

Insurance & Banking Subcommittee

Thursday, March 27, 2025
9:00 AM - 12:00 PM
Morris Hall (17 HOB)

Meeting Packet

Daniel Perez
Speaker

Bradford Yeager
Chair

The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

Daniel Perez
Speaker

Bradford Yeager
Chair

Meeting Agenda

Thursday, March 27, 2025
9:00 am – 12:00 pm
Morris Hall (17 HOB)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 265 Postjudgment Execution Proceedings Relating to Terrorism by Civil Justice & Claims Subcommittee, Porras
- HB 315 Transportation Network Company and Driver Insurance Requirements by Fabricio
- CS/HB 1173 Florida Trust Code by Civil Justice & Claims Subcommittee, Duggan

Consideration of the following proposed committee substitute(s):

- PCS for HB 643 -- Residual Market Insurers
- PCS for HB 1047 – Insurance

V. Closing Remarks

VI. Adjournment

214 House Office Building, 402 South Monroe Street, Tallahassee, Fl 32399-1300
(850) 717-4870

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/HB 265	**COMPANION BILL:** SB 1430 (Collins)
TITLE: Postjudgment Execution Proceedings Relating to Terrorism	**LINKED BILLS:** None
SPONSOR(S): Porras	**RELATED BILLS:** None

Committee References

Civil Justice & Claims	➤	Insurance & Banking	➤	Judiciary
15 Y, 0 N, As CS				

SUMMARY

Effect of the Bill:

CS/HB 265 clarifies current law relating to the ability of a victim of international terrorism to collect on a judgment from a terrorist party or an agency or instrumentality thereof. The bill authorizes creditor process issued under ch. 56 (final process) or ch. 77 (garnishment) to be served upon any person or entity over whom the court has jurisdiction and clarifies that a Florida court enforcing a terrorism victim's anti-terrorism judgment can garnish intangible assets wherever they are located, without territorial limitation. Further, the bill specifies that such "intangible assets" include bank accounts, financial assets, or other intangible property, thus clarifying inconsistent and ambiguous interpretations of case law. Under the bill, such intangible assets are subject to execution, garnishment, and turnover by the United States securities custodian or intermediary.

The provisions of the bill apply to any postjudgment execution proceeding served, or filed before, on, or after the effective date of the bill. The bill will be effective upon becoming law.

Fiscal or Economic Impact:

The bill may have a significant positive fiscal impact on private citizens seeking to obtain judgments against an international terrorist party or affiliate thereof.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

CS/HB 265 amends s. 772.13, F.S., relating to civil remedies for terrorism to create a pathway by which a victim of terrorism can collect on a judgment ordered in his or her favor by a court from a terrorist party or associate of a terrorist party. The bill makes it easier for a victim to collect on a judgment in a postjudgment execution proceeding entered against a terrorist party under Florida law as well as 18 U.S.C. s. 2333 or a substantially similar federal law. Further, the bill permits enforcement in any postjudgment execution proceedings against any agency or instrumentality of the terrorist party not named in the judgment pursuant to section 201(a) of the Terrorism Risk Insurance Act.[1] (Section 1).

Once a judgment is entered against a terrorist party, the ability to collect on a judgment is complicated by the nature of the international transactions and the complex processes such criminal organizations use to hide, launder, and transfer assets. The bill reconciles a disparity between precedent[2] established in *APR Energy, LLC. v.*

[1] 28 U.S.C. s. 1610.

[2] *See APR Energy, LLC. v. Pakistan Power Res., LLC.*, 653 F. Supp. 2d 1227 (M.D. Fla. Feb. 20, 2009) in which the court classified a bank account as a tangible asset, thus requiring the court to have personal jurisdiction over the Garnishee as well as jurisdiction over the property to be garnished-the actual bank account. *See also*, *Skulas v. Loiselle*, No. 09-60096-CIV, 2010 WL 1790439 (S.D. Fla. April 9, 2010) in which the court adopted the reasoning from APR Energy and held that Florida's

Pakistan Power Res., LLC.,[3] the Florida garnishment statutes, and the holding in *Stansell v. Revolutionary Armed Forces of Colombia (FARC)*,[4] to clarify that a court does not need to have in rem jurisdiction over the actual bank account being sought for the satisfaction of a judgment. The bill provides that creditor process issued under ch. 56 (final process) or ch. 77 (garnishment) may be served upon any person or entity over whom the court has personal jurisdiction. As such, victims under the bill would be able to serve the U.S. intermediary rather than having to serve the foreign bank where the account was opened, as is required under current law. (Section 1).

Under the bill, writs of garnishment issued under s. 77.01, F.S., and proceedings supplementary under s. 56.29, F.S., apply to intangible assets wherever they are located, including bank accounts, financial assets, or other intangible property. As such, a Florida court enforcing a terrorism victim's anti-terrorism judgment can garnish intangible assets wherever they are located, so long as the garnishee is subject to personal jurisdiction in the state of Florida. Further, the situs of any intangible assets held or maintained by or in the possession, custody, or control of a person or entity so served shall be deemed to be in Florida for the purposes of a final process or garnishment proceeding. Under the bill, service of a writ or notice to appear provides the court with in rem jurisdiction over any intangible assets regardless of the physical location, if any, of the assets. (Section 1).

The bill permits a creditor to reach a terrorist debtor's interest within a financial asset or security entitlement by legal process through the securities intermediary or financial institution with whom the debtor's account is maintained. If the securities intermediary is a foreign entity, legal process under chapters 56 or 77 may be served upon the United States securities custodian or intermediary that has reported holding or maintaining the blocked financial assets or security entitlement to the Office of Foreign Assets Control of the United States Department of the Treasury. Such financial assets or security entitlements are subject to execution, garnishment, and turnover by the U.S. securities custodian or intermediary. (Section 1).

When an electronic funds transfer ("EFT") is not completed within 5 banking days and is cancelled because a U.S. intermediary financial institution has blocked the transaction in compliance with a United States sanctions program, and a terrorist party or any agency or instrumentality thereof was either the originator or the intended beneficiary, the blocked funds are deemed owned by the terrorist party or its agency or instrumentality and, thus, are subject to execution and garnishment. (Section 1).

The bill allows a specific group of people who have been awarded a judgment through the court system for torts committed by a terrorist party to collect the judgment owed to them, even if the funds are blocked or otherwise "untouchable" due to a financial institution's compliance with federal sanctions on such organizations or individuals. As such, plaintiffs like those in the *Stansell v. Lopez Bello* case would be able to collect on the judgment owed to them by the Revolutionary Armed Forces of Colombia ("FARC") through the federal Anti-Terrorism Act. The bill, though narrowly tailored, would not only benefit or apply to those plaintiffs in the *Stansell* case; but would open up a pathway for other Floridians who have received judgments in their favor against a terrorist party or certain foreign nations to collect the funds owed to them. (Section 1).

The provisions of the bill apply to any postjudgment execution proceeding, including creditor process under chapters 56 or 77, served, or filed before, on, or after the bill becomes law. (Section 1).

The bill is effective upon becoming law and applies to any postjudgment execution proceeding served or filed before, on, or after such date. (Section 2).

FISCAL OR ECONOMIC IMPACT:

---

garnishment statutes (s. 77.01, F.S., et seq.) did not have extraterritorial effect and the court lacked in rem jurisdiction over the account.

[3] *Id.*

[4] *Stansell v. Revolutionary Armed Forces of Colombia (FARC)*, 149 F. Supp. 3d, 1337, 1341 (M.D. Fla. 2015)(providing that nothing in the language or structure of the Florida garnishment statutes demonstrates that they were intended to apply to bank accounts located outside of the state of Florida).

PRIVATE SECTOR:

The bill may have a significant positive fiscal impact on the ability of those private citizens who have been awarded judgments against an international terrorist party or affiliate to collect on such judgments. These victims have faced significant hurdles in attempting to collect on the judgments awarded to them based on the complex nature of foreign financial transaction by criminal actors.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Procedural Obstacles Related to Recovering Assets from a Criminal Organization

Generally, complex criminal organizations and terrorist parties are savvy as it relates to moving assets and money internationally. Because of this, they often use various foreign banks in their stream of transactions to create an impenetrable financial web of which U.S. control and interference is especially difficult. Terrorists and money launderers often open securities accounts with foreign banks to purchase large sums of stocks and bonds issued in the U.S., then use foreign intermediaries in the chain of custody within a U.S. bank. Then, such parties attempt to hide behind the protections offered by the Uniform Commercial Code ("UCC"), which generally require a victim to serve creditor process against the foreign bank where the account was actually opened, rather than the U.S. intermediary that blocks the securities in the U.S. However, such foreign banks intentionally have no U.S. branches and lack any type of presence in the U.S., making it difficult or impossible to serve them and litigate the issue.

The process becomes even more complicated when the originator and/or the beneficiary are blocked parties on the Office of Foreign Assets Control ("OFAC") Sanctions list (also referred to as the "SDN List")[5]. It is common for a terrorist party to use multiple intermediary banks and subsequently argue that, under the UCC, a wire transfer that is blocked "midstream" by a U.S. bank is only owned by the entity immediately upstream, thus placing huge sums of midstream wire transfers frozen out of a victim's reach.

For example, narcotics Kingpin and U.S. fugitive Samark Lopez Bello opened an account at a Swiss bank. The Swiss bank had no U.S. branches or U.S. employees. Lopez Bello used that account to acquire a nine-figure portfolio of stocks and bonds issued in the United States. When victims attempted to collect the judgment via a turnover motion against Citibank, Lopez Bello argued that Citibank was not the proper garnishee under U.C.C. s. 8-112, which provides that "the interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained."[6]

Electronic Funds Transfer Process – Overview

An electronic funds transfer ("EFT") is a transaction by which funds move from one institution to another or from one account to another at the direction of an institution's customer.[7] The transaction is done through the transmission of electronic instruction messages that cause the institutions to make the required bookkeeping entries and make the funds available for transfer.[8] The funds transfer process generally consists of a series of electronic messages sent between financial institutions directing each to make the debit and credit accounting entries necessary to complete the transaction.[9]

Chapter 670, F.S., of the Uniform Commercial Code ("UCC") applies to funds transfers. "Funds transfers" refers to the series of transactions, beginning with an originator's payment order, that is made for the purpose of making

[5] The Specifically Designated Nationals and Blocked Persons List ("SDN List") is a sanctions list administered by OFAC. *See* OFAC, *Sanctions List*, https://sanctionssearch.ofac.treas.gov/ (last visited March 6, 2025).
[6] *Stansell v. Revolutionary Armed Forces of Colombia (FARC)*, No. 19-cv-20896, 2020 WL 4692748 (S.D. Fla. 2020).
[7] U.S. Dep't. of the Treasury: Financial Crimes Enforcement Network ("FinCen"), *Appendix D – Fundamentals of the Funds Transfer Process*, https://www.fincen.gov/sites/default/files/shared/Appendix_D.pdf (last visited March 5, 2025).
[8] *Id*. at 1.
[9] *Id*.

payment to the beneficiary of the order.[10] The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the order.[11] A funds transfer is completed by acceptance of the beneficiary's bank of a payment order for the benefit of the beneficiary.[12]

Financial Institutions

A "financial institution" includes any person doing business in one or more of the following capacities:

- Bank (except bank credit card systems);
- Broker or dealer in securities;
- Money services business;
- Telegraph company;
- Casino;
- Card club; or
- A person subject to supervision by any state or federal bank supervisory authority;
- A futures commission merchant;
- An introducing broker in commodities; or
- A mutual fund.[13]

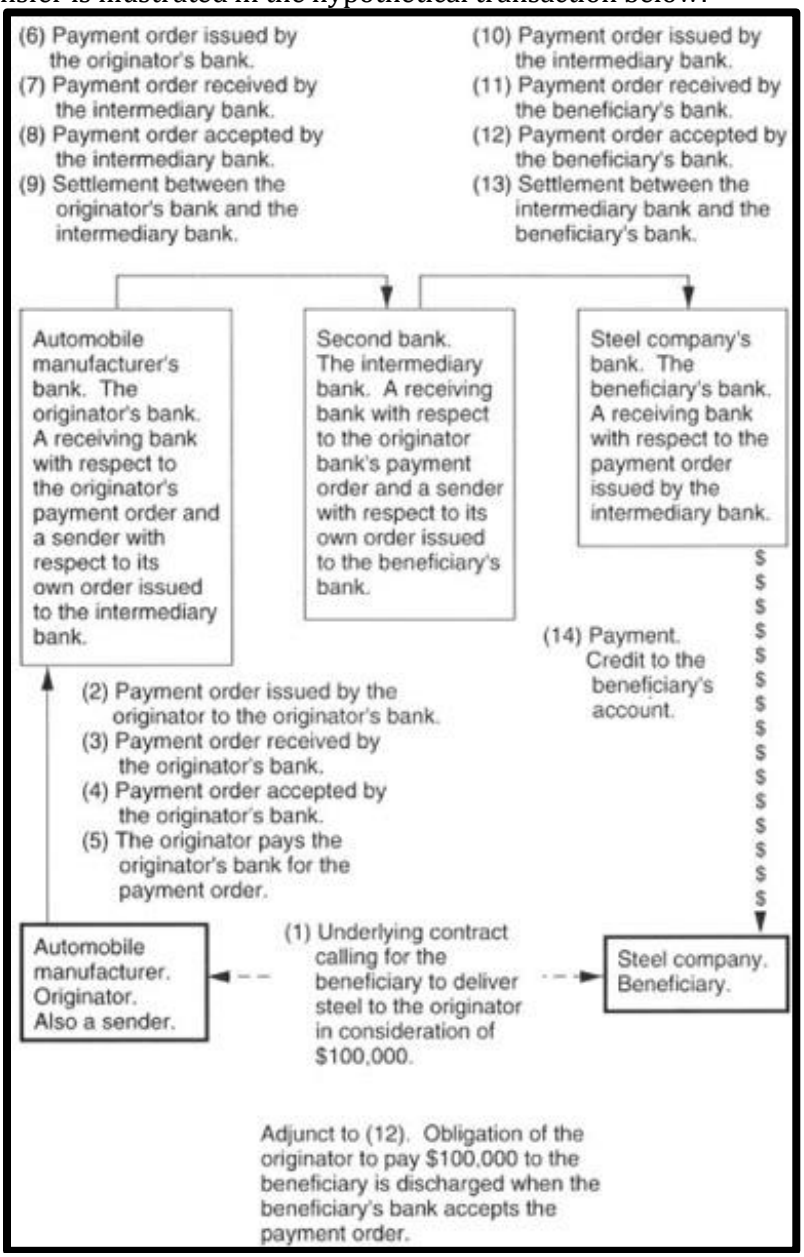
For the purposes of ch. 670, F.S., the terms below have the following definitions:

- "Originator" means the individual or business entity that initiated the funds transfer.[14]
- "Originator's Bank" means the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or the originator if the originator is a bank.[15]
- "Beneficiary" means the ultimate party to be credited or paid as a result of a funds transfer. [16]
- "Beneficiary's Bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.[17]
- "Intermediary Bank" means a receiving bank other than the originator's bank or the beneficiary's bank.
- "Payment Order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay (or cause another bank to pay) a fixed or determinable amount of money if:
    - The instruction does not state a condition to payment to the beneficiary other than time of payment;
    - The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and
    - The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.[18]
- "Receiving Bank" means the bank to which the sender's instruction is addressed.[19]
- "Sender" means the person giving the instruction to the receiving bank.[20]

---

[10] S. 670.104(1), F.S.
[11] *Supra* note 5.
[12] *Id.*
[13] FinCen, *Financial Institutions Definition*, https://www.fincen.gov/financial-institution-definition (last visited March 5, 2025). *See also* 31 C.F.R. 1010.100(t).
[14] S. 670.104(2), F.S.
[15] S. 670.104(4), F.S.
[16] S. 670.103(1)(a), F.S.
[17] S. 670.103(1)(b), F.S.
[18] S. 670.103(1)(c), F.S.
[19] S. 670.103(1)(d), F.S.
[20] S. 670.103(1)(e), F.S.

An Example of a funds transfer is illustrated in the hypothetical transaction below:[21]



In the EFT process, other financial institutions (not the originator or beneficiary institutions) may be required to effect the transaction. The financial industry uses a number of technical terms to describe such other financial institutions including, "intermediary," "instructing," "sender's correspondent," and "receiver's correspondent."[22]

Garnishment

Garnishment means a court-ordered process for collecting on a judgment, which takes money directly from a defendant's wages or assets (in this case in the form of bank accounts), or other third party who owes the defendant a debt.[23] A garnishment order instructs a third party who owes money to a defendant, typically the

[21] Bruce J. Summers, *The Payment System: Design, Management, and Supervision* (Dec. 15, 1994), International Monetary Fund (Dec. 1994), https://www.elibrary.imf.org/display/book/9781557753861/ch05.xml (last visited March 6, 2025).
[22] *Supra* note 1 at 56.
[23] Cornell Law School, Legal Information Institute, *Garnishment*, https://www.law.cornell.edu/wex/garnishment (last visited March 5, 2025).

defendant's employer or bank, to pay some or all of that money to the plaintiff instead of to the defendant.[24] This third party is referred to as a "garnishee."[25]

In Florida, every person or entity who has been awarded a judgment against another party has a right to a writ of garnishment. That is, the party seeking to collect on a judgment award may collect on that judgment from any debt that may be owed to the person or party the judgment was issued against.[26] For example, if plaintiff "A" is awarded a $1 million judgment against defendant "Z" and defendant "Z" is owed $5 million from company "C" (a third-party who is not a party to the lawsuit filed by plaintiff "A"), plaintiff "A" has a right to garnish (access and take possession of) the debt owed by company "C" to defendant "Z" to collect on the judgment she is owed if defendant "Z" is unable or unwilling to pay the judgment out of the assets in his own possession.

Civil Tort Action

One of the goals of the civil justice system is to redress tortious conduct, or "torts." A tort is a wrong for which the law provides a remedy. Torts are generally divided into two categories, as follows:

- An intentional tort, examples of which include an assault, battery, or false imprisonment.
- Negligence, which is a tort that is unintentionally committed. To prevail in a negligence lawsuit, the party seeking the remedy, the "plaintiff," must demonstrate that the:
  - Defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
  - Defendant breached his or her duty of care by failing to conform to the required standard;
  - Defendant's breach caused the plaintiff to suffer an injury; and
  - Plaintiff suffered actual damage or loss resulting from such injury.[27]

Jurisdiction in General

"Jurisdiction" refers to the power of a court to hear cases and enter orders.[28] It also refers to the territory within which a court may properly exercise its power.[29] There are three general types of jurisdiction:

- Personal jurisdiction.
- Subject matter jurisdiction.
- Territorial jurisdiction.

Personal Jurisdiction

Personal jurisdiction refers to the ability of a court to exercise power over a specific person. A Florida court has personal jurisdiction over a person, who personally or through an agent, submits himself or herself to the jurisdiction of the court. This can be done in a number of ways, including:

- Operating, conducting, engaging in, or carrying on a business or business venture in the state or having a physical office in the state.
- Committing a tort within the state.
- Owning, using, possessing, or holding a mortgage or other lien on any real property in the state.
- Contracting to insure a person, property, or risk located within the state at the time of contracting.
- With respect to most family law matters, maintaining a matrimonial domicile in the state at the commencement of an action or, if the defendant resided in the state prior to the commencement of the action, whether cohabitating during that time or not.
- Causing injury to persons or property within the state arising out of an act or omission by the defendant outside of the state, if, at or about the time of the injury, either:

---

[24] *Id*.
[25] *Id*.
[26] S. 77.01, F.S.
[27] 6 *Florida Practice Series* s. 1.1; *see Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508 (Fla. 2020).
[28] Cornell Law School, Legal Information Institute, *Jurisdiction,* https://www.law.cornell.edu/wex/jurisdiction (last visited March 10, 2025).
[29] *Id*.

    - The defendant was engaged in solicitation or services activities within the state; or
    - Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within the state in the ordinary course of commerce, trade, or use.
- Breaching a contract in the state by failing to perform acts required by the contract to be performed in the state.
- With respect to a proceeding for paternity, engaging in the act of sexual intercourse within this state with respect to which a child may have been conceived.
- Entering into a contract that complies with s. 685.102, F.S.[30]

Personal jurisdiction is further broken down into three categories: in personam jurisdiction, in rem jurisdiction, and quasi in rem jurisdiction.

In Personam Jurisdiction

In personam means "against the person," and refers to a court's power to adjudicate matters directed against a party. A court may exercise in personam jurisdiction over a person who resides in, maintains connections with, or is served notice of legal proceedings in that court's area of territorial jurisdiction.[31]

In Rem Jurisdiction

In rem is a latin term meaning "against a thing," referring to a court's power to adjudicate matters directed against property.[32] In rem jurisdiction is one of the two forms of personal jurisdiction (the other being personal or "in personam" jurisdiction).[33] A court can exercise in rem jurisdiction over any real or personal property located within its jurisdiction. There are two types of in rem jurisdiction a court may exercise:

- "Pure in rem" refers to actions that are binding against the world, rather than just the parties to the specific action; and
- "Quasi in rem" refers to actions which are only binding against individual parties to the action.[34]

Subject Matter Jurisdiction

Subject matter jurisdiction refers to a court's authority over the subject matter of the proceeding. Subject matter jurisdiction is the court's authority to decide the issue in controversy such as a contracts issue, or a civil rights issue.[35] State courts have general jurisdiction, meaning that a state can hear any controversy except for those prohibited by that state's laws and those subjects specifically allocated to federal courts of exclusive jurisdiction such as admiralty or bankruptcy issues.[36]

Territorial Jurisdiction

Territorial jurisdiction refers to a court's power to bind the parties to the action.[37] State court territorial jurisdiction is determined by the Due Process Clause of the U.S. Constitution's Fourteenth Amendment, and federal court territorial jurisdiction is determined by the due process clause of the U.S. Constitution's Fifth Amendment.

Florida Law

---

[30] S. 48.193(1)(a), F.S.
[31] Cornell Law School, Legal Information Institute, *In Personam*, https://www.law.cornell.edu/wex/in_personam (last visited March 10, 2025).
[32] Cornell Law School, Legal Information Institute, *In Rem*, https://www.law.cornell.edu/wex/in_rem (last visited March 5, 2025).
[33] *Id*.
[34] *Id*.
[35] Cornell Law School, Legal Information Institute, *Jurisdiction*, https://www.law.cornell.edu/wex/jurisdiction (last visited March 10, 2025).
[36] *Id*.
[37] *Id*.

Creditor Process

Creditor process means a levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.[38] Put simply, creditor process is a legal action that a creditor (person owed money from another) can take to collect the debt owed.

Florida Civil Judgment Collections Processes

After a plaintiff prevails in a civil action and obtains a judgment against the defendant, the plaintiff may initiate post-judgment proceedings to obtain the defendant's assets to satisfy the judgment. An "execution" is the lawful seizure of property owned by the judgment debtor to be sold at public auction. The net proceeds of an execution on property are paid to the judgment creditor to be applied against the debt. Execution applies to real property and personal property. Execution and sale are conducted by the sheriff.[39] Section 56.19, F.S., specifically provides for recovery of judgments from a third party or its sureties, entities, or associated individuals. As such, once a trial court has found in favor of a party ("judgment creditor"), the judgment creditor must then proceed in an execution proceeding against the third party and his or her sureties to collect the awarded amount or awarded property.

Under ch. 77, F.S., a "garnishment" is the seizure of monies owed to the judgment debtor, which money is then paid to the judgment creditor to be applied against the debt. Common targets of a garnishment are bank accounts and wages. For actions in garnishment, either party has a right to, and may demand a jury trial.[40] Under current law, in a garnishment case against a fugitive or his or her sureties, the fugitive may demand a jury trial.

"Proceedings supplementary" is a collections tool created by s. 56.29, F.S. When any judgment creditor holds an unsatisfied judgment or judgment lien, the judgment creditor may file a motion asking for proceedings supplementary. In the proceeding, the court may issue a Notice to Appear to the judgment debtor or to any person alleged to be holding property of the judgment debtor, or to any person who may have property that was fraudulently transferred by the judgment debtor to that third party. After a hearing, the court may order the sheriff to execute on property found to be owned by the judgment debtor, or found to have been fraudulently conveyed by the judgment debtor, for sale for the benefit of the judgment creditor.[41]

While collection actions are primarily focused on assets of the judgment debtor, there may be occasions where property titled or held in the name of another person or entity may be seized in payment of the judgment. This occurs where the judgment debtor has fraudulently transferred the property to a third party in an attempt to thwart collection of the judgment. Florida has adopted the Uniform Fraudulent Transfer Act to address these situations.[42]

Civil Cause of Action for Terrorism

Section 775.30, F.S., defines "terrorism" as an activity that:

- Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or
- Involves a violation of s. 815.06, F.S.;[43] and is intended to:
  - Intimidate, injure, or coerce a civilian population;
  - Influence the policy of a government by intimidation or coercion; or
  - Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

A person who commits the offenses specified in s. 775.30(2), F.S., in furtherance of intimidating or coercing the policy of a government, or in furtherance of affecting the conduct of a government by mass destruction,

[38] S. 670.502, F.S.
[39] The civil execution process is governed by ch. 56, F.S.
[40] S. 77.08, F.S.
[41] S. 56.29, F.S.
[42] Ch. 726, F.S.
[43] S. 815.06, F.S., provides that various computer-related offenses are a felony.

assassination, or kidnapping, commits the crime of terrorism, a first-degree felony.[44] A person who commits a violation of s. 775.30(2), F.S., which results in death or serious bodily injury, commits a life felony.[45]

Section 772.13, F.S., creates a civil remedy for victims of acts of terrorism or facilitating or furthering terrorism. A person who is injured by an act of terrorism, or by an act facilitating or furthering terrorism, has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of $1,000 and reasonable attorney fees and court costs in the trial and appellate courts. A similar civil cause of action for acts of terrorism is created in federal law at 18 U.S.C. s. 2333.

Fugitive Disentitlement Doctrine

Section 896.106, F.S., prohibits a person from using state court resources in furtherance of a claim in any civil forfeiture or third-party proceeding in a related forfeiture action if that person purposely leaves the jurisdiction or otherwise evades the jurisdiction in which a criminal case is pending.[46] Thus, Florida's fugitive disentitlement section applies the same concept utilized under the federal doctrine to state courts. As such, a Florida court may prohibit a fugitive from seeking to recover in a civil matter while "gaming the system" to evade criminal penalties.

Stansell v. Lopez Bello

In 2010, Keith Stansell, Marc Gonsalves, Thomas Howes, and the family of Thomas Janis obtained a $318 million default judgment against the Revolutionary Armed Forces of Colombia (FARC) under the federal Anti-Terrorism Act after having been taken hostage and tortured by the FARC for 5.5 years.[47] Since the judgment was obtained in 2010, the prevailing plaintiffs have attempted to satisfy the judgment by seizing assets owned by the FARC and its subsidiaries.

Samark Jose Lopez Bello (Lopez-Bello) is a Venezuelan national and designated narcotics kingpin currently on the Homeland Security's Most Wanted List for sanctions evasion.[48] Lopez-Bello and his front companies were each ruled to be an agency or instrumentality of the FARC and their assets were ordered to be turned over to the prevailing plaintiffs, but Lopez-Bello's agents and front companies continue to evade being forced to satisfy the judgment by taking advantage of the Florida court system. Lopez-Bello and his attorneys continue to demand jury trials in the post-judgment phase of the proceedings, but then they fail to appear. This has caused over a decade of delay in the victims obtaining money on the judgment they were awarded.

Federal Law

Federal Anti-Terrorism Act

The Federal Anti-Terrorism Act creates a cause of action for a tort related to terrorism.[49] Specifically, this federal cause of action allows any United States citizen injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, to sue in United States district court and recover treble damages and the cost of the suit, including attorney fees.

Under the federal Terrorism Risk Insurance Act (TRIA),[50] recovery by a U.S. national against a terrorist may include any asset of that terrorist party, including assets of an agency or instrumentality of that party, seized or frozen by the U.S. pursuant to federal law.[51]

---

[44] A first-degree felony is punishable by up to 30 years' imprisonment and a $10,000 fine.
[45] A life felony is punishable by up to life imprisonment or a term of years not exceeding life and a $15,000 fine. Sections 775.082 and 775.083, F.S.
[46] S. 896.106, F.S.
[47] Thomas Janis was a decorated U.S. Army Delta Force pilot who successfully crash landed the plane the men were in after it had been shot down by the FARC. Upon landing, Mr. Janis was executed planeside.
[48] U.S. Immigration and Customs Enforcement, https://www.ice.gov/most-wanted/lopez-bello-samark-jose (last visited March 5, 2025).
[49] 18 U.S.C. s. 2333.
[50] 15 U.S.C. s. 6701 note; Pub. L. No. 107-297, 116 Stat. 2322.

Federal Fugitive Disentitlement Doctrine

The federal Fugitive Disentitlement Doctrine[52] permits a court to deny a party's request to use and access the U.S. court system when he or she purposefully evades the jurisdiction to avoid criminal prosecution.[53] Essentially, the rationale of the doctrine is that a person who purposely games the U.S. justice system to avoid criminal prosecution should not be rewarded with the benefits that stem from access to the appellate process.[54] As such, a court may deny appellate review of a matter to a fugitive based on the doctrine.

U.S. Office of Foreign Assets Control ("OFAC") – Department of Treasury

The Office of Foreign Assets Control (OFAC) of the United States Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, and other threats to the national security of the United States.[55] OFAC administers a number of different sanctions programs. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.[56]

Blocked Assets

"Blocking" refers to freezing assets or other property. OFAC has the authority to block assets or property which immediately imposes an across the board prohibition against transfers or dealings of any kind with regard to the blocked property.[57] Similarly, OFAC has the authority to block all property and interests in property of certain persons, known as "blocked persons."[58] In the case of a blocked person, any property and interests in property of a blocked person that are within the U.S. or within the possession and control of a U.S. person must be blocked (frozen)-not seized- and may not be transferred, withdrawn, or otherwise dealt in.[59] Title to the blocked property remains with the blocked person, but the exercise of powers and privileges normally associated with ownership is prohibited without authorization from OFAC.[60]

Additionally, parties must report blocked property to OFAC within 10 business days from the time the property is blocked.[61] Blocked persons include those individuals who appear on OFAC's List of Specially Designated Nationals and Blocked Persons List ("SDN List").[62]

---

[51] *See* s. 805(b) of the Foreign Narcotics Kingpin Designation Act. 21 U.S.C. 1904(b).
[52] 28 U.S.C. s. 2466.
[53] Chloe S. Booth, Doctrine on the Run: *The Deepening Circuit Split Concerning Application of the Fugitive Disentitlement Doctrine to Foreign Nationals*, 59 B.C. L. Rev. 1153 (Mar. 2018).
[54] *Id*. at 1155, (citing to Paige Taylor, *The Good, the Bad, the Ugly: A Survey of Selected Fifth Circuit Immigration Cases*, 41 Tex. Tech. L. Rev. 989, 1005 (2009)).
[55] U.S. Dep't. of Treasury, *Office of Foreign Assets Control*, https://ofac.treasury.gov/ (last visited March 5, 2025).
[56] Office of Foreign Assets Control, *Sanctions Programs and Country Information*, https://ofac.treasury.gov/sanctions-programs-and-country-information (last visited March 5, 2025).
[57] OFAC, *Basic Information on OFAC and Sanctions*, https://ofac.treasury.gov/faqs/9#:~:text=OFAC%20authorities%20may%20require%20U.S.,a%20U.S.%20person%20must%20be (last visited March 5, 2025).
[58] *Id*.
[59] *Id*.
[60] *Id*.
[61] *Id*.
[62] *Id*. The OFAC SDN list can be searched online and is *available at* https://sanctionssearch.ofac.treas.gov/ (last visited March 6, 2025).

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2023	SB 1442	Grant	Collins	The bill became law on June 20, 2023.

OTHER RESOURCES:

FinCen Fundamentals of the Funds Transfer Process

U.S. Supreme Court, *Stansell, et al v. Samark Jose Lopez Bello, et al.*

United States Office of Foreign Assets Control

U.S. Department of the Treasury: Terrorism Risk Insurance Program

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	3/13/2025	Jones	Mathews
THE CHANGES ADOPTED BY THE COMMITTEE:	• Clarified that the provisions of the bill apply to any postjudgment execution proceedings to enforce a judgment entered against a terrorist party as well as any agency or instrumentality of the terrorist party who is not named in the judgment pursuant to federal law. • Clarified that creditor process may be served upon any person or entity over which the court has personal jurisdiction. • Clarified writs of garnishment and proceedings supplementary issued under s. 77.01, F.S. and s. 56.29, F.S., respectively, apply to intangible assets regardless of where they may be considered to be physically located. Further, the changes adopted clarified that service of a writ or notice to appear under the bill provides the court with in rem jurisdiction over any intangible assets, regardless of the location of such assets. • Clarified that the interest of a debtor in a financial asset or security entitlement may be reached by a creditor or legal process and if that creditor s a foreign entity, legal process under the bill may be served upon the U.S. securities custodian or intermediary that has reported holding, maintaining, processing, or controlling the blocked assets. Further, such financial assets are subject to execution, garnishment, and turnover. • Provided applicability. • Amended the effective date providing that the bill shall be effective upon becoming law			
Insurance & Banking Subcommittee			Hamon	Schenk
Judiciary Committee				

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

A bill to be entitled

An act relating to postjudgment execution proceedings relating to terrorism; amending s. 772.13, F.S.; providing additional requirements for postjudgment execution proceedings to enforce judgments entered against terrorist parties under specified provisions; providing retroactive application of specified provisions; providing an effective date.

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

Section 1. Subsection (6) of section 772.13, Florida Statutes, is amended to read:

772.13 Civil remedy for terrorism or facilitating or furthering terrorism.—

(6)(a) In any postjudgment execution proceedings to enforce a judgment entered against a terrorist party under this section or under 18 U.S.C. s. 2333 or a substantially similar law of the United States or of any state or territory of the United States, including postjudgment execution proceedings against any agency or instrumentality of the terrorist party not named in the judgment pursuant to s. 201(a) of the Terrorism Risk Insurance Act, 28 U.S.C. s. 1610:

1. There is no right to a jury trial under s. 56.18 or s. 77.08; ~~and~~

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

2. A defendant or a person may not use the resources of the courts of this state in furtherance of a defense or an objection to postjudgment collection proceedings if the defendant or person purposely leaves the jurisdiction of this state or the United States, declines to enter or reenter this state or the United States to submit to its jurisdiction, or otherwise evades the jurisdiction of the court in which a criminal case is pending against the defendant or person. This subparagraph applies to any entity that is owned or controlled by a person to whom this paragraph applies;

3. Creditor process issued under chapter 56 or chapter 77 may be served upon any person or entity over whom the court has personal jurisdiction. Writs of garnishment issued under s. 77.01 and proceedings supplementary under s. 56.29 apply to intangible assets wherever located, without territorial limitation, including bank accounts as defined in s. 674.104(1)(a), financial assets as defined in s. 678.1021(1), or other intangible property as defined in s. 717.101. The situs of any intangible assets held or maintained by or in the possession, custody, or control of a person or entity so served shall be deemed to be in this state for the purposes of a proceeding under chapter 56 or chapter 77. Service of a writ or notice to appear under this section shall provide the court with in rem jurisdiction over any intangible assets regardless of the location of the assets;

4. Notwithstanding s. 678.1121, the interest of a debtor in a financial asset or security entitlement may be reached by a creditor by legal process upon the securities intermediary with whom the debtor's securities account is maintained, or, if that is a foreign entity, legal process under chapter 56 or chapter 77 may be served upon the United States securities custodian or intermediary that has reported holding, maintaining, possessing, or controlling the blocked financial assets or security entitlements to the Office of Foreign Assets Control of the United States Department of the Treasury, and such financial assets or security entitlements shall be subject to execution, garnishment, and turnover by the United States securities custodian or intermediary; and

5. Notwithstanding s. 670.502(4), when an electronic funds transfer is not completed within 5 banking days and is canceled pursuant to s. 670.211(4) because a United States intermediary financial institution has blocked the transaction in compliance with a United States sanctions program, and a terrorist party or any agency or instrumentality thereof was either the originator or the intended beneficiary, then the blocked funds shall be deemed owned by the terrorist party or its agency or instrumentality and shall be subject to execution and garnishment.

(b) Paragraph (a) applies to any postjudgment execution proceedings, including creditor process under chapter 56 or

chapter 77 served, ~~judgment collectible under state law and to any civil action~~ pending, or filed before, on, or after the effective date of this act ~~June 20, 2023~~.

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

HB 315

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: HB 315 **TITLE:** Transportation Network Company and Driver Insurance Requirements **SPONSOR(S):** Fabricio	**COMPANION BILL:** None **LINKED BILLS:** None **RELATED BILLS:** SB 1206 (DiCeglie)

Committee References

Insurance & Banking ➤ Commerce

SUMMARY

Effect of the Bill:

The bill changes the insurance requirement that applies when a transportation network driver (i.e., Uber, Lyft, Sidecar, etc.) is engaged in a prearranged ride, but the rider is not in the vehicle, from $1 million, per accident for death, bodily injury, and property damage, to $50,000 for bodily injury or death to one person, $100,000 for bodily injury or death, per incident, and $25,000 for property damage. This is the same insurance obligation that applies when the TNC driver is logged on to the application but is waiting to be connected to a rider for a prearranged ride.

The insurance requirement for when a TNC driver is engaged in a prearranged ride and the rider is in the vehicle is unchanged at $1 million, per accident for death, bodily injury, and property damage.

Fiscal or Economic Impact:

TNC networks may pay reduced insurance premiums, which may possibly be passed onto consumers.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

Current law requires at least $1 million insurance coverage for death, bodily injury, and property damage for TNC drivers engaged in any prearranged ride, regardless of whether a rider is occupying the vehicle. The bill reduces this requirement if the TNC driver is engaged in a prearranged ride with no rider occupying the vehicle, i.e., they have connected on the application for a ride and the TNC driver is en route to the rider's location.

When a TNC driver is logged into the application, but not connected to a rider at all, the minimum coverage requirement is $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage in addition to the standard personal injury protection and uninsured/underinsured coverages required for Florida drivers.[1][2]

For when the TNC driver is engaged with a rider for a prearranged ride, but the rider is not present in the vehicle, the bill changes the applicable coverage requirement from the current $1 million $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage.

The ultimate outcome of the bill is that the lower minimum coverage requirements currently applicable to TNC drivers logged onto the digital network but not engaged in a prearranged ride will now also apply to TNC drivers

[1] For purposes of comparison, s. 324.032, F.S., requires for-hire passenger transportation vehicles to carry limits of $125,000/$250,000 for bodily injury and $50,000 for property damage. Taxicabs, limousines, and other for-hire transportation vehicles are subject to s. 324.032, F.S.

[2] For the personal injury protection and uninsured/underinsured coverage requirements, *see infra* notes 4-5.

engaged in a prearranged ride with no rider. The minimum coverage required for TNC drivers engaged in a prearranged ride with a rider present remains unchanged.

The effective date of the bill is July 1, 2025.

FISCAL OR ECONOMIC IMPACT:

PRIVATE SECTOR:

TNC networks may pay reduced insurance premiums, which may possibly be passed onto consumers.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Transportation Network Companies (TNCs)

Transportation network companies (TNCs) are businesses that use a digital network to connect riders who provide prearranged rides. Examples of TNCs include Uber, Lyft, and Sidecar. Chapter 627.748, F.S., governs the operation of TNCs, including their insurance coverage requirements.

The law defines a "TNC vehicle" as a vehicle that is used by a TNC driver to offer or provide a prearranged ride and owned, leased, or otherwise authorized to be used by the TNC driver. A vehicle that is let or rented to another for consideration may be used as a TNC vehicle. The bill specifies that a taxicab, jitney, limousine, or for-hire vehicle is not a TNC vehicle.

Statute also defines the term "prearranged ride" as the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network[3] controlled by a TNC, continuing while the TNC driver transports the requesting rider, and ending when the last requesting rider departs from the TNC vehicle. The term does not include a taxicab, for-hire vehicle, or street hail[4] service and does not include ridesharing,[5] carpool,[6] or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

TNC Coverage Requirements

Current law prescribes different insurance requirements for two scenarios: when a driver is logged on but not engaged in a ride, and when a driver is engaged in a prearranged ride. The required coverage is significantly higher for TNC drivers engaged in a prearranged ride.

The following coverage requirements apply while a TNC driver is logged on to the digital network but not engaged in a prearranged ride under Section 627.748(7)(b), F.S.:

[3] "Digital network" is defined as any online-enabled technology application service, website, or system offered or used by a TNC which enables the prearrangement of riders with TNC drivers. F.S., Section 627.748(1)(a).
[4] "Street hail" is defined as an immediate arrangement on a street with a driver by a person using any method other than a digital network to seek immediate transportation.
[5] Section 341.031(9)(a), F.S., defines "ridesharing" as an arrangement between persons with a common destination, or destinations, within the same proximity, to share the use of a motor vehicle on a recurring basis for round-trip transportation to and from their place of employment or other common destination. For purposes of ridesharing, employment shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall be deemed to terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer. However, an employee shall be deemed to be within the course of employment when the employee is engaged in the performance of duties assigned or directed by the employer, or acting in the furtherance of the business of the employer, irrespective of location.
[6] Section 450.28(3), F.S., defines "carpool" as an arrangement made by the workers using one worker's own vehicle for transportation to and from work and for which the driver or owner of the vehicle is not paid by any third person other than the members of the carpool.

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage.[7]
- Personal injury protection benefits that meet the minimum coverage amounts required under sections 627.730-627.7405, F.S.[8]
- Uninsured and underinsured vehicle coverage as required by section 627.727, F.S.[9]

Current law applies the following coverage requirements while a TNC driver is engaged in a prearranged ride under Section 627.748(7)(c), both when connected to a rider but the rider is not yet in the vehicle and when the rider is present:

- A primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage.[10]
- Personal injury protection meeting the minimum coverage amounts required for a limousine under 627.730-627.7405, F.S.[11]
- Uninsured and underinsured vehicle coverage as required by section 627.727, F.S.[12]

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Insurance & Banking Subcommittee			Lloyd	Schenk
Commerce Committee				

[7] Section 627.748(7)(b), F.S.
[8] Sections 627.730-627.7405, F.S., are the "Florida Motor Vehicle No-Fault Law." The law requires Florida motor vehicle owners to maintain Personal Injury Protection (PIP) insurance coverage.
[9] Section 627.727, F.S., provides uninsured and underinsured vehicle coverage requirements for all motor vehicle liability policies issued in Florida..
[10] Section 627.748(7)(c), F.S.
[11] *Supra* note 8.
[12] *Supra* note 9.

A bill to be entitled

An act relating to transportation network company and driver insurance requirements; amending s. 627.748, F.S.; revising automobile insurance requirements for transportation network companies and drivers; providing an effective date.

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

Section 1. Paragraphs (b) and (c) of subsection (7) of section 627.748, Florida Statutes, are amended to read:

627.748 Transportation network companies.—

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride or while a participating TNC driver is engaged in a prearranged ride but a rider does not occupy the TNC vehicle:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;

b. Personal injury protection benefits that meet the

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

minimum coverage amounts required under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride and a rider occupies the TNC vehicle:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

Section 2. This act shall take effect July 1, 2025.

Insurance & Banking Subcommittee
HB 315
Transportation Network Company and Driver Insurance Requirements

AMENDMENT SUMMARY
March 27, 2025

Amendment 1 by Fabricio (line 10):

- Clarifies provisions of the bill that establish insurance requirements applicable while a participating transportation network company (TNC) driver has accepted a prearranged ride but a rider does not occupy the TNC vehicle.
- Provides that a TNC must maintain certain required coverage unless the TNC driver maintains a policy that does not exclude such coverage.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Fabricio offered the following:

Amendment

Remove lines 10-52 and insert:

Section 1. Paragraphs (c) through (i) of subsection (7) of section 627.748, Florida Statutes, are redesignated as paragraphs (d) through (j), respectively, paragraph (a) and present paragraphs (c), (d), and (h) of that subsection are amended, and a new paragraph (c) is added to that subsection, to read:

627.748 Transportation network companies.—

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(a) Beginning July 1, 2025 ~~2017~~, a TNC driver or a TNC on behalf of the TNC driver shall maintain primary automobile insurance that:

1. Recognizes that the TNC driver is a TNC driver or otherwise uses a vehicle to transport riders for compensation; and

2. Covers the TNC driver while the TNC driver is logged on to the digital network of the TNC or while the TNC driver is engaged in a prearranged ride.

(c) The following automobile insurance requirements apply while a participating TNC driver has accepted a prearranged ride but a rider does not occupy the TNC vehicle:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required under s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(d) ~~(c)~~ The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride and the rider occupies the TNC vehicle:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required under ~~by~~ s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(e) ~~(d)~~ The TNC shall maintain the required coverage under paragraphs (b), (c), and (d) unless the driver maintains a policy that does not exclude, pursuant to subsection (8), the required coverage under paragraph (b), paragraph (c), or

paragraph (d). If the ~~TNC driver's~~ insurance maintained by the TNC driver were to lapse under paragraph (b), ~~or~~ paragraph (c), or paragraph (d) ~~has lapsed or does not provide the required coverage~~, ~~the insurance maintained by~~ the TNC must provide the coverage required under this subsection, beginning with the first dollar of a claim, and have the duty to defend such claim.

(i) ~~(h)~~ A TNC driver shall carry proof of coverage satisfying paragraphs (b), ~~and~~ (c), and (d) with him or her at all times during his or her use of a TNC vehicle in connection with a digital network. In the event of an accident, a TNC driver shall provide this insurance coverage information to any party directly involved in the accident or the party's designated representative, automobile insurers, and investigating police officers. Proof of financial responsibility may be presented through an electronic device, such as a digital phone application, under s. 316.646. Upon request, a TNC driver shall also disclose to any party directly involved in the accident or the party's designated representative, automobile insurers, and investigating police officers whether he or she was logged on to a digital network or was engaged in a prearranged ride at the time of the accident.

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/HB 1173	**COMPANION BILL:** CS/SB 806 (Yarborough)
TITLE: Florida Trust Code	**LINKED BILLS:** None
SPONSOR(S): Duggan	**RELATED BILLS:** None

Committee References

Civil Justice & Claims
14 Y, 2 N, As CS
➤ Insurance & Banking ➤ Judiciary

SUMMARY

Effect of the Bill:

CS/HB 1173 limits the common law's "special interest exception" for charitable trust enforcement by giving the Florida Attorney General the exclusive authority to assert, in any judicial proceeding within Florida or elsewhere, the rights of a qualified beneficiary of a charitable trust having its principal place of administration in Florida. The bill also expressly prohibits the Attorney General or other public officer of another state from asserting the rights made exclusive to the Florida Attorney General by the bill, and makes conforming changes.

Fiscal or Economic Impact:

None

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

The bill amends provisions of the Florida Trust Code to limit the common law's "special interest exception" for charitable trust enforcement in order to prevent the Attorney General or other public officers of states other than Florida from suing to enforce the rights of the qualified beneficiaries of a charitable trust with its principal place of administration in Florida. To accomplish this, the bill:

- Amends s. 736.0110, F.S., to provide that, where the Florida Attorney General asserts the rights of a qualified beneficiary under that section, the Florida Attorney General has the exclusive authority to represent the general public, unnamed charitable beneficiaries, and any person having a special interest in a charitable trust in any judicial proceeding, within Florida or elsewhere, with respect to all matters relating to the charitable trust. This standing extends to all matters relating to the trust's administration, including contract and trust law claims relating to charitable distributions and the exercise of trustee powers, and the bill expressly prohibits the Attorney General or other public officer of another state from asserting the rights made exclusive to the Florida Attorney General under this section. (Section 1)
- Amends s. 736.0405, F.S., to provide that, though current law gives the settlor of a charitable trust, "among others," standing to enforce the trust, this section may not be construed to afford standing to the Attorney General or public officer of another state with respect to any charitable trust having its principal place of administration in Florida. (Section 3)

The bill also:

- Makes a conforming change to s. 736.0106, F.S. (Section 2)
- Reenacts s. 738.303, F.S., to incorporate the amendment made to s. 736.0110, F.S. (Section 4)
- Provides an effective date of upon becoming a law. (Section 5)

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Florida Attorney General

Article IV, section 4 of the Florida Constitution designates the Florida Attorney General as the chief legal officer of this state. Elected to serve a four-year term, the Florida Attorney General's powers and duties, codified in Art. IV, section 4 of the Florida Constitution and in ch. 16, F.S., include asserting the rights of Florida's citizens and those impacted by business and commercial activities occurring in this state in legal proceedings as directed by law.

Florida Trust Code

Generally speaking, a trust is a relationship in which one party (the "settlor")[1] gives another party (the "trustee")[2] the right to hold title to the settlor's assets for a third party's benefit (the "beneficiary").[3] A trust may be created and take effect during a settlor's lifetime ("a living trust") or may be created by a will or other disposition and take effect when the settlor dies ("testamentary trust").[4] 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 a court order upon the consent of the beneficiaries or where the trust's purposes have become frustrated or illegal).[5]

Trust Governance

A trust is generally governed by the law of the jurisdiction designated in the trust's terms, provided there is a sufficient nexus to the designated jurisdiction at the time of the trust's creation or during the trust's administration; a sufficient nexus may include, but is not limited to, the location of real property held by the trust or the residence or location of an office of the settlor, a trustee, or any beneficiary.[6] However, where there is no controlling designation in the trust's terms, a trust is governed by the law of the jurisdiction where the settlor resides at the time of the trust's creation.[7]

Florida trusts are generally governed by the Florida Trust Code, codified in ch. 736, F.S. However, additional provisions of Florida law may apply if the trust has special attributes, and, importantly, the terms of the trust govern over Trust Code provisions unless the Trust Code provides otherwise.[8] Further, s. 736.0106, F.S., provides that "[t]he common law of trusts and principles of equity supplement [the Trust Code], except to the extent modified by [the Trust Code] or another law of this state."

Trust Creation

Under Florida law, a trust is created only if certain conditions are met. Specifically, to create a trust:

- The settlor must have capacity to create a trust;[9]
- The settlor must indicate an intent to create a trust;

---

[1] "Settlor" means a person, including a testator, who creates or contributes property to a trust. S. 736.0103(18), F.S.
[2] A settlor can designate a trustee, and successor trustees, in the trust document itself; however, where there is no designated trustee, or if the designated trustee is unable or unwilling to accept the trusteeship, the qualified beneficiaries may select a trustee by unanimous agreement, or else a court may appoint a trustee. S. 736.0704, F.S.
[3] A "beneficiary" may have a present or future beneficial interest in a trust, which interest may be vested or contingent. S. 736.0103(4), F.S.
[4] *See* "inter vivos trust" and "testamentary trust," Black's Law Dictionary (11th ed. 2019); s. 736.0401, F.S.
[5] 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 Mar. 20, 2025).
[6] S. 736.0107, F.S.
[7] *Id.*
[8] Ss. 736.0102 and 736.0105, F.S.
[9] The capacity required to create, amend, revoke, or add property to a trust, or to direct the actions of the trustee, is generally the same as that required to make a will. In other words, the settlor must be at least 18 years of age and of sound mind, meaning that he or she understands the nature and extent of the property placed in trust, the identities of the beneficiaries, and the effect of the disposition. Ss. 732.501 and 736.0601, F.S.

- The trust must have a definite beneficiary,[10] or else be a charitable trust, a trust for the care of an animal,[11] or a trust for a non-charitable purpose;[12]
- The trustee must have duties to perform;[13] and
- The same person cannot be the sole trustee and sole beneficiary.[14]

Further, a trust may be created only to the extent that its purposes are lawful, not contrary to public policy, and possible to achieve.[15]

Principal Place of Administration

Generally speaking, a trust's "principal place of administration" is the usual place where the day-to-day activities of the trust occur and, typically, where the trusts' records are kept; this place may be designated in the trust's terms or, where no such designation is made, determined by operation of law. However, s. 736.0108, F.S., provides that a designation of a trust's principal place of administration is valid only if there is a sufficient connection with the designated jurisdiction; under this section, such a connection exists if:

- A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or
- All or part of the administration occurs in the designated jurisdiction.[16]

Further, s. 736.0108, F.S., specifies that, where there is no valid designation of a trust's principal place of administration, the principal place of administration is the trustee's usual place of business where the records pertaining to the trust are kept or, if the trustee has no place of business, the trustee's place of residence. Other rules apply where there is no designation but there are co-trustees, or where the trustee is a bank, association, or trust company organized under Florida law or a bank or savings association organized under United States law with its main office in Florida.[17]

Rights of Qualified Beneficiaries

Under Florida law, a "qualified beneficiary" is a living beneficiary who, on the date the beneficiary's qualification is determined:

- Is a distributee or permissible distributee of trust income or principal;
- Would be a distributee or permissible distributee of trust income or principal if the interest of the distributees described above terminated on that date without causing the trust's termination; or
- Would be a distributee or permissible distributee of trust income or principal if the trust terminated in accordance with its terms on that date.[18]

---

[10] A beneficiary is "definite" if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities. S. 736.0402(2), F.S.

[11] A trust may be created for the care of an animal alive during the settlor's lifetime. Such a trust terminates on the animal's death or, if the trust was created to provide for the care of more than one qualifying animal, on the death of the last surviving animal. S. 736.0408, F.S.

[12] A trust may be created for a non-charitable purpose without a definite or definitely ascertainable beneficiary. Such a trust may not be enforced for more than 1,000 years. S. 736.0409, F.S.

[13] Trustees must generally comply with the duties set out in the trust instrument. The Florida Trust Code also confers a number of duties on trustees, intended to ensure that trustees put the beneficiaries' interests before their own interests and act fairly and in good faith to preserve and protect the trust's assets for the beneficiaries' benefit. S. 736.0801, F.S.

[14] S. 736.0402(1), F.S.

[15] S. 736.0404, F.S.

[16] This does not preclude other means for establishing a sufficient connection.

[17] S. 736.0108, F.S.

[18] For example, imagine a scenario in which a settlor establishes a trust, the terms of which provide that: 1) upon the settlor's death, the residue of the trust will be held by a trustee who will distribute the income to Person A during her lifetime; and 2) upon Person A's death, the trustee will distribute the remainder to Person B. When the settlor later dies, Person A is a qualified beneficiary because she will receive the income during her lifetime, and Person B is a qualified beneficiary because she will receive the remainder upon Person A's death. Contrast this with a scenario in which the settlor establishes a trust, the terms of which provide that: 1) upon the settlor's death, the residue of the trust will be distributed outright to Person A; and 2) if Person A predeceases the settlor, the residue of the trust is to be distributed outright to Person B. If, after establishing the trust, the settlor dies and Person A is still living, Person A is a qualified beneficiary because she is entitled to the residue of the trust; however, Person B would not be a qualified beneficiary as the trust would terminate without Person B receiving any distributions. On the other hand, in that scenario, if Person A had died before the settlor did, Person B would be a qualified beneficiary. S. 736.0103, F.S.

Whether a beneficiary is "qualified" or not has legal significance, as a qualified beneficiary generally has more rights and obligations with respect to the trust than others who may have an interest therein; this is because the interests of a "qualified beneficiary" are typically more immediate and defined, while the interests of a beneficiary that is not a "qualified beneficiary" are more contingent or undefined. Importantly, the rights of a qualified beneficiary generally include the right to be kept reasonably informed of the trust and its administration, to receive distributions in accordance with the trust's terms, and to assert their own rights in court.[19]

Judicial Proceedings

Generally speaking, the courts intervene in trust administration only to the extent that an interested person invokes the court's jurisdiction.[20] Where the courts do intervene, judicial proceedings involving a trust may relate to the validity, administration, or distribution of a trust, and may include proceedings to:

- Determine a trust's validity;
- Appoint or remove a trustee;
- Ascertain beneficiaries;
- Determine any question arising in the administration or distribution of any trust, including questions pertaining to the construction of the trust instrument;
- Determine the existence or non-existence of any immunity, power, privilege, duty, or right;
- Obtain a declaration of rights; or
- Determine any other matters involving trustees and beneficiaries.[21]

Charitable Trusts

A "charitable trust" is a trust created for charitable purposes, which purposes may include poverty relief; the advancement of the arts, science, education, or religion; or the promotion of health, governmental, or municipal objectives.[22] The settlor of a charitable trust may designate in the trust instrument a particular charitable purpose or beneficiary, but, where the trust instrument includes no such designation, the court may select one or more charitable purposes or beneficiaries.[23]

Under s. 736.0405, F.S., the settlor of a charitable trust, "among others," has standing[24] to enforce the trust in court, and, as discussed above, Florida law also gives a named qualified beneficiary of a charitable trust standing to assert its own rights in court.[25] Further, s. 736.0110, F.S., gives the Florida Attorney General the authority to assert, in any judicial proceeding, the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in Florida. This is a particularly useful tool when the trust instrument does not name a specific charitable organization as a beneficiary, but instead specifies a more general charitable purpose from which any number of charitable organizations or persons may benefit; in such instances, courts have found that the public at large lacks standing to sue as, "if it were otherwise there would be no end to potential litigation against a given defendant…brought by individuals or residents, all possessed of the same general interest, since none of them would be bound by res judicata[26] as a result of prior suits."[27]

However, the common law[28] also provides a "special interest exception" to charitable trust enforcement; specifically, courts have found that a party alleging a "special interest" – that is, an interest beyond that general interest possessed by the public at large – has standing to sue to enforce a charitable trust.[29] Because of this

[19] S. 736.0813, F.S.
[20] S. 736.0201, F.S.
[21] *Id.*
[22] S. 736.0405, F.S.
[23] *Id.*
[24] "Standing" refers to the capacity of a person to bring a lawsuit in court. Legal Information Institute, *Standing*, https://www.law.cornell.edu/wex/standing (last visited Mar. 20, 2025).
[25] S. 736.0110, F.S.
[26] "Res judicata" refers to the legal principal that a cause of action may not be relitigated once it has been judged on the merits. Legal Information Institute, *Res Judicata*, https://www.law.cornell.edu/wex/res_judicata (last visited Mar. 20, 2025).
[27] *U.S. Steele Corp. v. Save Sand Key, Inc.*, 303 So. 2d 9 (Fla. 1974).
[28] The "common law" is law derived from judicial decisions instead of from statutes. Legal Information Institute, *Common Law*, https://www.law.cornell.edu/wex/common_law (last visited Mar. 20, 2025).
[29] *State of Del. ex rel. Gebelein v. Florida First Nat. Bank of Jacksonville*, 381 So. 2d 1075 (Fla. 1st DCA 1979).

exception, Florida courts have allowed the Attorney General of a state other than Florida to sue to enforce a charitable trust with its principal place of administration in Florida where the court found that the trust instrument provided a benefit for the people of that other state; this, the courts found, created a "special interest" in the trust's enforcement which gave that state's Attorney General standing to sue on behalf of its interested citizens.[30]

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Civil Justice & Claims Subcommittee	14 Y, 2 N, As CS	3/20/2025	Jones	Mawn
THE CHANGES ADOPTED BY THE COMMITTEE:	Limited the Florida Attorney General's exclusive authority under the bill.			
Insurance & Banking Subcommittee			Hamon	Herrera
Judiciary Committee				

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

---

[30] *See, e.g.*, *id.*; *see also, e.g., Jennings v. Durden*, 2024 WL 2788198 (Fla. 5th DCA 2024).

A bill to be entitled

An act relating to the Florida Trust Code; amending s. 736.0110, F.S.; specifying circumstances in which the Attorney General has exclusive authority to represent certain interests relating to a charitable trust having its principal place of administration in this state; prohibiting certain public officers of another state from asserting such rights; amending s. 736.0106, F.S.; conforming provisions to changes made by the act; amending s. 736.0405, F.S.; providing construction; reenacting s. 738.303(2)(b) and (d), F.S., relating to authority of a fiduciary, to incorporate the amendment made to s. 736.0110, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (3) of section 736.0110, Florida Statutes, is amended to read:

736.0110 Others treated as qualified beneficiaries.—

(3)(a) The Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state. The Attorney General has standing to assert such rights in any judicial proceedings.

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

(b) Where the Attorney General asserts the rights of a qualified beneficiary as provided in paragraph (a), the Attorney General has the exclusive authority to represent the general public, unnamed charitable beneficiaries, and any person having a special interest in a charitable trust, in any judicial proceedings within this state or elsewhere, with respect to all matters relating to the administration of the charitable trust, including and without limitation, contract and trust law claims relating to charitable distributions and the exercise of trustee powers. The Attorney General of another state or any other public officer of another state does not have standing to assert such rights or interests.

Section 2. Section 736.0106, Florida Statutes, is amended to read:

736.0106 Common law of trusts; principles of equity.—The common law of trusts and principles of equity supplement this code, except to the extent modified by this code or another law of this state, including, but not limited to, s. 736.0110(3).

Section 3. Subsection (3) of section 736.0405, Florida Statutes, is amended to read:

736.0405 Charitable purposes; enforcement.—

(3) The settlor of a charitable trust, among others, has standing to enforce the trust. This subsection may not be construed to afford standing to the Attorney General of any other state, or another public officer of another state, with

respect to any charitable trust having its principal place of administration in this state.

Section 4. For the purpose of incorporating the amendment made by this act to section 736.0110, Florida Statutes, in references thereto, paragraphs (b) and (d) of subsection (2) of section 738.303, Florida Statutes, are reenacted to read:

738.303 Authority of fiduciary.—

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

(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.

(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).

Section 5. This act shall take effect upon becoming a law.

PCS for HB 643

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: PCS for HB 643	**COMPANION BILL:** CS/SB 1184 (DiCeglie)
TITLE: Residual Market Insurers	**LINKED BILLS:** None
SPONSOR(S): Insurance & Banking Subcommittee	**RELATED BILLS:** None

Committee References

Orig. Comm.: Insurance & Banking

SUMMARY

Effect of the Bill:

The bill amends provisions relating to surplus lines and Citizens Property Insurance Corporation dispute resolution procedures. Specifically, the bill:

- Removes the definition of "diligent effort" relating to surplus lines;
- Revises surplus lines eligibility by eliminating the requirement that agents seek coverage from authorized insurers before placing coverage in the surplus lines market, replacing it with a standard that allows export if the coverage is not generally available from authorized insurers; clarifies that the full amount of insurance may be exported without layering; and retains the required disclosure to insureds; and
- Authorizes Citizens Property Insurance Corporation to offer policyholders the option, at issuance or renewal, to resolve claim disputes through arbitration before the Division of Administrative Hearings, with specific notice and selection requirements.

Fiscal or Economic Impact:

None

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

Surplus Lines

The bill removes the definition of "diligent effort," which previously required agents to seek and be rejected by three authorized insurers before being admitted to the surplus lines market. (Section 1)

The bill revises eligibility standards for surplus lines insurance placements by removing the requirement that a producing agent conduct and document a diligent effort to procure coverage from authorized insurers. Instead, the bill provides that coverage may be exported to the surplus lines market if it is of a kind or class not generally available from authorized insurers transacting insurance in this state. The bill also clarifies that the full amount of insurance may be exported, even if partial coverage might otherwise be available from authorized insurers, thereby eliminating the expectation that the risk be layered before surplus lines placement is permitted. (Section 2)

Citizens Arbitration Procedures

The bill authorizes Citizens Property Insurance Corporation (Citizens) to offer policyholders the option to resolve claim disputes through arbitration proceedings before the Division of Administrative Hearings (DOAH). While current law allows Citizens to use DOAH, the bill clarifies that this option can be offered directly to insureds in policy forms.

At issuance or renewal, Citizens may use forms that let insureds elect DOAH arbitration for disputes involving coverage, scope, or value of a claim. The insured must be given written notice of this option and indicate their choice by marking "ACCEPT" or "DECLINE" on a boldfaced 12-point disclosure immediately before the insured's signing. The selection applies for the entire policy term. (Section 3)

The bill provides an effective date of July 1, 2025. (Section 4)

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) regulates specified insurance products, insurers and other risk bearing entities in Florida.[1] As part of their regulatory oversight, the OIR may suspend or revoke an insurer's certificate of authority under certain conditions.[2] 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.[3] 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.[4] The OIR is also authorized to conduct market conduct examinations to determine compliance with applicable provisions of the Insurance Code.[5]

Insurance companies that transact insurance in Florida or that have offices located in the state are required to obtain a certificate of authority (COA) issued by the OIR pursuant to s. 624.401, F.S. These companies, referred to as authorized or admitted insurers,[6] are broadly regulated by the OIR under the Insurance Code as to reserves, surplus as to policyholders, solvency, rates and forms, market conduct, permissible investments, and affiliate relationships.[7] Authorized insurers are also required to participate in a variety of government mandated insurance programs and pay assessments levied by state guaranty funds in the event of insurer insolvencies.[8]

Surplus Lines Insurance

Surplus lines insurance is the market of last resort for difficult to place commercial and personal lines risks in Florida.[9] Typically, surplus lines insurers write policies for unusual, high-risk situations that include hazardous materials transporters, commercial trucking enterprises, day care centers, older homes located in coastal areas, professional athletes, hospitals, expensive boats and cars, and medical malpractice. Surplus lines insurance is coverage provided by a company that is not licensed in Florida but is allowed to transact insurance in the state as an "eligible" insurer[10] under the surplus lines law (ss. 626.913-626.937, F.S.). Under this law, insurance may only be purchased from a surplus lines carrier if the necessary amount of coverage cannot be procured after a diligent effort to buy the coverage from authorized insurers.[11]

---

[1] S. 20.121(3)(a), F.S. 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 the Office of Insurance Regulation for purposes of rulemaking. Further, the Financial Services Commission appoints the commissioner of the Office of Insurance Regulation.
[2] S. 624.418, F.S.
[3] S. 624.316(1)(a), F.S.
[4] S. 624.318(2), F.S.
[5] S. 624.3161, F.S.
[6] An "authorized" or "admitted" insurer is one duly authorized by a COA to transact insurance in this state.
[7] The Insurance Code consists of chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[8] For example, Florida licensed direct writers of property and casualty insurance must be members of the Florida Insurance Guaranty Association, which handles the claims of insolvent insurers under part II of ch. 631, F.S., and insurers offering workers' compensation coverage in Florida must be members of the Florida Workers' Compensation Insurance Guaranty Association, which provides payment of covered claims for insurers that are declared insolvent under part V of ch. 631, F.S.
[9] Surplus lines insurance is insurance coverage provided by an insurer that is not licensed in Florida but is allowed to do business in the state because the particular coverage offered is not available from Florida-licensed or authorized carriers. Surplus lines insurers are governed under the Surplus Lines Law (ss. 626.913-626.937, F.S.).
[10] An "eligible surplus lines insurer" as defined in s. 626.914(2), F.S., is an "unauthorized insurer" which has been made eligible by the Office of Insurance Regulation to issue insurance coverage under the surplus lines law.
[11] *See* s. 626.914(4), F.S. A "diligent effort" is defined as seeking coverage from and being rejected by at least three authorized insurers that write the type of coverage being sought. The rejections must be documented.

Rates charged by a surplus lines carrier must not be lower than the rate applicable and in use by the majority of the authorized insurers writing similar coverages on similar risks in Florida.[12] Likewise, a surplus lines policy contract form must not be more favorable to the insured as to the coverage or rate offered by the majority of authorized carriers.[13] Except as specifically stated as applicable, surplus lines insurers are not subject to regulation under ch. 627, F.S., of the Florida Insurance Code, which includes, in part, provisions related to ratings standard, contracts, and attorney fees for authorized insurers.[14]

The Florida Surplus Lines Service Office (FSLSO) is governed by a nine-person board of governors consisting of eight members appointed by the DFS with the insurance consumer advocate being the ninth member.[15] The FSLSO is required to perform its functions under a plan of operation[16] that is subject to the approval of the OIR.[17] The FSLSO is required to conduct the following activities:

- Receive, record and review all surplus lines insurance policies;
- Maintain records of the policies reported to the FSLSO and perform reports as required by the Financial Services Commission;
- Prepare and deliver to each surplus lines agent quarterly reports of each agent's business;
- Collect and remit to the DFS the surplus lines tax as provided for in s. 626.932, F.S.;
- Reconcile the policies provided by non-admitted insurers with the policies reported to the service office by agents;
- Collect monthly from each surplus lines agent a service fee of up to .03 percent; and
- Other activities as specified by statute.[18]

Diligent Effort

"To export" a policy means that an insurance agent,[19] with the consent of the insurance applicant, places a policy with an unauthorized insurer under the Surplus Lines Law through a surplus lines agent.[20] Unless an exception applies, in order to place business with a surplus lines insurer, the agent must make a "diligent effort" to place the policy with a Florida-authorized insurer, which is shown by having three written rejections of coverage from authorized insurers currently writing the type of insurance being sought.[21] However, if the cost to replace a residential dwelling is $700,000 or more, then diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market currently writing that type of coverage.[22]

Export requirements further specify that:

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- The policyholder must be advised in writing that coverage may be available and less expensive in the admitted market and persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.[23]

[12] S. 626.916(1)(b), F.S.
[13] S. 626.916(1)(c), F.S.
[14] s. 626.913(4), F.S.
[15] s. 626.921(4), F.S.
[16] s. 626.921(3), F.S.
[17] s. 626.921(5), F.S.
[18] s. 626.921(3), F.S.
[19] Typically, the applicant's usual insurance agent works with the surplus lines agent to arrange the placement, rather than the applicant working directly with the surplus lines agent.
[20] s. 626.914(3), F.S.
[21] s. 626.914(4) and 626.916(1)(a), F.S.
[22] s. 626.914(4), F.S.
[23] s. 626.916(1), F.S.

Only four states do not require that an agent make a diligent effort before exporting a policy to a surplus lines insurer.[24] Nineteen states require the agent obtain at least three declinations from authorized insurers before exporting a policy to a surplus lines insurer.[25]

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[26] Citizens is not a private insurance company.[27] Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).[28]

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by a nine-member Board of Governors (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.[29] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.[30] The Governor appoints an additional member who serves solely to advocate on behalf of the consumer.[31] Citizens is subject to regulation by the Office of Insurance Regulation (OIR).

Citizens may only appoint as its licensed agents those agents who also hold an appointment by at least three insurers who are authorized to write and are actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.[32]

The Division of Administrative Hearings (DOAH)

DOAH is a state agency that employs full-time Administrative Law Judges to conduct hearings in most cases in which the substantial interests of a person are determined by an agency and which involve a disputed issue of material fact.[33] When a state agency proposes to take some action that is adverse to a person, the affected person is normally entitled to request an administrative hearing to determine the matter.[34] Requests for hearings are initially made to the appropriate state agency.[35] If the case does not involve disputed facts, the agency itself will conduct a proceeding and subsequently render a decision.[36] If the request for hearing indicates that the affected person disputes facts upon which the proposed action is based, the agency ordinarily refers the case to DOAH for a hearing.[37]

DOAH provides a hearing conducted by an independent and neutral Administrative Law Judge who thereafter enters a Recommendation or Final Order, which is provided to the state agency and the parties in the case. In the case of a Recommended Order, the agency reviews the Recommended Order and issues a Final Order which usually adopts the Judge's factual findings, but, under certain circumstances, the agency may reject or modify certain legal conclusions of the Judge or the recommended penalty, if any. If the Final Order is adverse to the non-agency party, an appeal may be taken within a limited time to a District Court of Appeal.[38]

---

[24] These states are Louisiana, Mississippi, Virgina, and Wisconsin. See Wholesale & Specialty Insurance Association Diligent Effort Compliance Chart, https://www.wsia.org/docs/Diligent%20effort%20chart%202-3-17.pdf (last visited March 13, 2025).
[25] *Id.* Ohio requires five declinations and New Mexico requires four declinations. Idaho and South Carolina require only one declination.
[26] The term "admitted market" means insurance companies licensed to transact insurance in Florida.
[27] s. 627.351(6)(a)1., F.S.
[28] S. 2, ch. 2002-240, Laws of Fla.
[29] S. 627.351(6)(a)2., F.S.
[30] s. 627.351(6)(c)4.a., F.S.
[31] s. 627.351(6)(c)4., F.S.
[32] s. 627.351(6)(c)13., F.S.
[33] Ch. 120, F.S.
[34] s.120.68(1), F.S.
[35] See Uniform Rule 28-106.201(2).
[36] s.120.57(2), F.S.
[37] s.120.57(1), F.S.
[38] s.120.68(2)(a), F.S.

Integration of DOAH in Citizens' Dispute Resolution Process

Traditionally, disputes between Citizens and its policyholders that couldn't be resolved through informal negotiations or traditional alternative dispute resolution methods often resulted in civil suits filed in circuit court. In July 2022, Citizens' Board of Governors approved a policy endorsement allowing either the insurer or the insured to direct claims disputes to DOAH. This endorsement was subsequently approved by the OIR in August 2022 and became effective for new and renewing policies on February 1, 2023.[39]p

HB 799 (2023) codified Citizens' authority to include DOAH arbitration in its policy forms and to contract with DOAH to conduct claim-related dispute proceedings. Under current law, such proceedings are not governed by ch. 120, F.S., but are instead subject to ss. 57.105 and 768.79, F.S., allowing for attorney fee awards and settlement procedures similar to those in circuit court.[40]

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2023	799	Griffitts and Barnaby	Martin	The bill was approved by the Governor on May 31, 2023.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Orig. Comm.: Insurance & Banking Subcommittee			Hamon	Herrera

[39] *See* Insurance Journal, *Citizens Insurance to Begin Using DOAH for Dispute Resolution*, July 14, 2022, https://www.insurancejournal.com/news/southeast/2022/07/14/675721.htm; Insurance Journal, *Citizens Insurance Adds DOAH Arbitration Option to Policies*, Feb. 6, 2023. https://www.insurancejournal.com/news/southeast/2023/02/06/706063.htm.

[40] Ch. 2023-172, § 5, Laws of Fla.; see also § 57.105, 768.79, Fla. Stat. (2023).

A bill to be entitled

An act relating to residual market insurers; amending s. 624.155, F.S.; sufficient evidence to demonstrate an insurance claim for purposes of a bad faith action; clarifying the requirement of sufficient evidence; amending s. 626.914, F.S.; removing the definition of the term "diligent effort"; amending s. 626.916, F.S.; removing the diligent effort and other requirements for insurance coverage to be eligible for export; providing presumption of being informed and of knowing of certain insurance coverage under specified circumstances; amending s. 627.351, F.S.; dispute resolution procedures under Citizens Property Insurance Corporation; providing an effective date.

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

Section 1. Subsection (4) of section 626.914, Florida Statutes, is amended to read:

626.914 Definitions.—As used in this Surplus Lines Law, the term:

~~(4) "Diligent effort" means seeking coverage from and having been rejected by at least three authorized insurers currently writing this type of coverage and documenting these rejections. However, if the residential structure has a dwelling~~

~~replacement cost of $700,000 or more, the term means seeking coverage from and having been rejected by at least one authorized insurer currently writing this type of coverage and documenting this rejection.~~

Section 2. Section 626.916, Florida Statutes, is amended to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(a) The coverage must be of a kind or class not generally available from authorized insurers transacting insurance in this state. ~~The full amount of insurance required must not be procurable, after a diligent effort has been made by the producing agent to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state, and the amount of insurance exported shall be only the excess over the amount so procurable from authorized insurers. Surplus lines agents must obtain a statement verify that a diligent effort has been made by requiring a properly documented statement of diligent effort from the retail or producing agent that the coverage is not available from authorized insurers. However, to be in compliance with the diligent effort requirement, the surplus lines agent's reliance must be reasonable under the particular circumstances surrounding the export of that particular risk. Reasonableness~~

~~shall be assessed by taking into account factors which include, but are not limited to, a regularly conducted program of verification of the information provided by the retail or producing agent. Declinations must be documented on a risk-by-risk basis. If it is not possible to obtain the full amount of insurance required by layering the risk, it is permissible to export the full amount.~~

(b) The premium rate at which the coverage is exported shall not be lower than that rate applicable, if any, in actual and current use by a majority of the authorized insurers for the same coverage on a similar risk.

(c) The policy or contract form under which the insurance is exported shall not be more favorable to the insured as to the coverage or rate than under similar contracts on file and in actual current use in this state by the majority of authorized insurers actually writing similar coverages on similar risks; except that a coverage may be exported under a unique form of policy designed for use with respect to a particular subject of insurance if a copy of such form is filed with the office by the surplus lines agent desiring to use the same and is subject to the disapproval of the office within 10 days of filing such form exclusive of Saturdays, Sundays, and legal holidays if it finds that the use of such special form is not reasonably necessary for the principal purposes of the coverage or that its use would be contrary to the purposes of this Surplus Lines Law with

respect to the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers.

(d) Except as to extended coverage in connection with fire insurance policies and except as to windstorm insurance, the policy or contract under which the insurance is exported shall not provide for deductible amounts, in determining the existence or extent of the insurer's liability, other than those available under similar policies or contracts in actual and current use by one or more authorized insurers.

(e) The insured has signed or otherwise provided documented acknowledgment of a disclosure in substantially the following form: "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer." If the acknowledgment of the disclosure is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available.

Section 3. Paragraph (ll) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(ll)1. In addition to any other method of alternative dispute resolution authorized by state law, the corporation may

adopt policy forms that provide an option for the insured to select, at the time of entering into the policy or upon renewal, to have disputes regarding the corporation's claim determinations ~~for the resolution of disputes regarding its claim determinations~~, including disputes regarding coverage for, or the scope and value of, a claim, resolved in a proceeding before the Division of Administrative Hearings. Each insured must be notified in writing, at the time of entering into a policy with the corporation and upon each renewal, that they must decide whether to resolve disputes through arbitration before the Division of Administrative Hearings. Such notification must be included, in boldfaced 12-point type immediately preceding the insured's signature, in the following statement:

"AN INSURED MUST CHOOSE AT THE TIME OF ENTERING INTO THIS POLICY OR UPON RENEWAL WHETHER TO RESOLVE DISPUTES THROUGH ARBITRATION BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS. THE INSURED MUST INDICATE THIS SELECTION BY MARKING 'ACCEPT' OR 'DECLINE' BELOW. THIS DECISION CANNOT BE CHANGED DURING THE TERM OF THE POLICY."

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. This subparagraph expires July 1, 2025.

Section 4. This act shall take effect July 1, 2025.

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: PCS for HB 1047	**COMPANION BILL:** SB 230 (Truenow)
TITLE: Insurance	**LINKED BILLS:** None
SPONSOR(S): Insurance & Banking Subcommittee	**RELATED BILLS:** None

Committee References

Orig. Comm.: Insurance & Banking

SUMMARY

Effect of the Bill:

The bill:

- Defines "sufficient evidence" for precluding bad faith actions against liability insurers.
- Reduces the coursework requirement for general lines agent licensure from 200 to 60 hours.
- Limits claims-handling manual requirements to residential property insurers with active policies.
- Prohibits public adjusters from adversarial conduct and requires appointment type only in initial text messages.
- Allows policy cancellation or nonrenewal before repairs if the insured no longer has an insurable interest.
- Makes a grammatical correction to the required flood insurance disclosure.
- Requires written proof-of-loss statements and adjusts communication and disclosure requirements for property insurers.

Fiscal or Economic Impact:

None

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

Bad Faith

The bill amends s. 624.155, F.S., to define "sufficient evidence" for the purpose of precluding bad faith actions against liability insurers. "Sufficient evidence" must include written or photographic evidence of personal or property injury, such as accident reports, photos, medical or repair bills, or receipts. If an insurer believes the evidence is insufficient, it must object in writing within 10 business days or waive the objection. The claimant then has 10 business days to clarify or provide more evidence. This change clarifies what constitutes "sufficient evidence" necessary to trigger the start of the time period within which the insurer must tender payment to avoid bad faith. (Section 1).

General Lines Agents

The bill decreases the coursework requirement for general lines agent licensure from 200 hours to 60 hours. (Section 2).

Public Adjusters

The bill requires public adjusters communicating by text message to include their appointment type only in the initial message. The bill also prohibits public adjusters from engaging in adversarial conduct with insurer personnel during claims handling, including surreptitious recordings without consent. (Section 3).

Claims Handling Manuals

The bill limits the requirement to maintain a claims-handling manual to only those authorized residential property insurers with active residential policies**.** (Section 4).

Notice of Cancellation, Nonrenewal, or Renewal Premiums
The bill allows insurers to cancel or non-renew a policy before repairs are completed if the named insured no longer has an insurable interest[1] in the property. (Section 5).

Required Flood Insurance Disclosure on Homeowner's Policy Declarations Page
The bill makes a grammatical change to the required flood insurance disclosure on the homeowners' policy declaration page. (Section 6).

Property Insurance Claims Handling Requirements and Disclosures
The bill require that proof-of-loss statements submitted to property insurers be in writing. Additionally, the bill requires adjusters to include their name and license number only in the initial text message, not in all follow-up texts.

The bill revises the required statements that insurers must include when:

- Providing a preliminary or partial estimate of damage, to state that the evaluation is not final and may change; and
- Making a partial payment on a claim, to indicate that the claim is still being reviewed and additional payments may follow. (Section 7).

The bill becomes effective upon becoming law. (Section 8).

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Regulation of Insurance in Florida
The Office of Insurance Regulation (OIR) regulates specified insurance products, insurers and other risk bearing entities in Florida.[2] As part of their regulatory oversight, the OIR may suspend or revoke an insurer's certificate of authority under certain conditions.[3] 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.[4] 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.[5] The OIR is also authorized to conduct market conduct examinations to determine compliance with applicable provisions of the Insurance Code.[6]

Insurance companies that transact insurance in Florida or that have offices located in the state are required to obtain a certificate of authority (COA) issued by the OIR pursuant to s. 624.401, F.S. These companies, referred to as authorized or admitted insurers,[7] are broadly regulated by the OIR under the Insurance Code as to reserves, surplus as to policyholders, solvency, rates and forms, market conduct, permissible investments, and affiliate

[1] An *insurable interest* exists when the insured has a legal or financial stake in the property, such that its loss would result in a direct economic loss. If the named insured no longer owns the property or otherwise lacks a financial stake in it, the insurer may no longer be obligated to maintain coverage.
[2] s. 20.121(3)(a), F.S. 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 the Office of Insurance Regulation for purposes of rulemaking. Further, the Financial Services Commission appoints the commissioner of the Office of Insurance Regulation.
[3] s. 624.418, F.S.
[4] s. 624.316(1)(a), F.S.
[5] s. 624.318(2), F.S.
[6] s. 624.3161, F.S.
[7] An "authorized" or "admitted" insurer is one duly authorized by a COA to transact insurance in this state.

relationships.[8] Authorized insurers are also required to participate in a variety of government mandated insurance programs and pay assessments levied by state guaranty funds in the event of insurer insolvencies.[9]

Bad Faith in Insurance

Insurance is a contract between an insurance company ("insurer") and the insurance policy's beneficiary ("the insured"), in which, for specified consideration called a "premium," the insurer agrees to pay the insured or third-party claimants for covered losses.[10] An insurer generally owes two significant contractual duties to its insured in exchange for premium payments: the duty to indemnify and the duty to defend.[11]

- The "duty to indemnify" refers to the insurer's obligation to issue payment to the insured on a valid claim.[12] For example, an insured may purchase a policy requiring the insurer to replace the insured's vehicle in the event of a car accident. If a covered accident then occurs, causing the insured's vehicle to be destroyed, the duty to indemnify requires the insurer to replace the insured's vehicle.
- The "duty to defend" refers to the insurer's duty to defend the insured in court against a third party with respect to a covered claim.[13] For example, an insured may purchase a liability policy in the event the insured causes a car accident and injuries a third party. If a covered accident then occurs, causing injury to a third-party claimant who sues the insured, the duty to defend requires the insurer to defend the insured against the claimant's lawsuit.

Insurer's Common Law and Statutory Duties

Florida courts, in applying the common law, recognize that an insurer owes its insured a duty of good faith in negotiating settlements with third-party claimants.[14] There is also a statutory duty of good faith codified in s. 624.155, F.S. Under that provision, a statutory bad faith claim may arise where the insurer:

- Does not attempt in good faith to settle claims when, under all the circumstances, it could and should have done so;
- Makes claim payments without a statement identifying the applicable coverage; or
- Fails to promptly settle a claim under one portion of the policy to influence settlement under another portion.

Florida courts have interpreted an insurer's obligation to "act fairly" towards its insured, holding that when the insured's liability is clear and an excess judgment[15] is likely due to the resulting damage, the insurer has an affirmative duty to initiate settlement negotiations with third-party claimants.[16] If settlement fails, the insurer has the burden of showing that there was no realistic possibility of settling the claim within the policy limits.[17]

However, failure to settle a claim, without more, does not necessarily mean that an insurer has acted in bad faith, as liability may be unclear or the damages may be minimal. Further, courts have generally indicated that merely negligently failing to settle a claim does not rise to the level of bad faith, though a jury may consider negligence in the larger context of whether bad faith occurred.[18]

First-Party vs. Third-Party Bad Faith Claims

There are two general types of bad faith claims: "first-party" claims and "third-party" claims.

---

[8] The Insurance Code consists of chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[9] For example, Florida licensed direct writers of property and casualty insurance must be members of the Florida Insurance Guaranty Association, which handles the claims of insolvent insurers under part II of ch. 631, F.S., and insurers offering workers' compensation coverage in Florida must be members of the Florida Workers' Compensation Insurance Guaranty Association, which provides payment of covered claims for insurers that are declared insolvent under part V of ch. 631, F.S.
[10] 16 Williston on Contracts s. 49:103 (4th ed.).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Mut. Indemnity Co. v. Shaw,* 184 So. 852 (Fla. 1938).
[15] An "excess judgment" is a judgment in an amount over and above the insurance policy's coverage limits, which amount is paid out of the insured's own pocket.
[16] *Powell v. Prudential Prop. and Cas. Ins. Co.*, 584 So. 2d 12, 14 (Fla. 3d DCA 1991).
[17] *Id.* at 14.
[18] *See DeLaune v. Liberty Mut. Ins. Co.*, 314 So. 2d 601, 603 (Fla. 4th DCA 1975).

- A "first-party" bad faith claim is a claim filed by the insured against his or her own insurer; these claims typically involve allegations that the insurer improperly denied the insured coverage under the policy, underpaid a covered claim, or delayed payment without adequate justification.[19]
- A "third-party" bad faith claim arises when the insured is exposed to liability to a third party; such a claim, which may be brought by either the insured or the third party, typically arises when:
    - An insurer fails to settle in good faith a third party's claim against the insured within the policy limits;
    - There is serious injury to the third-party claimant; and
    - The policy limits are minimal, thus exposing the insured to an excess judgment.[20]

Legislative Reforms – HB 837 (2023)
In 2023, HB 837 amended s. 624.155, F.S., to clarify that mere negligence is not sufficient to constitute bad faith and established that the insured, third-party claimant, and any representative of either have a duty to act in good faith when furnishing claim information, making demands, setting deadlines, or attempting to settle.[21] The judge or jury (trier of fact) may consider a failure to act in good faith by any of these parties and may reasonably reduce damages awarded against the insurer accordingly.[22]

Additionally, HB 837 established a safe harbor from bad faith liability in liability insurance claims. An insurer is not liable for bad faith under either statute or common law if it tenders the lesser of the policy limits or the amount demanded by the claimant within 90 days after receiving actual notice of the claim along with sufficient evidence to support the amount. If the insurer does not tender within the 90-day period, the following applies:
- The existence of the safe harbor period and the fact that no bad faith action would have accrued had payment been tendered are inadmissible in a subsequent bad faith action; and
- The applicable statute of limitations is extended by 90 days.[23]

HB 837 further provided that if multiple third-party claimants present competing claims arising out of a single occurrence that may exceed the insured's policy limits, the insurer is not liable beyond those limits if, within 90 days, it either:
- Files a lawsuit (interpleader action) under the Florida Rules of Civil Procedure; or
- Agrees to binding arbitration and makes the full policy limits available for distribution before a mutually selected arbitrator, at the insurer's expense.[24]

Bad Faith Claim Pre-Suit Notice Requirement
To bring a statutory bad faith claim under s. 624.155, F.S., whether first-party or third-party, a plaintiff must first give the insurer 60 days' written notice of the claim by filing a civil remedy notice with Department of Financial Services (DFS).[25] The insurer then has 60 days from receiving notice from DFS to either pay the damages or correct the circumstances giving rise to the bad faith claim, and the statutory cause of action does not accrue until the 60-day "cure" period has run without the insurer taking such steps.[26] Where the insurer timely pays the damages or otherwise corrects the circumstances giving rise to the bad faith claim, no statutory bad faith lawsuit may be brought.[27]

If a plaintiff brings a third-party common law bad faith claim, by contrast, there is no statutory pre-suit notice requirement; thus, the insurer cannot avoid a third-party bad faith lawsuit by paying the damages or curing the circumstances giving rise to the claim within the statutory cure period. However, after HB 837 (2023), the claimant now has the right to offer the insurer an opportunity to cure.

---

[19] The Florida Senate, *Interim Report 2012-132: Insurance Bad Faith* (Nov. 2011), https://www.flsenate.gov/publishedcontent/session/2012/interimreports/2012-132ju.pdf (last visited March. 24, 2025).
[20] *Id.*
[21] ch. 2023-15, Laws of Fla.
[22] *Id.*
[23] *Id.*
[24] ch. 2023-15, Laws of Fla.
[25] s. 624.155(3)(a), F.S.
[26] s. 624.155(3)(c), F.S.; *Talat Enterprises, Inc. v. Aetna Cas. & Sur. Co.,* 753 So. 2d 1278, 1284 (Fla. 2000).
[27] s. 624.155(3)(c), F.S.

Filing a Bad Faith Claim
Generally, a bad faith cause of action does not accrue until the underlying contractual claim is resolved.[28] In a first-party context, this means the insured must prevail on their coverage claim before bringing a bad faith suit. In a third-party context, the action usually accrues only after an excess judgment is entered against the insured.[29]

Indefiniteness About What Constitutes Bad Faith
Florida law does not precisely define "bad faith," and the determination is generally a question of fact for the jury, based on the totality of the circumstances.[30] Courts have noted that insurer liability must be based on more than a failure to settle or negligence—there must be conduct showing a lack of fair dealing or failure to give due regard to the insured's interests.[31]

Division of Insurance Agent and Agency Services
The DFS Division of Insurance Agent and Agency Services is responsible for the licensing and regulation of insurance agents, adjusters, insurance agencies, as well as related personnel and business entities.[32]

No person may be, act as, or advertise, or hold himself/herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by DFS and appointed by an appropriate appointing entity or person.[33] There are several types of insurance representatives. These include:

- General lines agents,
- Life insurance agents,
- Health insurance agents,
- Title insurance agents,
- Personal lines agents, and
- Unaffiliated insurance agents.[34]

General Lines Agent
A general lines agent[35] is one who sells the following lines of insurance: property;[36] casualty,[37] including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,[38] or a workers' compensation self-insurance fund;[39] surety;[40] health;[41] and, marine.[42] The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.[43] Motor vehicle insurance is a type of casualty insurance.[44]

Public Adjusters

---

[28] *Blanchard v. State Farm Mut. Auto. Ins. Co.*, 575 So. 2d 1289, 1291 (Fla. 1991).
[29] *Id.*
[30] *Berges v. Infinity Ins. Co.*, 896 So. 2d 665 (Fla. 2004).
[31] *See* DeLaune v. Liberty Mut. Ins. Co., 314 So. 2d 601, 603 (Fla. 4th DCA 1975) (holding that negligence alone does not amount to bad faith); *Macola v. Gov't Emps. Ins. Co.*, 953 So. 2d 451, 458 (Fla. 2007) (explaining that payment of policy limits after a civil remedy notice does not bar a common law bad faith claim); *Blanchard v. State Farm Mut. Auto. Ins. Co.*, 575 So. 2d 1289, 1291 (Fla. 1991) (bad faith action does not accrue until coverage and damages are determined); *Berges v. Infinity Ins. Co.*, 896 So. 2d 665, 680 (Fla. 2004) (bad faith is assessed under the totality of the circumstances and requires fair and honest treatment of the insured's interests).
[32] Ch. 626, parts I, II, III, IV, V, VI, VIII, IX, and XIII, F.S.
[33] S. 626.112, F.S.
[34] S. 626.015, F.S.
[35] S. 626.015(5), F.S.
[36] S. 624.604, F.S.
[37] S. 624.605, F.S.
[38] As defined in s. 624.462, F.S.
[39] Pursuant to s. 624.4621, F.S.
[40] S. 626.606, F.S.
[41] Ss. 624.603 and 627.6482, F.S.
[42] S. 624.607, F.S.
[43] S. 626.829, F.S.
[44] S. 624.605, F.S.

Florida law defines a public adjuster as someone who, for something of value, directly or indirectly, prepares, completes, or files an insurance claim for an insured or third-party claimant, or who, for something of value, acts on behalf of, or aids, an insured or third-party claimant in settling a claim for loss or damage covered by an insurance contract, or who advertises for employment as an adjuster of such claims.[45] In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.[46]

Public adjusters' contracts relating to property and casualty claims must contain the full name, permanent business address, phone number, email address, and license number of the public adjuster; and the full name of the public adjusting firm for whom the public adjuster works.[47]

In Florida, public adjusters are regulated by the DFS under part VI of ch. 626, F.S.[48] To obtain a license, an applicant must meet specific eligibility, education, and examination requirements. Licensed public adjusters must comply with continuing education requirements and are subject to disciplinary action by the DFS for violations of the Florida Insurance Code.[49]

Code of Ethics and Communication Restrictions
Section 626.878, F.S., requires public adjusters to adhere to ethical standards established by the DFS.[50] The *Code of Ethics for Public Adjusters* is codified in Rule 69B-220.201, F.A.C., and sets forth rules of professional conduct, including limitations on how and when a public adjuster may communicate with a policyholder.
Key provisions of the rule include:

- A public adjuster may not initiate contact with a policyholder during a period of loss-producing events (e.g., a hurricane) until 48 hours after the occurrence of the event, unless the policyholder initiates the contact.
- Public adjusters must clearly identify themselves and their role when soliciting business and may not mislead or deceive a policyholder regarding their services.
- All contracts must be in writing and include specific disclosures regarding the public adjuster's compensation, the services to be provided, and the policyholder's right to cancel the contract.
- Public adjusters may not materially misrepresent the terms and conditions of an insurance policy or the outcomes of claims.
- Ethical conduct also includes a duty of honesty, fairness, and full disclosure when dealing with policyholders, insurers, and regulatory authorities.[51]

Violations of these standards may result in administrative action, including suspension or revocation of the adjuster's license, fines, or other penalties.[52]

Claims-Handling Manuals for Residential Property Insurers

The Florida Insurance Code imposes various requirements on insurers to ensure the fair, prompt, and efficient handling of property insurance claims. Section 627.4108, F.S., establishes detailed standards for the creation, use, and regulatory review of claims-handling manuals by authorized residential property insurers operating in Florida.

This section requires each authorized residential property insurer to create and maintain written claims-handling manuals that guide internal procedures for processing insurance claims in accordance with Florida law and customary industry standards.[53] These manuals must address the full lifecycle of a claim, including the receipt and acknowledgment of a claim, communication with policyholders, investigation and estimation of damages, reserving practices, payment or denial of claims, and claim closure.[54]

---

[45] s. 626.854, F.S., Public adjusters are regulated under ch. 626, part VI, F.S.
[46] *See id.*
[47] s. 626.8796(2), F.S.
[48] s. 626.878, F.S.,
[49] s. 626.869, F.S. and s. 626.8698, F.S.
[50] s. 626.878, F.S.,
[51] Fla. Dep't of Fin. Servs., *Public Adjuster Code of Ethics & Contract Checklist*, https://www.myfloridacfo.com/docs-sf/consumer-services-libraries/consumerservices-documents/understanding-coverage/pacodeofethicscontractchecklist.pdf (last visited Mar. 23, 2025).
[52] s. 626.8698, F.S.
[53] s. 627.4108, F.S.
[54] *Id.*

To promote accountability and transparency, the OIR can request and review a copy of an insurer's claims-handling manual at any time.[55] Insurers must provide a true and correct copy of the manual along with an attestation certifying the timeframe for which the manual was in effect.[56]

In addition, insurers must submit an annual certification and attestation that their current manuals comply with applicable legal requirements and reflect at least usual and customary industry practices. The attestation must also affirm that the insurer has sufficient resources to follow its own claims-handling procedures, including during disasters or catastrophic events.[57]

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2023	837	Gregory and Fabricio	Martin	The bill was approved by the Governor on May 31, 2023.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Orig. Comm.: Insurance & Banking Subcommittee			Hamon	Herrera

[55] s. 627.4108(2), F.S.
[56] *Id.*
[57] s. 627.4108(3)(a), F.S.

A bill to be entitled

An act relating to insurance; amending s. 624.155, F.S.; defining sufficient evidence; clarifying the requirement of sufficient evidence; amending s. 626.732, F.S.; revising the requirements for licensing or qualifying general lines agents; amending s. 626.878, F.S.; specifying when adjusters must include their appointment types if communicating by text message; prohibiting public adjusters from engaging in certain adversarial conduct; amending s. 627.4108, F.S.; limiting the requirements for the claims-handling manual to authorized residential property insurers with active residential policies; amending s. 627.4133, F.S.; revising the circumstances under which an insurer or agent may cancel or nonrenew certain residential property insurance policies; amending s. 627.7011, F.S.; revising the required statement by insurers issuing a homeowner's insurance policy that does not provide flood insurance coverage; amending s. 627.70131, F.S.; requiring that proof-of-loss statements that are received by property insurers be written; specifying when adjusters must include their name and license number if communicating by text message; revising the required statement by property insurers providing a preliminary or partial estimate

of damage regarding a claim; revising the required statement by property insurers providing payment on a claim which is not the full and final payment for the claim; providing an effective date.

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

Section 1. Subsection (4) of section 624.155, Florida Statutes, is amended to read:

624.155 Civil remedy.—

(4)(a)1. An action for bad faith involving a liability insurance claim, including any such action brought under the common law, shall not lie if the insurer tenders the lesser of the policy limits or the amount demanded by the claimant within 90 days after receiving actual notice of a claim which is accompanied by sufficient evidence to support the amount of the claim.

2. For purposes of this paragraph, "sufficient evidence" means written or photographic evidence submitted to the insurer that indicates the claimant has suffered personal injury or property injury. Evidence that may satisfy this requirement includes, but is not limited to:

a. Accident reports.

b. Photographs of an accident scene, physical injuries, or property damage.

c. Medical bills.

d. Repair bills.

e. Other receipts or copies of payments rendered.

3. If an insurer does not believe the submitted evidence is sufficient under sub-paragraph 2., the insurer must provide a written notice of objection within 10 business days of receipt of the submitted evidence; otherwise, any objection to the sufficiency of the evidence for purposes of this paragraph is waived. The submitting party has an additional 10 business days after receipt of any objection to provide clarification or submit further evidence.

Section 2. Subsection (1) of section 626.732, Florida Statutes, is amended to read:

626.732 Requirement as to knowledge, experience, or instruction.—

(1) Except as provided in subsection (4), an applicant for a license as a general lines agent, except for a chartered property and casualty underwriter (CPCU), may not be qualified or licensed unless, within the 4 years immediately preceding the date the application for license is filed with the department, the applicant has satisfied, at a minimum, one of the following requirements:

(a) Taught or successfully completed 60 ~~200~~ hours of coursework in property, casualty, surety, health, and marine insurance approved by the department, 3 hours of which must be

on the subject matter of ethics.~~;~~

(b) Completed at least 1 year in responsible insurance duties as a substantially full-time bona fide employee in all lines of property and casualty insurance as set forth in the definition of a general lines agent under s. 626.015, but without the education requirement described in paragraph (a).~~;~~ ~~or~~

(c) Completed at least 1 year of responsible insurance duties as a licensed and appointed customer representative, service representative, or personal lines agent and 40 hours of coursework approved by the department covering the areas of property, casualty, surety, health, and marine insurance.

Section 3. Subsection (2) of section 626.878, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

626.878 Rules; code of ethics.—

(2) A person licensed as an adjuster must identify himself or herself in any advertisement, solicitation, or written document based on the adjuster appointment type held. However, if the adjuster is communicating with a policyholder by text message, the adjuster's appointment type held is required only in the initial text message and is not required in subsequent text messages.

(4) A public adjuster may not engage in any adversarial conduct with insurance company claims personnel during the

course of adjusting claims, including, but not limited to, electronically recording insurance company claims personnel and consultants without their consent.

Section 4. Subsection (1) of section 627.4108, Florida Statutes, is amended to read:

627.4108 Claims-handling manuals; submission; attestation.—

(1) Each authorized residential property insurer with active residential policies conducting business in this state must create and use a claims-handling manual that provides guidelines and procedures and that complies with the requirements of this code and, at a minimum, comports to usual and customary industry claims-handling practices. Such manual must include all of the following guidelines and procedures for:

(a) Initially receiving and acknowledging initial receipt of the claim and reviewing and evaluating the claim.~~;~~

(b) Communicating with policyholders, beginning with the receipt of the claim and continuing until closure of the claim.~~;~~

(c) Setting the claim reserve.~~;~~

(d) Investigating the claim, including conducting inspections of the property that is the subject of the claim.~~;~~

(e) Making preliminary estimates and estimates of the covered damages to the insured property and communicating such estimates to the policyholder.~~;~~

(f) Paying, partially paying, or denying ~~The payment,~~

~~partial payment, or denial of~~ the claim and communicating such claim decision to the policyholder.~~;~~

(g) Closing claims.~~; and~~

(h) Any aspect of the claims-handling process which the office determines should be included in the claims-handling manual in order to:

1. Comply with the laws of this state or rules or orders of the office or department;

2. Ensure that the claims-handling manual, at a minimum, comports with usual and customary industry claims-handling guidelines; or

3. Protect policyholders of the insurer or the general public.

Section 5. Paragraph (e) of subsection (2) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(2) With respect to any personal lines or commercial residential property insurance policy, 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:

(e)1. An authorized 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:

a. For a period of 90 days after the dwelling or residential property has been repaired, if such property has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of Insurance Regulation.

b. Until the earlier of when the dwelling or residential property has been repaired or 1 year after the insurer issues the final claim payment, if such property was damaged by any covered peril and sub-subparagraph a. does not apply.

2. However, an insurer or agent may cancel or nonrenew such a policy before ~~prior to~~ 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~~

(III) If the insurer has paid policy limits; or

(IV) If the named insured does not have an insurable interest in the insured property.

3. If the insurer elects to nonrenew a policy covering a

property that has been damaged, the insurer must ~~shall~~ 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. Nothing in this paragraph prevents ~~shall 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 limitations of subparagraph 1. The Financial Services Commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

4. This paragraph ~~shall~~ also applies ~~apply~~ to personal residential and commercial residential policies covering property that was damaged as the result of Hurricane Ian or Hurricane Nicole.

5. For purposes of this paragraph:

a. A structure is deemed to be repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer writing policies in this state.

b. The term "insurer" means an authorized insurer.

Section 6. Paragraph (b) of subsection (4) of section 627.7011, Florida Statutes, is amended to read:

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

(4)

(b) An insurer that issues a homeowner's insurance policy that does not provide flood insurance coverage must include on the policy declarations page at initial issuance and every renewal, in bold type no smaller than 18 points, the following statement:

"FLOOD INSURANCE: YOU SHOULD CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOUR ~~UNCOVERED~~ LOSSES CAUSED BY FLOOD ARE NOT COVERED. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT."

Section 7. Paragraphs (a), (b), and (c) of subsection (3), paragraph (b) of subsection (4), and subsection (6) of section 627.70131, Florida Statutes, are amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(3)(a) Unless otherwise provided by the policy of insurance or by law, within 7 days after an insurer receives the written proof-of-loss statements, the insurer shall begin such investigation as is reasonably necessary unless the failure to begin such investigation is caused by factors beyond the control of the insurer.

(b) If such investigation involves a physical inspection

of the property, the licensed adjuster assigned by the insurer must provide the policyholder with a printed or electronic document containing his or her name and state adjuster license number. An insurer must conduct any such physical inspection within 30 days after its receipt of the written proof-of-loss statements.

(c) Any subsequent communication with the policyholder regarding the claim must also include the name and license number of the adjuster communicating about the claim. However, when the adjuster communicates with a policyholder by text message, the adjuster's name and license number are required only in the initial text message and are not required in subsequent text messages. Communication of the adjuster's name and license number may be included with other information provided to the policyholder.

(4) An insurer shall maintain:

(b) Claim records, including dates, of:

1. Any claim-related communication made between the insurer and the policyholder or the policyholder's representative;

2. The insurer's receipt of the policyholder's written proof-of-loss statement;

3. Any claim-related request for information made by the insurer to the policyholder or the policyholder's representative;

4. Any claim-related inspections of the property made by the insurer, including physical inspections and inspections made by electronic means;

5. Any detailed estimate of the amount of the loss generated by the insurer's adjuster;

6. The beginning and end of any tolling period provided for in subsection (8); and

7. The insurer's payment or denial of the claim.

(6)(a) When providing a preliminary or partial estimate of damage regarding a claim, an insurer shall include with the estimate the following statement printed in at least 12-point bold, uppercase type: "THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF ~~THE COVERED~~ DAMAGES TO YOUR INSURED PROPERTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US."

(b) When providing a payment on a claim which is not the full and final payment for the claim, an insurer shall include with the payment the following statement printed in at least 12-point bold, uppercase type: "WE HAVE ISSUED A PARTIAL SETTLEMENT FOR ~~ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING~~ YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US."

Section 8. This act shall take effect upon becoming a law.