HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 465 Insurance
SPONSOR(S): Commerce Committee; Insurance & Banking Subcommittee; Santiago
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Lloyd	Luczynski
2) Commerce Committee	23 Y, 0 N, As CS	Lloyd	Hamon

SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

- **Foreign Insurer Stock Valuation** – provides that the stock of a subsidiary corporation or related entity of a foreign insurer is exempt from certain limitations on valuation and investment requirements for solvency evaluation purposes in certain circumstances.
- **Exemption to Adjuster Examination Requirement** – provides an exemption to the all-lines adjuster licensing exam to individuals who receive a Claims Adjuster Certified Professional (CACP) designation from WebCE, Inc.
- **Surplus Lines Export Eligibility** – lowers, from $1,000,000 to $700,000, the threshold for exporting a homeowner's property insurance risk to a surplus lines insurer following a single coverage rejection.
- **Surplus Lines Insurer Eligibility –** repeals a requirement that conflicts with federal law; however, it does not affect the current eligibility determination process implemented in the state.
- **Surplus Lines Tax –** provides for a uniform surplus lines tax of 4.936 percent of gross premiums, regardless of where the risk is located, rather than the surplus lines tax rate of each state where the risk is located.
- **Personal Financial and Health Information Privacy** – incorporates a recent amendment of the Gramm-Leach-Bliley Act for purposes of privacy standards applicable to certain notices required by rules adopted by the Department of Financial Services and the Financial Services Commission.
- **Execution of Insurance Policies** – provides that an insurer may elect to issue a policy that is not executed by one of several specified insurer representatives and that the policy is not invalid despite not being executed.
- **Notice of Policy Change** – requires that a property and casualty insurer summarize policy changes on the required Notice of Change in Policy Terms that is issued at policy renewal, rather than merely issuing a notice (i.e., requires content more informative than merely the phrase "Notice of Change in Policy Terms").
- **Property Insurance Claim Mediation** – provides that a third-party assignee may request mediation of property insurance claims; except, an insurer is not required to participate in mediations requested by the assignee.
- **Proof of Mailing** – permits motor vehicle insurers to use the Intelligent Mail barcode, or similar method approved by the United States Postal Service, to document proof of mailing of certain required notices.
- **Filing Exception for Specialty Insurers –** authorizes specialty insurers to overcome a presumption of control regarding acquisition of stocks, interests, and assets of other companies in the same manner as insurers.
- **Confidentiality of Documents Submitted to the Office of Insurance Regulation** – expands the confidentiality of documents submitted to the Office of Insurance Regulation (OIR) under Own-Risk and Solvency Assessment requirements to make them inadmissible as evidence in any private civil action, regardless of from whom they were obtained, rather than only when they are obtained from OIR.
- **Reciprocal Insurer Reserve Requirements** – revises unearned premium reserve requirements.
- **Delivery of Policies –** authorizes motor vehicle service agreement companies and health maintenance organizations (HMO) to deliver agreements and HMO contracts, respectively, in the same manner as currently required for insurers, including the posting of boilerplate contents on a website and requiring delivery within 60 days, rather than 45 days and 10 days, respectively.

The bill has no impact on state or local government revenues or expenditures. It has positive and negative impacts on the private sector.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Foreign Insurer Stock Valuation

Chapter 625, F.S., regulates the financial dealings of insurers admitted to do insurance business in this state and empowers OIR to regulate and oversee their financial conduct. Among other things, the law provides for the valuation of a variety of assets held by the insurer, which contribute to the insurer's financial stability and, in the event of troubled assets, possible instability or insolvency.

Assets held in the form of stock in a subsidiary corporation are subject to maximum percentages of investments by the insurer, as follows:

- If the insurer's surplus, including investments in subsidiaries, does not exceed $100 million, the maximum percentage of investment in the subsidiaries may not exceed the lesser of:
  - 10 percent of admitted assets;[1] or,
  - 50 percent of the surplus in excess of minimum required surplus.[2]
- If the insurer's surplus, including investments in subsidiaries, is $100 million, or more, the maximum percentage investment in the subsidiaries may not exceed:
  - 25 percent of admitted assets.

The valuation of the stock held in the subsidiary may not exceed the net value established using only the assets of the subsidiary eligible under part II of ch. 625, F.S. The valuation of stocks and securities must be consistent with methods published by the National Association of Insurance Commissioners (NAIC).[3]

Part II of ch. 625, F.S., regulates the valuation of investments by domestic insurers and commercially domiciled insurers.[4] However, the law also provides that "[t]he investment portfolio of a foreign or alien insurer shall be as permitted by the laws of its domicile if of a quality substantially as high as that required under [ch. 625, F.S.] for similar funds of like domestic insurers."[5]

There are multiple private organizations that engage in the evaluation and rating of insurance companies for the purposes of identifying the financial strength of insurers.[6] These financial strength ratings allow potential investors to make informed decisions regarding possible investment in the rated insurer. The rating companies use similar terminology, but each has a proprietary method to establish their rating results. While the rating results are similar, it is necessary to review the rating organization's own explanation of its approach and methods to understand the subtle differences that occur when a particular insurer is rated by multiple rating organizations. A.M. Best's Financial Strength Rating is divided between "Secure," with ratings between A++ and B+, or "Vulnerable," with ratings of B or lower. Among the "Secure" ratings, A++ and A+ are described as "Superior," A and A- are described as

[1] "Admitted assets" are "assets recognized and accepted by state insurance laws in determining the solvency of insurers and reinsurers. To make it easier to assess an insurance company's financial position, state statutory accounting rules do not permit certain assets to be included on the balance sheet. Only assets that can be easily sold in the event of liquidation or borrowed against, and receivables for which payment can be reasonably anticipated, are included in admitted assets." https://www.iii.org/resource-center/iii-glossary/A (last visited Jan. 15, 2018).
[2] s. 625.151(3)(a), F.S.
[3] s. 625.151(4), F.S.
[4] s. 625.301, F.S
[5] s. 625.340, F.S.
[6] Financial strength rating organizations include: A.M. Best (www.ambest.com), Fitch (www.fitchratings.com), Moody's Investor Services (www.moodys.com), Standard & Poor's (www.standardandpoors.com), and Demotech (www.demotech.com).

"Excellent," and B++ and B+ are described as "Good" in terms of A.M. Best's opinion of the company's ability to meet financial obligations.[7]

Effect of the Bill

The bill provides that the stock of a subsidiary corporation or related entity of a foreign insurer is exempt from the limitations on valuation and investment requirements of ss. 625.151(3) and 625.325, F.S., for solvency evaluation purposes. The exemption applies if the investment is allowed under the laws of the insurer's domicile state provided that state is a member of NAIC. In addition, the subsidiary's stock must be valued by NAIC's Securities Valuation Office (SVO)[8] with a rating of 1, 2, or 3 or be exempt from NAIC filing and carry a rating assigned by a nationally recognized statistical rating organization that is equivalent to SVO's rating.[9]

Exemptions to Adjuster Examination Requirement

An adjuster is "an individual employed by a property/casualty insurer to evaluate losses and settle policyholder claims."[10] An adjuster may be licensed as either an "all-lines adjuster" or a "public adjuster."[11] An all-lines adjuster "is a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage."[12] Subject to certain exceptions, a public adjuster is someone that is paid by an insured to prepare and file a claim against their insurer.[13] Adjusters are commonly understood as an insurer's representative in an insurance claim. The public is not generally aware of the role of a public adjuster, but access to their services becomes competitive following natural disasters or other mass loss/claim events (e.g., hurricanes, tornadoes, floods, and fires).

Among other requirements, an applicant must pass an examination to obtain an adjuster's license; however, the examination requirement is waived if they have attained certain professional designations that document their successful completion of professional education coursework. This is true for applicants for life and health agents,[14] general lines agents,[15] adjusters,[16] resident or nonresident all-lines adjusters,[17] and non-resident agents.[18] An examination is not required for all-lines adjuster applicants with the following professional designations:

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[7] See A.M. BEST COMPANY, Guide to Best's Financial Strength Ratings, http://www.ambest.com/ratings/guide.pdf (Last visited Jan. 15, 2018).
[8] http://www.naic.org/svo.htm (last visited Jan. 14, 2018).
[9] NAIC has published tables of equivalent ratings comparing SVO ratings to ratings published by nationally recognized statistical rating organizations. http://www.naic.org/documents/svo_naic_aro.pdf (last visited Jan. 14, 2018).
[10] https://www.iii.org/resource-center/iii-glossary/A (last visited Jan. 20, 2018).
[11] s. 626.864, F.S. An individual may be licensed as either an all-lines adjuster or a public adjuster, but not both. An all-lines adjuster may be appointed as one, but no more than one at a time, of the following: independent adjuster, public adjuster apprentice, or company employee adjuster.
[12] ss. 626.015(2) and 626.8548, F.S.
[13] s. 626.854, F.S. A "public adjuster" is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of a public adjuster, an insured, or a third-party claimant. The term does not include a person who photographs or inventories damaged personal property or business personal property or a person performing duties under another professional license, if such person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim. s. 626.854(1), F.S.
[14] s. 626.221(g), F.S.
[15] s. 626.221(h), F.S.
[16] *Id.*
[17] s. 626.221(j), F.S.
[18] s. 626.211(l), F.S.

- Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state;
- Associate in Claims (AIC) from the Insurance Institute of America;
- Professional Claims Adjuster (PCA) from the Professional Career Institute;
- Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy;
- Certified Adjuster (CA) from ALL LINES Training;
- Certified Claims Adjuster (CCA) from AE21 Incorporated; or
- Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM).

DFS must approve the curriculum, which must include comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license.[19] The curriculum must include 40 hours of instruction covering all of the topics in the all-lines adjuster Examination Content Outline adopted by DFS.[20] DFS only approves curriculum related to adjuster licensing for designations listed in s. 626.221(2)(j), F.S.

WebCE, Inc., is a national provider of professional and continuing educational courses.[21] They provide education related to multiple professions, including: insurance, financial planning, accounting, and tax. Participants can obtain the following professional designations from WebCE: Certified Financial Planner (CFP), Certified Investment Management Analyst (CIMA), Certified Private Wealth Advisor (CPWA), and Certified Fraud Examiner (CFE). WebCE provides continuing education to insurance professionals with courses in subjects of life and health, property and casualty, adjuster, and limited lines.

Effect of the Bill

The bill provides an exemption to the all-lines adjuster licensing exam requirements to individuals who receive a Claims Adjuster Certified Professional (CACP) designation from WebCE, Inc.

Surplus Lines

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.[22] 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 Insurance Code,[23] which means they do not obtain a certificate of authority from OIR to transact insurance in Florida.[24] Rather, surplus lines insurers are "unauthorized" insurers,[25] but may transact surplus lines insurance if they are made eligible by OIR.

[19] s. 626.221(2)(j), F.S. In addition, DFS must adopt rules establishing standards for the approval of curriculum.
[20] Rule 69B-227.320, F.A.C.
[21] https://www.webce.com/ (last visited Jan. 20, 2018).
[22] 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.
[23] The Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. s. 624.01, F.S.
[24] s. 624.09(1), F.S.
[25] s. 624.09(2), F.S.

Export Eligibility

"To export" a policy means to place it with an unauthorized insurer under the Surplus Lines Law.[26] 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.[27] "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 $1,000,000 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.[28] The law further specifies that:[29]

- 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, [30] the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

As of January 1, 2017, Citizens decreased the maximum coverage limit for dwellings from $1,000,000 to $700,000 statewide, except for Miami-Dade and Monroe counties.[31]

Effect of the Bill

The bill allows homeowner's property insurance for a residential dwelling with a replacement cost of $700,000 or more to be exported to a surplus lines insurer following a single coverage rejection. This reduces, from three to one, the number of coverage rejections required prior to exportation for homes valued between $700,000 and $1,000,000.

Insurer Registration

The Florida Surplus Lines Service Office (FSLSO) [32] must file a written request with OIR in order for a surplus lines insurer to become eligible to underwrite insurance risks in Florida.[33] Subsequent to the adoption of this requirement, Congress passed the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA).[34] The NRRA requires the eligibility of surplus lines insurers to be determined in compliance with its criteria, unless the state has adopted nationwide uniform eligibility requirements.[35] OIR has implemented such eligibility determination standards that may be accessed directly by interested surplus lines insurers. Accordingly, surplus lines insurers apply directly to OIR rather than having FSLSO make the written request. The statute requiring such a written request by FSLSO has become superfluous because it conflicts with NRRA and is no longer implemented.

[26] s. 626.914(3), F.S.
[27] s. 626.916(1)(a), F.S.
[28] s. 626.914(4), F.S.
[29] s. 626.916(1), F.S.
[30] Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.
[31] https://www.citizensfla.com/-/20160726-maximum-coverage-limit-decreased (last visited Jan. 14, 2018).
[32] s. 626.921, F.S.
[33] OIR uses an online system to receive and process requests for authority to do insurance business in Florida. https://www.floir.com/iportal (last visited Jan. 20, 2018).
[34] 15 U.S.C. § 8201 *et seq*.
[35] 15 U.S.C. § 8204.

Effect of the Bill

The bill repeals the requirement that FSLSO submit written requests to OIR for eligibility purposes.

Tax

Surplus lines policies are taxed at five percent of all gross premiums.[36] However, a surplus lines policy written in Florida may cover risks that are only partially located in this state. This is because the insured's business, property, or other risks cross state lines. Since not all states use gross premiums as the taxable base nor use the same tax rate, this can lead to disparities in cost associated with the applicable premium tax law of other states.

The law provides that, if Florida is the "home" state, as defined under applicable federal law,[37] the tax is computed on the gross premium to facilitate uniform application of the tax rate to the gross premiums paid on multi-state risks. The law also provides that the surplus lines premium tax is limited to the tax rate in the state where the risk is located. This causes the surplus lines agent to calculate and the FSLSO to collect premium tax in a manner that coordinates the tax rate of premiums covering risks located in Florida and other states. This results in an effective tax rate on total taxable premiums that is lower than the statutory five percent.

Effect of the Bill

Effective October 1, 2018, the bill repeals the provision requiring premium tax to be calculated at the rate of the tax allowed in the state where the risk is located. In order to avoid an unintended increase in premium tax revenue that would result if the five percent surplus lines premiums tax applicable to risks located in this state were applied to risks located other states, the bill lowers the tax to 4.936 percent.[38] On average, the tax rate will remain unchanged and the burden on surplus lines agents will be simplified (i.e., they will only have to apply Florida's tax rate, rather than applying the tax rate of multiple states to various portions of premiums within a single policy). On January 26, 2018, the Revenue Estimating Conference of the Office of Economic & Demographic Research found that this change would have no impact on state revenues.[39]

Personal Financial and Health Information Privacy

DFS and the Financial Services Commission (Commission) are required to adopt rules governing the use of a consumer's non-public personal financial and health information by regulated entities.[40] The rules must be consistent with and not more restrictive than the requirements of Title V of the Gramm-Leach-Bliley Act of 1999. However, in December 2015, the Gramm-Leach-Bliley Act was amended by the Fixing America's Surface Transportation (FAST) Act.[41] The law governing DFS and Commission rules on privacy of consumer's non-public personal financial and health information does not yet

[36] s. 626.932(1), F.S. The surplus lines premium taxes of the many states, District of Columbia, Puerto Rico, and Virgin Islands vary from a low of 1 percent in Iowa to a high of 9 percent in Puerto Rico. Four jurisdictions apply a higher tax rate than Florida (AL, KS, OK, and Puerto Rico). Seven jurisdictions tax surplus lines premiums at the same rate as Florida, i.e., 5 percent (LA, MO, NJ, NC, OH, TN, and the Virgin Islands). The remaining 41 jurisdictions apply a tax rate lower than Florida. United States Government Accountability Office, REPORT TO CONGRESSIONAL COMMITTEES, PROPERTY AND CASUALTY INSURANCE, EFFECTS OF THE NONADMITTED AND REINSURANCE REFORM ACT OF 2010, GAO-14-136, January 2014, https://www.gao.gov/assets/670/660245.pdf (last visited Jan. 20, 2018).

[37] 15 U.S.C. § 8201 *et seq*.

[38] The Florida Surplus Lines Service Office reports that they received $235.8 million in tax revenues on $4.7768 billion in total taxable premium in 2017 (0.2358 / 4.7768 = 4.936%). Email from Sheila Pearson, Controller, Florida Surplus Lines Service Office, Re: HB 465 - impact of proposed change to s. 626.932, F.S. (Jan. 17, 2018).

[39] OFFICE OF ECONOMIC & DEMOGRAPHIC RESEARCH, REVENUE ESTIMATING CONFERENCE IMPACT CONFERENCE, *01/26/18 Revenue Impact Results*, pp. 328-330, http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/Impact0126.pdf (last visited Jan. 30, 2018).

[40] s. 626.9651, F.S.

[41] https://www.congress.gov/bill/114th-congress/house-bill/22/text (last visited Jan. 14, 2018).

incorporate this change. FAST added the following exception to the annual notice requirement found in Section 503 of the Gramm-Leach-Bliley Act:[42]

> (f) Exception to Annual Notice Requirement.--A financial institution that--
> (1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b), and
> (2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,
>
> shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

Effect of the Bill

The bill incorporates FAST's amendment of the Gramm-Leach-Bliley Act for purposes of privacy standards applicable to rules adopted by DFS and the Commission. This nullifies any existing rules and prohibits any new rules that would require an annual notice that would be exempted by FAST.

Execution of Insurance Policies

Part II of ch. 627, F.S., specifies numerous requirements applicable to insurance contracts.[43] These requirements apply to all aspects of the insurance transaction from the initial application to the cancellation, non-renewal, or lapse of the policy. This includes requirements concerning the execution of the policy.[44] The policy must be executed in the name of and on behalf of the insurer by its officer, attorney in fact, employee, or representative duly authorized by the insurer. A facsimile signature of one of the specified persons is acceptable and the policy cannot be made invalid because the facsimile signature is that of an individual who did not have the authority to execute the policy on the date of issuance.

Effect of the Bill

The bill provides that an insurer may elect to issue an insurance policy without being executed by one of the specified insurer representatives. If such a policy is issued, it is not invalid despite not being executed.

Notice of Policy Change

An insurer is prohibited from changing policy terms at renewal, unless they issue a notice of change in policy terms.[45] A change in policy terms includes, the modification, addition, or deletion of any term, coverage, duty, or condition from the previous policy, not including typographical or scrivener's errors or the application of mandated legislative changes. The notice may not be used to add optional coverages that increase premium, unless the policyholder affirmatively accepts the optional coverage.

The policyholder must receive advance written notice of the change.[46] If the insurer fails to issue the notice, coverage continues until the next renewal occurs (with proper service of notice) or replacement

[42] 15 U.S.C. §6803.
[43] Section 627.401, F.S., provides limited exceptions to the applicability of part II of ch. 627, F.S.
[44] s. 627.416, F.S.
[45] s. 627.43141(2), F.S.
[46] The written notice may be issued with the notice of renewal premium or consistent with the timeline for issuing a notice of non-renewal provided by law. *Id.*

coverage is obtained. The notice is required to be titled a "Notice of Change in Policy Terms." However, there is no explicit requirement for any other specific content of the notice. OIR has not adopted a rule interpreting the applicable statute.

Section 627.43141(7), F.S., states that the intent of the law is to:

- Allow an insurer to make a change in policy terms without nonrenewing those policyholders that the insurer wishes to continue insuring;
- Alleviate concern and confusion to the policyholder caused by the required policy nonrenewal for the limited issue if an insurer intends to renew the insurance policy, but the new policy contains a change in policy terms; and,
- Encourage policyholders to discuss their coverages with their insurance agents.

Despite the stated intent, it is arguable that a bare notice with the title "Notice of Change in Policy Terms" and containing no meaningful explanation of the change in policy terms complies with the law.

Effect of the Bill

The bill requires that an insurer summarize policy changes on the required notice upon renewal, rather than merely issuing a properly titled notice (i.e., requires content more informative than merely the phrase "Notice of Change in Policy Terms").

Property Insurance Claim Mediation

DFS administers alternative dispute resolution programs for various types of insurance. DFS has mediation programs for property insurance[47] and automobile insurance[48] claims. DFS has a neutral evaluation program, similar to mediation, for sinkhole insurance claims.[49] DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.[50]

For property insurance claims[51] involving personal lines and commercial residential claims, only the policyholder, as a first-party claimant, or the insurer may request mediation under DFS' program.[52] This means that third parties cannot utilize the program. This is true even if the policyholder assigns their policy benefit rights to the third party.[53] The insurer must notify the policyholder of the right to mediation under the program upon receipt of the claim. The mediation costs are generally the responsibility of the insurer.

Effect of the Bill

The bill provides that a third party who receives rights to policy benefits through an assignment may request mediation of a property insurance claim; except, an insurer is not required to participate in a mediation requested by the third-party assignee. It also conforms terminology in the applicable section of law to change the term "insured" to the term "policyholder." The terms are currently used

[47] s. 627.7015, F.S.
[48] s. 626.745, F.S.
[49] s. 627.7074, F.S.
[50] ss. 627.7015, 627.7074, and 627.745, F.S.
[51] 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. s. 627.7015(9), F.S.
[52] 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 coverages of property insurance policies are not eligible for the property insurance mediation program. s. 627.7015(1), F.S.
[53] s. 627.7015(1), F.S.

interchangeably in the statute. This makes it clear that the purchaser of the policy is the one with mediation rights, except as provided by the bill.

Proof of Mailing

When cancelling or non-renewing a policy, motor vehicle insurers are required to mail the cancellation or non-renewal to the first named insured on the policy and the applicable insurance agent at least 45 days prior to the effective date of the cancellation or non-renewal. In the case of non-payment of premium, only a 10-day notice is required. A policy that has been in effect for less than 60 days cannot be cancelled. The reason for the cancellation must be included in the notice. The insurer may also transfer the policy to an insurer under the same ownership or management upon proper notice. For each of these required notices the insurer must use United States postal proof of mailing, certified mail, or registered mail.[54]

Effect of the Bill

The bill permits use of the Intelligent Mail barcode,[55] or similar method approved by the United States Postal Service, to be used to establish proof that required motor vehicle insurance notices of cancellation, non-renewal, or transfer of insurer were mailed.

Filing Exception for Specialty Insurers

In 2014, the Legislature passed CS/CS/SB 1308,[56] which implemented new elements of NAIC Model Acts related to risk-based capital, holding company systems, standard valuation, and actuarial opinions and memorandum. This was primarily in response to the financial crisis of 2008. The financial crisis was affected by the impact of common ownership and control of insurance and financial services companies, such that when one company became financially troubled or insolvent, the value and solvency of related companies also became affected. This led regulators to have an interest in knowing and understanding the web of controlling interests among related companies. This legislation created a presumption of control in certain interests and acquisitions among related companies.

While not a portion of a model act, the 2014 bill allowed insurers to overcome the presumption of control by either filing a disclaimer of control on a form prescribed by OIR or by providing a copy of the applicable Schedule 13G on file with the federal Securities and Exchange Commission (SEC).

After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless OIR disallows the disclaimer. Specialty insurers must meet similar requirements addressing solvency and organizational risk controls as those created for insurers; however they do not have the option of filing their SEC Schedule 13G to rebut the presumption of control.

Specialty insurers are defined as:[57]

- Motor vehicle service agreement companies;
- Home warranty associations;
- Service warranty associations;
- Prepaid limited health service organizations;
- Authorized health maintenance organizations;
- Authorized prepaid health clinics;

[54] s. 627.728, F.S. While certified mail and registered mail are both fee-for-service options currently offered by the United States Postal Service (USPS), "proof of mailing" is not a specific fee-for-service offering. https://www.usps.com/ship/insurance-extra-services.htm (last visited Jan. 14, 2018). However, "certificate of mailing" is a service offered that documents presentment of the item to USPS.
[55] https://postalpro.usps.com/ (last visited Jan. 14, 2018).
[56] Ch. 2014-101, Laws of Fla.
[57] s. 627.4615(1), F.S.

- Legal expense insurance corporations;
- Providers licensed to operate a facility that undertakes to provide continuing care;
- Multiple-employer welfare arrangements;
- Premium finance companies; and
- Corporations authorized to accept donor annuity agreements.

Effect of the Bill

The bill adds viatical settlement providers to the list of specialty insurers and allows any specialty insurer to overcome the presumption of control by filing with OIR a disclaimer of control on an OIR form or a copy of their SEC Schedule 13G.

Confidentiality of Documents Submitted to the Office of Insurance Regulation

In 2011, as part of NAIC's Solvency Modernization Initiative, NAIC adopted a new insurance regulatory tool: the Own Risk and Solvency Assessment (ORSA). ORSA requires insurance companies to issue their own assessment of their current and future risk through an internal risk self-assessment process and allows regulators to form an enhanced view of an insurer's ability to withstand financial stress, particularly on a holding company's level.[58] In essence, an ORSA is an internal process undertaken by an insurer or insurance group to assess the adequacy of its risk management and current and prospective solvency positions under normal and severe stress scenarios. An ORSA requires insurers to analyze all reasonably foreseeable and relevant material risks (i.e., underwriting, credit, market, operational, liquidity risks, etc.) that could have an impact on an insurer's ability to meet its policyholder obligations.

Insurers and insurance groups are required to articulate their own judgment about risk management and the adequacy of their capital position. This is meant to encourage management to anticipate potential capital needs and to take action proactively, and serves as an early warning mechanism for insurance regulators. ORSA is not a one-off exercise - it is a continuous evolving process and should be a component of an insurer's enterprise risk-management framework. Moreover, there is no mechanical way of conducting an ORSA; how to conduct the ORSA is left to each insurer to decide, and actual results and contents of an ORSA report will vary from company to company. The output is a set of documents that demonstrate the results of management's self-assessment.

Effective January 1, 2018, ORSA is an NAIC accreditation standard for state insurance regulators. During the 2016 Regular Session, the Legislature passed CS/CS/HB 1422[59] and CS/CS/HB 1416[60] adopting ORSA requirements for Florida regulated insurers and providing a public record exemption for information produced to OIR in required ORSA filings, respectively.

The law requires insurers or insurance groups to:

- Maintain a risk management framework for identifying, assessing, monitoring, managing, and reporting on its material, relevant risks;
    - This requirement may be satisfied by being a member of an insurance group with a risk management framework applicable to the insurer's operations.
- Conduct an ORSA at least annually (and whenever there have been significant changes to the risk profile of the insurer or the insurance group), consistent with and comparable to the process in the ORSA Guidance Manual;[61] and

[58] NAIC, *Own Risk and Solvency Assessment (ORSA)*, at http://www.naic.org/cipr_topics/topic_own_risk_solvency_assessment.htm (last visited Jan. 15, 2018).
[59] Ch. 2016-206, Laws of Fla.
[60] Ch. 2016-205, Laws of Fla.
[61] The bill defines "ORSA guidance manual" as the ORSA manual developed and adopted by NAIC. *See* NAIC, *ORSA Guidance Manual* (Jul. 2014), at http://www.naic.org/store/free/ORSA_manual.pdf (last visited Jan. 15, 2018).

- File an ORSA summary report, based on the ORSA Guidance Manual with their domestic regulator or lead state (for an insurance group), beginning in 2017, which must:
    - Be submitted once every calendar year;
    - Include notification to OIR of its proposed annual submission date by December 1, 2016; initial ORSA summary report must be submitted by December 31, 2017;
    - Include a brief description of material changes and updates from the prior year's report;
    - Be signed by the chief risk officer or chief executive officer responsible for overseeing the enterprise risk management process; provide a copy to the board of directors or appropriate board committee; and
    - Be prepared in accordance with the ORSA Guidance Manual; the insurer must maintain and make documentation and supporting information available for OIR examination.

The law provides that an ORSA summary report and certain other related information are confidential and exempt public record information. In addition, that information in required ORSA filings is privileged, may not be produced by OIR in response to a subpoena or discovery request directed to OIR, and, if such information is obtained from OIR, it is not admissible in evidence in any private civil action.[62]

Effect of the Bill

The bill expands the confidentiality of documents submitted to OIR under ORSA requirements to prohibit these documents from being admitted as evidence in a private civil action regardless of the source of the ORSA documents, rather than only when they are obtained from OIR. This change relates to use of these documents while in private hands and not to public record information held by the state.

Reciprocal Insurer Reserve Requirements

Reciprocal insurance is a risk-pooling alternative to stock or mutual insurance.[63] Reciprocal insurance involves an exchange of reciprocal agreements of indemnity among participants who are known as "subscribers."[64] The subscribers generally have something in common. There are currently four companies active in Florida and licensed as reciprocal insurers under s. 629.401, F.S.[65]

The agreements of indemnity are exchanged through an attorney-in-fact, whose powers are set forth by the subscribers.[66] "In general, the attorney in fact manages the reciprocal's finances and handles underwriting, claims administration and investments."[67]

Twenty-five or more persons domiciled in Florida may organize a domestic reciprocal insurer and apply to OIR for authority to transact insurance.[68] Reciprocal insurers may transact any kind of insurance other than life or title.[69]

Reciprocal insurers offering property insurance are required to maintain an unearned premium[70] reserve consistent with the requirement generally applicable to property insurers under the Insurance

[62] s. 628.8015(4), F.S.
[63] *See* Kevin Moriarty, *Twenty Things You'd Always Wanted to Know about Reciprocals (But May Not Have Thought to Ask)*, THE RISK RETENTION REPORTER, July 2003.
[64] ss. 629.011 and 629.021, F.S.
[65] https://www.floir.com/CompanySearch/ (last visited Jan. 21, 2018). Under "Company Type," select "Reciprocal."
[66] ss. 629.011 and 629.101, F.S.
[67] Moriarty, *supra* note 69.
[68] s. 629.081(1), F.S.
[69] s. 629.041(1), F.S.
[70] "Unearned premium" is the portion of a premium already received by the insurer under which protection has not yet been provided. The entire premium is not earned until the policy period expires, even though premiums are typically paid in advance. https://www.iii.org/resource-center/iii-glossary (last visited Jan. 13, 2018).

Code.[71] This reserve requirement ensures the availability of funds for transfer to loss reserves when losses are incurred during the policy period or refunds that become due before the premium is earned, among other things. Premiums ceded to reinsurers for the purchase of reinsurance may be deducted from unearned premiums.

Property insurers are required to retain unearned premiums on reserve in the following proportions based upon the length of the policy period, as follows:

Policy Term	Proportion Required to be Reserved	
1 year or less		1/2
2 years	1st year	3/4
	2nd year	1/4
3 years	1st year	5/6
	2nd year	1/2
	3rd year	1/6
4 years	1st year	7/8
	2nd year	5/8
	3rd year	3/8
	4th year	1/8
5 years	1st year	9/10
	2nd year	7/10
	3rd year	1/2
	4th year	3/10
	5th year	1/10
Over 5 years		pro rata

In the alternative, insurers are allowed to calculate unearned premium reserves on monthly or more frequent pro rata basis. In other words, the insurer may reduce unearned premium reserves on a one-year policy at the rate of 1/12 per month or, for a two-year policy at 1/24 per month, and so on. Reciprocal insurers must calculate unearned premium reserves on a monthly or more frequent basis.[72]

NAIC has developed a model act for regulation of reciprocals. Section 7., Reserves, of NAIC Model Act 356, Model Indemnity Contracts Act,[73] provides for an unearned premium reserve, as follows:

> There shall at all times be maintained as a reserve a sum in cash or convertible securities equal to fifty percent (50%) of the net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run and pro rata on those for longer periods. Net annual deposits shall be construed to mean the advance payments of subscribers after deducting the amounts specifically provided in the subscribers' agreements, for expenses. The sum shall at no time be less than $25,000, and if at any time fifty percent (50%) of the deposits so collected and credited shall not equal that amount, then the subscribers, or their attorney for them, shall make up any deficiency.

[71] s. 625.051, F.S. This section does not apply to title insurers. s. 625.051(5), F.S.
[72] s. 629.401(6)(b)24., F.S. OIR may require reciprocal insurers to calculate unearned premium reserves on a different time basis. Marine and transportation risk premiums are not earned until the trip is completed and must be entirely kept in unearned premium reserve until then.
[73] http://www.naic.org/store/free/MDL-356.pdf (last visited Jan. 13, 2018).

Effect of the Bill

The bill revises the unearned premium reserve requirement that must be met by a reciprocal insurer, regardless of the line of insurance underwritten. The reciprocal insurer must retain 50 percent of "net written premiums" on policies having a policy period of one year or less. "Net written premiums" means premium payments made or due from subscribers after deducting expenses specified in the subscriber's agreement, including reinsurance costs and subscriber fees. To take the deduction from "net written premiums" for subscriber fees, the power of attorney agreement must contain an explicit provision to return subscriber fees on a pro rata basis for cancelled policies. The bill requires an unearned premium reserve of $100,000, at all times, and provides a mechanism to return the reserve to that amount if it is not maintained at the required amount.

Delivery of Policies by Motor Vehicle Service Agreement Companies and Health Maintenance Organizations

The law requires every insurance policy[74] to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect.[75] Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed.

Insurers are allowed to post insurance policies not containing policyholder personal identifiable information for certain types of insurance on the insurer's website instead of mailing or delivering the policy to the insured. Only policies for property and casualty insurance are allowed to be posted online. Casualty insurance includes automobile policies, workers' compensation policies, liability policies, and malpractice policies, among others.[76] Property insurance policies include homeowner's, tenant's, condominium unit owner's, mobile home owner's, condominium association, and commercial business property insurance policies.[77] The policy information posted online is general in nature.

The policy declarations page, which contains personal information about the policyholder, is provided to the policyholder in another manner, usually by mail. The declarations page must also identify the exact policy form purchased by the policyholder so the policyholder can find the policy on the insurer's website.

If an insurer opts to post an insurance policy online instead of mailing it, the policy must be easily accessible on the insurer's website and posted in a format that allows the policy to be printed by the policyholder free of charge. Insurers posting policies on their website must notify each policyholder of their right to request and obtain a paper or electronic copy of the policy without charge, but policyholder consent is not required for an insurer to post an insurance policy online. Insurers must also notify policyholders of this right if the insurer changes a policy. Insurers posting policies online must archive expired policies for five years on the insurer's website and archived policies must be available to policyholders at their request.

Effect of the Bill

The bill requires motor vehicle service agreement companies and health maintenance organizations (HMO) to deliver motor vehicle service agreements and HMO contracts in compliance with the standards applicable to insurers. This changes the timeline for delivery of a motor vehicle service agreement from 45 days to 60 days and for HMO contracts from ten days from enrollment to 60 days. It also allows posting of the non-personal portions of agreements and contracts, as applicable, on a

[74] s. 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. s. 627.401, F.S.
[75] s. 627.421, F.S.
[76] s. 624.605, F.S.
[77] See s. 624.604, F.S., defining property insurance and s. 627.4025, F.S., defining residential property insurance.

website in the manner allowed for policies by insurers. The personal portions of these documents would be delivered by other allowable means, usually mailing.

B. SECTION DIRECTORY:

Section 1. Amends s. 625.151, F.S., relating to valuation of other securities.

Section 2. Amends s. 625.325, F.S., relating to investments in subsidiaries and related corporations.

Section 3. Amends s. 626.221, F.S., relating to examination requirement; exemptions.

Section 4. Amends s. 626.914, F.S., relating to definitions.

Section 5. Repeals s. 626.918(2)(a), F.S., relating to eligible surplus lines insurers.

Section 6. Effective October 1, 2018, amends s. 626.932, F.S., relating to surplus lines tax.

Section 7. Amends s. 626.9651, F.S., relating to privacy.

Section 8. Amends s. 627.416, F.S., relating to execution of policies.

Section 9. Amends s. 627.43141, F.S., relating to notice of change in policy terms.

Section 10. Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 11. Amends s. 627.728, F.S., relating to cancellations; nonrenewals.

Section 12. Amends s. 628.4615, F.S., relating to specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.

Section 13. Amends s. 628.8015, F.S., relating to own-risk and solvency assessment; corporate governance annual disclosure.

Section 14. Amends s. 629.401, F.S., relating to insurance exchange.

Section 15. Amends s. 634.121, F.S., relating to forms, required procedures, provisions.

Section 16. Amends s. 641.3107, F.S., relating to delivery of contract.

Section 17. Provides an effective date of upon becoming law, except as otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. On January 26, 2018, the Revenue Estimating Conference of the Office of Economic & Demographic Research found that the change in surplus lines insurance premium tax would have no impact on state revenues.[78]

[78] OFFICE OF ECONOMIC & DEMOGRAPHIC RESEARCH, REVENUE ESTIMATING CONFERENCE IMPACT CONFERENCE, *01/26/18 Revenue Impact Results*, pp. 328-330, http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/Impact0126.pdf (last visited Jan. 30, 2018).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Reducing the number of coverage rejections required prior to exportation of a residential dwelling valued between $700,000 and $1,000,000 to the surplus lines market may remove some of these risks from the admitted market in the state. Owners in this home value range may find it easier to obtain coverage at a price acceptable to them.

Revising the surplus lines tax to provide for a uniform surplus lines tax of 4.936 percent of gross premiums, regardless of where the risk is located, rather than the tax rate of each state where the risk is located, will cause a net decrease in tax burden on average to payors with Florida based risks and a net increase on average to payors with multi-state risks, but the net increase and net decrease is expected to offset and result in no change in tax revenue solely attributable to the tax rate change.

Incorporating the recent amendment to the Gramm-Leach-Bliley Act will reduce costs to insurers, because they will be relieved from issuing certain required notices of change, if the underlying document was not changed.

Changes to the proof of mailing requirements may create savings for insurers.

Exempting certain monies from a reciprocal insurer's reserve requirements will reduce the amount of funds that must be retained in reserves and allow it to be utilized by the reciprocal insurer for other purposes.

Allowing motor vehicle service agreement companies and HMOs to post general agreement and contract language, respectively, to their websites will reduce their costs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2018, the Insurance & Banking Subcommittee considered a proposed committee substitute, adopted one amendment to the proposed committee substitute, and reported the bill favorably as a committee substitute. The amendment removed a provision that would have created a public records exemption that was not in the bill, as filed. The committee substitute made the following deletions and additions.

- **Deletions** – the bill no longer:
  - Specifies that third-party vendors, as an assignee of policy benefits, are not insurance consumers and will not be used for purposes of calculating complaint ratios;
  - Increases surplus lines insurer's capital and surplus requirements from $25 million to $30 million that qualifies them for a regulatory exception;
  - Makes the filing of certain fraud data reporting elements elective;
  - Prohibits a surplus lines insurer from being joined into a court case over a claim until after the claimant has prevailed in a claim against an insured; and
  - Expands a licensure exemption that relieves sellers of travel insurance from required health insurance agent licensing to allow anyone to sell such prepaid limited health service contracts without licensure, if the contract only relates to air ambulance coverage.

- **Additions** – the bill now:
  - Provides an exemption to the adjuster licensing exam to individuals who receive a Claims Adjuster Certified Professional (CACP) designation from WebCE, Inc.;
  - Repeals a requirement related to surplus lines insurer registration that conflicts with federal law; however, it does not affect the current eligibility determination process implemented in the state;
  - Provides for a uniform surplus lines tax of 4.936 percent of gross premiums, regardless of where the risk is located, rather than the tax rate of each state where the risk is located (surplus lines premiums on Florida risks are currently taxed at five percent);
  - Specifies that an insurer may elect to issue an insurance policy without being executed by one of several specified insurer representatives and the policy is not invalid despite not being executed;
  - Requires that a property and casualty insurer summarize policy changes on the required Notice of Change in Policy Terms that is issued at policy renewal, rather than merely issuing a notice (i.e., requires content more informative than merely the phrase "Notice of Change in Policy Terms");
  - Authorizes specialty insurers to disclaim a presumption of control regarding acquisition of stocks, interests, and assets of other companies in the same manner as insurers, also, it adds viatical settlement providers to the list of specialty insurers, for this purpose;
  - Revises unearned premium reserve requirements applicable to reciprocal insurers; and
  - Authorizes motor vehicle service agreement companies and health maintenance organizations (HMO) to deliver agreements and HMO contracts, respectively, in the same manner as currently required for insurers, including the posting of boilerplate contents on a website and requiring delivery within 60 days, rather than 45 days and 10 days, respectively.

On February 1, 2018, the Commerce Committee considered the bill, adopted two amendments, and reported the bill favorably as a committee substitute. The committee substitute removed the proposed revision of motor vehicle insurance coverage exclusions applicable to drivers of transportation network vehicles and made the proposed revision of the surplus lines insurance premium tax effective October 1, 2018. The effective date for the remainder of the bill is unchanged.

The staff analysis has been updated to reflect the committee substitute.