

**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: SB 1046

INTRODUCER: Senator Brandes

SUBJECT: Insurance

DATE: March 17, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	<b>Pre-meeting</b>
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 1046 enacts the following changes related to insurance:

- Prevents the expiration on May 31, 2013, of the exemption of medical malpractice insurance premiums from Florida Hurricane Catastrophe Fund (Cat Fund) emergency assessments;
- Authorizes motor vehicle proof of insurance cards to be issued in electronic form.
- Extends the examination period for licensing foreign or alien insurers;
- Includes employees within the scope of limited licenses to transact motor vehicle rental insurance that are issued to a business entity that offers motor vehicle for rent or lease;
- Provides the Department of Financial Services (DFS) with additional authority to regulate mediators and neutral evaluators under the alternative dispute resolution programs run by the DFS for property, motor vehicle, and sinkhole claims;
- Eliminates the requirement that viatical insurance life expectancy providers register with the Office of Insurance Regulation (OIR);
- Includes using multiple approved hurricane models, an average of models, or a weighted average of models as factors the OIR must consider in a rate filing;
- Increases from 60 days to 120 days the time an insurer is not required to use the newest version of an approved hurricane model;
- Repeals an annual report to the Legislature a report detailing the aggregate net probable maximum losses, financing options, and potential assessments of the Cat Fund and Citizens;
- Establishes a uniform 100 day advance written notice of nonrenewal, cancellation, or termination for personal or commercial lines residential property insurance policies;
- Authorize a licensed company to provide the sworn statement of liability insurance coverage required by current law;

- Allows a policyholder to elect electronic delivery of policy documents;
- Allows a Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium;
- Eliminates the requirement that an insurer must offer a \$500 deductible applicable to losses not caused by a hurricane prior to issuing a personal lines residential policy. Instead, effective January 1, 2014, the insurer must offer a \$500 deductible or a 1 percent deductible;
- Creates conflict of interest standards for appraisers in residential property insurance claims;
- Expand the use of separate sinkhole deductibles to all property insurance policies;
- Clarifies that the annual update to the Personal Injury Protection medical fee schedule applies until March 1 of the following year;
- Deletes a bond requirement on non-resident licensed risk retention and purchasing group insurance agents;
- Allows a financial guaranty insurance corporation to be organized and licensed as a mutual property and casualty insurer;
- Exempts captive insurers from the statutory trust deposit required under s. 624.411, F.S.; and
- Provides exceptions to certain financial requirements applicable to service warranty associations.

The bill is effective upon becoming a law.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 215.555, 316.646, 320.02, 624.413, 626.321, 626.601, 626.9914, 626.99175, 626.9919, 626.992, 626.9925, 626.99278, 627.062, 627.0628, 627.072, 627.281, 627.4133, 627.4137, 627.421, 627.43141, 627.701, 627.7015, 627.706, 627.7074, 627.736, 627.745, 627.952, 627.971, 627.972, 628.901, 628.909, and 634.406

The bill creates the following section of the Florida Statutes: 627.70151.

The bill repeals the following section of the Florida Statutes: 627.3519.

## II. Present Situation:

### **Florida Hurricane Catastrophe Fund Emergency Assessments**

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt fund administered by the State Board of Administration (SBA) that was created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. Insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF must charge insurers the “actuarially indicated” premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

Reimbursements to insurers for losses above the current cash balance of the fund are financed through bonding. The bonds are funded by assessments on direct premiums for all property and casualty lines of business in Florida except workers’ compensation and medical malpractice. The exemption for medical malpractice is scheduled for automatic repeal on May 31, 2013.

### **Proof of Financial Responsibility**

Every owner or operator of a motor vehicle that is required to be registered in Florida must:

- Maintain security to meet required levels of personal injury protection specified by the Florida Motor Vehicle No-Fault Law.<sup>1</sup>
- Demonstrate financial responsibility to cover up to \$10,000 of property damage resulting from the use of the motor vehicle.<sup>2</sup>
- For individuals who have been found guilty or entered a plea of nolo contendere to driving under the influence must demonstrate financial responsibility to cover up to:<sup>3</sup>
  - \$100,000 for death or injury to any one person;
  - \$300,000 for death or injury to two or more people;
  - \$50,000 for property damage in any one crash.

Section 316.646, F.S., specifies how proof of the financial securities described above must be maintained. The statute requires that a person must have in his or her immediate possession at all times while operating a motor vehicle:

- A uniform proof-of-insurance card in a form prescribed by the Department of Highway Safety and Motor Vehicles;
- A valid insurance policy;
- An insurance policy binder;
- A certificate of insurance; or
- Such other proof as may be prescribed by the department.

### **Motor Vehicle Registration**

Every person who owns a motor vehicle that is operated on Florida roads is required to register that vehicle with Department of Highway Safety and Motor Vehicles.<sup>4</sup> In order to register a vehicle, the owner must provide proof that the coverages required under s. 324.022, F.S., s. 324.023, F.S., and s. 627.733, F.S., have been purchased. Section 320.02(5), F.S., specifies that the proof this coverage can be satisfied by a number of alternative documents, one of which is a proof-of-purchase card. The statute requires that an insurer providing the required coverage must issue to its policyholder a uniform proof-of-purchase card in a form prescribed by the department that contains:

- The name of the insurance company;
- The coverage identification number;

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<sup>1</sup> Sections 627.730 – 627.405, F.S., comprise the “Florida Motor Vehicle No-Fault Law.” Section 627.733, F.S., requires that every owner or operator of a motor vehicle that is required to be registered in Florida must maintain security to meet required levels of personal injury protection specified by the Florida Motor Vehicle No-Fault Law. Section 627.736, F.S., requires that coverage of \$10,000 for medical and disability benefits and \$5,000 for death benefits must be purchased to cover: the named insured, relatives residing in the same household, persons operating the motor vehicle, passengers, and other people struck by the vehicle who are not in another vehicle at the time. Section 627.736, F.S., specifies that the provisions contained in ch. 324, F.S., for maintaining proof of financial responsibility also apply to the Florida Motor Vehicle No-Fault Law.

<sup>2</sup> See s. 324.022, F.S.

<sup>3</sup> See s. 324.023, F.S.

<sup>4</sup> Section 320.02(1), F.S.

- The make, year, and vehicle identification number of the vehicle; and
- A statement notifying the applicant of the penalty specified in s. 316.646(4), F.S.

### **Foreign or Alien Insurer Application for Certificate**

A foreign insurer is defined as being formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida.<sup>5</sup> A domestic insurer is defined as being formed under the laws of Florida.<sup>6</sup> An alien insurer is defined as an insurer other than a foreign or domestic insurer.<sup>7</sup> When a foreign or alien insurer applies for a certificate of authority in Florida, it must submit a report of its most recent examination certified by the insurance official in its state of domicile or of entry into the United States. The end of the most recent year covered by the examination must be within the 3-year period preceding the date of application.<sup>8</sup> In lieu of the certified examination report, the OIR can accept an audited certified public accountant's report prepared on a basis consistent with the insurance laws of the insurer's state of domicile, certified by the insurance official in its state of domicile or of entry into the United States.

### **Limited Agent Licenses**

Section 626.321, F.S., establishes categories for which the DFS will issue a license that authorizes an agent to transact a limited class of business. The following enumerated categories qualify for limited license:

- Motor vehicle physical damage and mechanical breakdown insurance;
- Industrial fire or burglary insurance;
- Travel insurance;
- Motor vehicle rental insurance;
- Credit life or disability insurance;
- Credit insurance;
- Credit property insurance;
- Crop hail and multi-peril crop insurance; In-transit and storage personal property insurance; and
- Communications equipment property insurance, communications equipment inland marine insurance, and communications equipment service warranty insurance.

Under a limited license for motor vehicle rental insurance, the licensee may sell coverage only when the coverage is offered or sold incidental to the rental or lease of a motor vehicle, the lease or rental period is for no more than 60 days, and the coverage is limited to only those risks specified in statute. Further, the license may be issued only to an employee of a licensed general lines agent or to a business entity that offers motor vehicles for lease or rent. A limited license that is issued to such a business entity encompasses each office or place of business that uses the entity's name to offer the specified coverage.

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<sup>5</sup> S. 624.06(2), F.S.

<sup>6</sup> S. 624.06(1), F.S.

<sup>7</sup> S. 624.06(3), F.S.

<sup>8</sup> S. 624.413(1)(f), F.S.

## **Inquiries into Improper Conduct**

Current law provides that the DFS and the OIR is authorized to inquire into any alleged improper conduct of any licensed, approved, or certified insurance agency, agent, adjuster, service representative, managing general agent, customer representative, title insurance agent, title insurance agency, mediator, neutral evaluator, continuing education course provider, instructor, school official, or monitor group under the insurance code.<sup>9</sup> The DFS or the OIR may then initiate an investigation if it has reasonable cause to believe there has been a violation of the code.

## **Suspension of Viatical Settlement Provider License**

A viatical settlement contract typically includes an agreement on the part of the owner of a life insurance policy to sell the policy to another person or entity for less than the expected death benefit payable under the policy.<sup>10</sup> Current law specifies the circumstances under which the OIR is required suspend, revoke, deny, or refuse to renew the license of a viatical settlement provider.<sup>11</sup> Among numerous circumstances under which sanctions are to be imposed is when the licensee obtains or utilizes life expectancies from life expectancy providers who are not registered with the OIR.<sup>12</sup>

Life expectancy providers are used in viatical settlements. The discounted amount paid to a policyholder is generally based upon the life expectancy of the insured, his or her general health, and other similar considerations. A life expectancy provider is used in a viatical settlement to determine life expectancy or mortality ratings used to determine a life expectancy.

Life expectancy providers are required to register with the OIR.<sup>13</sup> Every 3 years, a registered life expectancy provider must file an audit of all life expectancies by the provider for the five years preceding the audit. The audit compares actual to projected mortality data. According to the OIR, the OIR reviews the audit to verify it was done, is complete, and in the proper format, but does not verify the accuracy of the audit because the OIR has no authority to regulate the life expectancy provider.

## **Hurricane Loss Projection Models**

The Florida Commission on Hurricane Loss Projection Methodology (Commission) was established by the Legislature to serve as an independent body to provide expert evaluation of computer models that project hurricane losses.<sup>14</sup> The Commission is assigned to the State Board of Administration. The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Members of the Commission include:<sup>15</sup>

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<sup>9</sup> S. 626.601, F.S.

<sup>10</sup> See s. 626.9911(10), F.S.

<sup>11</sup> S. 626.9914, F.S.

<sup>12</sup> S. 626.9914(1) (k), F.S.

<sup>13</sup> S. 626.99175, F.S.

<sup>14</sup> See s. 627.0628, F.S.

<sup>15</sup> S. 627.0628(2) (b), F.S.

- The Insurance Consumer Advocate;
- The person responsible for FHCF operations;
- The Executive Director of Citizens Property Insurance Corporation;
- The Director of Emergency Management;
- An actuary member from the FHCF Advisory Council;
- An actuary employed by the OIR;
- An appointment by the state Chief Financial Officer who is an actuary employed with a property and casualty insurer;
- An appointment by the state Chief Financial Officer who is an expert insurance finance and who is a full-time faculty member in the State University System;
- An appointment by the state Chief Financial Officer who is an expert statistics in meteorology and who is a full-time faculty member in the State University System; and
- An appointment by the state Chief Financial Officer who is an expert in computer system design and who is a full-time faculty member in the State University System.

The Commission sets standards for loss projection methodology and examines the methods employed in hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards. Only hurricane loss models or methods that the Commission has found to be accurate can be used by insurers to estimate the hurricane losses that are used to set property insurance rates. After the Commission finds a model to be accurate, an insurer has 60 days to use the model to predict the insurer's probable maximum loss "with respect to a rate filing."<sup>16</sup>

### **Retrospective Rating Plan in Workers' Compensation**

Retrospective rating plans<sup>17</sup> may be used by workers' compensation insurance carriers to compete on price. Under a retrospective rating plan, the final premium paid by the employer is based on the actual loss experience of the employer during the policy, plus insurer expenses and an insurance charge. If the employer is able to limit the amount and the magnitude of claims, it will pay lower premiums. Before there were large deductible programs, retrospective rating plans were the dominant rating plan for large employers.

### **Notice of Cancellation or Nonrenewal**

The requirements for an insurer to give notice of cancelling or nonrenewing a residential property insurance policy are contained in s. 627.4133(2), F.S. The specific notice depends on the particular circumstances of the policy being nonrenewed, as follows:

- Generally, an insurer must give the insured 100 days written notice of nonrenewal or cancellation;
- For any nonrenewal or cancellation that would be effective between June 1 and November 30 (hurricane season), an insurer must give notice by June 1, or 100 days, whichever is earlier;

<sup>16</sup> S. 627.0628(3) (d), F.S.

<sup>17</sup> See "2012 Workers' Compensation Annual Report" (December 2012) by the Florida Office of Insurance Regulation. Available at <http://www.floir.com>.

- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the reason is a revision in sinkhole coverage, the insurer must give the insured 100 days written notice of nonrenewal;
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the policy is to be nonrenewed by Citizens pursuant to an approved assumption plan by an authorized insurer, Citizens must give the insured 45 days written notice of nonrenewal;
- If the insured structure has been insured by the insurer or an affiliate for at least 5 years, the insurer must give 120 days' notice of nonrenewal or cancellation;
- If the cancellation is for nonpayment of premium, the insurer must give 10 days' notice of cancellation accompanied by the reason for the cancellation;
- If the OIR finds that the early cancellation is necessary to protect the best interests of the public or policyholders, the insurer must give the insured 45 days' written notice of cancellation or nonrenewal;
- If a policy covers both home and motor vehicle, the insurer must give the insured 100 days written notice of nonrenewal.

### **Required Disclosures by Liability Insurers**

Under current law, a liability insurer must provide to a claimant a statement containing the following information within 30 days of a written request by the claimant:

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to the such insurer at the time of filing such statement; and
- A copy of the policy.

Further, the above statement must be under oath by a corporate officer or the insurer's claims manager or superintendent.

### **Delivery of Insurance Policies**

Part II of s. 627, F.S., generally applies to all insurance contracts except for those covering reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance.<sup>18</sup> Under this part, every insurance policy must be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect.<sup>19</sup>

In June, 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act (ESIGN) to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically.<sup>20</sup>

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<sup>18</sup> S. 627.401, F.S.

<sup>19</sup> S. 627.421, F.S.

<sup>20</sup> See Federal Trade Commission and Department Of Commerce publication: "Electronic Signatures in Global and National Commerce Act," published June 2001, available at <http://www.ftc.gov/os/2001/06/esign7.htm>.

ESIGN provides that contracts formed using electronic signatures on electronic records will not be denied legal effect merely because they are electronic. ESIGN, however, requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under ESIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to the use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications. Insurance is specifically included in ESIGN.

Section 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), has provisions similar to the federal ESIGN. UETA specifically applies to insurance and provides a requirement that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

### **Notice of Change in Policy Terms**

Section 627.43141, F.S., requires that when an insurer makes a change in the terms of an insurance policy upon the renewal of that policy, the insurer must give the named insured written notice of the change, and the notice must be enclosed with the written notice of renewal premium required by ss. 627.4133, F.S., and 627.728, F.S.

### **Personal Lines Residential Required Deductible Offering**

Currently, s. 627.701(7), F.S., requires that for personal lines residential insurance, the insurer must offer a deductible of \$500 applicable to losses from perils other than hurricanes. This offer must be made in a form approved by the OIR and must be made at least once every 3 years.

### **Alternative Procedure for Resolution of Disputed Property Insurance Claims**

The DFS has established alternative dispute resolution programs for various types of insurance. The property insurance claim mediation program is authorized under s. 627.7015, F.S.; the automobile insurance claim mediation program is authorized under s. 627.745, F.S.; and the sinkhole claim neutral evaluation program is authorized under s. 627.7074, F.S.

The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluation program for sinkhole insurance claims. To qualify as a mediator for the property or automobile mediation programs, a person must meet specific education or experience requirements set out in statute,<sup>21</sup> and must successfully complete a training program approved by the DFS. According to DFS, the required mediation training program is no longer available from outside vendors due to the low volume of DFS mediators. In

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<sup>21</sup> s. 627.745 (3)(b), F.S., requires a mediator to possess certain masters or doctorate degrees, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.

order to ensure there is a training program available for those who want to be DFS mediators, for the past several years DFS has approved the mediator training program offered by the courts.

### **Insurance Contract Appraisal Process**

Most insurance contracts contain an appraisal clause which establishes a procedure for resolving disputed amounts under a claim. Disputes over coverage are determined by the courts, but an appraisal process can be used to resolve disputed amounts. Generally, the appraisal process works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers cannot agree on the amount of damages, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both parties.
- If the two parties agree to the amount of the loss, that amount becomes the claim amount. If one of the parties does not agree, the case can still be litigated in court.

Current law does not address disqualification of an umpire due to impartiality. As a result, a party seeking to disqualify an umpire must go to Circuit Court and have a judge rule on the umpire's impartiality. There are no parameters in current law for a judge to rule on an umpire's impartiality.

### **Personal Injury Protection Insurance (PIP)**

In 2012, the Legislature enacted HB 119,<sup>22</sup> making substantial changes to laws applying to Florida's PIP requirements. Among numerous other changes, the bill amended s. 627.736(5)(a) 2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The new provision states, in part:

[T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered...and the applicable fee schedule or payment limitation applies throughout the remainder of that year....

The above language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied just to the end of the calendar year or applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,<sup>23</sup> stating that the plain language of the section requires the fee schedule in place on March 1, to apply throughout the following 365 days, or until March 1, of the following year.

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<sup>22</sup> Ch. 2012-151, L.O.F.

<sup>23</sup> Available at <http://www.flour.com/Sections/PandC/ProductReview/PIPInfo.aspx>. Last visited March 16, 2013.

### **Risk Retention Group Agents**

A risk retention group is defined in s. 627.942(9), F.S., as a corporation or limited liability association whose primary activity consists of spreading the liability exposure of its group members. Within the definition, the statute imposes numerous requirements and limitations for operating a risk retention group.

Section 627.952 (1), F.S., establishes requirements for risk retention and purchasing group agents. The statute requires that any person selling, purchasing, or servicing an insurance contracts for a purchasing group or risk retention group to a Florida resident must have an appointment to act general lines agent. In order to place business through a surplus lines carrier, a resident agent must be licensed and appointed as a surplus lines agent. If not a resident of Florida, the agent must be licensed and appointed as a surplus lines agent in her or his state of residence and must file and maintain a fidelity bond. The statute specifies the amount (\$50,000) and the conditions that are required for the fidelity bond.

### **Financial Guaranty Insurance**

Financial guaranty insurance is defined<sup>24</sup> as a surety bond, insurance policy, or similar guaranty, under which payment is made upon the occurrence of financial loss to an insured, as a result of:

- The failure of an obligor on a debt to make payments when due, if the failure is the result of a financial default or insolvency;
- Changes in the levels of interest rates;
- Changes in the rate of exchange of currency;
- Changes in the value of specific assets or commodities, or price levels in general; or
- Other events which the OIR determines are substantially similar to any of the foregoing.

Section 627.971, F.S., defines a financial guaranty insurance corporation as a stock insurer licensed to transact financial guaranty insurance business in this state. The definition makes no provision for mutual insurers. A stock insurer is defined as an incorporated insurer with its capital divided into shares and owned by its stockholders.<sup>25</sup> A mutual insurer is defined as an incorporated insurer without permanent capital stock, the governing body of which is elected in accordance with part I of ch. 628, F.S.<sup>26</sup>

### **Captive Insurance**

A captive insurer is an insurance company that primarily or exclusively insures a business entity, or entities, that owns or is an affiliate of the captive insurer. The insured business entities pay premiums to the captive insurer for specified insurance coverages. Under current law, captive insurance is regulated by the Office of Insurance Regulation (OIR) under part V of ch. 628, F.S., which defines a “captive insurance company” as a domestic insurer established under part V, and

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<sup>24</sup> S. 627.971(1) (a), F.S.

<sup>25</sup> S. 628.021, F.S.

<sup>26</sup> S. 628.031, F.S.

includes a pure captive insurance company, a special purpose captive insurance company, or an industrial captive insurance company, with each of these formations also separately defined.

Each formation may vary in allowable corporate structure, capital and surplus, underwritten risks, and number of owners. Most captive insurance companies are formed as pure captives,<sup>27</sup> meaning that the captive is a wholly-owned subsidiary that insures the risks of its parent and affiliates.

Chapter 628, F.S., also defines “captive reinsurance company” as a stock corporation reinsurer formed under part V of ch. 628, F.S., that is wholly owned by a qualifying reinsurance parent company. A “qualifying reinsurance parent company” is defined as a reinsurer that:

- Holds a certificate of authority or a letter of eligibility; or
- Is an accredited or a satisfactory non-approved reinsurer in Florida and possesses consolidated GAAP net worth of at least \$500 million and a consolidated debt to total capital ratio of not greater than 0.50.

### **Service Warranty Associations**

A service warranty is generally defined as a contract to perform the repair or replacement of a consumer product for failure due to a defect.<sup>28</sup> A service warranty association is defined as any person, other than an authorized insurer, issuing service warranties.<sup>29</sup>

Section 634.406, F.S., establishes the financial requirements, ratios, and limitations on service warranty associations. A service warranty association can allow its premiums to exceed the ratio to net assets limitations of s. 634.406, F.S., only if the association meets all of the following:

- Maintains net assets of at least \$750,000.
- Utilizes a contractual liability insurance policy approved by the office which:
  - Reimburses the service warranty association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least \$100 million; or
  - Complies with the requirements of subsection (3) and is issued by an insurer that maintains a policyholder surplus of at least \$200 million.
- The insurer issuing the contractual liability insurance policy:
  - Maintains a policyholder surplus of at least \$100 million.
  - Is rated “A” or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the OIR.
  - Is in no way affiliated with the warranty association.
  - Provides a statement certifying the gross written premiums is covered under the contractual liability policy, whether or not it has been reported.

<sup>27</sup> Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9. [www.captive.com](http://www.captive.com).

<sup>28</sup> S. 634.401(13), F.S.

<sup>29</sup> S. 634.401(14), F.S.

The statute further requires that a contractual liability policy must insure 100 percent of an association's claims exposure under all of the association's service warranty contracts, unless numerous specified conditions are met.

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

#### **Florida Hurricane Catastrophe Fund Exemption for Medical Malpractice Insurance**

**Section 1.** Amends s. 215.555, F.S., to prevent the expiration on May 31, 2013, of the exemption of medical malpractice insurance premiums from Cat Fund emergency assessments.

#### **Proof of Motor Vehicle Insurance in Electronic Form**

**Sections 2 and 3.** Amends ss. 316.646 and 320.02, F.S., to authorize the uniform motor vehicle proof of insurance card to be issued in electronic form. The bill grants the DHSMV rulemaking authority to implement s. 316.646, F.S.

#### **Certificates of Authority Application Process for Foreign and Alien Insurers**

**Section 4.** Amends s. 624.413, F.S., to allow a foreign or alien insurer applying for a certificate of authority to submit a copy of the report of the most recent examination certified by the public official having supervision of insurance in its state of domicile or of entry into the United States that is up to 5 years old as of the date of the insurer's application. Under current law, the examination may be no greater than 3 years old.

#### **Scope of Limited Licensure for Motor Vehicle Rental Insurance**

**Section 5.** Amends s. 626.321, F.S., to include employees within the scope of limited licenses to transact motor vehicle rental insurance that are issued to a business entity that offers motor vehicle for rent or lease.

#### **Department of Financial Services Oversight of Mediators and Neutral Evaluators**

**Section 6.** Amends s. 626.601, F.S., to authorize the Department of Financial Services to inquire into alleged improper conduct of mediators and neutral evaluators and subsequently to initiate and conduct an investigation if reasonable cause exists of an insurance code violation.

**Section 23.** Amends s. 627.7015(4)(b), F.S., to delete the requirement that the Department of Financial Services adopt rules that qualify mediators for the property insurance mediation program who are eligible pursuant to the Florida Rules of Certified and Court Appointed Mediators, or that the DFS determines have appropriate education, training, or expertise to serve as a mediator. The bill retains current law that the DFS adopt rules specifying that mediators be qualified under the requirements of s. 627.745, F.S., but adds language specifying that s. 627.745, F.S., also governs the denial of application, suspension, revocation and other penalties for mediators in the program.

**Section 26.** Amends s. 627.7074, F.S., to require the Department of Financial Services to adopt rules for certifying, denying certification, suspending certification, and revoking certification as a neutral evaluator. The rules must be based on the neutral evaluator qualifications contained in ss. 627.7074, 627.706, and s. 627.745(4), F.S.

**Section 28.** Amends s. 627.745, F.S., to change the requirements for qualifying as a mediator under the motor vehicle insurance claim mediation program for personal injury claims of \$10,000 or less, or for property damage claims of any amount. A mediator must possess an active certification as a Florida Circuit Court Mediator or be an appointed department mediator as of July 1, 2013, who has conducted at least one mediation on behalf of the DFS within 4 years prior to that date. The bill eliminates the 40-hour mediation training program and test that all mediators under the program currently must complete in order to be approved as a mediator under the program.

The bill also requires the DFS to deny an application or revoke its approval of a mediator or neutral evaluator for any of the following:

- Lack of one or more of the qualifications required for approval or certification.
- Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain approval or certification.
- Demonstrated lack of fitness or trustworthiness to act as a mediator or neutral evaluator.
- Fraudulent or dishonest practices in the conduct of mediation or neutral evaluation or in conducting business in the financial services industry.
- Violation of any provision of the Florida Insurance Code; a lawful order or rule of the DFS; or aiding, instructing, or encouraging another party to commit such a violation.

The bill grants rulemaking authority to administer this requirement.

### **Repeal of Registration Requirement for Viatical Insurance Life Expectancy Providers**

**Sections 7 – 12.** Amends s. 626.99175, F.S., (Section 8 of the bill) to eliminate the requirement that viatical insurance life expectancy providers register with the Office of Insurance Regulation. Sections 626.9914, 626.9919, 626.992, 626.9925, and 626.99278, F.S., are also amended to conform to the elimination of the registration requirement.

### **Use of Hurricane Models in Rate Filings**

**Section 13.** Amends s. 627.062, F.S., to specify that the Office of Insurance Regulation, when reviewing a rate filing, must consider projections of hurricane losses that have been estimated using multiple models, an average of models, or a weighted average of models found acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628, F.S.<sup>30</sup>

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<sup>30</sup> Section 627.0628, F.S., tasks the Florida Commission on Hurricane Loss Projection Methodology with considering actuarial methods, principles, standards, models, or output ranges that have the potential for improving the accuracy or reliability of hurricane loss projections used in rate filing and probable maximum loss levels. Insurers are prohibited from

**Section 14.** Amends s. 627.0628, F.S., to increase from 60 days to 120 days the time an insurer is not required to use the newest version of a model approved by the Commission on Hurricane Loss Projection Methodology. This section also specifies that an insurer is not prohibited from averaging model results, output ranges, or using weighted averages in a rate filing.

### **Workers' Compensation Retrospective Rating Plans**

**Section 15.** Amends s. 627.072, F.S., to allow workers' compensation insurance retrospective rating plans that authorize the employer and insurer to negotiate and determine the retrospective rating factors used to calculate the employer's premium if the employer has exposure in more than one state and an estimated countrywide standard premium of \$1 million or more for workers' compensation coverage.

**Section 16** contains a technical, conforming change to s. 627.281, F.S.

### **Repeal of Financial Services Commission Report of Hurricane Risk**

**Section 17.** Repeals s. 627.3519, F.S., which requires the Financial Services Commission to annually provide the Legislature a report detailing the aggregate net probable maximum losses, financing options, and potential assessments of the Cat Fund and Citizens.

### **Notice of Non-Renewal for Residential Property Insurance Policies**

**Section 18.** Amends s. 627.4133, F.S., to reduce to 100 days the advance written notice of nonrenewal, cancellation, or termination an insurer must give the first-named insured of a personal lines or commercial residential property insurance policy when the nonrenewal, cancellation, or termination that:

- Is effective between June 1 and November 30, which under current law requires the insurer to provide written notice by June 1 or at least 100 days notice, whichever is greater.
- Is for a residential structure that has been insured by the insurer or the insurer's affiliate for at least 5 years, which under current law requires the insurer to provide at least 120 days written notice.

### **Insurer Sworn Statement Detailing Liability Coverage and Alleged Defenses**

**Section 19.** Amends s. 627.4137, F.S., to authorize the licensed company adjuster of an insurer that provides liability insurance coverage to provide the sworn statement required by current law setting forth the name of the insurer, the name of each insured, the limits of liability coverage, a statement of each policy defense the insurer reasonably believes is available, and a copy of the policy. Current law allows the sworn statement to be provided by the insurer's claims manager or superintendent, or a corporate officer of the insurer.

### **Electronic Delivery of Insurance Policy Documents**

**Section 20.** Amends s. 627.421(1), F.S., to authorize an insurer to allow a policyholder to elect electronic delivery of policy documents, rather than delivery by mail. The bill does not alter the requirement that the insurer provide the policy no later than 60 days after the effectuation of coverage.

### **Notice of Change in Policy Terms Delivered Separately from Notice of Renewal Premium**

**Section 21.** Amends s. 627.43131(2), F.S., to allow the Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium. If a separate notice is used, it must comply with the nonrenewal mailing time requirement for that particular line of business. Insurers must also provide or make available electronically to the insured's insurance agent the Notice of Change in Policy Terms before or at the same time the notice is given to the insured.

### **Insurer Choice to Offer \$500 or 1 Percent Mandatory Residential Property Insurance Non-Hurricane Deductible**

**Section 22.** Amends s. 627.701(7), F.S., to eliminate the requirement that an insurer must offer a \$500 deductible applicable to losses not caused by a hurricane prior to issuing a personal lines residential policy. Instead, effective January 1, 2014, the insurer must offer a \$500 deductible or a deductible equal to 1 percent of the policy dwelling limits (if the deductible is not less than \$500) for such losses. The section also deletes the requirement that each insurer notify the insured of the availability of a \$500 deductible for non-hurricane losses at least once every 3 years on a form approved by the OIR.

### **Conflict of Interest Standards for Residential Property Insurance Appraisal Umpires**

**Section 24.** Creates s. 627.70151, F.S., to provide conflict of interest standards for appraisers in residential property insurance claims. The insurer or policyholder may challenge impartiality and seek to disqualify the appraisal umpire only if:

- A familial relationship within the third degree exists between the umpire and a party or a representative of a party;
- The umpire previously represented any party or a representative of any party in a professional capacity in the same or a substantially related matter;
- The umpire has represented another person in a professional capacity on the same or a substantially related matter, including the claim, on the same property, or on an adjacent property and that other person's interests are materially adverse to the interests of any party; or
- The umpire has worked as an employer or employee of any party within the preceding 5 years.

### **Separate Sinkhole Deductible Expanded to All Property Insurance Policies**

**Section 25.** Amends s. 627.706, F.S., to expand the authorization of sinkhole deductibles of 1 percent, 2 percent, 5 percent, or 10 percent to all property insurance policies. Current law authorizes such deductibles only for residential property insurance.

### **Personal Injury Protection Medical Fee Schedule Clarification**

**Section 27.** Amends s. 627.736(5)(a), F.S., to clarify that the Personal Injury Protection medical fee schedule that is effective on March 1 of each year applies until March 1 of the following year.

### **Non-Resident Risk Retention and Purchasing Group Agents**

**Section 29.** Amends s. 627.952, F.S., to delete the requirement that non-resident licensed risk retention and purchasing group insurance agents, in order to place business through Florida eligible surplus lines carriers, must file and maintain a fidelity bond of at least \$50,000 in favor of the people of the State of Florida that is issued by an admitted surety company.

### **Allowing Financial Guaranty Insurance Corporations to Organize as Mutual Insurers**

**Sections 30 and 31.** Amends s. 927.972, F.S., to allow a financial guaranty insurance corporation to be organized and licensed as a mutual property and casualty insurer under the Florida Insurance Code. Current law only permits organization as a stock property and casualty insurer. The bill makes a conforming change to s. 627.971, F.S., revising the definition of “financial guaranty insurance corporation” to include a mutual insurer.

### **Statutory Deposit for Captive Insurers**

**Section 32.** Amends s. 628.901(13), F.S., to strike a reference to a satisfactory non-approved reinsurer in the definition of “qualifying reinsurer parent company” in part V of ch. 628, F.S., governing captive insurers.

### **Repeal of Captive Insurer Trust Deposit Requirement**

**Section 33.** Amends s. 628.909, F.S., to exempt captive insurers from the statutory trust deposit required under s. 624.411, F.S., as a condition of obtaining a certificate of authority to transact insurance.

### **Service Warranty Association Financial Requirements**

**Section 34.** Amends s. 634.406, F.S., to revise the requirement that if a service warranty association’s premiums to exceed the statutorily required 7-to-1 ratio of gross written premium to net assets, it must maintain net assets of \$750,000 and maintain a contractual liability insurance policy that reimburses the service warranty association for 100 percent of its claims liability and is approved by the office. Under the bill, the contractual liability policy may be issued by an affiliate of the warranty association. Additionally, the insurer issuing the policy

must either maintain at least a \$100 million policyholder surplus or maintain a policyholder surplus of at least \$200 million and issue a policy that complies with the provisions of subsection (3).<sup>31</sup>

**Effective Date**

**Section 35.** The bill is effective 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. Other Constitutional Issues:

Issuance of proof of motor vehicle insurance cards in electronic format implicates the “Plain View Doctrine” of the Fourth Amendment of the United States Constitution. The doctrine provides that when a person voluntarily grants access to an otherwise protected area, evidence discovered in the course of that search is admissible if the evidence discovered in the course of that search is in plain view; the officer discovers evidence, contraband, or a fruit or instrumentality of a crime; and the officer has probable cause to believe that the item is evidence, contraband, or a fruit or instrumentality of a crime.<sup>32</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

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<sup>31</sup> Subsection (3) of s. 634.406, F.S., states that a warranty association need not establish an unearned premium reserve if it purchases contractual liability insurance that covers 100 percent of its claims liability from an authorized insurer. The terms of the policy must contain the following (a) state the insurer will pay losses and unearned premium refunds directly to a person making a claim under the warranty association contract in the event the services warranty association does not do so; (b) the insurer must assume full responsibility for administering claims if the warranty association cannot do so; (c) 60 days written notice must be given to the OIR prior to policy cancellation; (4) the policy must insure all service warranty contracts issued while the policy was in effect whether or not the premium has been remitted to the insurer; (e) If the insurer is fulfilling the service warranty covered by the policy and the service warranty holder cancels the warranty, the insurer must fully refund unearned premium, subject to a cancellation fee under s. 634.414, F.S.; and (f) a warranty association may not use an unearned premium reserve and contractual liability insurance policy simultaneously. However, the warranty association may have contractual liability coverage on service warranties previously sold and sell new service warranties covered by the unearned premium reserve, and the converse. The warranty association must be able to distinguish how each individual service warranty is covered.

<sup>32</sup> See *Arizona v. Hicks*, 480 U.S. 321 (1987).

**B. Private Sector Impact:**

Representatives from the Department of Highway Safety and Motor Vehicles note that “according to the Department’s Annual Uniform Traffic Citation statistics, in 2011 there were 353,703 citations issued for no proof of motor vehicle insurance.” The use of electronic cards may reduce the number of such citations.

Preventing the expiration on May 31, 2013, of the exemption of medical malpractice insurance premiums from Cat Fund emergency assessments will benefit the purchasers of such premiums, who would otherwise be subject to assessment.

Replacing the mandatory offer of a \$500 deductible for non-hurricane losses on a personal lines residential policy with an option for the insurance company to offer either a \$500 or 1 percent deductible on such losses may result in customers no longer being able to purchase a policy with a \$500 deductible from many insurance carriers. Eliminating the requirement to offer a \$500 deductible may create efficiencies for some insurers who write in multiple states and generally do not offer such a deductible to their policyholders in other states.

Life expectancy providers will no longer be required to register with the Office and send the Office an actuarial audit every 3 years.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

None.

**B. Amendments:**

None.