

THE FLORIDA SENATE
2023 SUMMARY OF LEGISLATION PASSED
Committee on Banking and Insurance

HB 793 — Collateral Protection Insurance

by Rep. Fernandez-Barquin and others (SB 410 by Senators Garcia and Hutson)

The bill creates a new statutory chapter part (Part XXII), Collateral Protection Insurance (CPI) to regulate CPI on real property. All CPI policies for mortgaged real property, including manufactured and mobile homes, are subject to Part XXII except for transactions involving extensions of credit primarily for business, commercial, or agricultural purposes; insurance offered by a lender or servicer and elected by the mortgagor at the mortgagor's option; insurance purchased by a lender or servicer on real-estate owned property; and insurance for which no specific charge is made to the mortgagor or mortgagor's account.

Definitions

The bill defines CPI and several related terms. CPI means commercial property insurance under which a creditor is the primary beneficiary and policyholder, and which protects or covers the creditor's interest arising out of a credit transaction secured by the mortgaged real property. CPI is triggered by the mortgagor's failure to maintain insurance coverage required by the mortgage or other lending document. Individual CPI is defined in the bill as coverage for individual real property evidenced by a certificate of coverage under a master CPI policy or a CPI policy for individual real property. A master CPI policy is a group policy issued to a lender or servicer providing coverage for all loans in the lender's or servicer's loan portfolio, as needed.

Collateral Protection Insurance Policies

The bill provides that CPI becomes effective no earlier than the date of lapse of insurance on mortgaged real property. Individual CPI terminates on the earliest of the following dates:

- The effective date of insurance acceptable under the mortgage agreement.
- The date on which the applicable real property no longer serves as collateral for a mortgage loan.
- Such other date specified by the individual policy or certificate of insurance.
- Such other date as specified by the lender or servicers.
- The termination date of the policy.

The bill provides that CPI coverage, and the calculation of the related premium, should be based on the replacement cost value of the real property serving as collateral, as best determined by the last known coverage amount. The last known coverage amount is the dwelling coverage amount specified in the most recent evidence of insurance coverage provided by the mortgagee. The bill requires that an insurer or insurance agent ask the insured, at least once, for the last known coverage amount. If the insurer or insurance agent cannot obtain the last known coverage amount from the insured or by another means, the CPI coverage and the calculation of the related premium may be based on the replacement cost of the real property serving as collateral as calculated by the insurer. If the last known coverage amount is unknown and the replacement cost is unavailable or prohibited by other state or federal law, the CPI coverage and calculation

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of premium should be based upon the unpaid principal balance of the mortgage loan. In any event, a mortgagor must not be charged for CPI before the effective date of the CPI or for a term longer than the scheduled term of the CPI.

Prohibited Practices

The bill prohibits the following practices by insurers or insurance agents related to CPI:

- Issuing CPI on mortgaged real property if the insurer or insurance agent or an affiliate of the insurer or insurance agent owns the real property or performs the servicing for, or owns the servicing rights to, the real property.
- Compensating a lender, insurer, investor, or servicer, including through the payment of commissions, on CPI policies issued by the insurer.
- Sharing CPI premium or risk with the lender, investor, or servicer that obtained the CPI.
- Offering contingent commissions, profit-sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with CPI.
- Providing free or below-cost outsourced services to a lender, investor, or servicer and outsourcing its own functions to a lender, investor, or servicer at a rate above cost.
- Making any payments, including, but not limited to, the payment of expenses to a lender, insurer, investor, or servicer to secure CPI business or related outsourced services.

Evidence of Coverage

The bill requires evidence of CPI must be set forth in an individual policy or certificate of insurance, which must be delivered to the mortgagor either by mail, in person, or electronically. The individual policy or certificate of insurance must include specified information identifying the real property insured, information about the CPI policy, and contact information for filing a claim.

Filing, Approval, and Withdrawal of Forms and Rates

The bill provides that, except as otherwise provided in Part XXII, rate and form filing requirements are subject to the Florida Insurance Code. The policy forms and certificates of insurance for CPI, and related premium rates, must be reviewed and approved by the OIR as provided in s. 627.062, F.S. As part of the rate review, the OIR must also evaluate whether expenses included by the insurer in the rates are appropriate. The bill requires insurers to refile CPI insurance rates at least once every four years. All insurers writing CPI must have separate rates for CPI and voluntary insurance obtained by a mortgage servicer on real-estate owned property.

An insurer must include its experience in existing programs in the associated filings upon the introduction of a new CPI program. Part XXII does not limit an insurer's discretion, as actuarially appropriate, to distinguish different terms, conditions, exclusions, eligibility criteria, or other unique or different characteristics. An insurer may also rely on models, where

actuarially acceptable, or in the case of flood filings where applicable experience is not credible, on National Flood Insurance Program data.

By April 1 each year, each insurer with at least \$100,000 in direct written premium for CPI in Florida during the prior calendar year must report the following information to the OIR for the prior calendar year:

- Actual loss ratio.
- Earned premiums.
- Any aggregate schedule rating debit or credit to earned premium.
- Itemized expenses.
- Paid losses.
- Loss reserves, including case reserves and reserves for incurred but not reported losses.

The report must be separately produced for each CPI program and presented on both an individual-jurisdiction and countrywide basis. Except for CPI for flood insurance, an insurer experiencing an annual rate loss ratio of less than 35 percent in any collateral protection insurance program for two consecutive years, must submit a rate filing, either adjusting its rates or supporting their continuance, to the office no more than 90 days after the submission of the data required.

Fiscal Impact

The bill does not have a fiscal impact on state or local revenues or local government expenditures. Insofar as a data call is created for the annual report required in Section 10 of the bill, the OIR may experience an increase in expenditures related to the technology need. To the extent the requirements of Part XXII result in lower CPI premiums for mortgagors, the bill may have a positive direct economic impact on the private sector.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.

Vote: Senate 35-0; House 105-0