

Tab 1	SB 122 by Broxson (CO-INTRODUCERS) Hooper; Attorney Fee Awards Under Insurance Policies and Contracts					
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923034	D	S	WD	BI, Thurston	Delete everything after	03/04 06:37 PM
469254	SD	S	OO	BI, Thurston	Delete everything after	03/04 06:37 PM
355342	SD	S	OO	BI, Thurston	Delete everything after	03/04 06:37 PM
711030	SD	S	OO	BI, Lee	Delete everything after	03/04 06:37 PM
724484	D	S	WD	BI, Thurston	Delete everything after	03/04 06:37 PM
545092	SD	S	OO	BI, Lee	Delete everything after	03/04 06:37 PM
487740	D	S	WD	BI, Lee	Delete everything after	03/04 06:37 PM
672446	SD	S	WD	BI, Thurston	Delete everything after	03/04 06:37 PM
306982	D	S	RCS	BI, Broxson	Delete everything after	03/04 06:37 PM
336048	AA	S	UNFAV	BI, Taddeo	Delete L.224:	03/04 06:37 PM
892198	SD	S	WD	BI, Thurston	Delete everything after	03/04 06:37 PM
932552	AA	S	WD	BI, Taddeo	Delete L.147:	03/04 06:37 PM

Tab 2	SB 496 by Rader; (Similar to CS/H 00429) Insurance Guaranty Associations					
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308964	D	S	RCS	BI, Rader	Delete everything after	03/04 05:54 PM
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Tab 3	SB 626 by Brandes; (Similar to H 00673) Insurer Guaranty Associations					
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687388	D	S	RCS	BI, Brandes	Delete everything after	03/05 09:23 AM
682770	AA	S	RCS	BI, Brandes	Delete L.341 - 346:	03/05 09:23 AM
580372	SAA	S	WD	BI, Brandes	Delete L.341 - 346:	03/05 09:23 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, March 4, 2019
TIME: 3:30—5:30 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 122 Broxson	Attorney Fee Awards Under Insurance Policies and Contracts; Revising certain attorney fee provisions in the Florida Insurance Code to specify that an insured or beneficiary entitled, under certain circumstances, to attorney fees under an insurance policy or contract must be a named insured or named beneficiary; providing that such right to attorney fees may not be assigned or extended by agreement, except to certain persons, etc. BI 01/22/2019 Workshop-Discussed BI 02/04/2019 Workshop-Discussed BI 02/11/2019 Temporarily Postponed BI 03/04/2019 Fav/CS JU RC	Fav/CS Yeas 5 Nays 3
2	SB 496 Rader (Similar CS/H 429)	Insurance Guaranty Associations; Authorizing the Florida Insurance Guaranty Association to authorize certain employees to adjust losses for the association; revising the assessments levied by the Office of Insurance Regulation on workers' compensation insurers; requiring such insurers to recoup the assessments by applying a certain surcharge percentage to certain policies, etc. BI 03/04/2019 Fav/CS AEG AP	Fav/CS Yeas 6 Nays 0
3	SB 626 Brandes (Similar H 673)	Insurer Guaranty Associations; Revising applicability of part III of ch. 631, F.S., as to health maintenance organizations, long-term care insurance benefits, certain health care benefits, and certain structured settlement annuity benefits; revising the number of members and composition of the Florida Life and Health Insurance Guaranty Association's board of directors; adding the reissuance of covered policies to a list of duties of the association relating to insolvent insurers, etc. BI 03/04/2019 Fav/CS AEG AP	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Monday, March 4, 2019, 3:30—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 122

INTRODUCER: Banking and Insurance Committee and Senator Broxson

SUBJECT: Attorney Fee Awards Under Insurance Policies and Contracts

DATE: March 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 122 provides that a post-loss assignments of benefits under a property insurance policy or under the comprehensive or combined additional coverage of a motor vehicle insurance policy for coverage of windshield damage is only valid if:

- A copy of the agreement is provided to the consumer's insurer within 3 business days after the agreement's execution;
- The agreement may be rescinded within 14 days of execution or at least 30 days after the execution if the service provider has not begun substantial work on the property;
- The agreement does not impose any fee or penalty for rescinding the agreement, for check processing, for not using a specified service provider for permanent repairs, or for mortgage processing;
- The agreement does not assign more than \$500, if related to repairing a windshield under a motor vehicle insurance policy's comprehensive or combined additional coverage;
- The agreement does not transfer authority to adjust, negotiate, or settle a claim to a person who is not authorized to do so under the Insurance Adjusters Law;
- The agreement does not transfer a greater right to attorney fees than that created by the bill;
- The agreement does not prevent or inhibit an insurer from communicating with the consumer at any time; and
- The agreement relates only to work performed or to be performed by the service provider.

The bill removes the “one way” attorney fee for assignees of property insurance benefits or motor vehicle insurance benefits to repair or replace automobile windshields under comprehensive or combined additional coverage. It does not change the law relating to first party insurance claims. Instead of “one way” attorney fees, the bill provides that the prevailing party in a suit between an assignee and an insurer has the right to attorney fees and costs. The bill defines the prevailing party as the party which prevails on the significant issues of the case and provides factors that a court must consider when determining the prevailing party:

- The issues litigated;
- The amount of the claim by the service provider versus the amount recovered;
- The existence of setoffs and counterclaims; and
- The amounts offered by either party to resolve the issues prior to or during litigation.

The bill provides that if a consumer acts under urgent or emergency circumstances to protect property from damage and enters into an agreement with a service provider, the service provider may only contract for the right to payment for the work necessary to protect and prevent additional damage to the property. The right to payment may include a post-loss assignment of benefits. However, a service provider may not receive from a consumer acting under urgent or emergency circumstances an assignment of post-loss benefits in excess of:

- Under a property insurance policy, in excess of the greater of \$3,000 or 1 percent of the Coverage A limit under such policy.
- Under a motor vehicle insurance policy for comprehensive or combined additional coverage for windshield damage, in excess of \$500.

The bill requires an assignee and any subcontractor of the assignee to waive any and all claims against a consumer. However, the consumer remains responsible for the payment of any deductible amount provided for by the terms of the insurance policy, and for the cost of any betterment ordered by the consumer. The waiver is effective even if the assignment agreement is subsequently found invalid or rescinded by the consumer.

The bill provides that if an assignee commences a suit based upon or including the same claim against the same adverse party that such assignee has previously voluntarily dismissed, the court may order the assignee to pay the costs of the adverse party of the action previously voluntarily dismissed.

This bill takes effect on July 1, 2019.

II. Present Situation:

Attorney Fees in Insurance Litigation

In general, parties to a lawsuit each pay their own attorney fees unless statutes or contractual provisions provide otherwise. Section 627.428, F.S., provides, in part:

Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate

court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.¹

This statute allows an insured to recover his or her own attorney fees if the insured prosecutes a lawsuit to enforce an insurance policy. Some version of this statute has been the law in Florida since at least 1893.²

The Florida Supreme Court recently explained the purpose of the statute:

The need for fee and cost reimbursement in the realm of insurance litigation is deeply rooted in public policy. Namely, the Legislature recognized that it was essential to "level the playing field" between the economically-advantaged and sophisticated insurance companies and the individual citizen. Most assuredly, the average policyholder has neither the finances nor the expertise to single-handedly take on an insurance carrier. Without the funds necessary to compete with an insurance carrier, often a concerned policyholder's only means to take protective action is to hire that expertise in the form of legal counsel... For this reason, the Legislature recognized that an insured is not made whole when an insurer simply grants the previously denied benefits without fees. The reality is that once the benefits have been denied and the plaintiff retains counsel to dispute that denial, additional costs that require relief have been incurred. Section 627.428, F.S., takes these additional costs into consideration and levels the scales of justice for policyholders by providing that the insurer pay the attorney's fees resulting from incorrectly denied benefits.³

Florida courts have interpreted the statute broadly to allow recovery of fees when the insurer ultimately settles the case before trial.⁴ The court awards fees pursuant to the statute even if the insurer does not act in bad faith.⁵

There must be a dispute over the amount owed before attorney fees can be recovered pursuant to s. 627.428, F.S. In *Goldman v. United Services Automobile Association*,⁶ homeowners sustained water damage due to a plumbing leak. The homeowners reported the claim to their insurance company. The insurance company investigated and paid the claim. The homeowners filed a

¹ Section 626.9373, F.S., contains substantially similar language but it applies to surplus lines insurers. Florida courts have interpreted the statutes to have the same meaning.

² See *Tillis v. Liverpool & London & Globe Insurance Company*, 35 So. 171 (1903)(rejecting an insurance company argument that the 1893 law providing that an insured may recover attorney fees in actions against an insurance company to enforce a policy violates due process and equal protection).

³ *Johnson v. Omega Ins. Co.*, 200 So.3d 1207, 1215-1216 (Fla. 2016)(internal citations omitted).

⁴ *Johnson v. Omega Ins. Co.*, 200 So.3d 1207, 1215 (Fla. 2016)(noting that it is "well settled that the payment of a previously denied claim following the initiation of an action for recovery, but prior to the issuance of a final judgment, constitutes the functional equivalent of a confession of judgment").

⁵ *Insurance Co. of North America v. Lexow*, 602 So.2d 528, 531 (Fla. 1992)("We reject the argument that attorney's fees should not be assessed against INA because this dispute involved a type of claim which reasonably could be expected to be resolved by a court. INA's good faith in bringing this suit is irrelevant. If the dispute is within the scope of s. 627.428, F.S., and the insurer loses, the insurer is always obligated for attorney's fees").

⁶ 244 So.3d 310 (Fla. 4th DCA 2018).

lawsuit without informing the insurance company that they disputed the amount of the claim. The insurance company demanded appraisal and paid the disputed amount after the appraisal award.⁷ The court held the homeowners were not entitled to attorney fees because the insurance company was not aware of a dispute over the amount of the claim until the filing of the lawsuit. The court said that attorney fees may only be recovered when the claims process breaks down and the parties are no longer working to resolve the claim.⁸

Assignments of Post-Loss Insurance Benefits

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. This assignment is often called an “assignment of benefits” or “AOB.” Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee may file a lawsuit against the insurer to recover the insurance benefits.⁹

The Florida Supreme Court Applies Section 627.428, F.S., to AOB Cases

Section 627.428, F.S., provides that “any named or omnibus insured or the named beneficiary under a policy” may be entitled to attorney fees. In 1961, the First District Court of Appeal held that an assignee of the proceeds of a life insurance policy could recover attorney fees when the assignee had to sue to enforce payment.¹⁰

In 1971, the Fourth District Court of Appeal considered whether the insured’s assignee of benefits from a property insurance policy was entitled to attorney fees and held the assignee was not entitled to fees because the assignee was not a named insured or beneficiary.¹¹ The Fourth District’s opinion was appealed to the Florida Supreme Court and the Florida Supreme Court reversed. In 1972, the Florida Supreme Court held that an insured’s assignee is entitled to attorney fees under s. 627.0127, F.S., the predecessor statute to s. 627.428, F.S. The court said “an assignee of an insurance claim stands to all intents and purposes in the shoes of the insured and logically should be entitled to an attorney’s fee when he sues and recovers on the claim.”¹²

The court reaffirmed the holding in 2008:

⁷ *Goldman*, 244 So.3d at 311.

⁸ *Goldman*, 244 So.3d at 312. See also *Hill v. State Farm Florida Insurance Company*, 35 So.3d 956, 961 (Fla. 2d DCA 2010)(stating that “fees should normally be limited to the work associated with filing the lawsuit after the insurance carrier has ceased to negotiate or has breached the contract and the additional legal work necessary and reasonable to resolve the breach of contract); *Lewis v. Universal Property and Casualty Insurance Co.*, 13 So.3d 1079 (Fla. 4th DCA 2009).

⁹ *Nationwide Mutual Insurance Company v. Pinnacle Medical, Inc.* 753 So.2d 55, 57 (Fla. 2000)(“The right of assignee to sue for breach of contract to enforce assigned rights predates the Florida Constitution”).

¹⁰ *Travelers Insurance Company v. Tallahassee Bank and Trust Company*, 133 So.2d 463 (Fla. 1st DCA 1961).

¹¹ *Southern American Fire Insurance Company v. All Ways Reliable Building Maintenance, Inc.*, 251 So.2d 11 (Fla. 4th DCA 1971), reversed, *All Ways Reliable Building Maintenance, Inc. v. Moore*, 261 So.2d 131 (Fla. 1972).

¹² *All Ways Reliable Bldg. Maintenance, Inc. v. Moore*, 261 So.2d 131 (1972)

[S]ection 627.428 authorizes an award of attorney's fees only to “the named or omnibus insured or named beneficiary” under an insurance policy and to other third parties who obtain coverage based on an assignment from an insured.¹³

Anti-Assignment Provisions in Insurance Contracts Do Not Prevent AOB in Property Insurance or Motor Vehicle Insurance

Section 627.422, F.S., governs assignability of insurance contracts and provides that a policy may or may not be assignable according to its terms. In *Lexington Insurance Company v. Simkins Industries*,¹⁴ the court held that a provision in an insurance contract prohibiting assignment of the policy was enforceable under the plain language of s. 627.422, F.S. The court explained that the purpose of a provision prohibiting assignment was to protect an insurer against unbargained-for risks.¹⁵

An assignment made after the loss is valid even if the contract states otherwise.¹⁶ In *Continental Casualty Company v. Ryan Incorporated Eastern*,¹⁷ the court noted that it is a “well-settled rule that [anti-assignment provisions do] not apply to an assignment after loss.” A court explained that a rationale for post-loss assignments is that “assignment of the policy, or rights under the policy, before the loss is incurred transfers the insurer’s contractual relationship to a party with whom it never intended to contract, but an assignment after loss is simply the transfer of the right to a claim for money” and “has no effect upon the insurer’s duty under the policy.”¹⁸

Assignments have been prohibited by contract in other insurance contexts. In *Kohl v. Blue Cross Blue Shield of Florida, Inc.*,¹⁹ the court found anti-assignment language was sufficiently clear and upheld language prohibiting the assignment of a health insurance claim. The court explained that anti-assignment clauses “prohibiting an insured’s assignments to out-of-network medical providers are valuable tools in persuading health [care] providers to keep their costs down and as such override the general policy favoring the free alienability of choses in action.”²⁰

AOB in Property Insurance Cases

In recent years, insurers have complained of abuse of the assignment of benefits process. An insurance company described the issue in a court filing:

The typical scenario surrounding the use of an “assignment of benefits” involved vendors and contractors, mostly water remediation companies, who were called by an insured immediately after a loss to perform emergency remediation services, such as water extraction. The vendor came to the insured’s home and,

¹³ *Continental Cas. Co. v. Ryan, Inc. Eastern*, 974 So.2d 368, 379 (Fla. 2008).

¹⁴ 704 So.2d 1384 (Fla. 1998).

¹⁵ *Id.* at 1386.

¹⁶ *West Fla. Grocery Co. v. Teutonia Fire Ins. Co.*, 74 Fla. 220, 77 So. 209 (1917); *Gisela Inv., N.V. v. Liberty Mut. Ins. Co.*, 452 So.2d 1056 (Fla. 3d DCA 1984).

¹⁷ 974 So.2d 368, 377 n. 7 (Fla. 2000).

¹⁸ *Wehr Constructors, Inc. v. Assurance Company of America*, 384 S.W.3d 680, 683 (Ky. 2012). The Florida courts’ interpretation of s. 627.422, F.S., appears to be the position of a majority of states that have considered the issue.

¹⁹ 955 So.2d 1140 (Fla. 4th DCA 2007).

²⁰ *Id.* at 1144-1145.

before performing any work, required the insured to sign an “assignment of benefits” – when the insured would be most vulnerable to fraud and price gouging. Vendors advised the insured, “We’ll take care of everything for you.” The vendor then submitted its bill to the insurer that was, on average, nearly 30 percent higher than comparative estimates from vendors without an assignment of benefits. Some vendors added to the invoice an additional 20 percent for “overhead and profit,” even though a general contractor would not be required or hired to oversee the work. Vendors used these inflated invoices to extract higher settlements from insurers. This, in turn, significantly increases litigation over the vendors’ invoices.²¹

In a court filing in a different case, a company that provides emergency repair and construction services explained the rationale behind assignments of insurance benefits:

As a practical matter, a homeowner often will not be able to afford or hire a contractor immediately following a loss unless the contractor accepts an assignment of benefits to ensure payment. A homeowner may be unable to comply with the ... provision requiring the homeowner to protect and repair the premises unless the remediation contractor accepts an assignment of benefits, however, contractors will become unwilling to accept payments by assignment if court decisions render the assignments unenforceable ...

Whether the repair invoice is routed through the insured or submitted by the service provider directly by assignment, the service provider’s repair invoice is submitted to the insurer for coverage and reviewed by an adjuster. The only difference an assignment makes is that, if an insurance company wishes to partially deny coverage or contest an invoice as unreasonable, the insured policyholder is not mired in litigation in which he or she has no stake.²²

There have been a number of cases in recent years where courts have held that post-loss benefits are assignable.²³

Automobile Insurance

Automobile insurance consists of different types of insurance coverages. Personal injury protection or “PIP” coverage is required in Florida to cover injuries to the driver regardless of which party is at fault in an accident. Bodily injury liability coverage pays for damage that the insured causes to other drivers and passengers in an accident. Property damage liability coverage covers damage that the insured causes to the property of another individual. Collision coverage

²¹ *Security First Insurance Company v. State of Florida, Office of Insurance Regulation*, Case No. 1D14-1864 (Fla. 1st DCA), Appellant’s Initial Brief at pp. 3-4 (appellate record citations omitted).

²² *One Call Property Services, Inc. v. Security First Insurance Company*, Case No. 4D14-0424 (Fla. 4th DCA), Appellant’s Initial Brief at 46-48.

²³ See, e.g., *Security First Ins. Co. v. State of Florida Office of Insurance Regulation*, 177 So.3d 627, rehearing denied (Fla. 1st DCA 2015); *Bioscience W., Inc. v. Gulfstream Prop. & Cas. Ins. Co.*, 185 So.2d 638 (Fla.2d DCA 2016); *One Call Property Services, Inc. v. Security First Ins. Co.*, 165 So.3d 749 (Fla. 4th DCA 2015); *Accident Cleaners, Inc. v. Universal Ins. Co.*, 186 So.3d 1 (Fla. 5th DCA 2015).

pays for damages to the insured automobile caused by a collision with another automobile. Comprehensive coverage generally pays for damages to the insured automobile, including damage to the windshield, caused by events other than a collision.

The “deductible” is the amount the insured must pay before the insurance company pays any amount. Section 627.7288, F.S. states:

The deductible provisions of any policy of motor vehicle insurance, delivered or issued in this state by an authorized insurer, providing comprehensive coverage or combined additional coverage shall not be applicable to damage to the windshield of any motor vehicle covered under such policy.^{24, 25}

Consumers who purchase the minimum coverage required by law do not have first-party coverage for windshield repair or replacement. Consumers who purchase comprehensive coverage have first-party coverage if a windshield is damaged or broken. Lenders often require borrowers to purchase comprehensive coverage, so consumers who owe money on their vehicles will often qualify for windshield repair or replacement without a deductible.²⁶

Windshield Replacement and Repair

Florida law does not contain insurer claim handling requirements specific to windshield claims. The claims are handled through the insurance contract. Current law does not prohibit an insurer from including an inspection requirement in policy forms.

Many Florida insurance carriers set up a network of providers that will provide windshield repair or replacement services at negotiated rates. If the insured uses one of these “in-network” providers, an insured windshield is repaired or replaced at no cost to the insured. Some glass shops do not participate in the insurer’s provider network. To claim benefits from an insured’s automobile insurer, the “out-of-network” shop often obtains an assignment of benefits from the insured. Florida law allows an insured to assign the benefits of his or her insurance policy to a third party, in this case, the out-of-network glass shop. The assignee glass shop can negotiate with the insurer and file a lawsuit against the insurance company if the two sides do not agree on the claim amount.²⁷

Vehicle Safety Requirements

Section 316.2952, F.S., requires vehicles operated on highways to have a windshield. Section 316.610, F.S., prohibits driving a vehicle in such an unsafe condition that it endangers persons or property. A police officer is allowed to stop a vehicle if required equipment is not in

²⁴ Language similar to s. 627.7288, F.S., has been part of Florida law since 1979. *See* Ch. 79-241, Laws of Florida.

²⁵ At least seven other states have provisions prohibiting insurers from requiring a deductible for windshield claims or allowing insureds to purchase a policy with no deductible for windshield claims.

²⁶ Florida Department of Financial Services, *Automobile Insurance A Toolkit for Consumers*, <https://www.myfloridacfo.com/division/consumers/UnderstandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited February 4, 2019).

²⁷ Dale Parker and Brendan McKay, *Florida Auto Glass Claims: A Cracked System*, Trial Advocate Quarterly Fall 2016 (Westlaw Citation: 35 No. 4 Trial Advoc. Q. 20).

proper repair.²⁸ Depending on the severity of the equipment damage, a police officer may order a vehicle removed from use until repairs are made or give the driver 48 hours to make the repairs.²⁹

AOB Windshield Litigation

According to the Department of Financial Services,³⁰ the number of AOB auto glass lawsuits has increased in recent years:

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Auto Glass	397	571	271	709	351	478	1,389	4,331	9,018	12,817	19,695	25,664	17,399

Some insurers argue that the increase in litigation is caused by the ability of some vendors to execute an assignment of benefits and recover attorney fees under s. 627.428, F.S. They allege that some vendors are obtaining an assignment of benefits from the insured and inflating the cost of the claim when they bill the insurance company.³¹ Insurers also believe that many windshield claims brought by assignees are fraudulent.^{32, 33} In such cases, the insurer must determine whether to pay what it believes to be an inflated or fraudulent claim or pay its own attorneys to litigate the case and risk having to pay the other side’s attorney fees if it does not prevail.³⁴

Some auto glass vendors argue that litigation is necessary because insurers enter into agreements with preferred vendors and will not pay the “prevailing competitive price” for windshield repair or replacement. Instead, some vendors contend, insurers will only pay the price they pay to the preferred vendors and that litigation is necessary to force the insurers to pay the “prevailing competitive price” pursuant to the insurance policy language.³⁵

Data and Recommendations for Reform

According to the Department of Financial Services,³⁶ the number of AOB lawsuits for water claims has increased in recent years:

²⁸ Section 316.610(1), F.S.

²⁹ Section 316.610(2), F.S.

³⁰ Data provided by the Department of Financial Services (on file with the Senate Committee on Banking and Insurance).

³¹ One provider offers cash rebates and restaurant gift cards to customers “with qualifying insurance” for windshield repair or replacement. See <http://www.auto-glassamerica.com> (last accessed February 4, 2019).

³² *Government Employees Insurance Co. v. Clear Vision Windshield Repair, L.L.C.*, 2017 WL 1196438 (M.D. Florida March 29, 2017).

³³ *VIP Auto Glass, Inc. v. Geico General Insurance Co.*, 2018 WL 3649638 (M.D. Florida January 3, 2018), the court dismissed a class action lawsuit brought by an auto glass company because the court found the assignment of benefits was fraudulent. The court also awarded attorney fees to the insurance company.

³⁴ Florida Justice Reform Institute, White Paper: *Restoring Balance in Insurance Litigation* (2015)(on file with the Senate Committee on Banking and Insurance).

³⁵ See *VIP Auto Glass, Inc. v. Geico General Insurance Co.*, 2017 WL 3712918 (M.D. Florida March 17, 2017) at p. 1. (discussing a class action lawsuit against Geico by VIP Auto Glass).

³⁶ Data presented to the Senate Committee on Banking and Insurance on January 22, 2019 (on file with the Senate Committee on Banking and Insurance).

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Water	8	35	87	184	483	989	1,603	2,083	2,786	5,328	8,488	10,937	16,890

This chart shows the percentage of lawsuits with an AOB for water claims or for windshield glass:

Year	Lawsuits	AOB	AOB Percentage
2018	278,739	34,289	12.3%
2017	229,188	36,601	16.0%
2016	192,598	28,183	14.6%
2015	161,062	18,145	11.3%
2014	148,003	11,804	8.0%
2013	141,320	6,414	4.5% ³⁷

In 2015, the Office of Insurance Regulation (OIR) did a data call to attempt to determine the effect of assignment of benefits in the insurance market.³⁸ The OIR found that water losses alone could require rate increases of 10 percent per year.³⁹ The Insurance Commissioner showed that the OIR has approved a greater percentage of rate increases in personal residential insurance in recent years:

Year	Percentage of Filings with a Rate Increase
2017	91.9%
2016	72.0%
2015	44.9%
2014	37.6% ⁴⁰

In 2017, the OIR conducted another data call on AOB. The OIR found that water losses (a combination of the frequency of water claims and the severity of the claims) increased 14.2 percent per year from January 1, 2010, to September 30, 2015.⁴¹ From January 1, 2015, to June 30, 2017, water losses increased by 42.1 percent per year.⁴² In 2015, almost 13 percent of the water claims utilized an AOB. In 2017, that percentage was approximately 17 percent.⁴³

³⁷ The number of lawsuits was determined by entering a start date of January 1 and an end date of December 31 for each year as selection criteria into the Florida Department of Financial Services Service of Process reports site <https://apps.fldfs.com/LSOPReports/Reports/Report.aspx> (last visited February 5, 2019). The number of AOB lawsuits was provided the Florida Department of Financial Services.

³⁸ <http://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx> (last accessed February 5, 2019).

³⁹ Office of Insurance Regulation, *2015 Report on Review of the 2015 Assignment of Benefits Data Call* (February 8, 2016) at p 8. The report can be accessed at <https://www.floir.com/siteDocuments/AssignmentBenefitsDataCallReport02082016.pdf> (last visited on February 5, 2019).

⁴⁰ Presentation by David Altmaier to the Senate Committee on Banking and Insurance on January 22, 2019 (on file with the Senate Committee on Banking and Insurance).

⁴¹ Office of Insurance Regulation, *Report of the 2017 Assignment of Benefits Data Call*, January 8, 2018, at page 1. The report can be accessed at <https://www.floir.com/siteDocuments/AssignmentBenefitsDataCallReport02082017.pdf> (last visited on February 5, 2019).

⁴² *Id.*

⁴³ *Id.* at p. 3.

Citizens Property Insurance Company (Citizens) reports an increase in both litigation and litigation where the claimant has an AOB:⁴⁴

Year	Lawsuits	AOB	AOB Percentage
2018	13,363	3,631	27.2%
2017	7,624	2,718	35.6%
2016	10,061	3,242	32.2%
2015	7,653	1,250	16.3%
2014	9,525	1,062	11.1%
2013	9,146	860	9.4%

The current average actuarial rate indication for multiperil homeowners policies for policies issued by Citizens Property Insurance Company (Citizens) is 25.2 percent. Citizens anticipates an actuarial rate indication on the same policies of 10.1 percent if AOB reform is successful.⁴⁵ Citizens reports that 70 percent of its homeowners multiperil customers received rate decreases in 2015 while 97 percent of those customers will see rate increases in 2019.⁴⁶

A restoration contractor testified that issues arise between assignees and insurers because insurers wrongly deny claims and adjusters are poorly trained.⁴⁷ The contractor suggested the following solutions:

- Regulation of restoration contractors;
- Increased training for insurance company claims staff;
- Increased penalties for insurance fraud committed by contractors; and
- Penalties against insurers for underpayment and delayed claims.⁴⁸

Nebraska AOB Reform

In *Mallard Gutter Company v. Farm Bureau Property and Casualty Insurance Company*,⁴⁹ the Nebraska Supreme Court held that assignment of post-loss benefits from an insured to a roofing contractor is allowed under Nebraska law. In 2018, the Nebraska Legislature adopted a statute to deal with perceived issues in Nebraska. The statute:

- Allows an assignment to authorize a contractor to be named as a copayee;
- Requires the assignment to be provided to the insurer within five business days after execution;
- Requires the following notice on an assignment:

YOU ARE AGREEING TO ASSIGN CERTAIN RIGHTS YOU HAVE
UNDER YOUR INSURANCE POLICY. WITH AN ASSIGNMENT,

⁴⁴ Presentation by Barry Gilway to the Senate Committee on Banking and Insurance on January 22, 2019 (on file with the Senate Committee on Banking and Insurance).

⁴⁵ Presentation by Barry Gilway to the Senate Committee on Banking and Insurance on January 22, 2019 (on file with the Senate Committee on Banking and Insurance).

⁴⁶ *Id.*

⁴⁷ Presentation by Josh Reynolds to the Senate Committee on Banking and Insurance on February 4, 2019 (on file with the Senate Committee on Banking and Insurance).

⁴⁸ *Id.*

⁴⁹ 889 N.W.2d 596 (Neb. 2016).

THE RESIDENTIAL CONTRACTOR SHALL BE ENTITLED TO PURSUE ANY RIGHTS OR REMEDIES THAT YOU, THE INSURED HOMEOWNER, HAVE UNDER YOUR INSURANCE POLICY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING;

- Provides that the assignment shall not impair the interest of a mortgagee; and
- Provides that the assignment shall not prevent or inhibit an insurer from communicating with the named insured or mortgagee.⁵⁰

Florida Courts Say if Policy Changes Are Needed, They Should be Made by the Legislature

The First District Court of Appeal recently noted:

[W]e are not unmindful of the concerns that Security First expressed in support of [limiting assignment of benefits], providing evidence that inflated or fraudulent post-loss claims filed by remediation companies exceeded by thirty percent comparable services; that policyholders may sign away their rights without understanding the implications; and that a "cottage industry" of "vendors, contractors, and attorneys" exists that use the "assignments of benefits and the threat of litigation" to "extract higher payments from insurers." These concerns, however, are matters of policy that we are ill-suited to address.⁵¹

The Fourth District Court of Appeal explained the competing policy arguments raised by the assignment of benefits issue:

Turning to the practical implications of this case, we note that this issue boils down to two competing public policy considerations. On the one side, the insurance industry argues that assignments of benefits allow contractors to unilaterally set the value of a claim and demand payment for fraudulent or inflated invoices. On the other side, contractors argue that assignments of benefits allow homeowners to hire contractors for emergency repairs immediately after a loss, particularly in situations where the homeowners cannot afford to pay the contractors up front.⁵²

The court noted that if "studies show that these assignments are inviting fraud and abuse, then the legislature is in the best position to investigate and undertake comprehensive reform."⁵³

⁵⁰ Neb.Rev.St. s 44-8605.

⁵¹ *Security First Ins. Co. v. State of Florida Office of Insurance Regulation*, 177 So.3d 627, 628, rehearing denied (Fla. 1st DCA 2015).

⁵² *One Call Property Services, Inc. v. Security First Ins. Co.*, 165 So.3d 749, 755 (Fla. 4th DCA 2015).

⁵³ *Id.*

III. Effect of Proposed Changes:

The bill creates requirements for assignment agreements between a consumer⁵⁴ and a service provider.⁵⁵ The bill changes how a service provider can obtain attorney fees in a civil action based on assignment of post-loss benefits under a property insurance policy or under a motor vehicle insurance policy for coverage of windshield damage. It limits the ability of consumers to contract for repairs in emergency or urgent situations. It provides a deterrent to prevent “judge shopping” by litigants. The bill contains legislative findings and intent. Each subject will be discussed as follows.

Requirements for Agreements Containing a Post-Loss Assignment of Benefits

The bill creates section 501.172, F.S., to govern assignment agreements between service providers and consumers. It requires that an agreement entered into by a consumer and a service provider after a loss or damage has occurred to the consumer’s property which contains a post-loss assignment of benefits to the service provider or some third person is only valid if:

- The consumer or service provider provides a copy of the agreement to the consumer’s insurer, sent to the location designated for receipt of such agreements if specified in the insurance policy, within 3 business days after the agreement’s execution;
- The agreement contains a provision allowing the consumer to rescind the agreement in a writing signed by the assignor, if the consumer provides written notice of the rescission to the service provider within 14 days of the execution of the agreement or at least 30 days after the execution of the agreement if the service provider has not begun substantial work on the property;
- The agreement does not impose any fee or penalty for rescinding the agreement, for check processing, for not using a specified service provider for permanent repairs, or for mortgage processing;
- The agreement does not prevent or inhibit an insurer from communicating with the consumer at any time;
- The agreement, if made under a motor vehicle insurance policy for comprehensive or combined additional coverage for windshield damage, does not assign the right to more than \$500 in post-loss benefits;
- The agreement does not transfer or create any authority to adjust, negotiate, or settle any portion of a claim to a person or an entity who is not authorized to adjust, negotiate, or settle a claim on behalf of the insured or claimant under part VI of chapter 626;
- The agreement does not transfer to the assignee any greater right to attorney fees and costs from the insurer than the right to attorney fees and costs as provided for in the bill; and
- The agreement relates only to work performed or to be performed by the service provider.

⁵⁴ The bill defines consumer as “a person who has an interest in, or who has a right to manage real or personal property, including improvements upon such property, regardless of whether for personal or business purposes, including an owner, a tenant, a licensee, or a property manager.”

⁵⁵ The bill defines “service provider” as “a person who enters into an agreement with a consumer for the stabilization, repair, improvement, or remediation of real or personal property.”

Attorney Fees

The bill provides that in a civil action under a property insurance policy or under the comprehensive or combined additional coverage under a motor vehicle insurance policy for coverage of windshield damage, between an insurer and a service provider who obtains an assignment of post-loss benefits, the prevailing party has the right to attorney fees and costs from the opposing party. The prevailing party is the party which prevails on the significant issues of the case. The court may determine that there is no prevailing party in a case. In determining if there is a prevailing party, the court must consider:

- The issues litigated;
- The amount of the claims by the service provider versus the amount recovered;
- The existence of setoffs and counterclaims, if any; and
- The amounts offered by either party to resolve the issues prior to or during litigation.

Service provider assignees will no longer be able to obtain attorney fees from an insurer under ss. 626.9373 or 627.428, F.S. Instead, they can obtain attorney fees from an insurer similar to the way a contractor can obtain fees against a homeowner in a construction lien case.

In *Trytek v. Gale Industries, Inc.*, 3 So.3d 1194, 1203 (Fla. 2009), the Florida Supreme Court discussed the factors that a lower court must consider when determining the prevailing party in a construction lien case:

[W]e conclude that a trial court has the discretion to make a determination that neither party has prevailed on the significant issues in litigation after a thorough examination of all the factors, including the issues litigated, the amount of the claim of lien versus the amount recovered on the lien, the existence of setoffs and counterclaims by the homeowner, and the amounts offered by either party to resolve the issues prior to the litigation, assuming that those negotiations were not otherwise confidential either by agreement or statute.

The bill requires the court to consider the same factors set forth in *Trytek* when determining which party, if any, prevailed in the case. The bill's changes to attorney fee statutes in litigation against insurers only applies when certain benefits are assigned. It does not alter the ability of insureds to obtain attorney fees in actions against their own insurers.

Agreements Between Service Providers and Consumers Under Emergency Circumstances

The bill provides that if a consumer acts under urgent or emergency circumstances to protect property from damage and enters into an agreement with a service provider to stabilize, protect, repair, or improve such property, the service provider may only contract for the right to payment for the work necessary to stabilize, protect, and prevent additional damage to the property. Such right to payment may include a post-loss assignment of benefits under a property insurance policy or under the comprehensive or combined additional coverage under a motor vehicle insurance policy for coverage of windshield damage.

A service provider may not receive from a consumer acting under urgent or emergency circumstances an assignment of post-loss benefits:

- Under a property insurance policy, in excess of the greater of \$3,000 or 1 percent of the Coverage A limit under such policy or
- Under a motor vehicle insurance policy for comprehensive or combined additional coverage for windshield damage, in excess of \$500.

A service provider may receive an acknowledgement of the rights that may exist, if any, under chapter 713 to make a claim upon the property.

The bill provides that an agreement between a consumer and a service provider that provides greater rights to the service provider under such urgent or emergency circumstances, including rights to do further repairs, remediation, or improvements or an assignment of rights, benefits, causes of action, or other contractual rights is void.

Limitation on Recovery from the Consumer

An assignee service provider and any subcontractor of the service provider that accepts an assignment of post-loss benefits waives any and all claims against a consumer. However, the consumer remains responsible for the payment of any deductible amount provided for by the terms of the insurance policy, and for the cost of any betterment ordered by the consumer. The bill does not prohibit the assignee from collecting or attempting to collect money from, maintaining an action at law against, or claiming a lien on the property of a consumer or reporting a consumer to a credit agency for payment of the amount of the insurance deductible, or any amount attributable to betterment ordered by the consumer. The waiver is effective notwithstanding any subsequent determination that the assignment agreement is invalid or the rescission of the assignment agreement by the consumer.

Actions Based on the Same Claim Previously Dismissed

The bill provides that if a service provider assignee commences an action in any court based upon or including the same claim against the same adverse party that such assignee has previously voluntarily dismissed, the court may order the assignee to pay the attorney fees and costs of the adverse party.

Application

This bill does not apply to a power of attorney granted to a management company, family member, guardian, or similarly situated person which complies with chapter 709 and which may include, as part of the authority granted, the authority to act in place of a principal as it relates to a property insurance or motor vehicle insurance claim, if such power of attorney is not provided to a service provider or any person with a personal or financial interest in the service provider.

Legislative Findings and Intent

The bill contains legislative findings and intent language. In these findings, the Legislature recognizes that “one way” attorney fee statutes are intended to level the economic playing field between the economically-advantaged insurance company and the individual consumer. It finds

that the award of attorney fees to the individual consumer under these statutes makes the consumer financially whole and discourages insurance companies from contesting valid claims.

The Legislature finds that the increased use of post-loss assignment of benefits by service providers has led to a dramatic increase in assignment of benefits litigation. The Legislature recognizes that additional costs incurred by insurance companies in contesting assignment of benefits-related litigation are factored into the rates charged for property insurance and motor vehicle insurance. By explicitly providing that any right to attorney fees or costs against an insurer by an assignee service provider shall be as provided by the bill, the Legislature finds that it is addressing the increase in assignment of benefits litigation by nonparties to property insurance policies and motor vehicle insurance policies for coverage of windshield damage and the associated increase in insurance premiums that are experienced by consumers.

Other Provisions

The bill amends sections 626.9373 and 627.428, F.S., to provide that attorney fees may not be awarded under those sections to an assignee of post-loss benefits who is a service provider under section 501.172, F.S.

The bill provides that section 501.172, F.S., and the amendments to ss. 626.9373 and 627.428, F.S., apply to actions pending on or after July 1, 2019, to the extent they do not require the invalidation of any provision of a contract executed before July 1, 2019.

The bill takes effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Due Process

The Florida Supreme Court has explained that in order to determine whether a statute violates due process, it must determine whether the statute bears a reasonable relationship to a legitimate legislative objective and is not discriminatory, arbitrary, or oppressive.⁵⁶ In *Nationwide Mutual Fire Insurance Company v. Pinnacle Medical Inc.*,⁵⁷ the court considered a challenge to a provision in the Florida Motor Vehicle No-Fault law that created a prevailing party standard for awarding attorney fees to medical provider assignees, rather than the standard applied to insureds under s. 627.428, F.S. The court held that the prevailing party standard for awarding attorney fees to medical provider assignees violated the due process⁵⁸ rights of medical providers.

In 1998, the Motor Vehicle No-Fault Law required motor vehicle insurance policies to contain a provision requiring providers who accepted an assignment of personal injury protection benefits to provide medical services or supplies to resolve any dispute with the insurance company via binding arbitration. It provided the prevailing party could recover attorney fees but did not define prevailing party.⁵⁹ In 1998, the Legislature amended the No-Fault Law to create a prevailing party definition.⁶⁰ Under s. 626.736, F.S., providers who accepted assignments and had a dispute were not entitled to attorney fees under 627.428, F.S. Instead, they could only recover fees if they prevailed at arbitration under the statutory formula.

The court said that an objective of No-Fault Law was to provide persons injured in an accident with prompt payment of benefits and that the legislative objective of s. 627.428, F.S., was to discourage insurance companies from contesting valid claims and to reimburse successful insureds for their attorney fees when they are compelled to sue to enforce their insurance contracts. The court explained that the prevailing party attorney fee formula replaced s. 627.428, F.S., attorney fees with an award of attorney fees based on who was the prevailing party. Therefore, medical provider-assignees were subject to attorney fees while insureds suing to enforce the exact same contract could obtain one-way imposition of attorney fees against insurers. The court held that this distinction does nothing to further the prompt payment of benefits or to discourage insurers' denial of valid claims and that the effect of the attorney-fee provision was to delay insureds from receiving medical benefits by encouraging medical providers to require payment from insureds at the time the services are rendered. Therefore, the court said the prevailing

⁵⁶ 753 So.2d 55, 59 (Fla. 2000).

⁵⁷ 753 So.2d 55, 59 (Fla. 2000).

⁵⁸ Article 1, section 9 of the Florida Constitution provides that no person shall be deprived of life, liberty, or property without due process of law.

⁵⁹ See Section 627.736(5), F.S. (Supp. 1998).

⁶⁰ See ch. 98-270, L.O.F. The definition provides that the claimant prevails if the PIP award at arbitration exceeds the sum of the insurer's offer at arbitration plus 50 percent of the difference between the insurer's demand at arbitration and the insurer's offer. The insurer prevails if the PIP award is less than the insurer's offer at arbitration plus 50 percent of the difference between the insurer's demand at arbitration and the insurer's offer. The formula can be expressed as PIP BENEFITS DETERMINED BY ARBITRATION < or > INSURER OFFER + .5(CLAIMANT DEMAND – INSURER OFFER)

party attorney-fee provision arbitrarily distinguished between medical providers and insureds and violated medical providers' due process rights.⁶¹

Opponents may argue that the provisions of this bill that prohibit an assignee from using s. 627.428, F.S., to collect attorney fees when the assignee prevails in an action against an insurance company similarly violates the assignee's due process rights. They could argue that the assignee, like the medical providers in *Pinnacle*, are suing to enforce the same contract as a named insured and the distinction between assignees and named insureds is arbitrary and does nothing to encourage the prompt payment of valid claims.

Proponents could argue that this bill's distinction is not arbitrary. Proponents could argue that the distinction was drawn because: (1) there has been a large increase in AOB litigation in recent years; (2) claims with an AOB are often higher cost than claims without an AOB; (3) AOB claims are more likely to be inflated; and (4) the one-way attorney fee statute limits the insurers' ability to litigate smaller claims. Proponents could argue that the Legislature is drawing this distinction to prevent further increases in insurance rates because higher rates harm the state's economy.

Freedom of Contract

The bill limits a consumer's ability to contract with a service provider during urgent or emergency circumstances. The Florida Supreme Court has explained that any "restraints imposed by legislation on the right to contract must not be arbitrary or unreasonable. The right to make contracts... should not be struck down or arbitrarily restrained unless such restraint be reasonably justified by the needs of the public health, safety or welfare."⁶² If the limitation on contracts during emergency were challenged, a court would have to consider whether the restraint imposed by the bill is reasonably justified by the needs of public welfare.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Contractors and other vendors who use assignments of benefits may use them less often. They could be responsible for their own attorney fees if they had to prosecute a lawsuit against an insurance company and did not prevail in the lawsuit.

C. Government Sector Impact:

None.

⁶¹ 753 So.2d 55, 59 (Fla. 2000).

⁶² *Larson v. Lesser*, 106 So. 2d 188, 191-92 (Fla. 1958).

VI. Technical Deficiencies:

Lines 63, 64, and 68 contain the phrase “in excess of” and the phrase is unnecessary in all of those locations.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 501.172 of the Florida Statutes.

This bill substantially amends sections 626.9373 and 627.428 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 March 4, 2019:

- Establishes standards for a valid assignment of post-loss benefits under property insurance policies and motor vehicle insurance policies for coverage of windshield damage under comprehensive or combined additional coverage.
- Limits the scope of an AOB in urgent or emergency circumstances and requires the assignee service provider to waive all claims against a consumer other than for payment of the deductible and betterment ordered by the consumer.
- Provides that the prevailing party in litigation between an assignee service provider and insurer may be awarded attorney fees and establishes standard for the court to apply when determining the prevailing party.
- Prohibits “judge shopping” by authorizing judges to order assignees to pay attorney fees and cost to the other party when an assignee service provider files suit, voluntarily dismisses the action, and then refiles in hopes of being assigned a different judge.
- Contains legislative findings and intent.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 627.7152, Florida Statutes, is created to read:

627.7152 Assignment of residential homeowner's property insurance post-loss benefits.—

(1) An agreement to assign post-loss benefits of a residential homeowner's property insurance policy is not valid



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11 unless the agreement:

12 (a) Is in writing;

13 (b) Is limited to claims for work performed or work to be
14 performed by the assignee to protect or repair property from
15 damage, including, but not limited to, work to stabilize,
16 protect, repair, or improve such property;

17 (c) Allows the insured to rescind the assignment within 3
18 days after the execution of the assignment without a penalty or
19 fee;

20 (d) Contains the following notice in 14-point bold type to
21 the consumer:

22
23 "WARNING: IF YOU HAVE RESIDENTIAL HOMEOWNERS PROPERTY
24 INSURANCE, YOU MAY BE AGREEING TO GIVE UP CERTAIN
25 RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD
26 PARTY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE
27 SIGNING IT. WITH THE EXCEPTION OF PAYMENT FOR WORK
28 ALREADY PERFORMED BY A SERVICE PROVIDER TO PREVENT
29 ADDITIONAL DAMAGE FROM OCCURRING TO THE PROPERTY
30 RESULTING FROM EMERGENCY OR URGENT CIRCUMSTANCES, YOU
31 HAVE THE RIGHT TO RESIND THIS AGREEMENT WITHOUT
32 PENTALTY WITHIN 3 BUSINESS DAYS AFTER THE DATE THIS
33 AGREEMENT IS EXECUTED. IF THE ASSIGNMENT IS RESCINDED,
34 YOU ARE RESPONSIBLE TO PAY FOR THE WORK DONE UP TO THE
35 DATE OF THE RESCISSION AND YOU ARE NOT OTHERWISE
36 RESPONSIBLE TO PAY FOR THE WORK COVERED BY THE
37 ASSIGNMENT. IF WORK IS BEING PERFORMED AS A RESULT OF
38 DAMAGES CAUSED BY AN EVENT FOR WHICH THE GOVERNOR HAS
39 DECLARED A STATE OF EMERGENCY AND IS WITHIN 1 YEAR



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40 AFTER SUCH DECLARATION, THE 3 BUSINESS DAY PERIOD TO
41 RESIND THIS AGREEMENT IS EXTENDED TO 5 BUSINESS DAYS.
42 THIS AGREEMENT DOES NOT CHANGE YOUR DUTIES UNDER YOUR
43 PROPERTY INSURANCE POLICY, SUCH AS PROMPTLY NOTIFYING
44 YOUR INSURANCE COMPANY OF A LOSS AND MITIGATING YOUR
45 PROPERTY FROM FURTHER DAMAGE.

46
47 (2) (a) The assignee shall provide a copy of the assignment
48 agreement to the insurer within 5 days after execution of the
49 agreement, or within 48 hours after beginning nonemergency work,
50 whichever is earlier, if the insurer has a facsimile number and
51 email address on its website designated for the delivery of such
52 documents. This assignment agreement must be accompanied by a
53 written estimate of the work to be done, with unit prices
54 indicated where appropriate, and the basis for calculating lump
55 sum fees if unit prices are inappropriate. The estimate must be
56 timely updated if conditions require a change in scope. The
57 failure to comply with this requirement constitutes a defense to
58 any payment obligation under the policy or the assignment, if
59 the insurer can establish prejudice resulting from the failure.

60 (3) Notwithstanding any other law, the acceptance by a
61 person of any assignment agreement constitutes a waiver by the
62 assignee or transferee, and any subcontractor of the assignee or
63 transferee, of any and all claims against all named insureds for
64 payment arising from the specified loss, except that all named
65 insureds remain responsible for the payment of any deductible
66 amount provided for by the terms of the insurance policy and for
67 the cost of any betterment ordered by all named insureds. This
68 waiver remains in effect notwithstanding any subsequent



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69 determination that the assignment agreement is invalid or
70 notwithstanding the rescission of the assignment agreement by
71 all named insureds, except that the assignee is entitled to
72 payment for the reasonable cost of any contracted work performed
73 before the assignor rescinded the assignment agreement.

74
75 ===== T I T L E A M E N D M E N T =====

76 And the title is amended as follows:

77 Delete everything before the enacting clause
78 and insert:

79 A bill to be entitled
80 An act relating to assignment of residential
81 homeowners property insurance post-loss benefits;
82 creating s. 627.7152, F.S.; providing that an
83 agreement to assign post-loss benefits of a
84 residential homeowner's property insurance policy is
85 not valid unless specified conditions are met;
86 requiring the assignee to provide a copy of the
87 assignment agreement and a specified written estimate
88 to the insurer within a specified timeframe; requiring
89 the estimate to be timely updated if conditions
90 require a change in scope; providing construction
91 relating to failure to comply with such requirement;
92 providing that a person's acceptance of an assignment
93 agreement constitutes a waiver by the assignee or
94 transferee, or any subcontractor of the assignee or
95 transferee, of certain claims against named insureds,
96 except under specified circumstances; providing
97 construction relating to such waiver; providing an



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98

effective date.



469254

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Banking and Insurance (Thurston) recommended the following:

1 **Senate Substitute for Amendment (923034) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 627.7152, Florida Statutes, is created
7 to read:

8 627.7152 Assignment of residential homeowner's property
9 insurance post-loss benefits.—

10 (1) An agreement to assign post-loss benefits of a



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11 residential homeowner's property insurance policy is not valid
12 unless the agreement:

13 (a) Is in writing;

14 (b) Is limited to claims for work performed or work to be
15 performed by the assignee to protect or repair property from
16 damage, including, but not limited to, work to stabilize,
17 protect, repair, or improve such property;

18 (c) Allows the insured to rescind the assignment within 3
19 days after the execution of the assignment without a penalty or
20 fee;

21 (d) Contains the following notice in 14-point bold type to
22 the consumer:

23
24 "WARNING: IF YOU HAVE RESIDENTIAL HOMEOWNERS PROPERTY
25 INSURANCE, YOU MAY BE AGREEING TO GIVE UP CERTAIN
26 RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD
27 PARTY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE
28 SIGNING IT. WITH THE EXCEPTION OF PAYMENT FOR WORK
29 ALREADY PERFORMED BY A SERVICE PROVIDER TO PREVENT
30 ADDITIONAL DAMAGE FROM OCCURRING TO THE PROPERTY
31 RESULTING FROM EMERGENCY OR URGENT CIRCUMSTANCES, YOU
32 HAVE THE RIGHT TO RESCIND THIS AGREEMENT WITHOUT
33 PENALTY WITHIN 3 BUSINESS DAYS AFTER THE DATE THIS
34 AGREEMENT IS EXECUTED. IF THE ASSIGNMENT IS RESCINDED,
35 YOU ARE RESPONSIBLE TO PAY FOR THE WORK DONE UP TO THE
36 DATE OF THE RESCISSION AND YOU ARE NOT OTHERWISE
37 RESPONSIBLE TO PAY FOR THE WORK COVERED BY THE
38 ASSIGNMENT. IF WORK IS BEING PERFORMED AS A RESULT OF
39 DAMAGES CAUSED BY AN EVENT FOR WHICH THE GOVERNOR HAS



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40 DECLARED A STATE OF EMERGENCY AND IS WITHIN 1 YEAR
41 AFTER SUCH DECLARATION, THE 3 BUSINESS DAY PERIOD TO
42 RESCIND THIS AGREEMENT IS EXTENDED TO 5 BUSINESS DAYS.
43 THIS AGREEMENT DOES NOT CHANGE YOUR DUTIES UNDER YOUR
44 PROPERTY INSURANCE POLICY, SUCH AS PROMPTLY NOTIFYING
45 YOUR INSURANCE COMPANY OF A LOSS AND MITIGATING YOUR
46 PROPERTY FROM FURTHER DAMAGE.

47
48 (2) The assignee shall provide a copy of the assignment
49 agreement to the insurer within 5 days after execution of the
50 agreement, or within 48 hours after beginning nonemergency work,
51 whichever is earlier, if the insurer has a facsimile number and
52 email address on its website designated for the delivery of such
53 documents. This assignment agreement must be accompanied by a
54 written estimate of the work to be done, with unit prices
55 indicated where appropriate, and the basis for calculating lump
56 sum fees if unit prices are inappropriate. The estimate must be
57 timely updated if conditions require a change in scope. The
58 failure to comply with this requirement constitutes a defense to
59 any payment obligation under the policy or the assignment, if
60 the insurer can establish prejudice resulting from the failure.

61 (3) Before emergency work commences, the remediator,
62 contractor, or other service provider must inform the homeowner
63 in writing of the obvious conditions that require priority
64 repairs and mitigation, including, but not limited to, flooding
65 or standing water, exposed electrical wiring, a hole or breach
66 in the roof or an exterior wall, or significant foundation
67 cracks.

68 (4) The insurer may inspect the property at any time. If



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69 the insurer fails to attempt in good faith to do so within 5
70 days after receiving a copy of the assignment agreement
71 described in subsection (2) and to promptly deliver to the
72 assignee written notice of any perceived deficiency in the
73 assignee's notice or the work being performed, the failure may
74 be raised to estop the insurer from asserting that work done was
75 not reasonably necessary or that the notice was insufficient to
76 comply with this section.

77 (5) Notwithstanding any other law, the acceptance by a
78 person of any assignment agreement constitutes a waiver by the
79 assignee or transferee, and any subcontractor of the assignee or
80 transferee, of any and all claims against all named insureds for
81 payment arising from the specified loss, except that all named
82 insureds remain responsible for the payment of any deductible
83 amount provided for by the terms of the insurance policy and for
84 the cost of any betterment ordered by all named insureds. This
85 waiver remains in effect notwithstanding any subsequent
86 determination that the assignment agreement is invalid or
87 notwithstanding the rescission of the assignment agreement by
88 all named insureds, except that the assignee is entitled to
89 payment for the reasonable cost of any contracted work performed
90 before the assignor rescinded the assignment agreement.

91 Section 2. This act shall take effect July 1, 2019.

92
93 ===== T I T L E A M E N D M E N T =====

94 And the title is amended as follows:

95 Delete everything before the enacting clause
96 and insert:

97 A bill to be entitled



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98 An act relating to assignment of residential
99 homeowners property insurance post-loss benefits;
100 creating s. 627.7152, F.S.; providing that an
101 agreement to assign post-loss benefits of a
102 residential homeowner's property insurance policy is
103 not valid unless specified conditions are met;
104 requiring the assignee to provide a copy of the
105 assignment agreement and a specified written estimate
106 to the insurer within a specified timeframe; requiring
107 the estimate to be timely updated if conditions
108 require a change in scope; providing construction
109 relating to failure to comply with such requirement;
110 requiring service providers to inform homeowners of
111 certain conditions before commencing emergency work;
112 authorizing insurers to inspect the property at any
113 time; providing construction if an insurer fails to
114 attempt in good faith to inspect the property within a
115 certain timeframe; providing that a person's
116 acceptance of an assignment agreement constitutes a
117 waiver by the assignee or transferee, or any
118 subcontractor of the assignee or transferee, of
119 certain claims against named insureds, except under
120 specified circumstances; providing construction
121 relating to such waiver; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
03/04/2019	.	
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The Committee on Banking and Insurance (Thurston) recommended the following:

1 **Senate Substitute for Amendment (923034) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 627.7152, Florida Statutes, is created
7 to read:

8 627.7152 Assignment of residential homeowner's property
9 insurance post-loss benefits.—

10 (1) An agreement to assign post-loss benefits of a



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11 residential homeowner's property insurance policy is not valid
12 unless the agreement:

13 (a) Is in writing;

14 (b) Is limited to claims for work performed or work to be
15 performed by the assignee to protect or repair property from
16 damage, including, but not limited to, work to stabilize,
17 protect, repair, or improve such property;

18 (c) Allows the insured to rescind the assignment within 3
19 days after the execution of the assignment without a penalty or
20 fee;

21 (d) Contains the following notice in 14-point bold type to
22 the consumer:

23
24 "WARNING: IF YOU HAVE RESIDENTIAL HOMEOWNERS PROPERTY
25 INSURANCE, YOU MAY BE AGREEING TO GIVE UP CERTAIN
26 RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD
27 PARTY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE
28 SIGNING IT. WITH THE EXCEPTION OF PAYMENT FOR WORK
29 ALREADY PERFORMED BY A SERVICE PROVIDER TO PREVENT
30 ADDITIONAL DAMAGE FROM OCCURRING TO THE PROPERTY
31 RESULTING FROM EMERGENCY OR URGENT CIRCUMSTANCES, YOU
32 HAVE THE RIGHT TO RESIND THIS AGREEMENT WITHOUT
33 PENTALTY WITHIN 3 BUSINESS DAYS AFTER THE DATE THIS
34 AGREEMENT IS EXECUTED. IF THE ASSIGNMENT IS RESCINDED,
35 YOU ARE RESPONSIBLE TO PAY FOR THE WORK DONE UP TO THE
36 DATE OF THE RESCISSION AND YOU ARE NOT OTHERWISE
37 RESPONSIBLE TO PAY FOR THE WORK COVERED BY THE
38 ASSIGNMENT. IF WORK IS BEING PERFORMED AS A RESULT OF
39 DAMAGES CAUSED BY AN EVENT FOR WHICH THE GOVERNOR HAS



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40 DECLARED A STATE OF EMERGENCY AND IS WITHIN 1 YEAR
41 AFTER SUCH DECLARATION, THE 3 BUSINESS DAY PERIOD TO
42 RESIND THIS AGREEMENT IS EXTENDED TO 5 BUSINESS DAYS.
43 THIS AGREEMENT DOES NOT CHANGE YOUR DUTIES UNDER YOUR
44 PROPERTY INSURANCE POLICY, SUCH AS PROMPTLY NOTIFYING
45 YOUR INSURANCE COMPANY OF A LOSS AND MITIGATING YOUR
46 PROPERTY FROM FURTHER DAMAGE.

47
48 (2) (a) The assignee shall provide a copy of the assignment
49 agreement to the insurer within 5 days after execution of the
50 agreement, or within 48 hours after beginning nonemergency work,
51 whichever is earlier, if the insurer has a facsimile number and
52 email address on its website designated for the delivery of such
53 documents. This assignment agreement must be accompanied by a
54 written estimate of the work to be done, with unit prices
55 indicated where appropriate, and the basis for calculating lump
56 sum fees if unit prices are inappropriate. The estimate must be
57 timely updated if conditions require a change in scope. The
58 failure to comply with this requirement constitutes a defense to
59 any payment obligation under the policy or the assignment, if
60 the insurer can establish prejudice resulting from the failure.

61 (3) Notwithstanding any other law, the acceptance by a
62 person of any assignment agreement constitutes a waiver by the
63 assignee or transferee, and any subcontractor of the assignee or
64 transferee, of any and all claims against all named insureds for
65 payment arising from the specified loss, except that all named
66 insureds remain responsible for the payment of any deductible
67 amount provided for by the terms of the insurance policy and for
68 the cost of any betterment ordered by all named insureds. This



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69 waiver remains in effect notwithstanding any subsequent
70 determination that the assignment agreement is invalid or
71 notwithstanding the rescission of the assignment agreement by
72 all named insureds, except that the assignee is entitled to
73 payment for the reasonable cost of any contracted work performed
74 before the assignor rescinded the assignment agreement.

75 Section 2. This act shall take effect July 1, 2019.

76
77
78 ===== T I T L E A M E N D M E N T =====

79 And the title is amended as follows:

80 Delete everything before the enacting clause
81 and insert:

82 A bill to be entitled
83 An act relating to assignment of residential
84 homeowners property insurance post-loss benefits;
85 creating s. 627.7152, F.S.; providing that an
86 agreement to assign post-loss benefits of a
87 residential homeowner's property insurance policy is
88 not valid unless specified conditions are met;
89 requiring the assignee to provide a copy of the
90 assignment agreement and a specified written estimate
91 to the insurer within a specified timeframe; requiring
92 the estimate to be timely updated if conditions
93 require a change in scope; providing construction
94 relating to failure to comply with such requirement;
95 providing that a person's acceptance of an assignment
96 agreement constitutes a waiver by the assignee or
97 transferee, or any subcontractor of the assignee or



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98 transferee, of certain claims against named insureds,
99 except under specified circumstances; providing
100 construction relating to such waiver; providing an
101 effective date.



724484

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/04/2019	.	
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The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (11) is added to section 627.062,
Florida Statutes, to read:

627.062 Rate standards.—

(11) Attorney fees and costs paid by a property insurer
pursuant to s. 627.428 may not be included in the property
insurer's rate base and may not be used to justify a rate



724484

11 increase or rate change.

12 Section 2. Subsection (1) of section 627.409, Florida
13 Statutes, is amended to read:

14 627.409 Representations in applications; warranties.—

15 (1) Any statement or description made by or on behalf of an
16 insured or annuitant in an application for an insurance policy
17 or annuity contract, or in negotiations for a policy or
18 contract, is a representation and not a warranty. Except as
19 provided in subsection (3), a misrepresentation, omission,
20 concealment of fact, or incorrect statement may prevent recovery
21 under the contract or policy only if the misrepresentation,
22 omission, concealment of fact, or incorrect statement directly
23 relates to the cause of the claim being made and any of the
24 following apply:

25 (a) The misrepresentation, omission, concealment, or
26 statement is fraudulent or is material to the acceptance of the
27 risk or to the hazard assumed by the insurer.

28 (b) If the true facts relative to the loss claimed had been
29 known to the insurer pursuant to a policy requirement or other
30 requirement, the insurer in good faith would not have:

31 1. Issued the policy or contract;~~it would not have~~

32 2. Issued the policy or contract at a the same premium
33 rate at least 20 percent higher than the rate actually charged;~~it~~
34 ~~would not have~~

35 3. Issued a policy or contract in as large an amount;~~it~~ or

36 4. would not have Provided coverage with respect to the
37 hazard resulting in the loss.

38 Section 3. Section 627.422, Florida Statutes, is amended to
39 read:



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40 627.422 Assignment of policies or post-loss benefits.-A
41 policy may be assignable, or not assignable, as provided by its
42 terms.

43 (1) LIFE OR HEALTH INSURANCE POLICIES.-Subject to its terms
44 relating to assignability, any life or health insurance policy
45 under the terms of which the beneficiary may be changed upon the
46 sole request of the policyowner may be assigned either by pledge
47 or transfer of title, by an assignment executed by the
48 policyowner alone and delivered to the insurer, whether or not
49 the pledgee or assignee is the insurer. Any such assignment
50 shall entitle the insurer to deal with the assignee as the owner
51 or pledgee of the policy in accordance with the terms of the
52 assignment, until the insurer has received at its home office
53 written notice of termination of the assignment or pledge or
54 written notice by or on behalf of some other person claiming
55 some interest in the policy in conflict with the assignment.

56 (2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE
57 POLICIES.-A personal lines residential property insurance policy
58 or a commercial residential property insurance policy may not
59 restrict the assignment of post-loss benefits.

60 Section 4. Section 627.7152, Florida Statutes, is created
61 to read:

62 627.7152 Assignment of residential homeowner's property
63 insurance post-loss benefits; prelitigation invoice; offer of
64 settlement; annual reporting.-

65 (1) An agreement to assign post-loss benefits of a
66 residential homeowner's property insurance policy is not valid
67 unless the agreement:

68 (a) Is in writing;



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69 (b) Is limited to claims for work performed or work to be
70 performed by the assignee;

71 (c) Contains an accurate and up-to-date statement of the
72 scope of work to be performed;

73 (d) Allows the insured to rescind the assignment within 7
74 days after the execution of the assignment;

75 (e) Provides that the insured may be responsible for
76 payment for any work performed before the rescission of the
77 assignment; and

78 (f) Contains a provision, in 14-point boldfaced type, which
79 allows the insured to rescind the agreement within 7 days after
80 execution of the assignment, and with a notice that if the
81 assignment is rescinded, the homeowner is responsible to pay for
82 the work done up to the date of the rescission and that the
83 homeowner is not otherwise responsible to pay for the work
84 covered by the assignment.

85 (2) (a) The assignee shall provide a copy of the assignment
86 agreement to the insurer within 7 days after execution of the
87 agreement, or within 48 hours after beginning nonemergency work,
88 whichever is earlier, if the insurer has a facsimile number and
89 e-mail address on its website designated for the delivery of
90 such documents. This notice must be accompanied by a written
91 estimate of the work to be done, with unit prices indicated
92 where appropriate, and the basis for calculating lump sum fees
93 if unit prices are inappropriate. The estimate must be timely
94 updated if conditions require a change in scope. The failure to
95 comply with this requirement constitutes a defense to any
96 payment obligation under the policy or the assignment, if the
97 insurer can establish prejudice resulting from the failure.



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98 (b) The insurer may inspect the property at any time. If
99 the insurer fails to attempt in good faith to do so within 7
100 days after learning of the loss and promptly deliver to the
101 assignee written notice of any perceived deficiency in the
102 assignee's notice or the work being performed, the failure may
103 be raised to estop the insurer from asserting that work done was
104 not reasonably necessary or that the notice was insufficient to
105 comply with this section.

106 (3) Notwithstanding any other law, the acceptance by an
107 assignee of a valid assignment agreement constitutes a waiver by
108 the assignee or transferee, and any subcontractor of the
109 assignee or transferee, of any and all claims against named
110 insureds for payment arising from the specified loss, except
111 that all named insureds remain responsible for:

112 (a) The payment of any deductible amount provided for by
113 the terms of the insurance policy;

114 (b) The payment for work performed before the rescission of
115 the assignment agreement, if there is a rescission;

116 (c) The cost of any betterment specifically authorized by
117 the insured in a writing that identifies the work as betterment
118 for which the insured will be liable; and

119 (d) A misrepresentation of the existence of homeowner's
120 coverage by the homeowner.

121
122 The waiver in this subsection is valid even if the assignment
123 agreement is determined to be invalid.

124 (4) No later than 30 days before an assignee initiates
125 litigation against an insurer relating to a residential
126 homeowner's property insurance claim, the assignee must provide



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127 the insurer an invoice for all work that has been performed and
128 a current estimate of work remaining to be performed.

129 (5) In a civil action relating to a residential homeowner's
130 property insurance claim under a policy in which an assignment
131 agreement under this section was executed, an offer of
132 settlement under s. 768.79 by any party may be made no earlier
133 than 30 days after the civil action has commenced.

134 (6) The office shall require each insurer to report by
135 January 30, 2022, and each year thereafter, data on each
136 residential property insurance claim paid in the prior calendar
137 year pursuant to an assignment agreement. Such data must
138 include, but are not limited to, specific data about claims
139 adjustment and settlement timeframes and trends grouped by
140 whether litigated or not litigated, by loss adjustment expenses,
141 and by the amount and type of attorney fees incurred or paid.
142 The office may adopt rules to administer this subsection.

143 (7) This section does not apply to:

144 (a) An assignment, transfer, or conveyance granted to a
145 subsequent purchaser of the property with an insurable interest
146 in the property following a loss; or

147 (b) A power of attorney under chapter 709 which grants to a
148 management company, family member, guardian, or similarly
149 situated person of an insured the authority to act on behalf of
150 an insured as it relates to a property insurance claim.

151 Section 5. This act shall take effect July 1, 2019.

152
153 ===== T I T L E A M E N D M E N T =====

154 And the title is amended as follows:

155 Delete everything before the enacting clause



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156 and insert:

157 A bill to be entitled
158 An act relating to insurance; amending s. 627.062,
159 F.S.; providing that certain attorney fees and costs;
160 providing an effective paid by property insurers may
161 not be included in the property insurer's rate base
162 and may not be used to justify a rate increase or rate
163 change; amending s. 627.409, F.S.; adding and revising
164 conditions under which certain misrepresentations,
165 omissions, concealments of fact, or incorrect
166 statements may prevent recovery under an insurance
167 policy or annuity contract; amending s. 627.422, F.S.;
168 providing that personal lines residential and
169 commercial residential property insurance policies may
170 not restrict the assignment of post-loss benefits;
171 creating s. 627.7152, F.S.; providing that an
172 agreement to assign post-loss benefits of a
173 residential homeowner's property insurance is not
174 valid unless specified conditions are met; requiring
175 the assignee, under certain circumstances, to provide
176 a copy of the assignment agreement and a specified
177 written estimate to the insurer within a specified
178 timeframe; requiring the estimate to be timely updated
179 if conditions require a change in scope; providing
180 construction relating to failure to comply with such
181 requirement; authorizing an insurer to inspect the
182 property at any time; providing that an insurer's
183 failure to make a certain attempt to inspect the
184 property and deliver a certain notice, under certain



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185 circumstances, may estop certain assertions by the
186 insurer; providing that an assignee's acceptance of a
187 valid assignment agreement constitutes a waiver by the
188 assignee or transferee, or any subcontractor of the
189 assignee or transferee, of certain claims against
190 named insureds, except under specified circumstances;
191 providing construction relating to the validity of
192 such waiver; requiring an assignee, before initiating
193 certain litigation against an insurer, to provide a
194 certain invoice and estimate to the insurer within a
195 specified timeframe; providing that certain offers of
196 settlement in certain civil actions may not be made
197 until after a specified timeframe; requiring the
198 office to require each insurer to annually report
199 specified data relating to certain claims paid
200 pursuant to assignment agreements; authorizing the
201 office to adopt rules; providing applicability;
202 providing an effective date.



545092

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
03/04/2019	.	
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The Committee on Banking and Insurance (Lee) recommended the following:

1 **Senate Substitute for Amendment (724484) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 627.7152, Florida Statutes, is created
7 to read:

8 627.7152 Assignment of residential homeowner's property
9 insurance post-loss benefits.-

10 (1) Under an agreement to assign post-loss benefits, an



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11 assignee is bound by all post-loss obligations specified in the
12 residential homeowner's property insurance policy.

13 Notwithstanding any policy provision or law to the contrary,
14 however, the obligation to submit to an examination under oath
15 shall be limited to one examination under oath by the insurer or
16 the insurer's representative relating to an assignment agreement
17 and services provided by the assignee. The examination under
18 oath:

19 (a) Is limited to the person designated by the assignee as
20 the person with the most knowledge of the assignment agreement
21 and services provided pursuant to the assignment;

22 (b) Must occur in the county where the property for which
23 the loss was assigned and the work performed or in the county
24 where the assignee has offices or agents or in the county where
25 the person designated by the assignee as the person with the
26 most knowledge resides; and

27 (c) Must not last more than 3 hours.

28 (2) (a) If an assignee commences an action in any court of
29 this state based upon or including the same claim against the
30 same adverse party that the assignee has previously voluntarily
31 dismissed in a court of this state, the court may as it deems
32 proper, order the assignee to pay the costs of the adverse party
33 of the claim previously voluntarily dismissed. Upon the issuance
34 of such order, the court shall stay the proceedings in the
35 subsequent action until the assignee has complied with the
36 order.

37 (b) Upon a finding by the court that an assignee has not
38 complied with its post-loss obligations under the residential
39 homeowner's insurance policy pursuant to this section, the court



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40 may not award attorney fees to the assignee under s. 627.428
41 directly related to the assignee's noncompliance with post-loss
42 obligations.

43
44 Notwithstanding the execution of an assignment, a homeowner
45 remains bound by any duty under the policy to take reasonable
46 steps to prevent further damage to the property.

47 Section 2. This act shall apply to assignment agreements
48 executed on or after July 1, 2019.

49 Section 3. This act shall take effect July 1, 2019.

50
51 ===== T I T L E A M E N D M E N T =====

52 And the title is amended as follows:

53 Delete everything before the enacting clause
54 and insert:

55 A bill to be entitled
56 An act relating to assignment of residential
57 homeowner's property insurance post-loss benefits;
58 creating s. 627.7152, F.S.; providing that an assignee
59 is bound by all post-loss obligations specified in a
60 residential homeowner's insurance policy; providing
61 that the obligation of the assignee to submit to an
62 examination under oath is limited to one examination
63 of a person designated by the assignee; providing
64 criteria for the assignee to designate the person who
65 will be examined under oath; providing requirements as
66 to the location and length of time of the examination
67 under oath; providing that if an assignee brings an
68 action based upon or including the same claim as a



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69 previous action the assignee voluntarily dismissed,
70 the court may order an assignee to pay the costs of
71 the adverse party and shall stay the action until the
72 assignee has complied with the order; providing that
73 the court may not award the assignee an attorney fee
74 under s. 627.428, F.S., directly related to the
75 assignee's noncompliance with post loss obligations;
76 specifying that notwithstanding any assignment the
77 homeowner remains bound by any duty under the policy
78 to prevent further damage to the property; providing
79 applicability; providing an effective date.



487740

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/04/2019	.	
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The Committee on Banking and Insurance (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 627.7152, Florida Statutes, is created
to read:

627.7152 Assignment of residential homeowner's property
insurance post-loss benefits.-

(1) Under an agreement to assign post-loss benefits, an
assignee is bound by all post-loss obligations specified in the



487740

11 residential homeowner's property insurance policy.
12 Notwithstanding any policy provision or law to the contrary,
13 however, the obligation to submit to an examination under oath
14 shall be limited to one examination under oath by the insurer or
15 the insurer's representative relating to an assignment agreement
16 and services provided by the assignee. The examination under
17 oath:

18 (a) Is limited to the person designated by the assignee as
19 the person with the most knowledge of the assignment agreement
20 and services provided pursuant to the assignment;

21 (b) Must occur in the county where the property for which
22 the loss was assigned and the work performed or in the county
23 where the assignee has offices or agents or in the county where
24 the person designated by the assignee as the person with the
25 most knowledge resides; and

26 (c) Must not last more than 3 hours.

27 (2) (a) If an assignee commences an action in any court of
28 this state based upon or including the same claim against the
29 same adverse party that the assignee has previously voluntarily
30 dismissed in a court of this state, the court may as it deems
31 proper, order the assignee to pay the costs of the adverse party
32 of the claim previously voluntarily dismissed. Upon the issuance
33 of such order, the court shall stay the proceedings in the
34 subsequent action until the assignee has complied with the
35 order.

36 (b) Upon a finding by the court that an assignee has not
37 complied with its post-loss obligations under the residential
38 homeowner's insurance policy pursuant to this section, the court
39 may not award attorney fees to the assignee under s. 627.428



487740

40 directly related to the assignee's noncompliance with post-loss
41 obligations.

42
43 Notwithstanding the execution of an assignment, a homeowner
44 remains bound by any duty under the policy to take reasonable
45 steps to prevent further damage to the property.

46 Section 2. This act shall apply to assignment agreements
47 executed on or after July 1, 2019.

48 Section 3. This act shall take effect July 1, 2019.

49
50 ===== T I T L E A M E N D M E N T =====

51 And the title is amended as follows:

52 Delete everything before the enacting clause
53 and insert:

54 A bill to be entitled
55 An act relating to assignment of residential
56 homeowner's property insurance post-loss benefits;
57 creating s. 627.7152, F.S.; providing that an assignee
58 is bound by all post-loss obligations specified in a
59 residential homeowner's insurance policy; providing
60 that the obligation of the assignee to submit to an
61 examination under oath is limited to one examination
62 of a person designated by the assignee; providing
63 criteria for the assignee to designate the person who
64 will be examined under oath; providing requirements as
65 to the location and length of time of the examination
66 under oath; providing that if an assignee brings an
67 action based upon or including the same claim as a
68 previous action the assignee voluntarily dismissed,



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69 the court may order an assignee to pay the costs of
70 the adverse party and shall stay the action until the
71 assignee has complied with the order; providing that
72 the court may not award the assignee an attorney fee
73 under s. 627.428, F.S., directly related to the
74 assignee's noncompliance with post loss obligations;
75 specifying that notwithstanding any assignment the
76 homeowner remains bound by any duty under the policy
77 to prevent further damage to the property; providing
78 applicability; providing an effective date.



711030

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
03/04/2019	.	
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The Committee on Banking and Insurance (Lee) recommended the following:

1 **Senate Substitute for Amendment (923034) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 627.7152, Florida Statutes, is created
7 to read:

8 627.7152 Assignment of residential homeowner's property
9 insurance post-loss benefits.-

10 (1) Under an agreement to assign post-loss benefits, an



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11 assignee is bound by all post-loss obligations specified in the
12 residential homeowner's property insurance policy.

13 Notwithstanding any policy provision or law to the contrary,
14 however, the obligation to submit to an examination under oath
15 shall be limited to one examination under oath by the insurer or
16 the insurer's representative relating to an assignment agreement
17 and services provided by the assignee. The examination under
18 oath:

19 (a) Is limited to the person designated by the assignee as
20 the person with the most knowledge of the assignment agreement
21 and services provided pursuant to the assignment;

22 (b) Must occur in the county where the property for which
23 the loss was assigned and the work performed or in the county
24 where the assignee has offices or agents or in the county where
25 the person designated by the assignee as the person with the
26 most knowledge resides; and

27 (c) Must not last more than 3 hours.

28 (2) (a) If an assignee commences an action in any court of
29 this state based upon or including the same claim against the
30 same adverse party that the assignee has previously voluntarily
31 dismissed in a court of this state, the court may as it deems
32 proper, order the assignee to pay the costs of the adverse party
33 of the claim previously voluntarily dismissed. Upon the issuance
34 of such order, the court shall stay the proceedings in the
35 subsequent action until the assignee has complied with the
36 order.

37 (b) Upon a finding by the court that an assignee has not
38 complied with its post-loss obligations under the residential
39 homeowner's insurance policy pursuant to this section, the court



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40 may not award attorney fees to the assignee under s. 627.428
41 directly related to the assignee's noncompliance with post-loss
42 obligations.

43
44 Notwithstanding the execution of an assignment, a homeowner
45 remains bound by any duty under the policy to take reasonable
46 steps to prevent further damage to the property.

47 Section 2. This act shall apply to assignment agreements
48 executed on or after July 1, 2019.

49 Section 3. This act shall take effect July 1, 2019.

50
51 ===== T I T L E A M E N D M E N T =====

52 And the title is amended as follows:

53 Delete everything before the enacting clause
54 and insert:

55 A bill to be entitled
56 An act relating to assignment of residential
57 homeowner's property insurance post-loss benefits;
58 creating s. 627.7152, F.S.; providing that an assignee
59 is bound by all post-loss obligations specified in a
60 residential homeowner's insurance policy; providing
61 that the obligation of the assignee to submit to an
62 examination under oath is limited to one examination
63 of a person designated by the assignee; providing
64 criteria for the assignee to designate the person who
65 will be examined under oath; providing requirements as
66 to the location and length of time of the examination
67 under oath; providing that if an assignee brings an
68 action based upon or including the same claim as a



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69 previous action the assignee voluntarily dismissed,
70 the court may order an assignee to pay the costs of
71 the adverse party and shall stay the action until the
72 assignee has complied with the order; providing that
73 the court may not award the assignee an attorney fee
74 under s. 627.428, F.S., directly related to the
75 assignee's noncompliance with post loss obligations;
76 specifying that notwithstanding any assignment the
77 homeowner remains bound by any duty under the policy
78 to prevent further damage to the property; providing
79 applicability; providing an effective date.



672446

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/04/2019	.	
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The Committee on Banking and Insurance (Thurston) recommended the following:

1 **Senate Substitute for Amendment (487740) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 627.7152, Florida Statutes, is created
7 to read:

8 627.7152 Assignment of residential homeowner's property
9 insurance post-loss benefits.—

10 (1) An agreement to assign post-loss benefits of a



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11 residential homeowner's property insurance policy is not valid
12 unless the agreement:

13 (a) Is in writing;

14 (b) Is limited to claims for work performed or work to be
15 performed by the assignee to protect or repair property from
16 damage, including, but not limited to, work to stabilize,
17 protect, repair, or improve such property;

18 (c) Allows the insured to rescind the assignment within 3
19 days after the execution of the assignment without a penalty or
20 fee;

21 (d) Contains the following notice in 14-point bold type to
22 the consumer:

23
24 "WARNING: IF YOU HAVE RESIDENTIAL HOMEOWNERS PROPERTY
25 INSURANCE, YOU MAY BE AGREEING TO GIVE UP CERTAIN
26 RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD
27 PARTY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE
28 SIGNING IT. WITH THE EXCEPTION OF PAYMENT FOR WORK
29 ALREADY PERFORMED BY A SERVICE PROVIDER TO PREVENT
30 ADDITIONAL DAMAGE FROM OCCURRING TO THE PROPERTY
31 RESULTING FROM EMERGENCY OR URGENT CIRCUMSTANCES, YOU
32 HAVE THE RIGHT TO RESCIND THIS AGREEMENT WITHOUT
33 PENALTY WITHIN 3 BUSINESS DAYS AFTER THE DATE THIS
34 AGREEMENT IS EXECUTED. IF THE ASSIGNMENT IS RESCINDED,
35 YOU ARE RESPONSIBLE TO PAY FOR THE WORK DONE UP TO THE
36 DATE OF THE RESCISSION AND YOU ARE NOT OTHERWISE
37 RESPONSIBLE TO PAY FOR THE WORK COVERED BY THE
38 ASSIGNMENT. IF WORK IS BEING PERFORMED AS A RESULT OF
39 DAMAGES CAUSED BY AN EVENT FOR WHICH THE GOVERNOR HAS



672446

40 DECLARED A STATE OF EMERGENCY AND IS WITHIN 1 YEAR
41 AFTER SUCH DECLARATION, THE 3 BUSINESS DAY PERIOD TO
42 RESCIND THIS AGREEMENT IS EXTENDED TO 5 BUSINESS DAYS.
43 THIS AGREEMENT DOES NOT CHANGE YOUR DUTIES UNDER YOUR
44 PROPERTY INSURANCE POLICY, SUCH AS PROMPTLY NOTIFYING
45 YOUR INSURANCE COMPANY OF A LOSS AND MITIGATING YOUR
46 PROPERTY FROM FURTHER DAMAGE.

47
48 (2) The assignee shall provide a copy of the assignment
49 agreement to the insurer within 5 days after execution of the
50 agreement, or within 48 hours after beginning nonemergency work,
51 whichever is earlier, if the insurer has a facsimile number and
52 email address on its website designated for the delivery of such
53 documents. This assignment agreement must be accompanied by a
54 written estimate of the work to be done, with unit prices
55 indicated where appropriate, and the basis for calculating lump
56 sum fees if unit prices are inappropriate. The estimate must be
57 timely updated if conditions require a change in scope. The
58 failure to comply with this requirement constitutes a defense to
59 any payment obligation under the policy or the assignment, if
60 the insurer can establish prejudice resulting from the failure.

61 (3) Before emergency work commences, the remediator,
62 contractor, or other service provider must inform the homeowner
63 in writing of the obvious conditions that require priority
64 repairs and mitigation, including, but not limited to, flooding
65 or standing water, exposed electrical wiring, a hole or breach
66 in the roof or an exterior wall, or significant foundation
67 cracks.

68 (4) The insurer may inspect the property at any time. If



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69 the insurer fails to attempt in good faith to do so within 5
70 days after receiving a copy of the assignment agreement
71 described in subsection (2) and to promptly deliver to the
72 assignee written notice of any perceived deficiency in the
73 assignee's notice or the work being performed, the failure may
74 be raised to estop the insurer from asserting that work done was
75 not reasonably necessary or that the notice was insufficient to
76 comply with this section.

77 (5) Notwithstanding any other law, the acceptance by a
78 person of any assignment agreement constitutes a waiver by the
79 assignee or transferee, and any subcontractor of the assignee or
80 transferee, of any and all claims against all named insureds for
81 payment arising from the specified loss, except that all named
82 insureds remain responsible for the payment of any deductible
83 amount provided for by the terms of the insurance policy and for
84 the cost of any betterment ordered by all named insureds. This
85 waiver remains in effect notwithstanding any subsequent
86 determination that the assignment agreement is invalid or
87 notwithstanding the rescission of the assignment agreement by
88 all named insureds, except that the assignee is entitled to
89 payment for the reasonable cost of any contracted work performed
90 before the assignor rescinded the assignment agreement.

91 Section 2. This act shall take effect July 1, 2019.

92
93 ===== T I T L E A M E N D M E N T =====

94 And the title is amended as follows:

95 Delete everything before the enacting clause
96 and insert:

97 A bill to be entitled



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98 An act relating to assignment of residential
99 homeowners property insurance post-loss benefits;
100 creating s. 627.7152, F.S.; providing that an
101 agreement to assign post-loss benefits of a
102 residential homeowner's property insurance policy is
103 not valid unless specified conditions are met;
104 requiring the assignee to provide a copy of the
105 assignment agreement and a specified written estimate
106 to the insurer within a specified timeframe; requiring
107 the estimate to be timely updated if conditions
108 require a change in scope; providing construction
109 relating to failure to comply with such requirement;
110 requiring service providers to inform homeowners of
111 certain conditions before commencing emergency work;
112 authorizing insurers to inspect the property at any
113 time; providing construction if an insurer fails to
114 attempt in good faith to inspect the property within a
115 certain timeframe; providing that a person's
116 acceptance of an assignment agreement constitutes a
117 waiver by the assignee or transferee, or any
118 subcontractor of the assignee or transferee, of
119 certain claims against named insureds, except under
120 specified circumstances; providing construction
121 relating to such waiver; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
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	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 501.172, Florida Statutes, is created to
read:

501.172 Agreements between service providers and
consumers.—

(1) DEFINITIONS.—As used in this section:

(a) "Consumer" means a person who has an interest in, or



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11 who has a right to manage real or personal property, including
12 improvements upon such property, regardless of whether for
13 personal or business purposes, including an owner, a tenant, a
14 licensee, or a property manager.

15 (b) "Service provider" means a person who enters into an
16 agreement with a consumer for the stabilization, repair,
17 improvement, or remediation of real or personal property.

18 (2) LIMITATION ON AGREEMENTS BETWEEN SERVICE PROVIDERS AND
19 CONSUMERS UNDER URGENT OR EMERGENCY CIRCUMSTANCES.—

20 (a) If a consumer acts under urgent or emergency
21 circumstances to protect property from damage and enters into an
22 agreement with a service provider to stabilize, protect, repair,
23 or improve such property, the service provider may only contract
24 for, receive, or acquire in any manner from the consumer at such
25 time the right to payment for the work necessary to stabilize,
26 protect, and prevent additional damage to the property. Such
27 right to payment may include:

28 1. A post-loss assignment of benefits under a property
29 insurance policy or under the comprehensive or combined
30 additional coverage under a motor vehicle insurance policy for
31 coverage of windshield damage, executed pursuant to subsection
32 (3), except that notwithstanding s. 626.9373 and s. 627.428, any
33 right to attorney fees or costs against an insurer by any such
34 service provider shall be as provided in subsection (4). A
35 service provider may not receive from a consumer acting under
36 urgent or emergency circumstances an assignment of post-loss
37 benefits in excess of:

38 a. Under a property insurance policy, in excess of the
39 greater of \$3,000 or 1 percent of the Coverage A limit under



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40 such policy.

41 b. Under a motor vehicle insurance policy for comprehensive
42 or combined additional coverage for windshield damage, in excess
43 of \$500.

44 2. An acknowledgement of the rights that may exist, if any,
45 under chapter 713 to make a claim upon the property.

46 (b) An agreement between a consumer and a service provider
47 that provides greater rights to the service provider under such
48 urgent or emergency circumstances, including alleged rights to
49 do further repairs, remediation, or improvements or an
50 assignment of rights, benefits, causes of action, or other
51 contractual rights in violation of this subsection is void.

52 (3) REQUIREMENTS FOR AGREEMENTS CONTAINING A POST-LOSS
53 ASSIGNMENT OF BENEFITS.—In all circumstances, an agreement
54 entered into by a consumer and a service provider after a loss
55 or damage has occurred to the consumer's property which contains
56 a post-loss assignment of benefits to the service provider or
57 some third person is only valid if:

58 (a) The consumer or service provider provides a copy of the
59 agreement to the consumer's insurer, sent to the location
60 designated for receipt of such agreements if specified in the
61 insurance policy, within 3 business days after the agreement's
62 execution;

63 (b) The agreement contains a provision allowing the
64 consumer to rescind the agreement in a writing signed by the
65 assignor, if the consumer provides written notice of the
66 rescission to the service provider within 14 days of the
67 execution of the agreement or at least 30 days after the
68 execution of the agreement if the service provider has not begun



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69 substantial work on the property;

70 (c) The agreement does not impose any fee or penalty for
71 rescinding the agreement, for check processing, for not using a
72 specified service provider for permanent repairs, or for
73 mortgage processing;

74 (d) The agreement does not prevent or inhibit an insurer
75 from communicating with the consumer at any time;

76 (e) The agreement, if made under a motor vehicle insurance
77 policy for comprehensive or combined additional coverage for
78 windshield damage, does not assign the right to more than \$500
79 in post-loss benefits;

80 (f) The agreement does not transfer or create any authority
81 to adjust, negotiate, or settle any portion of a claim to a
82 person or an entity who is not authorized to adjust, negotiate,
83 or settle a claim on behalf of the insured or claimant under
84 part VI of chapter 626;

85 (g) The agreement does not transfer to the assignee any
86 greater right to attorney fees and costs from the insurer than
87 the right to attorney fees and costs as provided for in
88 subsection (4); and

89 (h) The agreement relates only to work performed or to be
90 performed by the service provider.

91 (4) ATTORNEY FEES.—

92 (a) In a civil action under a property insurance policy or
93 under the comprehensive or combined additional coverage under a
94 motor vehicle insurance policy for coverage of windshield
95 damage, between an insurer and a service provider who obtains an
96 assignment of post-loss benefits, the prevailing party has the
97 right to attorney fees and costs from the:



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98 1. Insurer, if the service provider is the prevailing
99 party.

100 2. Service provider, if the insurer is the prevailing
101 party.

102 (b) The prevailing party is the party which prevails on the
103 significant issues of the case. The court may determine that
104 there is no prevailing party in a case. In determining if there
105 is a prevailing party, the court must consider:

106 1. The issues litigated;

107 2. The amount of the claims by the service provider versus
108 the amount recovered;

109 3. The existence of setoffs and counterclaims, if any; and

110 4. The amounts offered by either party to resolve the
111 issues prior to or during litigation.

112 (5) LIMITATION ON RECOVERY FROM ASSIGNOR.—An assignee
113 service provider and any subcontractor of the service provider
114 that accepts an assignment of post-loss benefits waives any and
115 all claims against a consumer, except as provided herein. The
116 consumer remains responsible for the payment of any deductible
117 amount provided for by the terms of the insurance policy, and
118 for the cost of any betterment ordered by the consumer. This
119 subsection does not prohibit the assignee from collecting or
120 attempting to collect money from, maintaining an action at law
121 against, or claiming a lien on the property of a consumer or
122 reporting a consumer to a credit agency for payment of the
123 amount of the insurance deductible, or any amount attributable
124 to betterment ordered by the consumer. This waiver is effective
125 notwithstanding any subsequent determination that the assignment
126 agreement is invalid or the rescission of the assignment



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127 agreement by the consumer.

128 (6) ACTIONS BASED UPON THE SAME CLAIM AND PARTY PREVIOUSLY
129 VOLUNTARILY DISMISSED.—If a service provider assignee commences
130 an action in any court of this state based upon or including the
131 same claim against the same adverse party that such assignee has
132 previously voluntarily dismissed in a court of this state the
133 court may, as it deems proper, order the assignee to pay the
134 attorney fees and costs of the adverse party of the action
135 previously voluntarily dismissed. Upon the issuance of such
136 order, the court shall stay the proceedings in the subsequent
137 action until the assignee has complied with the order.

138 (7) APPLICATION.—This section does not apply to a power of
139 attorney granted to a management company, family member,
140 guardian, or similarly situated person which complies with
141 chapter 709 and which may include, as part of the authority
142 granted, the authority to act in place of a principal as it
143 relates to a property insurance or motor vehicle insurance
144 claim, if such power of attorney is not provided to a service
145 provider or any person with a personal or financial interest in
146 the service provider.

147 (8) LEGISLATIVE FINDINGS AND INTENT.—

148 (a) The Legislature recognizes that the provisions of s.
149 626.9373 and s. 627.428 are intended to level the economic
150 playing field between the economically-disadvantaged insurance
151 company and the individual consumer. The award of attorney fees
152 to the individual consumer under these statutes makes the
153 consumer financially whole and discourages insurance companies
154 from contesting valid claims.

155 (b) The increased use of post-loss assignment of benefits



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156 by service providers, however, has led to a dramatic increase in
157 assignment of benefits litigation. The Legislature recognizes
158 that additional costs incurred by insurance companies, in
159 contesting assignment of benefits-related litigation or paying
160 inflated claims for insurance proceeds, are factored into the
161 rates charged for property insurance and motor vehicle
162 insurance.

163 (c) By explicitly providing that notwithstanding s.
164 626.9373 and s. 627.428, any right to attorney fees or costs
165 against an insurer by a service provider shall be as provided in
166 s. 501.172, the Legislature is addressing the dramatic increase
167 in assignment of benefits litigation by nonparties to property
168 insurance policies and motor vehicle insurance policies for
169 coverage of windshield damage and the associated increase in
170 insurance premiums that are experienced by consumers. The
171 Legislature is maintaining its public policy of making consumers
172 financially whole and reducing inequities between consumers and
173 their insurance companies, as such consumers have the right to
174 obtain attorney fees under s. 626.9373 and s. 627.428 in civil
175 actions they bring against their insurers.

176 Section 2. Section 626.9373, Florida Statutes, is amended
177 to read:

178 626.9373 Attorney ~~Attorney's~~ fees.—

179 (1) Upon the rendition of a judgment or decree by any court
180 of this state against a surplus lines insurer in favor of any
181 named or omnibus insured or the named beneficiary under a policy
182 or contract executed by the insurer on or after the effective
183 date of this act, the trial court or, if the insured or
184 beneficiary prevails on appeal, the appellate court, shall



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185 adjudge or decree against the insurer in favor of the insured or
186 beneficiary a reasonable sum as fees or compensation for the
187 insured's or beneficiary's attorney prosecuting the lawsuit for
188 which recovery is awarded.

189 (2) If awarded, attorney ~~attorney's~~ fees or compensation
190 shall be included in the judgment or decree rendered in the
191 case.

192 (3) Attorney fees may not be awarded under this section to
193 an assignee of post-loss benefits who is a service provider
194 under s. 501.172.

195 Section 3. Section 627.428, Florida Statutes, is amended to
196 read:

197 627.428 Attorney fees ~~Attorney's fee~~.-

198 (1) Upon the rendition of a judgment or decree by any of
199 the courts of this state against an insurer and in favor of any
200 named or omnibus insured or the named beneficiary under a policy
201 or contract executed by the insurer, the trial court or, in the
202 event of an appeal in which the insured or beneficiary prevails,
203 the appellate court shall adjudge or decree against the insurer
204 and in favor of the insured or beneficiary a reasonable sum as
205 fees or compensation for the insured's or beneficiary's attorney
206 prosecuting the suit in which the recovery is had.

207 (2) As to suits based on claims arising under life
208 insurance policies or annuity contracts, no such attorney fees
209 ~~attorney's fee~~ shall be allowed if such suit was commenced prior
210 to expiration of 60 days after proof of the claim was duly filed
211 with the insurer.

212 (3) When so awarded, compensation or fees of the attorney
213 shall be included in the judgment or decree rendered in the



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214 case.

215 (4) Attorney fees may not be awarded under this section to
216 an assignee of post-loss benefits who is a service provider
217 under s. 501.172.

218 Section 4. The creation of s. 501.172, Florida Statutes,
219 and the amendments made to ss. 626.9373 and 627.428, Florida
220 Statutes, by this act apply to actions pending on or after July
221 1, 2019, to the extent that the act does not require the
222 invalidation of any provision of a contract executed before July
223 1, 2019.

224 Section 5. This act shall take effect July 1, 2019.

225

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

227 And the title is amended as follows:

228 Delete everything before the enacting clause
229 and insert:

230 A bill to be entitled
231 An act relating to agreements between service
232 providers and consumers; creating s. 501.172, F.S.;
233 defining terms; specifying limitations and authorized
234 provisions relating to a service provider's right to
235 payment under certain agreements with consumers under
236 urgent or emergency circumstances; specifying
237 requirements, limitations, and prohibited provisions
238 for agreements containing a post-loss assignment of
239 benefits; providing that a prevailing party under
240 certain policies and coverages has the right to
241 attorney fees and costs; providing that a court need
242 not determine there is a prevailing party; providing



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243 factors a court must consider in determining who the
244 prevailing party is under certain circumstances;
245 providing construction relating to waiver and
246 limitations on recovery; authorizing a court to order
247 an assignee to pay attorney fees and costs under
248 certain circumstances; requiring the court to stay
249 proceedings under certain circumstances; providing
250 applicability; providing legislative findings and
251 intent; amending ss. 626.9373 and 627.428, F.S.;
252 providing that attorney fees under certain provisions
253 of the Florida Insurance Code may not be awarded to an
254 assignee of post-loss benefits who is a service
255 provider; providing applicability; providing an
256 effective date.



336048

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/04/2019	.	
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	.	

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

1 **Senate Amendment to Amendment (306982) (with title**
2 **amendment)**

3
4 Delete line 224
5 and insert:

6 Section 5. (1) Within 60 days after the effective date of
7 this section, the Office of Insurance Regulation shall enter
8 into a contract with an independent consultant to calculate the
9 savings expected as a result of this act. The contract must
10 require the use of generally accepted actuarial techniques and



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11 standards in determining the expected impact on losses and
12 expenses. By September 15, 2019, the office shall submit to the
13 Governor, the President of the Senate, and the Speaker of the
14 House of Representatives a report concerning the results of the
15 independent consultant's calculations.

16 (2) By October 1, 2019, an insurer writing property
17 insurance in this state shall make a rate filing with the Office
18 of Insurance Regulation. A rate certification does not satisfy
19 this requirement. If the insurer requests a rate in excess of a
20 10 percent reduction as applied to the current rate in its
21 overall base rate for property insurance, the insurer must
22 include in its rate filing a detailed explanation of the reasons
23 for its failure to achieve a 10 percent reduction.

24 (3) By January 1, 2021, an insurer writing property
25 insurance in this state shall make a rate filing with the Office
26 of Insurance Regulation. A rate certification does not satisfy
27 this requirement. If the insurer requests a rate in excess of a
28 25 percent reduction as applied to the rate in effect as of July
29 1, 2019, in its overall base rate for property insurance since
30 July 1, 2019, the insurer must include in its rate filing a
31 detailed explanation of the reasons for its failure to achieve a
32 25 percent reduction.

33 (4) If an insurer fails to provide the detailed explanation
34 required by subsection (2) or subsection (3), the Office of
35 Insurance Regulation must order the insurer to stop writing new
36 property insurance policies in this state until the insurer
37 provides the required explanation.

38 (5) This section shall take effect upon this act becoming a
39 law.



40 Section 6. Except as otherwise expressly provided in this
41 act and except for this section, which shall take effect upon
42 this act becoming a law, this act shall take effect July 1,
43 2019.

44
45 ===== T I T L E A M E N D M E N T =====

46 And the title is amended as follows:

47 Delete lines 255 - 256

48 and insert:

49 provider; providing applicability; requiring the
50 Office of Insurance Regulation, within a certain
51 timeframe, to enter into a contract with an
52 independent consultant for certain purposes; providing
53 requirements for the contract; requiring the office to
54 submit, by a specified date, a certain report to the
55 Governor and Legislature; requiring property insurers,
56 by specified dates, to make full rate filings with the
57 office; requiring such insurers to include a certain
58 explanation under certain circumstances; requiring the
59 office to order such an insurer to stop writing new
60 policies if the insurer fails to provide such
61 explanation; providing effective dates.



892198

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/04/2019	.	
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The Committee on Banking and Insurance (Thurston) recommended the following:

1 **Senate Substitute for Amendment (306982) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 501.172, Florida Statutes, is created to
7 read:

8 501.172 Agreements between service providers and
9 consumers.—

10 (1) DEFINITIONS.—As used in this section, the term:



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11 (a) "Consumer" means a person who has an interest in or who
12 has a right to manage real property, including improvements upon
13 such property, regardless of whether for personal or business
14 purposes. The term includes an owner, a tenant, a licensee, or a
15 property manager.

16 (b) "Service provider" means a person who enters into an
17 agreement with a consumer for the stabilization, repair,
18 improvement, or remediation of real property.

19 (2) REQUIREMENTS FOR AGREEMENTS CONTAINING A POST-LOSS
20 ASSIGNMENT OF BENEFITS.—

21 (a) In all circumstances, an agreement entered into by a
22 consumer and a service provider after a loss or damage has
23 occurred to the consumer's property which contains a post-loss
24 assignment of benefits to the service provider is only valid if:

25 1. The consumer or service provider provides a copy of the
26 agreement to the consumer's insurer within 5 business days after
27 the agreement's execution;

28 2. The agreement contains a provision allowing the consumer
29 to rescind the agreement in a writing signed by the consumer if
30 the consumer provides written notice of the rescission to the
31 service provider within 3 days after the execution of the
32 agreement;

33 3. The agreement does not impose any fee or penalty for
34 rescinding the agreement, for check processing, for not using a
35 specified service provider for permanent repairs, or for
36 mortgage processing;

37 4. The agreement does not prevent or inhibit an insurer
38 from communicating with the consumer at any time;

39 5. The agreement does not transfer or create any authority



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40 to adjust, negotiate, or settle any portion of a claim to a
41 person or an entity who is not authorized to adjust, negotiate,
42 or settle a claim on behalf of the insured or claimant under
43 part VI of chapter 626. However, this subparagraph does not
44 prevent the service provider from negotiating with the insurer
45 on the limited issues of the scope of the work to be performed
46 under the assignment and the pricing therefore;

47 6. The agreement contains an acknowledgement of the rights
48 that may exist, if any, under chapter 713 to make a claim upon
49 the property;

50 7. The agreement does not transfer to the service provider
51 any greater right to attorney fees and costs from the insurer
52 than the right to attorney fees and costs as provided for in
53 subsection (3); and

54 8. The agreement relates only to work performed or to be
55 performed by the service provider.

56 (b) Under an agreement to assign post-loss benefits, a
57 service provider is bound by all post-loss obligations specified
58 in the residential homeowner's property insurance policy to the
59 extent possible by the service provider and limited to the scope
60 of the assignment. Notwithstanding any policy provision or law
61 to the contrary, the obligation to submit to an examination
62 under oath is limited to 1 examination under oath by the insurer
63 or the insurer's representative relating to an assignment
64 agreement and services provided by the service provider. The
65 examination under oath:

66 1. Is limited to the person designated by the service
67 provider as the person with the most knowledge of the assignment
68 agreement and services provided pursuant to the assignment;



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69 2. Must occur in the county where the property for which
70 the loss was assigned and the work performed or in the county
71 where the service provider has offices or agents or in the
72 county where the person designated by the service provider as
73 the person with the most knowledge resides; and

74 3. May not last more than 3 hours.

75 (c) Upon a finding by the court that a service provider has
76 not complied with its post-loss obligations pursuant to this
77 section, the court may not award attorney fees to the service
78 provider under s. 501.172 directly related to the service
79 provider's noncompliance with post-loss obligations.

80 (3) ATTORNEY FEES.—

81 (a) In a civil action under a homeowner's residential
82 property insurance policy which is between an insurer and a
83 service provider who obtains an assignment of post-loss
84 benefits, the prevailing party has the right to attorney fees
85 and costs from the:

86 1. Insurer, if the service provider is the prevailing
87 party.

88 2. Service provider, if the insurer is the prevailing
89 party. An insurer may not be found to be a prevailing party
90 unless it serves an offer of judgment upon the service provider
91 either 10 days after the suit commences or 45 days prior to
92 trial, providing the service provider with 30 days to accept the
93 offer and the recovery by the service provider is 25 percent
94 less than the offer of judgment from the insurer.

95 (b) The prevailing party is the party that prevails on the
96 significant issues of the case. The court may determine that
97 there is no prevailing party in a case. In determining if there



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98 is a prevailing party, the court shall consider:

99 1. The issues litigated;

100 2. The amount of the claims by the service provider versus
101 the amount recovered;

102 3. The existence of setoffs and counterclaims, if any; and

103 4. The amounts offered by either party to resolve the
104 issues before or during litigation.

105 (4) LIMITATION ON RECOVERY FROM SERVICE PROVIDER.—

106 Notwithstanding any other law, the acceptance by a person of any
107 assignment agreement constitutes a waiver by the service
108 provider or transferee, and any subcontractor of the service
109 provider or transferee, of any and all claims against all named
110 insureds for payment arising from the specified loss, except
111 that all named insureds remain responsible for the payment of
112 any deductible amount provided for by the terms of the insurance
113 policy and for the cost of any betterment ordered by all named
114 insureds. This waiver remains in effect notwithstanding any
115 subsequent determination that the assignment agreement is
116 invalid or notwithstanding the rescission of the assignment
117 agreement by all named insureds, except that the service
118 provider is entitled to payment for the reasonable cost of any
119 contracted work performed before the consumer rescinded the
120 assignment agreement from the insured or insurance carrier.

121 (5) ACTIONS BASED UPON THE SAME CLAIM AND PARTY PREVIOUSLY
122 VOLUNTARILY DISMISSED.—If a service provider commences an action
123 in any court of this state based upon or including the same
124 claim against the same adverse party which such service provider
125 has previously voluntarily dismissed in a court of this state,
126 the court may, as it deems proper, order the service provider to



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127 pay the attorney fees and costs of the adverse party of the
128 action previously voluntarily dismissed. Upon the issuance of
129 such order, the court shall stay the proceedings in the
130 subsequent action until the service provider has complied with
131 the order.

132 (6) CONDITION ON ATTORNEY FEES.—In any action at law
133 brought by an assigned of a homeowner's residential property
134 insurance policy, the service provider is not entitled to
135 attorney fees or costs unless one of the following events has
136 occurred:

137 (a) The period established in s. 627.70131 has elapsed;

138 (b) The insurance carrier has denied coverage or payment
139 for all or part of the claim; or

140 (c) The insurance carrier has made a payment that is less
141 than the amount sought by the consumer or service provider.

142 (7) APPLICATION.—This section does not apply to a power of
143 attorney granted to a management company, family member,
144 guardian, or similarly situated person which complies with
145 chapter 709 and which may include, as part of the authority
146 granted, the authority to act in place of a principal as it
147 relates to a homeowner's residential property insurance claim,
148 if such power of attorney is not provided to a service provider
149 or any person with a personal or financial interest in the
150 service provider.

151 Section 2. Section 626.9373, Florida Statutes, is amended
152 to read:

153 626.9373 Attorney ~~Attorney's~~ fees.—

154 (1) Upon the rendition of a judgment or decree by any court
155 of this state against a surplus lines insurer in favor of any



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156 named or omnibus insured or the named beneficiary under a policy
157 or contract executed by the insurer on or after the effective
158 date of this act, the trial court or, if the insured or
159 beneficiary prevails on appeal, the appellate court, shall
160 adjudge or decree against the insurer in favor of the insured or
161 beneficiary a reasonable sum as fees or compensation for the
162 insured's or beneficiary's attorney prosecuting the lawsuit for
163 which recovery is awarded.

164 (2) If awarded, attorney ~~attorney's~~ fees or compensation
165 shall be included in the judgment or decree rendered in the
166 case.

167 (3) Attorney fees may not be awarded under this section to
168 an assignee of post-loss benefits who is a service provider
169 under s. 501.172.

170 Section 3. Section 627.428, Florida Statutes, is amended to
171 read:

172 627.428 Attorney fees ~~Attorney's fee~~.—

173 (1) Upon the rendition of a judgment or decree by any of
174 the courts of this state against an insurer and in favor of any
175 named or omnibus insured or the named beneficiary under a policy
176 or contract executed by the insurer, the trial court or, in the
177 event of an appeal in which the insured or beneficiary prevails,
178 the appellate court shall adjudge or decree against the insurer
179 and in favor of the insured or beneficiary a reasonable sum as
180 fees or compensation for the insured's or beneficiary's attorney
181 prosecuting the suit in which the recovery is had.

182 (2) As to suits based on claims arising under life
183 insurance policies or annuity contracts, no such attorney fees
184 ~~attorney's fee~~ shall be allowed if such suit was commenced prior



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185 to expiration of 60 days after proof of the claim was duly filed
186 with the insurer.

187 (3) When so awarded, compensation or fees of the attorney
188 shall be included in the judgment or decree rendered in the
189 case.

190 (4) Attorney fees may not be awarded under this section to
191 an assignee of post-loss benefits who is a service provider
192 under s. 501.172.

193 Section 4. This act applies to assignment agreements
194 executed for losses that occur on or after July 1, 2019.

195 Section 5. This act shall take effect July 1, 2019.

196

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

198 And the title is amended as follows:

199 Delete everything before the enacting clause
200 and insert:

201 A bill to be entitled
202 An act relating to agreements between service
203 providers and consumers; creating s. 501.172, F.S.;
204 defining terms; specifying requirements for certain
205 agreements containing a post-loss assignment of
206 benefits; specifying requirements and limitations for
207 obligations to submit to examinations under oath;
208 prohibiting a court from awarding attorney fees to the
209 service provider under certain circumstances;
210 specifying who is the prevailing party entitled to
211 attorney fees under certain civil actions; providing
212 factors a court must consider in determining who the
213 prevailing party is under certain circumstances;



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214 providing construction relating to waiver and
215 limitations on recovery; authorizing a court to order
216 an assignee to pay attorney fees and costs under
217 certain circumstances; requiring the court to stay
218 proceedings under certain circumstances; providing
219 that the service provider is not entitled to attorney
220 fees or costs in certain actions except under certain
221 circumstances; providing applicability; amending ss.
222 626.9373 and 627.428, F.S.; providing that attorney
223 fees under certain provisions of the Florida Insurance
224 Code may not be awarded to an assignee of post-loss
225 benefits who is a service provider; providing
226 applicability; providing an effective date.



932552

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/04/2019	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (306982) (with title**
2 **amendment)**

3
4 Delete line 147
5 and insert:

- 6 (8) PROHIBITED ACTS BY INSURERS.—An insurer may not:
7 (a) Require that a particular vendor make repairs to the
8 consumer's property;
9 (b) Unless expressly requested by the consumer, recommend
10 or suggest a particular vendor for repairs to be made to the



932552

11 consumer's property;
12 (c) Disparage the service provider;
13 (d) Advise as to the consumer's rights under any agreement;
14 or
15 (e) Otherwise attempt to influence the consumer to rescind
16 any agreement between the consumer and the service provider.
17 (9) LEGISLATIVE FINDINGS AND INTENT.-

18
19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 Delete line 250

22 and insert:

23 applicability; specifying prohibited acts by insurers;
24 providing legislative findings and

By Senator Broxson

1-00417-19

2019122__

1 A bill to be entitled
 2 An act relating to attorney fee awards under insurance
 3 policies and contracts; amending ss. 626.9373 and
 4 627.428, F.S.; revising certain attorney fee
 5 provisions in the Florida Insurance Code to specify
 6 that an insured or beneficiary entitled, under certain
 7 circumstances, to attorney fees under an insurance
 8 policy or contract must be a named insured or named
 9 beneficiary; providing that such right to attorney
 10 fees may not be assigned or extended by agreement,
 11 except to certain persons; making technical changes;
 12 providing an effective date.

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

16 Section 1. Section 626.9373, Florida Statutes, is amended
 17 to read:

18 626.9373 Attorney ~~Attorney's~~ fees.—

19 (1) Upon the rendition of a judgment or decree by any court
 20 of this state against a surplus lines insurer in favor of any
 21 named or omnibus insured or the named beneficiary under a policy
 22 or contract executed by the insurer ~~on or after the effective~~
 23 ~~date of this act~~, the trial court or, if the named insured or
 24 named beneficiary prevails on appeal, the appellate court, shall
 25 adjudge or decree against the insurer in favor of the named
 26 insured or named beneficiary a reasonable sum as fees or
 27 compensation for the named insured's or named beneficiary's
 28 attorney prosecuting the lawsuit for which recovery is awarded.
 29 The right to attorney fees under this section may not be

Page 1 of 3

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

1-00417-19

2019122__

30 assigned or extended by contract or other agreement to any
 31 person other than another named insured, named beneficiary, or
 32 omnibus insured.

33 (2) If awarded, attorney ~~attorney's~~ fees or compensation
 34 ~~must shall~~ be included in the judgment or decree rendered in the
 35 case.

36 Section 2. Section 627.428, Florida Statutes, is amended to
 37 read:

38 627.428 Attorney fees ~~Attorney's fee~~.—

39 (1) Upon the rendition of a judgment or decree by any court
 40 ~~of the courts~~ of this state against an insurer and in favor of
 41 any named or omnibus insured or the named beneficiary under a
 42 policy or contract executed by the insurer, the trial court or,
 43 in the event of an appeal in which the named insured or named
 44 beneficiary prevails, the appellate court shall adjudge or
 45 decree against the insurer and in favor of the named insured or
 46 named beneficiary a reasonable sum as fees or compensation for
 47 the named insured's or named beneficiary's attorney prosecuting
 48 the suit in which the recovery is awarded ~~had~~. The right to
 49 attorney fees under this section may not be assigned or extended
 50 by contract or other agreement to any person other than another
 51 named insured, named beneficiary, or omnibus insured.

52 (2) As to suits based on claims arising under life
 53 insurance policies or annuity contracts, ~~no~~ such attorney fees
 54 ~~may not attorney's fee shall~~ be allowed if such suit was
 55 commenced prior to expiration of 60 days after proof of the
 56 claim was duly filed with the insurer.

57 (3) When so awarded, compensation or fees of the attorney
 58 ~~must shall~~ be included in the judgment or decree rendered in the

Page 2 of 3

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

1-00417-19

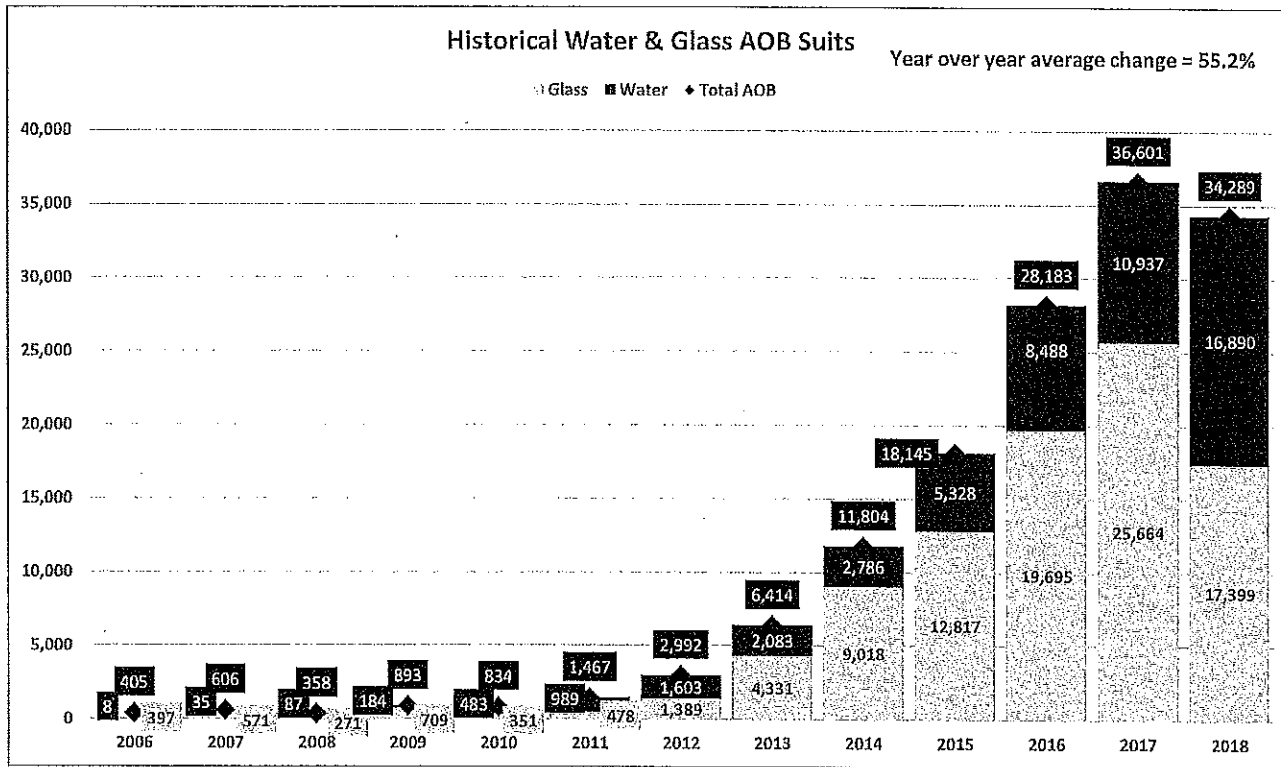
2019122__

59 case.

60 Section 3. This act shall take effect July 1, 2019.

DEPARTMENT OF FINANCIAL SERVICES

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Glass	397	571	271	709	351	478	1,389	4,331	9,018	12,817	19,695	25,664	17,399
Water	8	35	87	184	483	989	1,603	2,083	2,786	5,328	8,488	10,937	16,890
Total AOB	405	606	358	893	834	1,467	2,992	6,414	11,804	18,145	28,183	36,601	34,289



CFO JIMMY PATRONIS

Restoring Balance in Insurance Litigation

*Curbing Abuses of Assignments of Benefits and
Reaffirming Insureds' Unique Right to Unilateral
Attorney's Fees*



FLORIDA
Justice Reform
I N S T I T U T E

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Executive Summary

Certain providers have partnered with attorneys to create a profitable litigation arrangement. In this arrangement, a service provider agrees to make a repair potentially covered by an insurance policy in exchange for the insurance policyholder’s right to sue his insurer via an assignment of insurance policy benefits. These service providers are typically associated with home and auto repairs. The service provider then often uses that acquired right to force the insurer to pay grossly inflated costs or risk even higher litigation costs. While policyholders simply seek to be made whole for losses, service providers and their attorneys are likely motivated to increase scope of work and to maximize profit and litigation fees.

What makes this arrangement particularly lucrative for attorneys are the “one-way” attorney’s fees awarded to the attorneys that represent prevailing service providers. Under Section 627.428, Florida Statutes, a prevailing party in a dispute with an insurer is entitled to his attorney’s fees and costs. The fees are “one way” because insurers that prevail are not entitled to fees under the statute.

Florida courts have consistently held that the legislature may not prohibit an assignment of insurance policy benefits when assignment is made after a loss. This is because of the strong common law tradition and public policy that favors the free assignment of contractual rights. However, the one-way attorney fee is in derogation of the common law and is a creature of

statute, which the legislature may regulate, change, or take away entirely. The one-way attorney fee statute's underlying purpose was to level the playing field between individual insureds and economically powerful insurers so that litigation for individual insureds is worthwhile. This report will show that the one-way attorney fee statute is no longer serving that purpose and is instead benefiting third parties to the underlying insurance contract.¹ Consequently, the one-way attorney fee statute should be amended to clarify that it was intended for the protection of named and omnibus insureds and named beneficiaries only, and that service providers holding assignments of benefits may not obtain attorney's fees pursuant to Section 627.428.

I. The Primary Purpose of Florida's One-Way Attorney Fee Statute is to Level the Playing Field

Under the well-established common law rule, neither prevailing plaintiffs nor prevailing defendants are entitled to recover attorney's fees unless authorized by contract or statute.² Section 627.428, Florida Statutes, is an exception to that common law rule. Called herein the one-way attorney fee statute, Section 627.428 authorizes an award of attorney's fees to certain prevailing parties in disputes with insurers.³ Under Section 627.428 "any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer" is entitled to an award of attorney's fees if it prevails in a dispute with an insurer.⁴

A number of purposes have been ascribed to the one-way attorney fee statute. Traditionally, one-way attorney fee statutes operate to "compensate the prevailing plaintiff, promote public interest litigation, punish or deter the losing party for misconduct, or prevent abuse of the judicial system."⁵ Attorney fee statutes that categorically shift fees to only one type of losing party are intended to avoid "grave injustices" that arise with "strict adherence to the [common law] rule [that each party bears its own attorney's fees], indiscriminate to the equities of particular cases."⁶ Exceptions have been built to the common law rule for certain defendants perceived to have

"It is clear to us that the purpose of this provision is to level the playing field so that the economic power of insurance companies is not so overwhelming that injustice may be encouraged because people will not have the necessary means to seek redress in the courts."

Justice R. Fred Lewis writing for the Florida Supreme Court in *Ivey v. Allstate Insurance Co.* (2000)

¹This report often refers to this service provider-initiated litigation as "third party litigation." To be clear, these particular third parties are initiating first-party litigation by stepping into the shoes of the policyholder and thus receiving the policyholder's unique benefits and rights, for which the policyholder has paid. This is distinct from the colloquial use of third party litigation, initiated by a party injured by a policyholder who, as a result of such injury, is seeking entitlement to the policyholder's coverage which extends to injuries inflicted on others.

²See *Rivera v. Deauville Hotel, Emps. Serv. Corp.*, 277 So. 2d 265, 266 (Fla. 1973); *Stone v. Jeffres*, 208 So. 2d 827, 828-29 (Fla. 1968).

³See *Stone*, 208 So. 2d at 828-29; see also § 627.428, Fla. Stat. (2015).

⁴§ 627.428(1), Fla. Stat.; see also, e.g., *Danis Indus. Corp. v. Ground Imp. Techniques, Inc.*, 645 So. 2d 420, 421 (Fla. 1994) (Section 627.428 "is a one-way street offering the potential for attorney's fees only to the insured or beneficiary.").

⁵John F. Vargo, *The American Rule on Attorney Fee Allocation: The Injured Person's Access to Justice*, 42 Am. U. L. Rev. 1567, 1588 (1993).

⁶Lawrence J. Hollander & Michael H. Cramer, *Attorney's Fees—Should They Be Taxed as Costs?*, 8 Miami L.Q. 573 (Summer 1954).

greater economic power, like railroads and, in this case, insurance companies.⁷

In *Feller v. Equitable Life Assurance Society of the United States*,⁸ the Florida Supreme Court described the purposes of the one-way attorney fee statute as follows: “to discourage the contesting of policies . . . and to reimburse successful plaintiffs reasonably for their outlays for attorney’s fees when a suit is brought against them, or they are compelled to sue, in Florida Courts to enforce their contracts.”⁹ According to the Court, reimbursing individual insureds and beneficiaries is necessary because “[i]t is an undue hardship upon beneficiaries of policies to be compelled to reduce the amount of their insurance by paying attorney’s fees when suits are necessary in order to collect that to which they are entitled.”¹⁰ Large insurance companies do not incur the same hardship. The one-way attorney fee statute “level[s] the playing field so that the economic power of insurance companies is not so overwhelming that injustice may be encouraged because people will not have the necessary means to seek redress in the courts.”¹¹ This economic power flows from not only the insurer’s oft-superior resources in defending litigation, but also by virtue of the fact that the insurer has the most control in writing the contract of insurance, to which the two parties—the insurer and the policyholder—are held.

The public policy underlying the statute is best served when the statute is used to award fees to the other party to the insurance contract, the policyholder, or any beneficiaries specifically designated by the policyholder at the time of contract formation. As Florida courts have emphasized, the purpose of the statute is to reimburse those for which the insurance policy was contracted to protect in the first place.¹² In order for the one-way attorney fee statute to apply, “[t]he paramount condition is the entry of a judgment against the insurer and in favor of the insured.”¹³

⁷*Id.* at 573 (citing § 356.04, Fla. Stat. (1953) (railroads); § 625.08, Fla. Stat. (1953) (insurance companies)); *see also, e.g.*, John Leubsdorf, *Toward a History of the American Rule on Attorney Fee Recovery*, 47 *Law & Contemp. Probs.* 9, 25 (1984) (with the creation of one-way attorney fee statutes, legislatures “were beginning to look at realistic attorney fee awards less as bounties for greedy lawyers and more as aids to needy plaintiffs or sanctions against corporate defendants”).

⁸57 So. 2d 581 (Fla. 1952).

⁹*Id.* at 586; *accord State Farm Fire & Cas. Co. v. Palma*, 629 So. 2d 830, 831 (Fla. 1993); *Ins. Co. of N. Am. v. Lexow*, 602 So. 2d 528, 531 (Fla. 1992).

¹⁰*Feller*, 57 So. 2d at 586.

¹¹*Ivey v. Allstate Ins. Co.*, 774 So. 2d 679, 684 (Fla. 2000).

¹²*See Fewox v. McMerit Constr. Co.*, 556 So. 2d 419, 423 (Fla. 2d DCA 1989) (statute’s purpose is to “reimburse successful policyholders forced to sue to enforce their policies” (emphasis added) (quoting *Zac Smith & Co. v. Moonspinner Condo. Ass’n*, 534 So. 2d 739, 743 (Fla. 1st DCA 1988))); *see also Stone*, 208 So. 2d at 829 (“Section 627.0127, F.S.A., . . . authorizes attorneys’ fees where insureds are successful in maintaining suits on certain types of insurance policies . . .” (emphasis added)); *Fewox*, 556 So. 2d at 423 (“The legislative policy underlying Section 627.428 is served by requiring insurers to pay attorney’s fees to a prevailing insured or beneficiary . . .” (emphasis added)); *Zac Smith & Co.*, 534 So. 2d at 743 (explaining that the policy underlying the one-way attorney fee statute is to “discourage the contesting of coverage by insurers and to reimburse successful policy holders when they are compelled to sue to enforce their policies” (emphasis added)); Robert O. Stripling, Jr., *Recovery of Attorney’s Fees Under the Bussey Decision*, Fla. B.J., July 1970, at 386-87.

¹³*Lexow*, 937 F.2d at 573 (quoting *Travelers Indem. Co. v. Chisholm*, 384 So. 2d 1360, 361 (Fla. 1st DCA 1980)) (emphasis added).

II. Application of the Statute Beyond the “Narrow Statutory Class”

As a derogation of the common law rule that a party must bear its own attorney’s fees, the one-way attorney fee statute should be strictly construed.¹⁴ Yet the statute has at times been broadly construed to authorize fee awards to more than just the class of entities specifically identified in the statute. However, the Florida Supreme Court has recently suggested that the statute should be construed as limited to those designated by the legislature.

The Florida Supreme Court’s 1969 decision in *Shingleton v. Bussey*¹⁵ provided an early signal that the term “beneficiary” would be broadly interpreted, although the case did not involve application of the one-way attorney fee statute. In *Shingleton*, the Court held that a plaintiff injured by an insured vehicle could sue the automobile liability insurer directly because the injured was a third party beneficiary of the insurance contract. Florida district courts of appeal soon concluded that *Shingleton* applied with equal force to all types of liability insurance, not just automobile liability.¹⁶ Given this expansive view of the term “beneficiary,” and despite the one-way attorney fee statute’s clear omission of non-policyholders and unnamed beneficiaries, the *Shingleton* case had obvious implications for the category of entities entitled to fees under the one-way attorney fee statute.¹⁷

However, the Florida Supreme Court held that the one-way attorney fee statute should not be interpreted as broadly as suggested by *Shingleton*. In *Wilder v. Wright*,¹⁸ the Court decided that the one-way attorney fee statute did not permit a tort claimant like the plaintiff in *Shingleton* to recover attorney’s fees. This is because in such cases, the plaintiff is not making a claim in the name of the insured but is instead “seeking attorney’s fees in his own right.”¹⁹ According to the Court, it was clear that the one-way attorney fee statute “was intended to govern the relationship between the *contracting parties* to the insurance policy. While the injured party may become a third party beneficiary under the policy, as stated in *Shingleton*, that third party may not automatically invoke all the provisions of the contract or statutes governing the rights and responsibilities flowing between insurer and insured.”²⁰ The Court cautioned that *Shingleton* “cannot be read to allow the injured party to enforce any and every provision of law or of the insurance contract.”²¹ Four years later, the Florida Supreme Court reiterated in *Roberts v. Carter*²² that an award of attorney’s fees under the statute is available only to a “narrow statutory class”: “the contracting insured, the insured’s estate, specifically named policy beneficiaries, and third parties who claim policy coverage by assignment from the insured.”²³

¹⁴*Pepper’s Steel & Alloys, Inc. v. United States*, 850 So. 2d 462, 465 (Fla. 2003); see also, e.g., *Great Sw. Fire Ins. Co. v. DeWitt*, 458 So. 2d 398, 400 (Fla. 1st DCA 1984) (citing *Lumbermens Mut. Ins. Co. v. Am. Arbitration Ass’n*, 398 So. 2d 469, 461 (Fla. 4th DCA 1981)).

¹⁵223 So. 2d 713 (Fla. 1969).

¹⁶See *Liberty Mut. Ins. Co. v. Roberts*, 231 So. 2d 235 (Fla. 3d DCA 1970); *Beta Eta House Corp. v. Gregory*, 230 So. 2d 495 (Fla. 1st DCA 1970).

¹⁷See Stripling, *supra*, at 385-87 (describing the application of *Shingleton v. Bussey* to the one-way attorney fee statute as likely).

¹⁸278 So. 2d 1 (Fla. 1973).

¹⁹*Wilder*, 278 So. 2d at 2-3.

²⁰*Id.* at 3 (internal citation omitted) (emphasis added).

²¹*Id.*

²²350 So. 2d 78 (Fla. 1977).

²³*Id.* at 79.

Wilder and *Roberts* caused confusion in Florida's district courts of appeal, prompting some to conclude that only the contractual parties to an insurance policy were entitled to fees under the statute. In *Industrial Fire & Casualty Insurance Co. v. Prygrocki*,²⁴ the Florida Supreme Court addressed this confusion. The Court in *Prygrocki* held that an injured pedestrian may obtain attorney's fees under the one-way attorney fee statute because the pedestrian was an "insured" under the provisions of the personal injury protection ("PIP") coverage of an automobile policy.²⁵ The Court explained that the term "contracting insured" means "those persons insured under an insurance contract rather than the plaintiff third-party claimant discussed in *Roberts*."²⁶ The plaintiff in *Prygrocki* was not a third party claimant but was, instead, an omnibus insured under the policy's PIP protection.²⁷ The Florida Legislature had recently amended the one-way attorney fee statute to make this clear, adding an "omnibus insured" to the category of persons entitled to fees under the statute.²⁸

Despite the return to a more expansive interpretation of the statute, in the 2008 decision *Continental Casualty Co. v. Ryan Inc. Eastern*²⁹ the Florida Supreme Court reaffirmed that the one-way attorney fee statute authorizes fees "in a discrete set of circumstances."³⁰ The Court refused to extend the statute to a surety that paid money on behalf of the surety's principal, emphasizing the plain language of the statute, which states that "a *named or omnibus insured or the named beneficiary*" is entitled to attorney's fees.³¹ The Court acknowledged that the statute may have been interpreted too broadly in the past in contravention of the statute's plain language, observing that "[d]espite the express limitations in Section 627.428 as to the class of designated entities entitled to recover attorney's fees, this Court has previously approved an award of attorney's fees in situations where policy coverage was obtained through an assignment from the insured."³²

The Court also made clear that the persons and entities entitled to fees under the statute are a *legislative* decision. Addressing an argument that the statute should be construed to cover sureties, the Court said: "If there is an injustice that requires the expansion of the statutory class of entities entitled to recover attorney's fees under section 627.428, that argument is one best addressed by the Legislature."³³

III. The Intersection Between Assignments of Benefits and the One-Way Attorney Fee Statute

Despite the statute's plain language, assignees of insureds and beneficiaries have historically been permitted to recover attorney's fees under the statute. Allowing third parties to the insurance policy to benefit from the one-way attorney fee statute by virtue of an assignment has contributed to distortions in the insurance market. Such distortions are seen no more

²⁴422 So. 2d 314 (Fla. 1982).

²⁵*Id.* at 314.

²⁶*Id.* at 316.

²⁷*Id.*

²⁸*Id.* at 316 n.*.

²⁹974 So. 2d 368 (Fla. 2008).

³⁰*Id.* at 374.

³¹*Id.*

³²*Id.* at 375 (emphasis added).

³³*Id.* at 379.

frequently than in the context of post-loss assignments of insurance policies. Assigning an insurance policy after a loss is premised on the idea that accrued benefits may be assigned to a noninsured, who then “steps into the shoes” of the insured. Over time, case law has developed allowing insureds to assign all post-loss rights, including that of their legal standing, to a third party by virtue of an assignment of benefits (“AOB”). An AOB has been found to entitle a third party, who initiates first party litigation by virtue of the assignment, to the protections offered by the one-way attorney fee statute, likely altering the equilibrium that Section 627.428 was designed to achieve.

Assignments of Benefits

An assignment is a transfer of some right or interest in property from one person to another.³⁴ All contractual rights are assignable unless the contract prohibits assignment, the contract involves obligations of a personal nature, or public policy dictates against assignment.³⁵ So, for example, a chose in action—which is “the right to bring an action to recover a debt, money, or thing”³⁶—arising out of contract is assignable and “may be sued upon and recovered by the assignee in his own name and right.”³⁷ A claim arising under an insurance policy is a chose in action and is thus assignable.³⁸ Once an assignment is made, the assignor no longer has a right to enforce the interest assigned.³⁹

Florida law provides that an insurance policy “may be assignable, or not assignable, as provided by its terms.”⁴⁰ Where there is no policy provision prohibiting assignment of a policy, it is clear that a claim under an insurance policy “may be assigned as any other chose in action.”⁴¹ But, even where there is a policy provision that would bar assignment or render an assignment invalid, courts have refused to enforce such provisions in certain circumstances. Courts distinguish between pre-loss assignments and post-loss assignments to determine whether a provision that requires insurer consent or a provision prohibiting assignment—often called an “anti-assignment clause”—validly bars an assignment.

Pre-loss assignments are made before a claim arises; post-loss assignments are made after a loss. An anti-assignment clause or provision requiring insurer consent may validly prohibit *pre-loss* assignments. However, courts have held that an anti-assignment clause may not prohibit *post-loss* assignments.⁴² The idea is that “post-loss assignments merely transfer an accrued right to payment and do nothing to alter the risk originally assumed by the insurance company,” and thus the general right to assign contractual rights should control over the policy’s

³⁴*Id.* at 376.

³⁵*Kohl v. Blue Cross & Blue Shield of Fla., Inc.*, 988 So. 2d 654, 658 (Fla. 4th DCA 2008).

³⁶Black’s Law Dictionary (9th ed. 2009).

³⁷*Spears v. W. Coast Builders’ Supply Co.*, 133 So. 97, 98 (Fla. 1931).

³⁸*United Cos. Life Ins. Co. v. State Farm & Fire Cas. Co.*, 477 So. 2d 645, 646 (Fla. 1st DCA 1985).

³⁹*Cont’l Cas. Co.*, 974 So. 2d at 376.

⁴⁰§ 627.422, Fla. Stat. (2015). A provision requiring insurer consent prior to assignment is typically called a “consent to assignment clause” and is enforceable in Florida. See *Cordis Corp. v. Sonics Int’l*, 427 So. 2d 782, 783 (Fla. 3d DCA 1983).

⁴¹*Kohl*, 955 So. 2d at 1143.

⁴²See *W. Fla. Grocery Co. v. Teutonia Fire Ins. Co.*, 77 So. 209, 210-11 (Fla. 1917) (“The policy was assigned after loss, and it is a well-settled rule that the provision in a policy relative to the consent of the insurer to the transfer of an interest therein does not apply to an assignment after loss.”); see also, e.g., *Lexington Ins. Co. v. Simkins Indus.*, 704 So. 2d 1384, 1386 n.3 (Fla. 1998) (Insurer “concedes that an insured may assign insurance proceeds to a third party after a loss, even without the consent of the insurer.”); *Citizens Prop. Ins. Corp. v. Ifergane*, 114 So. 3d 190, 195 (Fla. 3d DCA 2012) (“Post-loss insurance claims are freely assignable without the consent of the insurer.”).

prohibition.⁴³ In contrast, a policy may validly prohibit pre-loss assignments to “protect an insurer against unbargained-for risks.”⁴⁴

The freedom to assign post-loss claims has long been the common law of Florida since *West Florida Grocery Co. v. Teutonia Fire Insurance Co.*⁴⁵ In *Teutonia*, the Court held that a post-loss assignment of the proceeds of a fire insurance policy was valid, even though the insurer’s consent was not obtained as required by the policy. The Court observed that “[i]t is a well-settled rule that the provision in a policy relative to the consent of the insurer to the transfer of an interest therein does not apply to an assignment *after loss*.”⁴⁶

Recent Case Law Developments on AOBs

A series of 2015 Florida state court cases illustrates the growing problems associated with AOBs, particularly their use by certain service providers, and that these problems are best addressed by the Florida Legislature.

In *Accident Cleaners, Inc. v. Universal Insurance Co.*,⁴⁷ the Fifth District Court of Appeal held that an assignee of a homeowner’s insurance policy could bring a breach of contract claim under Section 627.405, Florida Statutes, even though the assignee had no insurable interest in the home at the time of loss.⁴⁸ Section 627.405 provides that “[n]o contract of insurance of property . . . shall be enforceable . . . except for the benefit of persons having an insurable interest in the things insured as of the time of the loss.”⁴⁹ The court rejected the insurer’s argument that the assignee did not have an insurable interest at the time of the loss since the policy had been assigned only post loss. The court explained that the insurer’s “argument ignores that the right to recover is freely assignable after loss and that an assignee has a common-law right to sue on a breach of contract claim.”⁵⁰ Because Section 627.405 did not explicitly state that it was displacing the common law of free assignability of contractual rights or the inability for insurers to restrict post-loss assignments,⁵¹ the insurer consequently could “not overcome the presumption that the Legislature did not intend in Section 627.405 to alter common law.”⁵² Instead, so long as the policyholder had an insurable interest at the time of the loss, that interest was imputed to the post-loss assignee and could be enforced by the assignee.⁵³

⁴³*In re Katrina Canal Breaches Litig.*, 63 So. 2d 955, 959 (La. 2011) (discussing the issue’s treatment in the majority of jurisdictions); *see also id.* at 961 (“In differentiating between [pre-loss and post-loss assignments], courts reason that allowing an insured to assign the right to coverage (pre-loss) would force the insurer to protect an insured with whom it had not contracted—an insured who might present a greater level of risk than the policyholder. However, allowing an insured to assign its rights to the proceeds of an insurance policy (post-loss) does not modify the insurer’s risk. The insurer’s obligations are fixed at the time the loss occurs, and the insurer is obligated to cover the loss agreed to under the terms of the policy. This obligation is not altered when the claimant is not the party who was originally insured.”).

⁴⁴*Lexington Ins. Co.*, 704 So. 2d at 1386.

⁴⁵77 So. 209 (Fla. 1917).

⁴⁶*Teutonia*, 77 So. at 210-11.

⁴⁷— So. 3d —, No. 5D14-352, 2015 WL 1609973 (Fla. 5th DCA Apr. 10, 2015).

⁴⁸*Id.* at *1.

⁴⁹*Id.* at *2 (quoting § 627.405, Fla. Stat. (2014)).

⁵⁰*Id.*

⁵¹*Id.*

⁵²*Id.*

⁵³*Id.*

The Fourth District Court of Appeal in *One Call Property Services Inc. v. Security First Insurance Co.*⁵⁴ confronted the issue whether payment must be due under an insurance policy before an insured may assign a post-loss claim. The court held that an assignable right to policy benefits accrues on the date of the loss even though payment is not due under the policy’s loss payment clause, and the policy did not prohibit the assignment.⁵⁵ Thus, the assignee—which obtained the AOB after performing emergency water removal services for the insured following a water event—had standing to state a claim under the policy.

The Fourth District Court of Appeal acknowledged arguments that AOBs given to service providers like the plaintiff are spurring concerns of fraud and abuse. The Fourth District stated that the issue of service provider AOBs “boils down to two competing public policy considerations.”⁵⁶ On one side are insurers that “argue[] that assignments of benefits allow contractors to unilaterally set the value of a claim and demand payment for fraudulent or inflated invoices.”⁵⁷ On the other side are contractors that “argue that assignments of benefits allow homeowners to hire contractors for emergency repairs immediately after a loss, particularly in situations where the homeowners cannot afford to pay the contractors up front.”⁵⁸ While sympathetic to the insurers’ concerns, the court stated that it was not in a position to evaluate them. The court pointed out that “[i]f studies show that these assignments are inviting fraud and abuse, then the legislature is in the best position to investigate and undertake comprehensive reform.”⁵⁹

In *Security First Insurance Co. v. State of Florida, Office of Insurance Regulation*,⁶⁰ an insurer appealed the decision of Florida’s Office of Insurance Regulation (“OIR”) to deny its request to amend its homeowner’s policies to restrict the ability of policyholders to assign post-loss rights without consent.⁶¹ OIR had denied the amendment as misleading on the basis that Florida law does not allow enforcement of an anti-assignment provision with respect to post-loss rights. The First District Court of Appeal agreed with OIR, citing “an unbroken string of Florida cases over the past century holding that policyholders have the right to assign such claims without insurer consent.”⁶² Like the Fourth District in *One Call*, the First District was mindful of the serious concerns that have arisen as a result of a “cottage industry of vendors, contractors, and attorneys . . . that use the assignment of benefits and the threat of litigation to extract higher payments from insurers.”⁶³ But like its sister court, the First District Court of Appeal said the issue is one left to the legislature to resolve.⁶⁴

⁵⁴165 So. 3d 749 (Fla. 4th DCA 2015).

⁵⁵*Id.* at 754; see also *Emergency Servs. 24 v. United Prop. & Cas. Ins. Co.*, 165 So. 3d 756 (Fla. 4th DCA 2015) (same); *ASAP Restoration & Constr. v. Tower Hill Signature Ins. Co.*, 165 So. 3d 736 (Fla. 4th DCA 2015) (same).

⁵⁶*One Call Prop. Servs.*, 165 So. 3d at 755.

⁵⁷*Id.*

⁵⁸*Id.*

⁵⁹*Id.*

⁶⁰No. 1D14-1864, 2015 WL 3824166 (Fla. 1st DCA June 22, 2015).

⁶¹*Id.* at *1.

⁶²*Id.*

⁶³*Id.* at *2 (internal quotation marks omitted).

⁶⁴*Id.*

More recently, the First District Court of Appeal in *United Water Restoration Group v. State Farm Insurance Co.*⁶⁵ found that a court had improperly dismissed assignee United Water Restoration Group's complaint based on an argument raised by State Farm that United Water could not satisfy the conditions of coverage under the policy.

United Water provided remediation services in exchange for an AOB from the policyholder whose home was damaged by water. State Farm refused to pay the bill because it found that the damage arose from conditions that fell within a policy exclusion. United Water responded by filing a county court action pursuant to the assignment. State Farm moved to dismiss the complaint due to the coverage issue, contending that only the policyholder, not the remediation company, could satisfy the conditions for coverage. The county court dismissed the complaint, and the circuit court upheld the dismissal. The First District reversed, concluding that the dismissal violated established principles of Florida law that an assignee of an insurance policy may sue for breach. According to the court, "[c]learly established law permits United Water to bring suit to seek recovery under the State Farm policy, and if necessary, seek a coverage determination. The dismissal order had the harsh effect of barring United Water's enforcement of its bargained-for right to pursue assigned benefits, which amounts to a miscarriage of justice."⁶⁶

The One-Way Attorney Fee Statute Incentivizes AOB Litigation

As acknowledged by the Fourth District Court of Appeal in *One Call* and the First District Court of Appeal in *Security First Insurance*, there are many that argue service providers armed with AOBs are "unilaterally set[ting] the value of a claim and demand[ing] payment for fraudulent or inflated invoices"⁶⁷ from insurers and using "the threat of litigation to extract [these] higher payments."⁶⁸ Service providers are incentivized to do this because, as an assignee of the insured or beneficiary, they are entitled to attorney's fees under the one-way attorney fee statute, and in turn the exposure to attorney's fees discourages insurers from fighting the assigned claim.

Florida courts have held that with an AOB comes an assignment of the insured's or beneficiary's right to recover fees under the one-way attorney fee statute.⁶⁹ The one-way attorney fee statute likely fuels AOB litigation because the statute offers distinct advantages over other attorney's fee payment arrangements. For example, in a contingency fee arrangement, payment of the attorney's fees by the client is contingent on the outcome of the case.⁷⁰ The

⁶⁵No. 1D14-3797, 2015 WL 4111662 (Fla. 1st DCA July 8, 2015).

⁶⁶*Id.* at *2.

⁶⁷See *One Call Prop. Servs.*, 165 So. 3d at 755.

⁶⁸See *Sec. First*, 2015 WL 3824166, at *2.

⁶⁹See, e.g., *Roberts*, 350 So. 2d at 79; *All Ways Reliable Bldg. Maint., Inc. v. Moore*, 261 So. 2d 131, 132 (Fla. 1972); *Magnetic Imaging Sys., I, Ltd., v. Prudential Prop. & Cas. Ins. Co.*, 847 So. 2d 987, 989-90 (Fla. 3d DCA 2003); *Superior Ins. Co. v. Liberty*, 776 So. 2d 360, 365 (Fla. 5th DCA 2001); *Travelers Ins. Co. v. Tallahassee Bank & Trust Co.*, 133 So. 2d 463, 467 (Fla. 1st DCA 1961) (assignee entitled to attorney's fees under statute even though it was not a named beneficiary under the policy because it effectively became a beneficiary pursuant to the assignment); see also, e.g., *Liberty Mut. Ins. Co. v. Davis*, 412 F.2d 475, 486 (5th Cir. 1969) (applying Florida law) (assignee stands "in the shoes of the insured" with respect to the entire action, "including [the insured's] right to attorneys' fees" under the statute). "[A]n assignee of an insurance claim stands to all intents and purposes in the shoes of the insured and logically should be entitled to an attorney's fee when he sues and recovers on the claim." *All Ways Reliable*, 261 So. 2d at 132.

⁷⁰R. Regulating the Fla. Bar 4-1.5(f)(1)-(2); see also *Brickell Place Condo. Ass'n v. Joseph H. Ganguzza & Assocs., P.A.*, 31 So. 3d 287, 290 (Fla. 3d DCA 2010).

attorney agrees to accept a part of the money the client recovers in the case as the fee for services, generally fixed at a percentage of the client's recovery. Although attractive to clients because they do not have to pay unless they win, contingency fees are subject to strict requirements and may not be used in certain types of cases.⁷¹ And ultimately, the client reduces his recovery by the amount of the fee he must pay his attorney. The client will also likely be responsible for paying court filing fees and other costs, regardless of whether he prevails.

In contrast, under the one-way attorney fee statute, the prevailing party is awarded his attorney's fee and costs in addition to the damages he is awarded by the court.⁷² The prevailing party's attorney recovers his full fee, no matter what amount of damages is awarded to his client. In a contingency fee arrangement resulting in a low damages award by the court, neither the client nor the attorney fully recovers.

The one-way attorney fee statute also offers a greater recovery than that authorized under other attorney's fee statutes available to prevailing parties.⁷³ For example, the one-way attorney fee statute permits a greater recovery than the offer of judgment statute since the one-way attorney fee statute awards the prevailing insured *all* fees and costs and not just those incurred after an offer of judgment is made.⁷⁴ The one-way attorney fee statute is also more appealing than Section 57.105, Florida Statutes, because it guarantees recovery without any requirement that the plaintiff demonstrate the insurer presented a claim or defense that was essentially frivolous.⁷⁵

These advantages make AOB litigation all too enticing, and courts have acknowledged that the one-way attorney fee statute may spur litigation which the Florida Legislature did not contemplate.

In *Allstate Insurance Co. v. Regar*,⁷⁶ the Second District Court of Appeal held that the assignee of a bad faith claim was entitled to attorney's fees under the statute, although the assignee was not a named or omnibus insured or the named beneficiary, because the entire cause of action had been assigned to him. Standing in the shoes of the insured, the assignee was entitled to all remedies to which the insured would otherwise be entitled. However, the court was "not unsympathetic" to the defendant insurer's plight given the "exponential[] increas[e]" in the number of bad faith cases filed without any apparent link to the conduct of insurers. "Instead, plaintiff's attorneys are filing bad faith actions over issues that it seems could be simply resolved, like the wording of the release in this case."⁷⁷ The court observed that "[t]hese attorneys are

⁷¹See, e.g., R. Regulating the Fla. Bar 4-1.5(f)(3)-(5).

⁷²Relatedly, the ability to obtain a contingency fee multiplier is not exclusive to contingency fee arrangements and may be obtained in a proper case under Section 627.428 as a contingency risk multiplier. See *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 834 (Fla. 1990) (use of multiplier under statute may be appropriate "when a risk of nonpayment is established"); see also *Allstate Ins. Co. v. Regar*, 942 So. 2d 969, 974-75 (Fla. 2d DCA 2006) (holding that trial court properly determined that it had discretion to award a multiplier to the attorney's fees awarded under Section 627.428).

⁷³See *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1075 (Fla. 2006) (holding that existence of one-way attorney fee statute does not preclude the application of other attorney's fee provisions).

⁷⁴Cf. § 765.79(1), Fla. Stat. (2015) (awarding attorney's fees incurred by a plaintiff after a demand for judgment is made in certain circumstances).

⁷⁵Cf. § 57.105(1), Fla. Stat. (2015) (authorizing an award of attorney's fees to a prevailing party when the court finds that the losing party or losing party's attorney knew or should have known that a claim or defense presented to the court was unsupported by material facts or would not be supported by the application of then-existing law to material facts).

⁷⁶942 So. 2d 969.

⁷⁷*Id.* at 973.

perhaps motivated by the promise of fees under Section 627.428 upon prevailing in this action. Certainly this case has mushroomed into over \$200,000 in attorney's fees plus an as-yet-undetermined amount of appellate attorney's fees from an initial offer of settlement for meager policy limits of \$25,000."⁷⁸ While expressing concern that it was "not certain that outcomes like today's were contemplated at the time of the statute's enactment," the Florida court acknowledged "that issue is for resolution by the legislature."⁷⁹

Although public policy favors the free assignment of contract rights, at least post-loss, such a policy does not apply to the one-way attorney fee statute, a legislatively-created right and indeed a derogation of the common law rule that parties bear their own attorney's fees. Turning to the data underlying the exponential increase in AOB cases filed in Florida, it is clear that it is time for the Florida Legislature to curb the abuse of AOBs and AOB litigation by restricting use of the tool that incentivizes it—the one-way attorney fee statute.

IV. Explosion of Assignments of Benefits to Service Providers

Enticed by the prospect of attorney's fees, a growing number of lawyers have partnered with various types of service providers to solicit AOBs from policyholders. The effects are most pronounced in three segments of the insurance industry discussed below.

The typical AOB relationship begins when a policyholder signs a contract assigning rights, benefits, proceeds, and causes of action arising under his insurance policy to a third party. This third party is often a service provider that agrees to make the repair or provide the service for which insurance coverage will be sought. Indeed, often the repair or service is conditioned upon the assignment. In many cases the AOB includes language which divests the policyholder of any benefits under the policy, privacy rights, and any direct payment of insurance proceeds.⁸⁰ Based on a survey conducted of various insurance trade associations, most assignments reviewed shared the following characteristics:

- Irrevocable in nature, meaning the policyholder, insured, or beneficiary had no ability to rescind the assignment (79.55%);
- Transferred all causes of action, divesting the policyholder of any legal recourse under the insurance policy (79.55%);
- Waived the policyholder's privacy rights (37.5%); and

⁷⁸*Id.* at 973-74.

⁷⁹*Id.* at 974.

⁸⁰*See, e.g., See, e.g.,* Harvey V. Cohen, PowerPoint Presentation: Insider Secrets: Legal Assignment of Insurance Benefits 18 (on file with authors) (providing example AOB: "Assignment of Insurance Benefits: I, hereby, assign any and all insurance rights, benefits, proceeds and any causes of action under *any* applicable insurance policies to [Insert Your Company Name], for services rendered or to be rendered by Company. In this regard, I waive my privacy rights. . . . I also hereby direct my insurance carrier(s) to release any and all information requested by Company, its representative, and/or its Attorney for the direct purpose of obtaining actual benefits to be paid by my insurance carrier(s) for services rendered or to be rendered. I believe the appropriate insurance carrier to be (Insert Property Owners Insurance Company)."); Erickson's Drying Systems, Inc., Contract for Services, Assignment of Benefits, <http://ericksonsdrying.com/contact-us/contract-for-services-assignment-of-benefits/> (last visited Aug. 13, 2015) (providing example AOB for drying repair company); ELR Restoration Inc., Certificate of Completion & Assignment of Benefits, http://elrrestoration.com/uploads/2/8/8/6/2886421/elr_repair_assignment_forms.pdf (last visited Aug. 13, 2015) (providing example AOB for home restoration services).

- Included a “hold harmless” provision for the benefit of the service provider (53.4%).⁸¹

Once executed, the newly assigned service provider performs work for which reimbursement is then sought directly from an insurer, usually in the form of a demand letter. Demand letters provide an insurer a certain number of days to pay and “avoid any potential legal action in this matter.”⁸² When the insurer fails to pay, the service provider brings a lawsuit against the insurer.

A telltale sign that an AOB is sought to be enforced through litigation is the use of “a/a/o” or “as assignee of” in the plaintiff’s name in the case caption or style. A case caption might indicate that it is being brought by “Auto Glass Company a/a/o John Smith,” which means Auto Glass Company is suing as an assignee of John Smith. However, searching “a/a/o” in the plaintiff name field may not capture all AOB litigation because an assignee may bring a lawsuit in its own name, without reference to the assignor in the case style.⁸³ A review of AOB complaints substantiates the claim that attorneys for assignees are asking for fees under Section 627.428 as a matter of course.⁸⁴

Using the “a/a/o” search criterion, a search was conducted through the Florida Department of Financial Services Service of Process website.⁸⁵ The Department has created an online searchable service of process (“SOP”) database in which lawsuits against insurers for which the Department has received service of process are logged.⁸⁶ However, just as the “a/a/o” search criterion is not the exclusive way to identify all lawsuits filed as the result of AOBs, the SOP database is not representative of all AOB claims, as some claims never make it to litigation. With those caveats, the data extracted from the SOP database is compelling.

⁸¹Insurance Trade Association Survey Responses, Sept. 2015 (on file with authors); *see also infra* Section VI. Out of 116 total surveys received, 88 surveys included a response to a question requesting the characteristics of the AOB.

⁸²Cohen, *supra* at 22.

⁸³Searching cases for the use of “a/a/o” in the plaintiff’s name field may not capture all AOB cases as the “a/a/o” designation may be a relatively recent phenomenon. The earliest use of this plaintiff-naming convention found in Westlaw is a 2003 case, *Prof'l Consulting Servs., Inc. a/a/o Susan Berlinghoff v. Hartford Life & Accident Ins. Co.*, 849 So. 2d 446 (Fla. 2d DCA 2003), which involved an assignment of PIP benefits. Many of the other early “a/a/o” cases also dealt with PIP assignments. *E.g.*, *Advanced Diagnostic Testing, Inc. a/a/o Will Turcios v. Allstate Ins. Co.*, No. 2002-4740-SP-05, 2003 WL 23868672 (Fla. Cir. Ct. Oct. 21, 2003); *Nationwide Gen. Ins. Co. v. Family Chiropractic Health Ctr. a/a/o Ruth Morningred*, No. 03-4825, 2003 WL 23148880 (Fla. Cir. Ct. Dec. 1, 2003); *Vincent DiCarlo, M.D. & Assocs. a/a/o Bonita Thurston v. Am. Home Assur. Co.*, No. 03-4949, 2004 WL 326746 (Fla. Cir. Ct. Jan. 20, 2004); *Nationwide Prop. & Cas. Ins. Co. v. Drs. Sheer, Ahearn & Assocs., P.A. a/a/o Sherry Holdaway*, No. 03-4596, 2004 WL 326751 (Fla. Cir. Ct. Jan. 21, 2004). A search of the Florida Department of Financial Services Service of Process database indicates that “a/a/o” cases were filed as early as 2000. But an assignee is not required to use “a/a/o” in the case name and may bring an AOB suit in his or her own name. *See Harris v. Smith*, 7 So. 2d 343, 346 (Fla. 1942) (“It is well settled that an assignee of a chose in action arising out of contract may sue in his own name and right.”). Consequently, while “a/a/o” serves as an easy indicator of an AOB case, and as shown through case searches, appears very frequently, it may still only display a subset of all AOB litigation.

⁸⁴*See, e.g.*, Complaint, *Express Auto Glass, LLC a/a/o Amber Tyer v. Allstate Fire & Ins. Co.*, Case No. 2013-SC-007075-0 (Fla. 9th Cir. Ct.) (filed Aug. 1, 2013). The complaint and attachments were accessed via the Orange County Clerk of Courts MyECLerk website, <https://myeclerk.myorangeclerk.com/>.

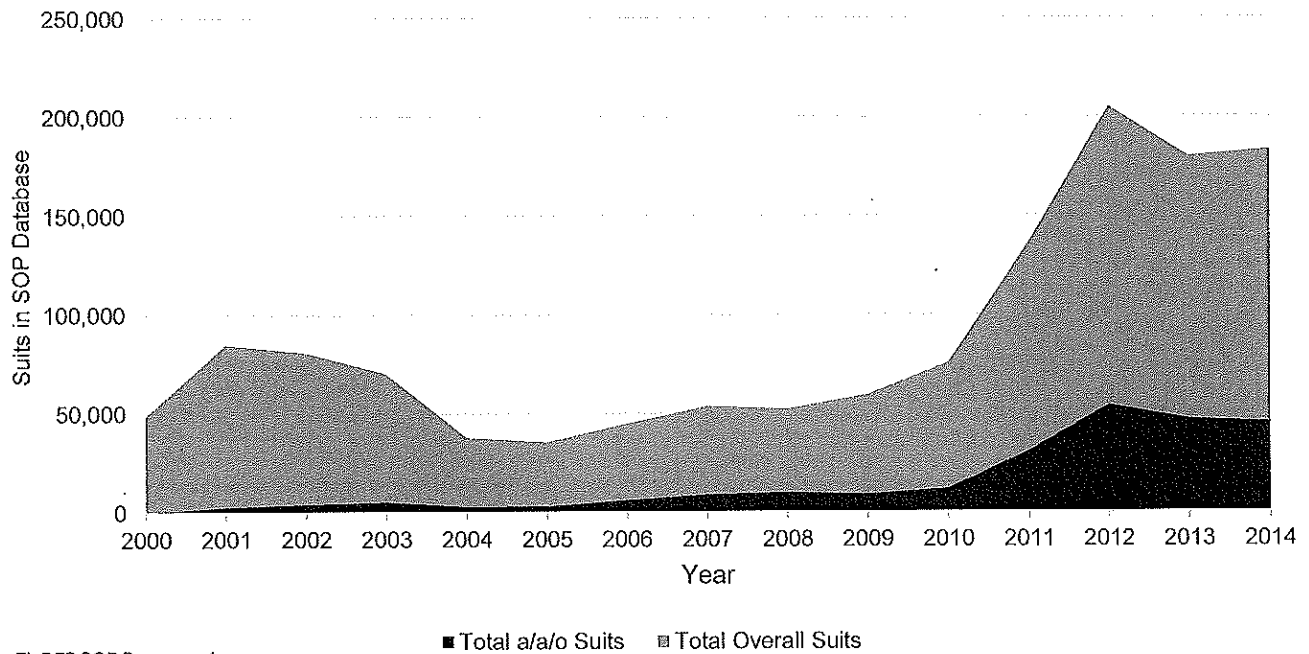
⁸⁵Licensed insurers must appoint the Chief Financial Officer, as head of the Department of Financial Services, to receive service of all legal process in any civil action filed against a licensed insurer in Florida. § 624.422, Fla. Stat. (2015).

⁸⁶*See* § 624.423, Fla. Stat. (2015).

AOB Cases Increasing at Staggering Rate

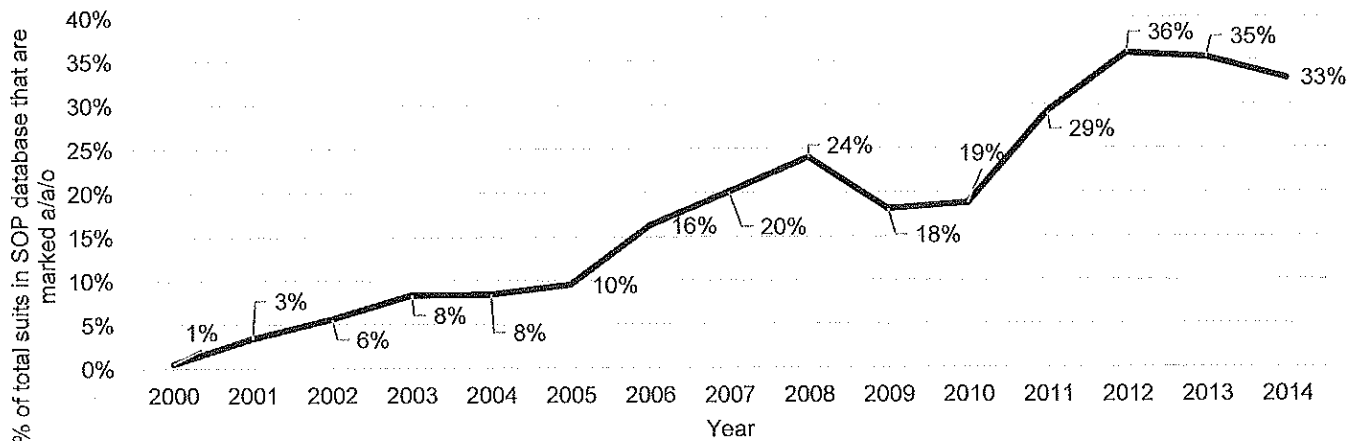
When searching just for cases that include “a/a/o” in the plaintiff’s name, the database reports a **16,000% increase** in such lawsuits since 2000. Only 281 “a/a/o” cases were served in 2000; 45,490 were served in 2014. Notably, the *total* amount of all service of process notices served only increased by 183% during this same timeframe. As a percentage of total lawsuits served, “a/a/o” cases comprised less than 1% in 2000 but comprised 33% of all lawsuits served in 2014. This means that about one in three lawsuits filed against an insurer is an “a/a/o” lawsuit.

All Lawsuits vs. a/a/o Lawsuits



FL DFS SOP DATABASE 1

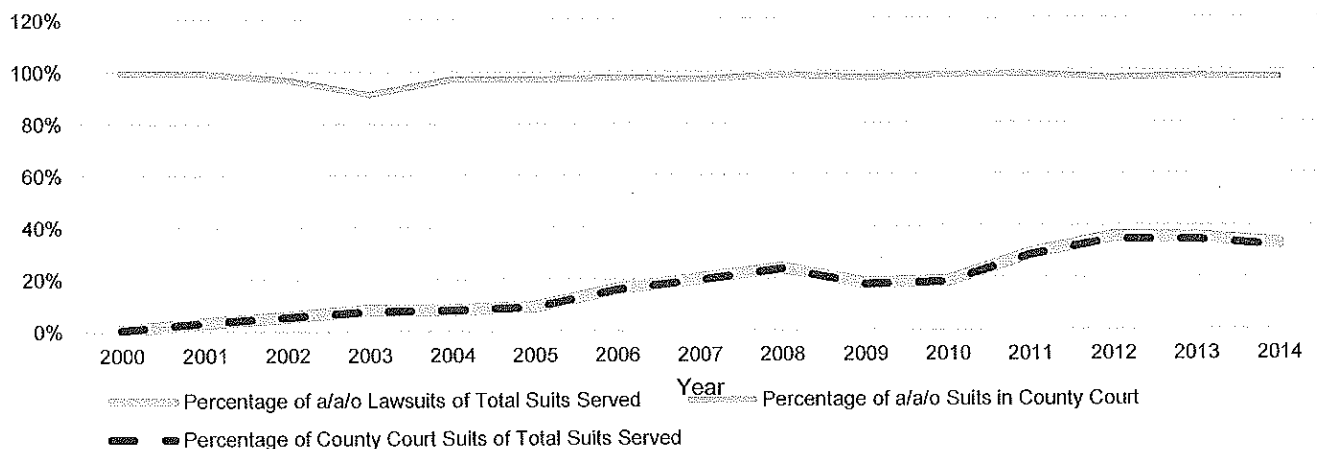
Closer Look: a/a/o Lawsuits as a Percentage of Total Lawsuits



FL DFS SOP DATABASE 2

Since 2000, roughly 97% of all “a/a/o” cases have been filed in county court. Florida county court jurisdiction lies in actions where the amount in controversy does not exceed \$15,000, exclusive of interest, costs, and attorney’s fees.⁸⁷ The fact that nearly all “a/a/o” cases are filed in county court indicates that these are lawsuits involving relatively low amounts in controversy.

a/a/o: A County Court Phenomenon



FL DFS SOP DATABASE 3

Given that most AOB cases are relatively small dollar cases, attorneys do not receive blockbuster damages verdicts from which they’ll take their fees. The difference? Attorneys do not need to obtain significant damages in order to make money in AOB cases. Rather, attorneys are able to bill for time spent on a case and receive their fees through the one-way attorney fee statute, which, when billed hourly, can be significant when paired with a high volume of claims. Contingency fee multipliers can be added to these awards, inflating them even further.⁸⁸

Attorney’s Fee Shifting Results in a Costly Power Shift to Unintended Parties

Aside from the data obtained from the SOP database, surveys were sent to two insurance trade associations with members that include property and casualty insurers that write a high volume of automobile and/or property insurance policies in Florida. The purpose of these surveys was to obtain a more qualitative view of insurers’ experiences with AOBs. Insurers (through their trade associations) were asked to identify claims and then to complete a survey for each identified claim. Each survey solicited information on numerous aspects of the AOB claim, including, among other things, whether an assignee was paid for the claim and what amount if any was paid to the assignee’s attorney in fees.⁸⁹

⁸⁷§ 34.01, Fla. Stat. (2015).

⁸⁸See *Quanstrom*, 555 So. 2d at 834; see also *Regar*, 942 So. 2d at 974-75.

⁸⁹A chart summarizing the information collected from these surveys is included as the final section of this report. See *infra* Section VI.

Out of the 116 surveys received, 60 claims were identified that provided both the final amount paid to the assignee on the claim and the amount paid in attorney's fees to the assignee's attorney. Of these 60 claims, attorney's fees represented an average of 274%⁹⁰ of the total amount paid to the assignee on the insurance claim. Most interesting is that in 48 of these claims, the assignee originally demanded more than what was ultimately paid by the insurer.

Ninety-two of the surveys listed both an amount demanded for payment on an assigned claim and an amount of final payment, separate from any other fees or costs. For purposes of this particular analysis, the authors only reviewed those surveys where some amount was paid on the claim, not, for example, where a claim was denied. Of the claims reviewed, it was found that the final amounts paid, on average, represented a 28.62% savings to the insurer from the amount first demanded by the assignee.⁹¹ Most of these claims were resolved in settlement, showing that assignees are settling for less than they demand, and in the case of service provider-assignees that performed the work for which they are seeking reimbursement from the insurer pursuant to an AOB, they are settling for less than what they "billed" the insured for services.

Settling claims by assignees and even paying attorney's fees in settlement is likely incentivized by the one-way attorney fee statute. The insurer's damages exposure would be significant if the assignee were to take its claim to court and to recover even just \$1. As the issues involved in this type of litigation are largely jury questions, an insurer's winning on the merits is an uncertainty. And even a minor victory for the insured exposes the insurer to attorney's fees. As a result, this uncertainty and exposure likely results in a payment to the assignee's attorney in settlement to discourage further litigiousness.

The motivating factor behind the AOB industry appears to be the fee-shifting offered by the one-way attorney fee statute. Specifically, in materials coaching service providers on the availability of AOBs, one law firm assures service providers that the AOB is preferable to other payment mechanisms since it "[c]onveys legal standing," "[a]llows the assignor to stand in the shoes of the insured," and, citing Section 627.428, "[a]llows [the] law firm to obtain their fees and costs separately from any client funds" without "tak[ing] a penny of your money."⁹² Moreover, the law firm reminds service providers that "[b]ad faith becomes an option" with an AOB, unlike with a simple direction to pay the service provider.⁹³ The risk of a bad faith claim also significantly increases an insurer's damages exposure.

⁹⁰Insurance Trade Association Survey Responses, Sept. 2015 (on file with authors); *see also infra* Section VI. These 60 claims included 48 property insurance claims and 12 auto glass-related insurance claims. The median percentage of attorney's fees of final reimbursement amount was 127.44% and the mode was 250%.

⁹¹Insurance Trade Association Survey Responses, Sept. 2015 (on file with authors); *see also infra* Section VI. The claims reviewed include 54 property insurance related claims and 38 auto glass-related claims. The total amount requested for these property claims was \$516,979.67. The total amount paid for those same property claims was \$371,661.75. Of the auto glass-related claims reviewed, the total amount requested was \$19,961.11, and the total amount paid was \$15,851.87. The median savings to the insurer on all these claims was 36.58% of the amounts first demanded. The average savings was 28.62%.

⁹²Cohen, *supra* at 28, 34.

⁹³*Id.* at 27.

So are attorneys the only ones benefiting by this scheme? It is hard to tell, given that such an analysis requires an examination of invoices submitted by service provider-assignees and a comparison with pricing and other standards. However, the same law firm presentation also advertises to service providers that they can “charge more than Xactimate.”⁹⁴ The surveys reflected that, in nearly 60% of the cases reviewed, pricing deviations did exist. One of the most frequent deviations cited? In excess of Xactimate. Other frequent deviations include excessive scope, inappropriate use of overhead and profit, incomplete logs, and discrepancies with peer reviews.

Unfortunately, Section 627.428’s intent—to shield policyholders from an insurer’s superior economic power—is being used as a sword by an altogether different set of persons.

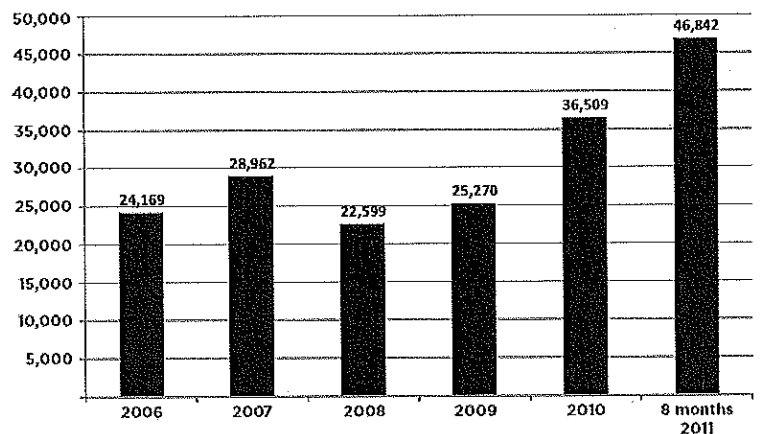
AOB Litigation Plagues Personal Lines Insurance in Florida

The explosion of AOB litigation is no more pronounced than in personal lines insurance, particularly in three lines: motor vehicle personal injury protection insurance (“PIP”), motor vehicle physical damage coverage insurance (specifically, auto glass repair coverage), and property insurance.

Case Study: Personal Injury Protection Claims

Historically, AOBs have dominated litigation concerning PIP. In 2011, Florida’s Insurance Consumer Advocate assembled a working group to study the issues troubling the PIP industry and used the SOP database to study the rise in PIP litigation.⁹⁵ The workgroup’s report estimated that about 95% of the 36,509 cases filed against insurance companies in 2010 were related to PIP coverage.⁹⁶ The working group was primarily concerned with what therapies or modalities are driving this increase. It determined that the modalities of chiropractic care, physical therapy, and massage therapy were most frequently billed,⁹⁷ and that providers of these modalities were increasingly becoming the actual plaintiffs in PIP litigation.⁹⁸ One insurer reported to the working group that based on its litigation experience, 99.6% of PIP AOB litigation is

NUMBER OF LAWSUITS IN COUNTY COURT



Source: Florida Department of Financial Services, http://webapps.dfdi.gov/LSOPReport/detail_report.asp

⁹⁴Cohen, *supra* at 42. Xactimate is a pricing software widely used by insurance industry stakeholders to estimate repair costs. See Xactimate website, <http://www.xactware.com/en-us/solutions/claims-estimating/xactimate/28/professional/>.

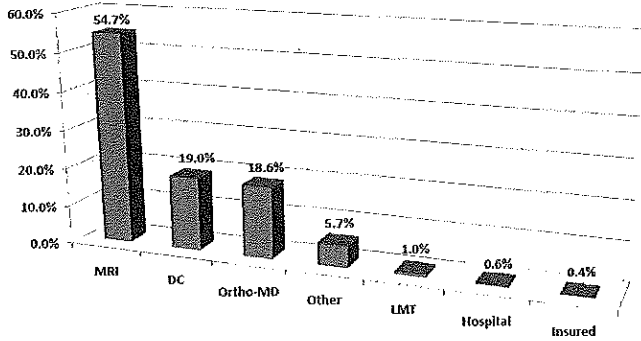
⁹⁵Florida Department of Financial Services, Office of the Insurance Consumer Advocate, *Report on Florida Motor Vehicle No-Fault Insurance (Personal Injury Protection)* (Dec. 2011), <http://www.myfloridacfo.com/ica/docs/PIP%20Working%20Group%20Report%202012.14.2011.pdf>.

⁹⁶*Id.* at 36.

⁹⁷*Id.* at 2.

⁹⁸*Id.* at 35.

PROVIDER TYPE IN LITIGATION

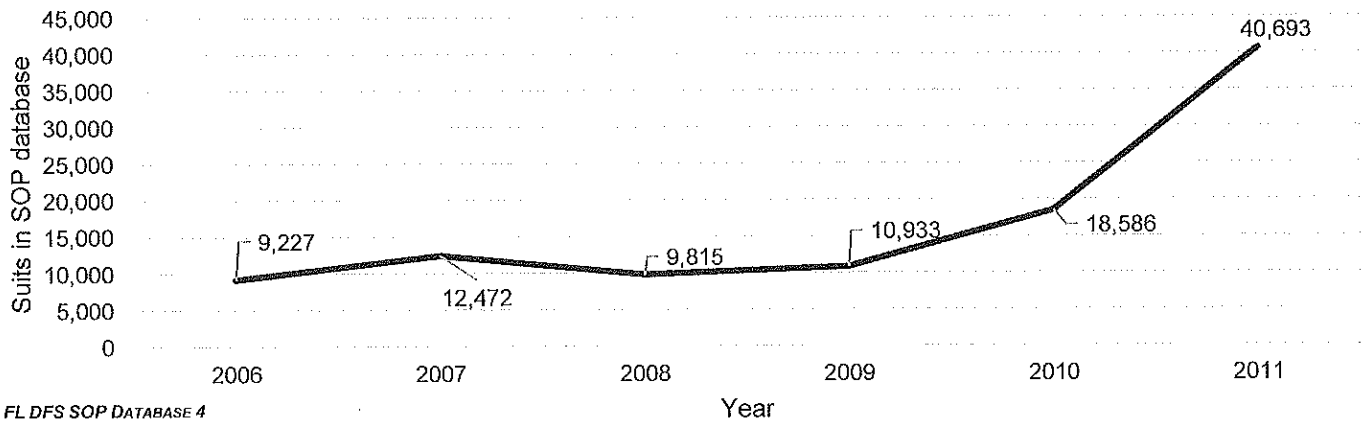


Source: Single insurer's litigation experience not independently verified.

driven by MRI providers, chiropractors, and similar service providers, while only 0.4% of PIP AOB litigation is generated by insureds.⁹⁹

In conducting our own search of the SOP database for the top providers of modalities most commonly attributed to PIP care (including chiropractors, MRI/imaging centers, and massage therapists), in 2011 these providers served 40,693 lawsuits on insurers.

Total Suits by Chiro/Medical/Imaging/Massage/MRI Providers



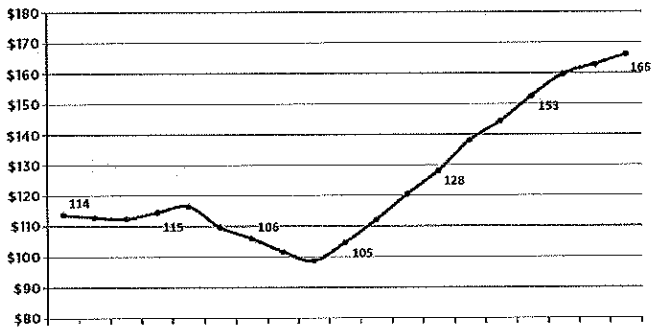
FL DFS SOP DATABASE 4

Interestingly, the line illustrating the number of lawsuits served by those providers catalogued by the SOP database parallels the line showing the average paid PIP losses per insured car, per year. The positive relationship between average paid PIP losses per car annually and lawsuits by service providers armed with AOBs is troubling and suggests that litigation is the main driver of the losses. As Florida Insurance Commissioner Kevin McCarty stated regarding PIP litigation more generally, "From 2008 to 2010, the amount Florida insurers paid for PIP benefits increased from \$1.45 billion to \$2.45 billion—a 70 percent increase. This increase is even more astounding when you consider the number of drivers was constant and the overall number of reported traffic accidents actually declined during the same period. Ironically, the number of lawsuits also doubled in the last two years, which undermines the entire premise of the 'no-fault' legal system."¹⁰⁰

⁹⁹*Id.* at 35.

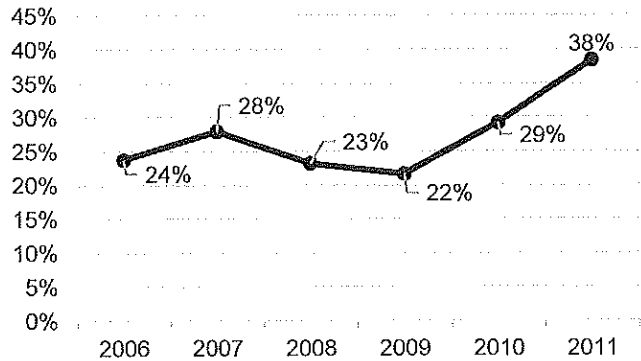
¹⁰⁰Kevin McCarty, *Getting Back to Basics: Fixing the PIP Problem*, Sunshine State News (Jan. 25, 2012), available at <http://www.sunshinestatenews.com/story/getting-back-basics-fixing-pip-problem>.

STATE OF FLORIDA
PRIVATE PASSENGER AUTO NON-FLEET
AVERAGE PAID PIP LOSSES PER INSURED CAR PER YEAR



Source: Four quarters ending industry Fast Track data collected by the Independent Statistical Services Office, Inc., and National Independent Statistical Service.

Chiro/Med/Imaging/MRI/Massage
County of Total Suits



FL DFS SOP DATABASE 5

In the 2012 regular session, the Florida Legislature passed PIP reform. The chief reforms included lowering the allowed claims payments for non-emergency conditions, excluding massage and acupuncture from covered medical benefits, strengthening the discovery mechanism requirements for insureds, and providing standards for reasonableness in attorney fee awards including elimination of the use of a contingent fee multiplier in some cases.¹⁰¹ The PIP reform bill was passed on May 9, 2012 with an effective date of January 1, 2013.¹⁰² In late 2012, certain chiropractors, acupuncturists, and massage therapists challenged the statute, prompting a series of stays and appeals that stretched into late 2013.¹⁰³ On October 23, 2013, the First DCA lifted the injunction placed on the implementation of the legislation based on the plaintiffs' lack of standing.¹⁰⁴ The plaintiffs' attempt to obtain review by the Florida Supreme Court was rejected on April 21, 2014.¹⁰⁵

¹⁰¹ Fla. CS for CS for HB 119 (2012) (Third Engrossed) (An Act Relating to Motor Vehicle Personal Injury Protection Insurance), available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName= h0119er.docx&DocumentType=Bill&BillNumber=0119&Session=2012>.

¹⁰² *Id.*

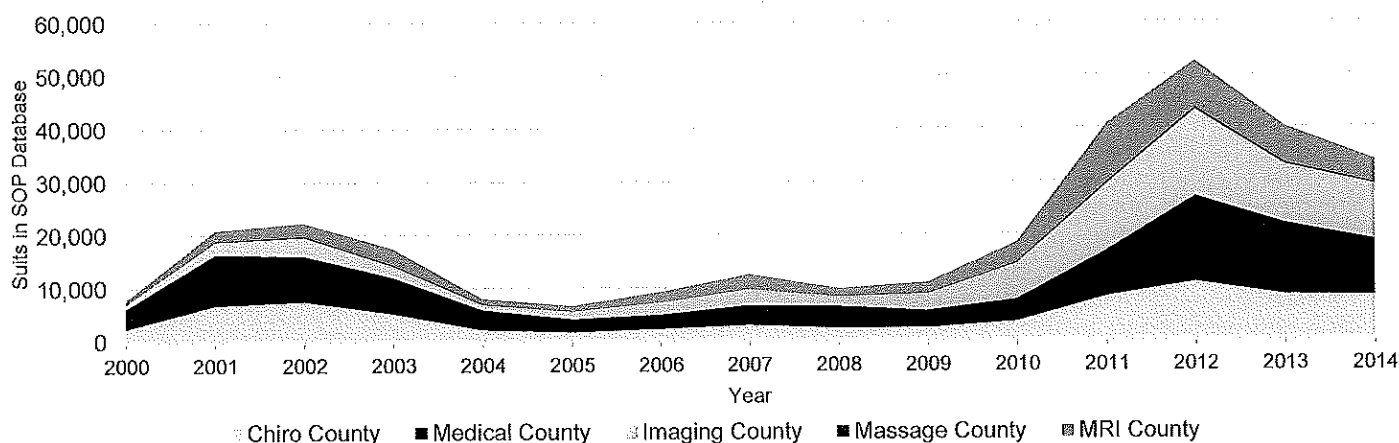
¹⁰³ See *McCarty v. Myers*, 125 So. 3d 333, 334-35 (Fla. 1st DCA 2013).

¹⁰⁴ *Id.* at 337.

¹⁰⁵ *Myers v. McCarty*, 143 So. 3d 921 (Fla. 2014).

With the implementation of reform, overall PIP lawsuit data from the top modalities reflects a decline that may correspond to these reforms.¹⁰⁶ This is not the first time this has occurred. As shown in the next chart, overall PIP litigation decreased in volume in 2002 and 2003, and decreased again in 2007. In 2001, enhanced fraud protections, including clinic licensure and limited third-party access to crash reports, were passed,¹⁰⁷ and in 2003, additional anti-fraud measures were added.¹⁰⁸ Another short decrease occurred in 2007, when the PIP law was repealed briefly as a result of a sunset provision in the law but was soon reenacted with additional reforms.¹⁰⁹

PIP County Court Litigation by Plaintiff Names



FL DFS SOP DATABASE 6

Some of the “dips” reflected in the overall number of AOB lawsuits filed may be attributable to the declines in PIP AOB litigation as the result of reform. However, despite reforms, PIP AOB litigation still represents a significant portion of all AOB litigation.

Case Study: Auto Glass Claims

Auto insurance policies often provide physical damage coverage, meaning coverage for loss to the vehicle that resulted from an occurrence other than a collision. Events covered by physical damage insurance include fire, theft, vandalism, falling objects, natural disasters, and the like.¹¹⁰ Windshields are excepted from an auto insurance policy’s deductible requirements by law.¹¹¹ Unfortunately, the prospect of a “no risk” or “free” windshield has fueled a very predictable moral hazard: manufactured windshield repair claims. Several auto glass repair

¹⁰⁶ See *infra* PIP County Court Litigation by Plaintiff Names Chart, Florida Department of Financial Services Service of Process Database.

¹⁰⁷ See Ch. 2001-271, Laws of Fla.; Ch. 2001-163, Laws of Fla.

¹⁰⁸ See Ch. 2003-411, Laws of Fla.

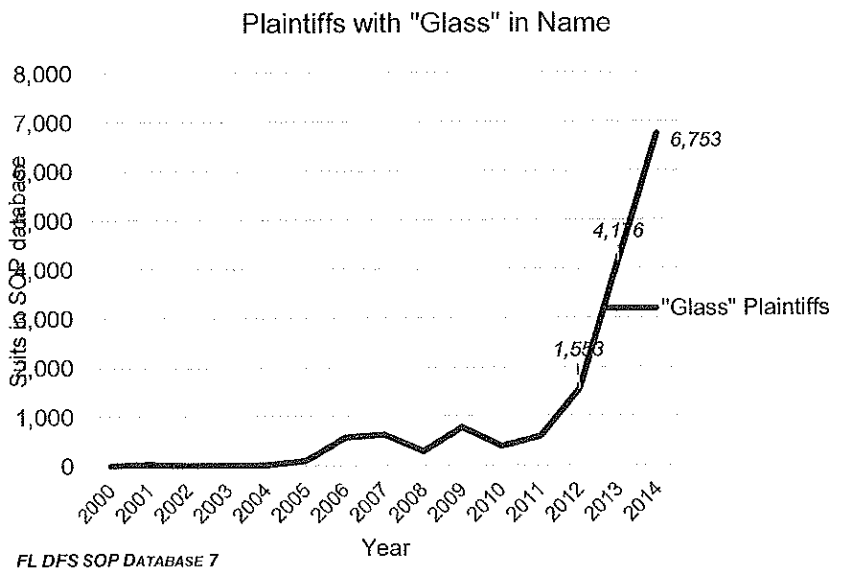
¹⁰⁹ Florida Office of Insurance Regulation, Cabinet Presentation—Personal Injury Protection 6 (Aug. 2011), <http://www.floir.com/siteDocuments/PIPPresentation08162011.pdf>.

¹¹⁰ Florida Department of Financial Services, *Automobile Insurance: A Toolkit for Consumers* 7, <http://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited Aug. 13, 2015).

¹¹¹ § 627.7288, Fla. Stat. (2015).

shops have developed a niche market of promising “free” windshields in exchange for an AOB and the right to sue an insurer.

In 2013, a Tampa news station completed a two-year undercover investigation into windshield repairs and replacements. The news station discovered windshield repair shops that offered gift cards, steaks, and cash in exchange for a car owner’s right to file an insurance claim for a “free” windshield replacement. Often undamaged windshields were targeted, but windshield repair shops alleged damage in order to seek insurer payment for replacement work.¹¹²



Unfortunately, a search of the SOP database suggests that this practice has boomed in Florida. From 2000 to 2005, only 92 services of process from plaintiffs with names containing the word “glass” were received. Over the next five years, 2,249 were received. From 2010 to 2014, 13,100 were filed. In 2014 alone, 6,722¹¹³—or almost 26 services of process per day—were logged into the SOP database.

Much of this litigation is being filed by the same small class of vendors. Express Auto Glass, which contributed about 600 lawsuits to the 2014 total, advertises a “FREE Gift Card with Windshield Replacement Insurance Claim!” on its website.¹¹⁴ As another example, Auto Glass America, which promises a \$100 restaurants.com gift card with the words “Have Any Auto Glass Service Done by Us and this Valuable Gift Card is Yours Absolutely Free!”¹¹⁵ on its website, filed 1,485 lawsuits in 2014. Mobile Auto Glass Repair, LLC—



Advertisements on the Auto Glass America Website, Aug. 15, 2015

¹¹²First Coast News, *Glass companies push unnecessary windshield replacements* (May 3, 2013), available at <http://www.firstcoastnews.com/story/news/local/florida/2014/01/17/4600895/>.

¹¹³The source for this data is the SOP database. Individuals who happen to have the word “glass” in their names but did not appear affiliated with auto glass repair were not removed from the results. However, such individuals likely represent a very small percentage of the results. For instance, examining cases filed in 2014, only about 0.046% of cases were filed by plaintiffs that appeared unrelated to the auto glass industry and happened to have the word “glass” in their name.

¹¹⁴Express Auto Glass, *Get your FREE Gift Card*, <http://www.expressautoglass.biz/windshield-replacement-gift-card.php> (last visited Aug. 13, 2015).

¹¹⁵Auto Glass America Homepage, <http://www.auto-glassamerica.com/free-windshield-clearwater.html> (last visited Aug. 13, 2015).

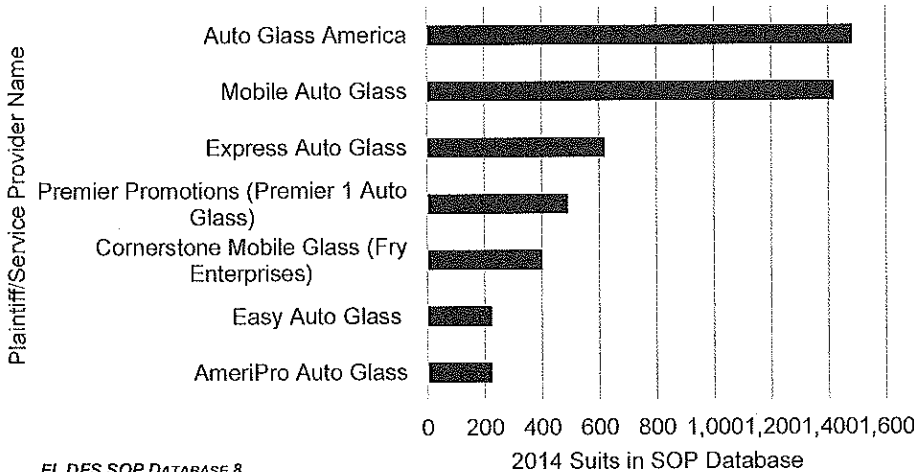
fronted by “Mr. Auto Glass”—filed 1,421 lawsuits in 2014, all by the same lawyer.¹¹⁶

Comprehensively, about 91% of the 6,722 likely auto glass AOB lawsuits filed in 2014 were brought by one of 16 attorneys—from 14 firms—in the state. One might presume that windshields are fixed soon after they are broken, and that the propensity for broken windshields is not associated in any significant way with a particular region, person, or entity. However, the auto glass AOB litigation phenomenon appears to defy such logic, given its concentration among a small group of plaintiffs and an even smaller group of attorneys. The chart below shows the

14 law firms most commonly responsible for likely auto glass AOB litigation as reflected in the SOP database.

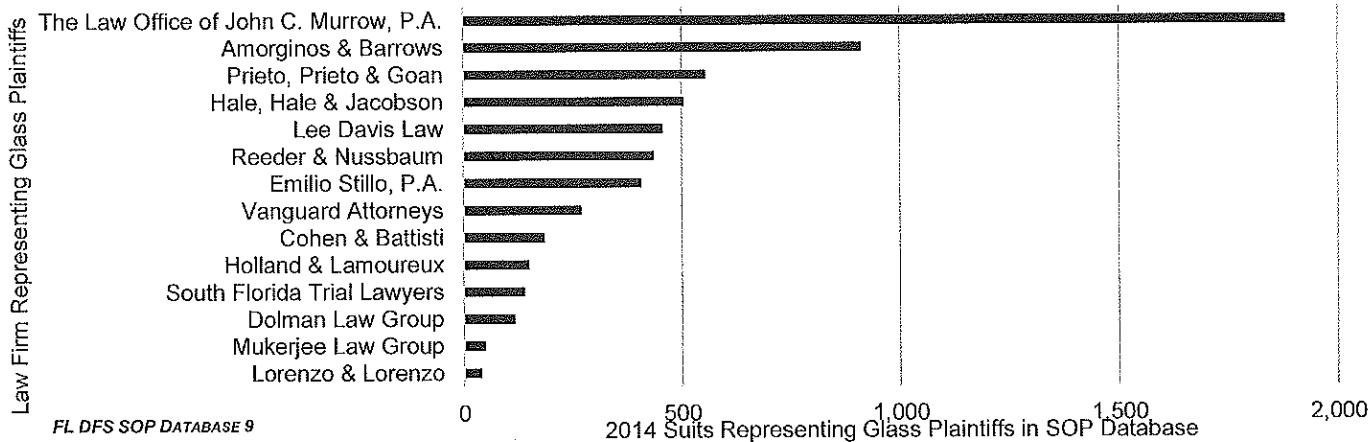
Again, these cases—predominantly filed in county court—are not high dollar cases. But these lawsuits are likely worthwhile because of the volume. For example, the Law Office of John C. Murrow filed 1,882 “glass”-affiliated plaintiff lawsuits in 2014. That amounts to a little more than five lawsuits per day.¹¹⁷

2014 Top Glass Lawsuit Plaintiffs



FL DFS SOP DATABASE 8

2014 Top Glass Plaintiff Attorneys



FL DFS SOP DATABASE 9

¹¹⁶Mr. Auto Glass, About Us, <http://www.fixmyquack.com/about-us.html> (last visited Aug. 13, 2015); John C. Murrow, The Law Office of John C. Murrow, P.A. (attorney filing suits on behalf of Mobile Auto Glass Repair, LLC determined by review of SOP database).

¹¹⁷Since services of process cannot be served on the Department of Financial Services on weekends, this calculation is based on the number of weekdays in a calendar year and does not exclude holidays when the Department may be closed and thus not accepting services of process.

In addition to being high volume, these cases are relatively simple. A review of the complaint filed in *Express Auto Glass, LLC a/a/o Amber Tyer v. Allstate Fire & Insurance Co.*,¹¹⁸ initiated by frequent auto glass plaintiff's firm Hale, Hale & Jacobson, P.A., is illustrative. The complaint alleges damages greater than \$750 but less than \$1,000, exclusive of interest and attorney's fees. The plaintiff Express Auto Glass asserts it has the right to sue defendant Allstate Fire & Insurance Company by virtue of an AOB, which is attached to the complaint. The AOB signed by the policyholder broadly assigns "any and all insurance rights, benefits and proceeds under any applicable insurance policies to Express Auto Glass LLC" and "direct[s] [the] insurance carrier to release any and all information requested by Express Auto Glass LLC." Very often—and this complaint is no different—the policyholder waives the right to a written estimate of the cost to repair the windshield at the time the AOB is signed. In the complaint Express Auto Glass alleges it has presented a "reasonably priced bill" to the insurer that has not been paid. As proof the complaint attaches an invoice. The invoice is identical to the AOB except it is not signed by the policyholder and it includes the actual estimate of cost. The invoice is also dated the same day as the AOB was signed by the policyholder. Finally, a staple of these complaints is an allegation that the plaintiff auto glass shop is entitled to attorney's fees pursuant to Section 627.428, Florida Statutes.

A review of the cases filed by plaintiffs like Express Auto Glass and Atlas Auto Glass demonstrate that attorneys can essentially copy and paste a new complaint from an old one, making it relatively easy to file five or more of these lawsuits in a single day. And the promise of attorney's fees and costs by virtue of the one-way attorney fee statute makes pursuit of these cases potentially lucrative.

The one-way attorney fee is also used as leverage to get higher amounts for work performed. Again, the prospect of awarding attorney's fees if a plaintiff wins just one cent more than was offered presents a Hobson's choice for insurers: pay what the service provider-assignee is asking for or try to negotiate a lower cost and get sued, creating exposure for attorney's fees.

Safelite® Solutions, an affiliate of Safelite® Auto Glass, the largest windshield repair company in the United States, provides claims management solutions for many of the country's largest property and casualty insurance companies. As part of this service, they review auto glass repair invoices submitted to their customer-insurers and compare them to related estimates to ensure equitable pricing. Given the spike in auto glass litigation from several service providers mentioned above, it is worth mentioning that the volume of auto glass claims reviewed by Safelite Solutions has remained relatively stable. From 2012 to 2013, Safelite Solutions reported a 4.74% increase and from 2013 to 2014, reported an 11.82% increase.¹¹⁹ This contrasts with the litigation statistics mentioned above, which reflect a 162.77% and 168.90%

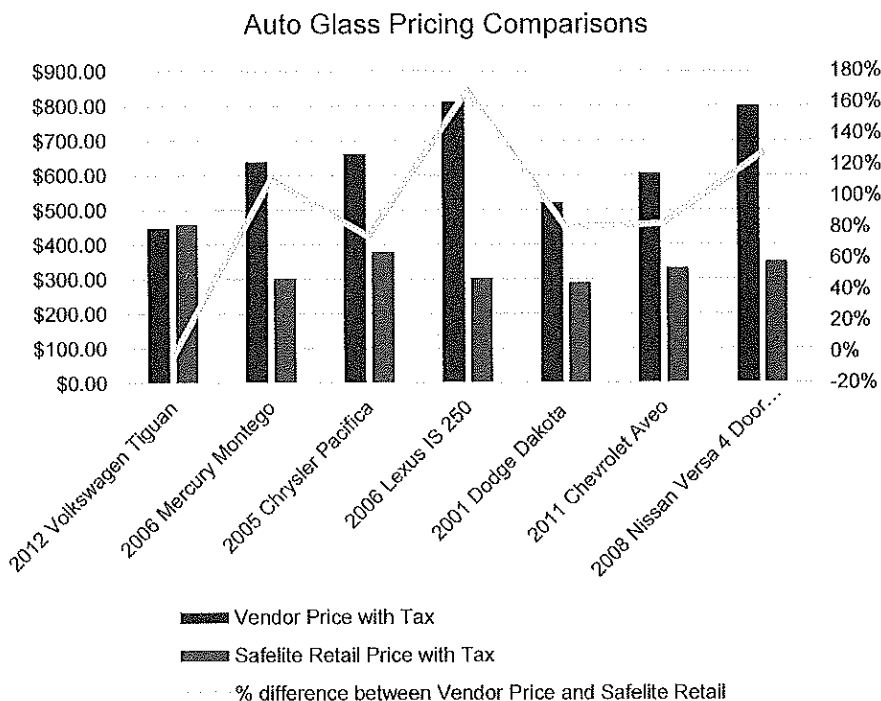
¹¹⁸Case No. 2013-SC-007075-0 (Fla. 9th Cir. Ct.) (filed Aug. 1, 2013). The complaint and attachments were accessed via the Orange County Clerk of Courts MyEClerk website, <https://myeclerk.myorangeclerk.com/>.

¹¹⁹Email to Authors from Safelite Solutions (on file with authors). Safelite Solutions reported the following: Total Claims, 2012: 227,931; 2013: 238,737; 2014: 266,967.

increase during those same time periods. The percentage of year over year growth between the two data sets, while both increasing, are doing so at drastically different growth rates.

Safelite Solutions was asked to review a small sample of invoices submitted by auto glass service providers as attachments to seven AOB lawsuits filed in Florida, illustrating the amount the service provider-assignee was claiming the defendant-insurer was refusing to pay on an assigned insurance claim.¹²⁰ Safelite Solutions compared these invoices to the retail price charged by Safelite Auto Glass for the same year and model vehicle. The Safelite retail prices reflect cash prices—not prices negotiated by insurer partners—for purposes of making a fair comparison. In all but one case, the markup by the service providers evidenced in the complaint invoices was at least 74% more than the Safelite retail price, including taxes and all fees.¹²¹

Given the Hobson's choice presented insurers today, settling for a higher amount to avoid additional litigation costs is most likely the economically efficient option for cost containment. Even when such option is taken though, the power wielded by service providers who have stepped into a first party's shoes and can assert first party protections to get above market reimbursements still results in additional costs for insurers and, eventually, policyholders.



SAFELITE/COUNTY COURT DOCUMENTS 1

¹²⁰The invoices reviewed were taken from the following, randomly-selected cases filed in Florida's Ninth Judicial Circuit by Express Auto Glass, Auto Glass America, and Atlas Auto Glass from the Orange County Clerk's website: *Express Auto Glass, LLC a/a/o Consilio v. Progressive Am. Ins. Co.*, Case No. 2013-SC-9744 (Fla. 9th Cir. Ct.) (filed Oct. 23, 2013) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2011 Chevrolet Aveo); *Express Auto Glass, LLC a/a/o Lopez v. Progressive*, Case No. 2013-SC-2544 (Fla. 9th Cir. Ct.) (filed March 13, 2013) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2008 Nissan Versa); *Auto Glass Am. LLC a/a/o Moore v. GEICO Cas. Co.*, Case No. 2015-SC-5814 (Fla. 9th Cir. Ct.) (filed May 15, 2015) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2005 Chrysler Pacifica); *Auto Glass Am. LLC a/a/o Colosky v. GEICO*, Case No. 2015-SC-5803 (Fla. 9th Cir. Ct.) (filed May 14, 2015) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2006 Lexus IS); *Auto Glass Am. LLC a/a/o Murtaugh v. Auto-Owners Ins. Co.*, Case No. 2015-SC-5379 (Fla. 9th Cir. Ct.) (filed May 13, 2014) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2001 Dodge Dakota); *Lusnia d/b/a Atlas Auto Glass a/a/o Costa v. Lib. Mut. Ins. Co.*, Case No. 2012-SC-6875 (Fla. 9th Cir. Ct.) (filed Aug. 10, 2012) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2006 Mercury Montego); *Lusnia d/b/a Atlas Auto Glass a/a/o Lotz v. Allstate Indem. Ins. Co.*, Case No. 2012-SC-6864 (Fla. 9th Cir. Ct.) (filed August 10, 2012) (complaint for breach of contract premised on unpaid claim on auto insurance policy for 2012 Volkswagen Tiguan).

¹²¹The one outlier—the Volkswagen Tiguan—is likely attributable to the newness of the model.

Case Study: Property Insurance Claims

Florida's geographic orientation as a peninsula, surrounded by two oceans, makes it more prone to windstorm risk than most other states.¹²² In 1992, South Florida was forever changed by Hurricane Andrew. In 2004 and 2005, a confluence of Hurricanes Charley, Frances, Ivan, Jeanne, Dennis, Katrina, Rita, and Wilma left a wake of bruised, battered, and destroyed structures. Tens of thousands of homes had to be repaired or rebuilt and, as a result, the composition of insurers willing to underwrite these losses changed dramatically. Legislative and regulatory actions were swift, with an eye to increased mitigation. But an unintentional side effect was the expansion of Florida's residual market.¹²³

Unfortunately, Florida's property insurance market has also been hit with other, albeit manmade, disasters. In 2011, Florida's "insurer of last resort," Citizens Property Insurance Corporation, was one of several insurers battered by a dramatic growth in sinkhole claims. The frequency of claiming activity was concentrated in three southwest Florida counties and contributed to loss ratios specific to those counties in the range of 300% to nearly 700%. This increase in claims and losses was unrelated to any geologic activity, and anecdotally was driven by the incentive for policyholders to file claims and pocket the cash proceeds instead of making repairs.¹²⁴ Public adjusters, attorneys, and other third parties in this system advertised the availability of sinkhole claims to policyholders, and received commissions and other payouts when their services were used.¹²⁵ In a presentation to the Senate Banking and Insurance Committee, Senate staff surmised that insurers were reluctant to litigate questionable sinkhole claims because of Section 627.428's one-way attorney fee, which put "insurers in a position in which the most cost effective method of dealing with sinkhole claims [was] to simply pay them, rather than risk a judgment for claimant attorneys' fees and bad faith damages after already incurring large costs associated with adjusting these claims."¹²⁶

Legislative action in the form of 2011 Senate Bill 408 stemmed the tide of sinkhole claims by reforming what qualified as covered sinkhole damage, requiring insurance proceeds to be devoted to repairs, and creating several risk management tools for insurers.¹²⁷

¹²²The Florida Catastrophic Storm Risk Management Center, *The State of Florida's Property Insurance Market 2nd Annual Report* 3 (Jan. 2013), <http://www.stormrisk.org/sites/default/files/sites/default/files/2nd%20Annual%20Insurance%20Market%20Rpt-FSU%20Storm%20Risk%20CenterRev.pdf>.

¹²³*Id.* at 12.

¹²⁴Fla. S. Banking & Ins. Comm., *Interim Report 2011-104 Issues Relating to Sinkhole Insurance 2* (Dec. 2010), <http://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-104bi.pdf>.

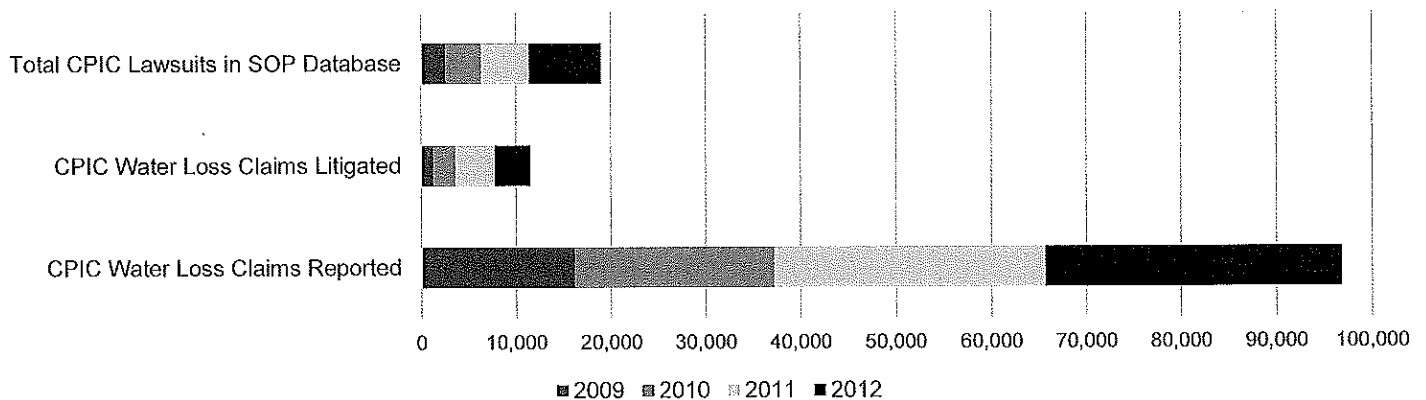
¹²⁵*Id.*

¹²⁶*Id.* at 10.

¹²⁷See Fla. S. Banking & Ins. Comm., House Message Summary on CS for CS for SB 408 (2011) (2nd Engrossed), <http://flsenate.gov/Session/Bill/2011/0408/Analyses/2011s0408.hms.PDF>.

Despite the reforms, there has been a disproportionate increase in the percentage of claims that result in litigation as compared to the percentage of policies in force with reported claims.¹²⁸ This is because non-sinkhole related claims are increasing.¹²⁹ When property insurance became more resistant to abusive practices related to sinkhole claims, the litigation template was exported to other scenarios. Now, the leading cause of loss for all reported claims to Citizens is water, growing from 38% of all reported claims to over 50% in just four years, followed by roof damage caused by wind or other weather, fire, and dropped objects.¹³⁰ For litigated claims, water leads the pack growing from 46% to 75% over that same four-year period.¹³¹

Citizens Property Insurance Corporation (CPIC):
Water Claims, Water Lawsuits, and Total Lawsuits



FL DFS SOP & CPIC LITIGATION ANALYSIS 1

Citizens' data makes for an interesting case study in litigation trends for two reasons. First, Citizens only sells property insurance, so its data should reflect how natural and unnatural causes have affected litigation trends in that market. Second, Citizens' policy count has varied sometimes dramatically over time, despite a continuous increase in the number of lawsuits. As displayed in the next chart, lawsuits as a percentage of policies in force was more than one full percentage point lower in the hurricane-battered 2004 and 2005 calendar years than it was in 2014. Even stranger is that lawsuits continued to spike after the statute of limitations for filing lawsuits for 2004 and 2005 storm claims had expired.^{132, 133}

¹²⁸Citizens Property Insurance Corporation, *Litigation Analysis* 6 (Oct. 2013), https://www.citizensfla.com/shared/press/documents/LitigationAnalysis_10-2013.pdf.

¹²⁹See *id.* at 7.

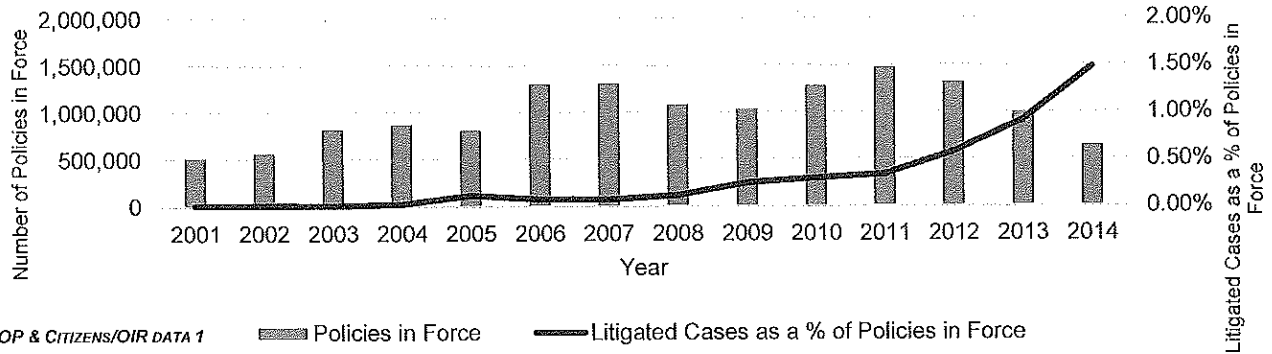
¹³⁰*Id.* at 10.

¹³¹*Id.* at 11.

¹³²See § 95.11, Fla. Stat. (2015) (providing a five-year statute of limitations for breach of contract claims). In 2011, section 627.70132, Florida Statutes, was enacted, requiring insurers to be notified about windstorm and hurricane claims within three years of the storm's landfall, but was not made retroactive.

¹³³The chart below contains lawsuit and policy count information from Citizens Property Insurance Corporation, as well as the Florida Windstorm Underwriting Association ("FWUA") and the Florida Residential Property and Casualty Joint Underwriting Association ("FRPCJUA"). The latter organizations were merged in 2002, creating Citizens Property Insurance Corporation.

Residual Market: Citizens, FWUA, FRPCJUA

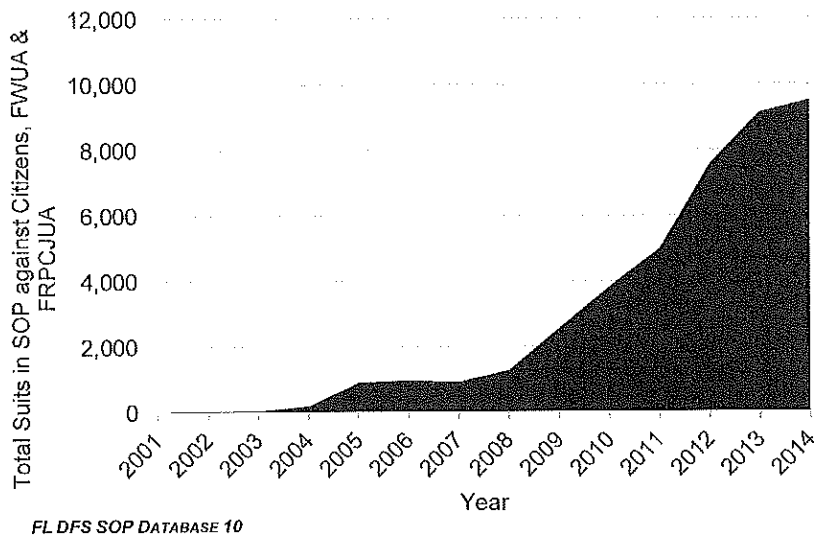


FL DFS SOP & CITIZENS/OIR DATA 1

The continued increase in lawsuits after 2005 has two common characteristics: the lawsuits are increasingly for lower dollar amounts (as they are predominantly filed in county court) and assignee litigation is becoming more prevalent, based on the number of cases involving an “a/a/o” plaintiff.

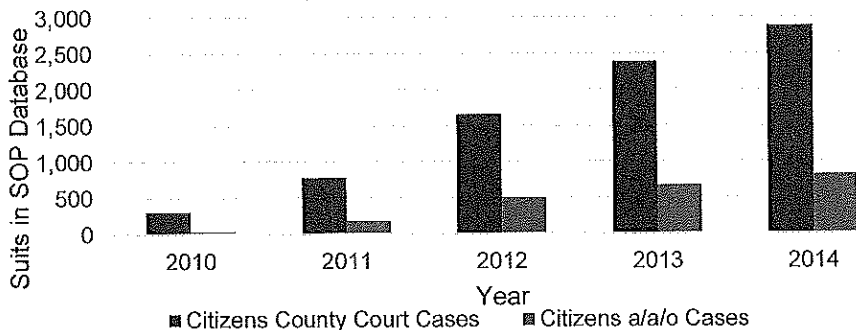
Regrettably, Newton’s third law applies as equally in insurance as it does in physics, and the increase in litigation in the absence of storms has prompted a reaction in the form of Citizens’ 2016 rate filing. Thirty percent of Citizens policyholders are likely to see a rate increase based on “a significant number of water claims, which drives rate indications higher for those areas.”¹³⁴

Residual Property Insurance Market Lawsuits



FL DFS SOP DATABASE 10

Citizens Property Insurance Corporation County Court Cases & A/A/O Cases



FL DFS SOP DATABASE 11

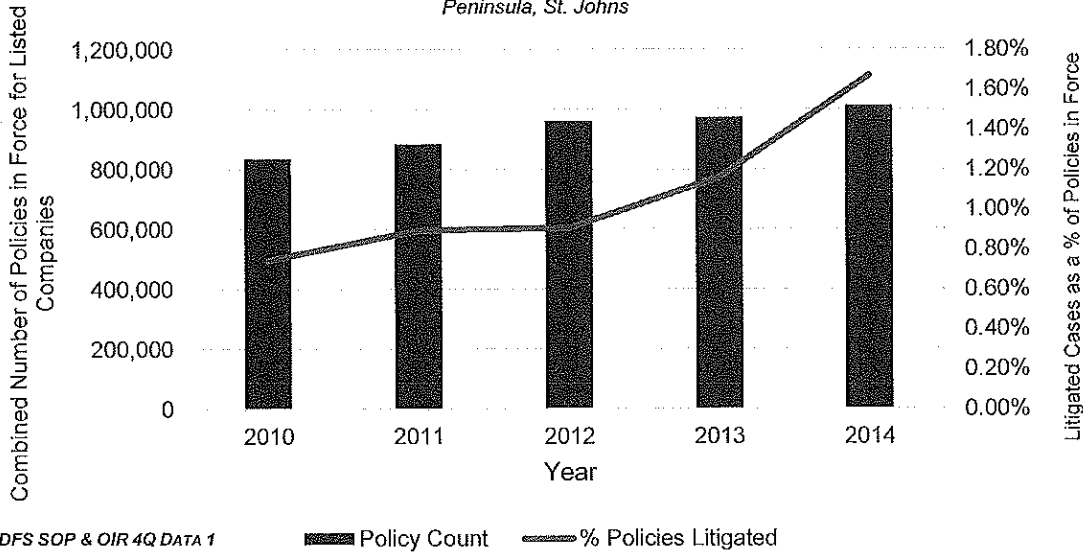
This was foreshadowed in a February 2015 presentation by Citizens’ Chief Claim Officer, who reported that 72% of water claims arise from the tri-county area of the state (Miami-Dade, Broward, and Palm Beach counties)—the same area that will be affected by the proposed rate increases.¹³⁵ Of those water claims, 98% had attorney representation. Based on a

¹³⁴Citizens Property Insurance Corporation, 2015 Rate Kit 2, <https://www.citizensfla.com/shared/press/documents/2015RateKit.pdf>.

¹³⁵Jay Adams, Chief Claims Officer, Citizens Property Insurance, Citizens Presentation on Assignment of Benefits 2 (Feb. 9, 2015), <http://piff.net/wp-content/uploads/2015/03/Citizens-Presentation-on-Assignment-of-Benefits.pdf>.

Florida Domestics

American Integrity, Florida Family, Security First, Castle Key Insurance & Indemnity, Florida Peninsula, St. Johns

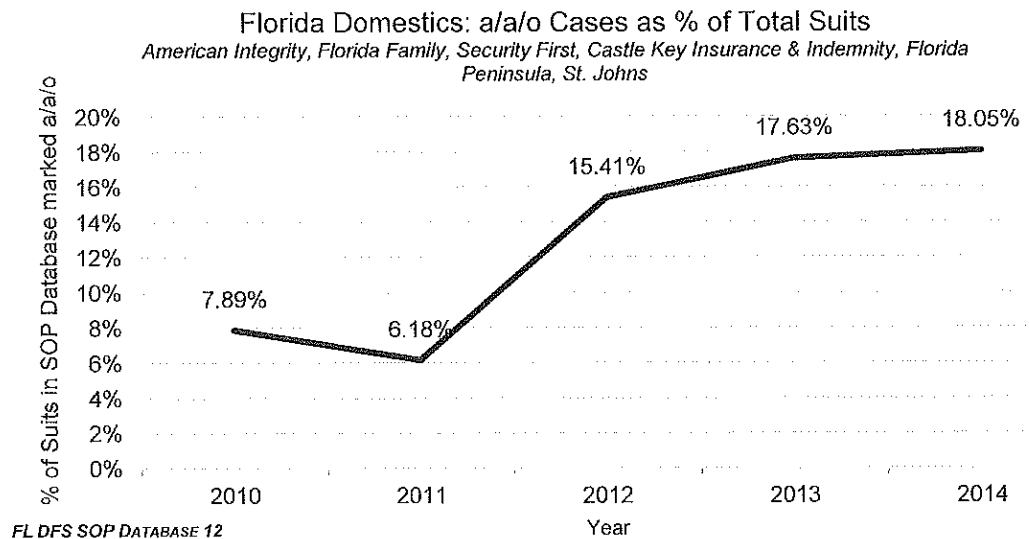


review of the lawsuits received as of December 2014,¹³⁶ Citizens found that 91% of the lawsuits were based on water claims, and that 98% of the lawsuits arose from claims in the tri-county area.¹³⁷ Notably, 85% of all the suits reviewed had an

attorney involved before the claim was even reported to the insurer, suggesting a coordinated—and potentially manufactured—effort to churn claims into litigation.¹³⁸

Anticipating the arguments of those who believe that this data does not, in and of itself, demonstrate an alarming trend exists, Citizens’ data can be compared and contrasted to that of the private market. Since the early 2000s, domestic, mono-line property insurers have entered the market more frequently and have collected similar data, providing yet another property insurance-only glimpse at lawsuit data. This data is nearly a mirror image of Citizens’ data, with litigation growing a full percentage point from 2010 to 2014 when controlled for policy count fluctuation.

Digging deeper, it appears that cases brought by assignees are a contributing factor. Cases that include an *a/a/o* in the plaintiff’s name have grown by about 10% of total litigated cases in a five-year period.

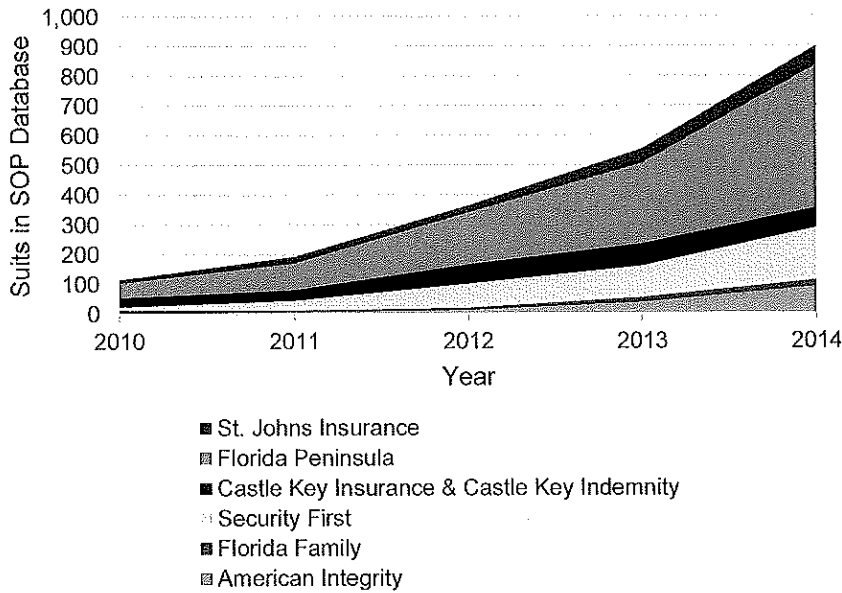


¹³⁶ See *id.* at 9.

¹³⁷ *Id.* at 6.

¹³⁸ *Id.* at 9 (stating that 479 of 562 suits had attorney representation at the first notice of loss).

Florida Domestic: County Court Litigation
 American Integrity, Florida Family, Security First, Castle Key Insurance &
 Indemnity, Florida Peninsula, St. Johns



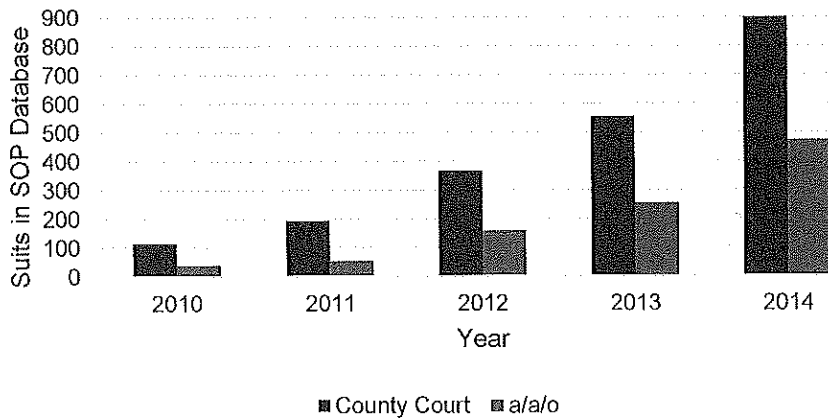
So is the influx of water claims occurring naturally? The data again shows that these claims concentrate in certain areas and are advanced by a relatively small class of service providers, suggesting that some other factor is at work. Would this large influx of naturally occurring, sudden, and accidental¹³⁹ water leaks and bursts really be serviced by the same set of providers?

Based on a review of lawsuit data provided by several property insurers, companies with names that included words such as “water,” “restoration,” “restore,” “flooring,” “remediation,” “mitigation,” “mold,” “carpet,” and “emergency” were frequently plaintiffs in lawsuits brought against insurers.¹⁴⁰ Accordingly, searches done in the SOP database with one or more of these search terms in the plaintiff field confirm that such service providers are comprising an increasing amount of insurance lawsuits.^{141,142}

FL DFS SOP DATABASE 13

Florida Domestic

American Integrity, Florida Family, Security First, Castle Key Insurance &
 Indemnity, Florida Peninsula, St. Johns



FL DFS SOP DATABASE 14

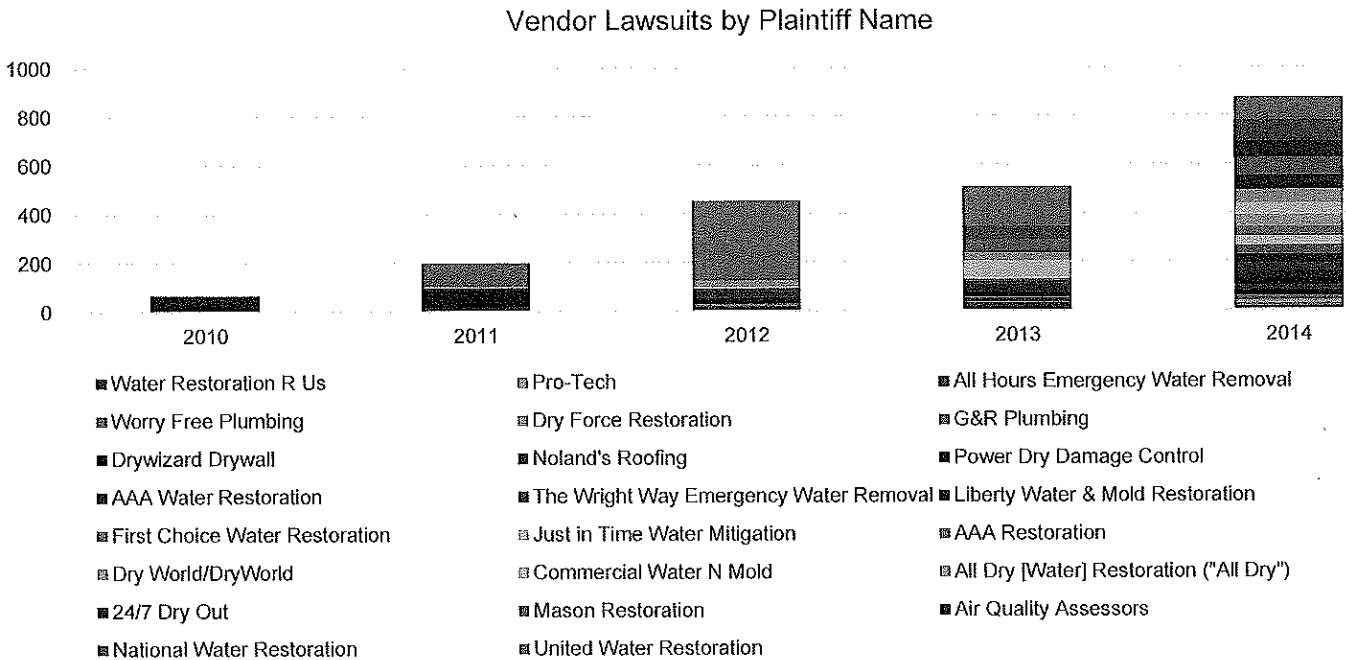
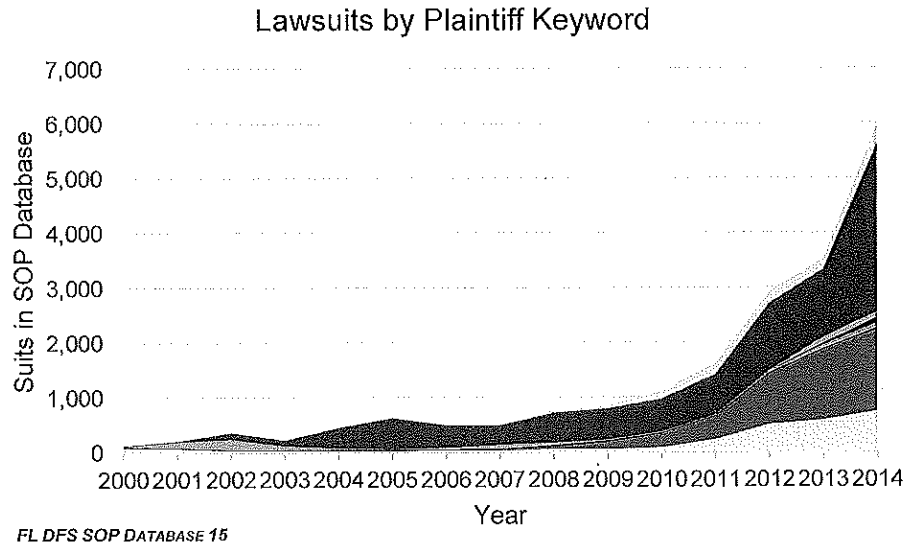
¹³⁹Most property insurance policies cover sudden and/or accidental water damage, but not leaks that have been constant, continuous, or occurring over a period of time and thus were preventable or capable of being easily corrected by mitigation efforts. For example, commonly covered perils under homeowners’ insurance include “[a]ccidental discharge or overflow of water or steam,” “a sudden and accidental discharge of water—such as a burst pipe or other plumbing failure, or claims that arise from water damage due to water instructions due to hurricanes.” Florida Department of Financial Services, Homeowners’ Insurance: A Toolkit for Consumers 5, 12, <http://www.myfloridacfo.com/division/Consumers/UnderstandingCoverage/Guides/documents/HomeownersToolkit.pdf>.

¹⁴⁰Insurance Trade Association Survey Responses, Sept. 2015 (on file with authors).

¹⁴¹It should be noted that companies such as “Carpet Cleaning & Restoration” and “United Water Restoration” may be represented in this chart twice because their names include two of the search terms; however, even removing these types of names, the graph still represents a significant spike in assignee lawsuits. Individual plaintiffs with names that include the search terms were also not removed.

¹⁴²Truncated versions of words were used in some instances to capture two variations of the same word. For example, the search term “restor” was used to capture companies that used either the word “restoration” or “restore” in their business name.

Akin to auto glass AOB litigation, a group of lawyers and plaintiffs—albeit a larger group in this context—dominate the property insurance AOB litigation landscape. Most of these companies either did not exist or did not file lawsuits before 2008.



V. Conclusions & Recommendations

This report has identified the following trends:

- (1) Despite a decline in extreme weather events, and despite no other apparent increases in naturally-occurring and damage-causing events, insurance litigation continues to increase.
- (2) Decreases in AOB PIP litigation appear to coincide with legislative reform of PIP.

- (3) Assignee plaintiffs—often those service providers repairing the insured damage—are increasingly becoming the plaintiffs in lawsuits filed against insurers.
- (4) Indeed, a third of all lawsuits filed against insurers are brought by apparent assignee-plaintiffs.
- (5) Lawyers filing cases on behalf of these litigants are concentrated in a relatively small subset of all lawyers, yet represent an overwhelming majority of the counsel in these cases.
- (6) More qualitative data obtained from insurers suggests that insurers are reacting by settling these service provider-AOB claims out of court, often paying *less* than what the assignee originally demanded but paying comparatively high assignee's attorney's fees.

Logically, there must be some explanation for these trends. While litigation initiated by assignees has consistently been pervasive in certain lines such as PIP for many years, this litigation has only recently grown to include auto glass and property insurance litigation. Below are a few conclusions that we will posit for consideration, understanding that it is difficult to determine any causal or correlative link:

- PIP legislative reforms over the last decade may have made that line of insurance a less profitable source of litigation for third parties and attorneys.
- AOB litigation began increasing for other lines of insurance that were not impacted by significant or comprehensive legislative reform.
- AOB litigation is profitable because AOBs are relatively easy to obtain, AOB litigation involves relatively simple pleading, and prevailing plaintiffs are entitled to attorney's fees and costs while prevailing insurers are not. Insurers are incentivized to settle inflated claims to avoid paying a plaintiff's attorney's fees and costs.
- Insurers are even paying assignee's attorney's fees in settlement to avoid excessive litigation costs that are essentially promised by the presence of the one-way attorney fee statute and the potential for bad faith damages.

With those conclusions in mind, this report recommends the following to disincentivize this litigation and to return the one-way attorney fee statute to its original mission of making named insureds, omnibus insureds, and named beneficiaries whole:

- Clarify that the one-way attorney fee statute was intended for the protection of named and omnibus insureds and named beneficiaries only, and that service providers holding AOBs may not obtain attorney's fees pursuant to Section 627.428, Florida Statutes.
- Curb incentives for potentially fraudulent claiming behavior with reforms, such as:
 - ✓ Prohibiting the offering of things of value like gift cards in exchange for receiving an assignment of benefits.
 - ✓ Considering a shortened statute of limitations for non-catastrophic claims.

- ✓ Allowing policyholders a window of time for rescission of contracts assigning benefits, after the insurer is notified about the contract, akin to what is done for public adjuster contracts.
- ✓ Ensuring full and fair informed consent regarding the transfer of legal rights is obtained in the event of a transfer of all post-loss benefits.

However, the first recommendation gets at the root of what makes this form of litigation profitable: the availability of attorney's fees. Importantly, amending the statute to exclude third parties like service providers from its protection would eliminate only one avenue for holders of AOBs to obtain their attorney's fees.¹⁴³ Essentially, this recommendation would place holders of AOBs on equal footing with most other businesses involved in litigation. As noted above, parties are traditionally entitled to attorney's fees if provided by contract or statute. A plaintiff can agree by contract to a contingency fee arrangement with counsel, ensuring his attorney is paid in the event he prevails but also permitting the plaintiff to walk away without losing money in the event he does not. There are also other statutes that permit the award of attorney's fees to a prevailing party.¹⁴⁴ In short, such plaintiffs may still recover attorney's fees in a number of ways.

This report demonstrates that the one-way attorney fee statute is no longer serving its original purpose of ensuring litigation for individual insureds, named beneficiaries, and omnibus insureds is worthwhile. Instead, the statute is fueling an increase in litigation brought by sophisticated service providers and attorneys that do not require the protection of a one-way attorney fee. The Florida Legislature should consider amending the one-way attorney fee statute to curb the abuse of assignments of benefits by service providers and attorneys.

¹⁴³Indeed, the Florida Supreme Court has previously stated that it has "not interpreted section 627.428 as precluding the application of other attorney's fee provisions." *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1075 (Fla. 2006).

¹⁴⁴There are two notable statutory avenues to obtain attorney's fees in civil litigation. Section 57.105, Florida Statutes, permits a court to award a reasonable attorney's fee, including prejudgment interest, to a prevailing party if the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense presented to the court: (a) was not supported by material facts necessary to establish the claim or defense; or (b) would not be supported by the application of then-existing law to those material facts. Another statutory avenue for obtaining partial attorney's fees is the offer of judgment statute, Section 768.79, Florida Statutes. If a plaintiff files a demand for judgment in compliance with the statute which is not accepted by the defendant within 30 days, and the plaintiff recovers a judgment in an amount at least 25% greater than the demand, the plaintiff is entitled to recover reasonable costs and attorney's fees incurred from the date of the demand's filing. § 768.79(1), Fla. Stat. (2015); see also *id.* § 768.79(6)(b); *Nichols*, 932 So. 2d at 1075-76 (holding that the offer of judgment statute applies to suits for PIP benefits and does not conflict with the one-way attorney fee statute).

VI. Survey Data

The following table catalogues the claims examples provided by the insurer trade associations surveyed that were collected by the authors in September 2015. Original copies of the surveys summarized in the table may be obtained from the authors.

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Auto glass damage from rock in road	5/18/2015	6/1/2015	Insured	5/21/2015	7/27/2015	Limited to Services Rendered, Assigned All Causes of Action, Waived Privacy, Irrevocable	\$ 1,118.48	n/a	30	N/A		Pending in court	
Cracked windshield, unknown cause	3/10/2015	5/19/2015		5/13/2015	5/19/2015	Limited to Services Rendered, Irrevocable	\$ 754.94	\$ 137.72		\$ 617.22			
Water leak in shower	1/27/2015	1/30/2015	Insured	1/30/2015	2/3/2015	Assigned All Causes of Action, Waived Privacy, Irrevocable, Hold Harmless Provision	\$ 19,644.00	Dry time of 5 days, additional fees for supervisory charges and overhead/profit	30	\$ 15,494.00		\$ -	
Auto glass damage from rock in road	1/24/2015	1/28/2015	Vendor	1/24/2015	1/26/2015	Assigned All Causes of Action, Limited to Services Rendered	\$ 159.75	Uncertain	Not specified	\$ 159.75		\$ 1,600.00	Settlement
Water damage in kitchen	1/23/2015	1/30/2015	Attorney	1/23/2015	6/23/14 (when lawsuit was received)	Limited to Services Rendered, Waived Privacy, Irrevocable	\$ 3,766.01	n/a	15	\$ 3,500.00		\$ 8,500.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Water loss	1/20/2015	1/21/2015	Insured	1/21/2015	2/5/2015	Limited to Services Rendered, Assigned All Causes of Action, Waived Privacy, Hold Harmless Provision	\$ 6,511.25	Carpet Cleaning Repair Installation Certifications violations based on extended drying time and lack of equipment removal as areas dried	10	\$ -	Global demand of \$10k including fees and work performed	\$ 3,500.00	Settlement
Auto glass damage from rock	12/10/2014	12/22/2014	Vendor	12/10/2014	12/22/2014	Assigned All Causes of Action, Limited Services Rendered	\$ 159.00	Uncertain	Not specified	\$ 159.00		\$ 1,600.00	Settlement
Windshield replacement	12/3/2014	10/27/2014	Vendor	2/28/2014	10/29/2014	Limited to Services Rendered, Assigned All Causes of Action, Irrevocable	\$ 356.45	\$ -		\$ 356.45	\$1,500.00	\$ 750.00	
Windshield replacement	11/20/2014	1/29/2015	Vendor	11/22/2014	1/28/2015	Limited to Services Rendered, Assigned All Causes of Action, Irrevocable, Hold Harmless Provision	\$ 635.63	\$ 283.39		\$ 352.24	\$750.00		
Cracked windshield	10/14/2014	11/13/2014		10/23/2014	11/13/2014	Limited to Services Rendered, Irrevocable	\$ 710.80	\$ 322.79		\$ 388.01			
Property damage from raccoon in attic	10/13/2014	10/20/2014	Insured	10/13/2014	10/20/2014	Limited to Services Rendered, Waived Privacy	\$ 14,525.00	Amount demanded deviated from Xactimate; peer review necessary \$8,290.72		\$7,290.72 (presuit offer)			Litigation ongoing

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Cracked windshield, unknown cause	8/23/2014	9/3/2014			9/4/2014	Irrevocable	\$ 738.75	\$ 314.22		\$ 424.53			
Wind/hail damage to roof, interior rain damage	8/8/2014	8/12/2014	Other	8/12/2014	8/26/2014	Limited to Services Rendered, Waived Privacy	\$ 4,730.83				\$3,500.00		Settlement
Cracked windshield, unknown cause	7/29/2014	8/5/2014		8/6/2014	8/5/2014	Limited to Svcs. Rendered, Irrevocable	\$ 692.38	\$ 331.16		\$ 361.16			
Lead from supply line in slab; damage to rooms	7/27/2014	7/29/2014	Insured	1/9/2014	8/18/2014	Assign All Causes of action, Waive Privacy, Hold Harmless	\$ 5,807.16	Excessive fees for administration, supply/materials, fuel surcharge, and supervisory charges; moisture inspection fee and overhead/profit	30	\$ 1,509.14		Pending in court	
Glass chip in windshield	7/2/2014	7/8/2014	Vendor	7/2/2014	7/3/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 85.20	\$ 74.90			\$1,250.00		
Water shower pan leak	6/28/2014	7/2/2014	Insured	7/2/2014	7/9/2014	Limited to Svcs. Rendered, Assign all Causes of action, Hold Harmless	\$ 1,808.80			\$5500 (global settlement)	\$8351.43 (global demand)	\$5500 (global settlement)	Settlement; claim excluded under policy, damages to insured denied
Auto glass damage from rock in road	6/24/2014	10/28/2014	Attorney	6/25/2014	10/28/2014	Assign All Causes of action, Waive Privacy, Irrevocable	\$ 160.50	n/a	30	\$ 1,500.00	\$1,339.50	\$ 1,339.50	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Kitchen supply line leak	6/24/2014	6/25/2014	Other	6/25/2014	8/4/2014	Limited to Svcs. Rendered, Waive Privacy, Irrevocable, Hold Harmless	\$ 4,650.33	Xactimate price deviation		\$ 3,400.00		\$ 4,350.00	Settlement
Water mitigation	6/22/2014	6/26/2014	Insured	6/22/2014	7/17/2014	Limited to Svcs. Rendered, Assign all Causes of action	\$ 25,824.75	Peer review found price should've been \$5,762.72		\$ 27,000.00	\$6,000.00	Apportioned from settlement balance	Settlement
Auto glass damage from rock in road	6/19/2014	6/24/2014	Insured	6/21/2014	8/7/2014	Assign All Causes of action, Waive Privacy, Irrevocable	\$ 539.80	n/a	30	\$ 2,039.80	\$1,500.00	\$ 1,500.00	Settlement
Roof leak, damage to drywall and paint	6/12/2014	6/12/2014	Vendor	6/12/2014	6/21/2014	Assign all Causes of action, Waive Privacy, Irrevocable	\$ 4,293.72	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,629.39		\$ 3,500.00	Settlement
Windshield repair	6/10/2014	9/22/2014	Vendor	6/10/2014	11/5/2014	Limited to Svcs. Rendered, Assign all COAs, Irrevocable, Hold Harmless	\$ 80.25	\$ 5.35		\$ 74.90	\$2,500.00	\$ 1,250.00	
Windshield replaced due to chip	6/10/2014	9/22/2014	Vendor	6/10/2014	11/5/2014	Limited to Svcs. Rendered, Assign all COAs, Irrevocable, Hold Harmless	\$ 80.25	\$ 5.35		\$ 74.90	\$1,250.00		
Shower drain leak	6/6/2014	6/16/2014	Insured	6/10/2014	6/30/2014	Assign all COAs, Waive Privacy, Irrevocable	\$ 11,590.53	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ -		\$ 2,500.00	Claim denied; settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Biohazard clean up	6/3/2014	6/4/2014	Other		6/25/2014	Limited to Svcs. Rendered, Waive Privacy , Irrevocable, Hold Harmless	\$ 26,421.00	Peer review found pricing irregularities, procedural issues with clean-up, and redundant work invoiced	10	\$ 20,000.00	\$32,000.00	\$ 5,000.00	Settlement
Repair due to multiple chips in windshield	5/22/2014	6/13/2014	Vendor	5/22/2014	9/11/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 160.50	\$ -		\$ 160.50	\$0.00		
Cracked windshield, unknown cause	5/17/2014	5/29/2014		5/21/2014	5/29/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable	\$ 652.43	\$ 237.11		\$ 415.28			
Property damage due to racoon in attic; damage to insulation	5/1/2014	5/20/2014	Insured	5/2/2014	5/22/2014	Limited to Svcs. Rendered, Assign all Causes of action, Waive Privacy , Irrevocable, Hold Harmless	\$ 13,973.75			\$ 1,669.00	\$4,000.00	\$ 2,500.00	Settlement
Pipe leak, water damage throughout home	4/27/2014	4/27/2014	Insured	4/27/2014	5/22/2014	Assign all Causes of action, Irrevocable	\$ 9,696.26	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	30	\$ 7,875.74		\$ 2,500.00	Settlement
Unknown	4/24/2014	4/29/2014	Other	4/24/2014	5/3/2014	Assign all Causes of action, Irrevocable	\$ 159.00			\$ -			Plaintiff dismissed lawsuit
Unknown	4/8/2014	4/8/2014	Other	4/4/2014	4/7/2014	Assign all Causes of action, Irrevocable	\$ 159.00						Dismissed

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Cracked windshield repaired	4/3/2014	4/7/2014	Vendor	4/3/2014	4/4/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 159.00	\$ 105.50		\$ 53.50	\$1,500.00		
Damage to windshield due to rock	4/3/2014	4/4/2014	Other	4/3/2014	4/4/2014	Assign all Causes of action, Irrevocable	\$ 159.00			\$ 14.20			Plaintiff dismissed
Windshield replaced	3/28/2014	4/1/2014	Vendor	3/31/2014	3/31/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 159.00	\$ 105.50		\$ 53.50	\$2,500.00	\$ 1,250.00	
Windshield replaced	3/25/2014	8/6/2014	Vendor	3/25/2014	8/18/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 327.40	\$ -		\$ 327.40	\$0.00		
Toilet supply line damage, damage to carpet, vinyl, and paint	3/2/2014	3/2/2014	Insured	3/2/2014	3/7/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 3,860.39	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,766.24		\$ 3,364.80	Settlement
Leak from supply line in slab damaged rooms in home	2/15/2014	2/17/2014	Insured	2/20/2014	2/27/2014	Assign All Causes of action, Waive Privacy, Irrevocable, Hold Harmless	\$ 5,094.66	Drying time of 4 days; additional fees for unnecessary administrative charges and supplies	30	\$ 3,967.07		Pending in court	
Wind damage to roof	2/12/2014	2/17/2014	Insured	2/13/2014	2/18/2014	Limited to Svcs. Rendered, Waive Privacy, Waive Privacy	\$ 32,039.19			\$ 7,779.94	\$4,000.00	\$ 1,800.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Windshield replaced	1/30/2014	2/13/2014	Vendor	2/6/2014	2/27/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 451.49	\$ 280.36		\$ 171.13	\$0.00		
Slab leak, damage to wood floors	1/21/2014	1/27/2014	Vendor	1/27/2014	2/12/2014	Assign all Causes of action, Waive Privacy, Irrevocable	\$ 18,993.09			\$ -		\$ 4,500.00	Claim denied; settlement
Property loss due to mold	1/15/2014	2/27/2014	Insured	6/26/2014	10/9/2014	Limited to Svcs. Rendered, Waive Privacy, Irrevocable	\$ 15,399.75	Lack of itemized invoice, simply a flat rate entry for amount requested		Litigation ongoing	\$4,500.00	Litigation ongoing	Litigation ongoing
Fire from lightning, soot/smoke damage	12/17/2013	12/18/2013	Vendor	12/17/2013	12/27/2013	Assign all Causes of action, Irrevocable	\$ 7,079.46	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	30	\$ 6,472.07		\$ -	Dismissed
Windshield replaced	12/10/2013	10/24/2014	Vendor	1/21/2014	10/24/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 772.84			\$ -	\$2,500.00	\$ 750.00	
Cracked windshield	12/1/2013	12/17/2013		12/11/2013	12/17/2013	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable	\$ 602.25	\$ 290.90		\$ 311.35			
Auto glass damage	11/28/2013	10/27/2014	Attorney	6/6/2014	10/27/2014	Assign All Causes of action, Lmt. Svcs. Rendered	\$ 544.34	no		\$ 544.34	\$1,800.00	\$ 1,800.00	
Windshield replaced	10/5/2013	8/5/2014	Vendor	4/29/2014	8/5/2014	Limited to Svcs. Rendered, Assign all Causes of action,	\$ 337.66	\$ -		\$ 337.66	\$0.00		

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
						Irrevocable, Hold Harmless							
Windshield replaced	10/2/2013	10/16/2013	Vendor	10/8/2013	11/8/2013	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 615.58	\$ 615.58		\$ -	\$0.00		
Wind damage to roof	9/6/2013	11/18/2013	Insured	11/16/2013	11/22/2013	Limited to Svcs. Rendered, Waive Privacy	\$ 34,566.07						
Wind/hail damage to roof	8/31/2013	4/16/2014	Insured			Assign all Causes of action, Limited to Svcs. Rendered, Waive Privacy	\$ 13,029.50			\$ 9,953.57		\$ 2,000.00	Global settlement
Windshield replaced	8/15/2013	8/6/2014	Vendor	9/5/2013	8/7/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 258.76	\$ -		\$ 258.76	\$750.00		
Windshield replaced	8/15/2013	2/14/2014	Vendor	9/29/2013	2/20/2014	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 447.47	\$ 175.06		\$ 272.41	\$0.00		
Dishwasher leak, flooring damage	7/10/2013	7/10/2013	Insured	7/11/2013	7/23/2013	Assign all Causes of action, Waive Privacy, Irrevocable, Hold Harmless	\$ 3,576.75	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 2,070.68		\$ 2,000.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Broken drain line, damage to laminate flooring	6/25/2013	6/25/2013	Insured	6/24/2013	7/8/2013	Assign all Causes of action, Waive Privacy , Irrevocable, Hold Harmless	\$ 3,046.60	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,807.03		\$ 2,000.00	Settlement
Pipe leak, carpet damage	5/30/2013	5/30/2013	Insured	5/31/2013	6/21/2013	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 4,724.12	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	10	\$ 2,984.86		\$ 2,000.00	Settlement
Toilet leak, damage to ceilings and walls	5/13/2013	5/13/2013	Insured	5/13/2013	5/16/2013	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 2,313.78	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	10	\$ 1,226.25		\$ 2,000.00	Settlement
Pipe leak, damage to carpet, drywall and paint	4/13/2013	4/15/2013	Insured	4/13/2013	4/19/2013	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 2,396.64	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,575.49		\$ 2,000.00	Settlement
Long term shower leak	4/10/2013	4/10/2013	Insured	4/10/2013	4/25/2013	Assign all Causes of action, Waive Privacy , Irrevocable, Hold Harmless	\$ 2,568.05	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,770.80		\$ 2,000.00	Settlement
Pipe leak, damage to floor, cabinets and vanities	4/5/2013	4/8/2013	Insured	4/6/2013	4/19/2013	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 5,453.15		10	\$ 1,363.85		\$ 2,000.00	Settlement
Wind damage to roof	3/24/2013	4/8/2013	Insured	1/30/2014	2/20/2014	Irrevocable	\$ 10,884.61	Excessive scope, higher than Xactimate		\$ 10,000.00		\$ 3,250.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Rock or pebble hit windshield	3/15/2013	3/25/2013	Vendor				\$ 687.11			\$ 407.40	\$1,650	\$ 1,500.00	Global settlement
Plumbing leak in bathroom	3/14/2013	3/15/2013	Insured	3/15/2013	3/20/2013	Assign all Causes of action, Waive Privacy , Irrevocable, Hold Harmless	\$ 3,044.77	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,854.56		\$ 2,000.00	Settlement
Windshield damage	3/11/2013	3/25/2013	Vendor		3/22/2013	Assign all Causes of action, Irrevocable	\$ 560.22			\$ 320.37		\$ -	Settlement
Water heater leak, interior water damage	2/25/2013	2/27/2015	Insured	2/26/2015	3/4/2015	Lmt. Svcs. Rendered, Assign All Causes of action, Hold Harmless	\$ 4,983.12	no					
Unknown	2/12/2013	5/8/2013	Attorney	2/15/2013	5/8/2013		\$ 746.16			\$ 750.64			Negotiated
Rear view mirror fell and cracked glass	2/1/2013	5/8/2013	Vendor		7/9/2013		\$ 531.36			\$ -	\$1,650.00	1500 (global settlement)	Settlement
Pipe break, damage to carpet, drywall, and paint	1/23/2013	1/23/2013	Insured	1/23/2013	1/31/2013	Assign all Causes of action, Waive Privacy , Irrevocable	\$ 9,283.13	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	15	\$ 4,013.06		\$ 67,000.00	Settlement
Rock hit windshield	1/20/2013	1/31/2013	Insured	1/21/2013	7/2/2013	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable	\$ 908.98			\$ 560.72	\$1,650.00		
Pipe leak in wall, damage to carpet, drywall, paint, cabinets	1/13/2013	1/13/2013	Insured	1/14/2013	2/2/2013	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 3,722.04	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,684.08		\$ 1,800.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Rock hit windshield	1/2/2013	1/24/2013	Vendor	1/16/2013	1/24/2013	Limited to Svcs. Rendered, Assign all Causes of action, Waive Privacy, Hold Harmless	\$ 556.70			\$ 335.68	\$1,650.00	\$1500 (global settlement)	Settlement for fees only
Slab leak, damage to carpet, drywall and paint	12/21/2012	1/4/2013	Insured	12/21/2012	1/7/2013	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 5,634.46	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	10	\$ 2,468.48		\$ 2,000.00	Settlement
Rock cracked windshield	12/18/2012	8/8/2012	Vendor	5/9/2013	5/9/2013		\$ 309.12			\$ 309.12		\$ -	Dismissed
Rock hit windshield	12/4/2012	12/5/2012	Vendor	12/6/2012	12/18/2012	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable	\$ 626.86			\$ 353.11	\$1,650.00	\$ 1,500.00	Global settlement
Unknown	11/9/2012			11/13/2012	8/22/2013		\$ 869.91			\$ 528.42			Negotiated
Slab leak, damage to tile, drywall, and paint	10/1/2012	10/15/2012	Insured	10/22/2012	10/30/2012	Limited to Svcs. Rendered, Assign all Causes of action, Irrevocable, Hold Harmless	\$ 2,559.15	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 1,399.78		\$ 10,000.00	Settlement
Unknown	9/10/2012					Limited to Svcs. Rendered, Irrevocable, Hold Harmless	\$ 801.18			\$ 680.99			Negotiation
Mold in bathroom	9/5/2012	9/10/2012	Insured		9/24/2012	Limited to Svcs. Rendered, Assign all Causes of action, Hold Harmless	\$ 2,342.44						Denied claim

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Unknown	8/31/2012		Other			Limited to Svcs. Rendered, Irrevocable, Hold Harmless	\$ 1,545.35			\$ 1,480.31			Negotiation
Pipe leak, damage to carpet, cabinets and vanities	8/1/2012	9/29/2012	Insured	9/28/2012	10/9/2012	Assign all Causes of action, Irrevocable	\$ 3,788.64	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	10	\$ 1,413.32		\$ 2,000.00	Settlement
Windshield hit by softball	7/21/2012	8/7/2012	Insured		9/14/2012	Assign all Causes of action, Waive Privacy, Irrevocable, Hold Harmless	\$ 869.62			\$ 549.49			Plaintiff dismissed lawsuit
Rock hit windshield	6/12/2012	4/12/2012	Vendor	4/5/2013	4/12/2013	Assign all Causes of action, Waive Privacy, Irrevocable, Hold Harmless	\$ 570.83			\$ 369.84		\$ -	Dismissed
Unknown	5/17/2012			6/6/2012	7/17/2012		\$ 399.87			\$ 418.86			Negotiated
Unknown	4/7/2012		Other	4/25/2012		Limited to Svcs. Rendered, Irrevocable, Hold Harmless				\$ 445.61			Negotiation
Slab leak, damage to carpet, drywall, and paint	10/11/2011	10/13/2011	Insured	10/13/2011	10/18/2011	Assign all Causes of action, Waive Privacy, Irrevocable, Hold Harmless	\$ 4,624.08	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate	15	\$ 2,495.75		\$ 10,000.00	Settlement
A/C leak, damage to walls and ceilings	8/4/2011	8/5/2011	Insured	8/5/2011	8/8/2011	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 4,033.70	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate		\$ 3,500.00		\$ 4,500.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Property damage in attic due to raccoon	6/9/2011	6/16/2011	Vendor		6/27/2011	Limited to Svcs. Rendered, Assign all Causes of action, Waive Privacy, Irrevocable, Hold Harmless	\$ 8,710.00			\$ 8,843.06		\$ 43,220.57	Settlement
No facts obtained	6/4/2011	1/31/2013	Other	6/6/2011	1/31/2013	Limited to Svcs. Rendered, Assign all Causes of action, Waive Privacy, Irrevocable	\$ 319.68			\$ -		\$ -	Dismissed
Damage to windshield prior to policy cancellation	5/19/2011	5/28/2012	Insured	6/11/2012	7/2/2012	Limited to Svcs. Rendered, Assign all Causes of action	\$ 516.95			\$ 315.15	\$3,000.00	\$ 1,500.00	Global settlement
Hail damage to roof	4/28/2011	11/27/2012	Insured	11/27/2012	12/7/2012	Limited to Svcs. Rendered, Assign all Causes of action	\$ 26,891.22	Different in scope, higher than Xactimate	30	\$ 15,727.25		\$ 4,500.00	Settlement
Damage to windshield prior to policy cancellation	2/25/2011	5/31/2012	Other	6/12/2012	6/19/2012	Limited to Svcs. Rendered, Assign all Causes of action, Waive Privacy	\$ 824.95			\$ 543.78	\$2,500.00	\$ 1,500.00	Global settlement
Toilet overflow, damage to floor, baseboards, and walls	12/13/2010	12/16/2013	Insured		12/17/2010	Assign all Causes of action, Irrevocable	\$ 13,753.04	Excessive scope, higher than Xactimate	10	\$ 8,529.17		\$ 5,223.87	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Pipe leak, cabinet damage	10/7/2010	10/8/2010	Insured	10/12/2010	11/1/2010	Assign all Causes of action, Irrevocable, Hold Harmless	\$ 14,521.11	Excessive equipment and scope, incomplete logs, pricing higher than Xactimate, inappropriate use of O&P (Ova & Parasite)		\$ 10,000.00		\$ 5,000.00	Settlement
Garbage disposal leak		1/9/2015	Insured	1/9/2015	1/12/2015	Waive Lien Law, Assign All Causes of action, Waive Privacy, Irrevocable, Hold Harmless	\$ 1,420.74	no	3				
Auto glass damage		2/14/2012	Insured	2/14/2012	unknown	Irrevocable	\$ 264.28	no	19	pending			
Water mold							\$ 2,000.00						Withdrawn
Water Mitigation Rebuild							\$ 12,537.33	\$ 3,537.33		\$ 9,000.00		\$ 8,250.00	Settlement
Contractor Rebuild							\$ 21,061.00	\$ 4,123.90		\$ 8,800.00		\$ 3,400.00	Settlement
Water Mitigation Rebuild							\$ 19,021.22	\$ 2,753.00		\$ 21,774.22		\$ 6,975.78	Settlement
Water Mitigation Remediation							\$ 7,134.97	\$ 7,134.97		\$ 5,800.00		\$ 2,400.00	Settlement
Water Mitigation							\$ 7,154.51	\$ 4,905.94		\$ 3,500.00		\$ 2,500.00	Settlement
Water Mitigation							\$ 16,525.06	\$ 14,598.18		\$ 4,000.00		\$ 3,500.00	Settlement
Water Mitigation							\$ 6,653.09	\$ 3,997.57		\$ 2,842.90		\$ 3,950.00	Settlement

Loss	Date of Loss	Date First Notice of Loss Rec'd	Who Sent First Notice of Loss	AOB Date	Date Insurer Rec'd AOB	AOB Content	Amount Requested for Payment	Deviation from Pricing Standards, if applicable	Time Req'd for Payment	Amount of Final Payment	Amount Req'd in Attorney Fees	Attorney Fee Award	Venue of Resolution
Water Mitigation							\$ 54,543.40	\$ 46,690.67		\$ 62,500.00	\$ 12,500.00	\$ 12,500.00	Settlement
Water Mitigation Mold							\$ 2,000.00	\$ 2,000.00	15	\$ 2,000.00	\$ 500.00	\$ 5,000.00	Settlement
Water Mitigation							\$ 5,631.62	\$ 3,114.69	15	\$ 4,500.00			Settlement
Water Mitigation							\$ 4,900.09	\$ 900.09		\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	Settlement
Water Mitigation							\$ 6,279.79	\$ 4,278.79		\$ 2,001.00		\$ 2,500.00	Settlement
Water Mitigation							\$ 2,860.54	\$ 860.54		\$ 2,000.00		\$ 3,000.00	Settlement
Roof Replacement							\$ 16,000.00	\$ 2,500.00		\$ 31,500.00		\$ 8,000.00	Settlement
Water Mitigation							\$ 6,151.98	\$ 2,651.98		\$ 1,000.00		\$ 2,500.00	Settlement
Water Mitigation							\$ 2,832.51	\$ 1,228.51		\$ 1,000.00		\$ 3,000.00	Settlement
Water/mold							\$ 22,422.00						Withdrawn
Water Mitigation							\$ 2,500.00	\$ 500.00		\$ 2,000.00		\$ 5,000.00	Settlement
Water Mitigation							\$ 6,541.00	\$ 3,541.00	15	\$ 3,000.00		\$ 3,500.00	Settlement
Water Mitigation							\$ 3,742.34	\$ 7,114.82		\$ 3,000.00		\$ 3,000.00	Settlement
Remediation							\$ 2,200.00	\$ 2,200.00	10	\$ 1,700.00		\$ 2,500.00	Settlement



Florida Office of Insurance Regulation

Florida's Assignment of Benefits (AOB) Crisis

Presented to:

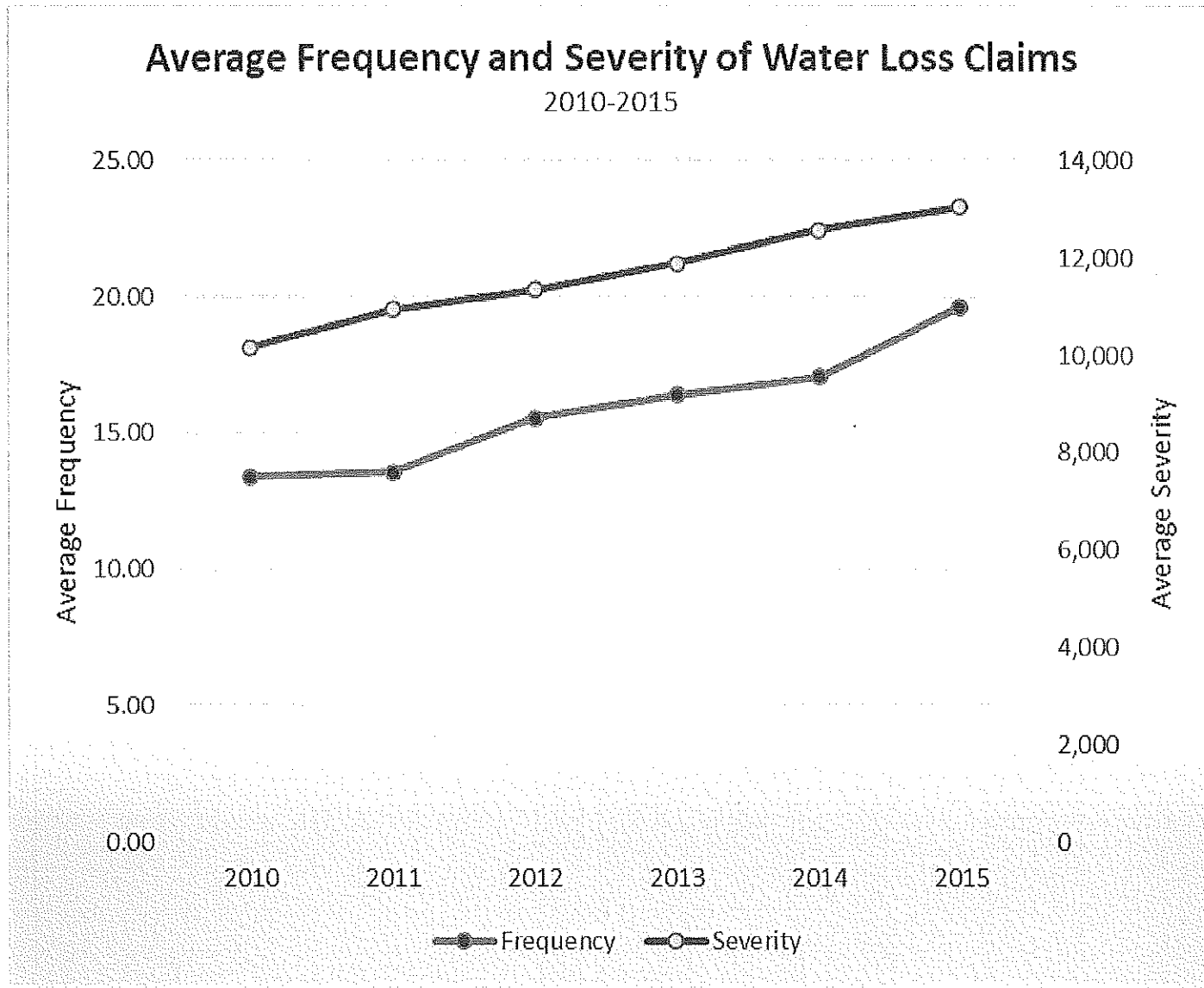
Senate Banking and Insurance Committee

January 22, 2019



Florida Office of Insurance Regulation

2015 AOB Study



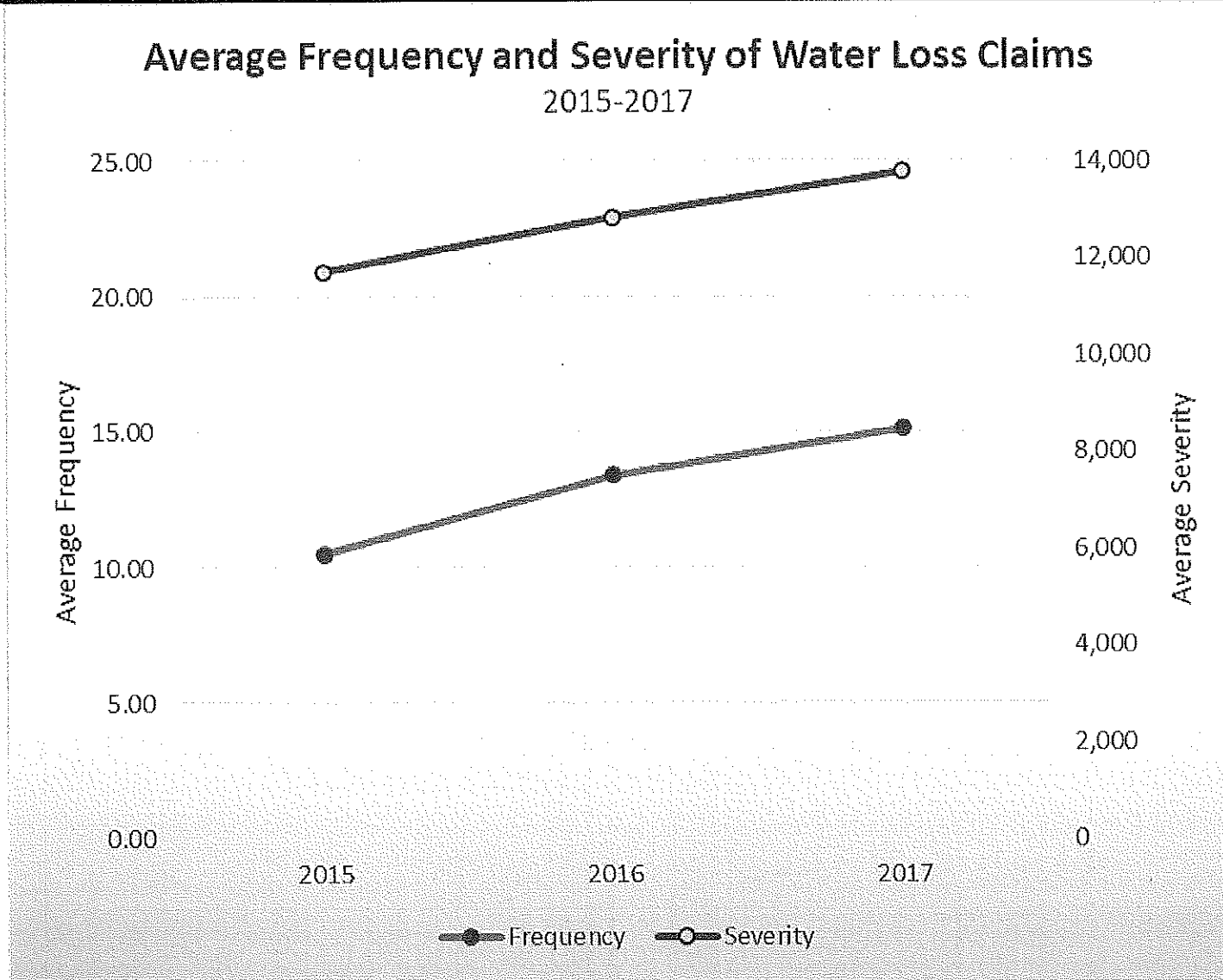
Source: Office Assignment of Benefits Data Call. Data based on claims for voluntary carriers with dates closed between 1/1/2010 and 9/30/2015. Insurer must have been able to provide information to determine the frequency and severity of HO-3/DF claims for water losses.

*Data is only shown for insurers that were able to consistently indicate for a given year that a claim had or did not have an (AOB).



Florida Office of Insurance Regulation

2017 AOB Study



Source: Office Assignment of Benefits Data Call. Data based on claims for voluntary carriers with dates closed between 1/1/2015 and 6/30/2017. Insurer must have been able to provide information to determine the frequency and severity of HO-3/DF claims for water losses.

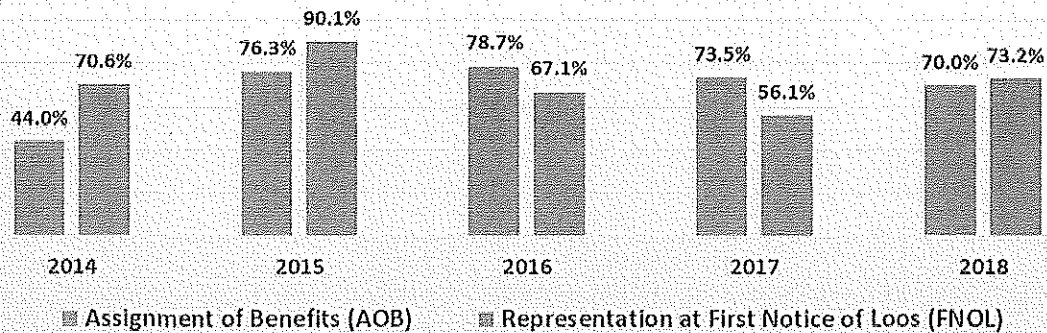
*Data is only shown for insurers that were able to consistently indicate for a given year that a claim had or did not have an (AOB).



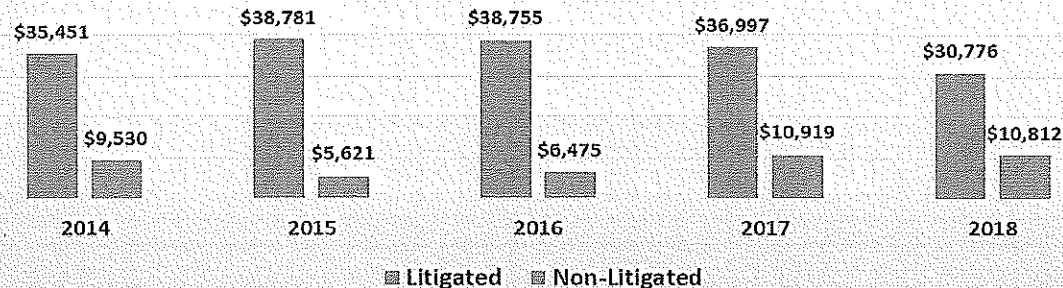
Florida Office of Insurance Regulation

Experience: Citizens Property Insurance Corporation 2014-2018

Percent of Litigated Water Claims with AOB or Representation at FNOL



Severity of Litigated vs. Non-Litigated Water Claims



Notes:

1) Claims data is based on non-weather related water claims by report year for Homeowners policies.

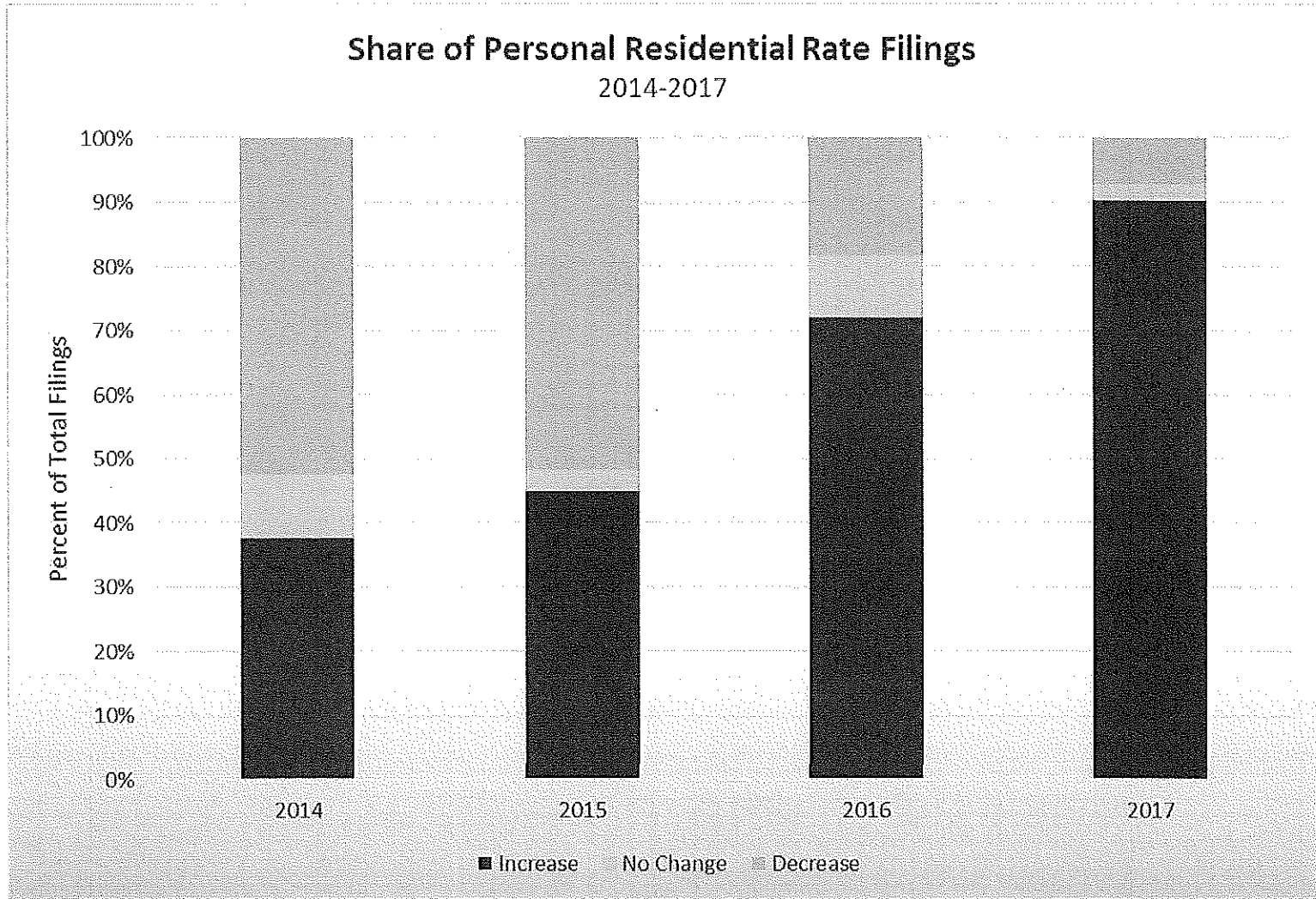
2) Severity of litigated and non-litigated claims are based on undeveloped report year incurred loss and allocated loss adjustment expense (ALAE)

Source: Citizens Property Insurance Corporation (2018)



Florida Office of Insurance Regulation

Property Insurance Affordability



Citizens Property Insurance Corporation Overview

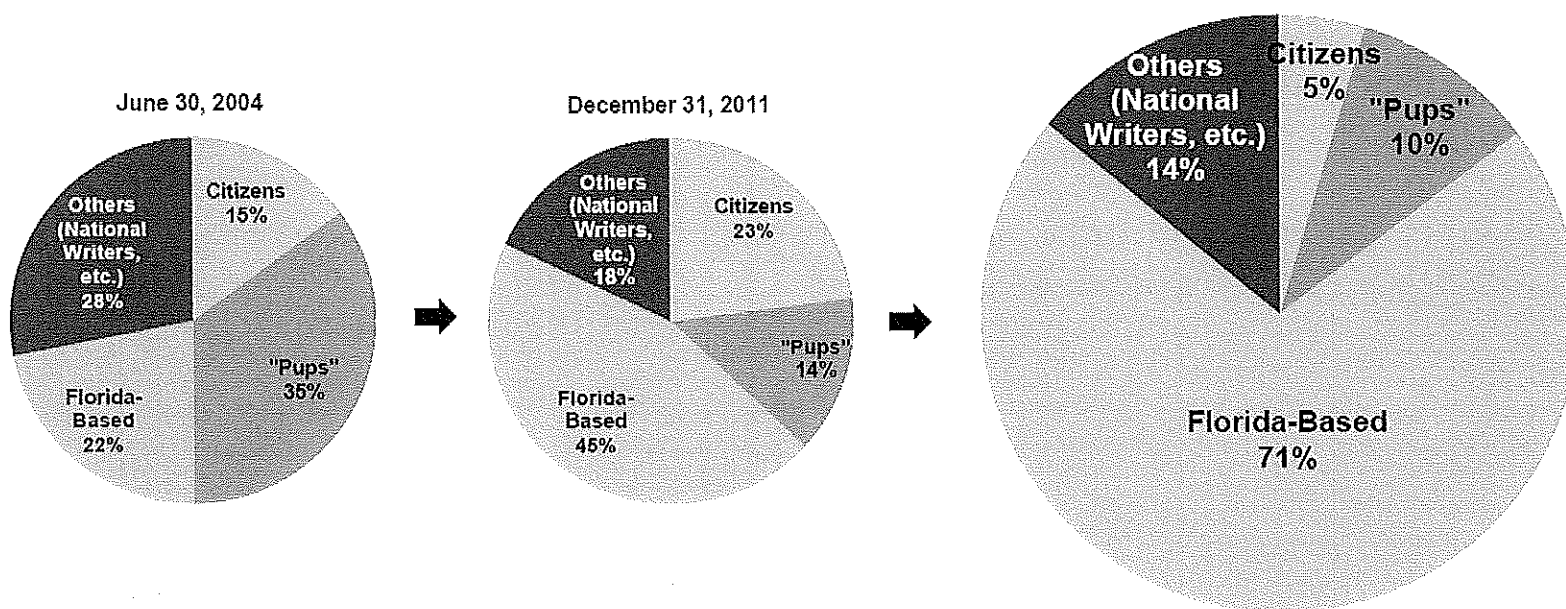
Barry Gilway
President





Market Share

For Policies that Include Wind Coverage
 Florida Residential Property Insurance Market
 Includes State Farm Florida
 QUASR data as of June 30, 2018



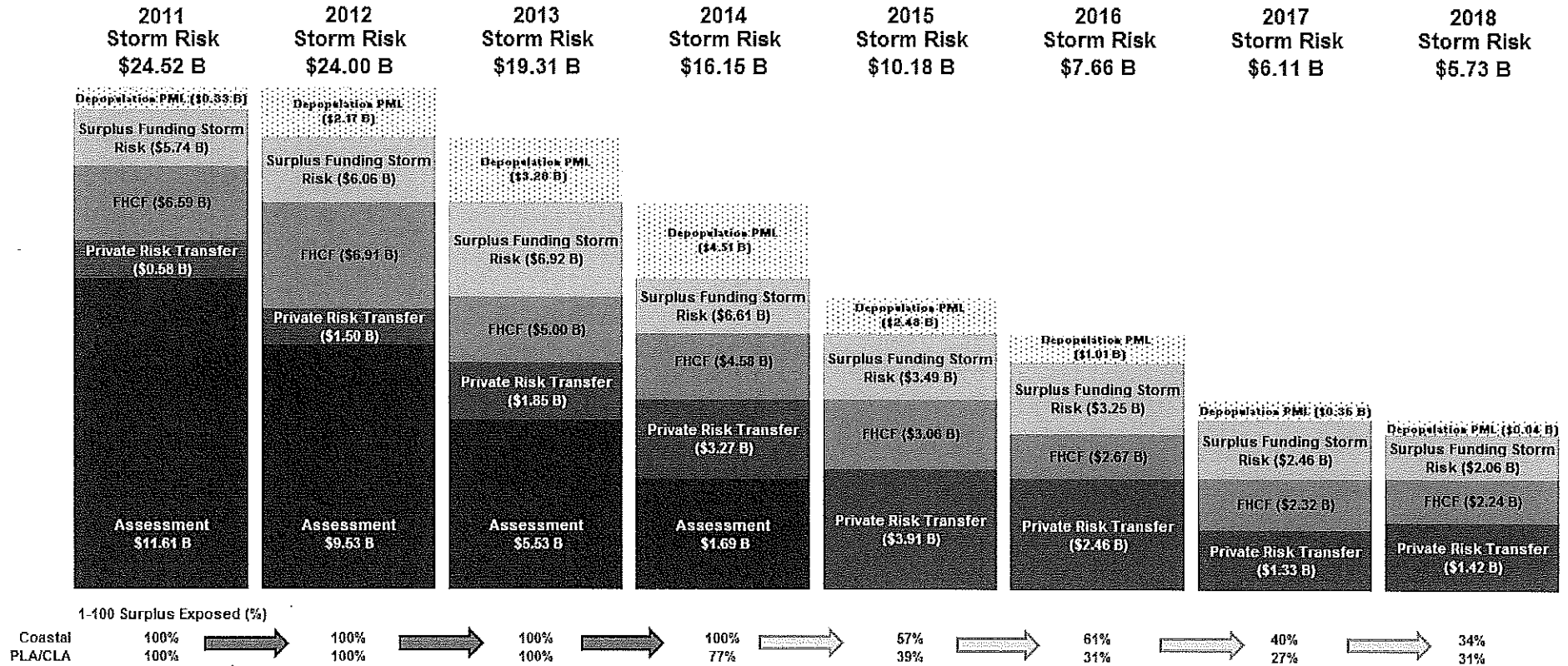
Insurer Category	Total Insured Value
Citizens	\$106,284,553,696
"Pups"	\$233,041,758,285
Florida-Based	\$1,612,889,890,922
Others	\$319,869,629,249
Total	\$2,272,085,832,151

The Florida Residential Property Insurance Admitted Market is divided into 4 major parts: (i) Citizens; (ii) Florida only subsidiaries "pups" of major national writers; (iii) Florida-based domestic companies; and (iv) non-domestic nationwide property writers, such as USAA, etc.



Storm Risk: 1 in 100 year PML

Public Summary of Citizens Assessment Reduction Efforts Over Time



- Notes:**
- Storm Risk is as measured by 1-in-100 year probable maximum loss (PML) plus estimated loss adjustment expenses using the Florida Hurricane Catastrophe Fund (FHCF) account allocation where PLA and CLA are combined. PLA/CLA combined PMLs are added to the Coastal PMLs to be consistent for surplus distribution. In general, the PMLs presented are as projected at the beginning of storm season; with the exception of 2017 which is as of August 31, 2017.
 - Surplus and Assessments are as projected at beginning of storm season. Not all PLA/CLA surplus is needed to fund storm risk in 2014. In 2015 - 2018, not all surplus in PLA/CLA and the Coastal Account is needed to fund storm risk. Remaining surplus is available to fund a second event.
 - Florida Hurricane Catastrophe Fund (FHCF) is as projected at beginning of storm season; with the exception of 2017 and 2018 which are Citizens' initial data submission to the FHCF.
 - Depopulation PMLs are not included in storm risk totals and are presented as year end totals; with the exception of 2018, which is as of May 31, 2018. PMLs from 2011-2014 use a weighted average of 1/3 Standard Sea Surface Temperature (SSST) and 2/3 Warm Sea Surface Temperature (WSST). 2015 - 2018 PMLs reflect only SSST event catalog.



Carrier Litigation Expense

Litigation has been increasing steadily for all carriers.

	2013	2014	2015	2016	2017	2018
Citizens Property Insurance Company						
All	9,146	9,525	7,653	10,061	7,624	13,363
AOB	860	1,062	1,250	3,242	2,718	3,631
AOB %	9%	11%	16%	32%	36%	27%
All Other Carriers						
All	18,270	22,122	30,167	31,790	41,524	69,300
AOB	4,613	4,820	6,645	5,968	9,772	17,421
AOB %	25%	22%	22%	19%	24%	25%
Total All	27,416	31,647	37,820	41,851	49,148	82,663
Total AOB	5,473	5,882	7,895	9,210	12,490	21,052
Total AOB %	20%	19%	21%	22%	25%	25%

Data source – DFS LSOP 2013-2018 Q4

Note: 2018 Q3 data includes Hurricane Irma which represents around 60% of all new Litigation for Citizens Property Insurance in 2018.

Legal Service of Process – All Litigation



Legal Service of Process 2013-2018 All State of Florida Carriers

	Miami-Dade	Broward	Palm Beach	Orange	Hillsborough	Duval	Polk
2013	10,759	4,383	2,116	1,578	2,064	725	326
2014	12,287	5,932	2,337	1,815	2,025	780	401
2015	13,133	8,309	3,184	2,101	2,019	960	363
2016	14,718	9,605	3,493	1,994	2,424	1,047	449
2017	13,993	11,137	4,403	2,980	2,913	1,487	623
2018	25,736	17,281	6,139	6,232	3,594	2,027	1,284

Legal Service of Process – AOB Litigation

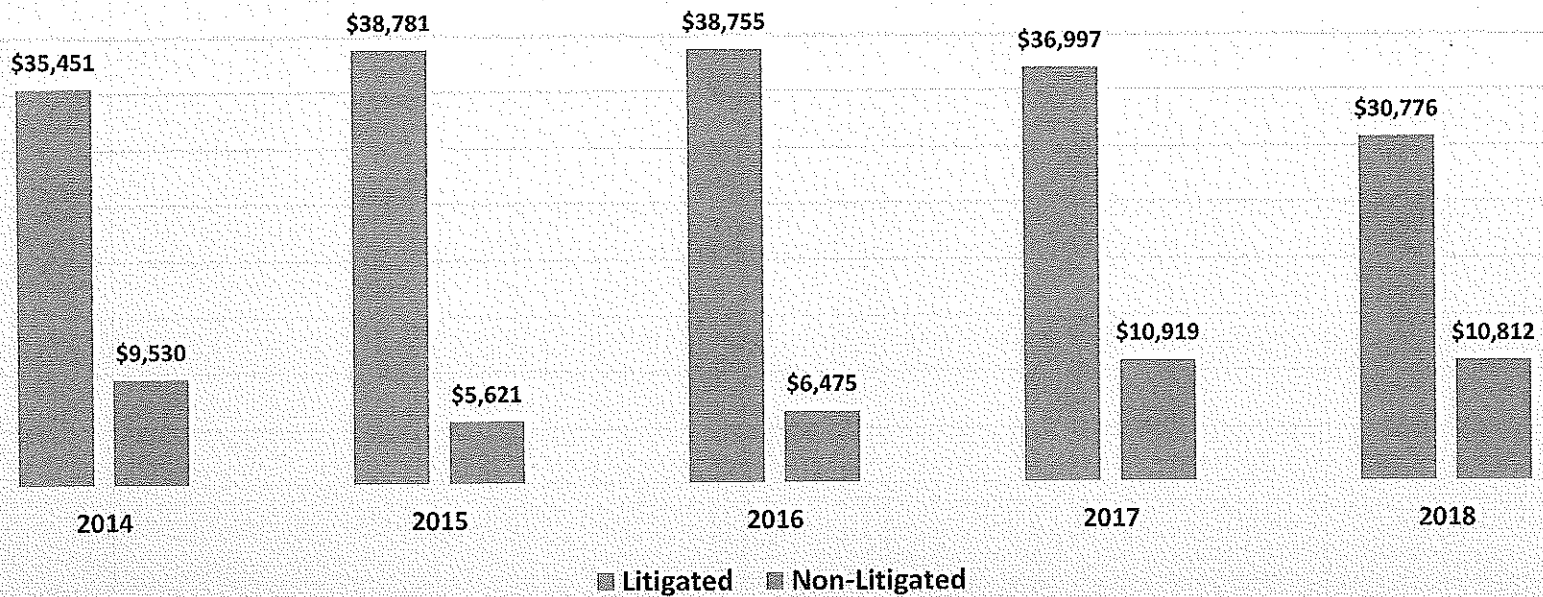


	Miami-Dade		Broward		Palm Beach		Orange		Hillsborough		Duval		Polk	
	AOB	%	AOB	%	AOB	%	AOB	%	AOB	%	AOB	%	AOB	%
2013	2,782	26%	775	18%	355	17%	723	46%	133	6%	65	9%	47	14%
2014	2,872	23%	1,155	19%	286	12%	766	42%	34	2%	94	12%	44	11%
2015	3,240	25%	2,170	26%	580	18%	536	25%	26	1%	95	10%	65	18%
2016	3,772	25%	2,886	30%	719	21%	413	21%	95	4%	58	6%	63	14%
2017	4,464	32%	3,821	34%	1,052	24%	658	22%	209	7%	193	13%	76	12%
2018	6,940	27%	5,227	30%	1,346	22%	2,276	37%	636	18%	440	22%	263	20%

Litigated vs. Non-Litigated Water Claims

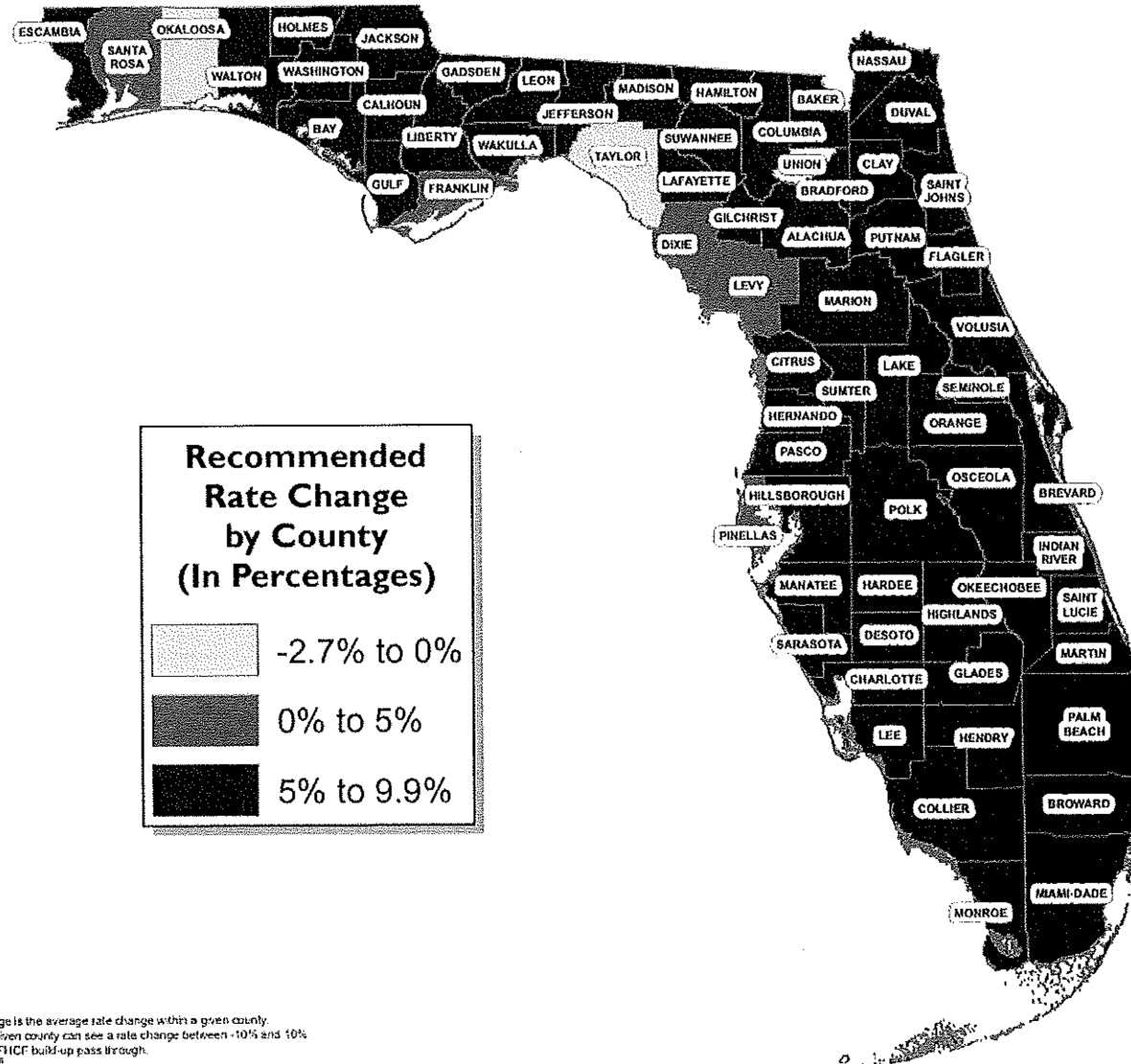


Severity of Litigated vs. Non-Litigated Water Claims



Homeowners Multiperil Rates

Exhibit 2 - Percent of 2019 Recommended Rate Change by County
Multi-Peril HO-3 Policies



Notes:

1. Percentage of rate change is the average rate change within a given county.
2. Policy holders within a given county can see a rate change between -10% and 10% excluding effects of the FICIF build-up pass through.
3. In force as of 06/30/2018.
4. Counties with no color have no HO-3 policies as of 06/30/2018.

- Citizens current average actuarial rate indication for multiperil homeowners is 25.2% with a capped indication of 8.5%
- Actuarial rate need for homeowners multiperil policies ranges among Senate districts from 0.1% to 51.6%
- 97% of homeowners multiperil policyholders will see rate increases in 2019
- 70% of homeowners customers received rate decreases in 2015
- If AOB reform is successful the actuarial rate indication for homeowners multiperil would be reduced from 25.2% to 10.1%
- If overall litigation rates can be reduced to pre-2015 levels the actuarial rate indication for homeowners multiperil would be reduced from 25.2 to 1.5%



Managed Repair Program

Available for Non-Weather Water Losses for Citizens' HO-3 and DP-3 Policies

- Voluntary program offered at time of loss for water losses caused by accidental discharge or overflow of water or steam from a plumbing, heating, air conditioning, automatic fire protective sprinkler system or household appliance
- **Emergency Water Removal Services**
 - No deductible
 - No cost to policyholder even if loss is not covered by Citizens
 - If the policyholder agrees to participate, Citizens provides a Citizens-approved contractor(s) to provide water removal and drying services to protect insured structures from further damage
- **Managed Repair Contractor Network Program**
 - Provides permanent repair services for covered damage
 - Policyholder works with licensed and insured contractors within the network
 - All contractors' claim related work is guaranteed for three years

2018 Policy Changes

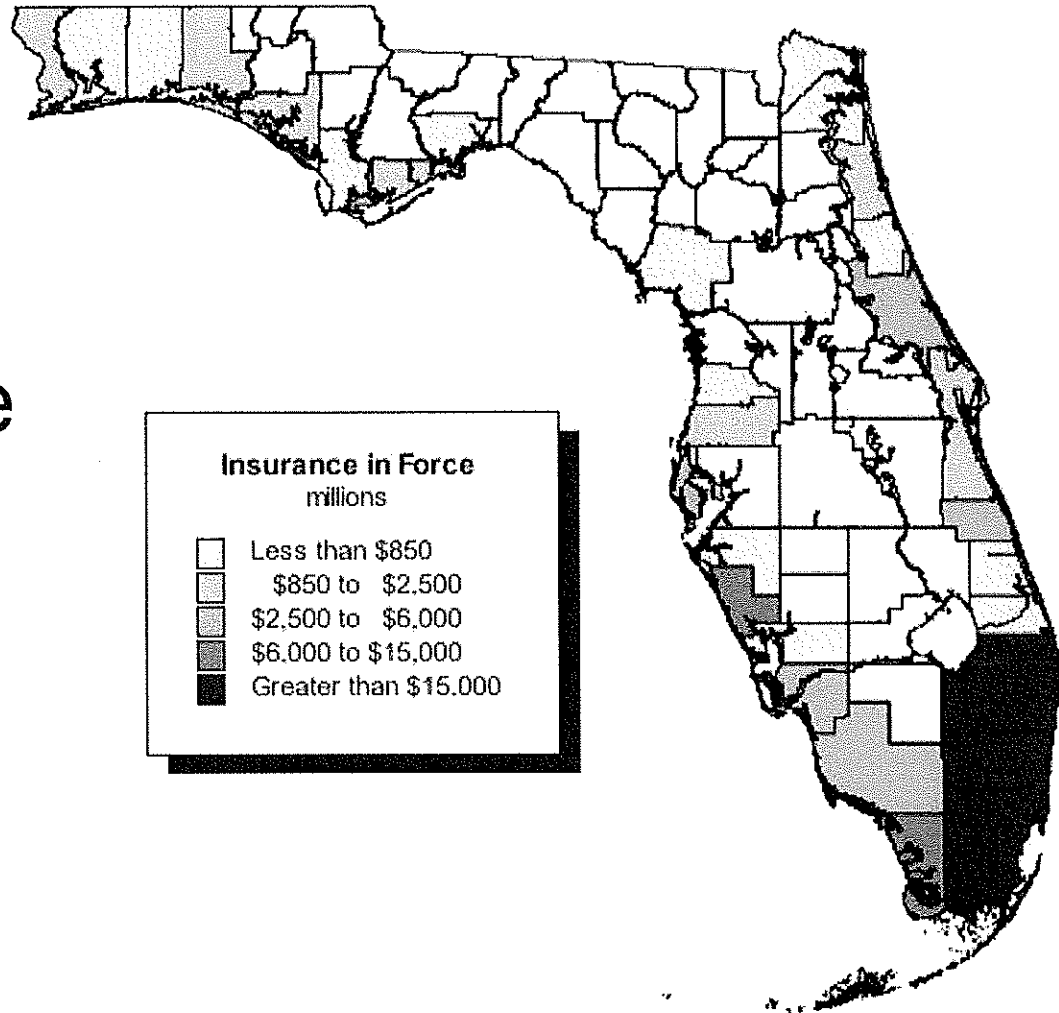
- Effective for HO-3 and dwelling DP-3 new business and renewals August 1, 2018
- \$10,000 Sublimit for Coverages A and B if Managed Repair Contractor Network not used
- Requires all claimants other than insured, their agent, representative or a public adjuster representing claimant to:
 - Provide documentation supporting the right to make a claim
 - Provide documentation detailing the scope and amount of loss
 - Participate in appraisal or alternative dispute resolution

**Value of the AOB during
Insurance Claims
for Contractors to Help
Customers**

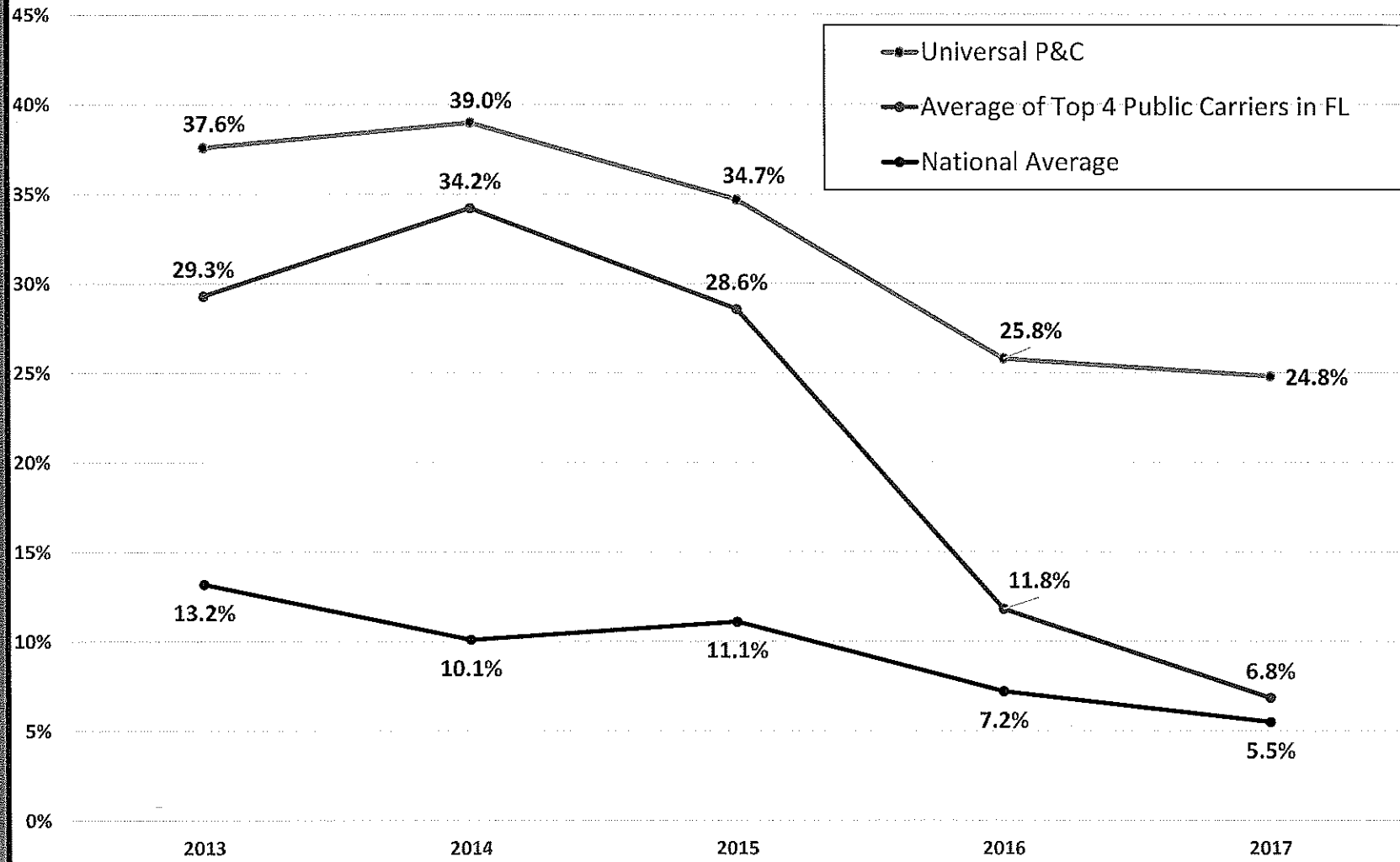
Insurance Companies Charge a Premium with a Promise to Make Customers Whole



Citizens Insurance Policies in Force

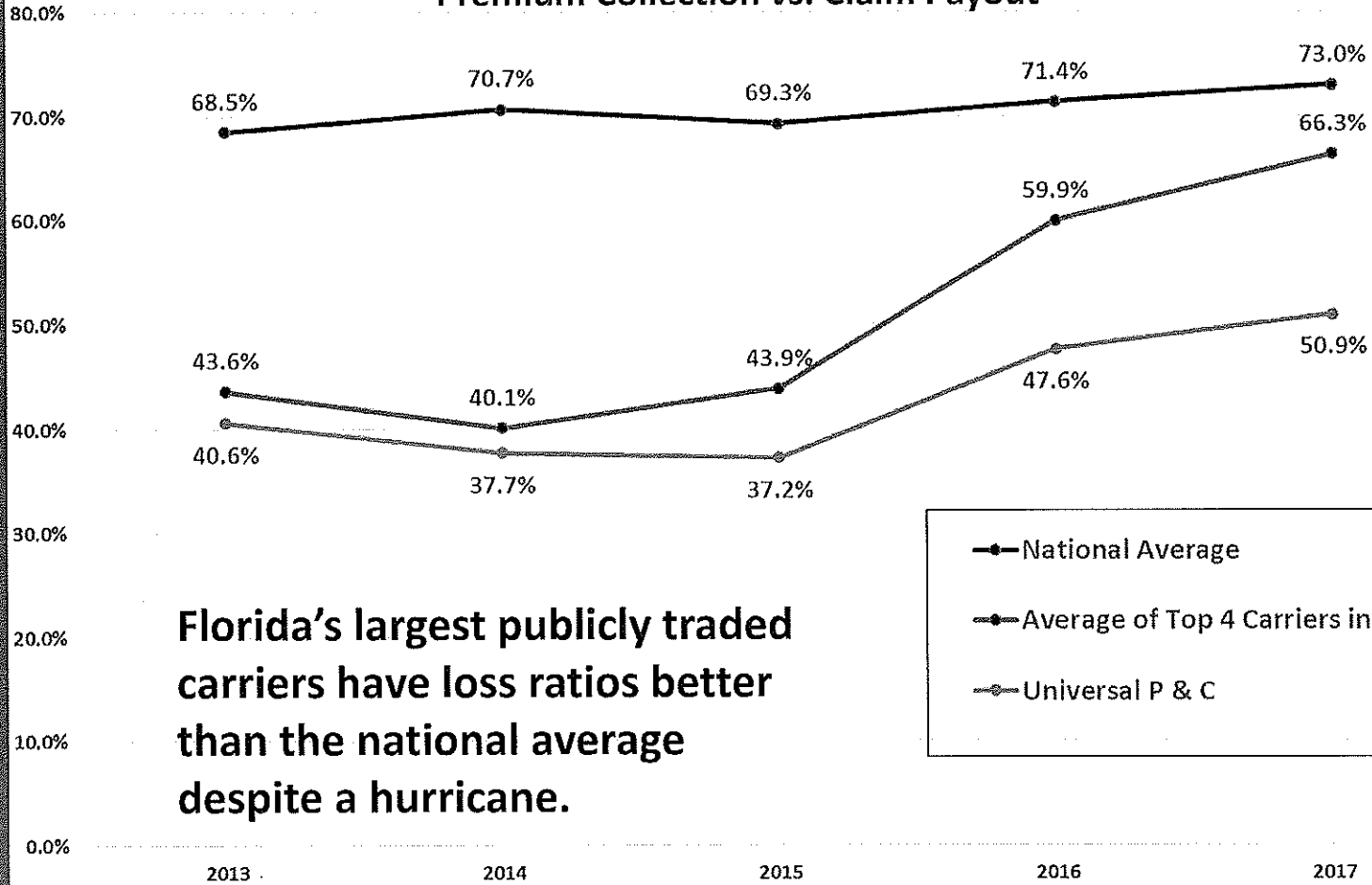


Net Income before Taxes (in thousands)

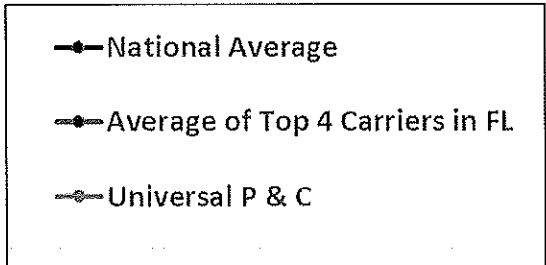


Loss Ratio

Premium Collection vs. Claim Payout



Florida's largest publicly traded carriers have loss ratios better than the national average despite a hurricane.

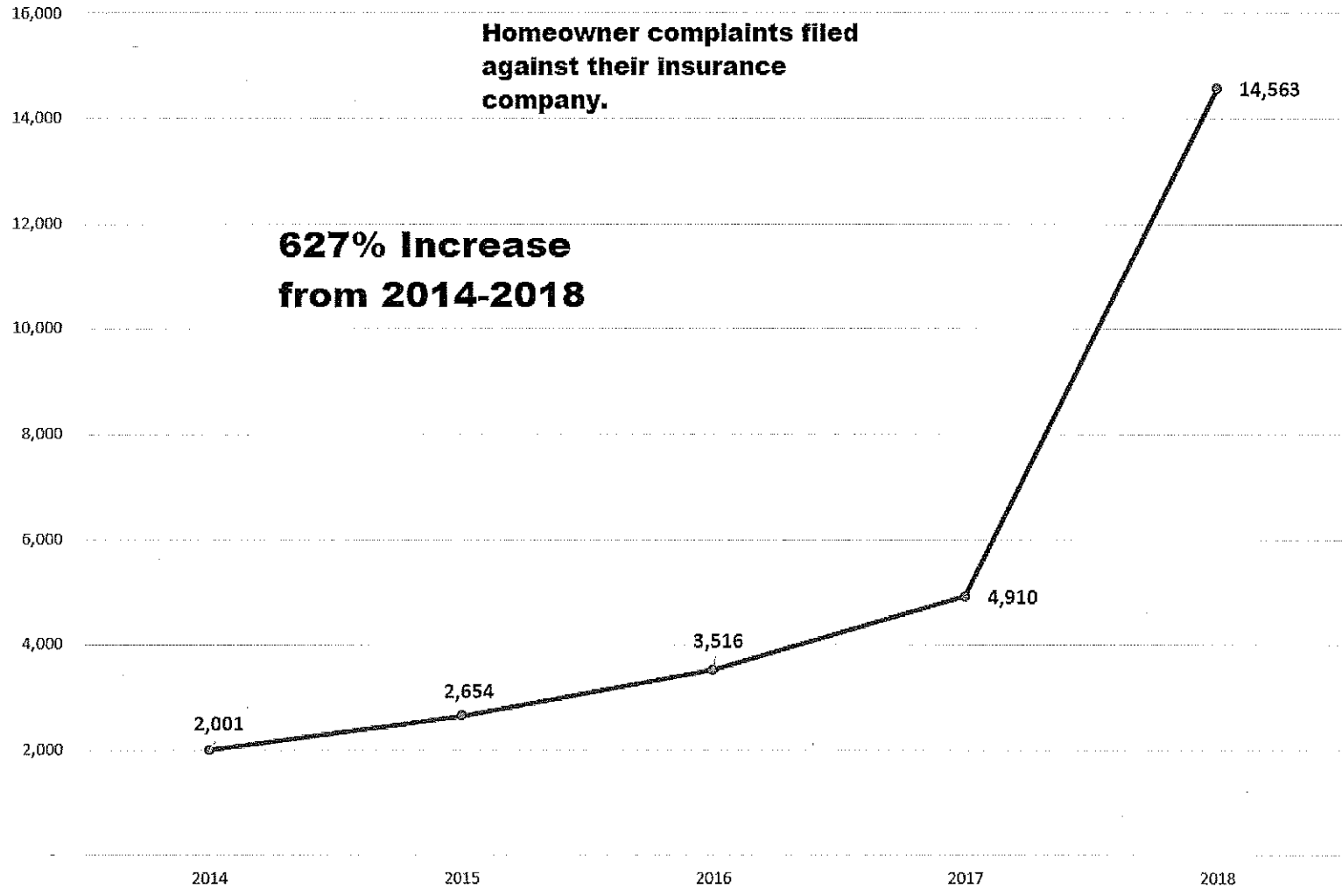


Decline in Payments Over Last 5 Years

Year	Job Count	Original Invoice	Undisputed from Carrier	Undisputed %	Amount Paid	% Rec'd	Delay in Payment
2013	16	\$ 380,449.91	\$ 296,064.01	78%	\$ 376,973.93	99%	651
2014	61	\$ 1,224,057.62	\$ 701,603.88	57%	\$ 1,148,978.40	94%	439
2015	55	\$ 1,306,743.03	\$ 512,583.53	39%	\$ 1,184,700.51	91%	483
2016	115	\$ 3,254,174.28	\$1,387,447.71	43%	\$ 2,921,703.52	90%	335
2017	40	\$ 619,933.53	\$ 198,715.77	32%	\$ 572,295.02	92%	251
2018	40	\$ 512,869.12	\$ 116,485.26	23%	\$ 446,125.84	87%	138
Totals	327	\$ 7,298,227.49	\$3,212,900.16	44%	\$ 6,650,777.22	91%	383

	Job Count	Invoiced Amount	Undisputed from Carrier	Undisputed %
Currently in Suit	52	\$ 2,473,098.93	\$ 469,521.63	19%
Current AR	208	\$ 4,115,451.90	\$ 863,232.05	21%
Total Work Completed	260	\$ 6,588,550.83	\$ 1,332,753.68	20%

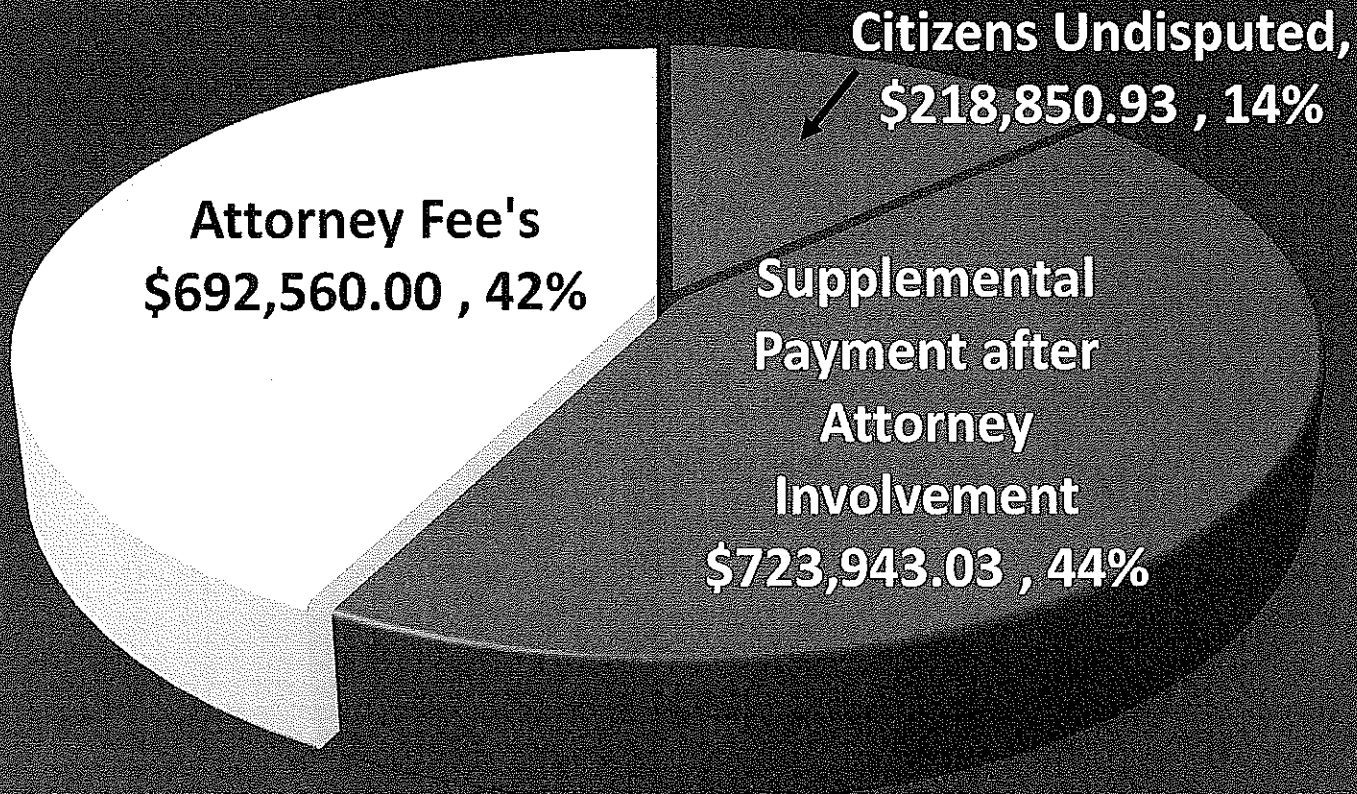
Florida Civil Remedy Notices



South Florida Contractor Claims with Citizens

The average invoice to Citizens was \$ 5,584.90 .

Between 2012-2016 the national average for a water claim was \$ 9,633 according to the Insurance Information Institute.





Vendor Programs

Backside of Shower



Vendor Program Restraints



Response from Insurance Company's Director of Customer Field Services

Good morning Josh,

Could you look at this claim, I have several issues with the way Wright Way handled it. My first concern is there appears to be a minimal amount of mold and we have turned this into a full blown mold claim causing unnecessary concern on the part of the insured. There seems to be less than 8 or 10 sq ft of mold normally contained and taken out with no muss or fuss. Another concern is that you went in there and wrote a pretty large water mit estimate, mold remediation estimate and build back estimate when all that we needed was a simple dry out. Our vendors usually communicate with the Examiner about these issues and are definitely not that aggressive. If I am missing something that would justify your handling of this claim please enlighten me. Thank you.

Best Regards

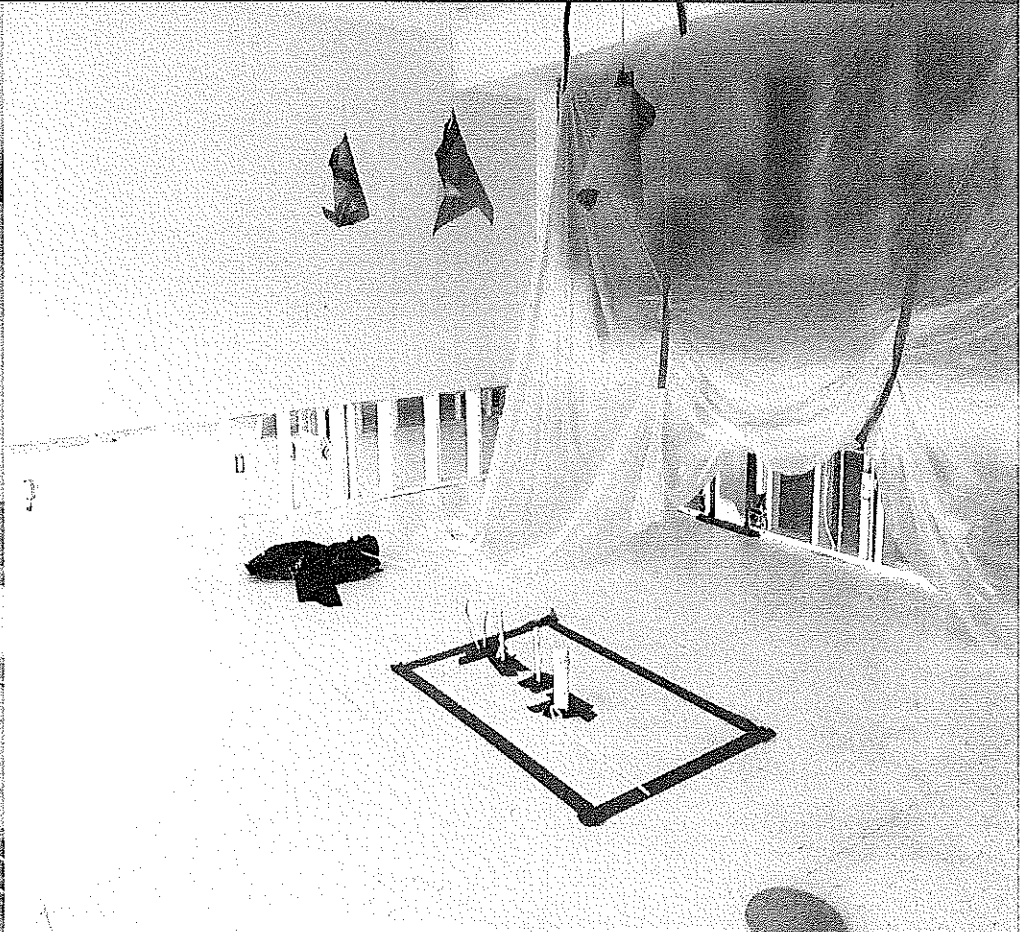
DIRECTOR OF CUSTOMER FIELD SERVICES



Sanibel Island Insurance Vendor Program Disaster

Sanibel Island Property





Proposed Solutions

1. Regulation of Restoration Contractors
2. Qualified and Educated Claims Staff
3. Serious Penalties for Insurance Fraud
-Contractors and Carriers
4. Penalties for Underpayment and Delayed
Claims
5. Proposal For Settlement

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-19

Meeting Date

SB 122

Bill Number (if applicable)

Topic AOR

Amendment Barcode (if applicable)

Name Jasmin Tolbert

Job Title Panama City President

Address 6524 Laine Joanna Circle

Phone (850) 319-5604

Street

Panama City

City

FL

State

32404

Zip

Email Jasmin_Tolbert@yahoo.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-19

Meeting Date

5B 122

Bill Number (if applicable)

Topic

AOB

Amendment Barcode (if applicable)

Name

David MacInnes

Job Title

Franchise Owner

Address

1424 Caty Court

Phone

(850) 590-1038

Street

57 Johns

FL

32259

City

State

Zip

Email

teamtallahassee@dytecl

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Representing

Rytecl Tallahassee

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

122

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 130 S Bronough St

Phone 521-1200

Street

Tallahassee

FL

32301

City

State

Zip

Email cjohnson@flchamber.com

Speaking: For Against Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-19

122

Meeting Date

Bill Number (if applicable)

Topic Assignment of Benefits - Attorney Fees

Amendment Barcode (if applicable)

Name Michael Carlson

Job Title President/CEO

Address 215 S. Monroe St. Ste. 835

Phone 850-597-7425

Street

Tallahassee

FL

32301

Email michael.carlson@piff.net

City

State

Zip

Speaking: For Against Information

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

Representing The Personal Insurance Federation of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19
Meeting Date

SB 122
Bill Number (if applicable)
306982
Amendment Barcode (if applicable)

Topic _____

Name Ron Haynes

Job Title Christopher Ligori & Associates

Address 117 S. Willow Ave.

Phone (813) 223-2929

Street

Tampa
City

FL
State

33606
Zip

Email rhaynes@ligori.law.com

Speaking: For Against Information

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

Representing Christopher Ligori & Associates

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

122

Bill Number (if applicable)

306982

Amendment Barcode (if applicable)

Topic Assignment of Benefits

Name Beth Vecchioli (pronounced Vetchee-o-lee)

Job Title Sr. Director Gov't. Consulting

Address 215 S. Monroe St. Ste 500

Street

Tallahassee FL 32301

City

State

Zip

Phone 850-425-3393

Email bvecchioli@earthlink.net

Speaking: For Against Information

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

Representing National Assoc. of Mutual Insurance Companies

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-4-19

Meeting Date

122

Bill Number (if applicable)

306982

Amendment Barcode (if applicable)

Topic AOB

Name Todd Palmer

Job Title Owner - Mr. Auto Glass dba Mr. Auto Glas

Address 640 Breaker Creek BL #420 Phone 813-902-2516

Street

Oldsmar Fl.

City

State

34677

Zip

Email todd@fixmyquad.com

Speaking: For Against Information

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

Representing Mr. Auto Glass

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19

Meeting Date

722

Bill Number (if applicable)

306982

Amendment Barcode (if applicable)

Topic A03

Name KEITH SEAMAN

Job Title GM, GLASS REPLACEMENTS

Address 3817 ELOISE ST.
Street

Phone 904.608-3940

JACKSONVILLE FL. 32205
City State Zip

Email KEITH.SEAMAN@GMAIL.COM

Speaking: For Against Information

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

Representing GLASS REPLACEMENTS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19

Meeting Date

122

Bill Number (if applicable)

306982

Amendment Barcode (if applicable)

Topic _____

Name Lee Jacobson

Job Title Attorney

Address 675 Shalonnass Circle

Street

Phone _____

Lake Mary

City

FL

State

32786

Zip

Email _____

Speaking: For Against Information

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

Representing FL Justice Asso

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/19

Meeting Date

122

Bill Number (if applicable)

306982

Amendment Barcode (if applicable)

Topic AOB

Name Richie Kidwell

Job Title owner

Address 944 W Mose Blvd

Street

Phone

City Palmdale

State

Zip

Email

Speaking: For Against Information

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

Representing Air Quality Assessors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/19

Meeting Date

122

Bill Number (if applicable)

3010982

Amendment Barcode (if applicable)

Topic AOB

Name JOE PUENTES

Job Title CEO

Address 14411 COMMERCE WAY STE 300

Street

Phone 1000-985-1772

MIAMI LAKE

City

State

33010

Zip

Email joe@expertnetwork.com

Speaking: [] For [x] Against [] Information

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

Representing HEALTHY HOMES COUNCIL

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [] Yes [x] No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/3/19

Meeting Date

122

Bill Number (if applicable)

3010902

Amendment Barcode (if applicable)

Topic A0B

Name STEPHEN BOWE

Job Title OWNER

Address 1830 Polk St

Phone (9) 800-8215

Hollywood FL 33020

City State Zip

Email info@mrrestorationfl.com

Speaking: For Against Information

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

Representing MR. RESTORATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/3/19

Meeting Date

122

Bill Number (if applicable)

306982

Amendment Barcode (if applicable)

Topic AOB

Name JIM APUZZO

Job Title Vice President

Address 2200 Winter Springs 104-221

Street

Phone 407-448-0048

Orlando

City

FL

State

32765

Zip

Email jimapuzzo@gmail.com

Speaking: For Against Information

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

Representing Damage Control

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/3/19
Meeting Date

122

Bill Number (if applicable)

306982

Amendment Barcode (if applicable)

Topic AOB

Name STEVEN ARREAGA

Job Title OWNER,

Address 5327 GEORGIA AVE
Street

Phone 561-493-5118

WEST PALM BCH FL 33405
City State Zip

Email steven@magnoliafl.com

Speaking: For Against Information

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

Representing MAGNOLIA RESTORATION SERVICES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-19

Meeting Date

122

Bill Number (if applicable)

306982

Amendment Barcode (if applicable)

Topic AOB

Name Dave DeBlander

Job Title Pres

Address 3255 Potter St

Street

Pensacola FL 32514

City

State

Zip

Phone 850 484 8500

Email dave@procleanrestoration.com

Speaking: For Against Information

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

Representing Pro Clean Restoration & Cleaning

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/19 Meeting Date

122 Bill Number (if applicable)
306982 Amendment Barcode (if applicable)

Topic AOB

Name JOSH REYNOLDS

Job Title Owner + CEO

Address 300 Triple Diamond Blvd Street

Phone 941-313-0998

Nokomis FL 34275 City State Zip

Email Josh@wrightway.com

Speaking: [] For [x] Against [] Information

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

Representing WRIGHT WAY EMERGENCY SERVICES

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [] Yes [x] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/19

Meeting Date

122

Bill Number (if applicable)

306982

Amendment Barcode (if applicable)

Topic AOB

Name ROBERT SHOWALTER

Job Title President Showalter Construction + Restoration LLC

Address 10798 Florence Ave

Street

Phone 813 752 9372

Thonotosassa FL 33592

City

State

Zip

Email robert@showalter.com

Speaking: For [] Against [x] Information []

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

Representing Showalter Construction + Restoration LLC

Appearing at request of Chair: Yes [] No [x]

Lobbyist registered with Legislature: Yes [] No [x]

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3-4-19

Meeting Date

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

SB 122

Bill Number (if applicable)

306982

Amendment Barcode (if applicable)

Topic AOB

Name CAM FENTRISS

Job Title LEGISLATIVE COUNSEL

Address 1400 VILLAGE SQ BLD # 3-243

Phone 850-222-2772

Street

TALL FL 32312

City

State

Zip

Email CFENTRISS@AOL.COM

Speaking: [X] For [] Against [] Information

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

Representing FLA. ROOFING & SHEET METAL CONTRACTORS ASSN

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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APPEARANCE RECORD

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

3-4-19

Meeting Date

SB 172

Bill Number (if applicable)

306982

Amendment Barcode (if applicable)

Topic AOB

Name CAM FENTRISS

Job Title LEGISLATIVE COUNSEL

Address 1400 VILLAGE SQ BLVD #3-243

Phone 850-222-2772

Street

TALL FL 32312

City

State

Zip

Email CFENTRISS@AOL.COM

Speaking: For Against Information

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

Representing FUA REFRIGERATION & AC CONTRACTORS ASSN

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

March 4, 2019

Meeting Date

122

Bill Number (if applicable)

306982

Amendment Barcode (if applicable)

Topic AOB

Name Foyt Ralston

Job Title _____

Address 317 East Park Ave

Street

Tallahassee

City

FL

State

32301

Zip

Phone _____

Email foyt@capadvocates.com

Speaking: For Against Information

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

Representing Florida Association of Restoration Specialist (FLARS)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____
Topic SB: AOB
Name Dave DeBlender
Job Title President
Address 3255 Potter St
Street
Pensacola FL 32514
City State Zip

122
Bill Number (if applicable)
306982
Amendment Barcode (if applicable)

Phone 850 712 8711
Email dave@procleanrestoration.com

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

Representing ProClean Restoration and Cleaning

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3.4.19

Meeting Date

122

Bill Number (if applicable)

306982

Amendment Barcode (if applicable)

Topic INSURANCE

Name Trey Goldman

Job Title Legislative Counsel

Address 200 S. MONROE
Street

Phone 850/224-1400

TLLH FL 32301
City State Zip

Email treyg@florida Realtors.org

Speaking: For Against Information

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

Representing FLORIDA REALTORS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-4-19

Meeting Date

122

Bill Number (if applicable)

Topic

S122 (A0B)

Amendment Barcode (if applicable)

Name

Boamy Gordon

Job Title

SR. Counsel

Address

1 GEICO Plaza

Phone

301-986-2653

Street

Washington

DC

20076

City

Zip

Email

bgordon@geico.com

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Representing

GEICO

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3-4-19

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

SB 122

Meeting Date

Bill Number (if applicable)

Topic AOB ABUSE



Amendment Barcode (if applicable)

Name CFO Jimmy Patronis

Job Title Chief Financial Officer

Address PL 11, Capitol

Phone 850-413-2890

Street

Tallahassee FL 32399

Email jimmy@myfloridacfo.com

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing CFO Jimmy Patronis

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

03-04-19

122

Meeting Date

Bill Number (if applicable)

Topic Attorney Fee Awards Under Insurance Policies and Contracts

Amendment Barcode (if applicable)

Name Christine Ashburn

Job Title Chief - Communications, Legislative and External Affairs

Address 2101 Maryland Circle

Phone 850-513-3746

Street

Tallahassee

Florida

32303

Email christine.ashburn@citizensfla.com

City

State

Zip

Speaking: For Against Information

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

Representing Citizens Property Insurance Corporation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19
Meeting Date

122
Bill Number (if applicable)

Topic AOB

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 W Adams
Street

Phone 224-7175

JCH FL 32301
City State Zip

Email bbevis@aif.ca

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3.4.19

Meeting Date

122

Bill Number (if applicable)

Topic AOB

Amendment Barcode (if applicable)

Name Ashley Kalifeh

Job Title lawyer/lobbyist

Address 101 E College Ave #502

Phone 222-9075

Street

Tallahassee FL

City

State

Zip

Email akalifeh@opartyconsult.com

Speaking: [] For [] Against [X] Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/14
Meeting Date

122
Bill Number (if applicable)

Topic AOB

Amendment Barcode (if applicable)

Name David Altmaier

Job Title Insurance Commissioner

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4 MAR 19

Meeting Date

SB 122

Bill Number (if applicable)

Topic AOB SEN BILL 122 ^{VICTIM IN} SUPPORT OF REFORM

Amendment Barcode (if applicable)

Name CHARLES SNELL GROVE ~~STAR~~

Job Title CITIZEN

Address 1759 STARLIGHT DR

Phone (727) 458-1808

Street

CLEARWATER FL 33755

Email n4tho.ham@yahoo.com

City

State

Zip

Speaking: For Against Information

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

Representing SELF/CONSUMER

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/2019
Meeting Date

SR 122
Bill Number (if applicable)

Topic AOR Bill

Amendment Barcode (if applicable)

Name Mark Delegal

Job Title Retained Counsel

Address 315 South Calhoun #600
Street

Phone 850 724-7000

City TLH State FL Zip 32301

Email

Speaking: For Against Information

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

Representing State Farm Florida Insurance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-19
Meeting Date

SB 0122
Bill Number (if applicable)

Topic On the Bill

Amendment Barcode (if applicable)

Name Gary Guzzo

Job Title _____

Address 108 S. Monroe St Suite 200 Phone _____

Tallahassee Fla 32301
Street City State Zip

Email _____

Speaking: For Against Information

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

Representing ILR Institute for Legal Reform

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

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

122

3/4/19
Meeting Date

122
Bill Number (if applicable)
892198
Amendment Barcode (if applicable)

Topic AOB ppp

Name Carolyn Johnson

Job Title Policy Director

Address 130 S Brimough St
Street
Tallahassee
City State Zip

Phone _____

Email _____

Speaking: For Against Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2019
Meeting Date

①
122
Bill Number (if applicable)
336048
Amendment Barcode (if applicable)

Topic Ratemaking

Name Mark Delegal

Job Title Retained Counsel

Address 315 S. Calhoun St #600

Phone 8507747000

TH FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing State Farm Florida Ins

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/11
Meeting Date

②

122
Bill Number (if applicable)

336048
Amendment Barcode (if applicable)

Topic AOB

Name Brewster Bevis

Job Title Senior VP

Address 516 N Adams St
Street

Phone 224-7173

TLH FL 32301
City State Zip

Email bbevis@aif.com

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 4, 2019

Meeting Date

122

Bill Number (if applicable)

336048

Amendment Barcode (if applicable)

Topic AOB

Name Foyt Ralston

Job Title W/S

Address 317 East Park Ave

Street

Tallahassee

City

FL

State

32301

Zip

Phone _____

Email foyt@capadvocates.com

Speaking: For Against Information

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

Representing Florida Association of Restoration Specialist (FLARS)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19
Meeting Date

122
Bill Number (if applicable)

33604A
Amendment Barcode (if applicable)

Topic AOB

Name Dave DeBlando

Job Title President *INTS*

Address 3255 Potter St
Street

Phone _____

Pen. FL 32514
City State Zip

Email _____

Speaking: For Against Information

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

Representing 710 Clean

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE APPEARANCE RECORD

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

3-4-19

Meeting Date

122

Bill Number (if applicable)

336048

Amendment Barcode (if applicable)

Topic Ratemaking

Name Michael Carlson

Job Title President/CEO

Address 215 S. Monroe St. Ste. 835

Phone 850-597-7425

Street

Tallahassee

FL

32301

Email michael.carlson@piff.net

City

State

Zip

Speaking: For Against Information

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

Representing The Personal Insurance Federation of Florida, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19

Meeting Date

122

Bill Number (if applicable)

336048

Amendment Barcode (if applicable)

Topic AOB

W/OB

Name Candyn Johnson

Job Title Policy Director

Address 136 S Branough St

Street

Tallahassee

City

State

Zip

Phone _____

Email _____

Speaking: For Against Information

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

Representing PL Chamber of Commerce

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19
Meeting Date

122
Bill Number (if applicable)
336048
Amendment Barcode (if applicable)

Topic A013

Name Lee Jacobson

Job Title Attorney

Address 695 Shadowway Clark

Street

Phone _____

Lake Mary
City

FL
State

32749
Zip

Email _____

Speaking: For Against Information

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

Representing Florida's Justice Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/3/19

Meeting Date

~~122~~ 122

Bill Number (if applicable)

Topic A0B

932552

~~6000000000~~

Amendment Barcode (if applicable)

Name JOSH REYNOLDS

Job Title Owner & CEO

Address 300 Triple Diamond Blvd
Street

Phone 941-313-0998

Nokomis
City

FL
State

34275
Zip

Email Josh@wrightway.com

Speaking: For Against Information

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

Representing Wright Way Emergency Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19

Meeting Date

~~12~~
122

Bill Number (if applicable)

932552

Amendment Barcode (if applicable)

Topic ADP

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St

Street

Tallahassee

City

FL

State

32301

Zip

Phone _____

Email _____

Speaking: For Against Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/19

Meeting Date

22

Bill Number (if applicable)

932552

Amendment Barcode (if applicable)

Topic AOB

Name RICHIE KIDWELL

Job Title OWNER

Address 941 W. MORSE BLVD #100

Street

Phone

WINTER PARK FL 32789

City

State

Zip

Richie@AirQualityAssessors.com

Email

Speaking: [X] For [] Against [] Information

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

Representing AIR QUALITY ASSESSORS

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

March 4

Meeting Date

122

Bill Number (if applicable)

Against: 932552

Amendment Barcode (if applicable)

Topic _____

Name Tim Meenan

For: 306982

Job Title _____

Address 400 S. Duval St.

Phone (850) 425-4000

Tallahassee FL 32302

City

State

Zip

Email Tim@meenanlaw.com

Speaking: For Against Information

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

Representing Tower Hill Insurance Group

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/19

Meeting Date

5
172

Bill Number (if applicable)

932552

Amendment Barcode (if applicable)

Topic AOB

Name Robert Showalter

Job Title President

Address 10798 Florence Ave

Street

Phone 813 752 9372

THONOTOSASSA FL

City

State

33592

Zip

Email robert@showalter.co

Speaking: For Against Information

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

Representing Showalter Construction + Restoration LLC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

~~122~~
122

Bill Number (if applicable)

932552

Amendment Barcode (if applicable)

3/4/19
Meeting Date

Topic A03

Name Lee Jacobson

Job Title Attorney

Address 675 Shadowmoss Circle

Phone 407 497 0771

Street

Lake Mary FL 32746

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FL Justice Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE APPEARANCE RECORD

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

03-04-19

7

122

Meeting Date

Bill Number (if applicable)

932552

Amendment Barcode (if applicable)

Topic Attorney Fee Awards Under Insurance Policies and Contracts

Name Christine Ashburn

Job Title Chief - Communications, Legislative and External Affairs

Address 2101 Maryland Circle

Phone 850-513-3746

Street

Tallahassee

Florida

32303

Email christine.ashburn@citizensfla.com

City

State

Zip

Speaking: For Against Information

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

Representing Citizens Property Insurance Corporation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19
Meeting Date

9
122
Bill Number (if applicable)

932552
Amendment Barcode (if applicable)

Topic AOB

Name Brewster Bevis W/O

Job Title Senior VP

Address 516 W Adams
Street

Phone 224-7173

TLH FL 32301
City State Zip

Email bbevis@aif.com

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-4

Meeting Date

X10
122

Bill Number (if applicable)

932552

Amendment Barcode (if applicable)

Topic AOB

Name Dave DeBlender

Job Title President

Address 3255 Potter St

Street

City

State

Zip

Rensicola FL 32514

Phone 850 484 8500

Email dave@procleanrestoration.com

Speaking: For Against Information

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

Representing Pro Clean Restoration and Cleaning

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

11
122

3/4/2019
Meeting Date

Bill Number (if applicable)

#932552

Amendment Barcode (if applicable)

~~#336075~~

Taddeo

Topic Rate Making / Managed Repair

Name Mark Delegal

Job Title Retained Counsel

Address 315 S. Calhoun St, #600
Street

Phone 850 274 7000

City TLH State FL Zip 32301

Email

Speaking: For Against Information

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

Representing State Farm Florida Ins Company

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

122

Bill Number (if applicable)

932552

Amendment Barcode (if applicable)

Topic Managed Repair

Name Steve Geller

Job Title Attorney

Address 110 East Broward Blvd

Street

Phone 954-315-3926

Ft. Lauderdale FL 33020

City

State

Zip

Email SteveGeller@newfirm.com

Speaking: For Against Information

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

Representing Florida Association of Public Insurance Adjusters

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2019

Meeting Date

X 6

122

Bill Number (if applicable)

892198

Amendment Barcode (if applicable)

Topic Sen Thurston Amendment

Name Mark Delegal

Job Title Retained Counsel

Address 315 S. Calhoun St #600

Phone (504) 774-7000

TUH FL 32301

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing State Farm Florida Ins Company

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-19
Meeting Date

122
Bill Number (if applicable)

892198
Amendment Barcode (if applicable)

Topic AOB

Name Dave DeBlander

Job Title President

Address 3255 Potter St

Street

Pensacola, FL 32514

City

State

Zip

Phone 850 484 8500

Email dave@procleanrestoration.com

Speaking: For Against Information

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

Representing Pro Clean Restoration and Cleaning

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19

Meeting Date

122

Bill Number (if applicable)

892198

Amendment Barcode (if applicable)

Topic AOB

Name Lee Jacobson

Job Title Attorney

Address 675 Shadow Moss Circle

Street

Lake Mary

City

FL

State

32746

Zip

Phone 407 497 0771

Email _____

Speaking: For Against Information

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

Representing Florida Justice Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/19

Meeting Date

122³

Bill Number (if applicable)

892198

Amendment Barcode (if applicable)

Topic AOB

Name RICHIE KIDWELL

Job Title OWNER

Address 941 W Morse Blvd #100

Street

Phone 407-233-0493

Winter Park FL 32789

City

State

Zip

Email RICHIE@AIRQUALITYASSESSORS.COM

Speaking: For Against Information

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

Representing AIR QUALITY ASSESSORS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

APPEARANCE RECORD

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

March 4, 2019

Meeting Date

122

Bill Number (if applicable)

892198

Amendment Barcode (if applicable)

Topic AOB

Name Foyt Ralston

Job Title _____

Address 317 East Park Ave

Street

Tallahassee

City

FL

State

32301

Zip

Phone _____

Email foyt@capadvocates.com

Speaking: For Against Information

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

Representing Florida Association of Restoration Specialist (FLARS)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

(45)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19
Meeting Date

122
Bill Number (if applicable)
892198
Amendment Barcode (if applicable)

Topic AOB

Name Brawster Bevis OPP

Job Title Senior VP

Address 516 W Adams

Phone 227-7173

TLH FL 32301
City State Zip

Email bbevis@aif.com

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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 496

INTRODUCER: Banking and Insurance Committee and Senator Rader

SUBJECT: Insurance Guaranty Associations

DATE: March 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.			AEG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 496 allows employees of the Florida Insurance Guaranty Association to adjust claims so long as they hold, or have held in the past 10 years, licensure in Florida that allows for the adjustment of claims. The bill allows certain employees of guaranty associations established by states whose insurance regulators are members of the National Association of Insurance Commissioners to adjust claims for the Florida Insurance Guaranty Association so long as the employees have experience and training in adjusting claims.

The bill revises the method by which Florida's Workers' Compensation Insurance Guaranty Association assessments are calculated against workers' compensation insurers by the Office of Insurance Regulation. The bill authorizes the Florida's Workers' Compensation Insurance Guaranty Association to audit reconciliation reports from insurers regarding amounts collected from policyholders.

The bill's effective date is July 1, 2019.

II. Present Situation:

Guaranty Associations

Under federal law, insurance companies cannot file for bankruptcy.¹ Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers² in Florida and sets up guaranty payments where necessary.³ Florida laws provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.⁴ A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements due to the insolvency of an insurer.⁵ Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA)⁶ and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)⁷.

Florida Insurance Guaranty Association (FIGA)

FIGA provides a “mechanism for the payment of covered claims under certain insurance policies to avoid” delay and financial loss due to the financial insolvency of an insurer.⁸ It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.⁹ When a property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. FIGA obtains funds to pay the claims of insolvent insurers located in Florida from the liquidation of the assets of insolvent insurers by the Division of Rehabilitation and Liquidation (the Division) in the Florida Department of Financial Services (DFS) and from the liquidation of assets of insolvent insurers located outside Florida that transact insurance business in Florida.¹⁰ If an insurer’s assets are insufficient to pay all claims, FIGA can also issue post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.¹¹

When an insolvent insurer is liquidated in Florida, FIGA assumes the claims and is “deemed the insurer to the extent of its obligation on...covered claims, and,...shall have all rights, duties,

¹ 11 U.S.C. s. 109(b)(2).

² An “insolvent insurer” means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. s. 631.904(4), F.S.

³ Chapter 631, F.S.

⁴ *Id.*

⁵ *See e.g.*, ss. 631.51 and 631.902, F.S.

⁶ Chapter 631, part II, F.S.

⁷ Chapter 631, part V, F.S.

⁸ Section 631.51, F.S.

⁹ Section 631.52, F.S.

¹⁰ *See* s. 631.061, F.S. for grounds for liquidation. *See* s. 631.025, F.S., for an overview of persons subject to proceedings initiated by the Division.

¹¹ Section 631.57, F.S.

defenses, and obligations of the insolvent insurer as if the insurer had not become insolvent.”¹² Additionally, FIGA has the right to employ the necessary staff to handle claims and perform other duties for the association.¹³

In general, when an insolvent insurer located in another state is liquidated, the claims in that state are referred to its guaranty association for claims handling. However, FIGA handles claims that exist on policies issued in Florida by insolvent foreign insurers.¹⁴

Florida Workers’ Compensation Insurance Guaranty Association (FWCIGA)

FWCIGA “provides a mechanism for the payment of covered claims under chapter 440 to avoid” delay and financial loss to claimants due to the insolvency of a workers’ compensation insurer.¹⁵ FWCIGA services workers’ compensation claims against insolvent workers’ compensation insurers¹⁶ and self-insurance funds.¹⁷ When a workers’ compensation insurer or self-insurance fund becomes insolvent, FWCIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. Like FIGA, FWCIGA is funded through the liquidation of insolvent insurers, including a portion of the estates of insolvent insurers in other states. If the assets of the liquidated insurer are insufficient to pay claims, FWCIGA in conjunction with the Office of Insurance Regulation (OIR), may order assessments of workers’ compensation insurers and self-insurance funds writing workers’ compensation coverage in Florida.¹⁸ FWCIGA levied assessments from its inception in 1998 through 2005.¹⁹ It has not levied any assessments since 2005, but anticipates doing so effective January 1, 2020.²⁰

Method of Assessment

In 2016, the method of assessment for FWCIGA was amended to be more consistent with the method used to levy assessments on the other Florida guaranty associations.²¹ Since the 2016 amendments, the law has provided for two methods by which FWCIGA can collect assessments

¹² *Id.*

¹³ *Id.*

¹⁴ A foreign insurer is one formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida. Section 624.06, F.S.

¹⁵ Section 631.902, F.S.

¹⁶ “‘Insurer’ means an insurance carrier or self-insurance fund authorized to insure under chapter 440. For purposes of this act, ‘insurer’ does not include a qualified local government self-insurance fund, as defined in s. 624.4622, or an individual self-insurer as defined in s. 440.385.” S. 631.904(5), F.S.

¹⁷ “‘Self-insurance fund’ means a group self-insurance fund authorized under s. 624.4621, a commercial self-insurance fund writing workers’ compensation insurance authorized under s. 624.462, or an assessable mutual insurer authorized under s. 628.6011. For purposes of this act, the term ‘self-insurance fund’ does not include a qualified local government self-insurance fund, as defined in s. 624.4622, an independent educational institution self-insurance fund as defined in s. 624.4623, an electric cooperative self-insurance fund as described in s. 624.4626, or an individual self-insurer as defined in s. 440.385.” S. 631.904(6), F.S.

¹⁸ Section 631.914, F.S.

¹⁹ Florida Workers’ Compensation Insurance Guaranty Association, *Assessments*, <https://fwciga.org/assessments> (last visited Feb. 27, 2019).

²⁰ Florida Workers’ Compensation Guaranty Association, *Bulletin 2019-1*, https://fwciga.org/wp-content/uploads/2019/01/Surcharge-Bulletin_sm.pdf (last visited Feb. 27, 2019). Pursuant to s. 631.914(4)(a), F.S., an insurer may be exempted from an assessment if, in the opinion of OIR, the assessment would impair the solvency of the insurer.

²¹ Chapter 16-170, Laws of Fla.

from workers' compensation insurers and self-insurance funds.²² FWCIGA may choose to fund an assessment by either of the following methods:²³

- Single payment, subject to true-up (pay and recover)²⁴ – under this method, the insurer pays the assessment to the FWCIGA and then recovers its payment from its insureds through policy surcharges. The assessment payment is due and payable no earlier than 30 days following written notice of the assessment order. For accounting purposes, the billed surcharges are a receivable and an asset for the purposes of the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles Number 4²⁵ and would be recorded separately from the liability for OIR reports.
- Installment (collect and remit) – under this method, the insurer would bill the insured for the surcharge as policies are written and remit the collected surcharges to the FWCIGA quarterly.²⁶

The insurer is required to submit a reconciliation report within 120 days following the end of the 12 month assessment recovery period showing the amount initially paid and the amount of the surcharge collected.²⁷ This results in a "true-up" of the actual assessment amount if the initial calculation and payment was too low or too high.²⁸

Calculation of Insurer Assessment Amount

OIR, upon certification of need by FWCIGA, levies assessments on each insurer "initially estimated in the proportion that the insurer's net direct written premiums" in Florida bear to the total net direct premiums received in Florida by all workers' compensation insurers during the previous calendar year.²⁹ The assessments levied against insurers and self-insurance funds are computed based upon the net direct written premium amounts set forth in Florida for workers' compensation insurance without consideration for any discount in premium or credit for deductibles.³⁰

The assessment is limited to 2 percent of an insurer's or self-insurance fund's net direct written premium in any given calendar year.³¹ If the assessment is insufficient to meet FWCIGA's funding need for payments owing to claimants in a calendar year, then, upon certification by FWCIGA, OIR shall levy assessments of up to an additional 1.5 percent of the insurer's net direct written premiums in Florida.³² Insurers and self-insurance funds must report to FWCIGA the amount of initial payment or installment payments made to FWCIGA and the amount

²² See s. 631.914, F.S.

²³ See *id.*

²⁴ Section 631.914(1)(d), F.S.

²⁵ National Association of Insurance Commissioners & The Center for Insurance Policy and Research, *Statutory Accounting Principles*, http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm (last visited Feb. 27, 2015).

²⁶ Section 631.914(1)(d), F.S.

²⁷ Section 631.914(1)(d)3., F.S.

²⁸ *Id.*

²⁹ Section 631.914(1)(a), F.S.

³⁰ *Id.*

³¹ *Id.*

³² Section 631.914(1)(c), F.S.

collected from policyholders.³³ The reporting must occur within 120 days after the 12-month assessment period and annually thereafter for 3 years.³⁴

III. Effect of Proposed Changes:

Section 1 allows employees of the Florida Insurance Guaranty Association to adjust claims so long as they hold, or have held in the past 10 years, licensure in Florida that allows for the adjustment of claims. The bill also allows employees of guaranty association established by states whose insurance regulators are members of the National Association of Insurance Commissioners to adjust claims for Florida Insurance Guaranty Association so long as the employees have experience and training in adjusting claims.

Section 2 revises the method by which assessments are levied against insurers and collected by FWCIGA, by providing that an insurer shall fully recoup assessments by applying a uniform surcharge percentage levied by OIR to all policies of the same kind or line as were considered by OIR in determining the assessment liability of the insurer.

The bill provides the authority for FWCIGA to audit the reports from insurers regarding the payments made to FWCIGA and the amounts collected from policyholders.

It provides that assessments paid by workers' compensation insurers constitute advances of funds to FWCIGA under certain circumstances to allow for proper accounting treatment. The bill removes the word "net" from "net direct written premium" to use the more common workers' compensation industry terminology of "direct written premium."

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

³³ Section 631.914(1)(a)d.3., F.S.

³⁴ *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 631.914 of the Florida Statutes.

This bill creates section 631.576 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 March 4, 2019:

The CS:

- Allows employees of the FIGA to adjust claims so long as they hold or have held in the past 10 years licensure in Florida that allows for the adjustment of claims.
- Requires out of state guaranty association employees contracted to adjust claims for the FIGA must reside in states whose insurance regulators are members of the NAIC and such employees must have experience and training in adjusting claims.
- Removes “large” deductibles and retrospectively rated policies from being excluded for discount and states that no policy shall be discounted when calculating the assessment amount.
- Reverts to current law that insurers must submit to the FWCIGA assessment reconciliation reports annually for 3 years.
- Makes other cross referencing and technical changes.

B. Amendments:

None.

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



308964

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 626.8621, Florida Statutes, is created
to read:

626.8621 Adjustments by guaranty association employees.—

(1) An employee of the Florida Insurance Guaranty
Association, created under part II of chapter 631, may adjust
losses for the association if such employee holds, or has held



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11 within the past 10 years, licensure in this state which allows
12 for the adjustment of such losses.

13 (2) An employee of a guaranty association established by
14 another state and whose insurance regulators are members of the
15 National Association of Insurance Commissioners may adjust
16 losses for the Florida Insurance Guaranty Association. The
17 authorization for such employees to adjust losses must be
18 included in a contract with the Florida Insurance Guaranty
19 Association and the employee's guarantee association or
20 association's authorized representative. The Florida Insurance
21 Guaranty Association shall contract only for employees of other
22 state guaranty associations who maintain the appropriate
23 experience and training for adjusting such claims.

24 Section 2. Subsections (1), (2), and (3) of section
25 631.914, Florida Statutes, are amended to read:

26 631.914 Assessments.—

27 (1) (a) To the extent necessary to secure the funds for the
28 payment of covered claims, and also to pay the reasonable costs
29 to administer the same, the Office of Insurance Regulation, upon
30 certification by the board, shall levy assessments on each
31 ~~insurer initially estimated in the proportion that the insurer's~~
32 ~~net direct written premiums in this state bears to the total of~~
33 ~~said net direct written premiums received in this state by all~~
34 ~~such workers' compensation insurers for the preceding calendar~~
35 ~~year.~~ An insurer shall fully recoup assessments by applying the
36 uniform surcharge percentage levied by the office to all
37 policies of the same kind or line as were considered by the
38 office in determining the assessment liability of the insurer.
39 Assessments levied against insurers and self-insurance funds



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40 pursuant to this paragraph must be computed and levied on the
41 basis of ~~the full policy premium value on the net~~ direct written
42 premium amount as set forth in the state for workers'
43 compensation insurance ~~without consideration of any applicable~~
44 ~~discount or credit for deductibles.~~ An insurer's direct written
45 premium calculated for the purposes of determining the insurer's
46 assessment or policyholder surcharge may not be reduced by any
47 discount or credit for deductibles in a policy or by any premium
48 adjustment to a retrospectively rated policy. Insurers and self-
49 insurance funds must report premiums in compliance with this
50 paragraph, and the association may audit the reports.

51 Assessments shall be remitted to and administered by the board
52 of directors in the manner specified by the approved plan of
53 operation and paragraph (d). ~~Each assessment shall be a uniform~~
54 ~~percentage applicable to the net direct written premiums of each~~
55 ~~insurer writing workers' compensation insurance.~~ Assessments
56 levied against insurers and self-insurance funds shall not
57 exceed in any calendar year more than 2 percent of that
58 insurer's ~~net~~ direct written premiums in this state for workers'
59 compensation insurance.

60 (c) ~~(b)~~ The office shall levy the uniform surcharge
61 percentage on all policies of the same kind or line as were
62 considered by the office in determining the assessment liability
63 of the insurer. Member insurers shall collect policyholder
64 surcharges at a uniform percentage rate on new and renewal
65 policies issued and effective during the period of 12 months
66 beginning on January 1, April 1, July 1, or October 1, whichever
67 is the first day of the following calendar quarter as specified
68 in an order issued by the office ~~directing insurers to pay an~~



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69 ~~assessment to the association.~~ The policyholder surcharge may
70 not begin until 90 days after the board of directors certifies
71 the assessment.

72 (b) ~~(e)~~ If assessments otherwise authorized in paragraph (a)
73 are insufficient to make all payments on reimbursements then
74 owing to claimants in a calendar year, then upon certification
75 by the board, the office shall levy additional assessments of up
76 to 1.5 percent of the insurer's ~~net~~ direct written premiums in
77 this state.

78 (d) The association may use an installment method to
79 require the insurer to remit the policyholder surcharge
80 ~~assessment~~ as premium is collected ~~written~~ or may require the
81 insurer to remit the assessment to the association before
82 collecting the policyholder surcharge. ~~If the assessment is~~
83 ~~remitted before the surcharge is collected, the assessment~~
84 ~~remitted must be based on an estimate of the assessment due~~
85 ~~based on the proportion of each insurer's net direct written~~
86 ~~premium in this state for the preceding calendar year as~~
87 ~~described in paragraph (a) and adjusted following the end of the~~
88 ~~12-month period during which the assessment is levied.~~

89 1. If the association elects to use the installment method,
90 the office may, in the order levying the assessment on insurers,
91 specify that the policyholder surcharge ~~assessment~~ is due and
92 payable quarterly as premium is collected ~~written~~ throughout the
93 assessment year. Insurers shall collect policyholder surcharges
94 at a uniform percentage rate specified by order as described in
95 paragraph (c) ~~(b)~~. Insurers are not required to advance funds if
96 the association and the office elect to use the installment
97 option. Assessments levied under this subparagraph are paid



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98 after policyholder ~~policy~~ surcharges are collected, and the
99 recognition of assets is based on actual premium collected
100 ~~written~~ offset by the obligation to the association.

101 2. If the association elects to require insurers to remit
102 the assessment before surcharging the policyholder, the
103 following shall apply:

104 a. The assessment remitted must be based on an estimate of
105 the assessment due based on the proportion of each insurer's
106 direct written premium in this state for the preceding calendar
107 year as described in paragraph (a).

108 ~~b.a.~~ The levy order shall provide each insurer so assessed
109 at least 30 days' written notice of the date the initial
110 assessment payment is due and payable by the insurer.

111 ~~c.b.~~ Insurers shall collect policyholder surcharges at a
112 uniform percentage rate specified by the order, as described in
113 paragraph (c) ~~(b)~~.

114 ~~d.e.~~ Assessments levied under this subparagraph and are
115 paid by an insurer constitute advances of funds from the insurer
116 to the association before policy surcharges are billed and
117 result in a receivable for policyholder ~~policy~~ surcharges to be
118 billed in the future. The amount of billed policyholder
119 surcharges, to the extent it is likely that it will be realized,
120 meets the definition of an admissible asset as specified in the
121 National Association of Insurance Commissioners' Statement of
122 Statutory Accounting Principles No. 4. The asset shall be
123 established and recorded separately from the liability. If an
124 insurer is unable to fully recoup the amount of the assessment,
125 the amount recorded as an asset shall be reduced to the amount
126 reasonably expected to be recouped.



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127 3. Insurers must submit a reconciliation report to the
128 association within 120 days after the end of the 12-month
129 assessment period and annually thereafter for a period of 3
130 years. The report must indicate the amount of the initial
131 payment or installment payments made to the association and the
132 amount of policyholder surcharges collected ~~written premium~~
133 ~~pursuant to paragraph (a)~~ for the assessment year. If the
134 insurer's reconciled ~~assessment~~ obligation is more than the
135 amount paid to the association, the insurer shall pay the excess
136 policyholder surcharges collected to the association. If the
137 insurer's reconciled ~~assessment~~ obligation is less than the
138 initial amount paid to the association, the association shall
139 return the overpayment to the insurer.

140 (2) Policyholder surcharges collected ~~Assessments levied~~
141 under this section are not premium and are not subject to any
142 premium tax, fees, or commissions. Insurers shall treat the
143 failure of an insured to pay policyholder ~~assessment-related~~
144 surcharges as a failure to pay premium. An insurer is not liable
145 for any uncollectible policyholder ~~assessment-related~~ surcharges
146 levied pursuant to this section.

147 (3) Assessments levied under this section may be levied
148 only upon insurers. This section does not create a cause of
149 action by a policyholder with respect to the levying of an
150 assessment or a policyholder's duty to pay assessment-related
151 policyholder surcharges.

152 Section 3. This act shall take effect July 1, 2019.

153
154 ===== T I T L E A M E N D M E N T =====

155 And the title is amended as follows:



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156 Delete everything before the enacting clause
157 and insert:

158 A bill to be entitled
159 An act relating to insurance guaranty associations;
160 creating s. 626.8621, F.S.; authorizing an employee of
161 the Florida Insurance Guaranty Association or an
162 employee of a guaranty association of another state to
163 adjust losses for the Florida Insurance Guaranty
164 Association if certain conditions are met; amending s.
165 631.914, F.S.; revising requirements for the Office of
166 Insurance Regulation in levying assessments on
167 workers' compensation insurers; requiring such
168 insurers to recoup the assessments by applying a
169 certain surcharge percentage to certain policies;
170 providing that an insurer's direct written premium may
171 not be reduced by certain amounts for the purposes of
172 determining insurer assessments or policyholder
173 surcharges; authorizing the Florida Workers'
174 Compensation Insurance Guaranty Association to audit
175 certain reports; revising requirements for remitting
176 policy surcharges and assessments; conforming cross-
177 references; providing that assessments paid by an
178 insurer constitute advances of funds to the
179 association under certain circumstances; revising
180 requirements for insurers' reconciliation reports to
181 the association; revising construction; providing an
182 effective date.

By Senator Rader

29-01191-19

2019496__

A bill to be entitled

An act relating to insurance guaranty associations; creating s. 631.576, F.S.; authorizing the Florida Insurance Guaranty Association to authorize certain employees to adjust losses for the association; requiring such authorization to be included in a contract; amending s. 631.914, F.S.; revising the assessments levied by the Office of Insurance Regulation on workers' compensation insurers; requiring such insurers to recoup the assessments by applying a certain surcharge percentage to certain policies; authorizing the Florida Workers' Compensation Insurance Guaranty Association to audit certain reports; revising requirements for remitting assessments; conforming cross-references; providing that assessments paid by an insurer constitute advances of funds to the association under certain circumstances; revising the requirements for the insurers' reconciliation reports to the Florida Workers' Compensation Insurance Guaranty Association; revising construction; providing an effective date.

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

Section 1. Section 631.576, Florida Statutes, is created to read:

631.576 Guaranty association employees; loss adjustment.-
The Florida Insurance Guaranty Association may authorize an
employee of any state guaranty association to adjust losses for

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

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the Florida Insurance Guaranty Association pursuant to this
part. The guaranty association's employee is not required to be
licensed as an adjuster; however, the authorization for the
guaranty association's employee to adjust losses must be
included in a contract between the Florida Insurance Guaranty
Association and the guaranty association or the guaranty
association's authorized representative.

Section 2. Subsections (1), (2), and (3) of section 631.914, Florida Statutes, are amended to read:

631.914 Assessments.-

(1) (a) To the extent necessary to secure the funds for the payment of covered claims, and also to pay the reasonable costs to administer the same, the Office of Insurance Regulation, upon certification by the board, shall levy assessments on each insurer ~~initially estimated in the proportion that the insurer's net direct written premiums in this state bears to the total of said net direct written premiums received in this state by all such workers' compensation insurers for the preceding calendar year.~~ An insurer shall fully recoup assessments by applying the uniform surcharge percentage levied by the office to all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer. Assessments levied against insurers and self-insurance funds pursuant to this paragraph must be computed and levied on the basis of ~~the full policy premium value on the net direct written premium amount as set forth in the state for workers' compensation insurance without consideration of any applicable discount or credit for large deductibles or retrospectively~~ rated policies. Insurers and self-insurance funds must report

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 59 premiums in compliance with this paragraph, and the association
 60 may audit the reports. Assessments shall be remitted to and
 61 administered by the board of directors in the manner specified
 62 by the approved plan of operation and paragraph (d). ~~Each~~
 63 ~~assessment shall be a uniform percentage applicable to the net~~
 64 ~~direct written premiums of each insurer writing workers'~~
 65 ~~compensation insurance~~. Assessments levied against insurers and
 66 self-insurance funds shall not exceed in any calendar year more
 67 than 2 percent of that insurer's ~~net~~ direct written premiums in
 68 this state for workers' compensation insurance.

69 (c) (b) Member insurers shall collect policyholder
 70 surcharges at a uniform percentage rate on new and renewal
 71 policies issued and effective during the period of 12 months
 72 beginning on January 1, April 1, July 1, or October 1, whichever
 73 is the first day of the following calendar quarter as specified
 74 in an order issued by the office ~~directing insurers to pay an~~
 75 ~~assessment to the association~~. The policyholder surcharge may
 76 not begin until 90 days after the board of directors certifies
 77 the assessment.

78 (b) (e) If assessments otherwise authorized in paragraph (a)
 79 are insufficient to make all payments on reimbursements then
 80 owing to claimants in a calendar year, then upon certification
 81 by the board, the office shall levy additional assessments of up
 82 to 1.5 percent of the insurer's ~~net~~ direct written premiums in
 83 this state.

84 (d) The association may use an installment method to
 85 require the insurer to remit the policyholder surcharge
 86 ~~assessment~~ as premium is collected ~~written~~ or may require the
 87 insurer to remit the assessment to the association before

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 88 collecting the policyholder surcharge. ~~If the assessment is~~
 89 ~~remitted before the surcharge is collected, the assessment~~
 90 ~~remitted must be based on an estimate of the assessment due~~
 91 ~~based on the proportion of each insurer's net direct written~~
 92 ~~premium in this state for the preceding calendar year as~~
 93 ~~described in paragraph (a) and adjusted following the end of the~~
 94 ~~12-month period during which the assessment is levied.~~

95 1. If the association elects to use the installment method,
 96 the office may, in the order levying the assessment on insurers,
 97 specify that the policyholder surcharge assessment is due and
 98 payable quarterly as premium is collected ~~written~~ throughout the
 99 assessment year. Insurers shall collect policyholder surcharges
 100 at a uniform percentage rate specified by order as described in
 101 paragraph (c) (b). Insurers are not required to advance funds if
 102 the association and the office elect to use the installment
 103 option. Assessments levied under this subparagraph are paid
 104 after policyholder policy surcharges are collected, and the
 105 recognition of assets is based on actual premium collected
 106 ~~written~~ offset by the obligation to the association.

107 2. If the association elects to require insurers to remit
 108 the assessment before surcharging the policyholder, the
 109 following shall apply:

110 a. The assessment remitted must be based on an estimate of
 111 the assessment due based on the proportion of each insurer's
 112 direct written premium in this state for the preceding calendar
 113 year as described in paragraph (a).

114 b. a- The levy order shall provide each insurer so assessed
 115 at least 30 days' written notice of the date the initial
 116 assessment payment is due and payable by the insurer.

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117 ~~c.b.~~ Insurers shall collect policyholder surcharges at a
 118 uniform percentage rate specified by the order, as described in
 119 paragraph (c) ~~(b)~~.

120 ~~d.e.~~ Assessments levied under this subparagraph and are
 121 paid by an insurer constitute advances of funds from the insurer
 122 to the association before policy surcharges are billed and
 123 result in a receivable for policyholder ~~policy~~ surcharges to be
 124 billed in the future. The amount of billed policyholder
 125 surcharges, to the extent it is likely that it will be realized,
 126 meets the definition of an admissible asset as specified in the
 127 National Association of Insurance Commissioners' Statement of
 128 Statutory Accounting Principles No. 4. The asset shall be
 129 established and recorded separately from the liability. If an
 130 insurer is unable to fully recoup the amount of the assessment,
 131 the amount recorded as an asset shall be reduced to the amount
 132 reasonably expected to be recouped.

133 3. Insurers must submit a reconciliation report to the
 134 association within 120 days after the end of the 12-month
 135 assessment period and annually thereafter for a period of 2 ~~3~~
 136 years. The report must indicate the amount of the initial
 137 payment or installment payments made to the association and the
 138 amount of policyholder surcharges collected ~~written premium~~
 139 ~~pursuant to paragraph (a)~~ for the assessment year. If the
 140 insurer's reconciled ~~assessment~~ obligation is more than the
 141 amount paid to the association, the insurer shall pay the excess
 142 policyholder surcharges collected to the association. If the
 143 insurer's reconciled ~~assessment~~ obligation is less than the
 144 initial amount paid to the association, the association shall
 145 return the overpayment to the insurer.

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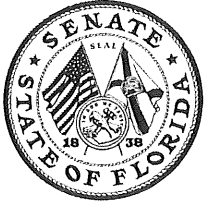
146 (2) Policyholder surcharges collected ~~Assessments levied~~
 147 under this section are not premium and are not subject to any
 148 premium tax, fees, or commissions. Insurers shall treat the
 149 failure of an insured to pay policyholder ~~assessment-related~~
 150 surcharges as a failure to pay premium. An insurer is not liable
 151 for any uncollectible policyholder ~~assessment-related~~ surcharges
 152 levied pursuant to this section.

153 (3) Assessments levied under this section may be levied
 154 only upon insurers. This section does not create a cause of
 155 action by a policyholder with respect to the levying of an
 156 assessment or a policyholder's duty to pay assessment-related
 157 policyholder surcharges.

158 Section 3. This act shall take effect July 1, 2019.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Vice Chair*
Agriculture
Appropriations Subcommittee on Health
and Human Services
Children, Families, and Elder Affairs

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR KEVIN J. RADER
29th District

February 8, 2019

Chairman Doug Broxson
Committee on Banking and Insurance
320 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Broxson,

I respectfully request that you place SB 496, relating to Insurance Guaranty Associations, on the agenda of the Committee on Banking and Insurance at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

A handwritten signature in cursive script that reads "Kevin Rader".

Senator Kevin J. Rader
Florida Senate, District 29

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

REPLY TO:

- 5301 North Federal Hwy, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 496

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Robert Reyes

Job Title

Address 817 Ingleside Ave

Phone 850 509 1802

Street

TAH FL 32303

City

State

Zip

Email rreyes@capitol.srp.com

Speaking: [X] For [] Against [] Information

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

Representing FL Workers Compensation Guaranty Association

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 4
Meeting Date

SB496
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Meenan

Job Title "President of Braxson Fan Club"

Address 400 S. Duval St.

Phone 850 425-4000

Tallahassee
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Insurance Guaranty Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 626

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Insurer Guaranty Associations

DATE: March 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.	_____	_____	AEG	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 626 revises provisions relating to the Florida Life and Health Insurance Guaranty Association (association)¹ and the Florida Health Maintenance Organization Consumer Assistance Plan (HMOCAP).² In response to recent long-term care insurer insolvencies, the bill incorporates some recent changes made to a National Association Insurance Commissioners' model act and additional recommendations of stakeholders. The bill:

- Expands the assessment base of the association to fund long-term care insurer impairments and insolvencies by including health maintenance organizations (HMOs), life insurers, and annuity insurers. Any assessments related to a long-term care insurance would be allocated 50 percent to accident and health member insurers and HMOs, and the remaining 50 percent to life and annuity member insurers. Total assessments on member insurers and HMOs is capped at 0.5 percent of premiums per year. Currently, only health insurers are assessed.
- Exempts any nonprofit HMO from the long-term care insurance assessment if it operates only in Florida and has statutory capital and surplus of less than \$200 million as of December 31 of the year preceding the year in which the assessment is made.
- Increases the number of directors on the association's board by requiring that one director be a member director of the HMOCAP.

¹ The purpose of the association is to protect policyholders against failure in the performance of contractual obligations under life and health insurance policies and annuity contracts due to the impairment or insolvency of the member insurer that issued the policies or contracts.

² The purpose of the HMOCAP is to protect subscribers enrolled with HMOs, subject to certain limitations, against the failure of their HMO to perform its contractual obligations due to its insolvency.

The bill will have an indeterminate negative impact for corporate income tax and an indeterminate positive impact for the insurance premium tax on a recurring basis.

II. Present Situation:

Long-term Care

People need long-term care when they are unable to take of themselves. Long-term care services may include assistance with activities of daily living, home health care, respite care, hospice care, adult day care, or care in an assisted living facility or nursing home. Current estimates suggest the annual costs of care in a nursing home are \$85,000, and home health care can cost upwards of \$25,000 per year. The demand for long-term care has increased significantly, as people live longer and the U.S. population ages.³

Insurer Insolvency

States primarily regulate insurance companies, and the state of domicile serves as the primary regulator for insurers. In Florida, the Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers and other risk-bearing entities.⁴ The OIR monitors the solvency of insurers, examines insurers, and takes administrative action, if necessary.⁵

Federal law provides that insurance companies may not file for bankruptcy.⁶ Instead, the state through the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating an insurer.⁷ If an insurer is found to be insolvent and is ordered to be liquidated by a court, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Generally, once an insurance company is liquidated, an insurance guaranty association becomes liable for the policy or contract obligations of the liquidated insurance company. Insurance guaranty funds are designed to protect policyholders of liquidated insurers from financial losses and delays in claim payments, up to limits provided by law. The Florida Legislature has created five guaranty funds.⁸

³ National Association of Insurance Commissioners, *Long Term Care Insurance Fact Sheet*, May 2018, available at https://www.naic.org/documents/consumer_alert_ltc.htm (last viewed Feb. 27, 2019). Life expectancy after age 65 is now 19.4 years. From 2015 to 2055, the number of people aged 85 and older is expected to almost triple from over six million to over 18 million.

⁴ Section 20.121(3), F.S.

⁵ Part VI, ch. 624, F.S.

⁶ The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. ss. 1011- 1012.

⁷ Sections 631.051 and 631.061, F.S. Chapter 631, F.S., governs the receivership process for insurance companies in Florida.

⁸ *See* parts II-V of ch. 631, F.S. and s. 440.385, F.S. (The Florida Insurance Guaranty Association, Florida Life and Health Insurance Guaranty Association, Florida Health Maintenance Organization Consumer Assistance Plan, Florida Workers' Compensation Insurance Guaranty Association, and the Florida Self-Insurers Guaranty Association, respectively.)

Florida Life and Health Insurance Guaranty Association

Part III of ch. 631, F.S., governs the powers and duties of the Florida Life and Health Insurance Guaranty Association (association).⁹ The association services covered policies and contracts, collects premiums, and pays valid claims.¹⁰ All insurers authorized to write life insurance policies, health insurance policies, supplemental contracts, and annuity contracts (with exceptions) in Florida are required, as a condition of doing business in this state, to be member insurers of the association.¹¹ Currently, the association does not provide coverage for or assess health maintenance organizations.¹²

The association's aggregate liability with respect to one life may not exceed the following:

- Life Insurance Death Benefit: \$300,000 per insured life.
- Life Insurance Cash Surrender: \$100,000 per insured life.
- Health Insurance or Long-term Care Insurance Claims: \$300,000 per insured life.
- Annuity Cash Surrender: \$250,000 for deferred annuity contracts per contract owner.
- Annuity in Benefit: \$300,000 per contract owner.¹³

The board of directors of the association must be composed of not fewer than five but not more than nine member insurers.¹⁴ At least one member of the board must be a domestic insurer.¹⁵ The member insurers elect the members of the board, and the members of the board are subject to the approval of the DFS. In approving or appointing members to the board the DFS must consider whether all member insurers are represented fairly.

The association has three operating accounts: health insurance, life insurance, and annuity for purposes of administration and assessments.¹⁶ The association may impose Class A assessments for administrative costs¹⁷ and Class B assessments to administer its duties relating to impaired or insolvent insurers.¹⁸ Class B assessments are calculated based on the premiums collected by each assessed member insurer on policies or contracts covered for each account in proportion to premiums collected by all assessed member insurers for the three most recent years. Florida law limits assessments on a member insurer to a maximum of one percent of the sum of the insurer's written premium in Florida regarding business covered by the account received during the three calendar years preceding the year in which the assessment is made, divided by three.¹⁹

⁹ In 1979, the Florida Legislature enacted provisions of the National Association of Insurance Commissioners' *Life and Health Insurance Guaranty Association Model Act*, which created FLAHIGA. Ch. 79-189, L.O.F. The National Association of Insurance Commissioners (NAIC) is a voluntary association of insurance regulators from all 50 states. The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states.

¹⁰ See association's website available at <http://www.flahiga.org/aboutus.cfm> (last viewed Feb. 18, 2019).

¹¹ Sections 631.713 and 631.715, F.S.

¹² Section 631.713(3)(e), F.S.

¹³ Section 631.717(9), F.S. FLAHIGA, *Frequently Asked Questions*, available at <https://www.flahiga.org/FAQ> (last viewed Feb. 28, 2019).

¹⁴ Section 631.716(1), F.S.

¹⁵ Section 624.06, F.S.

¹⁶ Section 631.715(2), F.S.

¹⁷ Section 631.718(2) and (3), F.S.

¹⁸ *Id.*

¹⁹ Section 631.718(5), F.S.

Member insurers of the association may offset the amount of an assessment against the insurance premium tax or corporate income tax.²⁰ The credit may be taken in an amount of 5 percent of the assessments for each of the 20 years following the year in which the assessment was paid.²¹

Health Maintenance Organization Consumer Assistance Plan (HMOCAP)

Part IV of ch. 631, F.S., creates the Florida Health Maintenance Organization Consumer Assistance Plan. The purpose of the HMOCAP is to protect subscribers of commercial HMOs against the risk of harm resulting from an HMO's insolvency. All HMOs authorized in Florida are required to be members.²² The board of directors of the HMOCAP must consist of at least five and not more than nine persons.²³ Member HMOs select board members, and the board members are subject to approval by the DFS. Coverage by the HMOCAP²⁴ ceases 6 months after the date of the insolvency; once the HMOCAP has provided \$300,000 in covered benefits; or when a subscriber obtains coverage with another HMO or health insurer.

To provide funds for the administration of the plan and the payment of claims, the plan may assess members of the plan to fund claims paid by the plan.²⁵ Assessments against member HMOs are levied as a percentage of annual earned premium revenue for non-Medicare and non-Medicaid contracts. The assessment in any calendar year may not exceed 0.5 percent of each member HMO's annual earned premium revenue for non-Medicare and non-Medicaid contracts.²⁶

Section 631.828, F.S., allows a member HMO to offset against its corporate income tax liability or other liabilities, on an individual or consolidated basis, as applicable, any assessments described in s. 631.819, F.S. The credit may be taken to the extent of 20 percent of the amount of such assessment for each of the 5 calendar years following the year in which such assessment was paid.

Long-term Care Insurance and Insolvencies

Many individuals buy long-term care insurance policies²⁷ to help pay for some of their long-term care needs. Despite the growing long-term care need, the number of long-term care insurance policies have fallen from 754,000 in 2002 to 129,000 in 2014. The number of insurers offering the coverage has declined from about 100 in 2002 to about a 12 today.²⁸ This may be attributable to the premium rates for newly issued policies increasing as the remaining issuers of existing

²⁰ Section 631.72, F.S.

²¹ *Id.*

²² Section 631.815, F.S.

²³ Section 631.816, F.S.

²⁴ Section 631.817, F.S.

²⁵ Section 631.819, F.S.

²⁶ Section 631.819(3), F.S.

²⁷ In Florida, a long-term care insurance policy is any insurance policy or rider advertised, marketed, offered, or designed to provide coverage on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital. Section 627.9404, F.S.

²⁸ NAIC, *Long-term Care Challenges*, Jan. 14, 2019, available at https://www.naic.org/cipr_topics/topic_long_term_care.htm (last viewed Feb. 10, 2019).

policies have refined their pricing due to inaccurate pricing assumptions relating to claim costs, mortality, interest rates, and policy lapses, which lead to an underpriced product.

Funding Claims of Insolvent Insurers

In 2017, Penn Treaty,²⁹ which was domiciled in Pennsylvania, was liquidated. The insurer wrote approximately 75,000 (primarily long-term care insurance) policies.³⁰ The insolvency is expected to be the second-largest insolvency in insurance guaranty fund history (the largest for an accident and health insurer).³¹ As of December 31, 2018, there were 7,468 in-force policies in Florida.³²

According to the National Association of Insurance Commissioners (NAIC), all states regulate long-term care insurance as health insurance.³³ The Penn Treaty insolvency resulted in health insurers bearing the majority of the assessments because long-term care insurance is classified as health insurance. Life insurers, however, wrote the majority of long-term care insurance premiums. In Florida, health insurers have paid almost \$336 million in assessments for the Penn Treaty insolvency.³⁴ The estimated actuarial liability on December 31, 2018, which is subject to change, was \$110 million.³⁵

NAIC Life and Health Insurance Guaranty Association Model Act

To address concerns with guaranty fund coverage and assessments for any future long-term care insurer insolvency, the NAIC modified the *Life and Health Insurance Guaranty Association Model Act* to expand the assessment base to include HMOs, life and annuity insurers for funding long-term care insurer insolvencies and impairments. Assessments for long-term care impairments and insolvencies are allocated equally between the life and health accounts. The NAIC clarifies the authority of the guaranty associations to adjust rates and coverage in the case of liquidation. Further, the NAIC clarifies that federal programs, such as Medicare and Medicaid, are excluded from the assessment base. Life and annuity policies with long-term care insurance riders are considered the same as the underlying product, not as a health insurance product.

III. Effect of Proposed Changes:

Florida Association of Life and Health Guaranty Association (association) (Sections 1-7)

Section 1 amends s. 631.713, F.S., to revise application of this part and subject health maintenance organizations (HMOs) to Class B assessments for long-term care insurer impairments or insolvencies. Currently, HMOs are exempt from assessments by the association. The section exempts long-term care any portion of a policy or contract, including a rider from

²⁹ Penn Treaty collectively includes Penn Treaty Network America Insurance Company and its affiliate, American Network Insurance Company.

³⁰ National Organization of Life and Health Insurance Guaranty Associations (NOLHGA), Guaranty System to Provide Safety Net for Policyholders of Penn Treaty/American Network Insurance Companies, Mar. 1, 2017) available at <https://www.nolhga.com/resource/file/NOLHGAPennTreatyPressReleaseFINAL.pdf> (last viewed Feb. 20, 2019).

³¹ Chicago Fed Letter, *The risks of pricing new insurance products: The case of long-term care*, 2018 Number 397.

³² Correspondence from FLAHIGA, Feb. 24, 2019, on file with Senate Banking and Insurance Committee.

³³ NAIC and NOLHGA, *State of the U.S. long-term care insurance industry*, March 30, 2017.

³⁴ Assessments paid from 2015 to 2019. Correspondence on file with the Senate Committee on Banking and Insurance.

³⁵ *Id.*

the interest rate cap for calculating the liability of FLAHIGA for long-term care insurance policies of impaired or insolvent insurers. The section clarifies that the association does not provide coverage for federal programs (Medicare, Medicaid, or Children's Health Insurance program)³⁶ and certain structured settlement annuity benefits.

Section 2 amends s. 631.714, F.S., to provide that the term, "long-term care assessment obligations," means long-term care impairment and insolvency assessment obligations of the association, which are subject to assessment pursuant to s. 631.715(2)(a)1. and 631.718(3)(b), F.S., in coordination with the HMOCAP. The section clarifies that all other obligations other than long-term care assessments are obligations of the association without contribution or involvement of the HMOCAP.

Section 3 amends 631.716, F.S., to revise the board of directors for the association by increasing the maximum number of members from nine to 11. One member of the HMOCAP board of directors, or alternate, must serve on the association's board of directors as a non-member insurer board representative, and has the right to attend all board meetings and has full voting rights on all issues. The association board of directors must confirm, subject to approval by DFS, the HMOCAP member.

Section 4 amends s. 631.717, F.S., to revise the powers and duties of the association. The section provides that, in the event of a long-term care insurer impairment or insolvency, the association is required to coordinate its activities with the HMOCAP, including the development of any plan for administering the impairment or insolvency. Further, the association is required to share information, including data, with and assist, if applicable, the HMOCAP with the administration and collection of member HMO assessments for long-term care insurer impairments or insolvencies.

The section clarifies that the association's maximum coverage for long-term care policies is \$300,000, and that any portion of a long-term care rider to a life insurance policy or annuity contract is considered the same type of benefit as the base life insurance policy or annuity contract to which the rider relates. The section also provides technical changes.

The association is authorized to file with the OIR for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under part III of ch. 631, F.S., if certain conditions are met. The approval authority for the association to issue certain alternative policies or contracts is changed from the receivership court to the DFS. The association is authorized to reissue policies or contracts.

Section 5 amends s. 631.718, F.S., to establish an assessment methodology for long-term care insurer insolvencies and impairments that is subject to approval by the DFS. The methodology must provide for 50 percent of the assessment to be allocated to accident and health member insurers and 50 percent to be allocated to life and annuity member insurers. The accident and

³⁶ The program, established pursuant to Title XXI of the U.S. Social Security Act, is a program administered by the United States Department of Health and Human Services that provides matching funds to states for health insurance to families with children.

health members' share of the assessment is calculated by including the assessable premiums of member HMOs of the HMOCAP.

The total assessment for long-term care impairments or insolvencies upon a member insurer or member HMO may not exceed 0.5 percent in any one calendar year the sum of the member insurer or member HMO premiums written in Florida covered by the account received during the calendar year preceding the year in which the assessment is made. If this information is unavailable, the member insurers of the association or the member HMOs of the HMOCAP may use other premium information.

Section 6 amends s. 631.721, F.S., to require the association to revise its plan of operation to provide for the coordination of efforts between the association and the HMOCAP in regards to assessments for long-term care insurer impairments or insolvencies.

Section 7 creates s. 631.738, F.S., relating to applicability as to certain member insurers and HMOs, to exempt any member insurer from long-term care assessment obligations if the member insurer has been adjudged insolvent by a court of competent jurisdiction, or has been determined insolvent by the DFS on or before the effective date of this act. The section also exempts any nonprofit HMO from the assessment if it operates only in Florida and has statutory capital and surplus of less than \$200 million as of December 31 of the year preceding the year in which the assessment is made.

Health Maintenance Organization Consumer Assistance Plan (HMOCAP) (Sections 8-12)

Sections 8-11 amend ss. 631.816, 631.818, 631.819, and 631.820, F.S. The HMOCAP is required to designate one representative to serve on the association's board of directors, subject to approval by the DFS. In the event of a long-term care insurer impairment or insolvency, the HMOCAP must:

- Collect and transmit all information requested by the association to determine the appropriate assessment base;
- Levy and collect assessments from member HMOs;
- Coordinate the administration and collection of member assessments with the association insolvency;
- Issue a certificate of contribution to each member HMO paying a long-term care insurer assessment; and
- Revise the plan of operations by including procedures for coordinating the administration and collection of member HMO assessments with the association.

Section 12 amends s. 631.821, to provide a technical conforming change.

Section 13 directs the Division of Law Revision to replace the phrase, "effective date of this act" wherever it occurs in this act with the date this act becomes law.

Section 14 provides this bill will take 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.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The expansion of the assessment base will provide access to more funds for the payment of policyholder claims in a more expedient manner.

For future impairments or insolvencies of long-term care insurers, life and annuity insurers and HMOs would be subject to assessments. The bill exempts any nonprofit HMO operating only in Florida that has statutory capital and surplus of less than \$200 million, as of December 31 of the year preceding the year the assessment is made, from the assessment obligation.

Subject to certain conditions, assessments may offset insurance premium tax liabilities or corporate income tax liabilities. Currently only health insurers are subject to assessments. This would expand the assessment base, and potentially reduce future assessments for health insurers.

C. Government Sector Impact:

According to the Revenue Estimating Conference, any impact of the bill is dependent upon future insolvencies and the size and timing of future assessments. The bill is

expected to have an indeterminate negative fiscal impact for corporate income tax and an indeterminate positive for the insurance premium tax on a recurring basis.³⁷

VI. Technical Deficiencies:

Section 7 of the bill provides that DFS or OIR may determine whether an insurer is impaired. The OIR makes the initial determination on whether an insurer is impaired.

Section 7 exempts “any nonprofit health maintenance organization that operates only in this state” and meets certain capital and surplus requirements. The section could be clarified by amending it to exempt “any member nonprofit member health maintenance organization of the Florida Health Maintenance Organization Consumer Assistance Plan transacting business only in this state...”

VII. Related Issues:

The National Association of Insurance Commissioners’ *Life and Health Insurance Guaranty Association Model Act* does not provide an assessment exemption for nonprofit entities that meet certain capital or surplus requirements.

However, ss. 631.718 and 631.819, F.S., authorize the association and the HMOCAP, respectively, to defer temporarily, in whole or in part, the assessment of a member if, in the opinion of the board, payment of an assessment would endanger the ability of the insurer or HMO to fulfill its contractual obligations.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 631.713, 631.714, 631.716, 631.717, 631.718, 631.721, 631.816, 631.818, 631.819, 631.820, and 631.821. This bill creates the section 631.738 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 March 4, 2019:

The CS:

- Exempts any nonprofit HMO from the assessment if it operates only in Florida and has statutory capital and surplus of less than \$200 million as of December 31 of the year preceding the year in which the assessment is made; and
- Provides technical, clarifying changes.

- B. Amendments:

None.

³⁷ Revenue Estimating Conference, *Insurance Premium Tax/Corporate Income Tax, SB 626*, Feb. 15, 2019, available at <http://edr.state.fl.us/Content/> (last viewed Feb. 24, 2019).

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 631.713, Florida
Statutes, is amended to read:

631.713 Application of part.—

(3) This part does not apply to:

(a) That portion or part of a variable life insurance
contract or variable annuity contract not guaranteed by an



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11 insurer.

12 (b) That portion or part of any policy or contract under
13 which the risk is borne by the policyholder.

14 (c) Any policy or contract or part thereof assumed by the
15 impaired or insolvent insurer under a contract of reinsurance,
16 other than reinsurance for which assumption certificates have
17 been issued.

18 (d) Fraternal benefit societies as defined in s. 632.601.

19 (e) Health maintenance organizations, except for
20 assessments levied pursuant to ss. 631.715(2)(a)1.,
21 631.718(3)(b), and 631.819(2)(c) for long-term care insurer
22 impairments or insolvencies insurance.

23 (f) Dental service plan insurance.

24 (g) Pharmaceutical service plan insurance.

25 (h) Optometric service plan insurance.

26 (i) Ambulance service association insurance.

27 (j) Preneed funeral merchandise or service contract
28 insurance.

29 (k) Prepaid health clinic insurance.

30 (l) Any annuity contract or group annuity contract that is
31 not issued to and owned by an individual, except to the extent
32 of any annuity benefits:

33 1. Guaranteed directly and not through an intermediary to
34 an individual by an insurer under such contract or certificate;

35 2. Under an annuity issued by an insurer under 26 U.S.C. s.
36 408(b); or

37 3. Under an annuity issued by an insurer and held by a
38 custodian or trustee in accordance with 26 U.S.C. s. 408(a).

39



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40 This paragraph applies to every insolvency regardless of its
41 date of inception, and an assessment base may not include
42 premiums for such excluded products.

43 (m) Any federal employees' group policy or contract that,
44 under 5 U.S.C. s. 8909(f), is prohibited from being subject to
45 an assessment under s. 631.718.

46 (n) Except as provided in this paragraph, a portion of a
47 policy or contract, to the extent that the rate of interest on
48 which the policy or contract is based, or the interest rate,
49 crediting rate, or similar factor determined by use of an index
50 or other external reference stated in the policy or contract
51 employed in calculating returns or changes in value:

52 1. Averaged over the period of 4 years immediately
53 preceding the date on which the member insurer becomes an
54 impaired or insolvent insurer under this part, whichever is
55 earlier, exceeds the rate of interest determined by subtracting
56 2 percentage points from Moody's Corporate Bond Yield Average
57 averaged for that same 4-year period or for such lesser period
58 if the policy or contract was issued less than 4 years before
59 the member insurer becomes an impaired or insolvent insurer
60 under this part, whichever is earlier; and

61 2. On and after the date on which the member insurer
62 becomes an impaired or insolvent insurer under this part,
63 whichever is earlier, exceeds the rate of interest determined by
64 subtracting 3 percentage points from the most current version of
65 Moody's Corporate Bond Yield Average.

66

67 This paragraph does not apply to any portion of a policy or
68 contract, including a rider, which provides long-term care or



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69 any other health insurance benefit.

70 (o) A portion of a policy or contract to the extent the
71 policy or contract provides for interest or other changes in
72 value to be determined by the use of an index or other external
73 reference stated in the policy or contract, but which has not
74 been credited to the policy or contract, or as to which the
75 policy or contract owner's rights are subject to forfeiture, as
76 of the date the member insurer becomes an impaired or insolvent
77 insurer under this part. However, if the interest or change in
78 value is credited less frequently than annually as determined by
79 using the procedures defined in the policy or contract, interest
80 or change in value shall be credited by using the procedure
81 defined in the policy or contract as if the contractual date of
82 crediting interest or changing values was the date of impairment
83 or insolvency, whichever is earlier, and shall not be subject to
84 forfeiture.

85 (p) A policy or contract providing any hospital, medical,
86 prescription drug, or other health care benefits pursuant to
87 Title XVIII (Medicare), Title XIX (Medicaid), or Title XXI (the
88 Children's Health Insurance Program) of the Social Security Act
89 Medicare part C or part D or any regulations promulgated
90 thereunder issued pursuant to Medicare Part C or Part D.

91 (q) Structured settlement annuity benefits to which a
92 payee, or a beneficiary if the payee is deceased, has
93 transferred his or her rights in a structured settlement
94 factoring transaction, as that term is defined in 26 U.S.C. s.
95 5891(c)(3)(A).

96 Section 2. Present subsections (7) through (10) of section
97 631.714, Florida Statutes, are redesignated as subsections (8)



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98 through (11), respectively, and a new subsection (7) is added to
99 that section, to read:

100 631.714 Definitions.—As used in this part, the term:

101 (7) "Long-term care assessment obligations" means the long-
102 term care impairment and long-term care insolvency assessment
103 obligations of the association which are subject to assessment
104 pursuant to ss. 631.715(2)(a)1. and 631.718(3)(b) in
105 coordination with the Florida Health Maintenance Organization
106 Consumer Assistance Plan, through a methodology provided in the
107 association's plan of operation. All obligations other than
108 long-term care assessment obligations are subject to assessment
109 exclusively by the association in accordance with s.
110 631.718(2)(b) and (3)(c), without contribution or involvement of
111 the Florida Health Maintenance Organization Consumer Assistance
112 Plan.

113 Section 3. Subsection (1) of section 631.716, Florida
114 Statutes, is amended to read:

115 631.716 Board of directors.—

116 (1)(a) The board of directors of the association shall have
117 at least 9, but no more than 11, members. The members shall be
118 comprised of ~~not fewer than five nor more than nine~~ member
119 insurers~~7~~ serving terms as established in the plan of operation
120 and 1 Florida Health Maintenance Organization Consumer
121 Assistance Plan director confirmed pursuant to paragraph (b),
122 who shall be a nonmember-insurer board representative. At all
123 times, at least 1 ~~one~~ member of the board must ~~shall~~ be a
124 domestic insurer as defined in s. 624.06(1). The members of the
125 board who are member insurers shall be elected by member
126 insurers, subject to the approval of the department.



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127 (b) The board shall confirm, subject to the approval of the
128 department, the Florida Health Maintenance Organization Consumer
129 Assistance Plan director. The director confirmed to the board
130 must be designated by the Florida Health Maintenance
131 Organization Consumer Assistance Plan's board of directors to
132 serve on the board and represent the interests of the Florida
133 Health Maintenance Organization Consumer Assistance Plan and its
134 board of directors. An individual serving as a Florida Health
135 Maintenance Organization Consumer Assistance Plan director on
136 the board must be a member of the Florida Health Maintenance
137 Organization Consumer Assistance Plan board of directors. The
138 Florida Health Maintenance Organization Consumer Assistance Plan
139 director, or his or her alternate, has the right to be present
140 at all meetings of the board and has full voting rights on all
141 issues.

142 (c) A vacancy on the board shall be filled for the
143 remaining period of the term by a majority vote of the remaining
144 board members, subject to the approval of the department. ~~Prior~~
145 ~~to the selection of the initial board of directors and the~~
146 ~~organization of the association, the department shall give~~
147 ~~notice to all member insurers of the time and place of the~~
148 ~~organizational meeting. At the organizational meeting, each~~
149 ~~member insurer shall be entitled to one vote, in person or by~~
150 ~~proxy. If the board of directors is not elected within 60 days~~
151 ~~after notice of the organizational meeting, the department may~~
152 ~~appoint the initial members.~~

153 Section 4. Present subsections (9) through (12) of section
154 631.717, Florida Statutes, are redesignated as subsections (12)
155 through (15), respectively, new subsections (9), (10), and (11)



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156 are added to that section, subsections (2) and (3), paragraph
157 (c) of present subsection (9), and paragraph (g) of present
158 subsection (12) are amended, and paragraph (h) is added to
159 present subsection (12) of that section, to read:

160 631.717 Powers and duties of the association.—

161 (2) If a domestic insurer is an insolvent insurer, the
162 association shall, subject to the approval of the department:

163 (a) Guarantee, assume, reissue, or reinsure, or cause to be
164 guaranteed, assumed, reissued, or reinsured, the covered
165 policies of persons referred to in s. 631.713(2); and

166 (b) Provide moneys, pledges, notes, guarantees, or other
167 means that are proper and reasonably necessary to implement
168 paragraph (a) in order to assure payment of the contractual
169 obligations of the insolvent insurer with regard to persons
170 referred to in s. 631.713(2).

171 (3) If a foreign or alien insurer is an insolvent insurer,
172 the association shall, subject to the approval of the
173 department:

174 (a) Guarantee, assume, reissue, or reinsure, or cause to be
175 guaranteed, assumed, reissued, or reinsured, the covered
176 policies of residents of this state; and

177 (b) Provide moneys, pledges, notes, guarantees, or other
178 means that are proper and reasonably necessary to implement
179 paragraph (a) in order to assure payment of the contractual
180 obligations of the insolvent insurer with regard to persons
181 referred to in s. 631.713(2).

182

183 However, this subsection does not apply when the department has
184 determined that the foreign or alien insurer's domiciliary



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185 jurisdiction or state of entry provides, by statute, protection
186 substantially similar to that provided by this part for
187 residents of this state.

188 (9) For purposes of this part, benefits provided by a long-
189 term care rider to a life insurance policy or annuity contract
190 are considered the same type of benefits as the base life
191 insurance policy or annuity contract to which the rider relates.

192 (10) In the event of a potential long-term care insurer
193 impairment or insolvency, the association shall coordinate its
194 activities with the Florida Health Maintenance Organization
195 Consumer Assistance Plan, including the development of any plan
196 for handling the administration of the impairment or insolvency.

197 (11) The association shall share information, including
198 data, with and assist, as applicable, the board of directors of
199 the Florida Health Maintenance Organization Consumer Assistance
200 Plan with the administration and collection of member health
201 maintenance organization assessments for long-term care insurer
202 impairments or insolvencies pursuant to ss. 631.715(2)(a)1.,
203 631.718(3)(b), 631.818(2), and 631.819(2)(c).

204 (12)~~(9)~~ The association's liability for the contractual
205 obligations of the insolvent insurer must be as great as, but no
206 greater than, the contractual obligations of the insurer in the
207 absence of such insolvency, unless such obligations are reduced
208 as permitted by subsection (4), but the aggregate liability of
209 the association with respect to one life shall not exceed the
210 following:

211 (c) For all other benefits, including in long-term care
212 policies, \$300,000, including cash values, except as provided in
213 paragraph (d).



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In no event is the association liable for any penalties or interest.

(15) ~~(12)~~

(g) In carrying out its duties in connection with guaranteeing, assuming, reissuing, or reinsuring policies or contracts under subsections (2) and (3), the association may, subject to approval of the department ~~receivership court~~, issue an alternative policy or contract to substitute coverage for a policy or contract providing that provides an interest rate, crediting rate, or similar factor that was determined by use of an index or other external reference stated in the policy or contract and employed in calculating returns or changes in value ~~by issuing an alternative policy or contract~~. In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract must provide for a fixed interest rate, payment of dividends with minimum guarantees, or a different method for calculating interest or changes in value. In such case:

1. There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract.

2. The alternative policy or contract shall be substantially similar to the replaced policy or contract in all other material terms.

(h) In accordance with the terms and conditions of the policy or contract, the board may directly file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under this part.



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243 Section 5. Paragraph (b) of subsection (3), paragraph (a)
244 of subsection (5), and subsection (8) of section 631.718,
245 Florida Statutes, are amended to read:

246 631.718 Assessments.—

247 (3)

248 (b)1. The amount of any Class B assessment, except for
249 assessments related to long-term care insurance, must ~~shall~~ be
250 allocated for assessment purposes among the accounts pursuant to
251 an allocation formula, which may be based on the premiums or
252 reserves of the impaired or insolvent insurer.

253 2. The amount of the Class B assessment for long-term care
254 insurance written by the impaired or insolvent insurer must be
255 allocated according to a methodology included in the plan of
256 operation and approved by the department. The methodology must
257 provide for 50 percent of the assessment to be allocated to
258 accident and health member insurers and 50 percent to be
259 allocated to life and annuity member insurers.

260 3. For the purposes of the methodology outlined in
261 subparagraph 2. and included in the plan of operation, the
262 accident and health member insurers' share of the assessment
263 must be calculated by including the assessable premiums of
264 member health maintenance organizations of the Florida Health
265 Maintenance Organization Consumer Assistance Plan.

266 (5) (a)1. The total of all assessments upon a member insurer
267 for each account may not in any one calendar year exceed 1
268 percent of the sum of the insurer's premiums written in this
269 state regarding business covered by the account received during
270 the 3 calendar years preceding the year in which the assessment
271 is made, divided by three. If premium information for the 3-year



272 period is not reasonably available for each member insurer, the
273 association may use any reasonably available premium
274 information.

275 2. For long-term care insurer impairments and insolvencies
276 only, the total assessments upon a member insurer or member
277 health maintenance organization of the Florida Health
278 Maintenance Organization Consumer Assistance Plan may not, in
279 any one calendar year, exceed 0.5 percent of the sum of the
280 member insurer or member health maintenance organization's
281 premiums written in this state regarding business covered by the
282 account received during the calendar year preceding the year in
283 which the assessment is made. If premium information is not
284 reasonably available for each member insurer or member health
285 maintenance organization of the Florida Health Maintenance
286 Organization Consumer Assistance Plan, the association or the
287 Florida Health Maintenance Organization Consumer Assistance Plan
288 may use any reasonably available premium information.

289 (8) The association shall issue to each member insurer
290 paying an assessment under this part, other than a Class A
291 assessment, a certificate of contribution, in a form prescribed
292 by the department, for the amount of the assessment so paid. All
293 outstanding certificates are of equal dignity and priority
294 without reference to amounts or dates of issue. A certificate of
295 contribution may be shown by the insurer in its financial
296 statement as an asset in such form and for such amount, if any,
297 and period of time as the department approves. However, any
298 amount offset pursuant to s. 631.72 may not be shown as an asset
299 of the insurer on any of its financial statements.

300 Section 6. Paragraph (b) of subsection (1), paragraph (f)



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301 of subsection (3), and subsection (4) of section 631.721,
302 Florida Statutes, are amended to read:

303 631.721 Plan of operation.—

304 (1)

305 ~~(b) If the association fails to submit a suitable proposed~~
306 ~~plan of operation within 180 days following October 1, 1979, or~~
307 If at any time thereafter the association fails to submit
308 suitable amendments to the plan, the department shall, after
309 notice and hearing, adopt such reasonable rules as are necessary
310 to effectuate the provisions of this part. Such rules shall
311 continue in force until modified by the department or superseded
312 by a proposed plan submitted by the association and approved by
313 the department.

314 (3) The plan of operation shall, in addition to
315 requirements enumerated elsewhere in this part:

316 (f) Establish any additional procedures for assessments
317 under s. 631.718, including procedures to share assessment
318 information, including data, with and assist, as applicable, the
319 board of directors of the Florida Health Maintenance
320 Organization Consumer Assistance Plan with the administration,
321 collection, and deposit of member health maintenance
322 organization assessments for long-term care insurer impairments
323 and insolvencies into the health account established under s.
324 631.715.

325 (4) The plan of operation may provide that any or all
326 powers and duties of the association, except those under ss.
327 631.717(13)(c) and 631.718 ~~ss. 631.717(10)(c) and 631.718~~, are
328 delegated to a corporation, association, or other organization
329 which performs or will perform functions similar to those of



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330 this association, or its equivalent, in two or more states. Such
331 a corporation, association, or organization shall be reimbursed
332 for any payments made on behalf of the association and shall be
333 paid for its performance of any function of the association. A
334 delegation under this subsection shall take effect only with the
335 approval of both the board of directors and the department and
336 may be made only to a corporation, association, or organization
337 which extends protection not substantially less favorable and
338 effective than that provided by this part.

339 Section 7. Section 631.738, Florida Statutes, is created to
340 read:

341 631.738 Applicability as to certain member insurers.—The
342 provisions of this part which relate to long-term care
343 assessment obligations do not apply to any member insurer that,
344 on or before the effective date of this act, has been adjudged
345 insolvent by a court of competent jurisdiction or has been
346 determined by the department to be impaired.

347 Section 8. Subsection (7) is added to section 631.816,
348 Florida Statutes, to read:

349 631.816 Board of directors.—

350 (7) Subject to the approval of the department, the board
351 shall designate one representative to serve as a member of the
352 board of directors of the Florida Life and Health Insurance
353 Guaranty Association pursuant to s. 631.716(1). The
354 representative, or his or her alternate, has the right to be
355 present during all meetings of the association board of
356 directors and shall have full voting rights.

357 Section 9. Present subsections (2) through (6) of section
358 631.818, Florida Statutes, are redesignated as subsections (3)



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359 through (7), respectively, a new subsection (2) is added to that
360 section, present subsection (4) is amended, present paragraph
361 (f) of present subsection (6) is redesignated as paragraph (g),
362 and a new paragraph (f) is added to that subsection, to read:

363 631.818 Powers and duties of the plan.—

364 (2) In the event of a long-term care insurer impairment or
365 insolvency, pursuant to s. 631.819(2) (c), the plan shall:

366 (a) Collect and transmit all information requested by the
367 Florida Life and Health Insurance Guaranty Association for the
368 association to determine the appropriate assessment base of the
369 health insurance account pursuant to ss. 631.715(2) (a)1. and
370 631.718 (3) (b) .

371 (b) Levy and collect assessments from HMOs.

372 (c) Coordinate the administration and collection of member
373 HMO assessments for long-term care insurer impairments and
374 insolvencies with the Florida Life and Health Insurance Guaranty
375 Association.

376 (5)~~(4)~~ The plan may render assistance and advice to the
377 department, at the department's request, concerning
378 rehabilitation, payment of claims, continuance of coverage, or
379 the performance of other contractual obligations of any HMO
380 subject to a delinquency proceeding ~~or a proceeding under s.~~
381 ~~624.90.~~

382 (7)~~(6)~~ The plan may:

383 (f) In the event of a long-term care insurer impairment or
384 insolvency, coordinate with the Florida Life and Health
385 Insurance Guaranty Association to carry out the responsibilities
386 of the association for the limited purpose of the long-term care
387 insurer impairment or insolvency, including the development of



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388 any plan for handling the administration of the impairment or
389 insolvency.

390 Section 10. Subsections (1) and (3) of section 631.819,
391 Florida Statutes, are amended, paragraph (c) is added to
392 subsection (2), and subsection (6) is added to that section, to
393 read:

394 631.819 Assessments.—

395 (1) For the purposes of providing the funds necessary to
396 carry out the powers and duties of the plan, the board of
397 directors shall assess the member HMOs at such time and for such
398 amounts as the board finds necessary. Assessments shall be due
399 not less than 30 days after written notice to the member HMOs
400 insurers.

401 (2) Assessments for funds to meet the requirements of the
402 plan with respect to an insolvent HMO shall not be made until
403 necessary to implement the purposes of this part. In order to
404 carry out its duties and powers under this part, upon the
405 insolvency of an HMO, the plan shall levy and collect
406 assessments as follows:

407 (c) For the purposes of long-term care insurer impairment
408 and insolvency assessments under s. 631.718(3)(b), member HMOs
409 must be assessed in the same manner as member insurers of the
410 Florida Life and Health Insurance Guaranty Association under
411 part III of this chapter. Long-term care insurer impairment and
412 insolvency assessments must be levied and collected by the plan
413 pursuant to this part, deposited into the health insurance
414 account established under s. 631.715, and used solely for long-
415 term care insurer impairment or insolvency obligations.

416 Assessments collected from member HMOs are considered part of



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417 and satisfy the obligations of the health insurance account
418 under ss. 631.715(2)(a)1. and 631.718(3)(b).

419 (3) All assessments against HMOs, including long-term care
420 insurer impairment and insolvency assessments, must shall be
421 levied as a percentage of annual earned premium revenue for non-
422 Medicare and non-Medicaid contracts. In no event may the plan
423 assess in any calendar year more than 0.5 percent of each HMO's
424 annual earned premium revenue for non-Medicare and non-Medicaid
425 contracts.

426 (6) The plan shall issue, in a form prescribed by the
427 department, a certificate of contribution to each member HMO
428 paying a long-term care insurer impairment or insolvency
429 assessment under this part for the amount of the assessment so
430 paid. All outstanding certificates are of equal dignity and
431 priority without reference to amounts or dates of issue. A
432 certificate of contribution may be shown by the member HMO in
433 its financial statement as an asset in such form and for such
434 amount and period of time as the department approves. However,
435 any amount offset pursuant to s. 631.828 may not be shown as an
436 asset of the member HMO on any of its financial statements.

437 Section 11. Paragraph (f) of subsection (3) and paragraph
438 (a) of subsection (4) of section 631.820, Florida Statutes, are
439 amended to read:

440 631.820 Plan of operation.—

441 (3) The plan of operation shall, in addition to
442 requirements enumerated elsewhere in this part:

443 (f) Establish any additional procedures for assessments
444 under this part, including procedures to coordinate the
445 administration and collection of member HMO assessments for



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446 long-term care insurer impairments and insolvencies with the
447 board of directors of the Florida Life and Health Insurance
448 Guaranty Association.

449 (4) (a) The plan of operation may provide that any or all
450 powers and duties of the plan, except those under ss.
451 631.818(7)(b) and (c) and 631.819 ~~ss. 631.818(6)(b) and (c) and~~
452 ~~631.819~~, are delegated to an administrator that ~~which~~ may be a
453 corporation, association, or other organization that ~~which~~
454 performs or will perform functions similar to those of this
455 plan, or its equivalent.

456 Section 12. Subsection (2) of section 631.821, Florida
457 Statutes, is amended to read:

458 631.821 Powers and duties of the department.—

459 (2) Any action of the board of directors of the plan may be
460 appealed to the office by any member HMO if such appeal is taken
461 within 21 days of the action being appealed; however, the HMO
462 must comply with such action pending exhaustion of appeal ~~under~~
463 ~~s. 631.818(2)~~. Any appeal shall be promptly determined by the
464 office, and final action or order of the office shall be subject
465 to judicial review in a court of competent jurisdiction.

466 Section 13. The Division of Law Revision is directed to
467 replace the phrase "the effective date of this act" wherever it
468 occurs in this act with the date this act becomes a law.

469 Section 14. This act shall take effect upon becoming a law.

470
471 ===== T I T L E A M E N D M E N T =====

472 And the title is amended as follows:

473 Delete everything before the enacting clause
474 and insert:



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475 A bill to be entitled
476 An act relating to insurer guaranty associations;
477 amending s. 631.713, F.S.; revising applicability of
478 part III of ch. 631, F.S., as to health maintenance
479 organizations, long-term care insurance benefits,
480 certain health care benefits, and certain structured
481 settlement annuity benefits; amending s. 631.714,
482 F.S.; defining the term "long-term care assessment
483 obligations"; amending s. 631.716, F.S.; revising the
484 number of members and composition of the Florida Life
485 and Health Insurance Guaranty Association's board of
486 directors; specifying requirements relating to the
487 director of the Florida Health Maintenance
488 Organization Consumer Assistance Plan to be confirmed
489 to the association's board; specifying rights of the
490 director or his or her alternate; deleting an obsolete
491 provision; amending s. 631.717, F.S.; adding the
492 reissuance of covered policies to a list of duties of
493 the association relating to insolvent insurers;
494 providing construction; specifying duties of the
495 association as to potential long-term care insurer
496 impairments or insolvencies, sharing information, and
497 providing assistance to the Florida Health Maintenance
498 Organization Consumer Assistance Plan's board of
499 directors; revising applicability of a specified limit
500 on the association's liability for the contractual
501 obligations of an insolvent insurer; conforming a
502 provision to changes made by the act; requiring that
503 the Department of Financial Services, rather than a



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504 receivership court, approve certain alternative
505 policies or contracts; authorizing the board to file
506 directly for actuarially justified rate or premium
507 increases; amending s. 631.718, F.S.; specifying the
508 calculation and allocation of Class B assessments for
509 long-term care insurance; specifying a limit on
510 certain assessments on a member insurer or member
511 health maintenance organization; conforming provisions
512 to changes made by the act; amending s. 631.721, F.S.;
513 deleting an obsolete provision; revising the
514 requirements of the association's plan of operation
515 relating to long-term care insurer impairments and
516 insolvencies; conforming a cross-reference; creating
517 s. 631.738, F.S.; providing applicability of certain
518 provisions to certain member insurers; amending s.
519 631.816, F.S.; adding duties of the board of directors
520 of the Florida Health Maintenance Organization
521 Consumer Assistance Plan to conform to changes made by
522 the act; amending s. 631.818, F.S.; adding to the
523 duties of the plan to conform to changes made by the
524 act; amending s. 631.819, F.S.; specifying
525 requirements for long-term care insurer impairment and
526 insolvency assessments for member health maintenance
527 organizations; requiring the plan to issue
528 certificates of contribution to member health
529 maintenance organizations paying certain assessments;
530 specifying requirements of, and the use of, such
531 certificates; amending s. 631.820, F.S.; conforming
532 provisions to changes made by the act; amending s.



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533 | 631.821, F.S.; making a technical change; providing a
534 | directive to the Division of Law Revision; providing
535 | an effective date.



682770

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2019	.	
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	.	
	.	

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

1 **Senate Amendment to Amendment (687388) (with title**
2 **amendment)**

3
4 Delete lines 341 - 346
5 and insert:

6 631.738 Applicability as to certain member insurers and
7 health maintenance organizations.—The provisions of this part
8 which relate to long-term care assessment obligations do not
9 apply to:

10 (1) Any member insurer or health maintenance organization



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11 that, on or before the effective date of this act, has been
12 adjudged insolvent by a court of competent jurisdiction or has
13 been determined by the department or by the office to be
14 impaired.

15 (2) Any nonprofit health maintenance organization that
16 operates only in this state and whose statutory capital and
17 surplus is less than \$200 million as of December 31 of the year
18 preceding the year in which the assessment is made.

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

21 And the title is amended as follows:

22 Delete line 518

23 and insert:

24 provisions to certain member insurers and health
25 maintenance organizations; amending s.



580372

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/05/2019	.	
	.	
	.	
	.	

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

1 **Senate Substitute for Amendment (682770) to Amendment**
2 **(687388) (with title amendment)**

3
4 Delete lines 341 - 346
5 and insert:

6 631.738 Applicability as to certain member insurers and
7 health maintenance organizations.—The provisions of this part
8 which relate to long-term care assessment obligations do not
9 apply to:

10 (1) Any member insurer or health maintenance organization



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11 that, on or before the effective date of this act, has been
12 adjudged insolvent by a court of competent jurisdiction or has
13 been determined by the department or by the office to be
14 impaired.

15 (2) Any nonprofit health maintenance organization that
16 operates only in this state, and operates under a corrective
17 action plan, and whose statutory capital and surplus is less
18 than \$200 million as of December 31 of the year preceding the
19 year in which the assessment is made.

20
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete line 518

24 and insert:

25 provisions to certain member insurers and health
26 maintenance organizations; amending s.

By Senator Brandes

24-00599A-19

2019626__

1 A bill to be entitled
 2 An act relating to insurer guaranty associations;
 3 amending s. 631.713, F.S.; revising applicability of
 4 part III of ch. 631, F.S., as to health maintenance
 5 organizations, long-term care insurance benefits,
 6 certain health care benefits, and certain structured
 7 settlement annuity benefits; amending s. 631.714,
 8 F.S.; defining the term "long-term care assessment
 9 obligations"; amending s. 631.716, F.S.; revising the
 10 number of members and composition of the Florida Life
 11 and Health Insurance Guaranty Association's board of
 12 directors; specifying requirements relating to the
 13 director of the Health Maintenance Organization
 14 Consumer Assistance Plan to be confirmed to the
 15 association's board; specifying rights of the director
 16 or his or her designee; deleting an obsolete
 17 provision; amending s. 631.717, F.S.; adding the
 18 reissuance of covered policies to a list of duties of
 19 the association relating to insolvent insurers;
 20 providing construction; specifying duties of the
 21 association as to potential long-term care insurer
 22 impairments or insolvencies, sharing information, and
 23 providing assistance to the Health Maintenance
 24 Organization Consumer Assistance Plan's board of
 25 directors; revising applicability of a specified limit
 26 on the association's liability for the contractual
 27 obligations of an insolvent insurer; conforming a
 28 provision to changes made by the act; requiring that
 29 the Department of Financial Services, rather than a

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

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30 receivership court, approve certain alternative
 31 policies or contracts; authorizing the board to file
 32 directly for actuarially justified rate or premium
 33 increases; amending s. 631.718, F.S.; specifying the
 34 calculation and allocation of Class B assessments for
 35 long-term care insurance; specifying a limit on
 36 certain assessments on a member insurer or member
 37 health maintenance organization; conforming provisions
 38 to changes made by the act; amending s. 631.721, F.S.;
 39 deleting an obsolete provision; revising the
 40 requirements of the association's plan of operation
 41 relating to long-term care insurer impairments and
 42 insolvencies; conforming a cross-reference; creating
 43 s. 631.738, F.S.; providing applicability of certain
 44 provisions to certain member insurers; amending s.
 45 631.816, F.S.; adding duties of the board of directors
 46 of the Health Maintenance Organization Consumer
 47 Assistance Plan to conform to changes made by the act;
 48 amending s. 631.818, F.S.; adding to the duties of the
 49 plan to conform to changes made by the act; amending
 50 s. 631.819, F.S.; specifying requirements for long-
 51 term care insurer impairment and insolvency
 52 assessments for member health maintenance
 53 organizations; requiring the plan to issue
 54 certificates of contribution to member health
 55 maintenance organizations paying certain assessments;
 56 specifying requirements of, and the use of, such
 57 certificates; amending s. 631.820, F.S.; conforming
 58 provisions to changes made by the act; amending s.

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59 631.821, F.S.; making a technical change; providing a
60 directive to the Division of Law Revision; providing
61 an effective date.

62
63 Be It Enacted by the Legislature of the State of Florida:

64
65 Section 1. Subsection (3) of section 631.713, Florida
66 Statutes, is amended to read:

67 631.713 Application of part.—

68 (3) This part does not apply to:

69 (a) That portion or part of a variable life insurance
70 contract or variable annuity contract not guaranteed by an
71 insurer.

72 (b) That portion or part of any policy or contract under
73 which the risk is borne by the policyholder.

74 (c) Any policy or contract or part thereof assumed by the
75 impaired or insolvent insurer under a contract of reinsurance,
76 other than reinsurance for which assumption certificates have
77 been issued.

78 (d) Fraternal benefit societies as defined in s. 632.601.

79 (e) Health maintenance organizations, except for
80 assessments levied pursuant to ss. 631.715(2)(a)1.,
81 631.718(3)(b), and 631.819(2)(c) for long-term care insurer
82 impairments or insolvencies insurance.

83 (f) Dental service plan insurance.

84 (g) Pharmaceutical service plan insurance.

85 (h) Optometric service plan insurance.

86 (i) Ambulance service association insurance.

87 (j) Preneed funeral merchandise or service contract

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

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88 insurance.

89 (k) Prepaid health clinic insurance.

90 (l) Any annuity contract or group annuity contract that is
91 not issued to and owned by an individual, except to the extent
92 of any annuity benefits:

93 1. Guaranteed directly and not through an intermediary to
94 an individual by an insurer under such contract or certificate;

95 2. Under an annuity issued by an insurer under 26 U.S.C. s.
96 408(b); or

97 3. Under an annuity issued by an insurer and held by a
98 custodian or trustee in accordance with 26 U.S.C. s. 408(a).

99

100 This paragraph applies to every insolvency regardless of its
101 date of inception, and an assessment base may not include
102 premiums for such excluded products.

103 (m) Any federal employees' group policy or contract that,
104 under 5 U.S.C. s. 8909(f), is prohibited from being subject to
105 an assessment under s. 631.718.

106 (n) Except as provided in this paragraph, a portion of a
107 policy or contract, to the extent that the rate of interest on
108 which the policy or contract is based, or the interest rate,
109 crediting rate, or similar factor determined by use of an index
110 or other external reference stated in the policy or contract
111 employed in calculating returns or changes in value:

112 1. Averaged over the period of 4 years immediately
113 preceding the date on which the member insurer becomes an
114 impaired or insolvent insurer under this part, whichever is
115 earlier, exceeds the rate of interest determined by subtracting
116 2 percentage points from Moody's Corporate Bond Yield Average

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117 averaged for that same 4-year period or for such lesser period
 118 if the policy or contract was issued less than 4 years before
 119 the member insurer becomes an impaired or insolvent insurer
 120 under this part, whichever is earlier; and

121 2. On and after the date on which the member insurer
 122 becomes an impaired or insolvent insurer under this part,
 123 whichever is earlier, exceeds the rate of interest determined by
 124 subtracting 3 percentage points from the most current version of
 125 Moody's Corporate Bond Yield Average.

126
 127 This paragraph does not apply to any portion of a policy or
 128 contract, including a rider, which provides long-term care or
 129 any other health insurance benefit.

130 (o) A portion of a policy or contract to the extent the
 131 policy or contract provides for interest or other changes in
 132 value to be determined by the use of an index or other external
 133 reference stated in the policy or contract, but which has not
 134 been credited to the policy or contract, or as to which the
 135 policy or contract owner's rights are subject to forfeiture, as
 136 of the date the member insurer becomes an impaired or insolvent
 137 insurer under this part. However, if the interest or change in
 138 value is credited less frequently than annually as determined by
 139 using the procedures defined in the policy or contract, interest
 140 or change in value shall be credited by using the procedure
 141 defined in the policy or contract as if the contractual date of
 142 crediting interest or changing values was the date of impairment
 143 or insolvency, whichever is earlier, and shall not be subject to
 144 forfeiture.

145 (p) A policy or contract providing any hospital, medical,

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146 prescription drug, or other health care benefits pursuant to
 147 ~~Medicare part C or part D of subchapter XVIII, chapter 7 of~~
 148 Title 42 of the United States Code, commonly known as Medicare
 149 Parts C and D; subchapter XIX, chapter 7 of Title 42 of the
 150 United States Code, commonly known as Medicaid; or any
 151 regulations promulgated thereunder issued pursuant to Medicare
 152 Part C or Part D.

153 (g) Structured settlement annuity benefits to which a
 154 payee, or a beneficiary if the payee is deceased, has
 155 transferred his or her rights in a structured settlement
 156 factoring transaction, as that term is defined in 26 U.S.C. s.
 157 5891(c) (3) (A).

158 Section 2. Present subsections (7) through (10) of section
 159 631.714, Florida Statutes, are redesignated as subsections (8)
 160 through (11), respectively, and a new subsection (7) is added to
 161 that section, to read:

162 631.714 Definitions.—As used in this part, the term:

163 (7) "Long-term care assessment obligations" means the long-
 164 term care impairment and long-term care insolvency assessment
 165 obligations of the association which are subject to assessment
 166 pursuant to ss. 631.715(2) (a)1. and 631.718(3) (b) in
 167 coordination with the Health Maintenance Organization Consumer
 168 Assistance Plan, through a methodology provided in the
 169 association's plan of operation. All obligations other than
 170 long-term care assessment obligations are subject to assessment
 171 exclusively by the association in accordance with s.
 172 631.718(2) (b) and (3) (c), without contribution or involvement of
 173 the Health Maintenance Organization Consumer Assistance Plan.

174 Section 3. Subsection (1) of section 631.716, Florida

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175 Statutes, is amended to read:

176 631.716 Board of directors.—

177 (1)(a) The board of directors of the association shall have
 178 at least 9, but no more than 11, members. The members shall be
 179 comprised of not fewer than five nor more than nine member
 180 insurers, serving terms as established in the plan of operation
 181 and 1 Health Maintenance Organization Consumer Assistance Plan
 182 director confirmed pursuant to paragraph (b). At all times, at
 183 least 1 ~~one~~ member of the board must shall be a domestic insurer
 184 as defined in s. 624.06(1). The members of the board who are
 185 member insurers shall be elected by member insurers, subject to
 186 the approval of the department.

187 (b) The board shall confirm, subject to the approval of the
 188 department, the Health Maintenance Organization Consumer
 189 Assistance Plan director. The director confirmed to the board
 190 must be designated by the Health Maintenance Organization
 191 Consumer Assistance Plan's board of directors to serve on the
 192 board and represent the interests of the Health Maintenance
 193 Organization Consumer Assistance Plan and its board of
 194 directors. An individual serving as a Health Maintenance
 195 Organization Consumer Assistance Plan director on the board must
 196 be a member of the Health Maintenance Organization Consumer
 197 Assistance Plan. The Health Maintenance Organization Consumer
 198 Assistance Plan director, or his or her designee, has the right
 199 to be present at all meetings of the board and has full voting
 200 rights on all issues.

201 (c) A vacancy on the board shall be filled for the
 202 remaining period of the term by a majority vote of the remaining
 203 board members, subject to the approval of the department. ~~Prior~~

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204 ~~to the selection of the initial board of directors and the~~
 205 ~~organization of the association, the department shall give~~
 206 ~~notice to all member insurers of the time and place of the~~
 207 ~~organizational meeting. At the organizational meeting, each~~
 208 ~~member insurer shall be entitled to one vote, in person or by~~
 209 ~~proxy. If the board of directors is not elected within 60 days~~
 210 ~~after notice of the organizational meeting, the department may~~
 211 ~~appoint the initial members.~~

212 Section 4. Present subsections (9) through (12) of section
 213 631.717, Florida Statutes, are redesignated as subsections (12)
 214 through (15), respectively, new subsections (9), (10), and (11)
 215 are added to that section, subsections (2) and (3), paragraph
 216 (c) of present subsection (9), and paragraph (g) of present
 217 subsection (12) are amended, and paragraph (h) is added to
 218 present subsection (12) of that section, to read:

219 631.717 Powers and duties of the association.—

220 (2) If a domestic insurer is an insolvent insurer, the
 221 association shall, subject to the approval of the department:

222 (a) Guarantee, assume, reissue, or reinsure, or cause to be
 223 guaranteed, assumed, reissued, or reinsured, the covered
 224 policies of persons referred to in s. 631.713(2); and

225 (b) Provide moneys, pledges, notes, guarantees, or other
 226 means that are proper and reasonably necessary to implement
 227 paragraph (a) in order to assure payment of the contractual
 228 obligations of the insolvent insurer with regard to persons
 229 referred to in s. 631.713(2).

230 (3) If a foreign or alien insurer is an insolvent insurer,
 231 the association shall, subject to the approval of the
 232 department:

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233 (a) Guarantee, assume, reissue, or reinsure, or cause to be
 234 guaranteed, assumed, reissued, or reinsured, the covered
 235 policies of residents of this state; and

236 (b) Provide moneys, pledges, notes, guarantees, or other
 237 means that are proper and reasonably necessary to implement
 238 paragraph (a) in order to assure payment of the contractual
 239 obligations of the insolvent insurer with regard to persons
 240 referred to in s. 631.713(2).

241
 242 However, this subsection does not apply when the department has
 243 determined that the foreign or alien insurer's domiciliary
 244 jurisdiction or state of entry provides, by statute, protection
 245 substantially similar to that provided by this part for
 246 residents of this state.

247 (9) For purposes of this part, benefits provided by a long-
 248 term care rider to a life insurance policy or annuity contract
 249 are considered the same type of benefits as the base life
 250 insurance policy or annuity contract to which the rider relates.

251 (10) In the event of a potential long-term care insurer
 252 impairment or insolvency, the association shall coordinate its
 253 activities with the Health Maintenance Organization Consumer
 254 Assistance Plan, including the development of any plan for
 255 handling the administration of the impairment or insolvency.

256 (11) The association shall share information, including
 257 data, with and assist, as applicable, the board of directors of
 258 the Health Maintenance Organization Consumer Assistance Plan
 259 with the administration and collection of member health
 260 maintenance organization assessments for long-term care insurer
 261 impairments or insolvencies pursuant to ss. 631.715(2)(a)1.,

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262 631.718(3)(b), 631.818(2), and 631.819(2)(c).

263 ~~(12)-(9)~~ The association's liability for the contractual
 264 obligations of the insolvent insurer must be as great as, but no
 265 greater than, the contractual obligations of the insurer in the
 266 absence of such insolvency, unless such obligations are reduced
 267 as permitted by subsection (4), but the aggregate liability of
 268 the association with respect to one life shall not exceed the
 269 following:

270 (c) For all other benefits, including in long-term care
 271 policies, \$300,000, including cash values, except as provided in
 272 paragraph (d).

273
 274 In no event is the association liable for any penalties or
 275 interest.

276 ~~(15)-(12)~~

277 (g) In carrying out its duties in connection with
 278 guaranteeing, assuming, reissuing, or reinsuring policies or
 279 contracts under subsections (2) and (3), the association may,
 280 subject to approval of the department ~~receivership court~~, issue
 281 an alternative policy or contract to substitute coverage for a
 282 policy or contract providing that provides an interest rate,
 283 crediting rate, or similar factor ~~that was~~ determined by use of
 284 an index or other external reference stated in the policy or
 285 contract and employed in calculating returns or changes in value
 286 ~~by issuing an alternative policy or contract~~. In lieu of the
 287 index or other external reference provided for in the original
 288 policy or contract, the alternative policy or contract must
 289 provide for a fixed interest rate, payment of dividends with
 290 minimum guarantees, or a different method for calculating

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291 interest or changes in value. In such case:

292 1. There is no requirement for evidence of insurability,
293 waiting period, or other exclusion that would not have applied
294 under the replaced policy or contract.

295 2. The alternative policy or contract shall be
296 substantially similar to the replaced policy or contract in all
297 other material terms.

298 (h) In accordance with the terms and conditions of the
299 policy or contract, the board may directly file for actuarially
300 justified rate or premium increases for any policy or contract
301 for which it provides coverage under this part.

302 Section 5. Paragraph (b) of subsection (3), paragraph (a)
303 of subsection (5), and subsection (8) of section 631.718,
304 Florida Statutes, are amended to read:

305 631.718 Assessments.-

306 (3)

307 (b)1. The amount of any Class B assessment, except for
308 assessments related to long-term care insurance, must ~~shall~~ be
309 allocated for assessment purposes among the accounts pursuant to
310 an allocation formula, which may be based on the premiums or
311 reserves of the impaired or insolvent insurer.

312 2. The amount of the Class B assessment for long-term care
313 insurance written by the impaired or insolvent insurer must be
314 allocated according to a methodology included in the plan of
315 operation and approved by the department. The methodology must
316 provide for 50 percent of the assessment to be allocated to
317 accident and health member insurers and 50 percent to be
318 allocated to life and annuity member insurers.

319 3. For the purposes of the methodology outlined in

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320 subparagraph 2. and included in the plan of operation, the
321 accident and health member insurers' share of the assessment
322 must be calculated by including the assessable premiums of
323 member health maintenance organizations of the Health
324 Maintenance Organization Consumer Assistance Plan.

325 (5) (a)1. The total of all assessments upon a member insurer
326 for each account may not in any one calendar year exceed 1
327 percent of the sum of the insurer's premiums written in this
328 state regarding business covered by the account received during
329 the 3 calendar years preceding the year in which the assessment
330 is made, divided by three. If premium information for the 3-year
331 period is not reasonably available for each member insurer, the
332 association may use any reasonably available premium
333 information.

334 2. For long-term care insurer impairments and insolvencies
335 only, the total assessments upon a member insurer or member
336 health maintenance organization of the Health Maintenance
337 Organization Consumer Assistance Plan may not, in any one
338 calendar year, exceed 0.5 percent of the sum of the member
339 insurer or member health maintenance organization's premiums
340 written in this state regarding business covered by the account
341 received during the calendar year preceding the year in which
342 the assessment is made. If premium information is not reasonably
343 available for each member insurer or member health maintenance
344 organization of the Health Maintenance Organization Consumer
345 Assistance Plan, the association or the Health Maintenance
346 Organization Consumer Assistance Plan may use any reasonably
347 available premium information.

348 (8) The association shall issue to each member insurer

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349 paying an assessment under this part, other than a Class A
 350 assessment, a certificate of contribution, in a form prescribed
 351 by the department, for the amount of the assessment so paid. All
 352 outstanding certificates are of equal dignity and priority
 353 without reference to amounts or dates of issue. A certificate of
 354 contribution may be shown by the insurer in its financial
 355 statement as an asset in such form and for such amount, if any,
 356 and period of time as the department approves. However, any
 357 amount offset pursuant to s. 631.72 may not be shown as an asset
 358 of the insurer on any of its financial statements.

359 Section 6. Paragraph (b) of subsection (1), paragraph (f)
 360 of subsection (3), and subsection (4) of section 631.721,
 361 Florida Statutes, are amended to read:

362 631.721 Plan of operation.—

363 (1)

364 (b) ~~If the association fails to submit a suitable proposed~~
 365 ~~plan of operation within 180 days following October 1, 1979, or~~
 366 If at any time thereafter the association fails to submit
 367 suitable amendments to the plan, the department shall, after
 368 notice and hearing, adopt such reasonable rules as are necessary
 369 to effectuate the provisions of this part. Such rules shall
 370 continue in force until modified by the department or superseded
 371 by a proposed plan submitted by the association and approved by
 372 the department.

373 (3) The plan of operation shall, in addition to
 374 requirements enumerated elsewhere in this part:

375 (f) Establish any additional procedures for assessments
 376 under s. 631.718, including procedures to share assessment
 377 information, including data, with and assist, as applicable, the

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378 board of directors of the Health Maintenance Organization
 379 Consumer Assistance Plan with the administration, collection,
 380 and deposit of member health maintenance organization
 381 assessments for long-term care insurer impairments and
 382 insolvencies into the health account established under s.
 383 631.715.

384 (4) The plan of operation may provide that any or all
 385 powers and duties of the association, except those under ss.
 386 631.717(13)(c) and 631.718 ~~ss. 631.717(10)(c) and 631.718~~, are
 387 delegated to a corporation, association, or other organization
 388 which performs or will perform functions similar to those of
 389 this association, or its equivalent, in two or more states. Such
 390 a corporation, association, or organization shall be reimbursed
 391 for any payments made on behalf of the association and shall be
 392 paid for its performance of any function of the association. A
 393 delegation under this subsection shall take effect only with the
 394 approval of both the board of directors and the department and
 395 may be made only to a corporation, association, or organization
 396 which extends protection not substantially less favorable and
 397 effective than that provided by this part.

398 Section 7. Section 631.738, Florida Statutes, is created to
 399 read:

400 631.738 Applicability as to certain member insurers.—The
 401 provisions of this part which relate to long-term care
 402 assessment obligations do not apply to any member insurer that,
 403 on or before the effective date of this act, has been adjudged
 404 insolvent by a court of competent jurisdiction or has been
 405 determined by the department to be impaired.

406 Section 8. Subsection (7) is added to section 631.816,

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407 Florida Statutes, to read:

408 631.816 Board of directors.-

409 (7) Subject to the approval of the department, the board
 410 shall designate one representative to serve as a member of the
 411 board of directors of the Florida Life and Health Insurance
 412 Guaranty Association pursuant to s. 631.716(1). The
 413 representative, or his or her designee, has the right to be
 414 present during all meetings of the association board of
 415 directors and shall have full voting rights.

416 Section 9. Present subsections (2) through (6) of section
 417 631.818, Florida Statutes, are redesignated as subsections (3)
 418 through (7), respectively, a new subsection (2) is added to that
 419 section, present subsection (4) is amended, present paragraph
 420 (f) of present subsection (6) is redesignated as paragraph (g),
 421 and a new paragraph (f) is added to that subsection, to read:

422 631.818 Powers and duties of the plan.-

423 (2) In the event of a long-term care insurer impairment or
 424 insolvency, pursuant to s. 631.819(2)(c), the plan shall:

425 (a) Collect and transmit all information requested by the
 426 Florida Life and Health Insurance Guaranty Association for the
 427 association to determine the appropriate assessment base of the
 428 health insurance account pursuant to ss. 631.715(2)(a)1. and
 429 631.718(3)(b).

430 (b) Levy and collect assessments from HMOs.

431 (c) Coordinate the administration and collection of member
 432 HMO assessments for long-term care insurer impairments and
 433 insolvencies with the Florida Life and Health Insurance Guaranty
 434 Association.

435 (5)(4) The plan may render assistance and advice to the

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436 department, at the department's request, concerning
 437 rehabilitation, payment of claims, continuance of coverage, or
 438 the performance of other contractual obligations of any HMO
 439 subject to a delinquency proceeding ~~or a proceeding under s.~~
 440 ~~624.90.~~

441 ~~(7)(6)~~ The plan may:

442 (f) In the event of a long-term care insurer impairment or
 443 insolvency, coordinate with the Florida Life and Health
 444 Insurance Guaranty Association to carry out the responsibilities
 445 of the association for the limited purpose of the long-term care
 446 insurer impairment or insolvency, including the development of
 447 any plan for handling the administration of the impairment or
 448 insolvency.

449 Section 10. Subsections (1) and (3) of section 631.819,
 450 Florida Statutes, are amended, paragraph (c) is added to
 451 subsection (2), and subsection (6) is added to that section, to
 452 read:

453 631.819 Assessments.-

454 (1) For the purposes of providing the funds necessary to
 455 carry out the powers and duties of the plan, the board of
 456 directors shall assess the member HMOs at such time and for such
 457 amounts as the board finds necessary. Assessments shall be due
 458 not less than 30 days after written notice to the member HMOs
 459 ~~insurers.~~

460 (2) Assessments for funds to meet the requirements of the
 461 plan with respect to an insolvent HMO shall not be made until
 462 necessary to implement the purposes of this part. In order to
 463 carry out its duties and powers under this part, upon the
 464 insolvency of an HMO, the plan shall levy and collect

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465 assessments as follows:

466 (c) For the purposes of long-term care insurer impairment
 467 and insolvency assessments under s. 631.718(3)(b), member HMOs
 468 must be assessed in the same manner as member insurers of the
 469 Florida Life and Health Insurance Guaranty Association under
 470 part III of this chapter. Long-term care insurer impairment and
 471 insolvency assessments must be levied and collected by the plan
 472 pursuant to this part, deposited into the health insurance
 473 account established under s. 631.715, and used solely for long-
 474 term care insurer impairment or insolvency obligations.
 475 Assessments collected from member HMOs are considered part of
 476 and satisfy the obligations of the health insurance account
 477 under ss. 631.715(2)(a)1. and 631.718(3)(b).

478 (3) All assessments against HMOs, including long-term care
 479 insurer impairment and insolvency assessments, must ~~shall~~ be
 480 levied as a percentage of annual earned premium revenue for non-
 481 Medicare and non-Medicaid contracts. In no event may the plan
 482 assess in any calendar year more than 0.5 percent of each HMO's
 483 annual earned premium revenue for non-Medicare and non-Medicaid
 484 contracts.

485 (6) The plan shall issue, in a form prescribed by the
 486 department, a certificate of contribution to each member HMO
 487 paying a long-term care insurer impairment or insolvency
 488 assessment under this part for the amount of the assessment so
 489 paid. All outstanding certificates are of equal dignity and
 490 priority without reference to amounts or dates of issue. A
 491 certificate of contribution may be shown by the member HMO in
 492 its financial statement as an asset in such form and for such
 493 amount and period of time as the department approves. However,

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494 any amount offset pursuant to s. 631.828 may not be shown as an
 495 asset of the member HMO on any of its financial statements.

496 Section 11. Paragraph (f) of subsection (3) and paragraph
 497 (a) of subsection (4) of section 631.820, Florida Statutes, are
 498 amended to read:

499 631.820 Plan of operation.—

500 (3) The plan of operation shall, in addition to
 501 requirements enumerated elsewhere in this part:

502 (f) Establish any additional procedures for assessments
 503 under this part, including procedures to coordinate the
 504 administration and collection of member HMO assessments for
 505 long-term care insurer impairments and insolvencies with the
 506 board of directors of the Florida Life and Health Insurance
 507 Guaranty Association.

508 (4) (a) The plan of operation may provide that any or all
 509 powers and duties of the plan, except those under ss.
 510 631.818(7)(b) and (c) and 631.819 ss. ~~631.818(6)(b) and (c) and~~
 511 ~~631.819~~, are delegated to an administrator that which may be a
 512 corporation, association, or other organization that which
 513 performs or will perform functions similar to those of this
 514 plan, or its equivalent.

515 Section 12. Subsection (2) of section 631.821, Florida
 516 Statutes, is amended to read:

517 631.821 Powers and duties of the department.—

518 (2) Any action of the board of directors of the plan may be
 519 appealed to the office by any member HMO if such appeal is taken
 520 within 21 days of the action being appealed; however, the HMO
 521 must comply with such action pending exhaustion of appeal ~~under~~
 522 ~~s. 631.818(2)~~. Any appeal shall be promptly determined by the

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523 office, and final action or order of the office shall be subject
524 to judicial review in a court of competent jurisdiction.

525 Section 13. The Division of Law Revision is directed to
526 replace the phrase "the effective date of this act" wherever it
527 occurs in this act with the date this act becomes a law.

528 Section 14. This act shall take effect upon becoming a law.

----- Original message -----

From: Brad Taman <brad@flahiga.org>

Date: 2/24/19 2:05 PM (GMT-05:00)

To: 'paulsanf' <paulsanf@aol.com>, 'William Falck' <wef@wfalcklaw.com>, 'Mary McAnnally' <mary@flahiga.org>

Subject: RE: SB 626

Paul, as of 12/31/2018 there are 7,468 inforce policies.

Year	Company	Health
2015	Penn Treaty Network America Insurance Company	3,500,000
2016	Penn Treaty Network America Insurance Company	284,000
2017	Penn Treaty Network America Insurance Company	151,573,286
2017	American Network Insurance Company	7,599,342
2018	Penn Treaty Network America Insurance Company	145,353,157
2018	American Network Insurance Company	7,287,928
2019	Penn Treaty Network America Insurance Company	20,000,000
		<u>335,597,713</u>
	Penn Treaty Network America Insurance Company	320,710,443
	American Network Insurance Company	14,887,270
	Assessments to date	<u>335,597,713</u>
<p>Actuarial Liability @ 12/31/2018 due to change over the next 70 years. This number will go up or down based on policyholder selection (Rate increase, Buyout, Reduced benefit, Reduced paid up), Investment return, Claims experience.</p>		
	Penn Treaty Network America Insurance Company	107,748,772
	American Network Insurance Company	1,867,638
		<u>109,616,410</u>



The Florida Senate

Committee Agenda Request

To: Senator Doug Broxson
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: February 15, 2019

I respectfully request that **Senate Bill #626**, relating to **Insurer Guaranty Associations**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 626

Bill Number (if applicable)

687388

Amendment Barcode (if applicable)

Topic Insurance

Name Mike Haridopolos

Job Title _____

Address 139 Lansing Island Dr

Street

Phone 321 525 1261

IHB FL 32937

City

State

Zip

Email MIKE@uly.floride.com

Speaking: For Against Information

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

Representing Health First

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 4, 2019

Meeting Date

SB626

Bill Number (if applicable)

687388

Amendment Barcode (if applicable)

Topic _____

Name Paul P. Sanford

Job Title _____

Address 106 South Monroe Street

Street

Phone 850-222-7200

Tallahassee

FL

32301

Email paulsanf@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Life And Health Insurance Guaranty Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

March 4, 2019

Meeting Date

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

SB626

Bill Number (if applicable)

687388

Amendment Barcode (if applicable)

Topic _____

Name Paul P. Sanford

Job Title _____

Address 106 South Monroe Street

Street

Phone 850-222-7200

Tallahassee

FL

32301

Email paulsanf@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Blue

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

D-0100000

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 4, 2019

Meeting Date

SB626

Bill Number (if applicable)

687388

Amendment Barcode (if applicable)

Topic _____

Name Paul P. Sanford

Job Title _____

Address 106 South Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-222-7200

Email paulsanf@aol.com

Speaking: For Against Information

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

Representing American Council of Life Insurers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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Email paulsanf@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Insurance Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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3/4/19

Meeting Date

626

Bill Number (if applicable)

Topic Insurer Guaranty Associations

Amendment Barcode (if applicable)

Name Bob Asztalos

Job Title Chief Lobbyist

Address 307 W. Park Avenue

Phone 850-224-3907

Street

Tallahassee

FL

32301

Email basztalos@fhca.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Health Care Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/19

Meeting Date

SB 626

Bill Number (if applicable)

Topic Insurer Guaranty Associations

Amendment Barcode (if applicable)

Name Wences Troncoso

Job Title Vice President & General Counsel

Address 200 W. College Ave

Phone 850-386-2904

Street

Tallahassee

FL

32301

Email wences@fahp.net

City

State

Zip

Speaking: For Against Information

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

Representing Florida Association of Health Plans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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03/04/2019

Meeting Date

SB 626

Bill Number (if applicable)

682770

Amendment Barcode (if applicable)

Topic Insurer Guaranty Associations

Name Joseph Salzverg ("Saul's-verg")

Job Title Attorney and Government Consultant, GrayRobinson, P.A.

Address 301 S. Bronough Street, Suite 600

Phone 850-577-9090

Street

Tallahassee

FL

32301

Email joseph.salzverg@gray-robinson.com

City

State

Zip

Speaking: For Against Information

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

Representing AvMed

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/4/19
Meeting Date

626
Bill Number (if applicable)
682770
Amendment Barcode (if applicable)

Topic Insurance Guaranty Funds

Name Beth Vecchioli (pronounced Vetch-ee-o-lee)

Job Title Sr. Director Gov't Consulting

Address 215 S. Monroe St., Ste 500

Phone 850-425-3393

Street Tallahassee, FL 32301
City State Zip

Email bvecchioli@certifiedfields.com

Speaking: For Against Information

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

Representing Armed Health plan

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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CourtSmart Tag Report

Room: KN 412

Case No.:

Type:
Judge:

Caption: Senate Banking and Insurance Committee

Started: 3/4/2019 3:35:14 PM

Ends: 3/4/2019 5:28:14 PM Length: 01:53:01

3:35:13 PM Meeting called to order
3:35:21 PM Roll call
3:35:33 PM Quorum present
3:35:59 PM Senator Rader presents SB 496. Senator Rader on amendment barcode 308964
3:36:55 PM Reyes waives in support
3:37:11 PM Senator waive close
3:37:19 PM Amendment is adopted
3:37:24 PM Back on bill as amended
3:37:36 PM Roll call on bill 496
3:37:57 PM Recorded favorably
3:42:42 PM Recording Paused
3:45:08 PM Recording Resumed
3:45:11 PM Senator Brandes presents SB 626
3:45:59 PM Amendment explained
3:46:37 PM Questions
3:46:45 PM Senator Taddeo
3:48:52 PM Senator Taddeo continues questions
3:50:05 PM Senator Perry
3:53:42 PM Appearance for Beth Vecchioli speaking
3:54:49 PM Debate
3:55:01 PM Senator Taddeo
3:55:38 PM Senator Perry
3:56:05 PM Senator Brandes regarding late-filed amendment
3:56:43 PM Senator Perry
3:57:23 PM Senator Brandes
3:57:58 PM Senator Gruters
3:58:33 PM Chair Broxson
3:59:21 PM Senator Brandes waives close
3:59:34 PM Amendment 682770 adopted
4:00:02 PM Senator Brandes explaining bar code 687388
4:00:45 PM Mike Haridopolos waive in support
4:01:55 PM Senator Taddeo
4:02:57 PM Senator Brandes
4:03:26 PM Amendment adopted
4:03:41 PM Joseph Salzverg speaking waive in support
4:04:55 PM Roll Call
4:05:14 PM Bill reported favorably
4:05:48 PM Chair Broxson
4:08:03 PM Turning chair over to Senator Rouson
4:08:59 PM Senator Broxson SB 122
4:09:16 PM Senator Broxson explaining amendment 306982
4:11:41 PM Senator Rouson
4:12:04 PM Senator Taddeo amendment bar code 336048
4:12:53 PM
4:12:55 PM Senator Taddeo amendment bar code 932552
4:13:45 PM Senator Thurston
4:16:13 PM Senator Thurston is explaining amendment barcode 892198
4:17:17 PM No questions
4:17:24 PM Brewster Bevis waives in opposition
4:17:42 PM Lee Jacobson speaking
4:21:49 PM Rickie Kidwell speaking
4:23:32 PM Foyt Ralston speaking

4:25:26 PM Dave Deblander waives in support
4:25:40 PM Mark Delegal speaking
4:30:13 PM Senator Thurston
4:31:17 PM Senator Thurston
4:35:28 PM Carolyn Johnson waives in opposition
4:35:49 PM Chair Broxson
4:36:31 PM Senator Lee
4:40:23 PM Senator Brandes
4:41:31 PM Senator Lee
4:42:05 PM Senator Thurston
4:43:16 PM Senator Thurston withdraws amendment
4:43:32 PM Senator Taddeo amendment
4:43:45 PM Senator Taddeo
4:46:08 PM Mark Delegal
4:47:56 PM Foyt Ralston waive in support
4:48:25 PM Michael Carlson speaking
4:49:48 PM Carolyn Johnson waive in opposition
4:50:22 PM Lee Jacobs speaking
4:51:30 PM Chair Broxson
4:52:10 PM Senator Taddeo
4:53:25 PM Amendment fails
4:53:30 PM Going to barcode 932552 again
4:53:48 PM Senator Taddeo explaining barcode 932552
4:54:50 PM Time Certain vote on bill at 5:25 by Senator Brandes
4:55:42 PM Josh Reynolds speaking
4:57:32 PM Carolyn Johnson waives in oppsitiion
4:57:58 PM Richie Kidwell speaking
4:59:15 PM Senator Brandes
4:59:32 PM Ritchie Kidwell answering
5:00:15 PM Senator Brandes
5:00:36 PM Ritchie Kidwell
5:01:18 PM Tim Meanan
5:02:28 PM Robert Showhalter speaking
5:04:41 PM Lee Jacobson speaking
5:07:04 PM Christine Ashburn waives in opposition
5:07:30 PM Brewster Beavis waives in opposition
5:07:47 PM Foyt Ralston speaking
5:08:39 PM Dave Deblander speaking
5:11:35 PM Mark Delegal waive in opposition
5:11:45 PM Steve Geller
5:14:00 PM Chair Broxson
5:14:31 PM Senator Taddeo
5:14:40 PM Senator Taddeo
5:15:31 PM Ron Haines
5:17:18 PM Senator Taddeo requests withdrawal of amendment
5:18:21 PM Senator Thurston
5:19:21 PM Senator Broxson waives close on amendment
5:19:54 PM The amendment is adopted
5:20:04 PM Back on bill as amended
5:20:12 PM CFO Patronis speaking on SB 122
5:22:37 PM Senator Thurston reads remaining speaker cards into the record
5:24:08 PM Senator Lee
5:25:55 PM Senator Lee amends time certain to 5:29
5:26:11 PM Senator Thurston
5:26:45 PM Senator Taddeo
5:27:14 PM Chair Broxson
5:27:20 PM Roll call on CS/SB 122
5:27:50 PM Bill reported favorably
5:28:00 PM Meeting adjourned