

<b>Tab 1</b>	<b>CS/CS/SB 714 by JU, BI, Brandes (CO-INTRODUCERS) Bracy; (Compare to CS/CS/CS/H 00301)</b>					
	Insurance					
<del>854368</del> —A	S	WD	BI, Brandes	btw L.161 - 162:	04/08 05:11 PM	
310308 A	S	RCS	BI, Brandes	Delete L.291 - 293:	04/08 05:11 PM	
454254 A	S	RS	BI, Brandes	Delete L.342 - 345:	04/08 05:11 PM	
712076 SA	S	RCS	BI, Brandes	Delete L.342 - 345:	04/08 05:11 PM	
<del>248142</del> —A	S	WD	BI, Brandes	btw L.354 - 355:	04/08 05:11 PM	

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**BANKING AND INSURANCE**  
**Senator Broxson, Chair**  
**Senator Rouson, Vice Chair**

**MEETING DATE:** Monday, April 8, 2019  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** *Pat Thomas Committee Room, 412 Knott Building*

**MEMBERS:** Senator Broxson, Chair; Senator Rouson, Vice Chair; Senators Brandes, Gruters, Lee, Perry, Taddeo, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/CS/SB 714</b> Judiciary / Banking and Insurance / Brandes (Compare CS/CS/CS/H 301, CS/H 387, CS/H 765, CS/S 538, S 1232)	Insurance; Citing this act as "Omnibus Prime"; increasing the required reimbursement of loss adjustment expenses in reimbursement contracts between the State Board of Administration and property insurers under the Florida Hurricane Catastrophe Fund; specifying means by which an insurance company may forward certificates of title of certain salvage motor vehicles or mobile homes to the Department of Highway Safety and Motor Vehicles; revising a criminal penalty for the submission, with certain intent, of an employer application for workers' compensation insurance coverage which contains false, misleading, or incomplete information; providing that certain sworn statements in such applications are not required to be notarized, etc.  BI     03/11/2019 Fav/CS JU     04/01/2019 Fav/CS BI     04/08/2019 Fav/CS RC	Fav/CS Yeas 7 Nays 0

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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**BILL:** CS/CS/CS/SB 714

**INTRODUCER:** Banking and Insurance Committee; Judiciary Committee; Banking and Insurance Committee; and Senator Brandes and others

**SUBJECT:** Insurance

**DATE:** April 10, 2019

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
4.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/CS/CS/SB 714 amends several insurance-related statutes. More particularly, the bill:

- Requires the Florida Hurricane Catastrophe Fund (FHCF) to reimburse a covered insurer's loss adjustment expenses at 10 percent of the insurer's loss reimbursement, instead of 5 percent as under current law.
- Authorizes insurers to transfer title of totaled motor vehicles or mobile homes to the Department of Highway Safety and Motor Vehicles electronically, as well as through regular mail or other "commercially available delivery service."
- Provides that workers compensation insurance applicants and their agents are no longer required to have their sworn statements notarized as currently required by rule of the Office of Insurance Regulation (OIR).
- Reduces the penalty for filing an application for workers compensation insurance that contains false, misleading, or incomplete information provided for the purpose of avoiding or reducing premiums from a second degree felony to a third degree felony.
- Gives a liability insurer who defends an insured the right to compel the sharing of defense costs by another insurer who also owes a duty to defend the insured on the same claim.
- Prohibits a pre-suit notice for an action brought under s. 624.155, F.S., which relates to bad faith claims and other causes of action against an insurer, from being filed within 60 days after the appraisal process outlined in an insurance contract is invoked.

- Deletes a provision allowing the Department of Financial Services (DFS) to return a pre-suit notice for a bad faith action under s. 624.155, F.S., if the notice lacks specific, required information.
- The bill allows a foreign or alien insurer to operate in Florida if the OIR is satisfied the insurer possesses sufficient capital and surplus to support its plan of operation, which is an exception to the requirement that such insurers must operate satisfactorily for at least 3 years in its state or country of domicile before being authorized to transact business in Florida.
- Classifies health maintenance organizations and prepaid limited health service organizations, which write in Florida and other states, as property and casualty insurers for the purpose of calculating the formula for risk based capital.
- Provides that a residential structure with a dwelling replacement cost of \$700,000 or more may be exported to a surplus lines insurer if an agent seeks coverage from one authorized insurer and is rejected. Current law requires three declinations for residential structures before exporting a residential structure to a surplus lines insurer, with an exception that allows exportation after one declination of a residential structure with a dwelling replacement cost of \$1 million or more.
- Includes insurers to establish rates and forms personal lines residential insurance with a dwelling replacement of \$700,000 or greater using the current deregulation of forms and rates that is allowed for commercial insurance. As to rates, this exempts the insurer from the standard rate review process if the insurer notifies the OIR of rate changes within 30 days after the rate is effective and uses a rate that provides a reasonable rate of return and is not excessive, inadequate, or unfairly discriminatory. The OIR may, in its discretion, examine rates to determine if they are excessive, inadequate, or unfairly discriminatory. No more than 5 percent of all personal lines residential insurance policies written or renewed by the insurer may be rated pursuant to the method created by the bill and through the consent to excess rate process in s. 627.171, F.S. As to forms, this allows an insurer to make an informational form filing with the OIR wherein the insurer certifies the form complies with Florida law when such forms are used in a personal lines residential insurance policy with a dwelling replacement of \$700,000 or greater that is rated pursuant to the alternative process created by the bill.
- Authorizes a surplus lines agent or a retail agent who is servicing a surplus lines policy to charge a reasonable per-policy fee.
- Allows an insurer to offer and give insureds goods or services of any value for the purposes of loss control or loss mitigation related to covered risks. Currently it is an unfair insurance trade practice to provide items or services to an insured valued at more than \$100 per year.
- Allows a property, casualty, or surety insurer to offer a premium discount for a policy if another policy has been purchased from a different insurer that:
  - Has a joint marketing arrangement with the insurer offering the discount;
  - Issued the policy pursuant to the Citizens clearinghouse program if the same agent is servicing both policies; or
  - Has its policy serviced by the same agent who is servicing the discounted policy.
- Requires a premium discount offered by a property, casualty, or surety insurer to be actuarially sound.
- Provides an insurer that is asserting a coverage defense more mailing options for sending the required notices.

- Requires a life insurer to provide a notice of lapse to the agent servicing a life insurance policy 21 days prior to the effective date of the lapse unless the:
  - Insurer provides an online method for the agent to identify lapsing policies;
  - Insurer has no record of the agent servicing the policy;
  - Agent is employed by the insurer or its affiliate; or
  - Insurer maintains a procedure that allows an agent to independently determine whether the notice of lapse has been sent to the insured.
- Requires a property insurer to notify a policyholder of its right to participate in mediation at the time of issuance and renewal or when the policyholder files a claim.
- Requires an insurer to collect an amount equal to at least one month's premium, instead of 2 month's premium, before issuing a private passenger motor vehicle policy.

The effective date of the bill is July 1, 2019, except as otherwise noted in the bill.

## II. Present Situation:

### **The Florida Hurricane Catastrophe Fund (FHCF)**

The FHCF is a tax-exempt<sup>1</sup> fund created in 1993<sup>2</sup> after Hurricane Andrew<sup>3</sup> as a form of mandatory reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration (SBA)<sup>4</sup> and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent)<sup>5</sup> of hurricane losses above the insurer's retention (deductible). The FHCF provides insurers an additional source of reinsurance that is less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers.

#### *FHCF Mandatory Coverage*

All insurers admitted to do business in this state writing residential property insurance that includes wind coverage must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.<sup>6</sup> The FHCF is authorized by statute to sell \$17 billion of mandatory layer coverage.<sup>7</sup> Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. Each insurer may select a reimbursement contract wherein the FHCF promises to

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<sup>1</sup> Section 215.555(1)(f), F.S.

<sup>2</sup> Ch. 93-409, Laws of Fla.

<sup>3</sup> Ed Rappaport, *Preliminary Report, Hurricane Andrew* (updated Dec. 10, 1993; addendum Feb. 7, 2005), <https://www.nhc.noaa.gov/1992andrew.html>.

<sup>4</sup> State Board of Administration of Florida, *About the SBA*, <https://www.sbafla.com/fsb/> (last visited March 27, 2019).

<sup>5</sup> Section 215.555(2)(e), F.S.

<sup>6</sup> *See* s. 215.555(4)(a), F.S.

<sup>7</sup> Section 215.555(4)(c)1., F.S.

reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 5 percent<sup>8</sup> of the reimbursed losses for loss adjustment expenses.<sup>9</sup>

### ***FHCF Premiums***

The FHCF must charge insurers the actuarially indicated premium<sup>10</sup> for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.<sup>11</sup> The actuarially indicated premium is an amount that is adequate to pay current and future obligations and expenses of the fund. In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. The cost of FHCF coverage is generally lower than the cost of private reinsurance because the fund is a tax-exempt non-profit corporation and does not charge a risk load as it relates to overhead and operating expenses incurred by other private insurers.<sup>12</sup>

### ***FHCF Bonding and Assessment Authority***

When the moneys in the FHCF are or will be insufficient to cover losses, the law<sup>13</sup> authorizes the FHCF to issue revenue bonds funded by emergency assessments on all lines of insurance except medical malpractice and workers compensation.<sup>14</sup> Emergency assessments may be levied up to 6 percent of premium for losses attributable to any one contract year, and up to 10 percent of premium for aggregate losses from multiple years. The FHCF's broad-based assessment authority is one of the reasons the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.<sup>15</sup>

### **Transfer of Title of Totaled Motor Vehicle or Mobile Home by Insurer to the Department of Highway Safety and Motor Vehicles (DHSMV)**

When an insurance company pays money as compensation for the total loss of a motor vehicle or mobile home, the insurer must obtain the certificate of title and forward it to the DHSMV for processing.<sup>16</sup>

Effective July 1, 2023, if the insurance company is unable to obtain a properly assigned certificate of title for the owner or lienholder, then the company may receive a salvage certificate of title or certificate of destruction from the DHSMV.<sup>17</sup> However, the company may only receive

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<sup>8</sup> Section 215.555(4)(b), F.S.

<sup>9</sup> Loss adjustment expenses are costs incurred by insurers when investigating, adjusting, and processing a claim.

<sup>10</sup> Section 215.555(2)(a), F.S.

<sup>11</sup> See, *Florida Commission on Hurricane Loss Methodology*, <https://www.sbafla.com/method/> (last visited March 29, 2019).

<sup>12</sup> [State Board of Administration of Florida, Florida Hurricane Catastrophe Fund, 2016 Annual Report, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606\\_FHCF\\_2016\\_AnnualReport\\_A.pdf?ver=2017-07-06-085215-943](https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943) (last visited March 29, 2019).

<sup>13</sup> Section 215.555(6), F.S.

<sup>14</sup> Section 215.555(6)(b), F.S.

<sup>15</sup> The U.S. Internal Revenue Service has, by a Private Letter Ruling, authorized the FHCF to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, for 5 years until June 30, 2003. On May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that the prior exemption, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis (on file with the Committee on Banking and Insurance).

<sup>16</sup> Section 319.30(3)(b), F.S.

<sup>17</sup> Section 319.30(3)(b)1., F.S.

this if the motor vehicle or mobile home does not carry an electronic lien on the title and the insurance company has:

- Obtained the release of all liens on the motor vehicle or mobile home;
- Provided proof of payment of the total loss claim; and
- Provided an affidavit on letterhead signed by the insurance company or its authorized agent stating the attempts made to obtain the title from the owner or lienholder and stating that all attempts are to no avail.<sup>18</sup>

### **Right of Contribution**

A person or entity often has two or more insurance policies covering the same type of claims. For example, a person may have automobile insurance that covers him or her for liability arising from an accident in which he or she was at fault. This person may also have an “umbrella policy,” which could be issued by a different insurer, and that would apply above the policy limits of the automobile policy.<sup>19</sup> If the person is at fault in an automobile accident and is sued, and only one insurer pays to defend the insured in the lawsuit, the insurer has no right to force the other insurer to cover the costs of defense; in other words, the insurer has no “right of contribution” from the other insurer.<sup>20</sup>

### **Workers Compensation Insurance Sworn Statements**

Employers who apply for workers compensation insurance coverage are required to file applications in a form prescribed by the Financial Services Commission. Submission of an application that contains false, misleading, or incomplete information provided with the purpose of avoiding or reducing the amount of premiums for workers’ compensation coverage is a felony of the second degree.<sup>21</sup>

The Financial Services Commission is allowed to adopt rules regarding the submission of such applications. The rules require applications to include information on the employer, the type of business, past and prospective payroll, estimated revenue, previous workers’ compensation experience, employee classification, employee names, and any other information necessary to enable a carrier to accurately underwrite the applicant. The application must contain a sworn statement by the employer attesting to the accuracy of the information submitted. The application must also contain a sworn statement by the agent attesting that the agent explained to the employer or officer the classification codes that are used for premium calculations. Rule 69O-189.003, F.A.C., promulgated by the Financial Services Commission, requires that the sworn statements be notarized.

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<sup>18</sup> *Id.*

<sup>19</sup> Investopedia, *Umbrella Insurance Policy*, <https://www.investopedia.com/terms/u/umbrella-insurance-policy.asp> (last visited April 2, 2019).

<sup>20</sup> *See, e.g., Continental Cas. Co. v. United Pacific Ins. Co.*, 637 So.2d 270 (Fla. 4th DCA 1994).

<sup>21</sup> Such a felony is punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

## Civil Remedies Against Insurers

### *Insurance and Insurer Obligations*

Insurance is a contract, commonly referred to as a “policy,” under which, for stipulated consideration called a “premium,” one party, the insurer, undertakes to compensate the other, the insured, for loss on a specified subject from specified perils. Florida residents often obtain property insurance and liability insurance. Property insurance protects individuals from the loss of or damage to property and, in some instances, personal liability pertaining to the property. One of the common lines of insurance in this category is homeowner’s insurance. Automobile liability insurance<sup>22</sup> covers suits against the insured for damages such as injury or death to another driver or passenger, as well as property damage. It is insurance for those damages for which the driver can be held liable due to the operation of the automobile.

A liability insurer generally owes two major contractual duties to its insured in exchange for premium payments—the duty to indemnify and the duty to defend.<sup>23</sup> The duty to indemnify refers to the insurer’s obligation to issue payment to the insured or a beneficiary on a valid claim.<sup>24</sup> The duty to defend refers to the insurer’s duty to provide a defense for the insured in court against a third party with respect to a claim within the scope of the insurance contract.<sup>25</sup>

### Statutory and Common Law Bad Faith

#### *Common Law Bad Faith – “Third Party Claims”*

As early as 1938, Florida courts recognized an additional duty that does not arise directly from the contract, the common law duty of good faith on the part of an insurer to the insured in negotiating settlements with third-party claimants.<sup>26</sup> Under a liability policy, the insured’s role is essentially limited to selecting the type and desired level of coverage and paying the corresponding premium.<sup>27</sup> As part of the contract, the insured surrenders to the insurer all control over the negotiations and decision making as to third-party claims.<sup>28</sup> The insured’s role is relegated to the obligation to cooperate with the insurer’s efforts to adjust the loss.<sup>29</sup> The insurer makes all the decisions with regard to third-party claims handling and thereby has the power to settle and foreclose an insured’s exposure to liability, or to refuse to settle and leave the insured exposed to liability in excess of the policy limits.<sup>30</sup> As a result, “the relationship between the parties arising from the bodily injury liability provisions of the policy is fiduciary in nature, much akin to that of attorney and client,” because the insurer owes a duty to refrain from acting

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<sup>22</sup> In Florida, every owner or operator of an automobile is required to maintain liability insurance to cover a minimum of \$10,000 in coverage for damage to another’s property in a crash. Additionally, every owner or registrant of an automobile is required to maintain personal injury protection, which covers medical expenses related to a car accident regardless of fault up to \$10,000. Sections 324.022 and 627.733, F.S.

<sup>23</sup> 16 Williston on Contracts s. 49:105 (4th ed.).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Auto. Mut. Indemnity Co. v. Shaw*, 184 So. 852 (Fla. 1938).

<sup>27</sup> Rutledge R. Liles, *Florida Insurance Bad Faith Law: Protecting Businesses and You*, 85 Fla. Bar. J. No. 3, p. 8 (March 2011).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *State Farm v. Laforet*, 658 So.2d 55, 58 (Fla. 1995).



solely on the basis of its own interests in the settlement of third-party claims.<sup>31</sup> Accordingly, and because of this relationship, the insurer owes a duty to the insured to “exercise the utmost good faith and reasonable discretion in evaluating the claim” and negotiating for a settlement within the policy limits.<sup>32</sup> When the insurer fails to act in the best interests of the insured in settling a third-party claim, an injured insured is entitled to hold the insurer accountable for its “bad faith”<sup>33</sup> if a third party obtains a judgment against the insured in excess of his or her insurance coverage.<sup>34</sup> A third-party claim can be brought by the insured, having been held liable for judgment in excess of policy limits by the third-party claimant,<sup>35</sup> or it can be brought by the third party directly or through an assignment of the insured’s rights.<sup>36</sup>

### ***Statutory Bad Faith -- First- and Third-Party Claims***

In 1982 the Legislature enacted s. 624.155, F.S., which provides that *any person* may bring a claim for “bad faith” against an insurer for “not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests,”<sup>37</sup> the same as the common law standard.<sup>38</sup> Section 624.155, F.S., codifies third-party claims for “bad faith,” but does not preempt the common law remedy.<sup>39</sup> Additionally, s. 624.155, F.S., recognizes first-party bad faith actions.

“There are three prerequisites to filing a statutory bad-faith claim: (1) determination of the insurer’s liability for coverage; (2) determination of the extent of the insured’s damages; and (3) the required notice must be filed under s. 624.155(3)(a), F.S.”<sup>40</sup>

In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer 60 days’ written notice of the alleged violation.<sup>41</sup> The insurer has 60 days after the required notice is filed to pay the damages or correct the circumstances giving rise to the violation.<sup>42</sup> Because first-party claims are only statutory, that cause of action does not exist until the 60-day cure period provided in the statute expires without payment by the insurer.<sup>43</sup> However, because third-party claims exist both in statute and at common law, the insurer cannot guarantee avoidance of a third-party bad faith claim by curing within the statutory period.<sup>44</sup>

<sup>31</sup> *Baxter v. Royal Indem. Co.*, 285 So.2d 652, 655 (Fla. 1st DCA 1973), *cert. discharged*, 317 So.2d 725 (Fla. 1975).

<sup>32</sup> *Id.*

<sup>33</sup> Liles, *supra* note 6.

<sup>34</sup> *Opperman v. Nationwide Mut. Fire Ins. Co.*, 515 So.2d 263, 265 (Fla. 5th DCA 1987).

<sup>35</sup> *See Powell v. Prudential Prop. and Cas. Ins. Co.*, 584 So.2d 12 (Fla. 3d DCA 1991).

<sup>36</sup> *See Thompson v. Commercial Union Ins. Co.* 250 So.2d 259 (Fla. 1971)(recognizing a direct third-party claim under the common law before the enactment of s. 624.155, F.S.); *State Farm Fire and Cas. Co. v. Zebrowski*, 706 So.2d 275 (Fla. 1997).

<sup>37</sup> Section 624.155(1)(b), F.S.

<sup>38</sup> Fla. Standard Jury Instr. 404.4 (Civil).

<sup>39</sup> Section 624.155(8), F.S.

<sup>40</sup> *Landers v. State Farm Florida Ins. Co.*, 234 So.3d 856, 859 (Fla. 5th DCA 2018) (*citing Cammarata v. State Farm Florida Ins. Co.*, 152 So.3d 606 (Fla. 4th DCA 2014)).

<sup>41</sup> Section 624.155(3)(a), F.S.

<sup>42</sup> Section 624.155(3)(d), F.S.

<sup>43</sup> *Talat Enterprises, Inc. v. Aetna Cas. & Sur. Co.*, 753 So.2d 1278, 1284 (Fla. 2000).

<sup>44</sup> *Macola v. Gov. Employees Ins. Co.*, 953 So.2d 451, 458 (Fla. 2007) (holding that an insurer’s tender of the policy limits to an insured in response to the filing of a civil remedy notice, after the initiation of a lawsuit against the insured but before entry of an excess judgment, does not preclude a common law cause of action against the insurer for third-party bad faith).

### ***“Acting Fairly” to Settle Third-Party Claims***

In interpreting what it means for an insurer to act fairly toward its insured, Florida courts have held that when the insured’s liability is clear and an excess judgment is likely due to the extent of the resulting damage, the insurer has an affirmative duty to initiate settlement negotiations.<sup>45</sup> If a settlement is not reached, the insurer has the burden of showing that there was no realistic possibility of settlement within policy limits.<sup>46</sup> Failure to settle on its own does not mean that an insurer acts in bad faith.

The question of whether an insurer has acted in bad faith in handling claims against the insured is determined under the totality of the circumstances standard.<sup>47</sup> Each case is determined on its own facts and ordinarily the question of failure to act in good faith with due regard for the interests of the insured is for the jury.<sup>48</sup>

In light of the heightened duty on the part of the insurer as a fiduciary, Florida courts focus on the actions of the insurer during the time when it was acting under a duty to the insured, not the actions of the claimant.<sup>49</sup>

### ***Property Insurance Appraisers and Umpires***

Insurance companies often include an appraisal clause in property insurance policies.<sup>50</sup> The appraisal clause provides a procedure to resolve disputes between the policyholder and the insurer concerning the value of a covered loss. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process *generally* works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and attempt to reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both appraisers. A decision agreed to by any two of the three will set the amount of the loss.
- The insurance company or the policyholder may challenge the umpire’s impartiality and disqualify a proposed umpire based on criteria set forth in statute.<sup>51</sup>

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<sup>45</sup> See *Powell v. Prudential Property and Casualty Insurance Company*, 584 So.2d 12, 14 (Fla. 3d DCA 1991).

<sup>46</sup> *Id.*

<sup>47</sup> See *Berges v. Infinity Ins. Co.*, 896 So.2d 665, 680 (Fla. 2004).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 677.

<sup>50</sup> *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So.3d 578 (Fla. 3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America*, 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal clauses.

<sup>51</sup> See s. 627.70151, F.S.

### **Eligibility of a Foreign or Alien Insurer to Transact Insurance in Florida**

“Foreign” and “alien” insurers, which are those that are not formed under the laws of this state,<sup>52</sup> may nonetheless transact insurance in Florida if they meet statutory criteria. Particularly, the insurer must meet the general requirements to transact insurance under the insurance code, and it must have operated satisfactorily for at least 3 years in its state or country of domicile. However, the Office of Insurance Regulation may waive the 3-year requirement if it:

- Has operated successfully and has capital and surplus of \$5 million;
- Is the wholly owned subsidiary of an insurer which is an authorized insurer in this state;
- Is the successor in interest through merger or consolidation of an authorized insurer; or
- Provides a product or service not readily available to the consumers of this state.

### **Risk-Based Capital for Insurers and Health Organizations**

Risk-based capital (RBC) is a capital adequacy standard that represents the amount of required capital an insurer must maintain, based on the inherent risks in the insurer’s operations. It is determined by a formula that considers certain material risks depending on the type of insurer, and generates the regulatory minimum amount of capital that a company is required to maintain to avoid regulatory action. The RBC standard raises a safety net for insurers, is uniform among states, and operates as a tripwire system to give state insurance regulators authority for timely corrective action.

In March 2006, the National Association of Insurance Commissioners (NAIC)<sup>53</sup> adopted revisions to the Risk-Based Capital for Insurers Model Act (#312), which provides that states must require both life and health and property and casualty insurers to submit RBC filings with their regulators. In 2010, the NAIC adopted a recommendation to make the Risk-Based Capital for Health Organizations (#315) Model Act an accreditation standard. This model act defines “health organization” to include Health Maintenance Organizations (HMO) and prepaid limited health service organizations (PLHSO). However, the model act permits insurance commissioners to exempt single-state HMOs and PLHSOs who meet specified criteria from the RBC requirements. Accordingly, effective January 1, 2015, it was mandatory for member states to require multi-state and non-exempt single-state HMOs and PLHSOs to submit risk-based capital filings in order to maintain accreditation.

In 2014, Florida adopted the RBC standard for multi-state<sup>54</sup> HMOs and PLHSOs.<sup>55</sup> However, Florida has neither extended the RBC requirements to single-state HMOs and PLHSO, nor adopted the exemption criteria permitted by the model act. Thus, life and health insurers, property and casualty insurers, including property and casualty insurers that write accident and health insurance, only, and multi-state HMOs and PLHSOs are subject to the RBC requirements. Single-state HMOs and PLHSOs are not.

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<sup>52</sup> See s. 624.06(2)-(3), F.S.

<sup>53</sup> The NAIC is a voluntary association of insurance regulators from all 50 states. The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. The NAIC accreditation is a certification that legal, financial and organizational standards are being fulfilled by the OIR.

<sup>54</sup> Defined to include those authorized in Florida and one or more other states or countries. Section 636.4085(1)(g), F.S.

<sup>55</sup> Ch. 2014-101, Laws of Fla.

## Surplus Lines Export Eligibility

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.<sup>56</sup> There are three basic categories of surplus lines risks:

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

Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code,<sup>57</sup> which means they do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida.<sup>58</sup> Rather, surplus lines insurers are “unauthorized” insurers,<sup>59</sup> but may transact surplus lines insurance if they are made eligible by the OIR.

“To export” a policy means an insurance agent,<sup>60</sup> with the consent of the insurance applicant, placing a policy with an unauthorized insurer under the Surplus Lines Law through a surplus lines agent.<sup>61</sup> Unless an exception applies, before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.<sup>62</sup> “Diligent effort” means seeking and coverage being rejected from at least three authorized insurers in the admitted market; however, if the cost to replace a residential dwelling is \$1 million or more, then only one coverage rejection is needed prior to export. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.<sup>63</sup> The law further specifies that:<sup>64</sup>

- 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
- For personal residential property risks,<sup>65</sup> the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

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<sup>56</sup> The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.

<sup>57</sup> The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

<sup>58</sup> S. 624.09(1), F.S.

<sup>59</sup> S. 624.09(2), F.S.

<sup>60</sup> 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.

<sup>61</sup> S. 626.914(3), F.S.

<sup>62</sup> S. 626.916(1)(a), F.S.

<sup>63</sup> S. 626.914(4), F.S.

<sup>64</sup> S. 626.916(1), F.S.

<sup>65</sup> Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

As of January 1, 2017, Citizens decreased the maximum coverage limit for dwellings from \$1 million to \$700,000 statewide, except for in counties where the OIR has determined there is not a reasonable degree of competition.<sup>66</sup> Currently, the OIR has determined that Miami-Dade and Monroe counties do not have a reasonable degree of competition. A homeowner seeking insurance for a personal residential property with a replacement cost of at least \$700,000 and less than \$1 million in Miami-Dade or Monroe counties is likely to be denied coverage from an authorized Florida insurer and to be referred to and receive coverage from Citizens. Surplus lines coverage may be the only coverage option as an alternative to Citizens in high-risk areas. Consequently, homeowners in Miami-Dade and Monroe counties **of properties with a** replacement cost of \$700,000 or more and less than \$1 million are required to comply with a more burdensome process to become eligible for surplus lines coverage and may be more likely to seek coverage from Citizens.

### **Ratemaking Regulation for Property, Casualty, and Surety Insurance**

The rating requirements for property, casualty, and surety insurance are located in part I of ch. 627, F.S.,<sup>67</sup> which is entitled the “Rating Law,” and applies to all property, casualty, and surety insurance. Section 627.062(1), F.S., specifies that the rates for all classes to which part I applies “shall not be excessive, inadequate, or unfairly discriminatory.”

Section 627.062(2)(a), F.S., describes the filing process and time frames that must be followed by all insurers subject to its provisions. Generally, insurers may choose to submit their rate to the OIR pursuant to either the “file and use” method or the “use and file” method. Under “file and use,” the insurer submits to the OIR their proposed rate at least 90 days before the rate’s effective date and shall not implement the rate until it is approved. Under “use and file,” the insurer may implement the rate before filing for approval, but must then submit the filing within 30 days of the rate’s effective date. If a portion of the rate is subsequently found to be excessive, the insurer must refund to policyholders the portion of the rate that is excessive.

For those insurers that file under s. 627.062(2)(a), F.S., the OIR applies the following factors in determining whether a rate is excessive, inadequate, or unfairly discriminatory.

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, if applicable.
- Projected flood losses for residential property insurance, if applicable.
- A reasonable margin for underwriting profit and contingencies.

<sup>66</sup> <https://www.citizensfla.com/-/20160726-maximum-coverage-limit-decreased> (last visited March 9, 2019).

<sup>67</sup> Sections 627.011, F.S., through 627.381, F.S.

- Cost of medical services, when applicable.
- Other relevant factors impacting frequency and severity of claims or expenses.<sup>68</sup>

Section 627.062(f), F.S., provides that during its review process, the OIR can require an insurer to submit at the insurer's expense all information that the OIR deems necessary to evaluate the condition of the insurer and the reasonableness of the filing.

### **Types of Insurance Exempt from Filing and Review Requirements**

The following types of insurance and types of commercial lines risks are exempt from the filing and review requirements of s. 627.062(2)(a) and (f), F.S.:

- Excess or umbrella.
- Surety and fidelity.
- Boiler and machinery and leakage and fire extinguishing equipment.
- Errors and omissions.
- Directors and officers, employment practices, fiduciary liability, and management liability.
- Intellectual property and patent infringement liability.
- Advertising injury and Internet liability insurance.
- Property risks rated under a highly protected risks rating plan.
- General liability.
- Nonresidential property, except for collateral protection insurance as defined in s. 624.6085, F.S.
- Nonresidential multiperil.
- Excess property.
- Burglary and theft.
- Travel insurance, if issued as a master group policy with a situs in another state where each certificate holder pays less than \$30 in premium for each covered trip and where the insurer has written less than \$1 million in annual written premiums in the travel insurance product in this state during the most recent calendar year.
- Medical malpractice for a facility that is not a hospital licensed under ch. 395, F.S., a nursing home licensed under part II of ch. 400, F.S., or an assisted living facility licensed under part I of ch. 429, F.S.
- Medical malpractice for a health care practitioner who is not a dentist licensed under ch. 466, F.S., a physician licensed under ch. 458, F.S., an osteopathic physician licensed under ch. 459, F.S., a chiropractic physician licensed under ch. 460, F.S., a podiatric physician licensed under ch. 461, F.S., a pharmacist licensed under ch. 465, F.S., or a pharmacy technician registered under ch. 465, F.S.
- Any other commercial lines categories or kinds of insurance or types of commercial lines risks that the office determines should not be subject to paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance or similarity of such insurance to other categories or kinds of insurance not subject to paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the office.<sup>69</sup>

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<sup>68</sup> Section 627.062(2)(b), F.S.

<sup>69</sup> Section 627.062(3)(d), F.S.

These types of insurance coverages continue to be subject to s. 627.062(1), F.S., which requires that rates shall not be excessive, inadequate, or unfairly discriminatory.

An insurer or rating organization which is exempt under this provision must notify the OIR of any changes for the types of insurance subject to this provision, no later than 30 days after the effective date of the change in rates. The notice to the OIR must include the following:

- The name of the insurer or rating organization.
- The type of insurance.
- The total premium written during the immediately preceding year for that type of insurance (for notice filed by an insurer).
- Loss costs during the immediately preceding year for that type of insurance (for notice filed by a rating organization).
- The average statewide percentage change in rates or loss costs.

Underwriting files, premiums, losses, and expense statistics must be maintained by the insurer and are subject to inspection by the OIR. Loss and exposure statistics must be maintained by the rating organization and are subject to inspection by the OIR. The OIR may require the insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the rates.

### **OIR Approval of Forms**

Each basic insurance policy form,<sup>70</sup> unless otherwise exempted,<sup>71</sup> must be approved by the OIR before the form can be used by an insurance company.<sup>72</sup> Each form must be filed at least 30 days prior to its use in policies delivered or issued for delivery in this state. The OIR must approve or disapprove the form within 30 days or it is deemed approved.<sup>73</sup> The OIR, however, under s. 627.410(4), F.S., has the authority to exempt by order an insurance form or type of form from the approval process for as long as it deems proper<sup>74</sup> if the filing and approval process cannot be practicably applied or is not desirable or necessary for the protection of the public.<sup>75</sup>

### **Exemptions from Approval of Forms**

Section 627.4102, F.S., exempts property and casualty forms, except workers' compensation and personal lines forms, from the approval process required under s. 627.410, F.S., if:

- The form has been electronically submitted to the office in an informational filing made through I-File 30 days before the delivery or issuance for delivery of the form within this state; and

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<sup>70</sup> Statutorily required forms requiring the OIR approval prior to use are basic insurance policies, annuity contracts, application forms where a written application is required and is part of the policy or contract, group certificates issued under a master contract delivered in Florida, and printed riders, endorsement forms, or forms of renewal certificates.

<sup>71</sup> Statutorily exempted forms are surety bonds or policies, riders, endorsements, or forms of unique character that are designed and used with relation to insurance upon a particular subject (other than health insurance).

<sup>72</sup> s. 627.410(1), F.S.

<sup>73</sup> The Office may extend the form review process 15 days.

<sup>74</sup> s. 627.410(4), F.S.

<sup>75</sup> Id.

- At the time the informational filing is made, a notarized certification is attached to the filing that certifies that each form within the filing is in compliance with all applicable state laws and rules. The certification must be on the insurer's letterhead and signed and dated by the insurer's president, chief executive officer, general counsel, or an employee of the insurer responsible for the filing on behalf of the insurer. The certification must contain the following statement, and no other language: "I, (name) as (title) of (insurer name) , do hereby certify that this form filing has been thoroughly and diligently reviewed by me and by all appropriate company personnel, as well as company consultants, if applicable, and certify that each form contained within the filing is in compliance with all applicable Florida laws and rules. Should a form be found not to be in compliance with Florida laws and rules, I acknowledge that the Office of Insurance Regulation shall disapprove the form."

The Office of Insurance Regulation (OIR), at its discretion, can subject forms that are not in compliance with state laws and rules to prior review and approval pursuant to s. 627.410, F.S. The period for review and approval established under s. 627.410(2), F.S., begins to run on the date the OIR notifies the insurer of the discovery of the noncompliant form.

A Notice of Change in Policy Terms form required under s. 627.43141(2), F.S., shall be filed as a part of the informational filing for a renewal policy that contains a change. If a renewal policy that was certified requires such form, the insurer must provide a sample copy of the form to the named insured's agent before or upon providing the form to the named insured.

Additionally, insurers can still elect to file any form for approval under s. 627.410, F.S., that would otherwise be exempt.<sup>76</sup>

### **Surplus Lines Agents**

Surplus lines agents are authorized to handle the placement of insurance coverages with surplus lines insurers.<sup>77</sup> Licensed resident general lines agents who meet the statutory criteria for licensure are eligible for licensure as a surplus lines agent.<sup>78</sup> Florida law requires a surplus lines agent to file a quarterly affidavit with the Florida Surplus Lines Service Office (FSLSO) to document all surplus lines insurance transacted in the quarter.<sup>79</sup> The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts. To account for the administrative costs surplus lines agents incur to comply with reporting requirements, the agent may charge a reasonable per-policy fee, not to exceed \$35, for each policy exported.<sup>80</sup> This fee has not been adjusted since it was raised from \$25 to \$35 in 2001.<sup>81</sup> Retail agents involved in the export of policies to surplus lines do not get to charge a fee.

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<sup>76</sup> Section 627.4102(4), F.S.

<sup>77</sup> Section 626.914(1), F.S.

<sup>78</sup> Section 626.927, F.S. Generally, to be licensed as a surplus lines agent, an individual must be: (1) deemed by the Department of Financial Services to have sufficient experience in the insurance business (2) have 1-year experience working for a licensed surplus lines agent or have completed 60 class hours in an approved surplus lines course, and (3) pass a written examination.

<sup>79</sup> FLORIDA SURPLUS LINES SERVICE OFFICE, *Quarterly Report Affidavit as Required by the Surplus Lines Law*, <https://www.fslso.com/docs/default-source/default-document-library/BusinessForms/QuarterlyAffidavit.pdf?sfvrsn=24> (last visited April 2, 2019).

<sup>80</sup> Section 626.916(4), F.S.

<sup>81</sup> Ch. 2001-213, Laws of Fla.



## Unfair Insurance Trade Practices

The Unfair Insurance Trade Practices Act,<sup>82</sup> among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.<sup>83</sup> It provides an extensive list of prohibited methods and acts. Among these are prohibitions on certain inducements to the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to the prospective insurance purchaser. The law also describes prohibited discrimination. There are also many exceptions to the prohibitions defined by law.

Among the exceptions is authorization for insurers and their agents to offer and make gifts of charitable contributions, merchandise, goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items up to \$100 per calendar year to an insured, prospective insured, or any person for the purpose of advertising.<sup>84</sup> There are several similar limitations on advertising gifts under the Florida Insurance Code related to the advertising practices of title insurance agents, agencies and insurers, public adjusters, group and individual health benefit plans, and motor vehicle service agreement companies.<sup>85</sup>

## Coverage Defense Notices

A liability insurer may not assert a “coverage defense” unless it sends a notice, and in some cases two notices, to its insured by registered or certified mail.<sup>86</sup> A “coverage defense” means “a defense to coverage that otherwise exists,” that is, coverage that would exist if an insured had not failed to meet the terms of the policy.<sup>87</sup> Accordingly, a coverage defense is not a denial of coverage based, for example, on the fact that the policy expressly excludes coverage of the type demanded by the insured.

The first notice that an insurer must send is the “written notice of reservation of rights to assert coverage defense,” which must be sent within 30 days after the liability insurer knew or should have known of the coverage defense. Within 60 days of compliance with the first notice requirement or receipt of a summons and complaint naming the insured as a defendant, but not later than 30 days before trial, the insurer must do one of three things if it desires to assert coverage defense.<sup>88</sup> One of these options is sending the insured a written notice by certified or registered mail of the insured’s refusal to defend the insured.<sup>89</sup>

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<sup>82</sup> Chapter 626, F.S., part IX.

<sup>83</sup> Section 626.9541, F.S.

<sup>84</sup> Rule 69B-186.010, F.A.C., Unlawful Inducements Related to Title Insurance Transactions, governs inducements related to title insurance, but exempts gifts within the value limitation of s. 626.9541(1)(m), F.S. However, federal law prohibits any fee, kickback or thing of value given for referral of real estate settlement services on mortgage loans related to federal programs. 12 U.S.C. s. 2607 (2017).

<sup>85</sup> Public adjusters, their apprentices, and anyone acting on behalf of the public adjuster are prohibited from giving gifts of merchandise valued in excess of \$25 as an inducement to contract. Section 626.854(10), F.S. A group or individual health benefit plan may provide merchandise without limitation in value as part of an advertisement for voluntary wellness or health improvement programs. Section 626.9541(4)(a), F.S. Motor vehicle service agreement companies are prohibited from giving gifts of merchandise in excess of \$25 to agreement holders, prospective agreement holders, or others for the purpose of advertising. Section 634.282(17), F.S.

<sup>86</sup> See s. 627.426(2), F.S.

<sup>87</sup> See *AIU Ins. Co. v. Block Marina Inv., Inc.*, 544 So.2d 998 (Fla. 1989).

<sup>88</sup> Section 627.426(2)(b), F.S.

<sup>89</sup> *Id.*

### **Discounts for Purchase of Multiple Insurance Policies**

Florida law allows an insurer to include a discount in the premium charged for any policy, contract, or certificate of insurance, because another policy, contract, or certificate of any type has been purchased by the insured from the same insurer or insurer group.<sup>90</sup> Additionally, the discount is allowed when an agent is servicing both an open-market policy for the insured and one issued by Citizens or an insurer that removed the policy from Citizens through the takeout process.<sup>91</sup>

### **Secondary Notice Prior to Life Insurance Policy Lapse**

Though insurance coverage of various types may lapse for non-payment of premium, in the case of life insurance, the insured is entitled to a minimum 30-day grace period for non-payment.<sup>92</sup> A notice of lapse must be issued after expiration of the grace period and at least 21 days prior to the effective date of the lapse. If the policy provides a grace period greater than 51 days (the standard minimum 30-day grace period, plus the 21-day pre-lapse notice period), then the insurer must issue the notice of lapse at least 21 days prior to the expiration of the grace period.<sup>93</sup> In addition, the insured is entitled to name a second person to receive the notice of lapse on their behalf.

### **Property Insurance Claim Mediation**

The Department of Financial Services (DFS) administers alternative dispute resolution programs for various types of insurance. DFS has mediation programs for property insurance<sup>94</sup> and automobile insurance<sup>95</sup> claims. DFS has a neutral evaluation program, similar to mediation, for sinkhole insurance claims.<sup>96</sup> DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.<sup>97</sup>

For property insurance claims<sup>98</sup> involving personal lines and commercial residential claims, only the policyholder, as a first-party claimant, or the insurer may request mediation under DFS' program.<sup>99</sup> This means that third parties cannot utilize the program; however, an insurer may

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<sup>90</sup> Section 627.0655, F.S.

<sup>91</sup> Florida law provides two methods to depopulate Citizens policies: 1) insurers may "takeout" policies currently issued by Citizens through offers of coverage, and 2) insurance applicants may be prevented from being issued a Citizens policy if an insurer offers the applicant coverage for no more than 15 percent more than the Citizens' premium through a clearinghouse listing process prior to being issued a Citizens policy. Sections 627.351(6) and 627.3518, F.S.

<sup>92</sup> Section 627.453, F.S.

<sup>93</sup> Section 627.4555, F.S.

<sup>94</sup> Section 627.7015, F.S.

<sup>95</sup> Section 626.745, F.S.

<sup>96</sup> Section 627.7074, F.S.

<sup>97</sup> Sections 627.7015, 627.7074, and 627.745, F.S.

<sup>98</sup> An eligible claim is one that does not involve: suspected fraud; there is no coverage under the policy; one where the insurer reasonably believes the policyholder has made material misrepresentations relevant to the claim and request for payment has been denied for that reason; one for less than \$500 (unless agreed to by the parties); or, windstorm or hurricane loss if the required notice of claim was not issued in compliance with law. Section 627.7015(9), F.S.

<sup>99</sup> Policyholders may have the assistance of legal counsel during the mediation process. Litigants in the county and circuit court may be referred to the program. Commercial coverages, private passenger motor vehicle coverages, and liability

elect to mediate with the third party. This is true even if the policyholder assigns their policy benefit rights to the third party.<sup>100</sup> The insurer must notify the policyholder of the right to mediation under the program upon receipt of the claim.<sup>101</sup> The mediation costs are generally the responsibility of the insurer.

### **Initial Payment Requirements for Motor Vehicle Insurance**

An insurer or agent may issue a private passenger motor vehicle insurance policy or binder for the policy only after collecting an amount of money that is equal to 2 months' premiums.

## **III. Effect of Proposed Changes:**

**Section 1.** Names the act "Omnibus Prime."

### **The Florida Hurricane Catastrophe Fund**

**Section 2.** Amends s. 215.555, F.S., to provide that for contracts and rates effective on or after June 1, 2019, the loss adjustment expenses paid by the Florida Hurricane Catastrophe Fund are to increase to 10 percent of an insurer's reimbursed losses. The current reimbursement rate for loss adjustment expenses is 5 percent of the reimbursed losses.

This section is effective upon becoming a law.

### **Transfer of Title of a Totaled Motor Vehicle or Mobile Home**

**Section 3.** Amends s. 390.30, F.S., to allow insurers to electronically transfer a salvage certificate of title or certificate of destruction for motor vehicles or mobile homes to the DHSMV. Insurers may also send them in the mail or through "another commercially available delivery service."

The bill also provides a new effective date for a provision of current law that allows insurers who cannot obtain the title from the insured to receive a salvage certificate of title or certificate of destruction from the DHSMV. Under current law, the effective date of this provision is July 1, 2023. Under the bill, the effective date is January 1, 2020.

Finally, this section of the bill allows any signature required under these provisions to be electronic. However, the electronic signature must be in accordance with ch. 668, F.S., which states that an "electronic signature"

means any letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.<sup>102</sup>

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coverages of property insurance policies are not eligible for the property insurance mediation program. Section 627.7015(1), F.S.

<sup>100</sup> Section 627.7015(1), F.S.

<sup>101</sup> Section 627.7015(2), F.S.

<sup>102</sup> Section 668.003(4), F.S.

### **Workers Compensation Sworn Statements**

**Section 4.** Amends s. 440.381, F.S., to provide that workers' compensation insurance applicants and their agents are no longer required to have their sworn statements notarized as currently required by rule 69O-189.003, F.A.C. Also, the bill reduces the penalty for filing an application for workers compensation insurance that contains false, misleading, or incomplete information provided for the purpose of avoiding or reducing premiums from a second degree felony to a third degree felony.

### **Right of Contribution**

**Section 5.** Creates s. 624.1055, F.S., to require insurers who cover and have a duty to defend the same insured to share the costs of defending an action against the insured. An insurer's duty to cover costs includes only the costs incurred after the insurer gets notice of the action. The court shall allocate the costs using appropriate equitable principles, and a liability insurer entitled to contribution may file an action for contribution in a court of competent jurisdiction.

### **Civil Remedies Against Insurers**

**Section 6.** Amends s. 624.155, F.S., to prohibit the filing of a civil remedy notice for a bad faith action under s. 624.155, F.S., within 60 days after the appraisal process outlined in the insurance contract is invoked by any party in a residential property insurance claim. The bill also repeals current law that allows the Department of Financial Services to return a civil remedy notice for lack of specificity.

### **Certificate of Authority**

**Section 7.** Amends s. 624.404, F.S., to provide another exception to the prohibition on a foreign or alien insurer or exchange operating in this state if that insurer or exchange has not operated satisfactorily for 3 years in its state or country of domicile. Under the bill, this 3-year requirement is waived if the insurer or exchange:

Possesses sufficient capital and surplus to support its plan of operation as filed with the office.

### **Risk-Based Capital Requirements for Insurers**

**Section 8.** Amends s. 624.4085, F.S., to exempt health maintenance organizations (HMO) and prepaid limited health service organizations from having their risk-based capital determined in accordance with the formula for life and health insurers set forth in the risk-based capital instructions. However, an HMO or prepaid limited health services organization must have its risk-based capital determined in accordance with the formula for property and casualty insurers if it also operates in another state.

### **Diligent Effort for Residential Structures \$700,000 or Greater**

**Section 9.** Amends s. 626.914, F.S., to provide that a residential structure with a dwelling replacement cost of \$700,000 or more may be exported to a surplus lines insurer if an agent

seeks coverage from one authorized insurer and is rejected. Current law requires three declinations for residential structures before exporting a residential structure to a surplus lines insurer, with an exception that allows exportation after one declination of a residential structure with a dwelling replacement cost of \$1 million or more.

### **Alternative Insurance Rates for Dwellings \$700,000 or Greater**

**Section 10.** Amends s. 627.062, F.S., to exempt personal lines residential insurance with a dwelling replacement of \$700,000 or greater from the standard rate review process if the insurer notifies the OIR of rate changes within 30 days after the rate is effective and uses a rate that provides a reasonable rate of return and is not excessive, inadequate, or unfairly discriminatory. The OIR may, in its discretion, examine rates to determine if they are excessive, inadequate, or unfairly discriminatory.

**Section 11.** Creates s. 627.1711, F.S., which provides that no more than 5 percent of all personal lines residential insurance policies written or renewed by the insurer may be rated pursuant to the method created by Section 10 of the bill and through the consent to excess rate process in s. 627.171, F.S.

### **Forms Allowed for Dwellings \$700,000 or Greater**

**Section 12.** Amends s. 627.4102, F.S., to allow an insurer make an informational form filing with the OIR wherein the insurer certifies the form complies with Florida law when such forms are used in a personal lines residential insurance policy with a dwelling replacement of \$700,000 or greater that is rated pursuant to the alternative process created in Section 10 of the bill.

### **Reasonable Per-Policy Fees for Placement or Export of Surplus Lines Policy**

**Section 13.** Amends s. 626.916, F.S., to remove the \$35 limit on the reasonable per-policy fee that a filing surplus lines agent may charge for each policy certified for export. The bill also requires the per-policy fee to be itemized separately to the customer before purchase and enumerated in the policy. The bill also authorizes a retail agent to charge a reasonable per-policy fee for placement of a surplus lines policy, and requires the fee to be itemized to the customer.

The bill makes a conforming change to clarify that the requirements of s. 626.916(1)(a)-(d), F.S., still apply to personal residential policies with a dwelling replacement cost of \$700,000 or greater. Those requirements are that a diligent effort be made to place a policy with a surplus lines insurer, 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, that 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, and that the deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm.

### **Unfair Insurance Trade Practices**

**Section 14.** Amends s. 626.9541(5), F.S., to allow insurers to offer and give insureds goods or services of any value for the purposes of loss control or loss mitigation related to covered risks. Currently it is an unfair insurance trade practice to provide items or services to an insured valued at more than \$100 per year.

### **Discounts for Purchase of Multiple Insurance Policies**

**Section 15.** Amends s. 627.0655, F.S., to allow a property, casualty, or surety insurer to offer an actuarially sound premium discount for a policy if another policy has been purchased from a different insurer that:

- Has a joint marketing arrangement with the insurer offering the discount; or
- Issued the policy pursuant to the Citizens clearinghouse program if the same agent is servicing both policies.

A property, casualty, or surety insurer may also offer an actuarially sound premium discount based on the fact that another insurer's policy, contract, or certificate of any type is serviced by an insurance agent who is servicing both policies.

Currently, s. 627.0655, F.S., does not expressly require these discounts to be actuarially sound.

### **Coverage Defense Letter**

**Section 16.** Amends s. 627.426, F.S., to add new options for an insurer's sending of the required coverage-defense notices. In addition to sending these notices via certified or registered mail, as under current law, an insurer may instead send them by "United States postal proof of mailing" or other mailing using the Intelligent Mail barcode or other similar tracking method used or approved by the United States Postal Service.

### **Secondary Notice Prior to Life Insurance Policy Lapse**

**Section 17.** Amends s. 627.4555, F.S., to require a life insurer to provide a notice of lapse to the agent servicing a life insurance policy 21 days prior to the effective date of the lapse. However, the insurer is not required to issue the notice to the agent servicing the life insurance policy if the:

- Insurer provides an online method for the agent to identify lapsing policies;
- Insurer maintains a procedure that allows an agent to independently determine whether the notice of lapse has been sent to the insured;
- Insurer has no record of the agent servicing the policy; or
- Agent is employed by the insurer or its affiliate. Receipt of the notice does not make the agent responsible for any lapse.

### **Property Insurance Claim Mediation**

**Section 18.** Amends s. 627.7015, F.S., to provide property insurers an additional option for giving a policyholder notice that the policyholder may elect to participate in mediation of a

disputed claim. Under current law, this notice must be given at the time a first-party claim is filed. Under the bill, an insurer may instead provide the notice at the time of issuance and renewal of a policy.

### **Motor Vehicle Insurance Initial Payments**

**Section 19.** Amends s. 627.7295, F.S., to permit an insurer to issue a private passenger motor vehicle policy after receiving an amount equal to at least 1 month's premium instead of an amount equal to 2 months' premiums, as under current law.

**Section 20.** Makes a conforming change related to the reduction of felony classification made in Section 4.

### **Effective Date**

**Section 21.** States that except as otherwise expressly provided in the bill, the effective date of the bill is July 1, 2019.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. State Tax or Fee Increases:**

None.

### **E. Other Constitutional Issues:**

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

**Section 2.** Increasing the amount of reimbursement for loss adjustment expense from the Florida Hurricane Catastrophe Fund will have a positive fiscal impact for insurers. Insurers that purchase private market reinsurance to cover loss adjustment expenses that costs more than what the FHCF charges for such coverage will experience a reduction in their premium. Insurers may receive FHCF reimbursement in excess of their actual loss adjustment expenses if their LAE costs are less than 10 percent of reimbursed losses.

Increasing the amount of loss adjustment expenses covered by the FHCF, however, could result in drawing down the fund quicker, and increasing the risk of assessments being needed. If assessments are needed they would be levied to all lines of insurance excluding medical malpractice and workers compensation.

**Section 5.** All insurers with a duty to defend an insured will be required to contribute to the defense costs of the insured.

**Section 13.** A surplus lines agent and retail agent will be allowed to charge a reasonable fee for facilitating the export of an insurance policy to a surplus line insurer. Such fees are also included in the calculation for the premium tax.

**Section 14.** Insureds can receive from an insurer or agent unlimited loss mitigation services or devises related to the risks covered by their policy for free or at a discount.

**Section 15.** Insureds will have greater opportunity to receive a multiline discount between multiple insurers.

**Section 16.** There could be an indeterminate cost savings to liability insurers by allowing them multiple delivery options for providing required notices.

**Section 19.** New policyholders for private passenger motor vehicle coverage will only need to prepay one month of premium as opposed to two.

**C. Government Sector Impact:**

**Section 3.** There could be an indeterminate cost savings to the Department of Highway Safety and Motor Vehicles for the electronic transfer of salvage titles as opposed to using USPS.

**Section 6.** There could be an indeterminate cost savings to the Department of Financial Services for no longer needing to review the specificity of notices for bad faith against an insurer.

**Sections 10, 11 and 12.** The Office of Insurance Regulation indicates they will need \$227,396 recurring expenses for staff positions and \$70,129 of nonrecurring expenses associated with implementing these sections of the bill.<sup>103</sup>

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<sup>103</sup> Office of Insurance Regulation 2019 Agency Legislative Bill Analysis for Amendment 712076 to CS/CS/SB 714. (On file with the Banking and Insurance Committee.)



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 215.555, 319.30, 440.381, 624.155, 624.404, 624.4085, 626.914, 626.916, 626.9541, 627.062, 627.0655, 627.4102, 627.426, 627.4555, 627.7015, 627.7295, and 921.0022.

This bill creates the following sections of the Florida Statutes: 624.1055 and 627.1711.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS/CS by Banking and Insurance on April 8, 2019:**

The CS:

- Provides that a foreign or alien insurer does not need to meet the 3 year operation requirement before being allowed to operate in this state if the OIR is satisfied the insurer possesses sufficient capital and surplus to support its plan of operation.
- Reduces from three to one the number of declinations needed to export to a surplus lines insurer a personal lines residential policy with a dwelling replacement cost of \$700,000 to below \$1 million to a surplus lines insurer.
- Allows personal lines residential insurance with a dwelling replacement of \$700,000 or greater certify policy forms and apply rates in the same ways allowed for commercial insurance. Caps the use of such rates and forms to no more than 5 percent of a company's book of business including the use of excess rates in s. 627.171, F.S.

**CS/CS by Judiciary on April 1, 2019:**

The committee substitute:

- Provides that the Florida Hurricane Catastrophe Fund must reimburse the loss adjustment expenses of an insurer at 10 percent of the insurer's reimbursed losses. In the underlying bill, the loss adjustment reimbursement percentage was 15 percent of reimbursed losses or the percentage created by the Financial Services Commission, whichever is less.
- Allows insurers to transfer title of totaled motor vehicles or mobile homes to the DHSMV electronically, as well as through regular mail or "another commercially available delivery service."
- Reduces the penalty for filing an application for workers compensation insurance that contains false, misleading, or incomplete information provided for the purpose of avoiding or reducing premiums from a second degree felony to a third degree felony.

- Gives a liability insurer who defends an insured the right to compel the sharing of defense costs by another insurer who also owes a duty to defend the insured on the same claim.
- Requires a premium discount offered by a property, casualty, or surety insurer to be actuarially sound.
- Provides that a foreign or alien insurer or exchange does not need to meet one of the requirements for operating in this state if the OIR is satisfied that its operation in this state is in the best interest of the state and its policyholders.
- Exempts health maintenance organizations and prepaid limited health service organizations (HMO) from having their risk-based capital determined in accordance with the formula set forth in the risk-based capital instructions, unless they also operate in another state.
- Authorizes a surplus lines agent or a retail agent who is servicing a surplus lines policy to charge a reasonable per-policy fee.
- Authorizes a property, casualty, or surety insurer to offer an actuarially sound premium discount based on the fact that a different insurer's policy, contract, or certificate of any type is serviced by an insurance agent who is servicing both policies.
- Provides more mailing options for an insurer that is asserting a coverage defense to send the required notices.
- Provides that a life insurer is not required to issue notice that a life insurance policy will lapse in 21 days to the agent servicing the life insurance policy if the insurer maintains a procedure that allows an agent to independently determine whether the notice of lapse has been sent to the insured.
- Requires a property insurer to notify a policyholder of its right to participate in mediation at the time of issuance and renewal or when the policyholder files a claim. In the underlying bill, the insurers could provide the notice when the policyholder filed a claim or when coverage is applied and payment is determined.
- Requires an insurer to collect an amount equal to at least one month's premium, instead of 2 month's premium, before issuing a private passenger motor vehicle policy.

**CS by Banking and Insurance on March 11, 2019:**

## The CS:

- Revises the reimbursement that insurers receive from the FHCF for loss adjustment expenses from 5 percent of losses to the lesser of 15 percent of losses or the uniform loss adjustment percentage established by rule.
- Deletes a requirement that workers compensation insurance applicants and their agents must have their sworn statements notarized.
- Prohibits filing during the first 60 days of the appraisal process outlined in the insurance contract a civil remedy notice for a bad faith action under s. 624.155, F.S.
- Repeals current law that allows the Department of Financial Services to return for lack of specificity a civil remedy notice.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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854368

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/08/2019	.	
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The Committee on Banking and Insurance (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 161 and 162

insert:

Section 4. Effective July 1, 2020, paragraph (d) of subsection (1) of section 440.10, Florida Statutes, is amended to read:

440.10 Liability for compensation.—

(1)

(d)1. If a contractor becomes liable for the payment of



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11 compensation to the employees of a subcontractor who has failed  
12 to secure such payment in violation of s. 440.38, the contractor  
13 or other third-party payor shall be entitled to recover from the  
14 subcontractor all benefits paid or payable plus interest unless  
15 the contractor and subcontractor have agreed in writing that the  
16 contractor will provide coverage.

17 2. If a contractor or third-party payor becomes liable for  
18 the payment of compensation to the corporate officer of a  
19 subcontractor who is engaged in the construction industry and  
20 has elected to be exempt from the provisions of this chapter,  
21 but whose election is invalid, the contractor or third-party  
22 payor may recover from the claimant or corporation all benefits  
23 paid or payable plus interest, unless the contractor and the  
24 subcontractor have agreed in writing that the contractor will  
25 provide coverage.

26 3. If a contractor or subcontractor and an employee leasing  
27 company are operating pursuant to an arrangement for employee  
28 leasing as defined in s. 468.520(4) and workers' compensation  
29 insurance is provided by the employee leasing company to the  
30 leased employees, a person is deemed an employee of the employee  
31 leasing company for purposes of workers' compensation insurance,  
32 unless the contractor or subcontractor has secured additional  
33 workers' compensation coverage applicable to the employee,  
34 effective upon the earliest of the following:

35 a. The hiring of the person by the contractor or  
36 subcontractor.

37 b. The commencement of work by the person for the  
38 contractor or subcontractor.

39 c. The hiring of the person directly by the employee



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40 leasing company.

41

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

43 And the title is amended as follows:

44       Delete line 15

45 and insert:

46       requirements; amending s. 440.10, F.S.; specifying,  
47       under certain circumstances and for purposes of  
48       workers' compensation insurance, when a person is  
49       deemed an employee of an employee leasing company  
50       operating in an arrangement with a contractor or  
51       subcontractor; amending s. 440.381, F.S.; revising a



310308

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2019	.	
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The Committee on Banking and Insurance (Brandes) recommended the following:

**Senate Amendment**

Delete lines 291 - 293

and insert:

(e) Possesses sufficient capital and surplus to support its plan of operation as filed with the office.



454254

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/08/2019	.	
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The Committee on Banking and Insurance (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 342 - 345

and insert:

Section 9. 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





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11 currently writing this type of coverage and documenting these  
12 rejections. However, if the residential structure has a dwelling  
13 replacement cost of \$700,000 ~~\$1 million~~ or more, the term means  
14 seeking coverage from and having been rejected by at least one  
15 authorized insurer currently writing this type of coverage and  
16 documenting this rejection.

17 Section 10. Paragraph (d) of subsection (3) of section  
18 627.062, Florida Statutes, is amended to read:

19 627.062 Rate standards.—

20 (3)

21 (d)1. Personal lines residential property insurance with a  
22 dwelling replacement limit of \$700,000 or more which is written  
23 or renewed pursuant to s. 627.1711 and the following categories  
24 or kinds of insurance and types of commercial lines risks are  
25 not subject to paragraph (2)(a) or paragraph (2)(f):

26 a. Excess or umbrella.

27 b. Surety and fidelity.

28 c. Boiler and machinery and leakage and fire extinguishing  
29 equipment.

30 d. Errors and omissions.

31 e. Directors and officers, employment practices, fiduciary  
32 liability, and management liability.

33 f. Intellectual property and patent infringement liability.

34 g. Advertising injury and Internet liability insurance.

35 h. Property risks rated under a highly protected risks  
36 rating plan.

37 i. General liability.

38 j. Nonresidential property, except for collateral  
39 protection insurance as defined in s. 624.6085.



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- 40 k. Nonresidential multiperil.
- 41 l. Excess property.
- 42 m. Burglary and theft.
- 43 n. Travel insurance, if issued as a master group policy  
44 with a situs in another state where each certificateholder pays  
45 less than \$30 in premium for each covered trip and where the  
46 insurer has written less than \$1 million in annual written  
47 premiums in the travel insurance product in this state during  
48 the most recent calendar year.
- 49 o. Medical malpractice for a facility that is not a  
50 hospital licensed under chapter 395, a nursing home licensed  
51 under part II of chapter 400, or an assisted living facility  
52 licensed under part I of chapter 429.
- 53 p. Medical malpractice for a health care practitioner who  
54 is not a dentist licensed under chapter 466, a physician  
55 licensed under chapter 458, an osteopathic physician licensed  
56 under chapter 459, a chiropractic physician licensed under  
57 chapter 460, a podiatric physician licensed under chapter 461, a  
58 pharmacist licensed under chapter 465, or a pharmacy technician  
59 registered under chapter 465.
- 60 q. Any other commercial lines categories or kinds of  
61 insurance or types of commercial lines risks that the office  
62 determines should not be subject to paragraph (2) (a) or  
63 paragraph (2) (f) because of the existence of a competitive  
64 market for such insurance or similarity of such insurance to  
65 other categories or kinds of insurance not subject to paragraph  
66 (2) (a) or paragraph (2) (f), or to improve the general  
67 operational efficiency of the office.
- 68 2. Insurers or rating organizations shall establish and use



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69 rates, rating schedules, or rating manuals to allow the insurer  
70 a reasonable rate of return on insurance and risks described in  
71 subparagraph 1. which are written in this state.

72 3. An insurer shall notify the office of any changes to  
73 rates for insurance and risks described in subparagraph 1.  
74 within 30 days after the effective date of the change. The  
75 notice must include the name of the insurer, the type or kind of  
76 insurance subject to rate change, and the average statewide  
77 percentage change in rates. Actuarial data with regard to rates  
78 for such risks must be maintained by the insurer for 2 years  
79 after the effective date of changes to those rates and are  
80 subject to examination by the office. The office may require the  
81 insurer to incur the costs associated with an examination. Upon  
82 examination, the office, in accordance with generally accepted  
83 and reasonable actuarial techniques, shall consider the rate  
84 factors in paragraphs (2) (b), (c), and (d) and the standards in  
85 paragraph (2) (e) to determine if the rate is excessive,  
86 inadequate, or unfairly discriminatory.

87 4. A rating organization shall notify the office of any  
88 changes to loss cost for insurance and risks described in  
89 subparagraph 1. within 30 days after the effective date of the  
90 change. The notice must include the name of the rating  
91 organization, the type or kind of insurance subject to a loss  
92 cost change, loss costs during the immediately preceding year  
93 for the type or kind of insurance subject to the loss cost  
94 change, and the average statewide percentage change in loss  
95 cost. Actuarial data with regard to changes to loss cost for  
96 risks not subject to paragraph (2) (a) or paragraph (2) (f) must  
97 be maintained by the rating organization for 2 years after the



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98 effective date of the change and are subject to examination by  
99 the office. The office may require the rating organization to  
100 incur the costs associated with an examination. Upon  
101 examination, the office, in accordance with generally accepted  
102 and reasonable actuarial techniques, shall consider the rate  
103 factors in paragraphs (2) (b)-(d) and the standards in paragraph  
104 (2) (e) to determine if the rate is excessive, inadequate, or  
105 unfairly discriminatory.

106 Section 11. Section 627.1711, Florida Statutes, is created  
107 to read:

108 627.1711 Alternative personal lines residential property  
109 insurance rates.—In each calendar year, the sum of personal  
110 lines residential property insurance policies issued or renewed  
111 by an insurer using rates established under s. 627.062(3) (d)  
112 plus personal lines residential property insurance policies  
113 issued or renewed using rates established under s. 627.171 may  
114 not exceed 5 percent of all personal lines residential insurance  
115 policies written or renewed by the insurer.

116 Section 12. Subsection (1) of section 627.4102, Florida  
117 Statutes, is amended to read:

118 627.4102 Informational filing of forms.—

119 (1) Property and casualty forms, excluding ~~except~~ workers'  
120 compensation and personal lines forms, but including residential  
121 property insurance with rates established pursuant to s.  
122 627.062(3) (d), are exempt from the approval process required  
123 under s. 627.410 if:

124 (a) The form has been electronically submitted to the  
125 office in an informational filing made through I-File 30 days  
126 before the delivery or issuance for delivery of the form within



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127 this state; and

128 (b) At the time the informational filing is made, a  
129 notarized certification is attached to the filing that certifies  
130 that each form within the filing is in compliance with all  
131 applicable state laws and rules. The certification must be on  
132 the insurer's letterhead and signed and dated by the insurer's  
133 president, chief executive officer, general counsel, or an  
134 employee of the insurer responsible for the filing on behalf of  
135 the insurer. The certification must contain the following  
136 statement, and no other language: "I, ...(name)..., as  
137 ...(title)... of ...(insurer name)..., do hereby certify that  
138 this form filing has been thoroughly and diligently reviewed by  
139 me and by all appropriate company personnel, as well as company  
140 consultants, if applicable, and certify that each form contained  
141 within the filing is in compliance with all applicable Florida  
142 laws and rules. Should a form be found not to be in compliance  
143 with Florida laws and rules, I acknowledge that the Office of  
144 Insurance Regulation shall disapprove the form."

145 Section 13. Paragraph (b) of subsection (3) and subsection  
146 (4) of section 626.916, Florida Statutes, are amended,  
147 subsection (5) is added to that section, and paragraph (a) of  
148 subsection (1) of that section is republished, to read:

149 626.916 Eligibility for export.—

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

152 (a) The full amount of insurance required must not be  
153 procurable, after a diligent effort has been made by the  
154 producing agent to do so, from among the insurers authorized to  
155 transact and actually writing that kind and class of insurance



156 in this state, and the amount of insurance exported shall be  
157 only the excess over the amount so procurable from authorized  
158 insurers. Surplus lines agents must verify that a diligent  
159 effort has been made by requiring a properly documented  
160 statement of diligent effort from the retail or producing agent.  
161 However, to be in compliance with the diligent effort  
162 requirement, the surplus lines agent's reliance must be  
163 reasonable under the particular circumstances surrounding the  
164 export of that particular risk. Reasonableness shall be assessed  
165 by taking into account factors which include, but are not  
166 limited to, a regularly conducted program of verification of the  
167 information provided by the retail or producing agent.  
168 Declinations must be documented on a risk-by-risk basis. If it  
169 is not possible to obtain the full amount of insurance required  
170 by layering the risk, it is permissible to export the full  
171 amount.

172 (3)

173 (b) Paragraphs (1)(a)-(d) do not apply to classes of  
174 insurance which are subject to s. 627.062(3)(d)1., except that  
175 paragraph (1)(a) applies to residential property insurance with  
176 rates established pursuant to s. 627.062(3)(d). These classes  
177 may be exportable under the following conditions:

- 178 1. The insurance must be placed only by or through a  
179 surplus lines agent licensed in this state;
- 180 2. The insurer must be made eligible under s. 626.918; and
- 181 3. The insured must sign a disclosure that substantially  
182 provides the following: "You are agreeing to place coverage in  
183 the surplus lines market. Superior coverage may be available in  
184 the admitted market and at a lesser cost. Persons insured by



185 surplus lines carriers are not protected under the Florida  
186 Insurance Guaranty Act with respect to any right of recovery for  
187 the obligation of an insolvent unlicensed insurer." If the  
188 notice is signed by the insured, the insured is presumed to have  
189 been informed and to know that other coverage may be available,  
190 and, with respect to the diligent-effort requirement under  
191 subsection (1), there is no liability on the part of, and no  
192 cause of action arises against, the retail agent presenting the  
193 form.

194  
195 ===== T I T L E A M E N D M E N T =====

196 And the title is amended as follows:

197 Delete line 42

198 and insert:

199 service organizations; amending s. 626.914, F.S.;

200 revising the definition of the term "diligent effort"

201 as used in the Surplus Lines Law; amending s. 627.062,

202 F.S.; specifying applicable rate standards and

203 requirements for certain personal lines residential

204 property insurance; creating s. 627.1711, F.S.;

205 providing a limitation on certain personal lines

206 residential property insurance policies that may be

207 written or renewed by an insurer each calendar year;

208 amending s. 627.4102, F.S.; providing an exemption, if

209 certain conditions are met, from a form approval

210 process for certain personal lines residential

211 property insurance forms; amending s. 626.916, F.S.;

212 specifying applicable requirements before certain

213 personal lines residential property insurance may be



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exported;





712076

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2019	.	
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The Committee on Banking and Insurance (Brandes) recommended the following:

1           **Senate Substitute for Amendment (454254) (with title**  
2 **amendment)**

3  
4           Delete lines 342 - 345  
5 and insert:

6           Section 9. Subsection (4) of section 626.914, Florida  
7 Statutes, is amended to read:

8           626.914 Definitions.—As used in this Surplus Lines Law, the  
9 term:

10           (4) "Diligent effort" means seeking coverage from and



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11 having been rejected by at least three authorized insurers  
12 currently writing this type of coverage and documenting these  
13 rejections. However, if the residential structure has a dwelling  
14 replacement cost of \$700,000 ~~\$1 million~~ or more, the term means  
15 seeking coverage from and having been rejected by at least one  
16 authorized insurer currently writing this type of coverage and  
17 documenting this rejection.

18 Section 10. Paragraph (d) of subsection (3) of section  
19 627.062, Florida Statutes, is amended to read:

20 627.062 Rate standards.—

21 (3)

22 (d)1. Personal lines residential property insurance with a  
23 dwelling replacement limit of \$700,000 or more which is written  
24 or renewed pursuant to s. 627.1711 and the following categories  
25 or kinds of insurance and types of commercial lines risks are  
26 not subject to paragraph (2) (a) or paragraph (2) (f):

27 a. Excess or umbrella.

28 b. Surety and fidelity.

29 c. Boiler and machinery and leakage and fire extinguishing  
30 equipment.

31 d. Errors and omissions.

32 e. Directors and officers, employment practices, fiduciary  
33 liability, and management liability.

34 f. Intellectual property and patent infringement liability.

35 g. Advertising injury and Internet liability insurance.

36 h. Property risks rated under a highly protected risks  
37 rating plan.

38 i. General liability.

39 j. Nonresidential property, except for collateral



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40 protection insurance as defined in s. 624.6085.

41 k. Nonresidential multiperil.

42 l. Excess property.

43 m. Burglary and theft.

44 n. Travel insurance, if issued as a master group policy  
45 with a situs in another state where each certificateholder pays  
46 less than \$30 in premium for each covered trip and where the  
47 insurer has written less than \$1 million in annual written  
48 premiums in the travel insurance product in this state during  
49 the most recent calendar year.

50 o. Medical malpractice for a facility that is not a  
51 hospital licensed under chapter 395, a nursing home licensed  
52 under part II of chapter 400, or an assisted living facility  
53 licensed under part I of chapter 429.

54 p. Medical malpractice for a health care practitioner who  
55 is not a dentist licensed under chapter 466, a physician  
56 licensed under chapter 458, an osteopathic physician licensed  
57 under chapter 459, a chiropractic physician licensed under  
58 chapter 460, a podiatric physician licensed under chapter 461, a  
59 pharmacist licensed under chapter 465, or a pharmacy technician  
60 registered under chapter 465.

61 q. Any other commercial lines categories or kinds of  
62 insurance or types of commercial lines risks that the office  
63 determines should not be subject to paragraph (2) (a) or  
64 paragraph (2) (f) because of the existence of a competitive  
65 market for such insurance or similarity of such insurance to  
66 other categories or kinds of insurance not subject to paragraph  
67 (2) (a) or paragraph (2) (f), or to improve the general  
68 operational efficiency of the office.



69           2. Insurers or rating organizations shall establish and use  
70 rates, rating schedules, or rating manuals to allow the insurer  
71 a reasonable rate of return on insurance and risks described in  
72 subparagraph 1. which are written in this state.

73           3. An insurer shall notify the office of any changes to  
74 rates for insurance and risks described in subparagraph 1.  
75 within 30 days after the effective date of the change. The  
76 notice must include the name of the insurer, the type or kind of  
77 insurance subject to rate change, and the average statewide  
78 percentage change in rates. Actuarial data with regard to rates  
79 for such risks must be maintained by the insurer for 2 years  
80 after the effective date of changes to those rates and are  
81 subject to examination by the office. The office may require the  
82 insurer to incur the costs associated with an examination. Upon  
83 examination, the office, in accordance with generally accepted  
84 and reasonable actuarial techniques, shall consider the rate  
85 factors in paragraphs (2) (b), (c), and (d) and the standards in  
86 paragraph (2) (e) to determine if the rate is excessive,  
87 inadequate, or unfairly discriminatory.

88           4. A rating organization shall notify the office of any  
89 changes to loss cost for insurance and risks described in  
90 subparagraph 1. within 30 days after the effective date of the  
91 change. The notice must include the name of the rating  
92 organization, the type or kind of insurance subject to a loss  
93 cost change, loss costs during the immediately preceding year  
94 for the type or kind of insurance subject to the loss cost  
95 change, and the average statewide percentage change in loss  
96 cost. Actuarial data with regard to changes to loss cost for  
97 risks not subject to paragraph (2) (a) or paragraph (2) (f) must



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98 be maintained by the rating organization for 2 years after the  
99 effective date of the change and are subject to examination by  
100 the office. The office may require the rating organization to  
101 incur the costs associated with an examination. Upon  
102 examination, the office, in accordance with generally accepted  
103 and reasonable actuarial techniques, shall consider the rate  
104 factors in paragraphs (2) (b)-(d) and the standards in paragraph  
105 (2) (e) to determine if the rate is excessive, inadequate, or  
106 unfairly discriminatory.

107 Section 11. Section 627.1711, Florida Statutes, is created  
108 to read:

109 627.1711 Alternative personal lines residential property  
110 insurance rates.—In each calendar year, the sum of personal  
111 lines residential property insurance policies issued or renewed  
112 by an insurer using rates established under s. 627.062(3) (d)  
113 plus personal lines residential property insurance policies  
114 issued or renewed using rates established under s. 627.171 may  
115 not exceed 5 percent of all personal lines residential insurance  
116 policies written or renewed by the insurer.

117 Section 12. Subsection (1) of section 627.4102, Florida  
118 Statutes, is amended to read:

119 627.4102 Informational filing of forms.—

120 (1) Property and casualty forms, excluding ~~except~~ workers'  
121 compensation and personal lines forms, but including residential  
122 property insurance with rates established pursuant to s.

123 627.062(3) (d), are exempt from the approval process required  
124 under s. 627.410 if:

125 (a) The form has been electronically submitted to the  
126 office in an informational filing made through I-File 30 days



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127 before the delivery or issuance for delivery of the form within  
128 this state; and

129 (b) At the time the informational filing is made, a  
130 notarized certification is attached to the filing that certifies  
131 that each form within the filing is in compliance with all  
132 applicable state laws and rules. The certification must be on  
133 the insurer's letterhead and signed and dated by the insurer's  
134 president, chief executive officer, general counsel, or an  
135 employee of the insurer responsible for the filing on behalf of  
136 the insurer. The certification must contain the following  
137 statement, and no other language: "I, ...(name)..., as  
138 ...(title)... of ...(insurer name)..., do hereby certify that  
139 this form filing has been thoroughly and diligently reviewed by  
140 me and by all appropriate company personnel, as well as company  
141 consultants, if applicable, and certify that each form contained  
142 within the filing is in compliance with all applicable Florida  
143 laws and rules. Should a form be found not to be in compliance  
144 with Florida laws and rules, I acknowledge that the Office of  
145 Insurance Regulation shall disapprove the form."

146 Section 13. Paragraph (b) of subsection (3) and subsection  
147 (4) of section 626.916, Florida Statutes, are amended, and  
148 subsection (5) is added to that section, to read:

149 626.916 Eligibility for export.—

150 (3)

151 (b) Except for personal lines insurance covering a  
152 residential structure that has a dwelling replacement cost of  
153 \$700,000 or more, paragraphs (1) (a)-(d) do not apply to classes  
154 of insurance which are subject to s. 627.062(3) (d)1. These  
155 classes may be exportable under the following conditions:



156           1. The insurance must be placed only by or through a  
157 surplus lines agent licensed in this state;  
158           2. The insurer must be made eligible under s. 626.918; and  
159           3. The insured must sign a disclosure that substantially  
160 provides the following: "You are agreeing to place coverage in  
161 the surplus lines market. Superior coverage may be available in  
162 the admitted market and at a lesser cost. Persons insured by  
163 surplus lines carriers are not protected under the Florida  
164 Insurance Guaranty Act with respect to any right of recovery for  
165 the obligation of an insolvent unlicensed insurer." If the  
166 notice is signed by the insured, the insured is presumed to have  
167 been informed and to know that other coverage may be available,  
168 and, with respect to the diligent-effort requirement under  
169 subsection (1), there is no liability on the part of, and no  
170 cause of action arises against, the retail agent presenting the  
171 form.

172  
173 ===== T I T L E   A M E N D M E N T =====

174 And the title is amended as follows:  
175           Delete line 42  
176 and insert:  
177           service organizations; amending s. 626.914, F.S.;  
178           revising the definition of the term "diligent effort"  
179           as used in the Surplus Lines Law; amending s. 627.062,  
180           F.S.; specifying applicable rate standards and  
181           requirements for certain personal lines residential  
182           property insurance; creating s. 627.1711, F.S.;  
183           providing a limitation on certain personal lines  
184           residential property insurance policies that may be



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185 written or renewed by an insurer each calendar year;  
186 amending s. 627.4102, F.S.; providing an exemption, if  
187 certain conditions are met, from a form approval  
188 process for certain personal lines residential  
189 property insurance forms; amending s. 626.916, F.S.;  
190 specifying applicable requirements before certain  
191 personal lines residential property insurance may be  
192 exported;





248142

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/08/2019	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 354 and 355

insert:

Section 10. Subsection (6) of section 626.932, Florida Statutes, is amended to read:

626.932 Surplus lines tax.—

(6) For the purposes of this section, the term "premium" means the consideration for insurance by whatever name called and includes any assessment, or any membership, policy, survey,



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11 inspection, service, or similar fee or charge in consideration  
12 for an insurance contract, which items are deemed to be a part  
13 of the premium. The per-policy fee authorized by s. 626.916(4)  
14 is specifically included within the meaning of the term  
15 "premium." However, the service fees ~~fee~~ imposed pursuant to ss.  
16 626.916(5) and 626.9325 are ~~s. 626.9325~~ is excluded from the  
17 meaning of the term "premium."  
18

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

20 And the title is amended as follows:

21 Between lines 47 and 48

22 insert:

23 amending s. 626.932, F.S.; excluding, for purposes of  
24 the surplus lines tax, certain service fees from the  
25 meaning of the term "premium";

By the Committees on Judiciary; and Banking and Insurance; and  
Senators Brandes and Bracy

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1 A bill to be entitled  
2 An act relating to insurance; providing a short title;  
3 amending s. 215.555, F.S.; increasing the required  
4 reimbursement of loss adjustment expenses in  
5 reimbursement contracts between the State Board of  
6 Administration and property insurers under the Florida  
7 Hurricane Catastrophe Fund; amending s. 319.30, F.S.;  
8 specifying means by which an insurance company may  
9 forward certificates of title of certain salvage motor  
10 vehicles or mobile homes to the Department of Highway  
11 Safety and Motor Vehicles; revising the effective date  
12 of certain procedures and requirements relating to  
13 certificates of title; providing that certain  
14 electronic signatures satisfy certain signature  
15 requirements; amending s. 440.381, F.S.; revising a  
16 criminal penalty for the submission, with certain  
17 intent, of an employer application for workers'  
18 compensation insurance coverage which contains false,  
19 misleading, or incomplete information; providing that  
20 certain sworn statements in such applications are not  
21 required to be notarized; creating s. 624.1055, F.S.;  
22 providing a right of contribution among insurers for  
23 defense costs under certain circumstances; providing a  
24 requirement for, and authorizing the use of certain  
25 factors by, a court in allocating costs; providing a  
26 cause of action to enforce the right of contribution;  
27 providing construction and applicability; amending s.  
28 624.155, F.S.; deleting a provision that tolls, under  
29 certain circumstances, a period before a civil action

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30 against an insurer may be brought; deleting a  
31 provision authorizing the Department of Financial  
32 Services to return a civil remedy notice for lack of  
33 specificity; prohibiting the filing of the notice  
34 within a certain timeframe under certain  
35 circumstances; amending s. 624.404, F.S.; adding a  
36 circumstance under which the Office of Insurance  
37 Regulation may waive a 3-year operation requirement  
38 for foreign or alien insurers and exchanges; amending  
39 s. 624.4085, F.S.; specifying the applicable formula  
40 for determining risk-based capital of certain health  
41 maintenance organizations and prepaid limited health  
42 service organizations; amending s. 626.916, F.S.;  
43 deleting a limit on fees charged by filing surplus  
44 lines agents per policy certified for export;  
45 authorizing retail agents to charge reasonable fees  
46 for placing surplus lines policies; specifying  
47 requirements for itemizing and enumerating fees;  
48 amending s. 626.9541, F.S.; providing that insurers  
49 and agents may give insureds certain free or  
50 discounted loss mitigation services or loss control  
51 items; deleting a limitation on the value of loss  
52 mitigation services that may be given to insureds;  
53 amending s. 627.0655, F.S.; revising circumstances  
54 under which insurers or certain authorized persons may  
55 provide certain premium discounts to insureds;  
56 amending s. 627.426, F.S.; adding means by which  
57 liability insurers may provide to named insureds  
58 certain notices relating to coverage denials based on

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59 a particular coverage defense; amending s. 627.4555,  
 60 F.S.; requiring life insurers that are required to  
 61 provide a specified notice to policyowners of an  
 62 impending lapse in coverage to also notify the  
 63 policyowner's agent of record within a certain  
 64 timeframe; providing that the agent is not responsible  
 65 for any lapse in coverage; exempting the insurer from  
 66 the requirement under certain circumstances; amending  
 67 s. 627.7015, F.S.; adding circumstances under which  
 68 certain property insurers may provide required notice  
 69 to policyholders of their right to participate in a  
 70 certain mediation program; amending s. 627.7295, F.S.;  
 71 reducing the collected premium required before private  
 72 passenger motor vehicle insurance policies or binders  
 73 may be initially issued; amending s. 921.0022, F.S.;  
 74 conforming a provision to changes made by the act;  
 75 providing effective dates.

76  
 77 Be It Enacted by the Legislature of the State of Florida:

78  
 79 Section 1. This act may be cited as "Omnibus Prime."

80 Section 2. Effective upon this act becoming a law,  
 81 paragraph (b) of subsection (4) of section 215.555, Florida  
 82 Statutes, is amended to read:

83 215.555 Florida Hurricane Catastrophe Fund.—

84 (4) REIMBURSEMENT CONTRACTS.—

85 (b)1. The contract shall contain a promise by the board to  
 86 reimburse the insurer for 45 percent, 75 percent, or 90 percent  
 87 of its losses from each covered event in excess of the insurer's

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88 retention, plus 5 percent of the reimbursed losses to cover loss  
 89 adjustment expenses. For contracts and rates effective on or  
 90 after June 1, 2019, the loss adjustment expense reimbursement  
 91 must be 10 percent of the reimbursed losses.

92 2. The insurer must elect one of the percentage coverage  
 93 levels specified in this paragraph and may, upon renewal of a  
 94 reimbursement contract, elect a lower percentage coverage level  
 95 if no revenue bonds issued under subsection (6) after a covered  
 96 event are outstanding, or elect a higher percentage coverage  
 97 level, regardless of whether or not revenue bonds are  
 98 outstanding. All members of an insurer group must elect the same  
 99 percentage coverage level. Any joint underwriting association,  
 100 risk apportionment plan, or other entity created under s.  
 101 627.351 must elect the 90-percent coverage level.

102 3. The contract shall provide that reimbursement amounts  
 103 shall not be reduced by reinsurance paid or payable to the  
 104 insurer from other sources.

105 Section 3. Paragraph (b) of subsection (3) of section  
 106 319.30, Florida Statutes, is amended, and paragraph (d) is added  
 107 to that section, to read:

108 319.30 Definitions; dismantling, destruction, change of  
 109 identity of motor vehicle or mobile home; salvage.—

110 (3)

111 (b) The owner, including persons who are self-insured, of a  
 112 motor vehicle or mobile home that is considered to be salvage  
 113 shall, within 72 hours after the motor vehicle or mobile home  
 114 becomes salvage, forward the title to the motor vehicle or  
 115 mobile home to the department for processing. However, an  
 116 insurance company that pays money as compensation for the total

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117 loss of a motor vehicle or mobile home shall obtain the  
 118 certificate of title for the motor vehicle or mobile home, make  
 119 the required notification to the National Motor Vehicle Title  
 120 Information System, and, within 72 hours after receiving such  
 121 certificate of title, forward such title by electronic means,  
 122 the United States Postal Service, or another commercially  
 123 available delivery service to the department for processing. The  
 124 owner or insurance company, as applicable, may not dispose of a  
 125 vehicle or mobile home that is a total loss before it obtains a  
 126 salvage certificate of title or certificate of destruction from  
 127 the department. Effective July 1, 2020 ~~July 1, 2023~~:

128 1. Thirty days after payment of a claim for compensation  
 129 pursuant to this paragraph, the insurance company may receive a  
 130 salvage certificate of title or certificate of destruction from  
 131 the department if the insurance company is unable to obtain a  
 132 properly assigned certificate of title from the owner or  
 133 lienholder of the motor vehicle or mobile home, if the motor  
 134 vehicle or mobile home does not carry an electronic lien on the  
 135 title and the insurance company:

136 a. Has obtained the release of all liens on the motor  
 137 vehicle or mobile home;

138 b. Has provided proof of payment of the total loss claim;  
 139 and

140 c. Has provided an affidavit on letterhead signed by the  
 141 insurance company or its authorized agent stating the attempts  
 142 that have been made to obtain the title from the owner or  
 143 lienholder and further stating that all attempts are to no  
 144 avail. The affidavit must include a request that the salvage  
 145 certificate of title or certificate of destruction be issued in

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146 the insurance company's name due to payment of a total loss  
 147 claim to the owner or lienholder. The attempts to contact the  
 148 owner may be by written request delivered in person or by first-  
 149 class mail with a certificate of mailing to the owner's or  
 150 lienholder's last known address.

151 2. If the owner or lienholder is notified of the request  
 152 for title in person, the insurance company must provide an  
 153 affidavit attesting to the in-person request for a certificate  
 154 of title.

155 3. The request to the owner or lienholder for the  
 156 certificate of title must include a complete description of the  
 157 motor vehicle or mobile home and the statement that a total loss  
 158 claim has been paid on the motor vehicle or mobile home.

159 (d) An electronic signature that is in accordance with  
 160 chapter 668 satisfies any signature requirement under this  
 161 subsection.

162 Section 4. Subsection (2) of section 440.381, Florida  
 163 Statutes, is amended to read:

164 440.381 Application for coverage; reporting payroll;  
 165 payroll audit procedures; penalties.—

166 (2) Submission of an application that contains false,  
 167 misleading, or incomplete information provided with the purpose  
 168 of avoiding or reducing the amount of premiums for workers'  
 169 compensation coverage is a felony of the third ~~second~~ degree,  
 170 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 171 The application must contain a statement that the filing of an  
 172 application containing false, misleading, or incomplete  
 173 information provided with the purpose of avoiding or reducing  
 174 the amount of premiums for workers' compensation coverage is a

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175 felony of the third degree, punishable as provided in s.  
 176 775.082, s. 775.083, or s. 775.084. The application must contain  
 177 a sworn statement by the employer attesting to the accuracy of  
 178 the information submitted and acknowledging the provisions of  
 179 former s. 440.37(4). The application must contain a sworn  
 180 statement by the agent attesting that the agent explained to the  
 181 employer or officer the classification codes that are used for  
 182 premium calculations. The sworn statements by the employer and  
 183 the agent are not required to be notarized.

184 Section 5. Section 624.1055, Florida Statutes, is created  
 185 to read:

186 624.1055 Right of contribution among insurers for defense  
 187 costs.—A liability insurer that owes a duty to defend an insured  
 188 and that defends the insured against a claim, suit, or other  
 189 action has a right of contribution for defense costs against any  
 190 other liability insurer that owes a duty to defend the insured  
 191 against the same claim, suit, or other action, provided that  
 192 contribution may not be sought from any insurer for defense  
 193 costs incurred before the insurer's receipt of notice of the  
 194 claim, suit, or other action.

195 (1) APPORTIONMENT OF COSTS.—The court shall allocate  
 196 defense costs among insurers that owe a duty to defend the  
 197 insured against the same claim, suit, or other action in  
 198 accordance with the terms of the insurance policies. The court  
 199 may use such equitable factors as the court determines are  
 200 appropriate in making such allocation.

201 (2) ENFORCEMENT OF RIGHT OF CONTRIBUTION.—A liability  
 202 insurer that is entitled to contribution from another insurer  
 203 under this section may file an action for contribution in a

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204 court of competent jurisdiction.

205 (3) CONSTRUCTION.—

206 (a) This section is not intended to alter any term of a  
 207 liability insurance policy or to create any additional duty on  
 208 the part of an insurer to an insured.

209 (b) An insured may not rely on this section as grounds for  
 210 a complaint against an insurer.

211 (4) APPLICABILITY.—

212 (a) This section applies to liability insurance policies  
 213 issued for delivery in this state or to liability insurance  
 214 policies under which an insurer has a duty to defend an insured  
 215 against claims asserted or suits or actions filed in this state.  
 216 Such liability insurance policies include surplus lines  
 217 insurance policies authorized under the Surplus Lines Law, ss.  
 218 626.913-626.937. This section does not apply to motor vehicle  
 219 liability insurance or medical professional liability insurance.

220 (b) This section applies to any claim, suit, or other  
 221 action initiated on or after January 1, 2020.

222 Section 6. Subsection (3) of section 624.155, Florida  
 223 Statutes, is amended to read:

224 624.155 Civil remedy.—

225 (3) (a) As a condition precedent to bringing an action under  
 226 this section, the department and the authorized insurer must  
 227 have been given 60 days' written notice of the violation. ~~If the~~  
 228 ~~department returns a notice for lack of specificity, the 60-day~~  
 229 ~~time period shall not begin until a proper notice is filed.~~

230 (b) The notice shall be on a form provided by the  
 231 department and shall state with specificity the following  
 232 information, and such other information as the department may

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233 require:

234 1. The statutory provision, including the specific language  
235 of the statute, which the authorized insurer allegedly violated.

236 2. The facts and circumstances giving rise to the  
237 violation.

238 3. The name of any individual involved in the violation.

239 4. Reference to specific policy language that is relevant  
240 to the violation, if any. If the person bringing the civil  
241 action is a third party claimant, she or he shall not be  
242 required to reference the specific policy language if the  
243 authorized insurer has not provided a copy of the policy to the  
244 third party claimant pursuant to written request.

245 5. A statement that the notice is given in order to perfect  
246 the right to pursue the civil remedy authorized by this section.

247 ~~(e) Within 20 days of receipt of the notice, the department~~  
248 ~~may return any notice that does not provide the specific~~  
249 ~~information required by this section, and the department shall~~  
250 ~~indicate the specific deficiencies contained in the notice. A~~  
251 ~~determination by the department to return a notice for lack of~~  
252 ~~specificity shall be exempt from the requirements of chapter~~  
253 ~~120.~~

254 (c) ~~(d)~~ No action shall lie if, within 60 days after filing  
255 notice, the damages are paid or the circumstances giving rise to  
256 the violation are corrected.

257 (d) ~~(e)~~ The authorized insurer that is the recipient of a  
258 notice filed pursuant to this section shall report to the  
259 department on the disposition of the alleged violation.

260 (e) ~~(f)~~ The applicable statute of limitations for an action  
261 under this section shall be tolled for a period of 65 days by

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262 the mailing of the notice required by this subsection or the  
263 mailing of a subsequent notice required by this subsection.

264 (f) A notice required under this subsection may not be  
265 filed within 60 days after appraisal is invoked by any party in  
266 a residential property insurance claim.

267 Section 7. Subsection (2) of section 624.404, Florida  
268 Statutes, is amended to read:

269 624.404 General eligibility of insurers for certificate of  
270 authority.—To qualify for and hold authority to transact  
271 insurance in this state, an insurer must be otherwise in  
272 compliance with this code and with its charter powers and must  
273 be an incorporated stock insurer, an incorporated mutual  
274 insurer, or a reciprocal insurer, of the same general type as  
275 may be formed as a domestic insurer under this code; except  
276 that:

277 (2) A ~~No~~ foreign or alien insurer or exchange may not shall  
278 be authorized to transact insurance in this state unless it is  
279 otherwise qualified therefor under this code and has operated  
280 satisfactorily for at least 3 years in its state or country of  
281 domicile; however, the office may waive the 3-year requirement  
282 if the foreign or alien insurer or exchange:

283 (a) Has operated successfully and has capital and surplus  
284 of \$5 million;

285 (b) Is the wholly owned subsidiary of an insurer which is  
286 an authorized insurer in this state;

287 (c) Is the successor in interest through merger or  
288 consolidation of an authorized insurer; ~~or~~

289 (d) Provides a product or service not readily available to  
290 the consumers of this state; or

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291 (e) Demonstrates to the satisfaction of the office that its  
 292 authorization to transact insurance in this state is in the best  
 293 interest of this state and its policyholders.

294 Section 8. Paragraphs (d) and (e) of subsection (2) of  
 295 section 624.4085, Florida Statutes, are amended, and paragraph  
 296 (g) of subsection (1) of that section is republished, to read:

297 624.4085 Risk-based capital requirements for insurers.—

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

299 (g) "Life and health insurer" means an insurer authorized  
 300 or eligible under the Florida Insurance Code to underwrite life  
 301 or health insurance. The term includes a property and casualty  
 302 insurer that writes accident and health insurance only.  
 303 Effective January 1, 2015, the term also includes a health  
 304 maintenance organization that is authorized in this state and  
 305 one or more other states, jurisdictions, or countries and a  
 306 prepaid limited health service organization that is authorized  
 307 in this state and one or more other states, jurisdictions, or  
 308 countries.

309 (2)

310 (d) A life and health insurer's risk-based capital is  
 311 determined in accordance with the formula set forth in the risk-  
 312 based capital instructions. The formula takes into account and  
 313 may adjust for the covariance between:

- 314 1. The risk with respect to the insurer's assets;
- 315 2. The risk of adverse insurance experience with respect to  
 316 the insurer's liabilities and obligations;
- 317 3. The interest rate risk with respect to the insurer's  
 318 business; and
- 319 4. Any other business or other relevant risk set out in the

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320 risk-based capital instructions,

321

322 determined in each case by applying the factors in the manner  
 323 set forth in the risk-based capital instructions. This paragraph  
 324 does not apply to a health maintenance organization or a prepaid  
 325 limited health service organization.

326 (e) The risk-based capital of a property and casualty  
 327 insurer, and, if a health maintenance organization or prepaid  
 328 limited health service organization is subject to this section  
 329 pursuant to paragraph (1)(g), the risk-based capital of such  
 330 organization, ~~insurer's risk-based capital~~ is determined in  
 331 accordance with the formula set forth in the risk-based capital  
 332 instructions. The formula takes into account and may adjust for  
 333 the covariance between:

- 334 1. The asset risk;
- 335 2. The credit risk;
- 336 3. The underwriting risk; and
- 337 4. Any other business or other relevant risk set out in the  
 338 risk-based capital instructions,

339

340 determined in each case by applying the factors in the manner  
 341 set forth in the risk-based capital instructions.

342 Section 9. Subsection (4) of section 626.916, Florida  
 343 Statutes, is amended, and subsection (5) is added to that  
 344 section, to read:

345 626.916 Eligibility for export.—

346 (4) A reasonable per-policy fee, ~~not to exceed \$35,~~ may be  
 347 charged by the filing surplus lines agent for each policy  
 348 certified for export. The per-policy fee must be itemized



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349 separately to the customer before purchase and must be  
 350 enumerated in the policy.

351 (5) A retail agent may charge a reasonable per-policy fee  
 352 for placement of a surplus lines policy under this section. The  
 353 per-policy fee must be itemized separately to the customer  
 354 before purchase.

355 Section 10. Paragraph (m) of subsection (1) of section  
 356 626.9541, Florida Statutes, is amended to read:

357 626.9541 Unfair methods of competition and unfair or  
 358 deceptive acts or practices defined.—

359 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
 360 ACTS.—The following are defined as unfair methods of competition  
 361 and unfair or deceptive acts or practices:

362 (m) Permissible advertising and promotional gifts, and  
 363 charitable contributions, and loss mitigation services or loss  
 364 control items permitted.—

365 1. ~~The provisions of Paragraph (f), paragraph (g), or~~  
 366 ~~paragraph (h) do not prohibit a licensed insurer or its agent~~  
 367 ~~from:~~

368 a. Giving to insureds, prospective insureds, or others any  
 369 article of merchandise, goods, wares, store gift cards, gift  
 370 certificates, event tickets, anti-fraud ~~or loss mitigation~~  
 371 services, or other items having a total value of \$100 or less  
 372 per insured or prospective insured in any calendar year.

373 b. Making charitable contributions, as defined in s. 170(c)  
 374 of the Internal Revenue Code, on behalf of insureds or  
 375 prospective insureds, of up to \$100 per insured or prospective  
 376 insured in any calendar year.

377 c. Giving to insureds, for free or at a discounted price,

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378 loss mitigation services or loss control items of value that  
 379 relate to the risks covered under the policy.

380 2. ~~The provisions of Paragraph (f), paragraph (g), or~~  
 381 ~~paragraph (h) do not prohibit a title insurance agent or title~~  
 382 ~~insurance agency, as those terms are defined in s. 626.841, or a~~  
 383 ~~title insurer, as defined in s. 627.7711, from giving to~~  
 384 ~~insureds, prospective insureds, or others, for the purpose of~~  
 385 ~~advertising, any article of merchandise having a value of not~~  
 386 ~~more than \$25. A person or entity governed by this subparagraph~~  
 387 ~~is not subject to subparagraph 1.~~

388 Section 11. Section 627.0655, Florida Statutes, is amended  
 389 to read:

390 627.0655 Policyholder loss or expense-related premium  
 391 discounts.—An insurer or person authorized to engage in the  
 392 business of insurance in this state may include, in the premium  
 393 charged an insured for any policy, contract, or certificate of  
 394 insurance, an actuarially sound a discount based on the fact  
 395 that another policy, contract, or certificate of any type has  
 396 been purchased by the insured from:

397 (1) The same insurer or insurer group, or another insurer  
 398 under a joint marketing agreement;

399 (2) The Citizens Property Insurance Corporation created  
 400 under s. 627.351(6), ~~if the same insurance agent is servicing~~  
 401 ~~both policies;~~ ~~or~~

402 (3) An insurer that has removed the policy from the  
 403 Citizens Property Insurance Corporation or issued a policy  
 404 pursuant to the clearinghouse program under s. 627.3518, if the  
 405 same insurance agent is servicing both policies; or

406 (4) An insurer, if the same insurance agent is servicing

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407 the policies.

408 Section 12. Subsection (2) of section 627.426, Florida  
409 Statutes, is amended to read:

410 627.426 Claims administration.—

411 (2) A liability insurer shall not be permitted to deny  
412 coverage based on a particular coverage defense unless:

413 (a) Within 30 days after the liability insurer knew or  
414 should have known of the coverage defense, written notice of  
415 reservation of rights to assert a coverage defense is given to  
416 the named insured by United States postal proof of mailing,  
417 registered or certified mail, or other mailing using the  
418 Intelligent Mail barcode or other similar tracking method used  
419 or approved by the United States Postal Service, sent to the  
420 last known address of the insured, or by hand delivery; and

421 (b) Within 60 days of compliance with paragraph (a) or  
422 receipt of a summons and complaint naming the insured as a  
423 defendant, whichever is later, but in no case later than 30 days  
424 before trial, the insurer:

425 1. Gives written notice to the named insured by United  
426 States postal proof of mailing, registered or certified mail, or  
427 other mailing using the Intelligent Mail barcode or other  
428 similar tracking method used or approved by the United States  
429 Postal Service, of its refusal to defend the insured;

430 2. Obtains from the insured a nonwaiver agreement following  
431 full disclosure of the specific facts and policy provisions upon  
432 which the coverage defense is asserted and the duties,  
433 obligations, and liabilities of the insurer during and following  
434 the pendency of the subject litigation; or

435 3. Retains independent counsel which is mutually agreeable

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436 to the parties. Reasonable fees for the counsel may be agreed  
437 upon between the parties or, if no agreement is reached, shall  
438 be set by the court.

439 Section 13. Section 627.4555, Florida Statutes, is amended  
440 to read:

441 627.4555 Secondary notice.—

442 (1) Except as provided in this section, a contract for life  
443 insurance issued or issued for delivery in this state on or  
444 after October 1, 1997, covering a natural person 64 years of age  
445 or older, which has been in force for at least 1 year, may not  
446 be lapsed for nonpayment of premium unless, after expiration of  
447 the grace period, and at least 21 days before the effective date  
448 of any such lapse, the insurer has mailed a notification of the  
449 impending lapse in coverage to the policyowner and to a  
450 specified secondary addressee if such addressee has been  
451 designated in writing by name and address by the policyowner. An  
452 insurer issuing a life insurance contract on or after October 1,  
453 1997, shall notify the applicant of the right to designate a  
454 secondary addressee at the time of application for the policy,  
455 on a form provided by the insurer, and at any time the policy is  
456 in force, by submitting a written notice to the insurer  
457 containing the name and address of the secondary addressee. For  
458 purposes of any life insurance policy that provides a grace  
459 period of more than 51 days for nonpayment of premiums, the  
460 notice of impending lapse in coverage required by this section  
461 must be mailed to the policyowner and the secondary addressee at  
462 least 21 days before the expiration of the grace period provided  
463 in the policy. This section does not apply to any life insurance  
464 contract under which premiums are payable monthly or more

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465 frequently and are regularly collected by a licensed agent or  
 466 are paid by credit card or any preauthorized check processing or  
 467 automatic debit service of a financial institution.

468 (2) If the policyowner has a life agent of record or any  
 469 agent of record, the insurer must also notify the agent of the  
 470 impending lapse in coverage or mail or send electronically a  
 471 copy of the notification of the impending lapse in coverage  
 472 under subsection (1) to the agent at least 21 days before the  
 473 effective date of any such lapse. Receipt of such notice does  
 474 not make the agent responsible for any lapse in coverage. An  
 475 insurer is not required to notify the agent under this  
 476 subsection if any of the following applies:

477 (a) The insurer maintains an online system that allows an  
 478 agent to independently determine if a policy has lapsed.

479 (b) The insurer maintains a procedure that allows an agent  
 480 to independently determine whether the notice of lapse has been  
 481 sent to the insured.

482 (c) The insurer has no record of the current agent of  
 483 record.

484 (d) The agent is employed by the insurer or an affiliate of  
 485 the insurer.

486 Section 14. Subsection (2) of section 627.7015, Florida  
 487 Statutes, is amended to read:

488 627.7015 Alternative procedure for resolution of disputed  
 489 property insurance claims.—

490 (2) At the time of issuance and renewal of a policy or at  
 491 the time a first-party claim within the scope of this section is  
 492 filed by the policyholder, the insurer shall notify the  
 493 policyholder of its right to participate in the mediation

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494 program under this section. The department shall prepare a  
 495 consumer information pamphlet for distribution to persons  
 496 participating in mediation.

497 Section 15. Subsection (7) of section 627.7295, Florida  
 498 Statutes, is amended to read:

499 627.7295 Motor vehicle insurance contracts.—

500 (7) A policy of private passenger motor vehicle insurance  
 501 or a binder for such a policy may be initially issued in this  
 502 state only if, before the effective date of such binder or  
 503 policy, the insurer or agent has collected from the insured an  
 504 amount equal to at least 1 month's ~~2 months'~~ premium. An  
 505 insurer, agent, or premium finance company may not, directly or  
 506 indirectly, take any action resulting in the insured having paid  
 507 from the insured's own funds an amount less than the 1 month's ~~2~~  
 508 ~~months'~~ premium required by this subsection. This subsection  
 509 applies without regard to whether the premium is financed by a  
 510 premium finance company or is paid pursuant to a periodic  
 511 payment plan of an insurer or an insurance agent. This  
 512 subsection does not apply if an insured or member of the  
 513 insured's family is renewing or replacing a policy or a binder  
 514 for such policy written by the same insurer or a member of the  
 515 same insurer group. This subsection does not apply to an insurer  
 516 that issues private passenger motor vehicle coverage primarily  
 517 to active duty or former military personnel or their dependents.  
 518 This subsection does not apply if all policy payments are paid  
 519 pursuant to a payroll deduction plan, an automatic electronic  
 520 funds transfer payment plan from the policyholder, or a  
 521 recurring credit card or debit card agreement with the insurer.  
 522 This subsection and subsection (4) do not apply if all policy

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523 payments to an insurer are paid pursuant to an automatic  
 524 electronic funds transfer payment plan from an agent, a managing  
 525 general agent, or a premium finance company and if the policy  
 526 includes, at a minimum, personal injury protection pursuant to  
 527 ss. 627.730-627.7405; motor vehicle property damage liability  
 528 pursuant to s. 627.7275; and bodily injury liability in at least  
 529 the amount of \$10,000 because of bodily injury to, or death of,  
 530 one person in any one accident and in the amount of \$20,000  
 531 because of bodily injury to, or death of, two or more persons in  
 532 any one accident. This subsection and subsection (4) do not  
 533 apply if an insured has had a policy in effect for at least 6  
 534 months, the insured's agent is terminated by the insurer that  
 535 issued the policy, and the insured obtains coverage on the  
 536 policy's renewal date with a new company through the terminated  
 537 agent.

538 Section 16. Paragraph (e) of subsection (3) of section  
 539 921.0022, Florida Statutes, is amended to read:

540 921.0022 Criminal Punishment Code; offense severity ranking  
 541 chart.-

542 (3) OFFENSE SEVERITY RANKING CHART

543 (e) LEVEL 5

544

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop;

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546 leaving scene.

316.1935(4)(a) 2nd Aggravated fleeing or eluding.

316.80(2) 2nd Unlawful conveyance of fuel; obtaining fuel fraudulently.

322.34(6) 3rd Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.

327.30(5) 3rd Vessel accidents involving personal injury; leaving scene.

379.365(2)(c)1. 3rd Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to

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551 supply, aiding in  
supplying, or giving  
away stone crab trap  
tags or certificates;  
making, altering,  
forging, counterfeiting,  
or reproducing stone  
crab trap tags;  
possession of forged,  
counterfeit, or  
imitation stone crab  
trap tags; and engaging  
in the commercial  
harvest of stone crabs  
while license is  
suspended or revoked.

552 379.367(4) 3rd Willful molestation of a  
commercial harvester's  
spiny lobster trap,  
line, or buoy.

553 379.407(5)(b)3. 3rd Possession of 100 or  
more undersized spiny  
lobsters.

381.0041(11)(b) 3rd Donate blood, plasma, or  
organs knowing HIV  
positive.

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554 440.10(1)(g) 2nd Failure to obtain  
workers' compensation  
coverage.

555 440.105(5) 2nd Unlawful solicitation  
for the purpose of  
making workers'  
compensation claims.

556 440.381(2) 3rd ~~2nd~~ Submission of false,  
misleading, or  
incomplete information  
with the purpose of  
avoiding or reducing  
workers' compensation  
premiums.

557 624.401(4)(b)2. 2nd Transacting insurance  
without a certificate or  
authority; premium  
collected \$20,000 or  
more but less than  
\$100,000.

558 626.902(1)(c) 2nd Representing an  
unauthorized insurer;  
repeat offender.

559

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560	790.01(2)	3rd	Carrying a concealed firearm.
	790.162	2nd	Threat to throw or discharge destructive device.
561	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
562	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
563	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
564	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
565	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
566			

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	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
567	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
568	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
569	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
570	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
571	812.131(2)(b)	3rd	Robbery by sudden snatching.
572	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
573	817.034(4)(a)2.	2nd	Communications fraud,

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574	817.234 (11) (b)	2nd			Insurance fraud; property value \$20,000 or more but less than \$100,000.
575	817.2341 (1), (2) (a) & (3) (a)	3rd			Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
576	817.568 (2) (b)	2nd			Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
577					

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	817.611 (2) (a)	2nd			Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
578	817.625 (2) (b)	2nd			Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
579	825.1025 (4)	3rd			Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
580	827.071 (4)	2nd			Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
581	827.071 (5)	3rd			Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual

	590-03702-19		2019714c2	conduct by a child.
582	828.12(2)	3rd		Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
583	839.13(2) (b)	2nd		Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
584	843.01	3rd		Resist officer with violence to person; resist arrest with violence.
585	847.0135(5) (b)	2nd		Lewd or lascivious exhibition using computer; offender 18 years or older.
586	847.0137	3rd		Transmission of pornography by electronic device or equipment.
587	(2) & (3)			

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	847.0138	3rd		Transmission of material harmful to minors to a minor by electronic device or equipment.
	(2) & (3)			
588	874.05(1) (b)	2nd		Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
589	874.05(2) (a)	2nd		Encouraging or recruiting person under 13 years of age to join a criminal gang.
590	893.13(1) (a)1.	2nd		Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c)5. drugs).
591	893.13(1) (c)2.	2nd		Sell, manufacture, or deliver cannabis (or other s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)6., (2) (c)7., (2) (c)8.,



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(2) (c) 9., (2) (c) 10.,  
(3), or (4) drugs)  
within 1,000 feet of a  
child care facility,  
school, or state,  
county, or municipal  
park or publicly owned  
recreational facility or  
community center.

592

893.13(1) (d) 1.

1st

Sell, manufacture, or  
deliver cocaine (or  
other s. 893.03(1) (a),  
(1) (b), (1) (d), (2) (a),  
(2) (b), or (2) (c) 5.  
drugs) within 1,000 feet  
of university.

593

893.13(1) (e) 2.

2nd

Sell, manufacture, or  
deliver cannabis or  
other drug prohibited  
under s. 893.03(1) (c),  
(2) (c) 1., (2) (c) 2.,  
(2) (c) 3., (2) (c) 6.,  
(2) (c) 7., (2) (c) 8.,  
(2) (c) 9., (2) (c) 10.,  
(3), or (4) within 1,000  
feet of property used  
for religious services

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or a specified business  
site.

594

893.13(1) (f) 1.

1st

Sell, manufacture, or  
deliver cocaine (or  
other s. 893.03(1) (a),  
(1) (b), (1) (d), or  
(2) (a), (2) (b), or  
(2) (c) 5. drugs) within  
1,000 feet of public  
housing facility.

595

893.13(4) (b)

2nd

Use or hire of minor;  
deliver to minor other  
controlled substance.

596

893.1351(1)

3rd

Ownership, lease, or  
rental for trafficking  
in or manufacturing of  
controlled substance.

597

598

599

600

601

Section 17. Except as otherwise expressly provided in this  
act and except for this section, which shall take effect upon  
this act becoming a law, this act shall take effect July 1,  
2019.

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## **POLICY ANALYSIS**

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### **1. EXECUTIVE SUMMARY**

This amendment to CS/CS/SB 714 amends s. 626.914, F.S. to revise the definition of the term “diligent effort” as used in the Surplus Lines Law; amends s. 627.062, F.S. to specify applicable rate standards and requirements for certain personal lines residential property insurance; creates s. 627.1711, F.S. which provides a limitation on certain personal lines residential property insurance policies that may be written or renewed by an insurer each calendar year; amends s. 627.4102, F.S. to provide an exemption, if certain conditions are met, from a form approval process for certain personal lines residential property insurance forms; amends s. 626.916, F.S. to specify applicable requirements before certain personal lines residential property insurance may be exported.

### **2. SUBSTANTIVE BILL ANALYSIS**

#### **1. PRESENT SITUATION:**

The “diligent effort” that is required in order to issue a surplus lines policy for a residential structure with a dwelling replacement cost of \$1 Million or more, is defined to only need one declination from an authorized insurer. Dwellings with replacement cost under \$1 Million must have three declinations and must comply with the other eligibility for export requirements of s. 626.916(1)(b) – (1)(d).

Rates and forms utilized by authorized insurers for all personal residential structures is subject to review and approval by the Office of Insurance Regulation (Office).

Insurers may charge an excess rate for personal lines of insurance, but is subject to the 5% restriction on the number of policies in s. 627.171.

#### **2. EFFECT OF THE BILL:**

##### **Section 9 – Amends s. 626.914**

Amends the definition of “diligent effort” in the Surplus Lines Law so that a residential structure with a dwelling replacement cost of \$700,000 or more only needs one declination from an authorized insurer.

##### **Section 10 – Amends s. 627.062(3)(d)1.**

Amends the rating statute so that a personal residential structure with a dwelling replacement cost of \$700,00 or more which is written on renewed pursuant to s. 627.1711 is subject to informational rate filings only. The informational rate filings must be submitted within 30 days after its effective date and are subject to examination by the Office to determine if the proposed rates are excessive, inadequate or unfairly discriminatory within two years of the effective date.

##### **Section 11 – Creates s. 627.1711**

Establishes a requirement that the total number of personal residential policies on dwellings with replacement costs of \$700,000 or more that are rated using the informational process under s. 627.062(3)(d) and policies issued under the “Excess Rates” statute (s. 627.171) may not exceed more than 5% of all personal lines residential policies issued by an insurer.

##### **Section 12 – Amends s. 627.4102**

Amends the forms informational filing statute so that a personal residential structure with a dwelling replacement cost of \$700,00 or more which is rated pursuant to s. 627.062(3)(d) may submit forms for informational purposes if the form is submitted at least 30 days prior to the proposed effective date and the insurer submits a notarized certification that the form complies with all applicable Florida Laws.

##### **Section 13 – Amends s. 626.916**

Amends the Surplus Lines eligibility for export requirements. Currently, any types of business that are subject to the informational rate filings in s. 627.062(3)(d) do not have to comply with the requirements of (1)(a)-(1)(d) of s. 626.916.

Since personal residential structures with a dwelling replacement cost of \$700,00 or more may now be rated pursuant to s. 627.062(3)(d) under this bill, the change in the section would require these risks to meet the requirements of (1)(a) – (1)(d).

**3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y  N**

If yes, explain:	The Office will need to review the informational rate filings made by companies writing personal residential property policies under this new statute. The office will need to track the personal residential market, monitor the 5% limitation for each company that writes business under the proposed s. 627.1711, and receive and review reports relating to this business.
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	
Opponents and summary of position:	

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y  N**

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y  N**

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y  N**

Revenues:	
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Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y  N**

Revenues:	
Expenditures:	<p>The Office will need one property and casualty actuary FTE to review the informational rate filings made by companies writing personal residential property policies under this new statute, and an actuarial analyst FTE to track the personal residential market, monitor the 5% limitation for each company that writes business under the proposed s. 627.1711, and receive and review reports relating to this business.</p> <p>One property and casualty actuary FTE with salary and benefits- \$183,535 One actuarial analyst FTE with salary and benefits- \$63,651</p> <p>System changes would be needed to allow for the informational filing provisions for personal lines residential structures with dwelling replacement costs of \$700,000 or more. It is expected that these changes would incur costs of approximately \$50,000.</p>
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y  N**

Revenues:	
Expenditures:	
Other:	

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y  N**

If yes, explain impact.	
Bill Section Number:	

**TECHNOLOGY IMPACT**

1. **DOES THE BILL IMPACT THE AGENCY’S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y  N

If yes, describe the anticipated impact to the agency including any fiscal impact.	System changes would be needed to allow for the informational filing provisions for personal lines residential structures with dwelling replacement costs of \$700,000 or more. It is expected that these changes would incur costs of approximately \$50,000.
--	--

**FEDERAL IMPACT**

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y  N

If yes, describe the anticipated impact including any fiscal impact.	
--	--

**ADDITIONAL COMMENTS**

Under the informational forms statute (s. 627.4102), it is clear that the decision to file for informational purposes is up to the insurer. It is unclear if this amendment is meant to mandate that all rate filings for personal lines residential structures with dwelling replacement costs of \$700,000 or more are submitted on an informational basis, or if the insurer is able to choose whether or not such rates are informational. The language added in lines 21 – 23 state that the informational rate filings apply to those rates on policies written or renewed pursuant to s. 627.1711. However, s. 627.1711 states that it applies to policies on the structures rated pursuant to s. 627.062(3)(d) (line 111).

The effect of this circular language is that if the use of an informational filing for form and rate submission is at the insurer’s option, it may have unfairly discriminatory impact on insureds with some insureds having rates and forms filed for approval and some subject to unapproved, informational forms and rates, and create confusion among similarly situated policyholders.

If the use of informational filings for form and rate submission is mandatory, insurers that currently write high value personal residential policies would have to stop writing to meet the 5% limitation and/or nonrenew their current block to meet the 5% or alternatively write a significant amount of policies using approved forms and rates.

Allowing for informational form and rate filings for personal residential properties places affected homeowners at heightened risk. Current law provides for an independent review by the Office to determine if the rates and coverages for personal residential policyholders comply with Florida’s specific requirements. Use of informational filings has worked successfully in the commercial lines market; however commercial insureds tend to be more sophisticated and more knowledgeable regarding insurance and risk management. It is unclear that homeowners of structures with replacement costs of \$700,000 or more would be as knowledgeable about insurance to determine if the unreviewed rates and forms met their individual needs.

While the legislation provides a 5% limitation on policies written under the new statute when combined with other personal residential policies written on excess rates, there is no reporting mechanism nor any requirement that any information actually be filed with the Office to monitor a company’s compliance.

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**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

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Issues/concerns/comments:	
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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/19

Meeting Date

714

Bill Number (if applicable)

Topic INSURANCE

Amendment Barcode (if applicable)

Name PAUL HANDERHAN

Job Title Consultant

Address 120 South Monroe Street

Phone 361 704 0428

Street

Tallahassee FL 32301

Email paul@paulaconsulting.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against (The Chair will read this information into the record.)

Representing FAIR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-19

Meeting Date

714

Bill Number (if applicable)

Topic Florida Hurricane Catastrophe Fund

X

Amendment Barcode (if applicable)

Name Ash Williams

Job Title Executive Director? Chief Investment Officer State Board of Administration

Address 1801 Hermitage Blvd

Phone (850) 413-1253

Street

Tallahassee

FL

32308

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Hurricane Catastrophe Fund

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/19

*Meeting Date*

714

*Bill Number (if applicable)*

Topic Insurance

*Amendment Barcode (if applicable)*

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St.

Phone 224-7173

*Street*

TLH

*City*

FL

*State*

32301

*Zip*

Email bbevis@aif.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/19

Meeting Date

SB 714

Bill Number (if applicable)

Topic Insurance Omnibus

Amendment Barcode (if applicable)

Name Laura Peatce

Job Title VP + General Counsel, FAIA

Address Phone

Street

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing Florida Association of Insurance Agents

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Commerce and Tourism, *Chair*  
Finance and Tax, *Vice Chair*  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Banking and Insurance

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

### SENATOR JOE GRUTERS

23rd District

March 8th, 2019

The Honorable Doug Broxson, Chair  
Banking and Insurance Committee  
320 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Broxson:

I am writing to inform you that Senator Gruters will not be at the Banking and Insurance Committee meeting, on 4/10/19 at 4 pm.

Warm regards,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

cc: James Knudson, Staff Director  
Sheri Green, Committee Administrative Assistant

#### REPLY TO:

- 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

# CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Banking and Insurance Committee

Judge:

Started: 4/8/2019 4:02:14 PM

Ends: 4/8/2019 5:02:56 PM Length: 01:00:43

4:02:21 PM Meeting called to order - quorum present  
4:03:14 PM Sen. Rouson acting as Chair.  
4:03:32 PM TAB 1 - CS/CS/SB 714 by JU, BI, Brandes - Insurance  
4:04:04 PM Senator Brandes recognized to explain the bill.  
4:05:40 PM AMD. 854368 - Sen. Brandes explain the amendment- motion to withdraw  
4:06:34 PM AMD. 310308 - Tech. amd. - fav. on voice voice  
4:06:58 PM SUB Amd. 712076  
4:07:19 PM Senator Brandes to explain Substitute Amendment-  
4:08:06 PM Sen. Thurston with question on substitute amendment  
4:16:07 PM Debate on Substitute Amendment  
4:18:32 PM Senator Brandes to close on substitute amendment  
4:19:22 PM Sub. Amend. adopted on voice voice  
4:20:45 PM Comments on bill by Senator Broxson  
4:22:18 PM Question on bill by Sen. Broxson.  
4:22:33 PM Senator Brandes responds to question.  
4:23:49 PM Follow up question by Sen. Broxson to Sen. Brandes  
4:24:58 PM Response by Sen. Brandes  
4:27:31 PM Comments on bill by Senator Lee  
4:34:19 PM Further discussion on bill.  
4:38:42 PM Ash Williams, FL Hurricane Cat Fund  
4:51:56 PM Comments by Senator Broxson  
4:52:40 PM Comments by Sen. Lee  
4:55:01 PM Senator Brandes to close on bill.  
4:57:24 PM Roll call vote on CS/CS/CS for 714 - Favorable  
4:58:04 PM Motion for technical corrections to be made by staff.  
4:59:04 PM Comments by Chair Broxson  
5:01:13 PM Comments by Senator Lee  
5:02:37 PM Meeting adjourned