total price of reconstruction.

(gg) The Office of Inspector General is established within the corporation to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency. The office shall be headed by an inspector general, which is a senior management position that involves planning, coordinating, and performing activities

assigned to and assumed by the inspector general for the corporation.

1. The inspector general shall be appointed by the Financial Services Commission and may only be removed from office by the commission. The inspector general shall be appointed without regard to political affiliation.

a. At a minimum, the inspector general must possess a bachelor's degree from an accredited college or university and 8 years of professional experience related to the duties of an inspector general as described in this paragraph, of which 5 years must have been at a supervisory level.

b. The inspector general shall report to, and be under the supervision of, the chair of the board of governors. The executive director or corporation staff may not prevent or prohibit the inspector general from initiating, carrying out, or completing any audit, review, evaluation, study, or investigation.

2. The inspector general shall initiate, direct, coordinate, participate in, and perform audits, reviews, evaluations, studies, and investigations designed to assess management practices; compliance with laws, rules, and policies; and program effectiveness and efficiency. This includes:

a. Conducting internal examinations; investigating allegations of fraud, waste, abuse, malfeasance, mismanagement, employee misconduct, or violations of corporation policies; and

conducting any other investigations as directed by the Financial Services Commission or as independently determined.

b. Evaluating and recommending actions regarding security, the ethical behavior of personnel and vendors, and compliance with rules, laws, policies, and personnel matters; and rendering ethics opinions.

c. Evaluating personnel and administrative policy compliance, management and operational matters, and human resources-related matters.

d. Evaluating the application of a corporation code of ethics, providing reviews and recommendations on the design and content of ethics-related policy training courses, educating employees on the code and on appropriate conduct, and checking for compliance.

e. Evaluating the activities of the senior management team and management's compliance with recommended solutions.

f. Cooperating and coordinating activities with the chief of internal audit.

g. Maintaining records of investigations and discipline in accordance with established policies, or as otherwise required.

h. Supervising and directing the tasks and assignments of the staff assigned to assist with the inspector general's projects, including regular review and feedback regarding work in progress and providing recommendations regarding relevant training and staff development activities.

i. Directing, planning, preparing, and presenting interim and final reports and oral briefings which communicate the results of studies, reviews, and investigations.

j. Providing the executive director with independent and objective assessments of programs and activities.

k. Completing special projects, assignments, and other duties as requested by the Financial Services Commission.

l. Reporting expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the inspector general has reasonable grounds to believe there has been a violation of criminal law.

(hh) The corporation shall prepare a report for each calendar year outlining both the statewide average and county-specific details of the loss ratio attributable to losses that are not catastrophic losses for residential coverage provided by the corporation, which information must be presented to the office and available for public inspection on the Internet website of the corporation by March 1 of the following calendar year.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (q)3.a. for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. After January 1, 2017, a policy may not be taken out of the corporation unless the provisions of this paragraph are met.

1. The corporation must publish a periodic schedule of cycles during which an insurer may identify, and notify the corporation of, policies that the insurer is requesting to take out. A request must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

2. The corporation must maintain and make available to the agent of record a consolidated list of all insurers requesting to take out a policy. The list must include a description of the coverage offered and the estimated premium for each take-out request.

3. If a policyholder receives a take-out offer from an authorized insurer, the risk is no longer eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from the corporation pursuant to sub-subparagraph (c)5.c. This subparagraph applies to take-out offers that are part of an application to participate in depopulation submitted to the office on or after January 1, 2023. However, notwithstanding any other provision of law, this sub-subparagraph does not apply to a policy that does not cover a primary residence.

4. The corporation must provide written notice to the policyholder and the agent of record regarding all insurers requesting to take out the policy. The notice must be in a

format prescribed by the corporation and include, for each take-out offer:

a. The amount of the estimated premium;

b. A description of the coverage; and

c. A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

(jj) The corporation's budget allocations for the compensation of all corporation employees and any proposed raise for an individual employee exceeding 10 percent of that employee's current salary must be approved by the board of governors. The corporation must have an overall employee compensation plan approved by the board of governors.

(kk) A corporation policyholder making a claim for water damage against the corporation has the burden of proving that the damage was not caused by flooding.

(ll) The corporation may share its claims data with the National Insurance Crime Bureau, provided that the National Insurance Crime Bureau agrees to maintain the confidentiality of such documents as otherwise provided for in paragraph (x).

(mm) ~~(ll)~~1. In addition to any other method of alternative dispute resolution authorized by state law, the corporation may adopt policy forms that provide for the resolution of disputes regarding its claim determinations, including disputes regarding coverage for, or the scope and value of, a claim, in a

proceeding before the Division of Administrative Hearings. Any such policies are not subject to s. 627.70154. All proceedings in the Division of Administrative Hearings pursuant to such policies are subject to ss. 57.105 and 768.79 as if filed in the courts of this state and are not considered chapter 120 administrative proceedings. Rule 1.442, Florida Rules of Civil Procedure, applies to any offer served pursuant to s. 768.79, except that, notwithstanding any provision in Rule 1.442, Florida Rules of Civil Procedure, to the contrary, an offer shall not be served earlier than 10 days after filing the request for hearing with the Division of Administrative Hearings and shall not be served later than 10 days before the date set for the final hearing. The administrative law judge in such proceedings shall award attorney fees and other relief pursuant to ss. 57.105 and 768.79. The corporation may not seek, and the office may not approve, a maximum hourly rate for attorney fees.

2. The corporation may contract with the division to conduct proceedings to resolve disputes regarding its claim determinations as may be provided for in the applicable policies of insurance.

(nn) ~~(mm)~~ The corporation may not determine that a risk is ineligible for coverage with the corporation solely because such risk has unrepaired damage caused by a covered loss that is the subject of a claim that has been filed with the Florida Insurance Guaranty Association. This paragraph applies to a risk

until the earlier of 24 months after the date the Florida Insurance Guaranty Association began servicing such claim or the Florida Insurance Guaranty Association closes the claim.

(7) TRADEMARKS, COPYRIGHTS, OR PATENTS.—Notwithstanding any other provision of law to the contrary, the corporation may, in its own name:

(a) Perform all things necessary to secure letters of patent, copyrights, or trademarks on any work products and enforce its rights therein.

(b) License, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture or use thereof, on a royalty basis or for such other consideration as the corporation deems proper.

(c) Take any action necessary, including legal action, to protect the manufacture or use thereof against improper or unlawful use or infringement.

(d) Enforce the collection of any sums due the corporation for the manufacture or use thereof by any other party.

(e) Sell any of the manufacture or use thereof and execute all instruments necessary to consummate any such sale.

(f) Do all other acts necessary and proper for the execution of powers and duties conferred upon the corporation in order to administer this paragraph.

Section 2. Subsections (3) and (5) and paragraphs (d), (e), and (f) of subsection (6) of section 627.3511, Florida

Statutes, are amended to read:

627.3511 Depopulation of Citizens Property Insurance Corporation.—

(3) EXEMPTION FROM DEFICIT ASSESSMENTS.—

~~(a) The calculation of an insurer's assessment liability under s. 627.351(6)(b)3.a. shall, for an insurer that in any calendar year removes 50,000 or more risks from the Citizens Property Insurance Corporation, either by issuance of a policy upon expiration or cancellation of the corporation policy or by assumption of the corporation's obligations with respect to in-force policies, exclude such removed policies for the succeeding 3 years, as follows:~~

~~1. In the first year following removal of the risks, the risks are excluded from the calculation to the extent of 100 percent.~~

~~2. In the second year following removal of the risks, the risks are excluded from the calculation to the extent of 75 percent.~~

~~3. In the third year following removal of the risks, the risks are excluded from the calculation to the extent of 50 percent.~~

~~If the removal of risks is accomplished through assumption of obligations with respect to in-force policies, the corporation shall pay to the assuming insurer all unearned premium with~~

~~respect to such policies less any policy acquisition costs agreed to by the corporation and assuming insurer. The term "policy acquisition costs" is defined as costs of issuance of the policy by the corporation which includes agent commissions, servicing company fees, and premium tax. This paragraph does not apply to an insurer that, at any time within 5 years before removing the risks, had a market share in excess of 0.1 percent of the statewide aggregate gross direct written premium for any line of property insurance, or to an affiliate of such an insurer. This paragraph does not apply unless either at least 40 percent of the risks removed from the corporation are located in Miami-Dade, Broward, and Palm Beach Counties, or at least 30 percent of the risks removed from the corporation are located in such counties and an additional 50 percent of the risks removed from the corporation are located in other coastal counties.~~

~~(b) An insurer that first wrote personal lines residential property coverage in this state on or after July 1, 1994, is exempt from regular deficit assessments imposed pursuant to s. 627.351(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.e., of the Citizens Property Insurance Corporation until the earlier of the following:~~

~~1. The end of the calendar year in which it first wrote 0.5 percent or more of the statewide aggregate direct written premium for any line of residential property coverage; or~~

~~2. December 31, 1997, or December 31 of the third year in which it wrote such coverage in this state, whichever is later.~~

~~(c) Other than an insurer that is exempt under paragraph (b), an insurer that in any calendar year increases its total structure exposure subject to wind coverage by 25 percent or more over its exposure for the preceding calendar year is, with respect to that year, exempt from deficit assessments imposed pursuant to s. 627.351(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.e., of the Citizens Property Insurance Corporation attributable to such increase in exposure.~~

~~(d)~~ Any exemption or credit from regular assessments authorized by this section shall last no longer than 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

(5) APPLICABILITY.—

~~(a)~~ The take-out bonus provided by subsection (2) applies ~~and the exemption from assessment provided by paragraph (3)(a) apply~~ only if the corporation policy is replaced by a standard policy including wind coverage or, if consistent with the

insurer's underwriting rules filed with the office, a basic policy including wind coverage; however, for risks located in areas where coverage through the coastal account of the corporation is available, the replacement policy need not provide wind coverage. The insurer must renew the replacement policy at approved rates on substantially similar terms for four additional 1-year terms, unless canceled or not renewed by the policyholder. If an insurer assumes the corporation's obligations for a policy, it must issue a replacement policy for a 1-year term upon expiration of the corporation policy and must renew the replacement policy at approved rates on substantially similar terms for four additional 1-year terms, unless canceled or not renewed by the policyholder. For each replacement policy canceled or nonrenewed by the insurer for any reason during the 5-year coverage period, the insurer must remove from the corporation one additional policy covering a risk similar to the risk covered by the canceled or nonrenewed policy. In addition, the corporation must place the bonus moneys in escrow for 5 years; such moneys may be released from escrow only to pay claims. If the policy is canceled or nonrenewed before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. A take-out bonus provided by subsection (2) or subsection (6) is not premium income for purposes of taxes and assessments under the Florida Insurance Code and remains the property of the

corporation, subject to the prior security interest of the insurer under the escrow agreement until it is released from escrow; after it is released from escrow it is considered an asset of the insurer and credited to the insurer's capital and surplus.

~~(b) It is the intent of the Legislature that an insurer eligible for the exemption under paragraph (3)(a) establish a preference in appointment of agents for those agents who lose a substantial amount of business as a result of risks being removed from the corporation.~~

(6) COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.—

~~(d) The calculation of an insurer's regular assessment liability under s. 627.351(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.e., shall, with respect to commercial residential policies removed from the corporation under an approved take-out plan, exclude such removed policies for the succeeding 3 years, as follows:~~

~~1. In the first year following removal of the policies, the policies are excluded from the calculation to the extent of 100 percent.~~

~~2. In the second year following removal of the policies, the policies are excluded from the calculation to the extent of 75 percent.~~

~~3. In the third year following removal of the policies,~~

~~the policies are excluded from the calculation to the extent of 50 percent.~~

~~(e) An insurer that first wrote commercial residential property coverage in this state on or after June 1, 1996, is exempt from regular assessments under s. 627.351(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c., with respect to commercial residential policies until the earlier of:~~

~~1. The end of the calendar year in which such insurer first wrote 0.5 percent or more of the statewide aggregate direct written premium for commercial residential property coverage; or~~

~~2. December 31 of the third year in which such insurer wrote commercial residential property coverage in this state.~~

~~(f) An insurer that is not otherwise exempt from regular assessments under s. 627.351(6)(b)3.a. with respect to commercial residential policies is, for any calendar year in which such insurer increased its total commercial residential hurricane exposure by 25 percent or more over its exposure for the preceding calendar year, exempt from regular assessments under s. 627.351(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c., attributable to such increased exposure.~~

Section 3. Subsections (5), (6), and (7) of section 627.3518, Florida Statutes, are amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold for applicants for new coverage established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program which is at or below the eligibility threshold for policyholders of the corporation established in s. 627.351(6)(c)5.a., the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold for applicants for new coverage established in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered exceeds the eligibility threshold for policyholders of the corporation

established in s. 627.351(6)(c)5.a., the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. However, notwithstanding any other provision of law, this subsection does not apply to a policy that does not cover a primary residence. As used in this subsection, the term "primary residence" has the same meaning as in sub-subparagraph s. 627.351(6)(c)2.a.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the

program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) May enter into either a standard or limited agency agreement with the insurer, at the insurer's option.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their independent agent is unwilling or unable for any reason, including the failure of such agent to be licensed as a surplus lines agent, to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit

such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) Must only facilitate the placement of an offer of coverage from an insurer whose limited servicing agreement is approved by that exclusive agent's exclusive insurer.

(d) May enter into a limited servicing agreement with the insurer making an offer of coverage, and only after the exclusive agent's insurer has approved the limited servicing agreement terms. The exclusive agent's insurer must approve a limited service agreement for the program for any insurer for which it has approved a service agreement for other purposes.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or unable for any reason, including the failure of such agent to be licensed as a surplus lines agent, to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant. This subsection does not apply to an authorized insurer that is an eligible surplus lines insurer.

Section 4. Effective upon becoming law, paragraph (aa) of

subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(aa) Except as otherwise provided in this paragraph, the corporation shall require the securing and maintaining of flood insurance as a condition of coverage of a personal lines residential risk. The insured or applicant must execute a form approved by the office affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured from an insurer other than the corporation and in addition to coverage by the corporation, the risk will not be eligible for coverage by the corporation. The corporation may deny coverage of a personal lines residential risk to an applicant or insured who refuses to secure and maintain flood insurance. The requirement to purchase flood insurance shall be implemented as follows:

1. Except as provided in subparagraphs 2. and 3., all personal lines residential policyholders must have flood coverage in place for policies effective on or after:

a. January 1, 2024, for a structure that has a dwelling replacement cost of $600,000 or more.

b. January 1, 2025, for a structure that has a dwelling replacement cost of $500,000 or more.

c. January 1, 2026, for a structure that has a dwelling

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

replacement cost of $400,000 or more.

d. January 1, 2027, for all other personal lines residential property insured by the corporation.

2. All personal lines residential policyholders whose property insured by the corporation is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:

a. At the time of initial policy issuance for all new personal lines residential policies issued by the corporation on or after April 1, 2023.

b. By the time of the policy renewal for all personal lines residential policies renewing on or after July 1, 2023.

3. Policyholders are not required to purchase flood insurance as a condition for maintaining the following policies issued by the corporation:

a. Policies that do not provide coverage for the peril of wind.

b. Policies that provide coverage under a condominium unit owners form.

The flood insurance required under this paragraph must meet, at a minimum, the dwelling coverage available from the National Flood Insurance Program or the requirements of subparagraphs s. 627.715(1)(a)1., 2., and 3.

Section 5. 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, 2024.

INSURANCE & BANKING SUBCOMMITTEE

PCS for HB 1503 by Esposito
Citizens Property Insurance Corporation

AMENDMENT SUMMARY
February 1, 2024

Amendment 1 by Rep. Esposito (Line 3128): Establishes an alternative determination for eligibility for Citizens Property Insurance (Citizens) for certain properties as follows:

- In a county that Office of Insurance Regulation (OIR) has not determined to lack reasonable competition (currently all counties except Miami-Dade and Monroe), OIR may evaluate whether there is a reasonable degree of competition within zip codes in that county;
- If OIR determines that zip codes within that county lack a reasonable degree of competition, then, within those zip codes, Citizens coverage eligibility for single-family homes and single condominium units includes structures with dwelling replacement costs, and single condominium units with combined dwelling and contents replacement costs, between $700,000 and $1 million.
    - The rate charged for policies issued to these properties must be actuarially sound and noncompetitive with the private market.

The amendment does not affect the glidepath controlled eligibility exception applicable to counties that currently lack a reasonable degree of competition within a county (currently, Miami-Dade and Monroe).

Amendments 2 and 3 by Rep. Esposito (Lines 693 and 2264): Preserves current law regarding the eligibility of properties valued between $700,000 and $1 million for Citizens coverage in counties where OIR has determined there is not a reasonable degree of competition. (These counties are currently Miami-Dade and Monroe).

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 Esposito offered the following:

Amendment (with title amendment)

Between lines 3128 and 3129, insert:

(oo) In a county that has not been determined to lack a reasonable degree of competition at the county level pursuant to sub-subparagraph (6)(a)3.a. the office may evaluate whether there is a reasonable degree of competition within an individual zip code in a county. If the office determines that such zip code lacks a reasonable degree of competition, then structures with dwelling replacement costs between $700,000 and $1 million, and single condominium units that have a combined dwelling and contents replacement cost between $700,000 and $1 million are eligible for coverage by the corporation. However, the rate

charged for policies issued on these risks is not subject to subparagraph (n)5.

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

Remove line 62 and insert:
with a specified entity; creating new eligibility criteria for coverage by the corporation; amending s. 627.3511, F.S.;

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 Esposito offered the following:

Amendment (with title amendment)

Remove lines 693-708 and insert:

a.~~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.~~

b. The requirements of sub-subparagraph a. ~~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.

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

Remove lines 10-12 and insert:
requiring the inclusion of quota share

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Esposito offered the following:

Amendment

Remove lines 2264-2269