

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 468

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Perry and others

SUBJECT: Insurance

DATE: January 26, 2022

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
3.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<b>Favorable</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 468 amends several insurance-related statutes. Specifically, the bill:

- Directs the Florida Hurricane Catastrophe Fund (FHCF) to provide reimbursement for a loss under collateral protection insurance (also known as lender-placed or force-placed insurance) when the coverage amount differs from the coverage amount under the lapsed policy if the homeowner received notice of the collateral protection insurance coverage amount, or the homeowner requested a different coverage amount from the collateral protection insurer;
- Provides that current requirements under the Workers' Compensation Law for annual, physical onsite payroll audits of employers in the construction class will only apply when the estimated annual premium is \$10,000 or more;
- Authorizes associations, trusts, and pools formed to provide self-insurance for public entities to use communications media technology to establish quorum and conduct public business;
- Provides that an all-lines adjuster who is appointed and employed by an insurer's affiliate may serve as a company employee adjuster for the purpose of adjusting claims;
- Allows a residential property insurer's rate filing to estimate projected hurricane losses by using a weighted or straight average of two or more models approved by the Florida Commission on Hurricane Loss Projection Methodology;
- Authorizes an insurer to file a personal lines residential property insurance rating plan that provides premium discounts, credits, and other rate differentials based on windstorm construction standards developed by an independent, not-for-profit, scientific research organization;

- Limits the requirement that an insurer provide a policyholder who has an automatic bank withdrawal agreement with the insurer with 15 days advance written notice of any increase in policy premiums. Instead, notice will only be required for premium increases that will result in an increase in the automatic withdrawal of more than \$10 from the previous withdrawal amount;
- Provides Citizens Property Insurance Corporation with discretion to offer wind-only policies to condominium associations when 50 percent or more of their units are rented more than eight times per year for a period of less than 30 days;
- Eliminates a requirement that an insurer that provides electronic delivery of the insurance policy to a policyholder (or the person entitled to delivery) to also provide within the electronic transmission notice of the policyholder's right to receive the policy via United States mail. The bill also eliminates a requirement that the insurer provide a paper copy of the policy to the insured upon his or her request;
- Allows a policyholder to select a hurricane deductible greater than 10 percent, reject windstorm coverage, or reject contents coverage under a residential property insurance policy by typing the existing exclusionary statement language, instead of handwriting it;
- Provides section 627.7152, F.S., governing assignment agreements, applies to instruments that assign or transfer post-loss benefits to a service provider that provides scopes of service or provides inspection services;
- Provides the term "assignment agreement" does not include an instrument by which a licensed public adjuster is compensated for public adjuster services;
- Requires an assignee provide the notice of intent to initiate litigation to the name and mailing address designated by the insurer in the policy forms if notice is sent by certified mail, return receipt requested, or to the e-mail address designated by the insurer in the policy forms if notice is sent by electronic delivery;
- Requires an automobile policy that does not provide coverage for bodily injury liability and property damage liability include notice accompanying the declarations page that the policy does not provide such coverages and does not comply with any financial responsibility laws. Such policies generally cover antique motor vehicles; and
- Exempts licensed personal lines and general lines agents from salesperson licensing requirements otherwise required to solicit, negotiate, advertise, or sell motor vehicle service agreements, home warranty contracts, and service agreement contracts.

The bill has no impact to state funds or expenditures and may have an insignificant impact on the FHCF.

The bill takes effect July 1, 2022, except as otherwise provided.

## II. Present Situation:

### The Florida Hurricane Catastrophe Fund (FHCF)

The FHCF is a tax-exempt<sup>1</sup> fund created in 1993<sup>2</sup> after Hurricane Andrew<sup>3</sup> as a form of mandatory reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration (SBA)<sup>4</sup> and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent)<sup>5</sup> of hurricane losses above the insurer's retention (deductible). The FHCF provides insurers an additional source of reinsurance that is less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers.

All insurers admitted to do business in this state writing residential property insurance that includes wind coverage must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.<sup>6</sup> The FHCF is authorized by statute to sell \$17 billion of mandatory layer coverage.<sup>7</sup> Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. Each insurer may select a reimbursement contract wherein the FHCF promises to reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 10 percent<sup>8</sup> of the reimbursed losses for loss adjustment expenses.<sup>9</sup>

The FHCF must charge insurers the actuarially indicated premium<sup>10</sup> for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.<sup>11</sup> The actuarially indicated premium is an amount determined by the principles of actuarial science to be adequate to pay current and future obligations and expenses of the fund.<sup>12</sup> In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. Historically, FHCF coverage generally costs less than private reinsurance because the fund is a tax-exempt non-profit corporation and does not charge a risk load as it relates to overhead and operating expenses incurred by other private insurers.<sup>13</sup>

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<sup>1</sup> Section 215.555(1)(f), F.S.

<sup>2</sup> Chapter 93-409, Laws of Fla.

<sup>3</sup> Ed Rappaport, *Preliminary Report, Hurricane Andrew* (updated Dec. 10, 1993; addendum Feb. 7, 2005), <https://www.nhc.noaa.gov/1992andrew.html>.

<sup>4</sup> State Board of Administration of Florida (SBA), *About the SBA*, <https://www.sbafla.com/fsb/> (last visited Mar. 23, 2021).

<sup>5</sup> Section 215.555(2)(e), F.S.

<sup>6</sup> *See* s. 215.555(4)(a), F.S.

<sup>7</sup> Section 215.555(4)(c)1., F.S.

<sup>8</sup> Section 215.555(4)(b)1., F.S.

<sup>9</sup> Loss adjustment expenses are costs incurred by insurers when investigating, adjusting, and processing a claim.

<sup>10</sup> Section 215.555(5)(a), F.S.

<sup>11</sup> *See Florida Commission on Hurricane Loss Methodology*, <https://www.sbafla.com/method/> (last visited Mar. 23, 2021).

<sup>12</sup> Section 215.555(2)(a), F.S.

<sup>13</sup> SBA, *Florida Hurricane Catastrophe Fund, 2016 Annual Report*, available at [https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606\\_FHCF\\_2016\\_AnnualReport\\_A.pdf?ver=2017-07-06-085215-943](https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943) (last visited Mar. 8, 2021).

When the moneys in the FHCF are or will be insufficient to cover losses, the law<sup>14</sup> authorizes the FHCF to issue revenue bonds funded by emergency assessments on all lines of insurance except medical malpractice and workers compensation.<sup>15</sup> Emergency assessments may be levied up to six percent of premium for losses attributable to any one contract year, and up to 10 percent of premium for aggregate losses from multiple years. The FHCF's broad-based assessment authority is one of the reasons the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.<sup>16</sup>

### ***Reimbursement of Collateral Protection Insurance***

Collateral protection insurance, sometimes referred to as “lender-placed” or “force-placed” insurance, is insurance placed by a lender, at the expense of the borrower, to protect the lender's security interest in property pursuant to a loan, such as a home mortgage. Collateral protection insurance is placed by the lender when it deems the homeowners' insurance insufficient, usually because the borrower's insurance policy is lapsed or cancelled. The FHCF covers policies of collateral protection insurance if the collateral protection insurance covers a personal residence and protects both the borrower's and the lender's financial interests in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowners policy.<sup>17</sup>

### **Payroll Audits for Construction Classification of Employers**

Florida law currently requires biennial payroll audits for employers in all classes other than construction, with factors for more frequent audits, and annual, physical onsite payroll audits for employers in the construction class, to ensure that the appropriate premium is charged for workers' compensation coverage.<sup>18</sup> Section 440.381, F.S., does not provide a minimum premium threshold for compliance purposes.

An employer that fails to provide reasonable access to payroll records for an audit must pay the insurer a premium not to exceed three times the most recent estimated annual premium.<sup>19</sup> An employer that understates or conceals payroll, misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, or misrepresents or conceals information pertinent to the computation and application of an experience rating modification factor, must pay the insurer a penalty equal to 10 times the amount of the difference in premium paid and the amount the employer should have paid, plus reasonable attorney's fees.<sup>20</sup>

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<sup>14</sup> Section 215.555(6), F.S.

<sup>15</sup> Section 215.555(6)(b), F.S.

<sup>16</sup> The U.S. Internal Revenue Service has, by a Private Letter Ruling, authorized the Florida Hurricane Catastrophe Fund (FHCF) to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, for five years until June 30, 2003. On May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that the prior exemption, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis. See FHCF, *Fiscal Year 2009-2010 Annual Report*, 14, [https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/SBA\\_CATF\\_Annual\\_ReportFHCF\\_Final.pdf?ver=2016-06-08-121900-647](https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/SBA_CATF_Annual_ReportFHCF_Final.pdf?ver=2016-06-08-121900-647) (last visited March 23, 2021).

<sup>17</sup> Section 215.555(2)(c), F.S.

<sup>18</sup> Section 440.381(3), F.S.

<sup>19</sup> Section 440.381(8), F.S.

<sup>20</sup> Section 440.381(6)(a), F.S.

### **Electronic Meetings for Public Self-Insurers**

Florida law authorizes two or more local governmental entities to enter into an interlocal agreement (fund) for the purpose of securing workers' compensation payments, or insuring or self-insuring real or personal property of every kind and every interest in such property against loss or damage from any hazard or cause and against any loss consequential to such loss or damage.<sup>21</sup>

For any fund created after October 1, 2004, the fund is subject to the requirements of group self-insurance funds for the first five years of its existence,<sup>22</sup> including participation in the Florida Self-Insurers Guaranty Association.<sup>23</sup> The Florida Self-Insurers Guaranty Association is exempt from certain public record requirements under s. 119.07(1), F.S., related to claims and minutes meetings, and certain public meeting requirements under s. 286.011, F.S.,<sup>24</sup> related to discussion to claims and other confidential information. Section 286.011, F.S., declares all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the State Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken to be public meetings open to the public at all times. Any resolution, rule, or formal action taken in contravention of this provision is not considered binding.<sup>25</sup>

### **Insurance Adjusters**

Florida law requires all insurance adjusters to be licensed by the Department of Financial Services (DFS) and appointed by the appropriate entity or person<sup>26</sup> in order to adjust claims. General requirements for licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.<sup>27</sup>

Under s. 626.864, F.S., there are both public adjusters and all-lines adjuster license types, with all-lines appointments further divided into independent adjusters,<sup>28</sup> company employee adjusters,<sup>29</sup> and public adjuster apprentices.<sup>30</sup> The same adjuster may not be concurrently licensed as a public adjuster and an all-lines adjuster.<sup>31</sup> In the case of an all-lines adjuster, the adjuster may be appointed as an independent adjuster, company employee adjuster, or public adjuster apprentice, but not more than one concurrently.<sup>32</sup>

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<sup>21</sup> Section 624.4622(1), F.S.

<sup>22</sup> Section 624.4622(3), F.S.

<sup>23</sup> Section 624.4621(9), F.S.

<sup>24</sup> Section 440.3851, F.S.

<sup>25</sup> Section 286.011, F.S.

<sup>26</sup> See s. 626.015(4), F.S., defining "appointment" as the authority given by an insurer or employer to a licensee to adjust claims on behalf of an insurer or employer.

<sup>27</sup> Section 626.171, F.S.

<sup>28</sup> Section 626.855, F.S.

<sup>29</sup> Section 626.856, F.S.

<sup>30</sup> Section 626.8561, F.S.

<sup>31</sup> Section 626.864(2), F.S.

<sup>32</sup> Section 626.864(3), F.S.

A public adjuster is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.<sup>33</sup> Public adjusters operate independently and are not affiliated with any insurer.

An all-lines adjuster is any person who, for compensation, ascertains and determines the amount of any claim, loss, or damage payable under an insurance contract or settles such claim, loss, or damage on behalf of a public adjuster or insurer.<sup>34</sup>

An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract.<sup>35</sup>

A company employee adjuster is any person employed in-house by an insurer, or a wholly owned subsidiary of the insurer, who ascertains and determines the amount of an insurance claim, loss, or damage, or settles such claim, loss, or damage.<sup>36</sup>

### **Regulation of Property Insurance Rates**

Part I of ch. 627, F.S., is the Rating Law,<sup>37</sup> which governs property, casualty, and surety insurance covering the subjects of insurance resident, located, or to be performed in this state.<sup>38</sup> The rating law provides that the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.<sup>39</sup> Though the terms “rate” and “premium” are often used interchangeably, the rating law specifies that “rate” is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.<sup>40</sup>

All insurers or rating organizations must file rates with the Office of Insurance Regulation (OIR) either 90 days before the proposed effective date of a new rate, which is considered a “file and use” rate filing, or 30 days after the effective date of a new rate, which is considered a “use and file” rate filing.

Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The OIR makes that determination in accordance with generally acceptable actuarial techniques and, in a property insurance rate filing, considers the following:

- Past and prospective loss experience;
- Past and prospective expenses;

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<sup>33</sup> Section 626.854(1), F.S.

<sup>34</sup> Section 626.8548, F.S.

<sup>35</sup> Section 626.855, F.S.

<sup>36</sup> Section 626.856, F.S.

<sup>37</sup> Section 627.011, F.S.

<sup>38</sup> Section 627.021, F.S.

<sup>39</sup> Section 627.062(1), F.S.

<sup>40</sup> Section 627.041, F.S.

- The degree of competition among insurers for the risk insured;
- Investment income reasonably expected by the insurer;
- The reasonableness of the judgment reflected in the rate filing;
- Dividends, savings, or unabsorbed premium deposits returned to policyholders;
- The adequacy of loss reserves;
- The cost of reinsurance;
- Trend factors, including trends in actual losses per insured unit for the insurer;
- Conflagration and catastrophe hazards;
- Projected hurricane losses;
- Projected flood losses, if the policy covers the risk of flood;
- A reasonable margin for underwriting profit and contingencies; and
- Other relevant factors that affect the frequency or severity of claims or expenses.

### ***Florida Commission on Hurricane Loss Projection Methodology***

Projected hurricane losses in a rate filing must be estimated using a model or method found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology (commission).<sup>41</sup> The commission consists of 12 members with expertise in the elements used to develop computer models to estimate hurricane and flood loss. Members of the commission include State University System faculty experts in insurance finance, statistics, computer system design, meteorology, and structural engineering; three actuaries; the insurance consumer advocate; the Director of the FHCF; the Executive Director of Citizens Property Insurance Corporation; and the Director of the Division of Emergency Management.<sup>42</sup>

### ***Residential Property Insurance Mitigation Credits, Discounts, or Other Rate Differentials***

Residential property insurance rate filings must account for mitigation measures undertaken by policyholders to reduce hurricane losses.<sup>43</sup> Specifically, the rate filings must include actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties.<sup>44</sup> Upon their filing by an insurer or rating organization, the OIR determines the discounts, credits, other rate differentials and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation,<sup>45</sup> which in turn may be used in rate filings under the rating law. Windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength; roof covering performance, roof-to-wall strength; wall-to-floor foundation strength; opening protections; and window, door, and skylight strength.<sup>46</sup>

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<sup>41</sup> Section 627.062(2)(b)11., F.S.

<sup>42</sup> Section 627.0628(2)(b), F.S.

<sup>43</sup> Section 627.062(2)(j), F.S.

<sup>44</sup> Section 627.0629(1), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

## **Automatic Bank Withdrawal Agreements in the Insurance Context**

Florida law allows insurers and policyholders to enter into automatic bank withdrawal agreements for the purpose of paying insurance premiums.<sup>47</sup> Policyholders generally have the option of selecting between payment plans that divide the premium into two or four separate payments or in monthly installments. Under current law, insurers must provide the policyholder with 15 days advance written notice prior to any automatic bank withdrawal if the premium payment increases from the previous withdrawal period by any amount.

By contrast, federal law requires financial institutions to provide 10 days advance written notice prior to any automatic bank withdrawal either when the amount varies from the previous withdrawal amount, when the amount varies outside a specified range of amounts, or when the amount varies from the previous withdrawal amount by an agreed-upon amount.<sup>48</sup>

## **Citizens Property Insurance Corporation (Citizens)**

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide affordable property insurance coverage to those unable to find coverage in the voluntary admitted market.<sup>49</sup> Citizens is not a private insurance company.<sup>50</sup> Citizens was statutorily created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association. Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by a nine-member Board of Governors<sup>51</sup> (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board. The Governor appoints three members to the board, one of whom serves solely to advocate for consumers. Citizens is subject to regulation by the OIR.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.<sup>52</sup> Assets may not be commingled or used to fund losses in another account.<sup>53</sup>

**The Personal Lines Account (PLA)** offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.

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<sup>47</sup> Section 627.0665, F.S.

<sup>48</sup> 12 CFR 1005.10(d).

<sup>49</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>50</sup> Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the OIR.

<sup>51</sup> The Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members. The Governor appoints three members.

<sup>52</sup> The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

<sup>53</sup> Section 627.351(6)(b)2b., F.S.



**The Commercial Lines Account (CLA)** offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

**The Coastal Account** offers personal residential, commercial residential, and commercial nonresidential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.<sup>54</sup>

### *Citizens Eligibility for Commercial Residential Wind-Only Coverage*

In 2014,<sup>55</sup> the Legislature enacted changes to the statutes governing Citizens that prohibited residential condominium associations from obtaining commercial residential property insurance policies from Citizens which cover damage only from wind if 50 percent or more of the condominiums in the association are rented more than eight times a year for less than 30 days. These changes were intended to provide clarity to the classification of transient occupancy risks and remove inconsistencies between commercial residential and commercial nonresidential properties.<sup>56</sup> Condominiums are presently able to obtain Citizens policies that cover damage from multiple perils, including wind.

### **Delivery of Insurance Policies and Claims Communications**

Under s. 627.421, F.S., Florida law currently requires most insurers<sup>57</sup> to deliver, mail, or electronically transmit the insurance policy to the policyholder within 60 days of such coverage taking effect. Policyholders of personal lines policies may elect electronic transmission of policy documents; however, for commercial lines policies, policy documents are sent via electronic transmission unless the policyholder declines electronic transmission by written or electronic communication to the insurer. The policyholder is further entitled to a paper copy of the policy upon request.<sup>58</sup> An insurer that electronically transmits policy documents must include notice of the right to receive a paper copy of the policy via United States Mail.<sup>59</sup>

Florida law varies with respect to electronic and nonelectronic transmission of claims communications. In some cases, e.g., written proof of loss, claims communications must be

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<sup>54</sup> In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial nonresidential multiperil policies in this account.

<sup>55</sup> Chapter 2015-140, Laws of Fla.

<sup>56</sup> House Regulatory Affairs Committee, *House Bill 1089 Analysis* (June 16, 2014), available at <https://www.flsenate.gov/Session/Bill/2014/1089/Analyses/h1089z1.JBS.PDF> (last visited Feb. 8, 2021).

<sup>57</sup> Part II of ch. 627, F.S., exempts reinsurers, wet marine and transportation, title, and credit life of credit disability insurers from the delivery provisions of s. 627.421, F.S.

<sup>58</sup> Section 627.421(1), F.S.

<sup>59</sup> *See Id.*

nonelectronic,<sup>60</sup> while on others, e.g., payment of health insurance claims, claims communication may be electronic or nonelectronic.<sup>61</sup>

### **Affirmative Exclusions of Property Insurance Deductibles and Coverages**

A hurricane deductible is the amount paid by the policyholder before the insurer issues any payment for damaged caused by a hurricane.<sup>62</sup> Under Florida law, the hurricane deductible is capped at 10 percent of the policy dwelling limits for a covered risk valued at less than \$500,000, unless the policyholder affirmatively rejects the statutory hurricane deductible limit.<sup>63</sup> In order to do so, the policyholder must personally write and provide the insurer the following statement in his or her own handwriting: “I do not want the insurance on my home to pay for the first (specify dollar value) of damage from hurricanes. I will pay those costs. My insurance will not.” Furthermore, the policyholder and each named insured on the policy must sign and date the statement.<sup>64</sup>

Florida law also requires a residential property insurance policy to include windstorm coverage,<sup>65</sup> unless the policyholder affirmatively rejects the coverage.<sup>66</sup> If the policyholder is a natural person, the policyholder must personally write and provide the insurer the following statement in his or her own handwriting: “I do not want the insurance on my home (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not.” Furthermore, the policyholder and each named insured on the policy must sign and date the statement.<sup>67</sup>

A similar provision exists in statute for exclusion of contents coverage under a residential property insurance policy, except for a condominium unit owner policy or a tenant policy. Under s. 627.712(3), F.S., the policyholder must personally write and provide the insurer the following statement in his or her own handwriting: “I do not want the insurance on my home (home/mobile) to pay for costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not.” Furthermore, the policyholder and each named insured on the policy must sign and date the statement.

### **Assignment of Post-Loss Benefits under a Property Insurance Policy**

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy,

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<sup>60</sup> Section 627.425, F.S.

<sup>61</sup> Section 627.6131, F.S.

<sup>62</sup> Department of Financial Services, *Florida’s Hurricane Deductible*

<https://www.myfloridacfo.com/division/consumers/floridashurricanedeductible.htm> (last visited Nov. 23, 2021).

<sup>63</sup> Section 627.701(4)(d), F.S.

<sup>64</sup> *See Id.*

<sup>65</sup> This requirement does not apply to a risk that is eligible for wind-only coverage from Citizens Property Insurance Corporation (Citizens). Nor does the requirement apply to a risk that is ineligible for Citizens coverage because the risk: (1) is a structure that has a dwelling replacement cost of \$700,000; (2) is a single condominium unit with a combined dwelling and contents replacement cost of \$700,000 or more; or (3) is located in the “wind-borne” debris region as defined in s. 1609.2 of the International Building Code (2006) and has an insured value on the structure of \$750,000 or more.

<sup>66</sup> Section 627.712, F.S.

<sup>67</sup> Section 627.712(2)(a)1., F.S.

such as the right to be paid, to another party. This assignment is often called an “assignment of benefits” or “AOB.” Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee may file a lawsuit against the insurer to recover the insurance benefits.<sup>68</sup>

The 2019, the Legislature enacted s. 627.7152, F.S., which governs the execution of assignment of post-loss benefits under a property insurance policy, provides duties that assignees must meet when filing a claim under a property insurance policy, provides requirements pursuant to litigation brought by assignees under property insurance policies, and revises the standards for awarding attorney fees in such litigation. An assignment agreement is any instrument that effectuates the assignment, transfer, or acquisition of post-loss benefits to or from a person providing services to protect, repair, restore, or replace property, or to mitigate against further damage to the property.

Prior to litigation, under s. 627.7152(9), F.S., an assignee must provide the named insured and the assignor a written notice of intent to initiate litigation, delivered at least 10 business days before filing suit, but not before the insurer has made a determination of coverage. The notice must also include a detailed written invoice or estimate of services that includes itemized information and proof work was performed in accordance with accepted industry standards. In a claim arising under an assignment agreement, the assignee has the burden under s. 627.7152(3)(b), F.S., to demonstrate that the insurer is not prejudiced by the assignee’s failure to cooperate with the insurer in the claim investigation.

### **Notice of Limited Coverage for Antique Vehicles**

Some insurers<sup>69</sup> offer motor vehicle insurance coverage for antique vehicles<sup>70</sup> which does not include mandatory personal injury protection<sup>71</sup> and property damage liability<sup>72</sup> coverages. In those cases, Florida law requires the automobile policy to provide notice to the policyholder of the limited coverage and its noncompliance with any financial responsibility law.<sup>73</sup> This coverage is generally appropriate for antique vehicles that are stored in a private collection or as part of a public display and are not driven on the roadways of this state. The notice must be stamped or printed in contrasting color from the color used on the policy and placed on the policy declaration page and on the back of the policy.<sup>74</sup>

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<sup>68</sup> *Nationwide Mutual Insurance Company v. Pinnacle Medical, Inc.* 753 So. 2d 55, 57 (Fla. 2000) (“The right of assignee to sue for breach of contract to enforce assigned rights predates the Florida Constitution”).

<sup>69</sup> <https://www.statefarm.com/insurance/auto/antique-classic-cars> (last visited Nov. 29, 2021).

<sup>70</sup> See section 320.086, F.S.

<sup>71</sup> Section 627.733, F.S.

<sup>72</sup> Section 324.022, F.S.

<sup>73</sup> Section 627.7276(1), F.S.

<sup>74</sup> Section 627.7276(2), F.S.

## **Agent Licensing**

### ***General Lines Agent***

A general lines agent<sup>75</sup> is one who sells the following lines of insurance: property,<sup>76</sup> casualty,<sup>77</sup> including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,<sup>78</sup> or a workers' compensation self-insurance fund;<sup>79</sup> surety;<sup>80</sup> health;<sup>81</sup> and marine.<sup>82</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.<sup>83</sup> 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>84</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>85</sup>

### ***Motor Vehicle Servicing Agreements***

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.<sup>86</sup> Motor vehicle service agreements can only be sold by a licensed and appointed salesperson.<sup>87</sup> Salespersons are licensed in the same manner as insurance representatives under ch. 626, F.S., with some exceptions to the requirements applied to insurance representatives.<sup>88</sup>

### ***Home Warranty Contracts***

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.<sup>89</sup> No person shall solicit, negotiate, or

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<sup>75</sup> Section 626.015(7), F.S.

<sup>76</sup> Section 624.604, F.S.

<sup>77</sup> Section 624.605, F.S.

<sup>78</sup> As defined in s. 624.462, F.S.

<sup>79</sup> Pursuant to s. 624.4621, F.S.

<sup>80</sup> Section 626.606, F.S.

<sup>81</sup> Section 624.603, F.S.

<sup>82</sup> Section 624.607, F.S.

<sup>83</sup> Section 626.827, F.S.

<sup>84</sup> Section 626.829, F.S.

<sup>85</sup> Section 626.015(17), F.S.

<sup>86</sup> Section 634.011(8), F.S.

<sup>87</sup> Section 634.031, F.S.

<sup>88</sup> Section 634.171, F.S.

<sup>89</sup> Section 634.301, F.S.

effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative.<sup>90</sup>

### ***Service Warranty Contracts***

A service warranty is an agreement or maintenance service contract equal to or greater than one 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>91</sup> A person or entity may not solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless the person or entity is licensed and appointed as a sales representative.<sup>92</sup>

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

### **Collateral Protection Insurance**

**Section 1** amends s. 215.555, F.S., to require that the Florida Hurricane Catastrophe Fund (FHCF) provide reimbursement for a loss under collateral protection insurance (also known as lender-placed or force-placed insurance) when the coverage amount differs from the coverage amount under the lapsed policy if the homeowner received notice of the collateral protection insurance coverage amount, or the homeowner requested a different coverage amount from the collateral protection insurer.

This section is effective June 1, 2023.

### **Payroll Audits for Construction Classification of Employers**

**Section 2** amends s. 440.381, F.S., governing payroll audits, provides that current requirements under the Workers' Compensation Law for annual, physical onsite payroll audits of employers in the construction class will only apply when the estimated annual premium is \$10,000 or more.

### **Electronic Meetings of Self-Insured Public Entities**

**Section 3** creates s. 624.46227, F.S., to authorize associations, trusts, and pools formed to provide self-insurance for public entities to use communications media technology to establish quorum and conduct public business.

**Section 4** amends s. 626.221, F.S., to authorize Certified All Lines Adjusters from Kaplan to be exempt from the examination requirement for licensure as an insurance agent or adjuster.

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<sup>90</sup> Section 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. Section 634.301(12), F.S.

<sup>91</sup> Section 634.401(13), F.S.

<sup>92</sup> Section 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. Section 634.401(12), F.S.

## **Company Employee Adjusters**

**Section 5** amends s. 626.856, F.S., revising the definition of a “company employee adjuster” in the Insurance Adjusters Law, to provide that an all-lines adjuster who is appointed and employed by an insurer’s affiliate may serve as a company employee adjuster for the purpose of ascertaining and determining the amount of an insurance claim, loss, or damage, or settling such claim, loss, or damage.

## **Florida’s Rating Law**

### ***Hurricane Model Averaging and Weighting***

**Section 6** amends s. 627.062, F.S., to provide that a residential property insurer’s rate filing may estimate projected hurricane losses by using a weighted or straight average of two or more methods or models approved by the Commission on Hurricane Loss Projection Methodology.

### ***Residential Property Insurance Mitigation Credits, Discounts, or Other Rate Differentials***

**Section 7** amends s. 627.0629, F.S., to provide that an insurer may file with the Office of Insurance Regulation a personal lines residential rating plan that provides premium discounts, credits, and other rate differentials based on windstorm construction standards developed by an independent, not-for-profit, scientific research organization, if such standards meet statutory requirements.

## **Required Notifications of Automatic Bank Withdrawals**

**Section 8** amends s. 627.0065, F.S., governing automatic bank withdrawal agreements between insurers and policyholders, to limit the requirement that an insurer provide a policyholder 15 days advance written notice of any increase in policy premiums. Instead, notice will only be required for premium increases that will result in an increase of the automatic withdrawal of more than \$10 from the previous withdrawal amount.

## **Citizens Eligibility for Commercial Residential Wind-Only Coverage**

**Section 9** amends s. 627.351, F.S., governing Citizens Property Insurance Corporation (Citizens), to provide that condominium associations where 50 percent or more of the condominium units are rented more than eight times per year for a period of less than 30 days may be eligible for wind-only Citizens policies.

## **Delivery of Policies and Claims Communications**

**Section 10** amends s. 627.421, F.S., to eliminate a requirement that an insurer that provides electronic delivery of the insurance policy to a policyholder (or the person entitled to delivery) must also provide within the electronic transmission notice of the policyholder’s right to receive the policy via United States Mail. The section also deletes a requirement that the insurer provide a paper copy of the policy to the insured upon his or her request. For personal lines policies, an insurer may offer electronic delivery to the policyholder, but electronic delivery may only be used if the policyholder elects to receive electronic delivery of the policy. For commercial lines,

the insurer may use electronic delivery without the consent of the policyholder unless the policyholder communicates to the insurer that he or she does not agree to electronic delivery.

### **Affirmative Exclusions of Property Insurance Deductibles and Coverages**

**Section 11** amends s. 627.701, F.S., governing hurricane deductibles in residential property insurance policies, to allow a policyholder to write *or* type the required statement<sup>93</sup> which the policyholder must complete and sign in order to select a hurricane deductible greater than 10 percent of the policy dwelling limits on a risk valued at less than \$500,000.

**Section 12** amends s. 627.712, F.S., governing windstorm and contents coverage exclusions, to allow a policyholder to affirmatively reject windstorm coverage under a residential property insurance policy by typing the required statement<sup>94</sup> which excludes coverage.

The bill also allows a policyholder, except for a condominium unit owner policy or tenant policy, to affirmatively reject contents coverage under a residential property insurance policy by typing the required statement<sup>95</sup> which excludes coverage.

The bill retains current law in both of these statutory sections that allows the policyholder to write out the required statements required in these sections.

### **Notice of Claims under Assignment Agreements**

**Section 13** amends s. 627.7152, F.S., governing residential property insurance and commercial property insurance assignment agreements. The bill adds the services of inspection and providing a scope of service to the list of services contemplated by the definition of “assignment agreement.”

The bill also specifies the notice of intent to initiate litigation that must be sent by an assignee to an insurer must be sent to the name and mailing address designated by the insurer in the policy forms if notice is sent by certified mail, return receipt requested, or to the email address designated by the insurer in the policy forms if notice is sent by electronic delivery.

This section is effective upon becoming law.

### **Notice of Limited Coverage for Antique Vehicles**

**Section 14** amends s. 627.7276, F.S., to require an automobile policy that does not provide coverage for bodily injury liability and property damage liability include notice accompanying the declarations page that the policy does not provide such coverages and does not comply with any financial responsibility laws. Such policies generally cover antique motor vehicles.

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<sup>93</sup> “I do not want the insurance on my home to pay for the first (specify dollar value) of damage from hurricanes. I will pay those costs. My insurance will not.”

<sup>94</sup> “I do not want the insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not.”

<sup>95</sup> “I do not want the insurance on my (home/mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not.”

## **Agent Licensing**

### ***Motor Vehicle Service Agreements***

**Section 15** amends s. 634.171, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell motor vehicle service agreements.

### ***Home Warranty Contracts***

**Section 16** amends s. 634.317, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell home warranty contracts.

### ***Service Warranty Contracts***

**Section 17** amends s. 634.419, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell service warranty contracts.

## **Reenactments**

**Section 18** reenacts s. 624.424(10), F.S., related to insurer's annual statements, to incorporate amendments made to s. 215.555, F.S., which address collateral protection insurance coverage amounts.

This section is effective June 1, 2023.

**Section 19** reenacts s. 627.351(6)(v), F.S., related to Citizens Property Insurance Corporation, to incorporate amendments made to s. 215.555, F.S., which address collateral protection insurance coverage amounts.

This section is effective June 1, 2023.

**Section 20** reenacts s. 626.8734, F.S., related to public adjuster's qualifications, to incorporate the amendments made to s. 626.221, F.S.

**Section 21** reenacts s. 626.865(1)(e), F.S., related to company employee adjusters, to incorporate amendments made to s. 626.865, F.S., which address insurer affiliates.

**Section 22** reenacts paragraph (1)(d) and subsection (2) of section 627.7153, F.S., which addresses policies restricting assignments of post-loss benefits under a property insurance policy, to incorporate amendments made to s. 627.7152, F.S., which address assignment agreements.

This section is effective upon becoming law.



**Effective Date**

**Section 23** provides that except as otherwise expressly provided in this act, and except for this section, which takes effect upon this act becoming a law, this act is effective July 1, 2022.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, section 10 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

There may be a decrease or increase in costs related to **Section 1** of the bill that requires that the Florida Hurricane Catastrophe Fund (FHCF) to provide reimbursement for a loss under collateral protection insurance (also known as lender-placed or force-placed insurance) in certain circumstances. If there is an increase in costs, the FHCF has an estimated balance well over \$10 billion, so the impact is estimated to be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 215.555, 440.381, 626.221, 626.856, 626.8734, 627.062, 627.0629, 627.0665, 627.351, 627.421, 627.701, 627.712, 627.7152, 627.7276, 634.171, 634.317, 634.419, 624.424, 626.865, and 627.7153.

This bill creates section 624.46227 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS by Judiciary on January 10, 2022:**

This CS no longer includes a provision from the prior version of the bill which would have revised the effective date of service of process served on an insurer through service on the Chief Financial Officer.

The CS adds to the various designations or certifications listed in statute which exempt a person from the examination requirement for licensure as an insurance agent or as an adjuster. Under the amendment, a designation as a Certified All Lines Adjuster from Kaplan will qualify a person for the exemption.

**CS by Banking and Insurance on December 1, 2021:**

The committee substitute excludes any instrument by which a licensed public adjuster receives any compensation, payment, commission, fee, or other thing of value for providing public adjuster services from the definition of “assignment agreement.”

- B. **Amendments:**

None.