

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 895 Insurance

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

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Lloyd	Cooper
2) Appropriations Committee	28 Y, 0 N, As CS	Helpling	Pridgeon
3) Commerce Committee			

### SUMMARY ANALYSIS

**Hurricane Catastrophe Fund** – The Florida Hurricane Catastrophe Fund, which is a state created tax-exempt trust fund that acts as a reinsurer to the Florida property insurance market, reimburses insurers for collateral protection insurance insurers must place on indebted properties when the owner’s insurance policy has lapsed. This “force placed” insurance can differ in value from the value of the insurance the owner had purchased. The bill allows insurers to recover the value of the “force placed” insurance, as an alternative to the last reported value associated with the property owner’s lapsed insurance policy, which is the current standard.

**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.

**Surplus Lines Agent Affidavits** – Surplus lines agents must obtain coverage rejections from Florida insurers before “exporting” a policy to a surplus lines insurer. The agent is required to file an affidavit quarterly attesting to the required coverage rejections. The bill eliminates the required affidavit (the information reported on the affidavit is otherwise available in electronic data filings).

**Agent Licensing** – To sell a motor vehicle servicing agreement, service warranty agreement, or home warranty contract, one must be licensed as a salesperson or sales representative, depending on the type of agreement or contract sold. The bill allows a licensed general lines agent or personal lines agent to sell such agreements and contracts without a separate salesperson or sales representative license.

There may be an insignificant reduction of revenue related to travel insurance licensing. See *Fiscal Analysis & Economic Impact Statement*.

The bill is effective on July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Hurricane Catastrophe Fund – Collateral Protection Insurance**

##### *Background*

The Florida Hurricane Catastrophe Fund (FHCF)<sup>1</sup> is a tax-exempt trust fund created by the Legislature in 1993 as a form of reinsurance for residential property losses. The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage of hurricane losses to residential property above the insurer's retention (deductible). As a condition of doing business in Florida, property insurers are required to enter into reimbursement contracts with FHCF. The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

The FHCF reimburses its participating insurers for losses on covered policies, subject to limitations.<sup>2</sup> Collateral protection insurance<sup>3</sup> is included as a covered policy.<sup>4</sup> It protects both a borrower's and a lender's financial interest and is covered at the value of the last known policy. Collateral protection insurance is placed by an insurer when a borrower's policy on the property has lapsed. Sometimes, the insurer is unable to obtain correct information from the homeowner and places coverage at an amount other than the amount of the homeowner's lapsed policy. This can create a discrepancy between the coverage in place and the amount of the homeowner's lapsed policy, which is the value currently covered by the FHCF.

##### *Effect of the Bill*

The bill allows the value of the lender's force-placed collateral protection insurance to be reimbursed as a covered policy, if the lender has notified the homeowner in writing of the coverage amount and the homeowner has not requested the insurer to issue a policy for a different amount.

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

##### *Background*

Law requires that a policy<sup>5</sup> of private passenger motor vehicle insurance or a binder<sup>6</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>7</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

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<sup>1</sup> S. 215.555, F.S.

<sup>2</sup> S. 215.555(1)(d), F.S.

<sup>3</sup> "Collateral protection insurance" means commercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document. Collateral protection insurance is not residential coverage. S. 624.6085, F.S.

<sup>4</sup> S. 215.555(1)(c), F.S.

<sup>5</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>6</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>7</sup> S. 627.7295(7), F.S.

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>8</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>9</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>10</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>11</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>12</sup>

A group policy for travel insurance is exempt from filing rates and forms.<sup>13</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>14</sup> Regardless of whether a travel insurance rate is required to be filed, it may not be excessive, inadequate, or unfairly discriminatory.<sup>15</sup>

### TRAVEL INSURANCE AGENT LICENSING

A travel insurance agent or agency license may be issued to only:<sup>16</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

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<sup>8</sup> S. 627.7295(4), F.S.

<sup>9</sup> Chapter 2019-108, F.S.

<sup>10</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>11</sup> S. 626.321, F.S. A travel insurance license is a limited license.

<sup>12</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).

<sup>13</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>14</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>15</sup> S. 627.062(1), F.S.

<sup>16</sup> S. 626.321(1)(c), F.S.

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>17</sup>

## 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>18</sup>

### *Effect of the Bill*

The bill incorporates NAIC's Travel Insurance Model Act, MDL-635,<sup>19</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:

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<sup>17</sup> S. 626.501(9), F.S. *See also* s. 626.381, F.S.

<sup>18</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>19</sup> *Id.*

- 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>20</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>21</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 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>22</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:

<sup>20</sup> Chapter 626, Part IX, F.S.

<sup>21</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.

<sup>22</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.

- 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.

The bill gives DFS rulemaking authority to administer the chapter.

## **Surplus Lines Agent Affidavits**

### *Background*

#### SURPLUS LINES OVERVIEW

Surplus lines insurance refers to a category of insurance for risks that the admitted market is unable or unwilling to provide coverage.<sup>23</sup> There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code, which means they do not obtain a certificate of authority from OIR to transact insurance in Florida.<sup>24</sup> Rather, surplus lines insurers are “unauthorized” insurers<sup>25</sup> that may transact surplus lines insurance, if they are made eligible by OIR.

The Florida Surplus Lines Service Office (FSLSO) is a self-regulating, nonprofit association of approved unauthorized insurers established by the Legislature in 1997. The FSLSO was created to protect consumers seeking surplus line insurance in the state, monitor marketplace compliance, and protect state revenues.<sup>26</sup> All licensed surplus lines agents are deemed to be members of the FSLSO. The FSLSO operates under the supervision of a nine-member board of governors, which has oversight responsibilities for the Florida surplus lines market.

<sup>23</sup> The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.

<sup>24</sup> S. 624.09(1), F.S.

<sup>25</sup> S. 624.09(2), F.S.

<sup>26</sup> See S. 626.921, F.S. and FLORIDA SURPLUS LINES SERVICE OFFICE, *About*, <https://www.fslso.com/about> (last visited Jan. 26, 2020).

“To export” a policy<sup>27</sup> means to place it with an unauthorized insurer under the Surplus Lines Law.<sup>28</sup> Unless an exception applies, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers before the agent can place insurance in the surplus lines market.<sup>29</sup> “Diligent effort” means, subject to certain exceptions,<sup>30</sup> seeking coverage from and being rejected by at least three authorized insurers in the admitted market.<sup>31</sup> The law further specifies that:<sup>32</sup>

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- For personal residential property risks,<sup>33</sup> the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

## SURPLUS LINES AGENTS

Surplus lines agents are authorized to handle the placement of insurance coverages with surplus lines insurers.<sup>34</sup> Licensed resident general lines agents who meet the statutory criteria for licensure are eligible for licensure as a surplus lines agent.<sup>35</sup> In order to place coverage with a surplus lines carrier, the agent must make a “diligent effort” to place the policy with a Florida-authorized insurer, i.e., one with a certificate of authority from OIR.<sup>36</sup>

Surplus lines agents are required to report and file with the FLSO specified information on each surplus lines insurance policy within 30 days of the effective date of the transaction, must transmit service fees to the FLSO each month, and must transmit assessment and tax payments to the FLSO quarterly.<sup>37</sup> When requested by DFS or the FLSO, surplus lines agents are also required to submit a copy of any policy and certain other information.<sup>38</sup> Surplus lines agents are required to maintain each surplus lines contract, including applications and all certificates, and other detailed information about each surplus lines policy, in their agency office for a period of five years.<sup>39</sup>

### *Effect of the Bill*

The bill eliminates the required quarterly affidavit. The FLSO receives relevant information electronically in ongoing data filings.

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<sup>27</sup> S. 626.914(3), F.S.

<sup>28</sup> Sections 626.913 – 626.937, F.S., constitute the “Surplus Lines Law.” S. 626.913(1), F.S.

<sup>29</sup> S. 626.916(1)(a), F.S.

<sup>30</sup> Exceptions include commercial lines risk, such as “excess or umbrella, surety and fidelity, boiler and machinery and leakage and fire extinguishing equipment,” and so on, as specified in s. 627.062(3)(d)1., F.S. S. 626.916(3)(b), F.S.

<sup>31</sup> If the cost to replace a residential dwelling is \$1,000,000 or more, then only one coverage rejection is needed prior to export. S. 626.914(4), F.S. When exporting a flood insurance policy, diligent effort requirements do not apply until July 1, 2019, or the Insurance Commissioner declares an adequate flood insurance market among admitted insurers, whichever occurs first. S. 627.715(4), F.S.

<sup>32</sup> S. 626.916(1), F.S.

<sup>33</sup> Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

<sup>34</sup> S. 626.914(1), F.S.

<sup>35</sup> S. 626.927, F.S. Generally, to be licensed as a surplus lines agent, an individual must be: (1) deemed DFS to have sufficient experience in the insurance business (2) have 1-year experience working for a licensed surplus lines agent or have completed 60 class hours in an approved surplus lines course, and (3) pass a written examination.

<sup>36</sup> There are certain exceptions to the diligent effort requirement. *Supra*, note 44.

<sup>37</sup> Ss. 626.921(2) and 626.931, F.S.

<sup>38</sup> S. 626.923, F.S.

<sup>39</sup> S. 626.930, F.S.

## 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' compensation experience for ratemaking purposes.<sup>40</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 workers' compensation carriers that enter receivership to continue to report the required data. The receiver, who is now in possession of the carrier, is permitted to do so directly or outsource the reporting to a third party. OIR may approve a modified reporting plan to accommodate limited data reporting.

## Agent Licensing

### *Background*

#### GENERAL LINES AGENT

A general lines agent<sup>41</sup> is one who sells the following lines of insurance: property;<sup>42</sup> casualty,<sup>43</sup> including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,<sup>44</sup> or a workers' compensation self-insurance fund;<sup>45</sup> surety;<sup>46</sup> health;<sup>47</sup> and marine.<sup>48</sup> The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.<sup>49</sup>

#### PERSONAL LINES AGENT

A personal lines agent is a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.<sup>50</sup>

#### MOTOR VEHICLE SERVICING AGREEMENTS

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<sup>40</sup> S. 627.914, F.S. *See also* R. 69O-189.0055, F.A.C.

<sup>41</sup> S. 626.015(5), F.S.

<sup>42</sup> S. 624.604, F.S.

<sup>43</sup> S. 624.605, F.S.

<sup>44</sup> As defined in s. 624.462, F.S.

<sup>45</sup> Pursuant to s. 624.4621, F.S.

<sup>46</sup> S. 626.606, F.S.

<sup>47</sup> Ss. 624.603 and 627.6482, F.S.

<sup>48</sup> S. 624.607, F.S.

<sup>49</sup> S. 626.829, F.S.

<sup>50</sup> S. 626.015(17), F.S.



Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. A motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended. Motor vehicle service agreements can only be sold by a licensed and appointed salesperson. Salespersons are licensed in the same manner as insurance representatives under chapter 626, F.S., with some exceptions to the requirements applied to insurance representatives.

#### SERVICE WARRANTY ASSOCIATIONS

Service warranty associations are entities, other than insurers, which issue service warranties. A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.<sup>51</sup> No person or entity shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative.<sup>52</sup>

#### HOME WARRANTY CONTRACTS

A home warranty association is any corporation or any other organization, other than an authorized insurer, issuing home warranties. A home warranty is any contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss. No person may solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative.<sup>53</sup>

#### *Effect of the Bill*

The bill allows a licensed general lines agent or licensed personal lines agent to advertise, solicit, negotiate, or sell motor vehicle service agreements, home warranty contracts, or service warranty contracts without being separately licensed as a sales representative or insurance representative, as applicable.<sup>54</sup>

#### B. SECTION DIRECTORY:

**Section 1.** Amending s. 215.555, F.S., relating to Florida Hurricane Catastrophe Fund.

**Section 2.** Amending s. 624.01, F.S., relating to short title.

**Section 3.** Amending s. 626.321, F.S., relating to limited licenses.

**Section 4.** Amending s. 626.931, F.S., relating to agent affidavit and Insurer reporting requirements.

**Section 5.** Amending s. 626.932, F.S., relating to surplus lines tax.

**Section 6.** Amending s. 626.935, F.S., relating to suspension, revocation, or refusal of surplus lines agent's license.

**Section 7.** Amending s. 627.7295, F.S., relating to motor vehicle insurance contracts.

**Section 8.** Amending s. 634.171, F.S., relating to salesperson to be licensed and appointed.

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<sup>51</sup> S. 634.401(13).

<sup>52</sup> S. 634.419, F.S. A "sales representative" is any person, retail store, corporation, partnership, or sole proprietorship utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties. However, in the case of service warranty associations selling service warranties from one or more business locations, the person in charge of each location may be considered the sales representative. S. 634.401(12), F.S.

<sup>53</sup> S. 634.317, F.S. "Sales representative" is any person with whom an insurer or home inspection or warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term includes all employees of an insurer or association engaged directly in the sale or issuance of home warranties. S. 634.301(12), F.S.

<sup>54</sup> See Section III.C., Drafting Issues or Other Comments.

- Section 9.** Amending s. 634.317, F.S., relating to license and appointment required.  
**Section 10.** Amending s. 634.419, F.S., relating to license and appointment required.  
**Section 11.** Providing direction to the Division of Law Revision.  
**Section 12.** Creating s. 647.01, F.S., relating to purpose and scope.  
**Section 13.** Creating s. 647.02, F.S., relating to definitions.  
**Section 14.** Creating s. 647.03, F.S., relating to premium tax.  
**Section 15.** Creating s. 647.04, F.S., relating to travel protection plans.  
**Section 16.** Creating s. 647.05, F.S., relating to sales practices.  
**Section 17.** Creating s. 647.06, F.S., relating to travel administrators.  
**Section 18.** Creating s. 647.07, F.S., relating to travel insurance policy.  
**Section 19.** Creating s. 647.08, F.S., relating to rulemaking authority.  
**Section 20.** Providing an effective date of July 1, 2020.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The licenses and appointments for representation of travel insurers are subject to filing and renewal fees. Some entities may no longer be required to obtain licensure under the bill. However, these entities will still be required to pay appointment fees. There are few licensees in travel insurance, but many appointees. This may result in an insignificant reduction in revenue.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

Article VII, s. 19, Florida Constitution, does not appear to apply. Travel insurance is currently subject to premium tax under the Florida Insurance Code. The newly created chapter 647, F.S., Travel Insurance, includes a premium tax provision regarding travel insurance likely to prevent currently taxable premiums from being relieved of the tax.

**B. RULE-MAKING AUTHORITY:**

The bill requires DFS to adopt rules.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Section 16 of the bill creates two new violations of the Unfair Insurance Trade Practices Act in relation to travel insurance. It may avoid confusion if these provision were amended into the Act, rather than stating them in a separate chapter of statute.

Section 16 of the bill cross-references s. 626.321 (1)(c)3.a., F.S., in regard to information that must be disclosed to a policyholder or certificate holder. The effect of this cross reference is unclear.

Section 17 of the bill exempts a travel administrator and its employees from the licensing requirements in chapter 626, part VI, F.S. Currently, there are express exemptions listed in statute.<sup>55</sup> It may avoid confusion if the bill's exemptions are placed with the existing exemptions found in s. 626.852, F.S.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 28, 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**
  - Removed two sections of the bill (ss. 6 and 25) that proposed to create certain requirements for disposition of insurance proceeds.
- **Additions:**
  - Added a new section to the bill (s. 25) to include chapter. 647, F.S., within the Florida Insurance Code. This clarifies that the regulation of travel insurance will continue to be done within the Code.
- **Revisions:**
  - Motor Vehicle Insurance Online Verification System –
    - Incorporated technical and clarifying changes identified by the Department of Highway Safety & Motor Vehicles; and
    - Made the development and implementation of the Motor Vehicle Insurance Online Verification System and the associated task force contingent upon receiving a specific appropriation, which could occur this Session or in the future.
  - Travel Insurance – made several revisions to conform the travel insurance related portions of the bill to the structure of the Florida Insurance Code.

On Tuesday, February 18, 2020, the Appropriations Committee adopted three amendments and reported the bill favorably as a committee substitute for committee substitute. The amendments deleted the following from the bill:

- Sections related to the establishment of the motor vehicle insurance verification system.
- Requirements for law enforcement to use the verification system.
- The creation of the Motor Vehicle Insurance Online Verification Task Force.
- Effective date for the insurance verification system and task force being subject to an appropriation.
- Requirement for the continued reporting of workers' compensation carriers that enter receivership.

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<sup>55</sup> Ss. 626.852(3)-(6), F.S.

This analysis is drafted to the committee substitute for committee substitute as passed by the Appropriations Committee.