

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.)

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

BILL: CS/SB 784

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Insurance

DATE: February 8, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Pre-meeting
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 784 amends numerous provisions of the Florida Insurance Code. This bill:

- 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, including permissibility in the insurer's domicile state;
- Provides that an applicant for licensure as an all-lines adjuster certified as a Claims Adjuster Certified Professional from WebCE, Inc., does not have to take the adjuster examination;
- Repeals a requirement that surplus lines insurers request eligibility from the Florida Surplus Lines Service Office;
- Provides a uniform surplus lines tax of 4.936 percent;
- Lowers from \$1 million to \$700,000 the threshold for exporting a homeowner's property insurance risk to a surplus lines insurer following a single coverage rejection;
- 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 (DFS) and the Financial Services Commission;
- Provides that an insurer may issue an insurance policy without certain signatures;
- Requires that a notice of policy change summarize the changes made to the policy before renewal;
- Provides that an insurer is not required to participate in a mediation of a property insurance claim requested by an assignee of policy benefits;

- Allows 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;
- Expands the confidentiality of documents submitted to the 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;
- Revises unearned premium reserve requirements for reciprocal insurers; and
- Allows for electronic posting of certain policy information by health maintenance organizations and motor vehicle service agreement companies.

II. Present Situation:

This bill addresses a number of issues related to insurance.

Foreign Insurers (Sections 1 and 2)

Chapter 625, F.S., regulates the financial affairs of insurers admitted in Florida. Sections 625.151 and 625.325, F.S., deal with the valuation of securities other than bonds and limit an insurer's ability to invest in its subsidiaries and related corporations. If the insurer's surplus including investments in subsidiaries does not exceed \$100 million, the maximum percentage of investments in the insurer's subsidiaries may not exceed the lesser of:

- Ten percent of the insurer's admitted assets; or
- Fifty percent of the insurer's surplus in excess of the minimum required surplus.¹

If the surplus of an insurer, including investments in subsidiaries, is \$100 million or more, investments in subsidiaries and related corporations may not exceed 25 percent of the insurer's admitted assets.²

Section 625.340, F.S., provides that the 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 for similar funds of like domestic insurers.

Insurance Adjuster Licensure Examination (Section 3)

An adjuster is an individual employed by an insurer to evaluate losses and settle policyholder claims.³ An adjuster may be licensed as either an "all-lines adjuster" or a "public adjuster."⁴ 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."⁵ Subject to certain exceptions, a public adjuster is someone that is paid by an insured to prepare and file a claim against their insurer.⁶

¹ Sections 625.151(3)(a) and 625.325(2), F.S.

² Section 626.151(3)(b), F.S.

³ <https://www.iii.org/resource-center/iii-glossary/A> (last visited Jan. 20, 2018).

⁴ Section 626.864, F.S.

⁵ Sections 626.015(2) and 626.8548, F.S.

⁶ Section 626.854, F.S.

Among other requirements, an applicant must pass an examination to obtain an adjuster's license; however, the examination requirement is waived if the applicant has attained certain professional designations that document their successful completion of professional education coursework. An examination is not required for all-lines adjuster applicants with the following professional designations:

- 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.⁷ The curriculum must include 40 hours of instruction covering all of the topics in the all-lines adjuster Examination Content Outline adopted by DFS.⁸ 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.⁹ 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.

Surplus Lines Insurance (Sections 4, 5, and 6)

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance is sold by surplus lines insurance agents. Before a surplus lines insurance agent can place insurance in the surplus lines market, s. 626.916, F.S., requires the insurance agent to make a diligent effort to procure the desired coverage from admitted insurers. Section 626.914, F.S., defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is \$1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

⁷ Section 626.221(2)(j), F.S.

⁸ Rule 69B-227.320, F.A.C.

⁹ <https://www.webce.com/> (last visited Jan. 20, 2018).

Surplus Lines Insurer Registration

The Florida Surplus Lines Service Office (FSLSO)¹⁰ must file a written request with OIR in order for a surplus lines insurer to become eligible to underwrite insurance risks in Florida. Subsequent to the adoption of this requirement, Congress passed the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA).¹¹ 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.¹² The 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.

Surplus Lines Premium Tax

Surplus lines policies are taxed at 5 percent of all gross premiums.¹³ 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. Florida law provides that, if Florida is the "home" state, as defined the federal Nonadmitted and Reinsurance Reform Act of 2010, 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.¹⁴ 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 can result in an effective tax rate on total taxable premiums that is lower than the statutory 5 percent.

Privacy Disclosures (Section 7)

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. 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, Public Law No. 114-94.

Execution of Policies (Section 8)

Section 627.416, F.S., provides that every insurance policy shall 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. Insurer representatives have suggested it would be more efficient to allow policies to be issued without a signature as long as consumer protections remain in place.

¹⁰ Section 626.921, F.S.

¹¹ 15 U.S.C. ss. 8201 *et seq.*

¹² 15 U.S.C. ss. 8204.

¹³ Section 626.932(1), F.S.

¹⁴ Section 626.932(3), F.S.

Notice of Change in Policy Terms (Section 9)

Section 627.43141, F.S., provides that an insurer may not change policy terms at renewal unless the insurer issues a notice of change in policy terms. 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.¹⁵ The notice may not be used to add optional coverages that increase premium, unless the policyholder affirmatively accepts the optional coverage.¹⁶

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

Mediation through the DFS (Section 10)

Section 627.7015, F.S., provides a mediation program for claims under personal lines and commercial residential property insurance policies. Mediation may be requested only by the policyholder, as a first-party claimant, or the insurer. The insurer must pay the costs of the mediation. Mediation is nonbinding. If a settlement agreement is reached and is not rescinded, it shall be binding and act as a release of all specific claims that were presented in that mediation conference.

Issues have arisen over whether an assignee of policy benefits, such as vendor or contractor, is allowed to request mediation through the DFS program.

Proof of Mailing (Section 11)

Current law provides that motor vehicle insurers are required to mail a notice of 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. For each of these required notices the insurer must use United States postal proof of mailing, certified mail, or registered mail.¹⁷ Current law does not provide for use of the United States Postal Service tracking system known as "intelligent mail barcode."¹⁸

¹⁵ Section 627.43141(1)(a), F.S.

¹⁶ Section 627.43141(3), F.S.

¹⁷ Section 627.728, F.S.

¹⁸ A mail tracking service offered by the USPS. Information can be found here: <https://postalpro.usps.com/node/217> (last visited January 31, 2018).

Bonds for Construction Contracts (Sections 12 and 13)

Under Florida law, there are generally two ways a contractor, subcontractor, materialman, or laborer may help secure or guarantee payment for work performed on a construction project. The first is by filing a lien against the owner's property.

The second way of helping to secure or guarantee payment for work on a construction project is by filing a claim against a payment bond. A "payment bond" is "[a] bond given by a surety to cover any amounts that, because of the general contractor's default, are not paid to a subcontractor or materials supplier."¹⁹ In Florida, a surety issuing a contract bond, such as a payment bond, is treated as an insurer and regulated by the Insurance Code.²⁰

Surety insurers²¹ that issue construction bonds are governed by the Insurance Code.²² Under the Code, owners, subcontractors, laborers, or materialmen are deemed insureds or beneficiaries of a construction bond.²³ If an insured or beneficiary must bring a lawsuit against a surety insurer to force payment under the construction bond and prevails, the insured or beneficiary is entitled to attorney's fees under s. 627.428, F.S. Contractors are not included in s. 627.756, F.S., and cannot recover attorney fees if they file a lawsuit to recover against a payment bond.

Filing Exception for Specialty Insurers (Section 14)

In 2014, the Legislature passed CS/CS/SB 1308,²⁴ 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).

¹⁹ BLACK'S LAW DICTIONARY (10th ed. 2014).

²⁰ See Section 624.606(1)(a), F.S. ("Surety insurance" includes: (a) A contract bond, including a bid, payment, or maintenance bond, or a performance bond, which guarantees the execution of a contract other than a contract of indebtedness or other monetary obligation[.]). See also BLACK'S LAW DICTIONARY (10th ed. 2014) ("Although a surety is similar to an insurer, one important difference is that a surety often receives no compensation for assuming liability. A surety differs from a guarantor, who is liable to the creditor only if the debtor does not meet the duties owed to the creditor; the surety is directly liable.").

²¹ Section 624.606(1)(a), F.S.

²² Section 624.01, F.S. (defining that the "Insurance Code," which includes ch. 627, F.S.).

²³ Section 627.756(1), F.S.

²⁴ Ch. 2014-101, Laws of Fla.

After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless the 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:²⁵

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

Own-Risk and Solvency Assessment (Section 15)

The Risk Management and Own Risk and Solvency Assessment (ORSA) Model Act by the National Association of Insurance Commissioners requires insurers to conduct their own internal assessment of all reasonably foreseeable and relevant material risks (e.g., underwriting, credit, market) potentially affecting their ability to meet policyholder obligations. This information will provide regulators with a more comprehensive view of the ability of an insurer to withstand financial stress. Florida adopted portions of the model act in 2016.²⁶

Section 628.8015, F.S., requires insurers or insurance groups to:

- Maintain a risk management framework for identifying, assessing, monitoring, managing, and reporting on its material, relevant risks;
- Conduct an ORSA at least annually (and whenever there have been significant changes to the risk profile of the insurer or the insurance group);
- File an ORSA summary report with the appropriate regulator; and
- File a corporate governance annual disclosure with the OIR.

ORSA documents and corporate governance reports are generally exempt from disclosure as public records.²⁷ In addition, the filings and related documents are privileged such that they may not be produced in response to a subpoena or other discovery directed to the OIR. Any such filings and related documents, if obtained from the OIR, are not admissible in evidence in any private civil action.²⁸

²⁵ Section 627.4615(1), F.S.

²⁶ Chapter 2016-206, Laws of Florida.

²⁷ Section 624.4212(3), F.S.

²⁸ Section 628.8015(4), F.S.

Reciprocal Insurance Reserve Requirements (Section 16)

Reciprocal insurance is a risk-pooling alternative to stock or mutual insurance.²⁹ Reciprocal insurance involves an exchange of reciprocal agreements of indemnity among participants who are known as “subscribers.”³⁰ 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.³¹

The agreements of indemnity are exchanged through an attorney-in-fact, whose powers are set forth by the subscribers.³² “In general, the attorney in fact manages the reciprocal’s finances and handles underwriting, claims administration and investments.”³³

Twenty-five or more persons domiciled in Florida may organize a domestic reciprocal insurer and apply to OIR for authority to transact insurance.³⁴ Reciprocal insurers may transact any kind of insurance other than life or title.³⁵

Reciprocal insurers offering property insurance are required to maintain an unearned premium³⁶ reserve consistent with the requirement generally applicable to property insurers under the Insurance Code.³⁷ 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.

²⁹ 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.

³⁰ Sections 629.011 and 629.021, F.S.

³¹ <https://www.floir.com/CompanySearch/> (last visited February 7, 2018).

³² Sections 629.011 and 629.101, F.S.

³³ 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.

³⁴ s. 629.081(1), F.S.

³⁵ s. 629.041(1), F.S.

³⁶ “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 February 7, 2018).

³⁷ s. 625.051, F.S.

Section 625.051, F.S., requires property insurers 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	1 st year	3/4
	2 nd year	1/4
3 years	1 st year	5/6
	2 nd year	1/2
	3 rd year	1/6
4 years	1 st year	7/8
	2 nd year	5/8
	3 rd year	3/8
	4 th year	1/8
5 years	1 st year	9/10
	2 nd year	7/10
	3 rd year	1/2
	4 th year	3/10
	5 th year	1/10
Over 5 years	pro rata	

In the alternative, insurers are allowed to calculate unearned premium reserves on a monthly or more frequent pro rata basis.³⁸ Reciprocal insurers must calculate unearned premium reserves on a monthly or more frequent basis.³⁹

NAIC has developed a model act for regulation of reciprocals. Section 7., Reserves, of NAIC Model Act 356, Model Indemnity Contracts Act,⁴⁰ 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.

³⁸ Section 625.051(3), F.S.

³⁹ Section 629.401(6)(b)24., F.S.

⁴⁰ <http://www.naic.org/store/free/MDL-356.pdf> (last visited February 7, 2018).

Delivery of Policies by Motor Vehicle Service Agreement Companies and Health Maintenance Organizations (Sections 17 and 18)

The law requires most insurance policies⁴¹ to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect.⁴² 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.⁴³ Property insurance policies include homeowner's, tenant's, condominium unit owner's, mobile home owner's, condominium association, and commercial business property insurance policies.⁴⁴ The policy information posted online is general in nature.

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 5 years on the insurer's website and archived policies must be available to policyholders at their request.

III. Effect of Proposed Changes:

Foreign Insurers (Sections 1 and 2)

Section 1 amends s. 625.151, F.S., to provide that its valuation requirements do not apply to stock of a subsidiary corporation or related entities of a foreign insurer if such stock meets the valuation requirements under the laws of that insurer's state of domicile and if that state is a member of the National Association of Insurance Commissioners (NAIC).

Section 2 amends s. 625.325, F.S., to make similar changes. It requires that the investments of a foreign insurer in its subsidiaries or related companies must be permitted under the laws of the foreign insurer's state of domicile; and either be:

- Assigned a rating of 1, 2, or 3 by the National Association of Insurance Commissioners' Securities Valuation Office; or
- Assigned a rating by a nationally recognized statistical rating organization that would be equivalent to a rating of 1, 2, or 3 by the National Association of Insurance Commissioners' Securities Valuation Office.

⁴¹ Section 627.402, F.S., defines policy to include endorsements, riders, and clauses.

⁴² Section 627.421, F.S.

⁴³ Section 624.605, F.S.

⁴⁴ Sections 624.604 and 627.4025, F.S.

The Securities Valuation Office (SVO) is responsible for the day-to-day credit quality assessment and valuation of securities owned by state regulated insurance companies. The SVO conducts credit analysis on these securities for the purpose of assigning an NAIC designation. These designations are produced for the benefit of NAIC members who may utilize them as part of the member's monitoring of the financial condition of its domiciliary insurers.⁴⁵ An NAIC rating of 1 means the obligation should be eligible for the most favorable treatment provided under the NAIC Financial Conditions Framework. An NAIC rating of 2 means that credit risk is low but may increase in the intermediate future and the issuer's credit profile are reasonably stable. It should be eligible for relatively favorable treatment under the NAIC Financial Conditions Framework. A rating of 3 is assigned to obligations of medium quality. Credit risk is intermediate. Ratings of 4, 5, and 6 means the obligations are low quality.⁴⁶

Nationally recognized statistical rating organizations (NRSRO) are credit rating agencies that provide an assessment of the creditworthiness of a company or a financial instrument. In 2006, Congress provided the Securities and Exchange Commission with the authority to establish a registration and oversight program for credit rating agencies registered as NRSROs.⁴⁷ The NRSROs registered with the SEC are:

- A.M. Best Rating Services, Inc.
- DBRS, Inc.
- Egan-Jones Ratings Co.
- Fitch Ratings, Inc.
- HR Ratings de México, S.A. de C.V.
- Japan Credit Rating Agency, Ltd.
- Kroll Bond Rating Agency, Inc.
- Moody's Investors Service, Inc.
- Morningstar Credit Ratings, LLC
- S&P Global Ratings⁴⁸

The chart containing ratings equivalent to SVO ratings is found here:
http://www.naic.org/documents/svo_naic_aro.pdf (last visited January 29, 2018).

The changes made by sections 1 and 2 of the bill would make Florida's requirements related to investments held by foreign insurers conform to the requirements of the state where the foreign insurer is domiciled. The Office of Insurance Regulation bill analysis noted that "[l]owering Florida's investment limitation standards to those of the domiciliary state would reduce protection for Florida policyholders and weaken effective solvency regulation."⁴⁹

Insurance Adjuster Licensure Examination (Section 3)

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

⁴⁵ <http://www.naic.org/svo.htm> (last visited January 29, 2018).

⁴⁶ http://www.naic.org/documents/svo_naic_public_listing.pdf?353 (last visited February 2, 2018).

⁴⁷ <https://www.sec.gov/ocr/ocr-learn-nrsros.html> (last visited January 29, 2018).

⁴⁸ *Id.*

⁴⁹ Office of Insurance Regulation, *Bill Analysis of SB 784* (on file with the Senate Committee on Banking and Insurance).

WebCE, Inc. The bill also authorizes the DFS to accept similar designations from similar entities to those listed in the statute for purposes for the examination exemption.

Surplus Lines Insurance (Sections 4, 5, and 6)

Section 4 amends s. 626.914, F.S., to provide that the surplus lines agent fulfills the “diligent effort” requirement if the agent seeks coverage from and is rejected by at least one authorized insurer if the residential structure has a dwelling replacement cost of at least \$ \$700,000. Currently, the property must have a \$1 million dwelling replacement cost in order for the agent to only have to seek coverage from and be rejected by one authorized insurer.

Section 5 repeals s. 626.918(2)(a), F.S., requiring surplus lines insurers to request eligibility from the FLSO.

Section 6 of the bill lowers the surplus lines premium tax rate to 4.936 percent instead of the current 5 percent. It allows the tax to exceed the tax rate where the risk is located.

Privacy Disclosures (Section 7)

The bill allows the DFS and the Financial Services Commission to adopt into rule the changes made by the FAST Act to federal standards governing the use of a consumer’s nonpublic personal financial and health information. It provides that companies that have not made changes to certain privacy policies are not required to send an annual notice of changes. If changes are made, the companies must notify customers.

Execution of Insurance Policies (Section 8)

Section 8 amends s.627.416, F.S., to provide that an insurer may elect to issue an insurance policy without it 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 Change in Policy Terms (Section 9)

The bill requires that an insurer summarize policy changes on the required notice upon renewal, rather than merely issuing a properly titled notice.

Mediation through DFS (Section 10)

The bill amends s. 627.7015, F.S., to provide that a policyholder, as first-party claimant, a third party, as assignee of policy benefits, or the insurer may request mediation through DFS. An insurer may participate in mediation requested by a third party, as assignee of policy benefits, but is not required to participate in a mediation requested by an assignee of policy benefits. The bill also makes stylistic changes by replacing the term “insured” with the term “policyholder.” The terms are often used interchangeably.

Proof of Mailing (Section 11)

Section 11 amends s. 627.728, F.S., to provide that an automobile insurer may rely on United States postal proof of mailing, certified or registered mailing, or other mailing using the Intelligent Mail barcode or other similar tracking method used or approved by the United States Postal Service as sufficient proof of:

- notice of cancellation;
- notice of intention not to renew, or of reasons for cancellation; or
- notice of the intention of the insurer to issue a policy by an insurer under the same ownership or management was sent to the first-named insured at the address shown in the policy.

Bonds for Construction Contracts (Sections 12 and 13)

Section 12 amends s. 627.756(1), F.S., of the Insurance Code to extend the ability to collect attorney's fees against an insurer under s. 627.428(1), F.S., to contractors by also deeming them an insured or beneficiary. This change will apply when a contractor successfully enforces a claim against the bond of a subcontractor that has breached a contract with the contractor. **Section 13** provides that this provision applies to payment or performance bonds issued on or after October 1, 2018.

Specialty Insurers (Section 14)

Section 14 amends s. 628.4615, F.S., to add 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.

Own-Risk and Solvency Assessment (Section 15)

Section 15 amends s. 628.8015, F.S., to expand the confidentiality of documents submitted to the OIR under ORSA requirements. The bill provides that such documents may not be admitted as evidence in a private civil action regardless of the source of the documents, rather than only when they are obtained from the OIR.

Reciprocal Insurer Reserve Requirements (Section 16)

Section 16 amends s. 629.401, F.S., to revise 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 1 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 (Sections 17 and 18)

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 10 days from enrollment to 60 days. It also allows posting of the non-personal portions of agreements and contracts, as applicable, on a website in the manner allowed for policies by insurers. The personal portions of these documents would be delivered by other allowable means, usually mailing.

Effective Date (Section 19)

The bill takes effect upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Changes to the mailing requirement in section 11 could result in cost savings to insurers.

C. Government Sector Impact:

The Revenue Estimating Conference does not anticipate a significant impact from the surplus line tax change in section 6 of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 625.151, 625.325, 626.221, 626.914, 626.932, 626.9651, 627.416, 627.41341, 627.7015, 627.728, 627.756, 628.4615, 628.8015, 629.401, 634.121, and 641.3107.

The bill repeals paragraph 626.918(2)(a) of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 6, 2018:

The CS removed provisions that:

- Provides that a third-party vendor, as an assignee of policy benefits, is not a consumer for purposes of consumer complaints received by the DFS Division of Consumer Services;
- Provides that complaints from third-party vendors as assignees of policy benefits will not count as complaints for purposes of the complaint ratio calculations;
- Provides that the reporting of certain information used by the Department of Financial Services to prevent insurance fraud is not mandatory;
- Provides that the insurance nonjoinder statute applies to surplus lines insurers;
- Allows the Office of Insurance Regulation (OIR) to waive the requirement that a surplus lines insurer has operated for the previous 3 years before seeking eligibility to operate in Florida if the insurer provides a product or service not readily available to Florida consumers or has operated successfully for a period of at least 1 year next preceding and has capital and surplus of not less than \$30 million;
- Increases the ability of motor vehicle insurers to exclude coverage when drivers are engaged in transportation network company activities; and
- Provides that any person who sells prepaid limited health service contracts that only cover the cost of transportation provided by an air ambulance service is not required to be licensed as a health insurance agent.

The CS adds provisions that:

- Provide if an applicant for licensure as an all-lines adjuster is certified as a Claims Adjuster Certified Professional from WebCE, Inc., the applicant does not have to take the adjuster examination;
- Repeal a requirement that surplus lines insurers request eligibility from the Florida Surplus Lines Service Office;
- Provide a uniform surplus lines tax of 4.936 percent;

- Lower from \$1 million to \$700,000 the threshold for exporting a homeowner's property insurance risk to a surplus lines insurer following a single coverage rejection;
- Provide that an insurer may issue an insurance policy without certain signatures;
- Require that a notice of policy change summarize the changes made to the policy before renewal;
- Revise unearned premium reserve requirements for reciprocal insurers; and
- Allow for electronic posting of certain policy information by health maintenance organizations and motor vehicle service agreement companies and increases the time for delivering such contracts.

B. Amendments:

None.