

**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 1728

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Boyd

SUBJECT: Property Insurance

DATE: March 2, 2022

REVISED: 3/3/22 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold/Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sanders/Knudson</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1728 addresses contractor solicitations related to property insurance roof claims, the application of a separate roof deductible for roof losses to residential property, and various aspects of Citizens Property Insurance Corporation (Citizens or corporation).

**Contractor Advertisement Related to Property Insurance Claims for Roof Damage**

The bill allows contractors to make written or electronic communications that encourage, instruct, or induce a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage if such communication includes the following disclosures:

- The consumer is responsible for payment of any insurance deductible;
- It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and
- It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete or misleading information.

The disclosures must be stated in a font size that is at least 12 points and at least half as large as the largest font used in the solicitation. With this change, contractors will no longer be prohibited

from making such solicitations so long as the solicitation includes the aforementioned disclosures.

### **Separate Roof Deductible**

The bill allows property insurers to require a separate roof deductible as a condition of eligibility or renewal of a residential property insurance policy, if all of the following conditions are met:

- The roof deductible may not exceed two percent of the policy's dwelling coverage limit.
- The premium for such coverage includes an actuarially sound premium discount or credit for the impact of the roof deductible.
- If the roof deductible is added to the policy at renewal, the insurer must provide a notice of change in policy terms pursuant to section 627.43141, Florida Statutes.
- The roof deductible does not apply to:
  - A total loss to a primary structure in accordance with the valued policy law;
  - Under section 627.702, Florida Statutes, which is caused by a covered peril;
  - A roof loss caused by a hurricane as defined by section 627.4025(2), Florida Statutes; or
  - A roof loss that can be repaired without replacement of the roof.
- If a roof deductible is applied, no other policy deductible may be applied to the loss. If, however, a roof deductible is not applied, the all-other-perils deductible or the hurricane deductible may be applied.

The bill specifies that a roof deductible provision may only be included in an insurance policy if the OIR determines the deductible provisions of the policy are clear and unambiguous. The bill also requires that any personal lines residential property insurance policy that contains a separate roof deductible must include the following disclosure in at least 18-point, boldfaced type: **THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR ROOF LOSSES WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.** The policy must also prominently display the actual dollar value of the roof deductible on the policy declarations page at issuance, and for renewal, on the renewal declarations page or the premium renewal notice.

The bill allows residential property insurers that utilize a roof deductible to provide only actual cash value reimbursement on a roof loss until the insurer receives reasonable proof of payment by the policyholder of the roof deductible.

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

The bill makes it a requirement, rather than an option, that Citizens merge their Personal Lines, Commercial Lines, and Coastal Accounts if financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are no longer outstanding.

The bill requires certain appointed members of the Citizens Board of Governors (board) to have demonstrated expertise in insurance at the time of appointment or reappointment. The bill requires that on or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance or must have at least one experience serving on the board. The bill revises the term "demonstrated expertise in insurance" to mean at least ten years' experience:

- In property and casualty insurance as a full time employee, officer, or owner of a licensed insurance agency or an insurer authorized to transact property insurance in this state; or
- As an insurer regulator or as an executive or officer of an insurance trade association.

The bill also requires that the Citizens executive director must, at the time of appointment, have the experience, character and qualifications necessary to serve in that role for an insurer that has a certificate of authority to transact insurance in Florida.

The bill limits the application of the Citizens “glidepath” to personal lines residential policies covering an insured’s *primary residence* and any commercial lines residential policy.

“Glidepath” is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. The maximum rate increase that may be imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.<sup>1</sup> Other properties would be charged the actuarially indicated rate.

The bill provides that when Citizens assumes a policy from an unsound insurer, the premium shall be the higher of the last premium amount charged by the unsound insurer to the policyholder or the premium that would be normally charged by Citizens to carry said risk. If an unsound insurer’s premium is applied to the policy, that premium would remain in place unchanged until the rate for Citizens, that would be normally applicable, exceeds the amount last charged by the unsound insurer.

The bill provides whenever an offer is received by a Citizens personal or commercial lines residential policyholder, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens. The bill also applies the 20 percent standard to new applicants for Citizens commercial lines residential coverage. Under current law, Citizens policyholders remain eligible for coverage unless the offer from an authorized insurer is less than the policyholder’s Citizens renewal premium.

The bill authorizes surplus lines insurers to participate in Citizens’ depopulation, take-out, and keep-out plans if Citizens’ policy count exceeds 700,000 policies. Citizens’ policy count was 759,305 policies as of December 31, 2021. The surplus lines insurer must: meet financial requirements; provide notice to the policyholder which outlines any coverage differences and explain surplus lines policies are not covered by the Florida Insurance Guaranty Association; and provide coverage similar to that provided by Citizens. A risk with a personal residential dwelling replacement cost or a single condominium unit with a combined dwelling and contents replacement cost that is less than \$700,000, remains eligible for Citizens regardless of receipt of an offer of comparable coverage from a surplus lines insurer. If such risk has a replacement cost of \$700,000 or more, however, the risk is ineligible for Citizens coverage upon receiving an offer of comparable coverage from a surplus lines insurer that is not greater than the premium for Citizens coverage.

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<sup>1</sup> The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.

## Notice of Intent to Initiate Litigation

The bill allows a defendant to recover reasonable attorney fees and costs if a claimant's suit against the defendant is dismissed for failure to submit a notice of intent to initiate litigation

The bill has an indeterminate fiscal impact to state revenues and expenditures. *See Section V. Fiscal Impact Statement.*

The bill has an effective date of July 1, 2022.

## II. Present Situation:

### Florida Residential Property Insurance Market Data and CS/CS/CS/SB 76 (2021)

According to the Florida Office of Insurance Regulation (OIR), from 2017 through the second quarter of 2021, Florida domestic property insurers had cumulative net underwriting losses that resulted in a cumulative net income in excess of negative one billion dollars.<sup>2</sup>

Prior to the 2021 Legislative Session, the OIR reported an increasing trend of domestic property insurers filing for rate increases. Insurers submitted 105 rate filings in 2020 for increases of 10 percent or more, with the OIR approving 55 of those filings. In 2016, the OIR approved only six rate increases of at least 10 percent.<sup>3</sup>

In a presentation to the Florida Senate Committee on Banking and Insurance on January 12, 2021, the State Insurance Commissioner attributed the net underwriting losses, combined ratios, and resulting rate increases displayed above to several related trends and behaviors present in Florida's domestic property insurance market:

- Claims with litigation;
- Claims solicitation; and
- Adverse loss reserve development.<sup>4</sup>

In 2020, the OIR conducted a data call of Florida's domestic property insurers.<sup>5</sup> According to the State Insurance Commissioner, the results of the data call showed the severity of non-weather water claims with litigation is nearly double that of the claims that are closed without litigation.<sup>6</sup>

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<sup>2</sup> David Altmaier, Florida Office of Insurance Regulation, Overview of the Florida Insurance Market, pg. 6 (Sept. 22, 2021). [https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/5252/9419\\_MeetingPacket\\_5252\\_2.pdf](https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/5252/9419_MeetingPacket_5252_2.pdf) (last accessed Jan. 30, 2022).

<sup>3</sup> Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

<sup>4</sup> Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

<sup>5</sup> <https://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx> (last visited Jan. 27, 2021).

<sup>6</sup> Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

According to the OIR, the increased severity of claims involving litigation is driving adverse loss reserve development, leading to high rate filings.<sup>7</sup> Loss reserve development is the difference between the original loss as initially reserved by the insurer and its subsequent evaluation later or at the time of its final disposal.<sup>8</sup> When adverse loss reserve development occurs, the claim costs more than its reserve was originally estimated by the insurer.

In response to the aforementioned challenges in Florida's property insurance market, the 2021 Legislature passed CS/CS/CS/SB 76 (2021).<sup>9</sup> The bill addressed multiple aspects of the property insurance market, including solicitations regarding roof claims, notice of bringing a civil action in a property insurance dispute, attorney fee awards in first-party property insurance litigation, and the eligibility standards and ratemaking of Citizens.

### ***Property Insurance Practices by Contractors***

The 2021 property insurance law attempted to address increases in roof claims by prohibiting contractors, and persons acting on behalf of contractors, from:

- Soliciting residential property owners through prohibited advertisements, which are communications to a consumer that encourage, instruct, or induce a consumer to contact a contractor to file an insurance claim for roof damage;
- Offering the residential property owner consideration to perform a roof inspection or file an insurance claim;
- Offering or receiving consideration for referrals when property insurance proceeds are payable;
- Engaging in unlicensed public adjusting; and
- Providing an authorization agreement to the insured without providing a good faith estimate.

The above acts are subject to license discipline by the Department of Business and Professional Regulation and a \$10,000 fine per violation. The law provides the residential property owner may void the contract with the contractor within 10 days of its execution if the contractor fails to provide notice to the residential property owner of the contractor's prohibited practices.

The law prohibits licensed contractors and subcontractors from advertising, soliciting, offering to handle, handling, or performing public adjuster (PA) services without a license. The prohibition does not prohibit the contractor from recommending the consumer consider contacting his or her insurer to determine if the proposed repair is covered by insurance.

The law prohibits a PA, PA apprentice, or person acting on behalf of a PA or PA apprentice, from offering financial inducements for allowing a roof inspection of residential property or making an insurance claim for roof damage. The law also prohibits them from offering or accepting consideration for referring services related to a roof claim. Each violation subjects the PA or PA licensee to up to a \$10,000 fine. Unlicensed persons not otherwise exempted from PA

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<sup>7</sup> Florida Senate, *Meeting of the Committee on Banking and Insurance* (Jan. 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation)

<sup>8</sup> International Risk Management Institute, *Glossary*, <https://www.irmi.com/term/insurance-definitions/loss-development> (last visited Jan. 27, 2021).

<sup>9</sup> Ch. 2021-77, Laws of Florida.

licensure commit the unlicensed practice of public adjusting when they do these prohibited acts, and are subject to a \$10,000 fine per act and the criminal penalty for unlicensed activity.

### ***Regulations of Commercial Speech***

The United States Supreme Court set forth the standards for analyzing whether a restriction on commercial speech<sup>10</sup> violates the First Amendment of the United States Constitution in the case of *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*.<sup>11</sup> Justice Powell succinctly set forth the standards.

In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.<sup>12</sup>

The court explained in *Central Hudson* that if a law restricts commercial speech that address speech that is not misleading or related to unlawful activity, the government's power to regulate such speech is limited:

If the communication is neither misleading nor related to unlawful activity, the government's power is more circumscribed. The State must assert a substantial interest to be achieved by restrictions on commercial speech. Moreover, the regulatory technique must be in proportion to that interest. The limitation on expression must be designed carefully to achieve the State's goal. Compliance with this requirement may be measured by two criteria. First, the restriction must directly advance the state interest involved; the regulation may not be sustained if it provides only ineffective or remote support for the government's purpose. Second, if the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive.

Florida Courts have applied the *Central Hudson* test to determine whether government restrictions on commercial speech violate article 1, section 4 of the Florida Constitution.<sup>13</sup>

The United State Supreme Court in *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, noted state laws that require disclosures in advertising do not receive the same degree of constitutional protection as a prohibition on commercial free speech.

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<sup>10</sup> Commercial speech is expression related solely to the economic interests of the speaker and its audience.

<sup>11</sup> 447 U.S. 557 (1980).

<sup>12</sup> See *Central Hudson Gas*, 447 US. 557 at pg. 565.

<sup>13</sup> See *Kortum v. Sink*, 54 So.3d 1012 (Fla. 1st DCA, 2010).

Because the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides, appellant's constitutionally protected interest in not providing any particular factual information in his advertising is minimal. An advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers.<sup>14</sup>

The United States Supreme Court (Court) used the *Zauderer* test to uphold disclosure requirements in *Milavetz, Gallop & Milavetz, P.A., v. U.S.* In delivering the opinion of the Court, Supreme Court Associate Justice Sonia Sotomayor upheld disclosure requirements placed by federal law<sup>15</sup> upon debt relief agents that provide bankruptcy assistance for payment because "...the disclosures are intended to combat the problem of inherently misleading commercial advertisements... [and] ... entail only an accurate statement of the advertiser's legal status and the character of the assistance provided."<sup>16</sup>

### ***Federal Preliminary Injunction against Provisions of SB 76 Banning Prohibited Advertisements***

On July 11, 2021, a federal district court enjoined the enforcement of the provisions of CS/CS/CS/SB 76 (2021) that ban contractors from making prohibited advertisements regarding property insurance roof claims.<sup>17</sup> Within the law, a prohibited advertisement is any written or electronic communication that encourages, instructs, or induces a consumer to contract a public adjuster or contractor for purposes of making an insurance claim for roof damage. The preliminary injunction prevents the enforcement of specific prohibitions in newly created s. 489.147, F.S., specifically (2)(a), (3), and (4)(b), F.S. These provisions are:

- (2)(a): A contractor may not directly or indirectly solicit a residential property owner by means of a prohibited advertisement;
- (3): A contractor who violates this section is subject to a disciplinary proceeding through Department of Business and Professional Regulation (DBPR) under s. 489.129, F.S., and is subject to a \$10,000 fine for each violation; and
- (4)(b): An unlicensed person who violates s. 489.147, F.S., is subject to the penalties in s. 489.13, F.S., and is subject to a fine of up to \$10,000 for each violation.

The judge issued the injunction on the basis that these provisions of the bill violate First Amendment commercial free speech rights of contractors under the United States Constitution. The injunction against (3) and (4)(b) above only apply to the prohibited advertisement provision. The prohibitions in the s. 489.147, F.S., regarding roof claims that ban offering inducements to consumers, accepting or paying referral fees, interpreting the insurance policy, or signing a contract with a consumer for roof repairs without providing a good faith estimate remain valid and enforceable.

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<sup>14</sup> *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, at pg. 628 (1985).

<sup>15</sup> 11 U.S.C. s. 528 (2006).

<sup>16</sup> *Milavetz, Gallop & Milavetz, P.A., v. U.S.*, 559 U.S. 229 at pg. 231 (2010).

<sup>17</sup> *Gale Force Roofing & Restoration, LLC v. Julie I. Brown*, 2021 WL 3046800, Case No. 4:21CV246-MW/MAF (U.S.D.C., N.D. Fla., Tallahassee Division) (Order Granting Preliminary Injunction, July 11, 2021).

The judge did not enjoin enforcement of the rest of the bill, thus the only provisions affected are those mentioned above that were specifically addressed by the preliminary injunction order.

### **Property Insurance Deductibles**

Section 627.701, F.S., governs to use of deductibles and coinsurance property insurance policies in this state. The law requires insurers to offer alternative deductible amounts applicable to hurricane losses equal to \$500, two percent, five percent, and 10 percent of the policy dwelling limits. However, the \$500 hurricane deductible need not be offered if certain conditions are met. If the policy covers a risk with dwelling limits of at least \$100,000, but less than \$250,000, the insurer may, in lieu of offering a \$500 hurricane deductible, may offer a policy that the insurer guarantees it will not nonrenew for reasons of reducing hurricane loss for one renewal period and that contains up to a two percent hurricane deductible. If the policy covers a risk with a dwelling replacement cost of \$250,000 or more, the insurer need not offer the \$500 hurricane deductible. The law requires that any policy that contains a separate hurricane deductible must include on its face in boldfaced type no smaller than 18 points, a statement that, “THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.” The hurricane deductible must be found to be clear and unambiguous by the Office of Insurance Regulation. The insurer must compute and prominently display the actual dollar value of the hurricane deductible on the policy declarations page at issuance and, at renewal, on the renewal declarations page or premium renewal notice.

### **Replacement Cost and Actual Cash Value Loss Settlement Provisions**

There are two primary settlement options available when purchasing a homeowner’s property insurance policy: *replacement cost* and *actual cash value*. Replacement cost is usually defined in the policy as the cost to repair or replace the damaged property with materials of like kind and quality, without any deduction for depreciation.<sup>18</sup> Replacement cost is designed to cover the difference between what the property is actually worth and what it would cost to rebuild or repair that property.<sup>19</sup> Following a covered loss, the insurer assumes the full cost of repairing or replacing the damaged property.<sup>20</sup>

By contrast, actual cash value is the cost to repair or replace the damaged property with material of like kind and quality, minus the cost of depreciation due to use, wear, obsolescence, or age.<sup>21</sup> Following a covered loss, the insured assumes the cost to cover the difference between the depreciated value of the damaged property and the cost of repairing or replacing it. Florida law currently requires insurers writing homeowner’s property insurance policies to offer adjustment to the dwelling, including the roof, on the basis of replacement cost.<sup>22</sup> The OIR will

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<sup>18</sup> National Association of Insurance Commissioners, *Glossary of Insurance Terms*, [https://content.naic.org/consumer\\_glossary.htm](https://content.naic.org/consumer_glossary.htm) (last visited Jan. 4, 2021).

<sup>19</sup> See *Trinidad v. Florida Peninsula Ins. Co.*, 121 So.3d 433, 438 (Fla. 2013) (quoting *State Farm Fire & Cas. Co. v. Patrick*, 647 So.2d 983 (Fla. 3d DCA 1994))

<sup>20</sup> Insureds that elect for adjustment on the basis of replacement cost receive greater coverage than adjustment on the basis of actual cash value because depreciation is not excluded from replacement cost, whereas it is generally excluded from actual cash value. See *Trinidad* at 438 (quoting *Goff v. State Farm Florida Ins. Co.*, 999 So.2d 684, 689 (Fla. 2d DCA 2008))

<sup>21</sup> National Association of Insurance Commissioner, *Glossary of Insurance Terms*, [https://content.naic.org/consumer\\_glossary.htm](https://content.naic.org/consumer_glossary.htm) (last visited Jan. 4, 2021).

<sup>22</sup> Section 627.7011(1), F.S.

approve policy forms that adjust roof losses on the basis of actual cash value, or the depreciated value of the roof. The insurer must, however, also offer replacement cost adjustment on the roof before issuing the policy.

### ***Fannie Mae and Freddie Mac Minimum Insurance Requirements***

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) provide liquidity, stability, and affordability to the mortgage market by buying mortgages from lenders and either holding the mortgages in their own portfolios or packaging the mortgages into mortgage-based securities for purposes of selling in the secondary mortgage market.<sup>23</sup> Fannie Mae and Freddie Mac, in turn, protect their interest in each mortgage by requiring minimum insurance coverages and settlement on the basis of replacement cost.<sup>24</sup>

Fannie Mae does not accept a property insurance policy that limits or excludes coverage, in whole or in part, for windstorm, hurricane, hail damages, or any other perils that normally are included under an extended coverage endorsement.<sup>25</sup> The borrower may not obtain a property insurance policy that includes such limitation or exclusion unless the borrower is able to obtain a separate policy or endorsement from another insurer that provides adequate coverage for the limited or excluded peril, or from an insurance pool that the state has established to cover the limitation or exclusions.<sup>26</sup> For first-lien residential mortgages, Fannie Mae requires coverage equal to the lesser of the following:

- 100 percent of the insurable value of the improvements, as established by the property insurer; or
- The unpaid principal balance of the mortgage, as long as it at least equals the minimum amount (80 percent of the insurable value of the improvements) required to compensate for damage or loss on a replacement cost basis.<sup>27</sup>

Freddie Mac does not accept a property insurance policy that excludes coverage for loss or damage from fire, lightning, and other perils, including windstorm, hail, explosion, riot, civil commotion, damage by aircraft, damage by vehicles, and damage by smoke, covered within the scope standard extended coverage.<sup>28</sup> The borrower may not obtain a property insurance policy that includes such exclusion unless the borrower is able to obtain a separate policy or endorsement from another insurer that provides adequate coverage for the limited or excluded

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<sup>23</sup> Federal House Finance Agency, *About Fannie Mae and Freddie Mac*, <https://www.fhfa.gov/about-fannie-mae-freddie-mac> (last visited Jan. 28, 2022).

<sup>24</sup> Fannie Mae, *Selling Guide: Fannie Mae Single Family* (Dec. 15, 2021), <https://singlefamily.fanniemae.com/media/30286/display#page=905> (last visited Jan. 28, 2022); Freddie Mac, *Minimum Property Insurance Types and Amounts* (November 4, 2020), <https://guide.freddiemac.com/app/guide/section/4703.2> (last visited Jan. 28, 2022).

<sup>25</sup> See Fannie Mae, *Selling Guide: Fannie Mae Single Family* (Dec. 15, 2021), <https://singlefamily.fanniemae.com/media/30286/display#page=905> (last visited Jan. 28, 2022); Extended coverage must include, at minimum, wind, hurricane, civil commotion (including riots), smoke, hail, and damages caused by aircraft, vehicle, or explosion. Typhoon coverage is required for security properties located in Guam.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Freddie Mac, *Minimum Property Insurance Types and Amounts* (Nov. 4, 2020), <https://guide.freddiemac.com/app/guide/section/4703.2> (last visited Jan. 28, 2022).

peril, or from an insurance pool the state has established to cover the limitation or exclusions.<sup>29</sup> For one-to-four unit residential properties, Freddie Mac requires coverage at least equal to the higher of the following, not to exceed the replacement cost of the insurable improvements:

- The unpaid principal balance of the mortgage; or
- Eighty percent of the full replacement cost of the insurable improvements.<sup>30</sup>

### ***Valued Policy Law***

Florida's Valued Policy Law (VPL)<sup>31</sup> has been in effect since 1899<sup>32</sup> and requires the insurer to set the value of the insured property in the event of a total loss.<sup>33</sup> The VPL originally applied to damages caused by fire and lightning; however, in 1982, the Legislature extended VPL to all covered perils under ch. 82-243, s. 539, L.O.F.<sup>34</sup> In the event of a total loss caused by a covered peril, where the covered peril alone would have caused the loss, an insurer's liability under a property insurance policy equals the total coverage limit for which a premium was paid.<sup>35</sup> However, in the event of total loss caused in part by a covered peril and in part by a noncovered peril, the insurer's liability is limited to the amount of the loss caused by the covered peril.<sup>36</sup>

Florida's VPL currently applies to the total loss of buildings, structures, mobile homes, or manufactured buildings located in Florida and insured as to a covered peril. While it does not differentiate between residential and commercial property, it does not cover policies issued by surplus lines insurers.

### **Notice of Intent to Litigate Property Insurance Claims**

Section 627.70152, F.S., specifies that a claimant must provide the Department of Financial Services (DFS) with written notice of intent to initiate litigation on a form provided by the DFS. Notice is a condition precedent to filing suit. The notice must be given at least 10 business days before filing suit under the policy, but may not be made before the insurer has made a coverage determination under s. 627.70131, F.S., The notice must specify certain information. The DFS forwards the notice to the insurer through electronic mail. A court must dismiss without prejudice any claimant's suit related to a claim for which such notice was not provided.

### **Citizens Property Insurance Corporation—Overview**

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Section 627.702, F.S.

<sup>32</sup> *Florida Farm Bureau Cas. Ins. Co. v. Cox*, 967 So. 2d 815, 818 (Fla. 2007).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* The Legislature amended the VPL in 2005 after *Mierzwa v Florida Windstorm Underwriting Ass'n*, 877 So.2d 774 (Fla. 4<sup>th</sup> DCA 2004) was released, "expressly providing that "when a loss was caused in part by a covered peril and in part by a noncovered peril, paragraph (a) does not apply. In such circumstances, the insurer's liability under this section shall be limited to the amount of the loss caused by the covered peril. See s. 627.702(1)(b), F.S. (2005)."

<sup>35</sup> Section 627.702(1)(a), F.S.

<sup>36</sup> Section 627.702(1)(b), F.S.

coverage to those unable to find affordable coverage in the voluntary admitted market.<sup>37</sup> Citizens is not a private insurance company.<sup>38</sup> Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.<sup>39</sup> The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.<sup>40</sup> Citizens is subject to regulation by the Florida Office of Insurance Regulation (OIR).

Citizens has three different accounts through which it offers property insurance: a personal lines account, a commercial lines account, and a coastal account.

### ***Citizens' Accounts***

*The Personal Lines Account (PLA)* offers personal lines residential policies that provide comprehensive, multi-peril 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 home owners, dwellings, tenants, and condominium unit owner's policies.<sup>41</sup>

*The Commercial Lines Account (CLA)* offers commercial lines residential and non-residential 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 non-residential policies covering business properties.<sup>42</sup>

*The Coastal Account* offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.<sup>43</sup>

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<sup>37</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>38</sup> Section 627.351(6)(a)1., F.S.

<sup>39</sup> Section 627.351(6)(a)2., F.S.

<sup>40</sup> Section 627.351(6)(c)4.a., F.S.

<sup>41</sup> See s. 627.351(6)(b)2.a., F.S., and *Account History and Characteristics*, Citizens Property Insurance Corporation, <https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563> (March 2016) (last visited Jan. 22, 2022).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.<sup>44</sup> Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens.<sup>45</sup>

**Current Policies**

As of December 31, 2021, Citizens reports 759,305 policies in-force with a total exposure of \$232,502,323,529.<sup>46</sup> The chart below outlines Citizens account and product type, number of policies in-force, total exposure and premium with surcharges.

Account	Product Line	Policies In-Force	Total Exposure	Premium with Surcharges	
PLA	Personal Residential Multiperil (PR-M)	589,028	167,886,789,888	1,280,496,248	
Coastal	Personal Residential Multiperil (PR-M)	98,105	23,245,226,192	278,331,349	
Coastal	Personal Residential Wind-Only (PR-W)	67,342	28,784,726,623	178,916,825	
Coastal	Commercial Residential Multiperil (CR-M)	111	592,392,383	2,789,952	
Coastal	Commercial Residential Wind-Only (CR-W)	1,749	5,682,636,307	33,449,678	
Coastal	Commercial Non-Residential Multiperil (CNR-M)	39	48,588,500	569,765	
Coastal	Commercial Non-Residential Wind-Only (CNR-W)	2,212	1,837,291,826	23,692,614	
CLA	Commercial Residential Multiperil (CR-M)	580	4,289,395,010	17,091,136	
CLA	Commercial Non-Residential Multiperil (CNR-M)	139	135,276,800	879,248	
		Total	759,305	232,502,323,529	1,816,216,815

Source: Citizens Property Insurance<sup>47</sup>

These numbers do not reflect policies tagged for takeout via Citizens’ depopulation program but still serviced by Citizens.<sup>48</sup> From December, 2020 to December, 2021, Citizens’ policy count

<sup>44</sup> Section 10, ch. 2013-60, L.O.F.

<sup>45</sup> Section 627.3518(2)-(3), F.S.

<sup>46</sup> Citizens Property Insurance, *About Us, Snapshot, December 31, 2021*, <https://www.citizensfla.com/-/20211231-policies-in-force> (last visited Jan. 22, 2022).

<sup>47</sup> *Id.* This table does not include policies tagged for takeout via the Depopulation Program but still serviced by Citizens.

<sup>48</sup> *Id.*

grew by nearly 40 percent, adding 216,566 total policies in force.<sup>49</sup> Citizens has expressed it expects to exceed one million policies in force in 2022.<sup>50</sup>

### ***Citizens Glidepath Rates***

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. In 2021, the Legislature revised this glidepath to increase it one percent per year to 15 percent, as follows:<sup>51</sup>

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

The implementation of this increase ceases when Citizens has achieved actuarially sound rates.<sup>52</sup> In addition to the overall glidepath rate increase, Citizens can increase its rates to recover the additional reimbursement premium it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.<sup>53</sup>

### ***Citizens Financial Resources***

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are currently the major determinants of insurance rates.<sup>54</sup> In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.<sup>55</sup> Under Florida law, if the Citizens' Board of Directors determines a Citizens' account has a projected deficit, Citizens is authorized to levy

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<sup>49</sup> Citizens Property Insurance Corporation, *Policies in Force*, <https://www.citizensfla.com/policies-in-force> (last visited Jan. 22, 2022).

<sup>50</sup> Citizens Property Insurance Corporation, *Press Release: Citizens Board approves 2022 rate recommendations* (December 15, 2021), available at <https://www.citizensfla.com/-/20211215-citizens-board-approves-2022-rate-recommendations>.

<sup>51</sup> Section 627.351(6)(n)5., F.S.

<sup>52</sup> Section 627.351(6)(n)7., F.S.

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

<sup>54</sup> Citizens Property Insurance Corporation, *2022 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, <https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548> (last visited Jan. 22, 2022).

<sup>55</sup> Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, <https://www.citizensfla.com/assessments> (last visited Jan. 22, 2022).

assessments<sup>56</sup> on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.<sup>57</sup> Citizens may impose three assessment tiers and their sequence is as follows:<sup>58</sup>

*Citizens Policyholder Surcharge* – A surcharge of up to 15 percent of premium on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account—that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.<sup>59</sup>

*Regular Assessment* – If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers except medical malpractice and workers' compensation. The assessment may be recouped from policyholders through a rate filing process of up to two percent of premium or two percent of the deficit, whichever is greater.<sup>60</sup> This assessment is not levied against Citizens' policyholders.

*Emergency Assessment* – Requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers' compensation), including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.<sup>61</sup>

### ***Eligibility for Insurance in Citizens***

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules are approved by the OIR and are set out in Citizens' underwriting manuals.<sup>62</sup>

### ***Eligibility Based on Premium Amount***

An applicant for residential insurance cannot buy insurance in Citizens if an authorized insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens

<sup>56</sup> Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.

<sup>57</sup> Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. Section 627.351.(6)(b)3.f.-h., F.S.

<sup>58</sup> Citizens Property Insurance Corporation, *supra* note 55.

<sup>59</sup> Sections 627.351.(6)(b)3.i.(I) and 627.351.(6)(c)21., F.S. *See also*, Citizens Property Insurance Corporation, *supra* note 55.

<sup>60</sup> Section 627.351.(6)(b)3.a., F.S.

<sup>61</sup> Section 627.351(6)(b)3.d., F.S.

<sup>62</sup> *See* Citizens Property Insurance Corporation *Revised Underwriting Manuals*, <https://www.citizensfla.com/-/20160329-revised-underwriting-manuals> (last visited Jan. 22, 2022).

premium by 20 percent or more.<sup>63</sup> In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

A residential policyholder cannot renew insurance in Citizens if an authorized insurer offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the eligibility requirement for renewal premium to apply.<sup>64</sup>

### ***Eligibility Based on Value of Property Insured***

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.<sup>65</sup> Structures with a dwelling replacement cost of \$700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of \$700,000 or more, are not eligible for coverage with Citizens.<sup>66</sup> However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of one million dollars or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.<sup>67</sup>

### ***Citizens Depopulation***

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.<sup>68</sup> In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to takeout agreements.<sup>69</sup> As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer is requesting to take out;<sup>70</sup>
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take-out a policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:
  - The amount of the estimated premium;

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<sup>63</sup> Section 627.351(6)(c)5., F.S.

<sup>64</sup> Section 627.351(6)(c)5., F.S.

<sup>65</sup> Section 627.351(6)(a)3., F.S.

<sup>66</sup> Section 627.351(6)(a)3.d., F.S.

<sup>67</sup> Office of Insurance Regulation, Final Order Case No: 165625-14 (Dec. 22, 2014), available at <https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf> (last visited Jan. 22, 2022). See also Section 627.351(6)(a)3.d., F.S., and Citizens Property Insurance Corporation, *Update to Maximum Coverage Limits, November 12, 2019* <https://www.citizensfla.com/-/2019-roof-permits-acceptable-for-fbc-credits>.

<sup>68</sup> Section 627.351(6)(q)3.a., F.S.

<sup>69</sup> Chapter 2016-229, L.O.F.

<sup>70</sup> Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

- A description of the coverage; and
- A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

### **Access to Public Records – Generally**

The Florida Constitution provides the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>71</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>72</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in ss. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the Legislature.<sup>73</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>74</sup> Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

### **Confidentiality of Citizens' Underwriting and Claims Files**

Section 627.351(1)(x), F.S., establishes certain records of Citizens are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. Pursuant to sub-sub-paragraphs 1.a.-b., these exempt records include:

- Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files; and
- Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law.

Sub-sub-paragraphs 1.a.-b. also provide that such records may be released to other governmental agencies upon written request and demonstration of need. Records so released and held by the receiving agency would remain confidential and exempt.

The public records exemption authorizes the sharing of certain files and information for the purpose of depopulating Citizens. If an authorized insurer is considering underwriting a risk insured by Citizens, relevant underwriting files and confidential claims files may be released to the insurer if the insurer agrees in a sworn writing to maintain the confidentiality of the files.

<sup>71</sup> FLA. CONST. art. I, s. 24(a).

<sup>72</sup> *Id.*

<sup>73</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022),

[https://www.flsenate.gov/UserContent/Publications/SenateRules/2020-2022\\_Rules.pdf](https://www.flsenate.gov/UserContent/Publications/SenateRules/2020-2022_Rules.pdf) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022), and

<https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Reference&CommitteeId=&Session=2022&DocumentType=The+Rules+Of+The+House+of+Representatives&FileName=2020-2022+House+Rules+-++Edition+1.pdf> (last visited Jan. 22, 2022).

<sup>74</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

Citizens may also release such files to the staff and board of governors of the market assistance plan established by s. 627.3515, F.S., who also must maintain confidentiality, and may share such files with authorized insurers considering writing those risks if the authorized insurer agrees to maintain confidentiality. Citizens may also release the name, address, and phone number of a residential property owner or insured, the location of the risk, rating information, loss history, and policy type to an entity that has obtained a permit to become an authorized insurer, a reinsurer under s. 624.610, F.S., a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines agent. The recipient of such information must maintain confidentiality.

### **Insurer Insolvency**

Federal law specifies insurance companies cannot file for bankruptcy and are instead subject to state laws regarding receivership.<sup>75</sup> Insurers are either "rehabilitated" or "liquidated" by the state. Typically, insurers are put into liquidation when the company is or is about to become insolvent;<sup>76</sup> whereas, insurers are placed in rehabilitation<sup>77</sup> for numerous reasons, one of which is the insurer is impaired or failed to comply with an order of the OIR to address an impairment of capital or surplus or both. The goal of rehabilitation is to return to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay off the company's debts and outstanding insurance claims.

In Florida, the Division of Rehabilitation and Liquidation of the DFS is responsible for rehabilitating or liquidating insurance companies. This process involves the initiation of a delinquency proceeding<sup>78</sup> and the placement of an insurer under the control of the DFS as the receiver. The DFS, as receiver, has many responsibilities related to outstanding debts and insurance claims, which include collecting all debts and money due to the insurer for the good of policyholders and creditors alike, evaluating and paying claims with available assets, and assisting in the transition of policyholders to other insurance coverage.<sup>79</sup>

If an insurer is placed under liquidation, Citizens may, if ordered by a court of competent jurisdiction, assume policies or otherwise provide coverage for policyholders of said insurer under such forms, rates, terms, and conditions as the corporation deems appropriate. Such forms, rates, terms, and conditions are subject to approval by the OIR.

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<sup>75</sup> The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. § 1012 (McCarran-Ferguson Act).

<sup>76</sup> Section 631.061, F.S.

<sup>77</sup> Section 631.051, F.S.

<sup>78</sup> Section 631.031, F.S.

<sup>79</sup> Florida Department of Financial Services, *Overview of Liquidation under Chapter 631, Florida Statutes*, <https://www.myfloridacfo.com/division/receiver/guide-to-the-receivership-process/liquidationsummary> (last visited December 29, 2021).

### III. Effect of Proposed Changes:

#### **Prohibition against Contractor Solicitations to Make Insurance Claims for Roof Damage**

**Section 1** amends s. 489.147(1)(a), F.S., to revise the definition of a prohibited advertisement, which current law prohibits. The term is currently defined as any written or electronic communication by a contractor which encourages, instructs, or induces a consumer to contact a contractor or public adjuster, for making an insurance claim for roof damage. The bill revises the definition by providing a prohibited advertisement means any such written or electronic communication that does not include the following disclosures:

- The consumer is responsible for payment of any insurance deductible;
- It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and
- It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete or misleading information.

The disclosures must be stated in a font size that is at least 12 points and at least half a large as the largest font used in the solicitation.

With this change, contractors will no longer be prohibited from making such solicitations so long as the solicitation includes the aforementioned disclosures.

#### **Scope (As it Applies to Property, Casualty and Surety Insurances)**

**Section 2** amends s. 627.021, F.S., to specify that though the Rating Law (Part I of ch. 627, F.S.) does not apply to surplus lines insurance placed under ss. 626.913 – 626, it may be specifically stated to apply to such insurance. The revision is necessitated by the provision allowing surplus lines insurers that meet certain requirements to participate in Citizens Property Insurance Corporation (Citizens or corporation) take-out programs.

#### **Citizens Property Insurance Corporation**

**Section 3** amends s. 627.351(6), F.S., regarding Citizens, the governmental entity that provides residential and commercial property insurance to applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market.

#### ***Eligibility for Citizens Coverage – Determining Replacement Cost***

The bill amends s. 627.351(6)(a), F.S., to require that Citizens use a method for valuing dwelling replacement cost, which is approved by the Office of Insurance Regulation (OIR), when enforcing the requirement that structures and single condominium units with a replacement cost above the statutory threshold are ineligible for Citizens. Currently, structures and single condominium units with a replacement cost above \$700,000 are ineligible for Citizens coverage unless the dwelling or single condominium unit is located in a county where the OIR has determined there is not a reasonable degree of competition. In a county where there is not a reasonable degree of competition, which is currently Miami-Dade County and Monroe County,

structures and single condominium units are ineligible for Citizens if the replacement cost is one million dollars or more.

The bill also deletes unnecessary language related to Citizens eligibility that ceased to be effective on January 1, 2017.

***Combining Citizens Accounts***

The bill amends s. 627.351(6)(b)2.b., F.S., to require that Citizens combine its three accounts (personal lines, coastal, and commercial) into a single account once financing obligations based on the three account structure are no longer outstanding. The Legislature will need to further revise the Citizens statute in a future session in order for this to occur because the statute currently requires the three account structure and bases Citizens assessment authority on that structure.

***Governance of Citizens – Qualifications to Serve on the Board of Governors or as Executive Director***

The bill amends s. 627.351(6)(c)4., F.S., to increase the insurance expertise required of certain appointed members of the Citizens Board of Governors (board) at the time of appointment or reappointment. On or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance or must have at least one year of experience serving on the board. The executive director of Citizens is required, at the time of appointment, to have must have the qualifications necessary to serve in that role for an insurer that has a certificate of authority to transact insurance in Florida.

Under current law, at least one of the two members of the board appointed by each appointing officer<sup>80</sup> must have “demonstrated expertise in insurance.” The bill specifies the demonstrated expertise in insurance must be at least 10 years’ experience with property and casualty insurance as a full-time employee, officer, or owner of a licensed insurance agency, an insurer authorized to transact property insurance in Florida, an insurance regulator or as an executive director or officer of an insurance trade association.

The bill also specifies the executive director of Citizens must, at the time of appointment, have the experience, character, and qualification required under s. 624.404(3), F.S., to serve as the chief executive officer of an insurer.

Section 624.404(3), F.S., contains a number of requirements a person must meet to be the chief executive officer of an authorized insurer in Florida. The statute prohibits the OIR from authorizing an insurer to transact insurance in Florida if the management, officers, or directors are found by the OIR to be:

- Incompetent or untrustworthy;
- So lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance buying public;
- So lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of success operation; or

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<sup>80</sup> The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House.

- A person the OIR has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders, or investors, or creditors or of the public, by manipulation of assets, accounts, or reinsurance or by bad faith.

The OIR is also prohibited by s. 624.404(3), F.S., from authorizing an insurer who exercises or has the ability to exercise control, or who influences or has the ability to influence the transaction of the business of the insurer, does not possess the financial standing and business experience for the successful operation of the insurer.

Under s. 624.404(3), F.S., an authorized insurer must immediately remove a person who exercises, or has the ability to exercise, effective control of an insurer if such person:

- Has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or crime punishable by imprisonment of one year or more of any state or country; or
- Was in the past affiliated directly or indirectly, through ownership interest of 10 percent or more, control, or reinsurance transactions, with any business, corporation, or entity that has been found guilty of or plead nolo contendere to any felony or crime punishable by imprisonment for one year or more under the laws of any state or country.

Under the bill, the executive director of Citizens would have be required to meet these requirements.

#### *Eligibility for Citizens Coverage*

The bill amends s. 627.351(6)(c)5., F.S., to increase the likelihood that a current Citizens policyholder with a personal lines or commercial lines residential policy will be made ineligible for Citizens by receiving an offer of coverage from an authorized insurer at renewal. Specifically, the bill provides whenever such an offer is received by a Citizens policyholder, the risk is not eligible for Citizens coverage unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens. Thus, a current Citizens policyholder may not renew Citizens coverage if the policyholder receives an offer of comparable coverage at renewal from an authorized insurer at a premium that is not more than 20 percent higher than the Citizens renewal premium. This matches the current standard that applies to new applicants for Citizens coverage.

The bill increases the eligibility threshold for new applicants for Citizens commercial lines residential policies (such as condominium association policies) by increasing the threshold that a private market offer of coverage must exceed to allow a risk receiving such offer to remain eligible for Citizens coverage. The threshold is increased from 15 percent above the Citizens premium to 20 percent above the Citizens premium.

The bill makes a conforming change to revise a notice requirement in s. 627.351(6)(ii), F.S., that applies to certain Citizens depopulation programs.

Furthermore, **Section 4** of the bill amends s. 627.3518(5), F.S., to apply the revised eligibility criteria to policies in the Citizens clearinghouse.

***Rates for Citizens Coverage – Narrowing the Scope of Application of the Citizens Glidepath***

The bill amends s. 627.351(6)(n), F.S., which sets for the standards for Citizens rates. The bill limits the application of the Citizens “glidepath” to personal lines residential policies covering an insured’s *primary residence* and any commercial lines residential policy. “Glidepath” is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. The maximum rate increase that may be imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.<sup>81</sup> This limit on rate increases is notwithstanding the requirement that rates for Citizens coverage must be actuarially sound and are subject to the standards of s. 627.062, F.S., of the Rating Law.

The bill defines a primary residence as the dwelling an insured has represented as their permanent home on the insurance application or otherwise to the corporation. Thus, going forward, a personal lines residential policy that does not cover a primary residence (for instance, a second home) will have to pay an actuarially sound rate. The fiscal impact of this change on policyholders and the corporation is examined in **Section V, Fiscal Impact Statement** below.

***Rates for Citizens Coverage – Personal Lines Residential Policies Assumed From an Unsound Insurer***

The bill also provides that any new personal lines residential policy written by Citizens that has an effective date on or after January 1, 2023, which covers a risk for which the immediately preceding policy was written by an unsound insurer, must be charged a premium for Citizens coverage that is the higher of:

- The Citizens premium; or
- The premium that was charged by the unsound insurer.

The term “unsound insurer” as used in this provision means an insurer determined by the OIR to be in unsound condition or an insurer placed in receivership.

***Participation of Surplus Lines Insurers in Citizens Depopulation Programs***

The bill revises s. 627.351(6)(q)3.d., F.S., to allow eligible surplus lines insurers to participate in any Citizens’ depopulation, take-out, or keep-out plan in the same manner and terms as an authorized insurer if Citizens’ policy count more than 700,000 within the 30 days before the time a takeout offer is made by a surplus lines insurer. To be eligible for participation in a particular program, a surplus lines insurer must follow all Citizens’ requirements relating to the plan that would be applicable to admitted insurers, follow statutory requirements applicable to the removal of policies from Citizens, and obtain approval from the OIR. In considering a surplus lines insurer’s request for approval, the OIR must ensure the insurer:

- Maintains surplus of \$50 million on a company or pooled basis;
- Has a superior, excellent, exceptional, or equally comparable financial strength rating by a rating agency acceptable to the OIR;
- Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover its 100-year probable maximum hurricane loss at least twice in a single hurricane season;<sup>82</sup>

<sup>81</sup> The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.

<sup>82</sup> The insurer also must submit such reinsurance to the OIR for review.

- Provides prominent notice to the policyholder that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association (FIGA) and outlines any substantial policy differences between the existing Citizens' policy and the policy the insurer is offering; and
- Provides policy coverage similar to that provided by Citizens.

The surplus lines insurer also must file the following with the OIR:

- Information requested by the OIR to demonstrate compliance with s. 624.404(3), F.S., regarding basic qualifications to transact insurance in Florida;<sup>83</sup>
- A service-of-process consent and agreement form executed by the insurer;
- Proof that the insurer has been an eligible or authorized insurer for at least three years;
- A duly authenticated copy of the insurer's current audited financial statement;<sup>84</sup>
- A certified copy of the insurer's most recent official financial statement required by the insurer's domiciliary state (this is only required if the authenticated copy provided above differs from what the insurer provided to their domiciliary state); and
- A copy of the United States trust account agreement, if applicable.

Participation in these plans would not make a surplus line insurer subject to additional requirements under ch. 626, F.S., except that which is already required under part VIII. Policies taken out are not subject to the exporting requirements provided in s. 626.916(1)(a)-(c), and (e), F.S.

After assuming policies under these plans, a surplus lines insurer would be required to remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Bureau of Collateral Management within the Department of Financial Services (DFS). The insurer would also need to submit to the OIR an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Subsequently, each quarter, the surplus lines insurer must update the OIR with the unearned premium in force for the previous quarter on policies assumed from the corporation, and must submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies. The purpose of the special deposit is to allow the DFS, in the event of liquidation of the surplus lines insurer, to pay unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of ch. 631, F.S., or in compliance with any order of a court having jurisdiction over the insurer's insolvency.

A surplus lines broker representing a surplus lines insurer must obtain confirmation, in advance, from the producing agent that the agent is willing to participate in the take-out plan with the surplus lines insurer. Also, authorized insurers are to be given priority over surplus lines insurers if both select a particular policy for removal.

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<sup>83</sup> This may include biographical affidavits, fingerprints processed pursuant to s. 624.34, F.S., and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company.

<sup>84</sup> The statement must be in English, expressing all monetary values in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and including any additional information relative to the insurer as the OIR may request.

The surplus lines insurer participation provision also states if a policyholder has a dwelling replacement cost of \$700,000 or more or if a single condominium unit has a combined dwelling and contents replacement cost of \$700,000 or more, the policyholder would no longer qualify for Citizens coverage should the premium offered by the surplus lines insurer is no greater than that offered by Citizens. This provision does not apply to policyholders with a dwelling replacement cost below \$700,000 or a single condominium unit with a combined dwelling and contents replacement cost below \$700,000. Such policyholders would maintain eligibility for coverage with Citizens regardless of any offer of coverage from a surplus lines insurer.

### ***Underwriting and Confidential Claim Files***

The bill revises an existing public records exemption<sup>85</sup> under s. 626.916(1)(x)2., F.S., that allows authorized insurers, considering underwriting a risk held by Citizens, to access underwriting files and confidential claims files that would otherwise be exempt from public records requirements. The bill authorizes reinsurance intermediaries, eligible surplus lines insurers, or entities that have been created to seek authority to write property insurance in this state to also have access to such underwriting files and confidential claims. The bill also revises activities that would allow such parties, including authorized insurers, to receive this information. In particular, relevant information from both the underwriting files and confidential claim files may be released to the parties seeking to underwrite or assist in underwriting a risk.

### ***Citizens Clearinghouse***

**Section 4** of the bill amends s. 627.3518(5), F.S., to apply the revised eligibility criteria to policies in the Citizens clearinghouse. Accordingly, if an offer of coverage from an authorized insurer is received by a Citizens policyholder through the clearinghouse, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens.

### ***Roof Deductible***

**Section 5** amends s. 627.701, F.S., to allow property insurers to require a separate roof deductible as condition of eligibility or renewal of a residential property insurance policy, if all of the following conditions are met:

- The roof deductible may not exceed two percent of the policy's dwelling coverage limit.
- The premium for such coverage includes an actuarially sound premium discount or credit for the impact of the roof deductible.
- If the roof deductible is added to the policy at renewal, the insurer must provide a notice of change in policy terms pursuant to s. 627.43141, F.S.
- The roof deductible does not apply to:
  - A total loss to a primary structure in accordance with the valued policy law under s. 627.702, F.S., which is caused by a covered peril.
  - A roof loss caused by a hurricane as defined by s. 627.4025(2), F.S.
  - A roof loss that can be repaired without replacement of the roof.

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<sup>85</sup> Public records, unless expressly stated to be confidential and exempt, are subject to s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

- If a roof deductible is applied, no other policy deductible may be applied to the loss. If, however, a roof deductible is not applied, the all-other-perils deductible or the hurricane deductible may be applied.

The bill specifies that a roof deductible provision may only be included in an insurance policy if the OIR determines the deductible provisions of the policy are clear and unambiguous.

The bill also requires that any personal lines residential property insurance policy that contains a separate roof deductible must include the following disclosure in at least 18-point, boldfaced type:

**THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR ROOF  
LOSSES WHICH MAY RESULT IN HIGH OUT-OF-POCKET  
EXPENSES TO YOU.**

The policy must also prominently display the actual dollar value of the roof deductible on the policy declarations page at issuance, and for renewal, on the renewal declarations page or the premium renewal notice.

**Section 6** amends s. 627.7011(3)(a), F.S., to allow residential property insurers that utilize a roof deductible to provide only actual cash value reimbursement on a roof loss until the insurer receives reasonable proof of payment by the policyholder of the roof deductible. The bill defines “reasonable proof of payment” to include a canceled check, money order receipt, credit card statement, or copy of an executed installment plan contract or other financing arrangement that requires full payment of the deductible over time.

#### *Attorney Fees*

**Section 7** amends s. 627.70152, F.S., to allow a defendant to receive reasonable fees and costs if a claimant’s suit against the defendant is dismissed for failure to submit a notice of intent to litigate.

#### *Other Bill Sections*

**Sections 8, 9, and 10** of the bill reenact certain sections of the Florida Statutes to incorporate the amendments made by this bill.

**Section 11** provides an effective date of July 1, 2022.

#### **IV. Constitutional Issues:**

##### A. Municipality/County Mandates Restrictions:

None.

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

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

**Section 1** of the bill revises the currently existing prohibition against contractors making prohibited advertisements related to insurance claims for roof damage. Under the bill, such communications are not prohibited if certain disclosures regarding insurance fraud and property insurance deductibles are included in the advertisement. Background on United States Supreme Court cases relevant to this topic is included on pages 4 through 6 of this Staff Analysis.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill limits application of the Citizens glidepath on rates, which is the statutory provision that provides that no single residential policy insured by Citizens may incur an annual rate increase above a certain threshold – 11 percent in 2022, exclusive of coverage changes and surcharges. Under the bill, the glidepath is applied to only primary residences. Thus, Citizens will charge a premium based on an actuarially sound rate to non-primary residences (such as second homes). According to the most recent Citizens rate filing, the statewide average actuarially indicated rate for personal lines policies would require an average rate increase of 34.9 percent.<sup>86</sup> Application of the glidepath limit resulted in Citizens proposing an average rate increase of 8.6 percent for 2022.<sup>87</sup> Under the bill, an additional rate increase averaging 26.3 percent would be imposed on a non-primary residences.

Insureds that purchase policies with a separate roof deductible will receive a premium discount related to the deductible, but will have increased personal financial responsibility for a roof replacement to which the deductible applies.

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<sup>86</sup> Citizens Property Insurance Corporation, *2022 Rate Kit*, pg. 6 (Dec. 13, 2021).  
<https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548> (last visited Jan. 29, 2022).

<sup>87</sup> See *id.*

**C. Government Sector Impact:**

The provisions of the bill intended to depopulate Citizens – making all applicants for new Citizens residential coverage and current Citizens residential policyholders ineligible for Citizens coverage upon receiving an offer from an authorized insurer unless the premium is more than 20 percent higher than the Citizens premium, and limiting application of the Citizens glidepath – will result in Citizens having a lower number of policies and collecting more premium from some policyholders. To the extent that the bill reduces Citizens policy count or slows the growth of the policy count, it will reduce the likelihood of Citizens running a deficit and having to impose surcharges and assessments on policyholders.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 489.147, 627.021, 627.351, 627.3518, 627.701, 627.7011, and 627.70152.

The bill re-enacts the following sections of the Florida Statutes: 624.424(10), 627.3571, and 627.712(1).

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Appropriations on February 28, 2022:**

The committee substitute:

- Requires certain appointed members of the Citizens Board of Governors (board) to have demonstrated expertise in insurance at the time of appointment or reappointment.
- Requires on or after July 1, 2022, an appointee designated as chair must have demonstrated expertise in insurance and must have at least one experience serving on the board.
- Revises the term “demonstrated expertise in insurance” to mean at least ten years’ experience:
  - In property and casualty insurance as a full time employee, officer, or owner of a licensed insurance agency or an insurer authorized to transact property insurance in this state; or
  - As an insurer regulator or as an executive or officer of an insurance trade association.

- Removes a provision that allows insurers to provide homeowner's insurance roof coverage solely on the basis of actual cash value (ACV) or a stated limit of coverage;
- Allows insurers to require a separate roof deductible; however, the deductible cannot exceed two percent of the policy's dwelling unit;
- Provides a roof deductible does not apply in the event of:
  - Total loss to the insured property;
  - A roof loss caused by a hurricane; and
  - A roof than can be repaired instead of entirely replaced.
- Allows insurers to limit roof reimbursement to actual cash value until the policyholder provides proof of paying the roof deductible;
- Requires Citizens Property Insurance Corporation (Citizens) to merge its three accounts [coastal, residential, and commercial] once financial obligations are met;
- Requires that policies assumed by Citizens from an unsound insurer must pay the higher of the Citizens premium or the premium that was charged by the unsound insurer;
- Allows surplus lines to participate in the Citizens take-out program;
- Provides limited access to files for additional parties seeking to take policies out of Citizens; and
- Allows a defendant to receive reasonable attorney fees and costs if a claimant's suit against the defendant is dismissed for failure to submit a notice of intent to litigate.

**CS by Banking and Insurance on February 2, 2022:**

The committee substitute:

- Removes the provisions related to Surplus Lines and public records exemptions in s. 627.351, F.S, of the underlying bill; and
- Makes a technical change restoring current law related to Citizens' policies removed from the corporation through an assumption agreement.

**B. Amendments:**

None.