

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 359 Insurance

**SPONSOR(S):** Commerce Committee; Insurance & Banking Subcommittee; Santiago

**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Lloyd	Cooper
2) Commerce Committee	20 Y, 0 N, As CS	Lloyd	Hamon

### SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

- **Motor Vehicle Salvage** – Current Florida law exceeds the federal standard for electronic signature security on motor vehicle odometer disclosures. Effective upon becoming law, the bill conforms the requirements to the federal requirements.
- **Workers' Compensation Payments to Injured Workers** – Lost wages may be paid to the injured worker by check, direct deposit to a financial institution or a prepaid card. The bill allows payment, upon authorization of the injured worker, by sending money electronically via an account with a state licensed money transmitter.
- **Civil Remedies Against Insurers** – Florida law requires a pre-suit notice to the Department of Financial Services (DFS) and the insurer 60 days prior to suing on a bad faith claim, but no particular insurer address is specified. The bill requires the insurer to designate an email address for delivery of the notice and mandates that DFS forward notices to that email. It starts the 60 days from the day the insurer receives the forwarded notice. Also, it extends the statute of limitation for 60 days, if the property appraisal process is invoked in the claim.
- **Insurer Trade Secrets** – Insurer trade secrets are protected by law (but are not confidential and exempt public records). The bill prohibits the publishing or dissemination of aggregate information containing protected trade secret information when the information can be extrapolated from the aggregate information.
- **Insurance Ratemaking and Form Filing Deadlines** – The bill extends the closure of the Office of Insurance Regulation's (OIR) review period for property and casualty rate and form filings to the close of the following business day if the deadline falls on a weekend or holiday.
- **Workers' Compensation Insurance Reporting Requirements** – Workers' compensation insurance carriers are required to record and report certain loss, expense, and claims experience to aid the OIR in making determinations concerning the adequacy of workers' compensation experience for ratemaking purposes. Currently, insurers in receivership stop reporting data because they are no longer members of the rating organization that handles the data reporting. The bill requires OIR to consider such data when considering and approving rates.
- **Residential Condominium Loss Assessments** – The bill clarifies that the condominium unit owner's property loss assessment coverage in effect one day before the date of an occurrence that resulted in a loss is the applicable coverage for the loss.
- **Motor Vehicle Insurance** – Currently, an insurer is only required to collect one month's premium at the inception of a motor vehicle insurance policy; prior to July 2019, this was two month's premium. The insurer is prohibited from cancelling the policy in the first 60 days, unless the initial payment fails. The bill reduces the cancellation prohibition from 60 days to 30 days.
- **Travel Insurance** – Travel insurance is a limited line of insurance. There are few requirements in the Florida Insurance Code specifically regulating travel insurance. Using the Travel Insurance Model Act, from the National Association of Insurance Commissioners, the bill expands the Florida Insurance Code to include a new chapter of statutes to regulate the transaction of travel insurance. The Model Act is generally consistent with Florida's current regulation of travel insurance, but there are some differences.

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

Except as otherwise specified in the bill, it is effective on July 1, 2020.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0359b.COM

**DATE:** 2/21/2020

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Motor Vehicles - Salvage Certificates of Title and Certificates of Destruction

The owner of a motor vehicle or mobile home that is considered to be salvage<sup>1</sup> is required to forward the title of the motor vehicle or mobile home to the Department of Highway Safety and Motor Vehicles (DHSMV) for processing within 72 hours after the motor vehicle or mobile home becomes salvage.<sup>2</sup> However, an insurance company that pays money as compensation for the total loss of a motor vehicle or mobile home must obtain the certificate of title for the motor vehicle or mobile home, make the required notification to the National Motor Vehicle Title Information System,<sup>3</sup> and, within 72 hours after receiving such certificate of title, forward such title to DHSMV for processing. The certificates of title may be forwarded to DHSMV via electronic means, the United States Postal Service, or other commercial delivery service (e.g., FedEx or UPS). The owner or insurance company may not dispose of a vehicle or mobile home that is a total loss before it obtains from DHSMV a salvage certificate of title or certificate of destruction.

To facilitate the issuance of salvage certificates of title and certificates of destruction when the insurer has been unable to obtain the title from the insured so that it may be surrendered to DHSMV, effective July 1, 2020:

- The insurer may receive a salvage certificate of title or certificate of destruction from DHSMV 30 days after paying the claim, if:
  - There is no electronic lien on the motor vehicle or mobile home; and
  - The insurer has:
    - Obtained a release of all liens;
    - Provided proof of payment of the total loss claim; and
    - Provided an affidavit<sup>4</sup> on letterhead signed by the insurance company or its authorized agent stating the attempts<sup>5</sup> that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail.<sup>6</sup>

The “Electronic Signature Act of 1996”<sup>7</sup> provides that unless otherwise provided by law, an electronic signature<sup>8</sup> may be used to sign a writing and has the same force and effect as a written signature.

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<sup>1</sup> “Salvage” is defined as a motor vehicle or mobile home that is a total loss. S. 319.30(1)(t), F.S. A motor vehicle is a “total loss:”

- When an insurance company pays the vehicle owner to replace the wrecked or damaged vehicle with one of like kind and quality or when an insurance company pays the owner upon the theft of the motor vehicle or mobile home; or
- When an uninsured motor vehicle or mobile home is wrecked or damaged and the cost, at the time of loss, of repairing or rebuilding the vehicle is 80 percent or more of the cost to the owner of replacing the wrecked or damaged motor vehicle or mobile home with one of like kind and quality.

S. 319.30(3)(a), F.S.

<sup>2</sup> S. 319.30(3)(b), F.S.

<sup>3</sup> The National Motor Vehicle Title Information System (NMVTIS) is an electronic system that provides consumers with valuable information about a vehicle's condition and history. NMVTIS allows consumers to find information on a vehicle's title, most recent odometer reading, brand history, and, in some cases, historical theft data. [https://www.vehiclehistory.gov/nmvtis\\_consumers.html](https://www.vehiclehistory.gov/nmvtis_consumers.html) (Last visited Dec. 18, 2019).

<sup>4</sup> The affidavit must include a request that the salvage certificate of title or certificate of destruction be issued in the insurance company's name due to payment of a total loss claim to the owner or lienholder. S. 319.30(3)(b)1.c., F.S.

<sup>5</sup> The attempts to contact the owner may be by written request delivered in person or by first-class mail with a certificate of mailing to the owner's or lienholder's last known address. S. 319.30(3)(b)1.c., F.S. If the owner or lienholder is notified of the request for title in person, the insurance company must provide an affidavit attesting to the in-person request for a certificate of title. S. 319.30(3)(b)1.c.2., F.S.

<sup>6</sup> The request to the owner or lienholder for the certificate of title must include a complete description of the motor vehicle or mobile home and the statement that a total loss claim has been paid on the motor vehicle or mobile home. S. 319.30(3)(b)1.c.3., F.S.

<sup>7</sup> Ch. 668, part I, F.S.

<sup>8</sup> Section 668.003(4), F.S., defines “electronic signature” as any letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.

In 2019, the Legislature passed HB 301, related to Insurance.<sup>9</sup> Among other things, the bill addressed the use of electronic signatures for automotive title transactions. It authorized an electronic signature consistent with ch. 668, F.S., relating to electronic commerce, to be used to satisfy any signature requirement related to the issuance of a salvage certificate of title or certificate of destruction when this new process becomes effective. However, it required an electronic signature on an odometer disclosure to meet specific security requirements.

For an odometer disclosure related to a certificate of destruction, the electronic signature must meet or exceed Level 2 requirements for Identity Assurance Level, Authenticator Assurance Level, and Federation Assurance Level, as described in the National Institute of Standards and Technology Special Publication 800-63-3, as of December 1, 2017. For a salvage certificate of title, the electronic signature must meet or exceed Level 3 requirements of this standard. While there are several differences between Level 2 and Level 3 requirements that affect the relative security of the electronic signature, one difference limits the use of electronic signatures when executing electronic signatures for odometer disclosures related to salvage certificates of title. Level 3 requires in person identity proofing, while Level 2 allows remote or in person identity proofing.

The security levels were chosen based on ongoing federal rule development that governs odometer disclosures. The draft federal regulations included the use of Level 2 requirements in certain instances and Level 3 requirements in others. HB 301 mirrored this structure; however, the final federal regulation was published with an unexpected change after the passage of HB 301. Only Level 2 requirements were implemented. So, the Level 3 requirement of s. 319.30(3)(d), F.S., applicable to odometer disclosures for obtaining salvage certificates of title exceed the federal standard.<sup>10</sup>

#### *Effect of the Bill*

Effective upon becoming law, the bill allows electronic signatures on odometer disclosures related to salvage certificates of title to use Level 2 security requirements, consistent with the applicable federal standard. This applies the same security requirements to electronic signatures on odometer disclosures for both certificates of destruction and salvage certificates of title and allows certificate applicants to electronically sign odometer disclosures remotely in both instances, rather than remotely when applying for a certificate of destruction, but in person only for salvage certificates of title.

#### **Workers' Compensation – Payments to Injured Workers**

When a compensable work-related injury occurs, the employer and their insurance carrier may be liable for payment of lost wages to the injured worker. Payment for lost wages is interchangeably referred to as indemnity benefits or compensation. Currently, indemnity benefits, including penalties associated with incorrect or untimely payment of indemnity, may be paid to the injured worker by check or, upon authorization of the injured worker, deposited into a financial institution or to a prepaid card.<sup>11,12</sup>

Carriers are required to keep records of all payments made, and the Department of Financial Services (DFS) audits employers and carriers for appropriate payment of indemnity benefits.

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<sup>9</sup> Ch. 2019-108, Laws of Fla.

<sup>10</sup> 84 Fed. Reg. 52664, at 52665 (Oct. 2, 2019).

<sup>11</sup> S. 440.12(1)(a), F.S. For the purposes of workers' compensation indemnity payments, "financial institution" means a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

<sup>12</sup> Pursuant to s. 440.12(1)(b), F.S., a carrier may use a prepaid card to deliver the payment of compensation to an employee if the employee is: 1. provided with at least one means of accessing his or her entire compensation payment once per week without incurring fees; 2. provided with the ability to make point-of-sale purchases without incurring fees from the financial institution issuing the prepaid card; and 3. provided with the terms and conditions of the prepaid card program, including a description of any fees that may be assessed. The obligation to pay indemnity benefits is satisfied when it is directly deposited compensation onto the prepaid card; further, it is considered paid on the date the funds become available for withdrawal by the injured worker. S. 440.20(1)(a), F.S.

## *Effect of the Bill*

The bill allows employers and their carriers, upon authorization of the injured worker, to pay indemnity benefits, including associated monetary penalties, by sending money electronically to the injured worker via her or his account with a money transmitter. Indemnity and penalties paid via money transmitter accounts is considered paid on the date the funds become available to the injured worker for withdrawal.

The money transmitter must be licensed under ch. 560, part II, F.S. A money transmitter is a type of money services business licensed and regulated by the Florida Office of Financial Regulation (OFR).<sup>13</sup> As of January 21, 2020, there are 213 money transmitters licensed to operate in Florida (at 49,664 locations), 26 of these money transmitters are dual licensed as check cashers.

## **Civil Remedies against Insurers**

### Pre-Suit Notice and Tolling of the Statute of Limitation Following Issuance of Pre-Suit Notice

In 1982 the Legislature enacted s. 624.155, F.S., which provides that any person may bring a claim for "bad faith" against an insurer for "not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests,"<sup>14</sup> the same as the common law standard.<sup>15</sup> In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer and DFS 60 days' written notice of the alleged violation.<sup>16</sup> The 60-day period begins on the date the notice is filed. While the notice is required to be provided to both DFS and the insurer,<sup>17</sup> the statute is silent on what constitutes filing and whether the filing date is the date the notice is received by DFS or the date it was received by the insurer.<sup>18</sup>

The notice must include:

- The statutory provision which the insurer allegedly violated;
- The facts and circumstances giving rise to the violation;
- The name of any individual involved in the violation;
- Reference to specific policy language that is relevant to the violation, unless the person bringing the civil action is a third party claimant; and

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<sup>13</sup> A money services business must have a net worth of \$100,000. If the licensee is operating in more than one location, the net worth requirement is increased by \$10,000, per location, up to a maximum of \$2,000,000. Licensees are required to obtain annual financial reports for submission to OFR. Additionally, prior to licensing, a licensee must provide a surety bond to OFR in amount between \$50,000 and \$2,000,000, as specified in rule. In the alternative, the licensee may deposit cash, securities, or alternative security devices as provided by rule with a federally insured financial institution that are pledged to OFR. The surety bond or collateral deposit must remain in place for five years after the licensee ceases business operations in this state. S. 560.209, F.S. Currently, a money transmitter must calculate their surety bond or collateral deposit based on the number of active branches operated and combined monetary value of the volume of money transmission and payment instruments sold. If the money services business operates 250 or more branches, the required bond is at least \$2,000,000. If they are operating fewer than 250 branches, then the bond is equal to two percent of the combined value of the previous year's money transmissions and payment instruments sold, rounded up to the next \$50,000 increment. Form OFR-560-07 (eff. Oct. 18, 2009), R. 69V-560.1012, F.A.C. License applicant's surety bonds are determined based on the monetary value of projected first-year business. Form OFR-560-01 (eff. Jan. 2, 2014), R. 69V-560.1012, F.A.C. Bonds are then adjusted annually based on actual operations.

<sup>14</sup> S. 624.155(1)(b), F.S.

<sup>15</sup> Fla. Standard Jury Instr. 404.4 (Civil).

<sup>16</sup> S. 624.155(3)(a), F.S.

<sup>17</sup> Filing of the notice with the correct insurer has been held to be a condition precedent to maintaining a bad faith suit against the insurer. *Lopez v. GEICO Casualty Co.*, 968 F.Supp. 2d 1202, at 1209 (S.D. Fla. 2013). In *Lopez*, the plaintiff filed the notice with Government Employees Insurance Company, a similarly named sister company instead of the actual insurer, GEICO Casualty Company. Because the statute of limitation had run out following the flawed delivery of the notice, the *Lopez* case was dismissed with prejudice.

<sup>18</sup> Filing of the notice with DFS has been held to establish the date that starts the 60-day cure period. *Harper v. GEICO Gen. Ins. Co.*, 272 So. 3d 448 (Fla. 2nd DCA 2019). In *Harper*, the plaintiff filed the notice with DFS electronically on Dec. 19, 2013, and mailed the notice to GEICO with it being received by GEICO on Dec. 26, 2013. When GEICO later paid the claim on Feb. 21, 2014, the payment was 65 days from the date DFS received the notice, but 57 days from the date GEICO received the notice. The trial court held that GEICO paid the claim within the 60-day cure period. On appeal, the Second DCA held that the 60-day cure period ran from the date DFS received the notice. The result allowed the plaintiff to pursue a bad faith claim against GEICO for untimely payment of the claim.

- A statement that the notice is given to perfect the right to pursue a civil remedy.<sup>19</sup>

The statute of limitation for the filing of a lawsuit under s. 624.155, F.S., is tolled for 65 days following the issuance of the notice described above. This extends the claimant's right to sue the insurer until after the conclusion of the 60-day period following the notice within which the insurer may respond to the notice by addressing the alleged violation.

In 2019, the Legislature revised s. 624.155, F.S., to prohibit the issuance of the notice when the insurer invokes the appraisal process. However, the appraisal process, which can be invoked for the first time following receipt of the pre-suit notice,<sup>20</sup> is unlikely to be completed within the 60-day cure period or the 65-day tolling of the applicable statute of limitations. If the appraisal process extends beyond the date the statute of limitation expires following the current tolling period, then the right to sue the insurer in civil court is lost.

### Property Appraisal Process

Insurance companies often include an appraisal clause in property insurance policies.<sup>21</sup> The appraisal clause provides a procedure to resolve disputes between the policyholder and the insurer concerning the value of a covered loss. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process *generally* 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 attempt to reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, 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 appraisers. A decision agreed to by any two of the three will set the amount of the loss.
- The insurance company or the policyholder may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.<sup>22</sup>

### *Effect of the Bill*

The bill provides that DFS must forward the required pre-suit notice via email to the insurer. It also requires the insurer to designate an email address for the purposes of receiving such notices forwarded by DFS. Additionally, the bill clarifies that the 60-day cure period runs from the date the insurer receives the notice from DFS at the designated email address, rather than following "filing," which is not defined. Since the notices will no longer be mailed and emailing them is a nearly instantaneous process, the bill changes the statute of limitation tolling period from 65 days to 60 days, thus removing the 5 days allotted for physical mailing through the postal service.

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<sup>19</sup> S. 624.155(3)(b), F.S.

<sup>20</sup> Invoking the appraisal process along with timely payment, if required, can be used by the insurer to cure its claims handling violations and prevent a bad faith claim. See *Effect of the Bill*, p. 5.

<sup>21</sup> *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So. 3d 578 (Fla. 3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America*, 540 So. 2d 162 (Fla. 3d DCA 1989), contain examples of appraisal clauses.

<sup>22</sup> See s. 627.70151, F.S.

The bill adds an additional tolling period to s. 624.155, F.S. It tolls the statute of limitation for 60 days following the date appraisal is invoked in a residential property insurance claim. In combination with the 60-day tolling period resulting from the filing of the notice, the statute of limitation could be tolled for up to 120 days to allow the insurer the 60-day cure period and to allow the parties to pursue the appraisal process prior to expiration of the statute of limitation.

## **Insurer Trade Secrets**

### Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution.<sup>23</sup> The general law must state with specificity the public necessity justifying the exemption<sup>24</sup> and must be no more broad than necessary to accomplish its purpose.<sup>25</sup>

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>26</sup> (Act) provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In the same manner as the Florida Constitution requires a statement of public necessity and limits the breadth of a public records exemption, an exemption under the Act may be no more broad than necessary to meet one of the following purposes:<sup>27</sup>

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.

The Act also requires the automatic repeal of a public record exemption on October 2 of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>28</sup> Specified questions must be considered by the Legislature during the review process.<sup>29</sup>

### Trade Secrets

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt<sup>30</sup> from public record requirements. Some exemptions only protect trade secrets, while others protect "proprietary business information" and define that term to specifically include trade

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<sup>23</sup> FLA. CONST. art. I, s. 24(c).

<sup>24</sup> This portion of a public record exemption is commonly referred to as a "public necessity statement."

<sup>25</sup> FLA. CONST. art. I, s. 24(c).

<sup>26</sup> S. 119.15, F.S.

<sup>27</sup> S. 119.15(6)(b), F.S.

<sup>28</sup> S. 119.15(3), F.S.

<sup>29</sup> Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>30</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

secrets. Generally, trade secret<sup>31</sup> information received by the Office of Insurance Regulation (OIR) or DFS is not protected as confidential and exempt public record information,<sup>32</sup> but the insurer is given the opportunity to receive notice of a public records request and a period of time to respond so that the insurer can move to protect the trade secret through an action in circuit court, if they so desire.<sup>33</sup> When an insurer submits trade secret information under the Florida Insurance Code<sup>34</sup> or OIR rules, the insurer may file a Notice of Trade Secret and mark and segregate the trade secret information provided to OIR.<sup>35</sup> This protection relates to public records requests from the public that would result in the publication of materials covered under a Notice of Trade Secret. It does not expressly extend to publication of aggregate information such as OIR's Annual Report or other OIR or DFS publications or reports that are not done in response to a public records request.

#### *Effect of the Bill*

The bill limits the release of aggregate information by OIR and DFS if protected trade secret information can be extrapolated from the aggregate information that OIR or DFS would otherwise release. This could occur where aggregate information is reported on a line of insurance in which a small number of companies participate such that one or more of the participating companies could back-out their own data from the reported aggregate information and discern the trade secret information of their competitor. The bill does not create a new public records exception, rather, it limits what OIR and DFS may do with public record information that is protected as a trade secret, but is not confidential and exempt public record information.

### **Extension of Deadlines in Insurance Rate and Form Filings**

Florida law provides certain requirements regarding OIR's review and approval of property and casualty insurance rate and form filings, including timeframes within which OIR must review these filings.<sup>36</sup> However, the law is silent on the applicable deadline should the closure of the review period fall on a weekend or a holiday.

#### *Effect of the Bill*

The bill establishes that if the last day of the timeframe for OIR to review and approve or disapprove a rate filing for property, casualty, or surety insurance, including motor vehicle insurance, or to review an insurer's form filing, falls on a weekend or holiday recognized by Florida governmental agencies or branches, then period shall be extended until the conclusion of the next business day.

### **Workers' Compensation Insurance Reporting Requirements**

#### *Background*

Workers' compensation insurance carriers are required to record and report certain loss, expense, and claims experience to aid OIR in making determinations concerning the adequacy of workers'

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<sup>31</sup> "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

S. 626.002(4), F.S.

<sup>32</sup> Trade secret information contained in an insurance administrator's records that is obtained by OIR is confidential and exempt. S. 626.884(2), F.S.,

<sup>33</sup> S. 624.4213(2), F.S.

<sup>34</sup> The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

<sup>35</sup> S. 624.4213(1), F.S.

<sup>36</sup> S. 627.062, F.S. (which controls rating requirements for property and casualty insurance in general), s. 627.0651, F.S. (which controls rating requirements for motor vehicle insurance), and s. 627.410 (which controls form filings in general). While the statutes differentiate between issuance of a notice of intent to approve or disapprove a property and casualty rate filing, other than a motor vehicle rate filing, and simply approving or disapproving a motor vehicle rate filing following review, the practical effect of the review process is the same.

compensation experience for ratemaking purposes.<sup>37</sup> Additionally, carriers are required to provide the following information annually on both Florida experience and nationwide experience separately:

- Payrolls by classification;
- Manual premiums by classification;
- Standard premiums by classification;
- Losses by classification and injury type; and
- Expenses.

Carriers satisfy these requirements by providing their data to the National Council on Compensation Insurance, Inc. (NCCI). When a carrier goes into receivership due to insolvency, they cease reporting to NCCI and, therefore, their data is no longer reported to OIR.

#### *Effect of the Bill*

The bill requires OIR to take loss data associated with insolvent insurers into account when considering and approving workers' compensation rates.

### **Residential Condominium Loss Assessments**

Loss assessment coverage is insurance coverage for condominium unit owners that provides protection for situations where the owner of a condominium unit, as the owner of shared property, is held financially responsible for:

- Deductibles owed when a claim is made under a condominium association's property insurance policy;
- Damage that occurs to the condominium building or the common areas of a condominium property; or
- Injuries that occur in the common areas of a condominium property.<sup>38</sup>

Florida law requires that property insurance policies held by condominium unit owners include a minimum property loss assessment coverage of \$2,000 for all assessments made because of the same direct loss to the condominium property.<sup>39</sup> The law further establishes that the maximum amount of any unit owner's coverage that can be assessed for any loss is an amount equal to the unit owner's loss assessment coverage limit in effect one day before the date of an occurrence, but it does not specify exactly what occurrence is referenced.<sup>40</sup>

#### *Effect of the Bill*

The bill clarifies that the amount of loss assessment coverage that can be assessed against a unit owner is based upon the coverage limit for loss assessment that was in effect in the unit owner's policy one day before the date of an occurrence that resulted in a loss for which the unit owner is being assessed. Further, the bill establishes that the coverage in place at that time applies regardless of the date on which the condominium association assesses the unit owner.

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<sup>37</sup> S. 627.914, F.S. *See also* R. 690-189.0055, F.A.C.

<sup>38</sup> The Balance, *Loss Assessment Explained for Condo Insurance*, <https://www.thebalance.com/loss-assessment-explained-for-condo-insurance-4060435> (last visited Jan. 8, 2020).

<sup>39</sup> S. 627.714(1), F.S.

<sup>40</sup> S. 627.714(2), F.S.

## Motor Vehicle Insurance – Prepayment of Premium on Initial Policy Purchase and Cancellation

### *Background*

Law requires that a policy<sup>41</sup> of private passenger motor vehicle insurance or a binder<sup>42</sup> for such a policy may be initially issued only if, before the effective date of such binder or policy, the insurer or agent has collected from the insured an amount equal to one month's premium.<sup>43</sup> An insurer, agent, or premium finance company may not, directly or indirectly, take any action resulting in the insured having paid from the insured's own funds an amount less than the required one month premium. This applies without regard to whether the premium is financed by a premium finance company or is paid pursuant to a periodic payment plan of an insurer or an insurance agent. The statute also provides various circumstances where this would not apply including policy renewal, coverage to active duty or former military personnel, and payments by automatic payroll deduction or electronic funds transfer. The insurer may not cancel the policy during the first 60 days, unless the reason for the cancellation is the issuance of a check for the premium that is dishonored for any reason or any other type of premium payment that was subsequently determined to be rejected or invalid.<sup>44</sup>

Prior to July 2019, insurers were required to collect two months of premium prior to issuing a private passenger motor vehicle policy. This was reduced to one month's premium by CS/CS/CS HB 301 (2019).<sup>45</sup> However, the cancellation limitation was not reduced at the same time. Now an insurer is only required to collect one month's premium, but cannot cancel the policy for 60 days.

### *Effect of the Bill*

The bill reduces the limitation on insurer cancellation from 60 days to 30 days consistent with the 2019 law change that reduced the required collection of initial premium from two month's premium to one month's premium.

## Travel Insurance

### *Background*

The Florida Insurance Code<sup>46</sup> generally regulates travel insurance. OIR currently reviews policies relating to travel insurance, pursuant to s. 626.321 (1)(c), F.S. DFS is responsible for licensing of individuals and entities that sell travel insurance.<sup>47</sup>

### TRAVEL INSURANCE RATES AND FORMS

Policies and certificates of travel insurance may provide coverage for risks incidental to travel, planned travel, or accommodations while traveling, including, but not limited to, accidental death and dismemberment of a traveler; trip or event cancellation, interruption, or delay; loss of or damage to personal effects or travel documents; damages to travel accommodations; baggage delay; emergency medical travel or evacuation of a traveler; or medical, surgical, and hospital expenses related to an illness or emergency of a traveler. Such policy or certificate may be issued for longer terms, but each policy or certificate must be limited to coverage for travel or use of accommodations of no longer than 90 days.<sup>48</sup>

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<sup>41</sup> Section 627.7295(1)(a), F.S., defines "policy" as a motor vehicle insurance policy that provides personal injury protection coverage, property damage liability coverage, or both.

<sup>42</sup> Section 627.7295(1)(b), F.S., defines "binder" as a binder that provides motor vehicle personal injury protection and property damage liability coverage.

<sup>43</sup> S. 627.7295(7), F.S.

<sup>44</sup> S. 627.7295(4), F.S.

<sup>45</sup> Chapter 2019-108, F.S.

<sup>46</sup> The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

<sup>47</sup> S. 626.321, F.S. A travel insurance license is a limited license.

<sup>48</sup> S. 626.321(1)(c), F.S. A policy or certificate providing coverage for air ambulatory services only may exceed the 90 day limit on travel/accommodation (due to illness or injury, and unforeseeable length of time may pass before return home by air ambulance).

A group policy for travel insurance is exempt from filing rates and forms.<sup>49</sup> Currently, a travel insurance policy that is sold directly from an insurance company to a consumer is required to make annual rate filings.<sup>50</sup> Regardless of whether a travel insurance rate is required to be filed, it may not be excessive, inadequate, or unfairly discriminatory.<sup>51</sup>

#### TRAVEL INSURANCE AGENT LICENSING

A travel insurance agent or agency license may be issued to only:<sup>52</sup>

- A full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency and may authorize the sale of such ticket policies only in connection with the sale of transportation tickets, or to the full-time salaried employee of such an agent. No such policy shall be for a duration of more than 48 hours or for the duration of a specified one-way trip or round trip.
- An individual that is:
  - The developer of a timeshare plan that is the subject of an approved public offering statement under chapter 721, F.S.;
  - A managing entity operating a timeshare plan approved under chapter 721, F.S.;
  - A seller of travel as defined in chapter 559, F.S.;
  - A seller of travel as defined in chapter 559, F.S.; or
  - A subsidiary or affiliate of any of the entities described above.
- The full-time salaried employee of a licensed general lines agent or to a business entity that offers motor vehicles for rent or lease if insurance sales activities authorized by the license are in connection with and incidental to the rental or lease of a motor vehicle.
  - A license issued to a business entity that offers motor vehicles for rent or lease encompasses each office, branch office, employee, authorized representative located at a designated branch, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to this paragraph.
  - The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee must notify the department within 30 days after closing or terminating an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.
  - A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees.

The travel insurance agency license is only issued to the business entity. Each of its branches must be appointed by the insurers the agency and branch represents and the appointments must be filed with DFS. Appointments are subject to an original appointment filing fee and a renewal fee every 24 months.<sup>53</sup>

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<sup>49</sup> Travel insurance is not subject to rate requirements listed in s. 627.062 (2)(a), F.S., or s. 627.062 (2)(f), F.S., as long as it is "issued as a master group policy with a situs in another state where each certificate holder pays less than \$30 in premium for each covered trip and where the insurer has written less than \$1 million in annual written premiums in the travel insurance product in this state during the most recent calendar year." S. 627.062 (3)(d)1.n., F.S.

<sup>50</sup> Each rating organization filing rates for, and each insurer writing, any line of property or casualty insurance is required to complete annual filings. s. 627.0645 (1), F.S.

<sup>51</sup> S. 627.062(1), F.S.

<sup>52</sup> S. 626.321(1)(c), F.S.

<sup>53</sup> S. 626.501(9), F.S. *See also* s. 626.381, F.S.

## TRAVEL INSURANCE MODEL ACT

In 2016, the National Conference of Insurance Legislators began considering the adoption of a Travel Insurance Model Act. The final version of this Travel Insurance Model Act was approved on July 15, 2017. NAIC used this model act to create a model of their own. At least 42 states have implemented portions of the NAIC Model Act.<sup>54</sup>

### *Effect of the Bill*

The bill incorporates NAIC's Travel Insurance Model Act, MDL-635,<sup>55</sup> into the Florida Insurance Code.

The bill creates a new chapter of F.S. entitled "Travel Insurance." The chapter applies to:

- Travel insurance covering any resident of Florida that is sold, solicited, negotiated, or offered in this state, as well as policies and certificates that are delivered or issued in this state; and
- Policies and certificates that are delivered or issued for delivery in Florida.

Specific provisions outlined in this chapter supersede any general provisions otherwise applicable to travel insurance. This chapter does not apply to:

- Major medical plans that provide medical protection for travelers with trips lasting longer than 6 months; and
- Travel assistance services and cancellation waivers.

A person offering, soliciting, or negotiating travel insurance or protection plans may not do so using an opt-out option that requires a consumer to take an affirmative action when purchasing a trip. Any person offering travel insurance is subject to the Unfair Insurance Trade Practices Act (UITPA),<sup>56</sup> unless otherwise specified. If a conflict arises between UITPA and this chapter, the provisions of this chapter will control. If a destination jurisdiction requires travel insurance coverage, it is not an unfair trade practice to require the consumer to purchase the required coverage through the travel retailer or the limited lines insurance producer supplying the trip or package. A consumer also has the option to obtain and provide proof of coverage from another source, provided it meets the jurisdiction's requirements and is purchased prior to departure. It is not an unfair trade practice to market travel insurance directly to a consumer online, as long as the web page provides an accurate summary or short description of the coverage and the consumer has access to the full policy provisions through electronic means. Conversely, a person commits an unfair trade practice under UITPA if he or she offers or sells a policy that could never result in payment of any claims or markets blanket travel insurance coverage as free.

A person may act or represent himself or herself as a travel administrator<sup>57</sup> if he or she is a licensed and appointed property and casualty insurance producer in Florida, is appointed as a managing agent in Florida, or holds a valid third party administrator license. A travel administrator and its employees are exempt from the licensing requirements listed in chapter 626, part VI, F.S. An insurer has the responsibility of ensuring a travel administrator acts in accordance with this chapter and maintains books and records, which must be available to DFS upon request.

The bill requires travel insurance documents to be provided to a consumer before purchase. Fulfillment materials must be sent to the purchaser of a travel protection plan after purchase, confirming the purchase and outlining the details of the plan. Fulfillment materials must include whether the travel insurance is primary or secondary to other applicable coverage and whether the policy has preexisting

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<sup>54</sup> National Association of Insurance Commissioners, *Travel Insurance Model Act* (4th quarter, 2018), <https://www.naic.org/store/free/MDL-632.pdf> (last visited Jan. 25, 2020).

<sup>55</sup> *Id.*

<sup>56</sup> Chapter 626, Part IX, F.S.

<sup>57</sup> A travel administrator is a person who directly or indirectly underwrites policies for, collects charges, collateral, or premiums from, or adjusts or settles claims on residents of this state, in connection with travel insurance.

condition exclusions. A policyholder or certificate holder can cancel a policy or certificate for a full refund up to 15 days after date of delivery, if delivered by postal mail, and 10 days after date of delivery, if delivered by means other than postal mail.

For purposes of rates and forms, the bill classifies travel insurance under the inland marine line of insurance. Coverage for sickness, accident, disability, or death during travel may be classified and filed under the accident and health or the inland marine line of insurance. Travel insurance may be in the form of an individual, group or blanket policy. A group or blanket policy is classified as commercial inland marine insurance under s. 627.021(2)(d), F.S. A policy not issued to a commercial entity and primarily used for personal, family, or household purposes is classified as personal inland marine insurance and is not subject to the rate requirements under s. 627.062, F.S.

The bill would require an insurer to pay a premium tax, as required under s. 624.509, F.S., on travel insurance premiums paid by the primary policyholder or certificate holder and by the blanket policyholder.<sup>58</sup> The premium paid does not include amounts received for travel assistance services or cancellation waivers.

#### TRAVEL INSURANCE AGENT LICENSING

The bill revises current travel insurance agent and agency licensing. The following individuals and entities will require licensing and appointment to transact travel insurance:

- A limited lines travel insurance producer, which is:
  - A licensed administrator or third-party administrator;
  - A licensed insurance producer, including a limited lines producer; or
  - A travel administrator.
- A general lines or personal lines agent.

The following individual or entity must be registered and appointed (under a licensed limited lines travel insurance producer) to transact travel insurance:

- Travel retailer, which is a business entity that:
  - Makes, arranges, or offers planned travel.
  - Disseminates travel insurance, under conditions specified in the bill, as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

A licensed limited lines travel insurance producer must designate one employee responsible for compliance issues applicable to the licensee and the registered travel retailers appointed under the licensee. The licensed producer must provide for the training of all employees and appointees. The licensed producer is responsible for all acts of its appointees and must ensure compliance with the law.

#### RULEMAKING

The bill gives OIR rulemaking authority to administer the chapter.

#### B. SECTION DIRECTORY:

**Section 1:** Effective upon becoming law, amends s. 319.30, F.S., relating to definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.

**Section 2:** Amends s. 440.12, F.S., relating to time for commencement and limits on weekly rate of compensation.

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<sup>58</sup> This does not appear to be a new tax. Travel insurance is already subject to premium tax under the Florida Insurance Code. This provision appears to be included to clarify the applicability of premium tax requirements to the newly created chapter 647, F.S.

- Section 3:** Amends s. 440.20, F.S., relating to time for payment of compensation and medical bills; penalties for late payment.
- Section 4:** Amends s. 624.01, F.S., relating to relating to short title.
- Section 5:** Amends s. 624.155, F.S., relating to civil remedy.
- Section 6:** Amends s. 624.307, F.S., relating to general powers; duties.
- Section 7:** Amends s. 624.315, F.S., relating to department; annual report.
- Section 8:** Amends s. 624.422, F.S., relating to service of process; appointment of Chief Financial Officer as process agent.
- Section 9.** Amending s. 626.321, F.S., relating to limited licenses.
- Section 10:** Amends s. 627.062, F.S., relating to rate standards.
- Section 11:** Amends s. 627.072, F.S., relating to making and use of rates.
- Section 12:** Amends s. 627.0651, F.S., relating to making and use of rates for motor vehicle insurance.
- Section 13:** Amends s. 627.410, F.S., relating to filing, approval of forms.
- Section 14:** Amends s. 627.714, F.S., relating to residential condominium unit owner coverage; loss assessment coverage required.
- Section 15.** Amending s. 627.7295, F.S., relating to motor vehicle insurance contracts.
- Section 16.** Providing direction to the Division of Law Revision.
- Section 17.** Creating s. 647.01, F.S., relating to purpose and scope.
- Section 18.** Creating s. 647.02, F.S., relating to definitions.
- Section 19.** Creating s. 647.03, F.S., relating to premium tax.
- Section 20.** Creating s. 647.04, F.S., relating to travel protection plans.
- Section 21.** Creating s. 647.05, F.S., relating to sales practices.
- Section 22.** Creating s. 647.06, F.S., relating to travel administrators.
- Section 23.** Creating s. 647.07, F.S., relating to travel insurance policy.
- Section 24.** Creating s. 647.08, F.S., relating to rulemaking authority.
- Section 25:** Except as otherwise expressly provided by the bill, provides an effective date of July 1, 2020.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The portion of the bill requiring DFS to forward the pre-suit civil remedy notice to a specified insurer email address may require a change to DFS' civil remedy notice web page. DFS reports that this provision will have a fiscal impact of \$33,000 and can be funded from existing resources.<sup>59</sup>

OIR has informed Commerce Committee staff that the portion of the bill requiring OIR to consider data related to insolvent workers' compensation insurers in ratemaking has no fiscal impact.<sup>60</sup>

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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<sup>59</sup> Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, DFS, Re: HB 359 – fiscal impact of CRN emailing by DFS (Feb. 21, 2020).

<sup>60</sup> Email from Grant Phillips, Legislative Analyst, OIR, Re: 627.072 (Feb. 19, 2020).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None known.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires OIR to adopt rules to administer the travel insurance portions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Insurance & Banking Subcommittee considered a proposed committee substitute, adopted two amendments, and reported the bill favorably as a committee substitute. The following changes were made to the bill:

- **Deletions**

The bill no longer:

- Requires a triennial Hurricane Catastrophe Fund premium formula audit.
- Tolls the statute of limitation for filing a third party bad faith claim following the Governor declaring a state of emergency due to fire, wind, or flood event.

- **Additions:**

- Allows an employee who is receiving workers' compensation payments to authorize a carrier to transmit compensation payments to a money transmitter, and specifies that the carrier's transmission of compensation to the employee's money transmitter account satisfies the carrier's obligation to pay compensation directly to the employee when the payment becomes available for withdrawal.

- **Revisions:**

- Protection of insurer trade secrets – eliminates terms inconsistent with current statute and to avoid unintentional effects, such as creating a de facto public records exemption or allowing insurer preview and court review of DFS or OIR annual reports and publications;
- Limitation on homeowners' insurance rate denials – substitutes correct terminology to avoid confusion over use of multiple models to establish a weighted or straight average to establish a modeling indication; and

- Use of secondary authority – prohibits court consideration of statements of liability insurance law by secondary legal authorities that conflict with law, rather than those by the American Law Institute’s Restatement of the Law, Liability Insurance.

On February 20, 2020, the Commerce Committee considered the bill, adopted two amendments and reported the bill favorably as a committee substitute. The amendments made the following changes to the bill:

- **Deletions**

The bill no longer:

- Hurricane Modeling – Allows the use of weighted or straight averages of hurricane loss projection models in homeowners’ insurance ratemaking.
- Use of Secondary Legal Authority – Prohibits the use of statements of the law on liability insurance provided by secondary legal authorities if they conflict with the U.S. or Florida Constitution or Florida statute, case law, or common law.
- Time for Filing Property Insurance Claims – Reduces the time limitation for filing certain property insurance claims, including supplemental claims and reopened claims.
- Property Insurance Mediation Notice Requirements – Authorizes an insurer to deliver the required notification of right to mediate a property insurance claim at the time a policyholder disputes a claim.

- **Additions:**

- Motor Vehicle Insurance – Reduces the limitation on policy cancellation of an initial policy from 60 days to 30 days to conform to a 2019 legislative revision requiring prepayment of only one month’s premium, rather than two month’s premium.
- Travel Insurance – Incorporates the Travel Insurance Model Act, by the National Association of Insurance Commissioners, into the Florida Insurance Code.
- Workers’ Compensation Insurance Reporting Requirements – Requires OIR to take loss data associated with insolvent insurers into account when considering and approving workers’ compensation rates.

- **Revisions:**

- Civil Remedies Against Insurers –
  - Requires DFS to forward the required pre-suit civil remedy notice related to bad faith claims to the insurer by email, rather than requiring the person filing the notice to send it to the insurer directly (using a statutorily designated address) and requires the insurer to designate an email address for this purpose.
  - Reduces the statute of limitation tolling period from 65 days to 60 days because of the replacement of the required physical mailing of the civil remedy notice with an automated delivery of it by email from DFS.
- Effective date – Provides an effective date of upon becoming law for the section of the bill affecting motor vehicle salvage (Sec. 1); the remainder of the bill is effective on July 1, 2020.

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