

**SPB 7062 by BI; Citizens Property Insurance Corporation Coverage**

186484	A	S	FAV	BI, Montford	Delete L.56 - 89.	03/11 06:41 PM
364132	A	S	FAV	BI, Hays	Delete L.90 - 93:	03/11 06:41 PM
962288	A	S	WD	BI, Hays	btw L.397 - 398:	03/11 06:41 PM
815198	A	S	FAV	BI, Hays	btw L.397 - 398:	03/11 06:41 PM
439764	A	S	FAV	BI, Simmons	Delete L.406 - 471.	03/11 06:41 PM
115044	A	S	WD	BI, Clemens	Delete L.472 - 636:	03/11 06:41 PM
812680	A	S	WD	BI, Margolis	Delete L.510 - 515:	03/11 06:41 PM
268554	A	S	FAV	BI, Hays	Delete L.518:	03/11 06:41 PM
268180	A	S	FAV	BI, Hays	Delete L.525 - 536:	03/11 06:41 PM
556552	A	S	FAV	BI, Hays	btw L.684 - 685:	03/11 06:41 PM
312886	T	S	FAV	BI, Simmons	In title, delete L.2 -	03/11 06:41 PM

**CS/CS/SB 542 by AP, BI, Brandes (CO-INTRODUCERS) Simpson, Benacquisto, Galvano, Bradley, Latvala; (Similar to H 0581) Flood Insurance**

823760	D	S	RCS	BI, Hays	Delete everything after	03/11 06:46 PM
--------	---	---	-----	----------	-------------------------	----------------

**SB 1262 by Brandes; (Compare to H 0581) Public Records and Meetings/Insurance Flood Loss Model**

**SM 1058 by Brandes; (Similar to H 0583) Biggert-Waters Flood Insurance Reform Act**

**SB 870 by Smith; (Compare to CS/H 0375) Insurance**

**SB 1210 by Bean; (Similar to CS/H 0633) Division of Insurance Agents and Agency Services**

333272	A	S	RCS	BI, Hays	Delete L.282 - 343:	03/11 06:41 PM
110598	A	S	RCS	BI, Hays	Delete L.1204 - 1393:	03/11 06:41 PM

**SB 310 by Simpson; Title Insurance**

126702	D	S	RCS	BI, Ring	Delete everything after	03/11 06:41 PM
--------	---	---	-----	----------	-------------------------	----------------

**SB 952 by Simpson; (Identical to H 0785) Workers' Compensation**

**SB 1278 by Richter; (Similar to CS/H 0675) Public Records/Office of Financial Regulation**

564502	A	S	RCS	BI, Richter	Delete L.302:	03/11 06:41 PM
--------	---	---	-----	-------------	---------------	----------------

**SB 856 by Detert; Uniform Fraudulent Transfer Act**

**SB 1300 by Simmons; (Similar to H 1273) Public Records/Office of Insurance Regulation**

717024	D	S	RCS	BI, Simmons	Delete everything after	03/11 06:41 PM
--------	---	---	-----	-------------	-------------------------	----------------

**SB 1308 by Simmons; (Similar to H 1271) Insurer Solvency**

416922	A	S	RCS	BI, Simmons	Delete L.324:	03/11 06:41 PM
919650	A	S	RCS	BI, Simmons	Delete L.523 - 554:	03/11 06:41 PM
510388	A	S	RCS	BI, Simmons	Delete L.843 - 847:	03/11 06:41 PM
208360	A	S	RCS	BI, Simmons	Delete L.1360:	03/11 06:41 PM
605142	A	S	RCS	BI, Simmons	Delete L.1435 - 1438:	03/11 06:41 PM
277336	A	S	RCS	BI, Simmons	Delete L.1647:	03/11 06:41 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**BANKING AND INSURANCE**  
**Senator Simmons, Chair**  
**Senator Clemens, Vice Chair**

**MEETING DATE:** Tuesday, March 11, 2014  
**TIME:** 4:00 —6:00 p.m.  
**PLACE:** *Toni Jennings Committee Room, 110 Senate Office Building*

**MEMBERS:** Senator Simmons, Chair; Senator Clemens, Vice Chair; Senators Benacquisto, Detert, Diaz de la Portilla, Hays, Lee, Margolis, Montford, Negron, Richter, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consideration of proposed committee bill:			
1	<b>SPB 7062</b>	Citizens Property Insurance Corporation Coverage; Revising the applicability of the limitations on public adjuster charges for claims based on events that are the subject of a declaration of a state of emergency; requiring the corporation to cease offering new commercial residential policies providing multiperil coverage after a certain date and providing that the corporation continue offering commercial residential wind-only policies; requiring the corporation to annually provide certain estimates for the next 12-month period to the Legislature and the Financial Services Commission, etc.	Submitted as Committee Bill Yeas 7 Nays 4
2	<b>CS/CS/SB 542</b> Appropriations / Banking and Insurance / Brandes (Similar H 581, Compare H 471, CS/H 565, CS/H 879, S 1260, Link S 1262)	Flood Insurance; Adding projected flood losses to the factors that must be considered by the Office of Insurance Regulation in reviewing certain rate filings; authorizing insurers to offer flood insurance on residential property in this state; prohibiting Citizens Property Insurance Corporation from writing flood insurance; prohibiting the Florida Hurricane Catastrophe Fund from reimbursing losses caused by flooding, etc.  BI 01/08/2014 Fav/CS AGG 02/06/2014 Fav/CS AP 02/20/2014 Fav/CS BI 03/11/2014 Fav/CS	Fav/CS Yeas 11 Nays 0
3	<b>SB 1262</b> Brandes (Compare H 581, Link CS/CS/S 542)	Public Records and Meetings/Insurance Flood Loss Model; Providing an exemption from public records and public meetings requirements for trade secrets used to design an insurance flood loss model held in records or discussed in meetings of the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or the appointed consumer advocate; providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc.  BI 03/11/2014 Favorable GO RC	Favorable Yeas 10 Nays 1

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Tuesday, March 11, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SM 1058</b> Brandes (Similar HM 583, Compare HM 603)	Biggert-Waters Flood Insurance Reform Act; Urging Congress to delay implementation of the Biggert-Waters Flood Insurance Reform Act of 2012 until specified conditions are met and to eliminate any requirement to immediately increase a property owner's insurance procured through the National Flood Insurance Program to a full-risk rate, and, if the Congress fails to act, urging the President to delay any resulting rate increases, etc.  BI 03/11/2014 Favorable RC	Favorable Yeas 11 Nays 0
5	<b>SB 870</b> Smith (Similar H 375)	Insurance; Providing that the absence of a countersignature does not affect the validity of a policy or contract, etc.  BI 03/11/2014 Favorable JU	Favorable Yeas 11 Nays 0
6	<b>SB 1210</b> Bean (Similar CS/H 633, Compare H 471, CS/H 565, H 759, CS/S 708, S 1260)	Division of Insurance Agents and Agency Services; Revising the name of the division; requiring a branch place of business to have an agent in charge; limiting the types of business that may be transacted by certain agents; revising terminology relating to investigations conducted by the Department of Financial Services and the Office of Insurance Regulation with respect to individuals and entities involved in the insurance industry; revising a prohibition against unlicensed transaction of life insurance, etc.  BI 03/11/2014 Fav/CS AGG AP	Fav/CS Yeas 11 Nays 0
7	<b>SB 310</b> Simpson	Title Insurance; Revising the definition of "premium" to provide that that the term does not include payment for certain title services, etc.  BI 03/11/2014 Fav/CS JU CA	Fav/CS Yeas 10 Nays 1
8	<b>SB 952</b> Simpson (Identical H 785, Compare H 471, CS/H 565, S 1260)	Workers' Compensation; Authorizing employers to negotiate the retrospectively rated premium with insurers under certain conditions, etc.  BI 03/11/2014 Favorable CM GO	Favorable Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Tuesday, March 11, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	<b>SB 1278</b> Richter (Similar CS/H 675, Compare CS/H 673, Link CS/S 1012)	Public Records/Office of Financial Regulation; Providing an exemption from public records requirements for certain informal enforcement actions by the Office of Financial Regulation, to which penalties apply for willful disclosure of such confidential information; providing an exemption from public records requirements for certain trade secrets held by the office, to which penalties apply for willful disclosure of such confidential information; providing for future legislative review and repeal of the section; providing a statement of public necessity, etc.  BI 03/11/2014 Fav/CS GO RC	Fav/CS Yeas 11 Nays 0
10	<b>SB 856</b> Detert	Uniform Fraudulent Transfer Act; Providing that certain transfers of charitable contributions to charitable or religious organizations are exempt from specified provisions, etc.  CM 03/03/2014 Favorable BI 03/11/2014 Favorable RC	Favorable Yeas 11 Nays 0
11	<b>SB 1300</b> Simmons (Similar H 1273, Compare H 1271, Link S 1308)	Public Records/Office of Insurance Regulation; Creating an exemption from public records requirements for proprietary business information submitted to the Office of Insurance Regulation; defining the term "proprietary business information"; providing for future legislative review and repeal; providing a statement of public necessity, etc.  BI 03/11/2014 Fav/CS GO RC	Fav/CS Yeas 9 Nays 0
12	<b>SB 1308</b> Simmons (Similar H 1271, Compare H 471, CS/H 565, H 1273, S 1260, Link S 1300)	Insurer Solvency; Providing additional definitions applicable to the Florida Insurance Code; clarifying that production of documents does not waive the attorney-client or work-product privileges; requiring an insurer's annual statement to include an actuarial opinion summary; revising the Standard Valuation Law and the Standard Nonforfeiture Law; providing for the groupwide supervision of international insurance groups, etc.  BI 03/11/2014 Fav/CS JU RC	Fav/CS Yeas 9 Nays 0

Other Related Meeting Documents

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

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

---

Prepared By: The Professional Staff of the Committee on Banking and Insurance

---

BILL: SPB 7062

INTRODUCER: For consideration by the Banking and Insurance Committee

SUBJECT: Citizens Property Insurance Corporation Coverage

DATE: March 3, 2014

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

---

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Matiyow, Knudson</u>	<u>Knudson</u>	_____	<b>Submitted as Committee Bill</b>

---

**I. Summary:**

SPB 7062 enacts the following changes to property insurance laws, primarily relating to Citizens Property Insurance Corporation (Citizens):

- The proposed bill directs Citizens to include commercial residential buildings within the Citizens policyholder eligibility clearinghouse program (clearinghouse) by October 1, 2015.
- Surplus lines insurers are authorized to make offers of similar coverage through the clearinghouse if no authorized insurers participating in the clearinghouse make an offer of coverage and the surplus lines insurer meets enhanced financial and disclosure requirements.
- The proposed bill applies a 15 percent limitation on the maximum rate increase that may be imposed annually to a commercial non-residential policy, an increase from 10 percent under current law.
- The Citizens policyholder surcharge is amended, increasing the maximum Citizens policyholder surcharge from 15 to 20 percent for coastal account deficits, but decreasing the maximum surcharge from 15 to 10 percent for personal lines account deficits.
- The bill requires Citizens to issue an annual report of its estimated bonding capacity, estimated claims paying capacity, and estimated year-end cash balance.
- The proposed bill directs Citizens to stop writing new commercial residential multi-peril policies in the Coastal Account. Instead, Citizens will write separate Wind and All-Other Perils (AOP) policies.

The proposed bill increases the residential property insurance deductible for non-hurricane losses that must be offered by insurers from \$500 to \$1,000. The proposed bill applies the 10 percent fee limit on public adjuster fees related to claims arising from a declared state-of-emergency to all such claims, rather than only claims filed within 1 year of the event. Public adjusters are also prohibited from accepting a power-of-attorney that vests in the PA the right to select the person or entity that will perform repairs.

## II. Present Situation:

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

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.<sup>1</sup> Citizens is not a private insurance company.<sup>2</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<sup>3</sup> (board) that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.<sup>4</sup> Assets may not be commingled or used to fund losses in another account.<sup>5</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 by homeowner's, mobile home owner's, dwelling, tenant's, and condominium unit owner's policies.

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 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 multiperil policies.<sup>6</sup>

---

<sup>1</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>2</sup> s. 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

<sup>3</sup> The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives.

<sup>4</sup> The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

<sup>5</sup> s. 627.351(6)(b)2b., F.S.

<sup>6</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 non-residential multiperil policies in this account.

Eligibility for Citizens coverage is at times restricted, or alternatively, the amount of coverage provided by Citizens is limited. Personal lines residential structures are ineligible for Citizens if they have an insured value of \$1 million or greater.<sup>7</sup> The eligibility threshold for such policies will be reduced annually in \$100,000 increments until it reaches \$700,000, effective January 1, 2017. Citizens will insure commercial residential properties at unlimited values. Citizens writes only the first \$1 million of commercial non-residential wind-only coverage and the first \$2.5 million of commercial residential multi-peril policies.

**Citizens Financial Resources for Paying Claims**

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. Citizens projected surplus for 2014 and its policies, premium in force and total exposure as of January 31, 2014, is as follows:<sup>8</sup>

Table 1: Citizens Surplus, Premium, Exposure, and Premium in Force

Citizens Account	Surplus	Policies In Force	Premium In Force <sup>9</sup>	Total Exposure <sup>10</sup>
Personal Lines	\$2.73 Billion	610,237	\$999 Million	\$113.4 Billion
Commercial Lines	\$1.54 Billion	7,534	\$196 Million	\$36.8 Billion
Coastal	\$3.39 Billion	383,106	\$1.071 Billion	\$164.6 Billion
TOTAL	\$7.66 Billion	1,000,877	\$2.266 Billion	\$314.8 Billion

It is estimated that as of December 31, 2014, Citizens will have an accumulated surplus<sup>11</sup> of approximately \$7.66 billion. Citizens has approximately \$1.85 billion in private reinsurance<sup>12</sup> coverage and \$4.48 billion in mandatory layer reinsurance from the FHCF.<sup>13</sup> Citizens has additional pre-event liquidity<sup>14</sup> of \$3.93 billion. For the 2014 storm season, Citizens has an estimated aggregate claims paying capacity of \$17.9 billion.

If Citizens incurs a deficit (i.e. its obligations to pay claims exceed its capital plus reinsurance recoveries), it may levy regular assessments on most of Florida’s property and casualty insurance policyholders in a specific sequence set by statute<sup>15</sup> as follows:

<sup>7</sup> s. 627.351(6)(a)3.a., F.S.

<sup>8</sup> See <https://www.citizensfla.com/about/corpfinaicals.cfm> (last accessed by Banking and Insurance Committee staff on Feb. 20, 2014).

<sup>9</sup> Rounded to the nearest \$1 million.

<sup>10</sup> Rounded to the nearest \$100 million.

<sup>11</sup> Surplus amounts consist of preliminary (unaudited) 2013 surplus and 2014 projected net income.

<sup>12</sup> 2014 projected private risk transfer estimated as the 2013 program.

<sup>13</sup> Florida Hurricane Catastrophe (FHCF) coverage is based on preliminary 2013 retention and payment multiples. Actual multiples may be significantly different.

<sup>14</sup> Pre-Event Liquidity does not represent risk transfer and any monies drawn must be repaid.

<sup>15</sup> s. 627.351(6)(b)3.a.,d., and i., F.S.

*Citizens Surcharge* – Require up to a 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied on each of the three Citizens' accounts with a maximum assessment of 45 percent of premium.

*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 2 percent of premium or 2 percent of the deficit, whichever is greater. This assessment is not levied against Citizens' policyholders.

*Emergency Assessment* – Requires any remaining deficit for either of Citizens three accounts be funded by multi-year emergency assessments on all insurance policyholders, including Citizens policyholders, except medical malpractice and workers compensation policyholders. This assessment is levied up to 10 percent of premium or 10 percent of the deficit per account, whichever is greater. The maximum emergency assessment that can be levied against Florida's varicose insurance policyholders is 30 percent per policy.

Citizens resources for paying claims and assessable shortfall amounts for probable maximum loss events occurring once every 50 years, 100 years, and 250 years are detailed in tables 2-A, 2-B, and 2-C, below.<sup>16</sup>

**Table 2-A: Citizens 1 in 50 Year Probable Maximum Losses and Potential Assessments<sup>17</sup>**  
 (\$ in billions)

Citizens Accounts	1: 50 Year PML Loss	Surplus Recovery	FHCF Reimbursement	Reinsurance/ Cat Bonds	Assessable Shortfall
PLA/CLA	\$3.129	\$1.428	\$1.702	\$0	\$0
Coastal	\$7.563	\$2.934	\$2.780	\$1.850	\$0
<b>TOTAL</b>	<b>\$10.657</b>	<b>\$4.326</b>	<b>\$4.481</b>	<b>\$1.850</b>	<b>\$0</b>

**Table 2-B: Citizens 1 in 100 Year Probable Maximum Losses and Potential Assessments**  
 (\$ in billions)

Citizens Accounts	1: 100 Year PML Loss	Surplus Recovery	FHCF Reimbursement	Reinsurance/ Cat Bonds	Assessable Shortfall
PLA/CLA	\$5.406	\$3.704	\$1.702	\$0	\$0
Coastal	\$11.841	\$3.390	\$2.780	\$1.850	\$3.822
<b>TOTAL</b>	<b>\$17.448</b>	<b>\$7.660</b>	<b>\$4.481</b>	<b>\$1.850</b>	<b>\$3.456</b>

<sup>16</sup> Citizens Property Insurance Corporation, Annual Report of Aggregate Net Probable Maximum Losses, Financing Options, and Potential Assessments, pg. 5 (February 2014). (On file with the Senate Banking and Insurance Committee).

<sup>17</sup> PML is estimated 100-year single event probable maximum loss based on modeled losses as of December 31, 2013, per AIR CLASIC/2, Version 15 based on a weighted average of Standard Sea Surface Temperature (SSST) and Warm Sea Surface Temperature (WSST) Event Catalogs and include estimated loss adjustment expenses. Although combined PMLs and surplus are shown, assessments are triggered at an account level and FHCF coverage is combined for PLA/CLA and separate for Coastal. PMLs are not additive; the combined value shown is not the sum of PLA/CLA + Coastal PMLs.



Table 2-C: Citizens 1 in 250 Year Probable Maximum Losses and Potential Assessments  
(\$ in billions)

Citizens Accounts	1: 250 Year PML	Surplus Recovery	FHCF Reimbursement	Reinsurance/ Cat Bonds	Assessable Shortfall
PLA/CLA	\$9.532	\$4.270	\$1.702	\$0	\$3.560
Coastal	\$19.165	\$3.390	\$2.780	\$1.850	\$11.145
<b>TOTAL</b>	<b>\$28.303</b>	<b>\$7.660</b>	<b>\$4.481</b>	<b>\$1.850</b>	<b>\$14.311</b>

**Citizens Rates**

Rates for Citizens coverage are required to be actuarially sound,<sup>18</sup> except that Citizens may not implement a rate increase that exceeds 10 percent for any single policy other than sinkhole coverage,<sup>19</sup> excluding coverage changes and surcharges.<sup>20</sup> The 10 percent limitation on rate increases is referred to as the Citizens rate “glide path” to achieving actuarially sound rates.<sup>21</sup> The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage, pursuant to s. 215.555(5)(b), F.S.

***Citizens Commercial Lines Non-Residential Rates***

Citizens presented data detailing the rate adequacy of its commercial non-residential policies at the January 11, 2014 meeting of the Senate Banking and Insurance Committee. The data indicates that over 90 percent of Citizens commercial non-residential policies (19,680 of 21,467 policies) are wind-only policies in the coastal account that have an average 24.3 rate need, using Citizens 2014 rates. Citizens writes only the first \$1 million of wind-only commercial non-residential coverage.

Table 3-A: Citizens Commercial Lines Non-Residential Policies and Average Rate Adequacy<sup>22</sup>  
(Data as of June 30, 2013)

Citizens Account/ Policy Type	Policies in Force	Buildings	Average Rate Adequacy	Exposure
Commercial Lines – Multiperil	1557	2287	2.8% Percent Above Adequacy	\$1.755 Billion

<sup>18</sup> s. 627.351(6)(n)1., F.S.

<sup>19</sup> s. 627.351(6)(n)6., F.S.

<sup>20</sup> s. 627.351(6)(n), F.S.

<sup>21</sup> With the enactment of Chapter 2007-001, L.O.F., from January 25, 2007 to January 1, 2010, Citizens rates were fixed by statute at the rates that were in effect on December 31, 2006. The Legislature also rescinded a Citizens rate increase that had taken effect January 1, 2007, and resulted in a statewide average rate increase of 12 percent for policies in the personal lines account and 21.4 percent for policies in the high risk account (since renamed the coastal account).

<sup>22</sup> Citizens Property Insurance Corporation, *Senate Banking & Insurance Committee – Response to Data Request*, pgs. 18-22 (January 3, 2014). [http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket\\_2430.pdf](http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket_2430.pdf) (Last accessed by staff of Senate Banking and Insurance Committee March 3, 2014).

Coastal Account – Multi-peril	230	321	73.5 Percent Below Adequacy	\$392 Million
Coastal Account – Wind Only	19,680	27872	24.3 Percent Below Adequacy	\$11.935 Billion

Of the 19,680 coastal account wind-only policies, 17,234 policies have a rate need of 30 percent or less. The average in-force premium charged such properties correlated with the expected rate need. For example, policies with a rate need of 10 or less percent have an average in-force premium of \$2,680; policies with a rate need ranging from 30 to 40 percent have an average in-force premium of \$6,097; and policies with a rate need greater than 50 percent have an average in-force premium of \$11,048.

**Table 3-B: Citizens Commercial Lines Non-Residential Coastal Account Wind-Only Rate Adequacy (Data as of June 30, 2013)<sup>23</sup>**

Indicated Rate Change	Policies In Force	Average Premium (2014 Rate Level)	Average Expected Rate Need (2014 Rates)	Total Insured Value
Below 10%	2,529	\$2,680	4.5%	\$1.512 Billion
10% to 20%	7,963	\$3,948	15.6%	\$4.763 Billion
20% to 30%	6,742	\$4,091	24.2%	\$3.768 Billion
30% to 40%	1,074	\$6,097	32.1%	\$686 Million
40% to 50%	787	\$8,773	42.2%	\$610 Million
50% or more	621	\$11,048	59.4%	\$594 Million
<b>TOTAL</b>	<b>19,716</b>	<b>\$4,368</b>	<b>24.3%</b>	<b>\$11.935 Billion</b>

Coastal account commercial lines non-residential multi-peril policies currently have the greatest rate need among Citizens commercial lines non-residential policies. Citizens has 230 of these policies in force with a total insured value of approximately \$346 million. All but two of these policies have a rate need between 70 percent and 80 percent.

**Table 3-C: Citizens Commercial Non-Residential Coastal Account Multi-Peril Rate Adequacy (Data as of June 30, 2013)<sup>24</sup>**

Indicated Rate Change	Policies In Force	Average Premium (2014 Rate Level)	Average Expected Rate Need (2014 Rates)	Total Insured Value
Below 70%	2	\$28,764	13.3%	\$4.5 Million
70% to 75%	112	\$12,467	74.3%	\$203 Million
75% to 80%	116	\$6,774	76.5%	\$139 Million
<b>TOTAL</b>	<b>230</b>	<b>\$9,738</b>	<b>73.5%</b>	<b>\$346 Million</b>

<sup>23</sup> See fn. 22 at pg. 23.

<sup>24</sup> Citizens Property Insurance Corporation, *Indicated Rate Change and Expected Loss Ratio*, (Page 112 of the Final Meeting Materials of the Feb. 18, 2014 Florida Senate Banking and Insurance Committee ) [http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket\\_2456.pdf](http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket_2456.pdf)

## Citizens Clearinghouse

In 2013, the Florida Legislature passed SB 1770 creating s. 627.3518, F.S., which mandated the creation of the Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse Program (clearinghouse) for personal residential risks.<sup>25</sup> The clearinghouse has two purposes, to determine if a new or renewal policy is eligible for Citizens coverage and to enhance access of new Citizens applicants and existing Citizens policyholders to offers of coverage from authorized insurers.<sup>26</sup> The clearinghouse facilitates the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market. Citizens launched the personal residential clearinghouse for new applicants on January 27, 2014.<sup>27</sup>

All applicants for Citizens personal lines residential coverage and all Citizens personal lines residential policies at renewal are submitted to the clearinghouse. The clearinghouse interacts with participating private-market insurers to match specific risks with the OIR approved rating and underwriting criteria of each participating insurer. The Clearinghouse displays all quotes that have been received for each risk submitted. However, a Citizens quote will be displayed as ineligible if one or more participating insurers makes a comparable offer of coverage priced within 15 percent of Citizens' premium for new applicants<sup>28</sup> or for a renewal policy makes a comparable offer of coverage priced no more than Citizens current rate. If a risk is deemed ineligible for Citizens, the policyholder's agent will be unable to submit the application to Citizens but will be able to access the offering insurer's policy system to bind the coverage. While the same eligibility thresholds apply for new commercial policies,<sup>29</sup> there is no clearinghouse for commercial-residential and commercial non-residential new or renewal policies written by Citizens.

The 2013 Legislature directed Citizens to develop appropriate procedures for developing a clearinghouse for commercial residential coverage that would divert ineligible applicants and existing Citizens policyholders into the private insurance market.<sup>30</sup> The Citizens report was issued December 30, 2013. The report indicates that admitted insurers currently writing commercial residential property in Florida are interested in participating in a commercial residential clearinghouse. Citizens also indicated that it has been contacted by prospective insurers targeting commercial residential lines and opined that there is significant interest in this product line. The lack of statutory authority to create a clearinghouse was identified as the primary obstacle to its creation.

---

<sup>25</sup> ch. 2013-60, L.O.F

<sup>26</sup> s. 627.3518(2), F.S.

<sup>27</sup> Citizens Property Insurance Corporation, Citizens Statement on Property Insurance Clearinghouse Rollout (January 27, 2014). <https://www.citizensfla.com/shared/press/articles/141/01.27.2014.pdf> (Last accessed by Banking and Insurance Committee Staff March 4, 2013).

<sup>28</sup> s. 627.351(6)(c)5.a., F.S.

<sup>29</sup> s. 627.351(6)(c)5.b., F.S.

<sup>30</sup> ch. 2013-60, s. 10, L.O.F.

## Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies authorized to transact insurance in Florida). There are three basic categories of surplus lines risks:

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

Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the Office of Insurance Regulation to transact insurance in Florida. Rather, surplus lines insurers are “unauthorized” or “nonadmitted” insurers, but are eligible to transact surplus lines insurance under the surplus lines law as “eligible surplus insurers.”<sup>31</sup> The OIR determines whether a surplus lines insurer is “eligible” based on statutory guidelines. Eligibility requirements<sup>32</sup> reviewed by the OIR for surplus lines include:

- Eligibility is requested in writing for the insurer by the Florida Surplus Lines Service Office;
- Insurer is authorized for the prior 3 years in the state or country of its domicile to write the kinds of insurance the insurer wants to write in Florida (with limited exceptions);
- Insurer provides the OIR with its current annual financial statement;
- Insurer meets surplus requirements (delineated below); and
- Insurer has a good reputation relating to payment of claims and policyholder service.

Generally, a surplus lines insurer must have and maintain surplus of \$15 million or more in order to obtain and maintain eligibility. In addition, an insurer formed outside the U.S. must have and maintain in the U.S. a trust fund containing at least \$5.4 million.<sup>33</sup> The OIR has no duty or responsibility to determine the actual financial condition or claims practice of surplus lines insurers.<sup>34</sup> A finding of eligibility by the OIR only means the surplus lines insurer appears to be financially sound and to have a satisfactory claims practice.

The OIR must withdraw the eligibility of a surplus lines insurer if the OIR has reason to believe the insurer is insolvent or is in unsound financial condition; does not make reasonable prompt payment of claims; or does not meet the statutory guidelines for eligibility (including maintenance of \$15 million in surplus). The OIR may withdraw the eligibility of a surplus lines insurer if the insurer willfully violates a statute or rule.

## Public Adjusters

Public adjusters are defined as persons, other than licensed attorneys, who, for compensation, prepare or file an insurance claim form for an insured or third-party claimant in negotiating or

---

<sup>31</sup> See s. 626.914(2), F.S.

<sup>32</sup> s. 626.918, F.S.

<sup>33</sup> s. 626.918(2)(d)1.a., F.S.

<sup>34</sup> s. 626.918(4), F.S.

settling an insurance claim on behalf of the insured or third party.<sup>35</sup> The responsibilities of property insurance public adjusters include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured's coverage, determining current replacement costs, and conferring with the insurer's representatives to adjust the claim. Public adjusters are licensed by the Department of Financial Services (DFS) and must meet specified age, residency, examination, and surety bond requirements.

A public adjuster may not charge a fee related to a residential property insurance claim greater than 20 percent of the insurance claims payment, except that the public adjuster may not charge a fee greater than 10 percent of the claims payment for claims related to an event that is declared a state of emergency by the Governor if the claim is made during the first year after the declaration.<sup>36</sup> These fee caps apply only to residential property insurance policies and condominium association policies.<sup>37</sup>

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

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

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

### **Citizens Property Insurance Corporation**

***Commercial Residential Insurance in the Coastal Account [s. 627.351(6)(b)2.a.(III), F.S.]***  
Effective July 1, 2014, Citizens may not offer new commercial residential multiperil insurance policies in the Coastal Account. Instead Citizens will only offer commercial residential wind-only policies and separate commercial residential policies that exclude wind. Citizens may continue renewing commercial residential multi-peril policies within the Coastal Account that provide coverage on June 30, 2014.

### ***Citizens Policyholder Surcharge [s. 627.351(6)(b)3.i.(I), F.S.]***

If the Citizens Board of Governors determines that one or more of the three accounts (Personal Lines, Coastal, or Commercial) has a projected deficit, the board levies a Citizens policyholder surcharge against all policyholders of the corporation. A policyholder surcharge of up to 15 percent of premium may be levied to fund a deficit for each Citizens account. All Citizens policyholders are subject to the surcharges, regardless of which account is projected to have a deficit. For example, if the Board projected a deficit for the Coastal Account requiring a 10 percent policyholder surcharge and a deficit for the Personal Lines Account requiring a 2 percent surcharge, all Citizens policyholders would be charged a 12 percent surcharge. Citizens policyholders are subject to a maximum 45 percent surcharge consisting of up to 15 percent for each of the three accounts.

<sup>35</sup> s. 626.854, F.S. See, part VI (Insurance Adjusters) under ch. 626, F.S.

<sup>36</sup> s. 626.854(11)(b), F.S.

<sup>37</sup> s. 626.854(18), F.S.

The bill increases the maximum Citizens policyholder surcharge for Coastal Account deficits to 20 percent of premium and decreases the maximum surcharge for Personal Lines Account deficits to 10 percent of premium. The maximum surcharge liability of Citizens policyholders remains 45 percent of premium.

***Citizens Rates for Commercial Nonresidential Policies* [s. 627.351(6)(n), F.S.]**

Effective January 1, 2015, the proposed bill increases the annual maximum rate increase that may be implemented on a commercial nonresidential insurance policy from 10 percent to 15 percent, excluding coverage changes and surcharges.

***Surplus Lines Insurer Participation in Citizens Clearinghouse* [s. 627.3518, F.S.]**

Surplus lines insurers are authorized by the bill to participate in the Citizens clearinghouse beginning January 1, 2015. A surplus lines insurer must offer similar coverage to that provided by Citizens. Coverage may be offered by a surplus lines insurer only if the risk receives no coverage offers from authorized insurers. An offer of coverage from a surplus lines insurer will not affect whether a risk is eligible to be insured by Citizens.

The surplus lines insurer must provide prominent notice to the policyholder of the following:

- An offer of coverage from a surplus lines insurer does not affect the policyholder's eligibility for coverage from Citizens.
- A policyholder who accepts an offer of coverage from a surplus lines insurer may submit a new application for coverage to Citizens at any time.
- Surplus lines policies are not covered by the Florida Insurance Guaranty Association (FIGA).
- Rates for surplus lines insurance are not subject to review by the Office of Insurance Regulation.
- Notice regarding any information required by the Office of Insurance Regulation.
  - Under s. 626.916(1)(e), F.S., the agent must provide written notice to a personal residential property insured that coverage may be available and less expensive from Citizens, but also explains that Citizens assessments are higher and that Citizens coverage may be less than the property's existing coverage.
  - Under s. 626.954, F.S., the insured must be provided notice that surplus lines insurers' policy rates and forms are not approved by any Florida regulatory agency and that surplus lines insurers are not protected by the FIGA.

A Citizens policyholder who accepts an offer of coverage from a surplus lines insurer and subsequently applies for coverage with Citizens within 36 months of being insured by Citizens will be considered a renewal policy. The rates on such policies will be rated as renewals and thus be subject to the 10 percent limit on annual rate increases.

To participate in the clearinghouse, the surplus lines insurer must be eligible to offer coverage under Florida's Surplus Lines Law (ss. 626.913-626.937, F.S.), maintain at least a \$50 million surplus on a company or pooled basis, be rated A- or higher by A.M. Best Company, and have the ability to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season through its reserves, surplus, reinsurance and reinsurance equivalents.

***Inclusion of Commercial Residential Risks within the Citizens Clearinghouse [627.3518, F.S.]***

The bill requires Citizens to implement by October 1, 2015, procedures for facilitating offers of coverage to commercial residential risks through the clearinghouse.

***Reports Submitted by Citizens [s. 627.351(6)(hh), F.S., s. 627.3519, F.S., and s. 627.35191, F.S.]***

The bill changes the due date for the report on Citizens non-catastrophic calendar-year loss ratios to March 1, rather than January 15, to provide Citizens sufficient time to complete the report. The bill requires Citizens to provide a report detailing its estimated borrowing capacity, claims-paying capacity, and estimated year-end balance to the Legislature and the Financial Services Commission in May of each year. Section 627.3519, F.S., is repealed because it requires a report that is duplicative of the report required under s. 627.35191, F.S.

***Public Adjusters [s. 626.854(11), (18), and (19), F.S.]***

Under current law, the maximum fee a public adjuster may charge is 20 percent of a residential property insurance or condominium unit-owner insurance policy claim payment. However, when a claim is based on events that are declared a state of emergency by the Governor and is made during the year after those events the maximum fee is 10 percent of the claim payment. The bill applies the 10 percent maximum fee limitation related to all such claims based on a state-of-emergency, regardless of when the claim is made.

The bill prohibits the execution of a power of attorney that vests the authority to choose the persons or entities that will perform repair work on a residential property insurance loss in a public adjuster, a public-adjuster apprentice, or any person acting on their behalf.

***Offer of Personal Lines Residential Property Insurance Deductible [s. 627.701(7), F.S.]***

Under current law, prior to issuing a personal lines residential property insurance policy, the insurer must offer a \$500 deductible applicable to non-hurricane losses. The bill increases the minimum deductible that must be offered for non-hurricane losses to \$1,000 for all such policies issued on or after January 1, 2015. For policies issued before that date, the \$1,000 deductible must also be offered before the first renewal of a policy on or after January 1, 2015. The insurer must continue providing notice of this deductible offering at least once every 3 years, as required under current law.

***Effective Date***

The effective date of the bill is July 1, 2014, except as otherwise provided.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The inclusion of commercial residential policies within the Citizens clearinghouse would help enforce the 15 percent eligibility requirement for new Citizens applicants, and encourage private-market insurers to offer coverage to existing Citizens policyholders. Private market insurers are actively writing commercial residential policies that insure newer buildings with a replacement cost greater than \$10 million. Citizens estimates that approximately up to 15 percent of its current commercial residential policies would be attractive to the private market, given Citizens current rates for such risks and their characteristics such as location, age and building construction type. Commercial residential policies constitute approximately 20 percent of Citizens total risk, with a 1 in 100 PML of \$4.065 Billion.

Allowing surplus lines insurers to participate in the Citizens clearinghouse may serve to further depopulate Citizens. The bill requires a participating surplus lines insurer to maintain at least \$50 million in surplus and demonstrate the ability to cover two 1 in 100 PML events in a single hurricane season. If these financial protections prove insufficient to prevent an insolvency, claims of policyholders who accept an offer of coverage from a surplus lines insurer will not be covered by the Florida Insurance Guaranty Association.

Prohibiting Citizens from writing new commercial residential multi-peril policies in the coastal account and instead allowing Citizens to offer separate wind-only and all-other perils (AOP) policies may further depopulate such policies. Testimony from Citizens representatives indicated a rate arbitrage issue exists, whereby the Citizens premium in the Coastal Account for multi-peril policies is less expensive than the Citizens premiums for a wind-only policies plus a separate all-other perils policy. Citizens' rates for All Other Perils coverage, if rated separately from wind, are approximately competitive with the private market. When wind and AOP are combined in a multi-peril product, the rate becomes non-competitive with the private market.

Increasing the coastal account surcharge to 20 percent, while reducing the personal lines surcharge to 10 percent, will increase the Citizens policyholder surcharges and decrease the regular and emergency assessments paid in certain circumstances. This change will occur during a storm that causes a coastal account deficit requiring more than the current



15 percent Citizens policyholder surcharge if the increased assessment due to the expansion of the coastal account surcharge exceeds the reduction that results from lowering the personal lines account surcharge to 10 percent. For example, under these new surcharge amounts, if Citizens policyholders are assessed 18 percent of premium for a coastal account deficit and 7 percent of premium for a personal lines account deficit, the Citizens policyholder would pay a surcharge of 25 percent of premium. Under current law, the coastal account surcharge would be limited to 15 percent, which would be added to the 7 percent PLA surcharge, resulting in a 22 percent surcharge. However, in a storm where the 20 percent coastal surcharge and the 10 percent PLA surcharge are both levied, the maximum Citizens policyholder surcharge will remain unchanged from current law, which imposes a 15 percent surcharge per account.

Increasing the limitation on rate increases for Citizens commercial non-residential policies to 15 percent should result in over 80 percent of such policies being rate adequate within 2 years, and almost all such policies being rate adequate within 4 years. The increase will result in the majority of such policyholders seeing greater annual rate increases than under current law until such policies reach rate adequacy. However, the collection of additional premium will increase Citizens claims paying resources.

**C. Government Sector Impact:**

Citizens may incur expenses associated with implementing procedures to include commercial residential risks within the Citizens clearinghouse.

**VI. Technical Deficiencies:**

The PCB requires a title amendment on lines 2-3 because not all provisions of the bill relate to Citizens Property Insurance Corporation.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 626.854, 627.351, 627.3518, 627.35191, and 627.701.

This bill repeals section 627.3519 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---



186484

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Montford) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 56 - 89.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 3 - 14

and insert:

Corporation coverage; amending s. 627.351, F.S.;

deleting



364132

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 90 - 93

and insert:

Section 2. Paragraphs (a), (b), and (hh) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents



364132

11 and businesses of this state.

12 1. The Legislature finds that private insurers are  
13 unwilling or unable to provide affordable property insurance  
14 coverage in this state to the extent sought and needed. The  
15 absence of affordable property insurance threatens the public  
16 health, safety, and welfare and ~~likewise threatens~~ the economic  
17 health of the state. The state, therefore, has a compelling  
18 public interest and a public purpose to assist in assuring that  
19 property in the state is insured ~~and that it is insured~~ at  
20 affordable rates so as to facilitate the remediation,  
21 reconstruction, and replacement of damaged or destroyed property  
22 in order to reduce or avoid ~~the~~ negative effects on otherwise  
23 ~~resulting to~~ the public health, safety, and welfare, to the  
24 economy of the state, and to the revenues of the state and local  
25 governments which are needed to provide for the public welfare.  
26 It is necessary, therefore, to provide affordable property  
27 insurance to applicants who are in good faith entitled to  
28 procure insurance through the voluntary market but are unable to  
29 do so. The Legislature intends, therefore, that affordable  
30 property insurance be provided and that it continue to be  
31 provided, as long as necessary, through Citizens Property  
32 Insurance Corporation, a government entity that is an integral  
33 part of the state, ~~and that is~~ not a private insurance company.  
34 To that end, the corporation shall strive to increase the  
35 availability of affordable property insurance in this state,  
36 while achieving efficiencies and economies, and while providing  
37 service to policyholders, applicants, and agents which is no  
38 less than the quality generally provided in the voluntary  
39 market, for the achievement of the foregoing public purposes.



364132

40 Because it is essential for this government entity to have the  
41 maximum financial resources to pay claims following a  
42 catastrophic hurricane, it is further the intent of the  
43 Legislature that the corporation continue to be an integral part  
44 of the state, ~~and~~ that the income of the corporation be exempt  
45 from federal income taxation, and that interest on the debt  
46 obligations issued by the corporation be exempt from federal  
47 income taxation.

48       2. The Residential Property and Casualty Joint Underwriting  
49 Association originally created by this statute shall be known as  
50 the Citizens Property Insurance Corporation. The corporation  
51 shall provide insurance for residential and commercial property,  
52 for applicants who are entitled, but, in good faith, are unable  
53 to procure insurance through the voluntary market. The  
54 corporation shall operate pursuant to a plan of operation  
55 approved by order of the Financial Services Commission. The plan  
56 is subject to continuous review by the commission. The  
57 commission may, by order, withdraw approval of all or part of a  
58 plan if the commission determines that conditions have changed  
59 since approval was granted and that the purposes of the plan  
60 require changes in the plan. For the purposes of this  
61 subsection, residential coverage includes both personal lines  
62 residential coverage, which consists of the type of coverage  
63 provided by homeowner's, mobile home owner's, dwelling,  
64 tenant's, condominium unit owner's, and similar policies; and  
65 commercial lines residential coverage, which consists of the  
66 type of coverage provided by condominium association, apartment  
67 building, and similar policies.

68       3. With respect to coverage for personal lines residential



364132

69 structures:

70 a. Effective January 1, 2014, a structure that has a  
71 dwelling replacement cost of \$1 million or more, or a single  
72 condominium unit that has a combined dwelling and contents  
73 replacement cost of \$1 million or more is not eligible for  
74 coverage by the corporation. Such dwellings insured by the  
75 corporation on December 31, 2013, may continue to be covered by  
76 the corporation until the end of the policy term. The office  
77 shall approve the method used by the corporation for valuing the  
78 dwelling replacement costs under ~~cost for the purposes of~~ this  
79 subparagraph. If a policyholder is insured by the corporation  
80 before being determined to be ineligible pursuant to this  
81 subparagraph and such policyholder files a lawsuit challenging  
82 the determination, the policyholder may remain insured by the  
83 corporation until the conclusion of the litigation.

84 b. Effective January 1, 2015, a structure that has a  
85 dwelling replacement cost of \$900,000 or more, or a single  
86 condominium unit that has a combined dwelling and contents  
87 replacement cost of \$900,000 or more, is not eligible for  
88 coverage by the corporation. Such dwellings insured by the  
89 corporation on December 31, 2014, may continue to be covered by  
90 the corporation only until the end of the policy term.

91 c. Effective January 1, 2016, a structure that has a  
92 dwelling replacement cost of \$800,000 or more, or a single  
93 condominium unit that has a combined dwelling and contents  
94 replacement cost of \$800,000 or more, is not eligible for  
95 coverage by the corporation. Such dwellings insured by the  
96 corporation on December 31, 2015, may continue to be covered by  
97 the corporation until the end of the policy term.



364132

98           d. Effective January 1, 2017, a structure that has a  
99 dwelling replacement cost of \$700,000 or more, or a single  
100 condominium unit that has a combined dwelling and contents  
101 replacement cost of \$700,000 or more, is not eligible for  
102 coverage by the corporation. Such dwellings insured by the  
103 corporation on December 31, 2016, may continue to be covered by  
104 the corporation until the end of the policy term.

105

106 The requirements of sub-subparagraphs b.-d. do not apply in  
107 counties where the office determines there is not a reasonable  
108 degree of competition. In such counties a personal lines  
109 residential structure that has a dwelling replacement cost of  
110 less than \$1 million, or a single condominium unit that has a  
111 combined dwelling and contents replacement cost of less than \$1  
112 million, is eligible for coverage by the corporation.

113           4. It is the intent of the Legislature that policyholders,  
114 applicants, and agents of the corporation receive service and  
115 treatment of the highest possible level but never less than that  
116 generally provided in the voluntary market. It is also intended  
117 that the corporation be held to service standards no less than  
118 those applied to insurers in the voluntary market by the office  
119 with respect to responsiveness, timeliness, customer courtesy,  
120 and overall dealings with policyholders, applicants, or agents  
121 of the corporation.

122           5.a. Effective January 1, 2009, a personal lines  
123 residential structure that is located in the "wind-borne debris  
124 region," as defined in s. 1609.2, International Building Code  
125 (2006), and that has an insured value on the structure of  
126 \$750,000 or more is not eligible for coverage by the corporation





364132

127 unless the structure has opening protections as required under  
128 the Florida Building Code for a newly constructed residential  
129 structure in that area. A residential structure is deemed to  
130 comply with this subparagraph if it has shutters or opening  
131 protections on all openings and if such opening protections  
132 complied with the Florida Building Code at the time they were  
133 installed.

134 b. Any major structure as defined in s. 161.54(6) (a) for  
135 which a permit is applied on or after July 1, 2014, for new  
136 construction or substantial improvement as defined in s.  
137 161.54~~(12)~~ is not eligible for coverage by the corporation if  
138 the structure is seaward of the coastal construction control  
139 line established pursuant to s. 161.053 or is within the Coastal  
140 Barrier Resources System as designated by 16 U.S.C. ss. 3501-  
141 3510. The restrictions of this subparagraph imposed on major  
142 structures located within the Coastal Barrier Resources System  
143 do not apply in a county where the corporation provides  
144 windstorm coverage on more than 75 percent of personal lines  
145 residential policies.

146  
147 ===== T I T L E A M E N D M E N T =====

148 And the title is amended as follows:

149 Delete line 14

150 and insert:

151 reference; amending s. 627.351, F.S.; providing  
152 exemptions from the restriction on obtaining coverage  
153 from Citizens Property Insurance Corporation for major  
154 structures under certain conditions; deleting



962288

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment (with directory and title amendments)**

Between lines 397 and 398

insert:

(e) The corporation is subject to s. 287.057 for the purchase of commodities and contractual services except as otherwise provided in this paragraph. Services provided by tradepersons or technical experts to assist a licensed adjuster in the evaluation of individual claims are not subject to the procurement requirements of this section. Additionally, the



962288

11 procurement of financial services providers and underwriters  
12 must be made pursuant to s. 627.3513. Contracts for goods or  
13 services valued at or more than \$100,000 are subject to approval  
14 by the board.

15 1. The corporation is an agency for purposes of s. 287.057,  
16 except that, for purposes of s. 287.057(22), the corporation is  
17 an eligible user.

18 a. The authority of the Department of Management Services  
19 and the Chief Financial Officer under s. 287.057 extends to the  
20 corporation as if the corporation were an agency.

21 b. The executive director of the corporation is the agency  
22 head under s. 287.057, except for resolution of bid protests for  
23 which the board would serve as the agency head.

24 2. The corporation must provide notice of a decision or  
25 intended decision concerning a solicitation, contract award, or  
26 exceptional purchase by electronic posting. Such notice must  
27 contain the following statement: "Failure to file a protest  
28 within the time prescribed in this section constitutes a waiver  
29 of proceedings."

30 a. A person adversely affected by the corporation's  
31 decision or intended decision to award a contract pursuant to s.  
32 287.057(1) or (3)(c) who elects to challenge the decision must  
33 file a written notice of protest with the executive director of  
34 the corporation within 72 hours after the corporation posts a  
35 notice of its decision or intended decision. For a protest of  
36 the terms, conditions, and specifications contained in a  
37 solicitation, including ~~any~~ provisions governing the methods for  
38 ranking bids, proposals, replies, awarding contracts, reserving  
39 rights of further negotiation, or modifying or amending any



962288

40 contract, the notice of protest must be filed in writing within  
41 72 hours after ~~the~~ posting ~~of~~ the solicitation. Saturdays,  
42 Sundays, and state holidays are excluded in the computation of  
43 the 72-hour time period.

44       b. A formal written protest must be filed within 10 days  
45 after the date the notice of protest is filed. The formal  
46 written protest must state with particularity the facts and law  
47 upon which the protest is based. Upon receipt of a formal  
48 written protest that has been timely filed, the corporation must  
49 stop the solicitation or contract award process until the  
50 subject of the protest is resolved by final board action unless  
51 the executive director sets forth in writing particular facts  
52 and circumstances that require the continuance of the  
53 solicitation or contract award process without delay in order to  
54 avoid an immediate and serious danger to the public health,  
55 safety, or welfare. The corporation must provide an opportunity  
56 to resolve the protest by mutual agreement between the parties  
57 within 7 business days after receipt of the formal written  
58 protest. If the subject of a protest is not resolved by mutual  
59 agreement within 7 business days, the corporation's board must  
60 place the protest on the agenda and resolve it at its next  
61 regularly scheduled meeting. The protest must be heard by the  
62 board at a publicly noticed meeting in accordance with  
63 procedures established by the board.

64       c. In a protest of an invitation-to-bid or request-for-  
65 proposals procurement, submissions made after the bid or  
66 proposal opening which amend or supplement the bid or proposal  
67 may not be considered. In protesting an invitation-to-negotiate  
68 procurement, submissions made after the corporation announces



962288

69 its intent to award a contract, reject all replies, or withdraw  
70 the solicitation that amends or supplements the reply may not be  
71 considered. Unless otherwise provided by law, the burden of  
72 proof rests with the party protesting the corporation's action.  
73 In a competitive-procurement protest, other than a rejection of  
74 all bids, proposals, or replies, the corporation's board must  
75 conduct a de novo proceeding to determine whether the  
76 corporation's proposed action is contrary to the corporation's  
77 governing statutes, the corporation's rules or policies, or the  
78 solicitation specifications. The standard of proof for the  
79 proceeding is whether the corporation's action was clearly  
80 erroneous, contrary to competition, arbitrary, or capricious. In  
81 any bid-protest proceeding contesting an intended corporation  
82 action to reject all bids, proposals, or replies, the standard  
83 of review by the board is whether the corporation's intended  
84 action is illegal, arbitrary, dishonest, or fraudulent.

85 d. Failure to file a notice of protest or failure to file a  
86 formal written protest constitutes a waiver of proceedings.

87 e. In lieu of a bid protest proceeding conducted by the  
88 board in accordance with this subparagraph, the corporation may  
89 refer the protest to the Division of Administrative Hearings for  
90 a proceeding pursuant to s. 120.569. The division has  
91 jurisdiction to conduct a proceeding on such protest if a  
92 referral is made by the corporation.

93 3. Contract actions and decisions by the board under this  
94 paragraph are final. Any further legal remedy must be made in  
95 the Circuit Court of Leon County.

96  
97 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====



962288

98 And the directory clause is amended as follows:

99 Delete lines 90 - 91

100 and insert:

101 Section 2. Paragraphs (b), (e), and (hh) of subsection (6)  
102 of section 627.351, Florida Statutes, are amended to read:

103

104 ===== T I T L E A M E N D M E N T =====

105 And the title is amended as follows:

106 Delete line 27

107 and insert:

108 projected deficit; authorizing the Division of  
109 Administrative Hearings to hear protests of the  
110 corporation's decisions regarding the purchase of  
111 commodities and contractual services; revising the  
112 date for submitting



815198

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment (with directory and title amendments)**

Between lines 397 and 398

insert:

(e) The corporation is subject to s. 287.057 for the purchase of commodities and contractual services except as otherwise provided in this paragraph. Services provided by tradepersons or technical experts to assist a licensed adjuster



815198

10 in the evaluation of individual claims are not subject to the  
11 procurement requirements of this section. Additionally, the  
12 procurement of financial services providers and underwriters  
13 must be made pursuant to s. 627.3513. Contracts for goods or  
14 services valued at or more than \$100,000 are subject to approval  
15 by the board.

16 1. The corporation is an agency for purposes of s. 287.057,  
17 except that, for purposes of s. 287.057(22), the corporation is  
18 an eligible user.

19 a. The authority of the Department of Management Services  
20 and the Chief Financial Officer under s. 287.057 extends to the  
21 corporation as if the corporation were an agency.

22 b. The executive director of the corporation is the agency  
23 head under s. 287.057, except for resolution of bid protests for  
24 which the board would serve as the agency head.

25 2. The corporation must provide notice of a decision or  
26 intended decision concerning a solicitation, contract award, or  
27 exceptional purchase by electronic posting. Such notice must  
28 contain the following statement: "Failure to file a protest  
29 within the time prescribed in this section constitutes a waiver  
30 of proceedings."

31 a. A person adversely affected by the corporation's  
32 decision or intended decision to award a contract pursuant to s.  
33 287.057(1) or (3)(c) who elects to challenge the decision must  
34 file a written notice of protest with the executive director of  
35 the corporation within 72 hours after the corporation posts a  
36 notice of its decision or intended decision. For a protest of  
37 the terms, conditions, and specifications contained in a  
38 solicitation, including ~~any~~ provisions governing the methods for





39 ranking bids, proposals, replies, awarding contracts, reserving  
40 rights of further negotiation, or modifying or amending any  
41 contract, the notice of protest must be filed in writing within  
42 72 hours after ~~the~~ posting ~~of~~ the solicitation. Saturdays,  
43 Sundays, and state holidays are excluded in the computation of  
44 the 72-hour time period.

45 b. A formal written protest must be filed within 10 days  
46 after the date the notice of protest is filed. The formal  
47 written protest must state with particularity the facts and law  
48 upon which the protest is based. Upon receipt of a formal  
49 written protest that has been timely filed, the corporation must  
50 stop the solicitation or contract award process until the  
51 subject of the protest is resolved by final board action unless  
52 the executive director sets forth in writing particular facts  
53 and circumstances that require the continuance of the  
54 solicitation or contract award process without delay in order to  
55 avoid an immediate and serious danger to the public health,  
56 safety, or welfare.

57 (I) The corporation must provide an opportunity to resolve  
58 the protest by mutual agreement between the parties within 7  
59 business days after receipt of the formal written protest.

60 (II) If the subject of a protest is not resolved by mutual  
61 agreement within 7 business days, the corporation's board must  
62 transmit the protest to the Division of Administrative Hearings  
63 and contract with the division to conduct a hearing to determine  
64 the merits of the protest and to issue a recommended order place  
65 the protest on the agenda and resolve it at its next regularly  
66 scheduled meeting. The contract must provide for the corporation  
67 to reimburse the division for any costs incurred by the division



815198

68 for court reporters, transcript preparation, travel, facility  
69 rental, and other customary hearing costs in the manner set  
70 forth in s. 120.65(9). The division has jurisdiction to  
71 determine the facts and law concerning the protest and to issue  
72 a recommended order. The division's rules and procedures apply  
73 to these proceedings; the division's applicable bond  
74 requirements do not apply. The protest must be heard by the  
75 division ~~board~~ at a publicly noticed meeting in accordance with  
76 procedures established by the division ~~board~~.

77       c. In a protest of an invitation-to-bid or request-for-  
78 proposals procurement, submissions made after the bid or  
79 proposal opening which amend or supplement the bid or proposal  
80 may not be considered. In protesting an invitation-to-negotiate  
81 procurement, submissions made after the corporation announces  
82 its intent to award a contract, reject all replies, or withdraw  
83 the solicitation that amends or supplements the reply may not be  
84 considered. Unless otherwise provided by law, the burden of  
85 proof rests with the party protesting the corporation's action.  
86 In a competitive-procurement protest, other than a rejection of  
87 all bids, proposals, or replies, the corporation's board must  
88 conduct a de novo proceeding to determine whether the  
89 corporation's proposed action is contrary to the corporation's  
90 governing statutes, the corporation's rules or policies, or the  
91 solicitation specifications. The standard of proof for the  
92 proceeding is whether the corporation's action was clearly  
93 erroneous, contrary to competition, arbitrary, or capricious. In  
94 any bid-protest proceeding contesting an intended corporation  
95 action to reject all bids, proposals, or replies, the standard  
96 of review by the board is whether the corporation's intended



815198

97 action is illegal, arbitrary, dishonest, or fraudulent.

98 d. Failure to file a notice of protest or failure to file a  
99 formal written protest constitutes a waiver of proceedings.

100 3. The board, acting as agency head, shall consider the  
101 recommended order of an administrative law judge in a public  
102 meeting and take final action on the protest. ~~Contract actions~~  
103 and decisions by the board under this paragraph are final. Any  
104 further legal remedy lies with the First District Court of  
105 Appeal ~~must be made in the Circuit Court of Leon County.~~

106

107 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

108 And the directory clause is amended as follows:

109 Delete lines 90 - 91

110 and insert:

111 Section 2. Paragraphs (b), (e), and (hh) of subsection (6)  
112 of section 627.351, Florida Statutes, are amended to read:

113

114 ===== T I T L E A M E N D M E N T =====

115 And the title is amended as follows:

116 Delete line 27

117 and insert:

118 projected deficit; requiring the corporation's board  
119 to contract with the Division of Administrative  
120 Hearings to hear protests of the corporation's  
121 decisions regarding the purchase of commodities and  
122 contractual services and issue a recommended order;  
123 requiring the board to take final action in a public  
124 meeting; revising the date for submitting



439764

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 406 - 471.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 29 - 30

and insert:

amending s.



115044

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Clemens) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 472 - 636

and insert:

Section 4. Subsection (2), subsection (5), paragraph (a) of subsection (6), and paragraph (a) of subsection (7) of section 627.3518, Florida Statutes, are amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to



115044

11 implement a clearinghouse program by January 1, 2014.

12 (2) In order to confirm eligibility with the corporation  
13 and to enhance the access of new applicants for coverage and  
14 existing policyholders of the corporation to offers of coverage  
15 from authorized insurers, the corporation shall establish a  
16 program for personal residential risks in order to facilitate  
17 the diversion of ineligible applicants and existing  
18 policyholders ~~from the corporation~~ into the voluntary insurance  
19 market. The corporation shall also develop appropriate  
20 procedures for facilitating the diversion of ineligible  
21 applicants and existing policyholders for commercial residential  
22 coverage into the private insurance market and implement these  
23 procedures by October 1, 2015 ~~shall report such procedures to~~  
24 ~~the President of the Senate and the Speaker of the House of~~  
25 ~~Representatives by January 1, 2014.~~

26 (5) Notwithstanding s. 627.3517, an ~~any~~ applicant for new  
27 coverage from the corporation is not eligible for coverage from  
28 the corporation if provided an offer of coverage from an  
29 authorized insurer through the program at a premium that is at  
30 or below the eligibility threshold established in s.  
31 627.351(6)(c)5.a. or (c)5.b. Whenever an offer of coverage for a  
32 personal lines or commercial lines residential risk is received  
33 for a policyholder of the corporation at renewal from an  
34 authorized insurer through the program, if the offer is equal to  
35 or less than the corporation's renewal premium for comparable  
36 coverage, the risk is not eligible for coverage with the  
37 corporation. If ~~In the event~~ an offer of coverage for a new  
38 applicant is received from an authorized insurer through the  
39 program, and the premium offered exceeds the eligibility



115044

40 threshold contained in s. 627.351(6)(c)5.a. or (c)5.b., the  
41 applicant or insured may elect to accept such coverage, or may  
42 elect to accept or continue coverage with the corporation. If ~~In~~  
43 ~~the event~~ an offer of coverage for a personal lines or  
44 commercial lines residential risk is received from an authorized  
45 insurer at renewal through the program, ~~and~~ if the premium  
46 offered is more than the corporation's renewal premium for  
47 comparable coverage, the insured may elect to accept such  
48 coverage, ~~or may elect~~ to accept or continue coverage with the  
49 corporation. Section 627.351(6)(c)5.a.(I) or (c)5.b.(I) does not  
50 apply to an offer of coverage from an authorized insurer  
51 obtained through the program. An applicant for personal lines  
52 residential coverage from the corporation who was declared  
53 ineligible for coverage at renewal by the corporation in the  
54 previous 36 months due to an offer of coverage pursuant to this  
55 subsection is ~~shall be~~ considered a renewal under this section  
56 if the corporation determines that the authorized insurer making  
57 the offer of coverage pursuant to this subsection continues to  
58 insure the applicant and increased the rate on the policy in  
59 excess of the increase allowed for the corporation under s.  
60 627.351(6)(n)5 ~~627.351(6)(n)6~~.

61 (6) Independent insurance agents submitting new  
62 applications for coverage or that are the agent of record on a  
63 renewal policy submitted to the program:

64 (a) Are granted and must maintain ownership and the  
65 exclusive use of expirations, records, or other written or  
66 electronic information directly related to such applications or  
67 renewals written through the corporation or through an insurer  
68 participating in the program, notwithstanding s.



115044

69 627.351(6)(c)5.a.(I)(B) and (II)(B) and b.(I)(B) and (II)(B).  
70 Such ownership is granted for as long as the insured remains  
71 with the agency or until sold or surrendered in writing by the  
72 agent. Contracts with the corporation or required by the  
73 corporation must not amend, modify, interfere with, or limit  
74 such rights of ownership. Such expirations, records, or other  
75 written or electronic information may be used to review an  
76 application, issue a policy, or for any other purpose necessary  
77 for placing such business through the program.

78  
79 Applicants ineligible for coverage in accordance with subsection  
80 (5) remain ineligible if their independent agent is unwilling or  
81 unable to enter into a standard or limited agency agreement with  
82 an insurer participating in the program.

83 (7) Exclusive agents submitting new applications for  
84 coverage or that are the agent of record on a renewal policy  
85 submitted to the program:

86 (a) Must maintain ownership and the exclusive use of  
87 expirations, records, or other written or electronic information  
88 directly related to such applications or renewals written  
89 through the corporation or through an insurer participating in  
90 the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and  
91 (II)(B) and b.(I)(B) and (II)(B). Contracts with the corporation  
92 or required by the corporation must not amend, modify, interfere  
93 with, or limit such rights of ownership. Such expirations,  
94 records, or other written or electronic information may be used  
95 to review an application, issue a policy, or for any other  
96 purpose necessary for placing such business through the program.

97





115044

98 Applicants ineligible for coverage in accordance with subsection  
99 (5) remain ineligible if their exclusive agent is unwilling or  
100 unable to enter into a standard or limited agency agreement with  
101 an insurer making an offer of coverage to that applicant.

102

103 ===== T I T L E A M E N D M E N T =====

104 And the title is amended as follows:

105 Delete lines 30 - 43

106 and insert:

107 increase implemented by the corporation; amending s.  
108 627.3518, F.S.; requiring the corporation to implement  
109 procedures for diverting ineligible applicants and  
110 existing policyholders for commercial residential  
111 coverage from the corporation by a certain date;  
112 deleting the requirement that the corporation report  
113 such procedures to the Legislature; providing that  
114 certain offers of coverage for commercial lines  
115 residential risk offered through the clearinghouse  
116 preclude coverage by the corporation; repealing s.  
117 627.3519, F.S.,



812680

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Margolis) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 510 - 515

and insert:

(5) Effective January 1, 2015, an eligible surplus lines insurer may make an offer of similar coverage on personal lines or commercial lines residential property valued at more than \$700,000 which is submitted through the clearinghouse program if no other offers of coverage for such property were submitted by authorized insurers participating in the program and the office



812680

11 determines that the eligible surplus lines insurer:

12

13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15       Delete line 39

16 and insert:

17       corporation's clearinghouse program for certain

18       residential properties and providing



268554

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment**

Delete line 518

and insert:

(b) Is rated as having a superior, excellent, exceptional, or equally comparable financial strength by a rating agency acceptable to the office;



268180

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment**

Delete lines 525 - 536

and insert:

(d) Provides prominent notice to the policyholder:

1. That the policyholder does not have to accept an offer of coverage from a surplus lines insurer;

2. That an offer of coverage from a surplus lines insurer does not affect whether the policyholder is eligible for coverage from the corporation;



268180

11           3. That a policyholder who accepts an offer of coverage  
12 from a surplus lines insurer may, at any time, submit a new  
13 application for coverage to the corporation;

14           4. That surplus lines policies are not covered by the  
15 Florida Insurance Guaranty Association;

16           5. That rates for surplus lines insurance are not subject  
17 to review by the office; and

18           6. Of any additional information required by the office.

19

20 Such notice must be signed by the policyholder and kept on file  
21 with the surplus lines insurer for as long as the policyholder  
22 remains insured by the surplus lines insurer.



556552

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 684 and 685  
insert:

Section 8. Subsection (9) is added to section 627.711,  
Florida Statutes, to read:

627.711 Notice of premium discounts for hurricane loss  
mitigation; uniform mitigation verification inspection form.—

(9) Citizens Property Insurance Corporation may create an  
addendum to the uniform mitigation verification form for use by



556552

11 a county when applying mitigation credits if that county has:  
12 (a) Implemented a building code that is more stringent than  
13 the highest code recognized on the uniform mitigation  
14 verification form; and  
15 (b) Completed a study verifying the use of the more  
16 stringent code.

17  
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Delete line 51

21 and insert:

22 for residential property insurance; amending s.  
23 627.711, F.S.; authorizing the corporation to create  
24 an addendum to the uniform mitigation verification  
25 form for use by counties under certain circumstances;  
26 providing





312886

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Simmons) recommended the following:

**Senate Amendment**

In title, delete lines 2 - 3  
and insert:  
An act relating to property insurance; amending s.  
626.854, F.S.;

FOR CONSIDERATION By the Committee on Banking and Insurance

597-01698E-14

20147062\_\_

1 A bill to be entitled  
 2 An act relating to Citizens Property Insurance  
 3 Corporation coverage; amending s. 626.854, F.S.;  
 4 revising the applicability of the limitations on  
 5 public adjuster charges for claims based on events  
 6 that are the subject of a declaration of a state of  
 7 emergency; prohibiting a public adjuster, a public  
 8 adjuster apprentice, or a person acting on his or her  
 9 behalf from entering into a contract or accepting a  
 10 power of attorney that allows the public adjuster, the  
 11 public adjuster apprentice, or a person acting on his  
 12 or her behalf to choose the persons or entities that  
 13 will perform repair work; conforming a cross-  
 14 reference; amending s. 627.351, F.S.; deleting  
 15 reference to the Residential Property and Casualty  
 16 Joint Underwriting Association with respect to issuing  
 17 certain residential or commercial policies; requiring  
 18 the corporation to cease offering new commercial  
 19 residential policies providing multiperil coverage  
 20 after a certain date and providing that the  
 21 corporation continue offering commercial residential  
 22 wind-only policies; authorizing the corporation to  
 23 offer commercial residential policies excluding wind;  
 24 providing exceptions; specifying the amount of the  
 25 surcharge to be assessed against personal lines,  
 26 commercial lines, and coastal accounts to cover a  
 27 projected deficit; revising the date for submitting  
 28 the annual loss ratio report for residential coverage;  
 29 deleting obsolete provisions; revising the annual rate

Page 1 of 24

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

597-01698E-14

20147062\_\_

30 increase implemented by the corporation; amending s.  
 31 627.3518, F.S.; defining the term "surplus lines  
 32 insurer"; requiring the corporation to implement  
 33 procedures for diverting ineligible applicants and  
 34 existing policyholders for commercial residential  
 35 coverage from the corporation by a certain date;  
 36 deleting the requirement that the corporation report  
 37 such procedures to the Legislature; authorizing  
 38 eligible surplus lines insurers to participate in the  
 39 corporation's clearinghouse program and providing  
 40 criteria for such eligibility; conforming cross-  
 41 references; providing that certain applicants who  
 42 accept an offer from a surplus lines insurer are  
 43 considered a renewal; repealing s. 627.3519, F.S.,  
 44 relating to an annual report requirement relating to  
 45 aggregate net probable maximum losses; amending s.  
 46 627.35191, F.S.; requiring the corporation to annually  
 47 provide certain estimates for the next 12-month period  
 48 to the Legislature and the Financial Services  
 49 Commission; amending s. 627.701, F.S.; increasing the  
 50 amount of the deductible that an insurer must offer  
 51 for residential property insurance; providing  
 52 effective dates.

54 Be It Enacted by the Legislature of the State of Florida:

55  
 56 Section 1. Present subsection (18) of section 626.854,  
 57 Florida Statutes, is redesignated as subsection (19), paragraph  
 58 (b) of subsection (11) and present subsection (18) of that

Page 2 of 24

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

597-01698E-14

20147062\_\_

59 section are amended, and a new subsection (18) is added to that  
60 section, to read:

61 626.854 "Public adjuster" defined; prohibitions.—The  
62 Legislature finds that it is necessary for the protection of the  
63 public to regulate public insurance adjusters and to prevent the  
64 unauthorized practice of law.

65 (11)

66 (b) A public adjuster may not charge, agree to, or accept  
67 from any source compensation, payment, commission, fee, or any  
68 other thing of value in excess of:

69 1. Ten percent of the amount of insurance claim payments  
70 made by the insurer for claims based on events that are the  
71 subject of a declaration of a state of emergency by the  
72 Governor. ~~This provision applies to claims made during the year~~  
73 ~~after the declaration of emergency. After that year, the~~  
74 ~~limitations in subparagraph 2. apply.~~

75 2. Twenty percent of the amount of insurance claim payments  
76 made by the insurer for claims that are not based on events that  
77 are the subject of a declaration of a state of emergency by the  
78 Governor.

79 (18) A public adjuster, a public adjuster apprentice, or  
80 any person acting on behalf of a public adjuster or apprentice  
81 may not enter into a contract or accept a power of attorney that  
82 vests in the public adjuster, the public adjuster apprentice, or  
83 the person acting on behalf of a public adjuster or apprentice  
84 the effective authority to choose the persons or entities that  
85 will perform repair work.

86 ~~(19)(18) The provisions of Subsections (5)-(18) (5) (17)~~  
87 apply only to residential property insurance policies and

Page 3 of 24

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01698E-14

20147062\_\_

88 condominium unit owner policies as described ~~defined~~ in s.  
89 718.111(11).

90 Section 2. Paragraphs (b) and (hh) of subsection (6) of  
91 section 627.351, Florida Statutes, are amended to read:

92 627.351 Insurance risk apportionment plans.—

93 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

94 (b)1. All insurers authorized to write one or more subject  
95 lines of business in this state are subject to assessment by the  
96 corporation and, for the purposes of this subsection, are  
97 referred to collectively as "assessable insurers." Insurers  
98 writing one or more subject lines of business in this state  
99 pursuant to part VIII of chapter 626 are not assessable  
100 insurers; however, but insureds who procure one or more subject  
101 lines of business in this state pursuant to part VIII of chapter  
102 626 are subject to assessment by the corporation and are  
103 referred to collectively as "assessable insureds." An insurer's  
104 assessment liability begins on the first day of the calendar  
105 year following the year in which the insurer was issued a  
106 certificate of authority to transact insurance for subject lines  
107 of business in this state and terminates 1 year after the end of  
108 the first calendar year during which the insurer no longer holds  
109 a certificate of authority to transact insurance for subject  
110 lines of business in this state.

111 2.a. All revenues, assets, liabilities, losses, and  
112 expenses of the corporation shall be divided into three separate  
113 accounts as follows:

114 (I) A personal lines account for personal residential  
115 policies issued by the corporation, ~~or issued by the Residential~~  
116 ~~Property and Casualty Joint Underwriting Association and renewed~~

Page 4 of 24

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01698E-14

20147062\_\_

117 ~~by the corporation,~~ which provides comprehensive, multiperil  
 118 coverage on risks that are not located in areas eligible for  
 119 coverage by the Florida Windstorm Underwriting Association as  
 120 those areas were defined on January 1, 2002, and for policies  
 121 that do not provide coverage for the peril of wind on risks that  
 122 are located in such areas;

123 (II) A commercial lines account for commercial residential  
 124 and commercial nonresidential policies issued by the  
 125 corporation, ~~or issued by the Residential Property and Casualty~~  
 126 ~~Joint Underwriting Association and renewed by the corporation,~~  
 127 which provides coverage for basic property perils on risks that  
 128 are not located in areas eligible for coverage by the Florida  
 129 Windstorm Underwriting Association as those areas were defined  
 130 on January 1, 2002, and for policies that do not provide  
 131 coverage for the peril of wind on risks that are located in such  
 132 areas; and

133 (III) A coastal account for personal residential policies  
 134 and commercial residential and commercial nonresidential  
 135 property policies issued by the corporation, ~~or transferred to~~  
 136 ~~the corporation,~~ which provides coverage for the peril of wind  
 137 on risks that are located in areas eligible for coverage by the  
 138 Florida Windstorm Underwriting Association as those areas were  
 139 defined on January 1, 2002. The corporation may offer policies  
 140 that provide multiperil coverage and ~~the corporation shall~~  
 141 ~~continue to~~ offer policies that provide coverage only for the  
 142 peril of wind for risks located in areas eligible for coverage  
 143 in the coastal account. Effective July 1, 2014, the corporation  
 144 shall cease offering new commercial residential policies  
 145 providing multiperil coverage and shall instead continue to

597-01698E-14

20147062\_\_

146 offer commercial residential wind-only policies, and may offer  
 147 commercial residential policies excluding wind. The corporation  
 148 may, however, continue to renew a commercial residential  
 149 multiperil policy on a building that is insured by the  
 150 corporation on June 30, 2014, under a multiperil policy. In  
 151 issuing multiperil coverage, the corporation may use its  
 152 approved policy forms and rates for the personal lines account.  
 153 An applicant or insured who is eligible to purchase a multiperil  
 154 policy from the corporation may purchase a multiperil policy  
 155 from an authorized insurer without prejudice to the applicant's  
 156 or insured's eligibility to prospectively purchase a policy that  
 157 provides coverage only for the peril of wind from the  
 158 corporation. An applicant or insured who is eligible for a  
 159 corporation policy that provides coverage only for the peril of  
 160 wind may elect to purchase or retain such policy and also  
 161 purchase or retain coverage excluding wind from an authorized  
 162 insurer without prejudice to the applicant's or insured's  
 163 eligibility to prospectively purchase a policy that provides  
 164 multiperil coverage from the corporation. It is the goal of the  
 165 Legislature that there be an overall average savings of 10  
 166 percent or more for a policyholder who currently has a wind-only  
 167 policy with the corporation, and an ex-wind policy with a  
 168 voluntary insurer or the corporation, and who obtains a  
 169 multiperil policy from the corporation. It is the intent of the  
 170 Legislature that the offer of multiperil coverage in the coastal  
 171 account be made and implemented in a manner that does not  
 172 adversely affect the tax-exempt status of the corporation or  
 173 creditworthiness of or security for currently outstanding  
 174 financing obligations or credit facilities of the coastal

597-01698E-14

20147062\_\_

175 account, the personal lines account, or the commercial lines  
 176 account. The coastal account must also include quota share  
 177 primary insurance under subparagraph (c)2. The area eligible for  
 178 coverage under the coastal account also includes the area within  
 179 Port Canaveral, which is bordered on the south by the City of  
 180 Cape Canaveral, bordered on the west by the Banana River, and  
 181 bordered on the north by Federal Government property.

182 b. The three separate accounts must be maintained as long  
 183 as financing obligations entered into by the Florida Windstorm  
 184 Underwriting Association or Residential Property and Casualty  
 185 Joint Underwriting Association are outstanding, in accordance  
 186 with the terms of the corresponding financing documents. If the  
 187 financing obligations are no longer outstanding, the corporation  
 188 may use a single account for all revenues, assets, liabilities,  
 189 losses, and expenses of the corporation. Consistent with this  
 190 subparagraph and prudent investment policies that minimize the  
 191 cost of carrying debt, the board shall exercise its best efforts  
 192 to retire existing debt or obtain the approval of necessary  
 193 parties to amend the terms of existing debt, so as to structure  
 194 the most efficient plan for consolidating ~~to consolidate~~ the  
 195 three separate accounts into a single account.

196 c. Creditors of the Residential Property and Casualty Joint  
 197 Underwriting Association and the accounts specified in sub-sub-  
 198 subparagraphs a.(I) and (II) may have a claim against, and  
 199 recourse to, those accounts and no claim against, or recourse  
 200 to, the account referred to in sub-sub-subparagraph a.(III).  
 201 Creditors of the Florida Windstorm Underwriting Association have  
 202 a claim against, and recourse to, the account referred to in  
 203 sub-sub-subparagraph a.(III) and no claim against, or recourse

597-01698E-14

20147062\_\_

204 to, the accounts referred to in sub-sub-subparagraphs a.(I) and  
 205 (II).

206 d. Revenues, assets, liabilities, losses, and expenses not  
 207 attributable to particular accounts shall be prorated among the  
 208 accounts.

209 e. The Legislature finds that the revenues of the  
 210 corporation are revenues that are necessary to meet the  
 211 requirements set forth in documents authorizing the issuance of  
 212 bonds under this subsection.

213 f. The income of the corporation may not inure to the  
 214 benefit of any private person.

215 3. With respect to a deficit in an account:

216 a. After accounting for the Citizens policyholder surcharge  
 217 imposed under sub-subparagraph i., if the remaining projected  
 218 deficit incurred in the coastal account in a particular calendar  
 219 year:

220 (I) Is not greater than 2 percent of the aggregate  
 221 statewide direct written premium for the subject lines of  
 222 business for the prior calendar year, the entire deficit shall  
 223 be recovered through regular assessments of assessable insurers  
 224 under paragraph (q) and assessable insureds.

225 (II) Exceeds 2 percent of the aggregate statewide direct  
 226 written premium for the subject lines of business for the prior  
 227 calendar year, the corporation shall levy regular assessments on  
 228 assessable insurers under paragraph (q) and on assessable  
 229 insureds in an amount equal to the greater of 2 percent of the  
 230 projected deficit or 2 percent of the aggregate statewide direct  
 231 written premium for the subject lines of business for the prior  
 232 calendar year. Any remaining projected deficit shall be

597-01698E-14

20147062\_\_

233 recovered through emergency assessments under sub-subparagraph  
234 d.

235 b. Each assessable insurer's share of the amount being  
236 assessed under sub-subparagraph a. must be in the proportion  
237 that the assessable insurer's direct written premium for the  
238 subject lines of business for the year preceding the assessment  
239 bears to the aggregate statewide direct written premium for the  
240 subject lines of business for that year. The assessment  
241 percentage applicable to each assessable insured is the ratio of  
242 the amount being assessed under sub-subparagraph a. to the  
243 aggregate statewide direct written premium for the subject lines  
244 of business for the prior year. Assessments levied by the  
245 corporation on assessable insurers under sub-subparagraph a.  
246 must be paid as required by the corporation's plan of operation  
247 and paragraph (q). Assessments levied by the corporation on  
248 assessable insureds under sub-subparagraph a. shall be collected  
249 by the surplus lines agent at the time the surplus lines agent  
250 collects the surplus lines tax required by s. 626.932, and paid  
251 to the Florida Surplus Lines Service Office at the time the  
252 surplus lines agent pays the surplus lines tax to that office.  
253 Upon receipt of regular assessments from surplus lines agents,  
254 the Florida Surplus Lines Service Office shall transfer the  
255 assessments directly to the corporation as determined by the  
256 corporation.

257 c. After accounting for the Citizens policyholder surcharge  
258 imposed under sub-subparagraph i., the remaining projected  
259 deficits in the personal lines account and in the commercial  
260 lines account in a particular calendar year shall be recovered  
261 through emergency assessments under sub-subparagraph d.

Page 9 of 24

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01698E-14

20147062\_\_

262 d. Upon a determination by the board of governors that a  
263 projected deficit in an account exceeds the amount that is  
264 expected to be recovered through regular assessments under sub-  
265 subparagraph a., plus the amount that is expected to be  
266 recovered through surcharges under sub-subparagraph i., the  
267 board, after verification by the office, shall levy emergency  
268 assessments for as many years as necessary to cover the  
269 deficits, to be collected by assessable insurers and the  
270 corporation and collected from assessable insureds upon issuance  
271 or renewal of policies for subject lines of business, excluding  
272 National Flood Insurance policies. The amount collected in a  
273 particular year must be a uniform percentage of that year's  
274 direct written premium for subject lines of business and all  
275 accounts of the corporation, excluding National Flood Insurance  
276 Program policy premiums, as annually determined by the board and  
277 verified by the office. The office shall verify the arithmetic  
278 calculations involved in the board's determination within 30  
279 days after receipt of the information on which the determination  
280 was based. The office shall notify assessable insurers and the  
281 Florida Surplus Lines Service Office of the date on which  
282 assessable insurers shall begin to collect and assessable  
283 insureds shall begin to pay such assessment. The date must be at  
284 least ~~may be not less than~~ 90 days after the date the  
285 corporation levies emergency assessments pursuant to this sub-  
286 subparagraph. Notwithstanding any other provision of law, the  
287 corporation and each assessable insurer that writes subject  
288 lines of business shall collect emergency assessments from its  
289 policyholders without such obligation being affected by any  
290 credit, limitation, exemption, or deferment. Emergency

Page 10 of 24

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01698E-14

20147062\_\_

291 assessments levied by the corporation on assessable insureds  
 292 shall be collected by the surplus lines agent at the time the  
 293 surplus lines agent collects the surplus lines tax required by  
 294 s. 626.932 and paid to the Florida Surplus Lines Service Office  
 295 at the time the surplus lines agent pays the surplus lines tax  
 296 to that office. The emergency assessments collected shall be  
 297 transferred directly to the corporation on a periodic basis as  
 298 determined by the corporation and held by the corporation solely  
 299 in the applicable account. The aggregate amount of emergency  
 300 assessments levied for an account ~~under this sub-subparagraph~~ in  
 301 any calendar year may be less than but may not exceed the  
 302 greater of 10 percent of the amount needed to cover the deficit,  
 303 plus interest, fees, commissions, required reserves, and other  
 304 costs associated with financing the original deficit, or 10  
 305 percent of the aggregate statewide direct written premium for  
 306 subject lines of business and all accounts of the corporation  
 307 for the prior year, plus interest, fees, commissions, required  
 308 reserves, and other costs associated with financing the deficit.

309 e. The corporation may pledge the proceeds of assessments,  
 310 projected recoveries from the Florida Hurricane Catastrophe  
 311 Fund, other insurance and reinsurance recoverables, policyholder  
 312 surcharges and other surcharges, and other funds available to  
 313 the corporation as the source of revenue for and to secure bonds  
 314 issued under paragraph (q), bonds or other indebtedness issued  
 315 under subparagraph (c)3., or lines of credit or other financing  
 316 mechanisms issued or created under this subsection, or to retire  
 317 any other debt incurred as a result of deficits or events giving  
 318 rise to deficits, or in any other way that the board determines  
 319 will efficiently recover such deficits. The purpose of the lines

597-01698E-14

20147062\_\_

320 of credit or other financing mechanisms is to provide additional  
 321 resources to assist the corporation in covering claims and  
 322 expenses attributable to a catastrophe. As used in this  
 323 subsection, the term "assessments" includes regular assessments  
 324 under sub-subparagraph a. or subparagraph (q)1. and emergency  
 325 assessments under sub-subparagraph d. Emergency assessments  
 326 collected under sub-subparagraph d. are not part of an insurer's  
 327 rates, are not premium, and are not subject to premium tax,  
 328 fees, or commissions; however, failure to pay the emergency  
 329 assessment shall be treated as failure to pay premium. The  
 330 emergency assessments ~~under sub-subparagraph d.~~ shall continue  
 331 as long as any bonds issued or other indebtedness incurred with  
 332 respect to a deficit for which the assessment was imposed remain  
 333 outstanding, unless adequate provision has been made for the  
 334 payment of such bonds or other indebtedness pursuant to the  
 335 documents governing such bonds or indebtedness.

336 f. As used in this subsection for purposes of any deficit  
 337 incurred on or after January 25, 2007, the term "subject lines  
 338 of business" means insurance written by assessable insurers or  
 339 procured by assessable insureds for all property and casualty  
 340 lines of business in this state, but not including workers'  
 341 compensation or medical malpractice. As used in this sub-  
 342 subparagraph, the term "property and casualty lines of business"  
 343 includes all lines of business identified on Form 2, Exhibit of  
 344 Premiums and Losses, in the annual statement required of  
 345 authorized insurers under s. 624.424 and any rule adopted under  
 346 this section, except for those lines identified as accident and  
 347 health insurance and except for policies written under the  
 348 National Flood Insurance Program or the Federal Crop Insurance

597-01698E-14

20147062\_\_

349 Program. For purposes of this sub-subparagraph, the term  
350 "workers' compensation" includes both workers' compensation  
351 insurance and excess workers' compensation insurance.

352 g. The Florida Surplus Lines Service Office shall determine  
353 annually the aggregate statewide written premium in subject  
354 lines of business procured by assessable insureds and report  
355 that information to the corporation in a form and at a time the  
356 corporation specifies to ensure that the corporation can meet  
357 the requirements of this subsection and the corporation's  
358 financing obligations.

359 h. The Florida Surplus Lines Service Office shall verify  
360 the proper application by surplus lines agents of assessment  
361 percentages for regular assessments and emergency assessments  
362 levied under this subparagraph on assessable insureds and assist  
363 the corporation in ensuring the accurate, timely collection and  
364 payment of assessments by surplus lines agents as required by  
365 the corporation.

366 i. ~~In 2008 or thereafter,~~ Upon a determination by the board  
367 of governors that an account has a projected deficit, the board  
368 shall levy a Citizens policyholder surcharge against all  
369 policyholders of the corporation.

370 (I) The surcharge shall be levied as a uniform percentage  
371 of the premium ~~for all corporation policyholders for the policy~~  
372 of up to 10 percent of the policy premium for deficits in the  
373 personal lines account, up to 15 percent of the policy such  
374 premium for deficits in the commercial lines account, and up to  
375 20 percent of the policy premium for deficits in the coastal  
376 account, which funds shall be used to offset the deficit.

377 (II) The surcharge is payable upon cancellation or

597-01698E-14

20147062\_\_

378 termination of the policy, upon renewal of the policy, or upon  
379 issuance of a new policy by the corporation within the first 12  
380 months after the date of the levy or the period of time  
381 necessary to fully collect the surcharge amount.

382 (III) The corporation may not levy any regular assessments  
383 under paragraph (q) pursuant to sub-subparagraph a. or sub-  
384 subparagraph b. with respect to a particular year's deficit  
385 until the corporation has first levied the full amount of the  
386 surcharge authorized by this sub-subparagraph.

387 (IV) The surcharge is not considered premium and is not  
388 subject to commissions, fees, or premium taxes. However, failure  
389 to pay the surcharge shall be treated as failure to pay premium.

390 j. If the amount of any assessments or surcharges collected  
391 from corporation policyholders, assessable insurers or their  
392 policyholders, or assessable insureds exceeds the amount of the  
393 deficits, such excess amounts shall be remitted to and retained  
394 by the corporation in a reserve to be used by the corporation,  
395 as determined by the board of governors and approved by the  
396 office, to pay claims or reduce any past, present, or future  
397 plan-year deficits or to reduce outstanding debt.

398 (hh) The corporation ~~shall~~ must prepare a report for each  
399 calendar year outlining both the statewide average and county-  
400 specific details of the loss ratio attributable to losses that  
401 are not catastrophic losses for residential coverage provided by  
402 the corporation, which information must be presented to the  
403 office and available for public inspection on the Internet  
404 website of the corporation by March 1 ~~January 15th~~ of the  
405 following calendar year.

406 Section 3. Effective January 1, 2015, paragraph (n) of



597-01698E-14

20147062\_\_

407 subsection (6) of section 627.351, Florida Statutes, is amended  
408 to read:

409 627.351 Insurance risk apportionment plans.-

410 (6) CITIZENS PROPERTY INSURANCE CORPORATION.-

411 (n)~~1~~. Rates for coverage provided by the corporation must  
412 be actuarially sound and subject to s. 627.062, except as  
413 otherwise provided in this paragraph.

414 1. The corporation shall file its recommended rates for  
415 each personal and commercial line of business it writes with the  
416 office at least annually. The corporation shall provide any  
417 additional information regarding the rates which the office  
418 requires. The office shall consider the recommendations of the  
419 board and issue a final order establishing the rates for the  
420 corporation within 45 days after the recommended rates are  
421 filed. The corporation may not pursue an administrative  
422 challenge or judicial review of the final order of the office.

423 2. In addition to the rates otherwise determined pursuant  
424 to this paragraph, the corporation shall impose and collect an  
425 amount equal to the premium tax provided in s. 624.509 to  
426 augment the financial resources of the corporation.

427 3. After the public hurricane loss-projection model under  
428 s. 627.06281 has been found to be accurate and reliable by the  
429 Florida Commission on Hurricane Loss Projection Methodology, the  
430 model shall serve as the minimum benchmark for determining the  
431 windstorm portion of the corporation's rates. This subparagraph  
432 does not require or allow the corporation to adopt rates lower  
433 than the rates otherwise required or allowed by this paragraph.

434 ~~4. The rate filings for the corporation which were approved~~  
435 ~~by the office and took effect January 1, 2007, are rescinded,~~

Page 15 of 24

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01698E-14

20147062\_\_

436 ~~except for those rates that were lowered. As soon as possible,~~  
437 ~~the corporation shall begin using the lower rates that were in~~  
438 ~~effect on December 31, 2006, and provide refunds to~~  
439 ~~policyholders who paid higher rates as a result of that rate~~  
440 ~~filing. The rates in effect on December 31, 2006, remain in~~  
441 ~~effect for the 2007 and 2008 calendar years except for any rate~~  
442 ~~change that results in a lower rate. The next rate change that~~  
443 ~~may increase rates shall take effect pursuant to a new rate~~  
444 ~~filing recommended by the corporation and established by the~~  
445 ~~office, subject to this paragraph.~~

446 4.5. Beginning on July 15, 2009, and annually thereafter,  
447 The corporation shall ~~must~~ make a recommended actuarially sound  
448 rate filing for each personal and commercial line of business it  
449 writes, ~~to be effective no earlier than January 1, 2010.~~

450 5.6. Beginning on or after January 1, 2015 ~~2010~~, and  
451 notwithstanding the board's recommended rates and the office's  
452 final order regarding the corporation's filed rates under  
453 subparagraph 1., the corporation shall annually implement a rate  
454 increase that ~~which~~, except for sinkhole coverage:

455 a. For personal residential and commercial residential  
456 policies, does not exceed 10 percent for any single policy  
457 issued by the corporation, excluding coverage changes and  
458 surcharges.

459 b. For commercial nonresidential policies, does not exceed  
460 15 percent for any single policy issued by the corporation,  
461 excluding coverage changes and surcharges.

462 ~~6.7.~~ The corporation may also implement an increase to  
463 reflect the effect on the corporation of the cash buildup factor  
464 pursuant to s. 215.555(5)(b).

Page 16 of 24

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01698E-14

20147062\_\_

465 ~~7.8-~~ The corporation's implementation of rates as  
 466 prescribed in subparagraph ~~5. 6-~~ shall cease for any line of  
 467 business written by the corporation upon the corporation's  
 468 implementation of actuarially sound rates. Thereafter, the  
 469 corporation shall annually make a recommended actuarially sound  
 470 rate filing for each commercial and personal line of business  
 471 the corporation writes.

472 Section 4. Paragraph (e) is added to subsection (1) of  
 473 section 627.3518, Florida Statutes, subsection (2) and paragraph  
 474 (e) of subsection (4) of that section are amended, present  
 475 subsections (5) through (10) of that section are redesignated as  
 476 subsections (6) through (11), respectively, present subsection  
 477 (11) is redesignated as subsection (13), new subsections (5) and  
 478 (12) are added to that section, and present subsections (5)  
 479 through (7) of that section are amended, to read:

480 627.3518 Citizens Property Insurance Corporation  
 481 policyholder eligibility clearinghouse program.—The purpose of  
 482 this section is to provide a framework for the corporation to  
 483 implement a clearinghouse program by January 1, 2014.

484 (1) As used in this section, the term:

485 (e) "Surplus lines insurer" means an unauthorized insurer  
 486 that has been made eligible by the office to issue coverage  
 487 under the Surplus Lines Law.

488 (2) In order to confirm eligibility with the corporation  
 489 and to enhance the access of new applicants for coverage and  
 490 existing policyholders of the corporation to offers of coverage  
 491 from authorized insurers and surplus lines insurers, the  
 492 corporation shall establish a program for personal residential  
 493 risks in order to facilitate the diversion of ineligible

597-01698E-14

20147062\_\_

494 applicants and existing policyholders ~~from the corporation~~ into  
 495 the voluntary insurance market. The corporation shall also  
 496 develop appropriate procedures for facilitating the diversion of  
 497 ineligible applicants and existing policyholders for commercial  
 498 residential coverage into the private insurance market and  
 499 implement these procedures by October 1, 2015 ~~shall report such~~  
 500 ~~procedures to the President of the Senate and the Speaker of the~~  
 501 ~~House of Representatives by January 1, 2014.~~

502 (4) Any authorized insurer may participate in the program;  
 503 however, participation is not mandatory for any insurer.  
 504 Insurers making offers of coverage to new applicants or renewal  
 505 policyholders through the program:

506 (e) May participate through their single-designated  
 507 managing general agent or broker; however, the provisions of  
 508 paragraph (7) (a) ~~(6) (a)~~ regarding ownership, control, and use of  
 509 the expirations continue to apply.

510 (5) Effective January 1, 2015, an eligible surplus lines  
 511 insurer may make an offer of similar coverage on a risk  
 512 submitted through the clearinghouse program if no offers of  
 513 coverage were submitted by authorized insurers participating in  
 514 the program and the office determines that the eligible surplus  
 515 lines insurer:

516 (a) Maintains a surplus of \$50 million on a company or  
 517 pooled basis;

518 (b) Is rated "A-" or higher by A.M. Best Company;

519 (c) Maintains reserves, surplus, reinsurance, and  
 520 reinsurance equivalents to cover the eligible surplus lines  
 521 insurer's 100-year probable maximum hurricane loss at least  
 522 twice in a single hurricane season, and submits such reinsurance

597-01698E-14

20147062\_\_

523 to the office for review for purposes of participation in the  
 524 program; and  
 525 (d) Provides prominent notice to the policyholder:  
 526 1. That an offer of coverage from a surplus lines insurer  
 527 does not affect whether the policyholder is eligible for  
 528 coverage from the corporation;  
 529 2. That a policyholder who accepts an offer of coverage  
 530 from a surplus lines insurer may, at any time, submit a new  
 531 application for coverage to the corporation;  
 532 3. That surplus lines policies are not covered by the  
 533 Florida Insurance Guaranty Association;  
 534 4. That rates for surplus lines insurance are not subject  
 535 to review by the office; and  
 536 5. Of any additional information required by the office.  
 537 (6)(5) Notwithstanding s. 627.3517, an ~~any~~ applicant for  
 538 new coverage from the corporation is not eligible for coverage  
 539 from the corporation if provided an offer of coverage from an  
 540 authorized insurer through the program at a premium that is at  
 541 or below the eligibility threshold established in s.  
 542 627.351(6)(c)5.a. ~~or b.~~ Whenever an offer of coverage for a  
 543 personal lines ~~or commercial lines residential~~ risk is received  
 544 for a policyholder of the corporation at renewal from an  
 545 authorized insurer through the program, if the offer is equal to  
 546 or less than the corporation's renewal premium for comparable  
 547 coverage, the risk is not eligible for coverage with the  
 548 corporation. ~~If in the event~~ an offer of coverage for a new  
 549 applicant is received from an authorized insurer through the  
 550 program, and the premium offered exceeds the eligibility  
 551 threshold contained in s. 627.351(6)(c)5.a. ~~or b.~~, the applicant

Page 19 of 24

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01698E-14

20147062\_\_

552 or insured may elect to accept such coverage, or may elect to  
 553 accept or continue coverage with the corporation. If ~~In the~~  
 554 event an offer of coverage for a personal lines ~~or commercial~~  
 555 lines residential risk is received from an authorized insurer at  
 556 renewal through the program~~7~~ and if the premium offered is more  
 557 than the corporation's renewal premium for comparable coverage,  
 558 the insured may elect to accept such coverage~~7~~, or may elect to  
 559 accept or continue coverage with the corporation. Section  
 560 627.351(6)(c)5.a.(I) or b.(I) does not apply to an offer of  
 561 coverage from an authorized insurer obtained through the  
 562 program. An applicant for personal lines residential coverage  
 563 from the corporation who was declared ineligible for coverage at  
 564 renewal by the corporation in the previous 36 months due to an  
 565 offer of coverage pursuant to this subsection is ~~shall be~~  
 566 considered a renewal under this section if the corporation  
 567 determines that the authorized insurer making the offer of  
 568 coverage pursuant to this subsection continues to insure the  
 569 applicant and increased the rate on the policy in excess of the  
 570 increase allowed for the corporation under s. 627.351(6)(n)5  
 571 ~~627.351(6)(n)6.~~  
 572 (7)(6) Independent insurance agents submitting new  
 573 applications for coverage or that are the agent of record on a  
 574 renewal policy submitted to the program:  
 575 (a) Are granted and must maintain ownership and the  
 576 exclusive use of expirations, records, or other written or  
 577 electronic information directly related to such applications or  
 578 renewals written through the corporation or through an insurer  
 579 participating in the program, notwithstanding s.  
 580 627.351(6)(c)5.a.(I)(B) and (II)(B) and b.(I)(B) and (II)(B).

Page 20 of 24

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01698E-14

20147062\_\_

581 Such ownership is granted for as long as the insured remains  
 582 with the agency or until sold or surrendered in writing by the  
 583 agent. Contracts with the corporation or required by the  
 584 corporation must not amend, modify, interfere with, or limit  
 585 such rights of ownership. Such expirations, records, or other  
 586 written or electronic information may be used to review an  
 587 application, issue a policy, or for any other purpose necessary  
 588 for placing such business through the program.

589 (b) May not be required to be appointed by any insurer  
 590 participating in the program for policies written solely through  
 591 the program, notwithstanding ~~the provisions of~~ s. 626.112.

592 (c) May accept an appointment from an ~~any~~ insurer  
 593 participating in the program.

594 (d) May enter into ~~either~~ a standard or limited agency  
 595 agreement with the insurer, at the insurer's option.

596 Applicants ineligible for coverage in accordance with subsection  
 597 (6) ~~(5)~~ remain ineligible if their independent agent is  
 598 unwilling or unable to enter into a standard or limited agency  
 599 agreement with an insurer participating in the program.

601 (8) ~~(7)~~ Exclusive agents submitting new applications for  
 602 coverage or that are the agent of record on a renewal policy  
 603 submitted to the program:

604 (a) Must maintain ownership and the exclusive use of  
 605 expirations, records, or other written or electronic information  
 606 directly related to such applications or renewals written  
 607 through the corporation or through an insurer participating in  
 608 the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and  
 609 (II)(B) and b.(I)(B) and (II)(B). Contracts with the corporation

597-01698E-14

20147062\_\_

610 or required by the corporation must not amend, modify, interfere  
 611 with, or limit such rights of ownership. Such expirations,  
 612 records, or other written or electronic information may be used  
 613 to review an application, issue a policy, or for any other  
 614 purpose necessary for placing such business through the program.

615 (b) May not be required to be appointed by any insurer  
 616 participating in the program for policies written solely through  
 617 the program, notwithstanding ~~the provisions of~~ s. 626.112.

618 (c) Must only facilitate the placement of an offer of  
 619 coverage from an insurer whose limited servicing agreement is  
 620 approved by that exclusive agent's exclusive insurer.

621 (d) May enter into a limited servicing agreement with the  
 622 insurer making an offer of coverage, and only after the  
 623 exclusive agent's insurer has approved the limited servicing  
 624 agreement terms. The exclusive agent's insurer must approve a  
 625 limited service agreement for the program for an ~~any~~ insurer for  
 626 which it has approved a service agreement for other purposes.

627 Applicants ineligible for coverage in accordance with subsection  
 628 (6) ~~(5)~~ remain ineligible if their exclusive agent is unwilling  
 629 or unable to enter into a standard or limited agency agreement  
 630 with an insurer making an offer of coverage to that applicant.

631 (12) An applicant for coverage from the corporation who was  
 632 a policyholder of the corporation within the previous 36 months  
 633 and who subsequently accepted an offer of coverage from a  
 634 surplus lines insurer is considered a renewal under this  
 635 section.

636 Section 5. Section 627.3519, Florida Statutes, is repealed.

637 Section 6. Section 627.35191, Florida Statutes, is amended

597-01698E-14

20147062\_\_

639 to read:

640 627.35191 Required reports ~~Annual report of aggregate net~~  
 641 ~~probable maximum losses, financing options, and potential~~  
 642 ~~assessments.-~~

643 (1) ~~By no later than~~ February 1 of each year, the Florida  
 644 Hurricane Catastrophe Fund and Citizens Property Insurance  
 645 Corporation shall each submit a report to the Legislature and  
 646 the Financial Services Commission identifying their respective  
 647 aggregate net probable maximum losses, financing options, and  
 648 potential assessments. The report issued by the fund and the  
 649 corporation must include their respective 50-year, 100-year, and  
 650 250-year probable maximum losses; analysis of all reasonable  
 651 financing strategies for each such probable maximum loss,  
 652 including the amount and term of debt instruments; specification  
 653 of the percentage assessments that would be needed to support  
 654 each of the financing strategies; and calculations of the  
 655 aggregate assessment burden on Florida property and casualty  
 656 policyholders for each of the probable maximum losses.

657 (2) In May of each year, Citizens Property Insurance  
 658 Corporation shall also provide to the Legislature and the  
 659 Financial Services Commission a statement of the estimated  
 660 borrowing capacity of the corporation for the next 12-month  
 661 period, the estimated claims-paying capacity of the corporation,  
 662 and the corporation's estimated balance as of December 31 of the  
 663 current calendar year. Such estimates must take into account  
 664 that the corporation, the Florida Hurricane Catastrophe Fund,  
 665 and the Florida Insurance Guaranty Association may all be  
 666 concurrently issuing debt instruments following a catastrophic  
 667 event.

Page 23 of 24

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01698E-14

20147062\_\_

668 Section 7. Effective January 1, 2015, subsection (7) of  
 669 section 627.701, Florida Statutes, is amended to read:

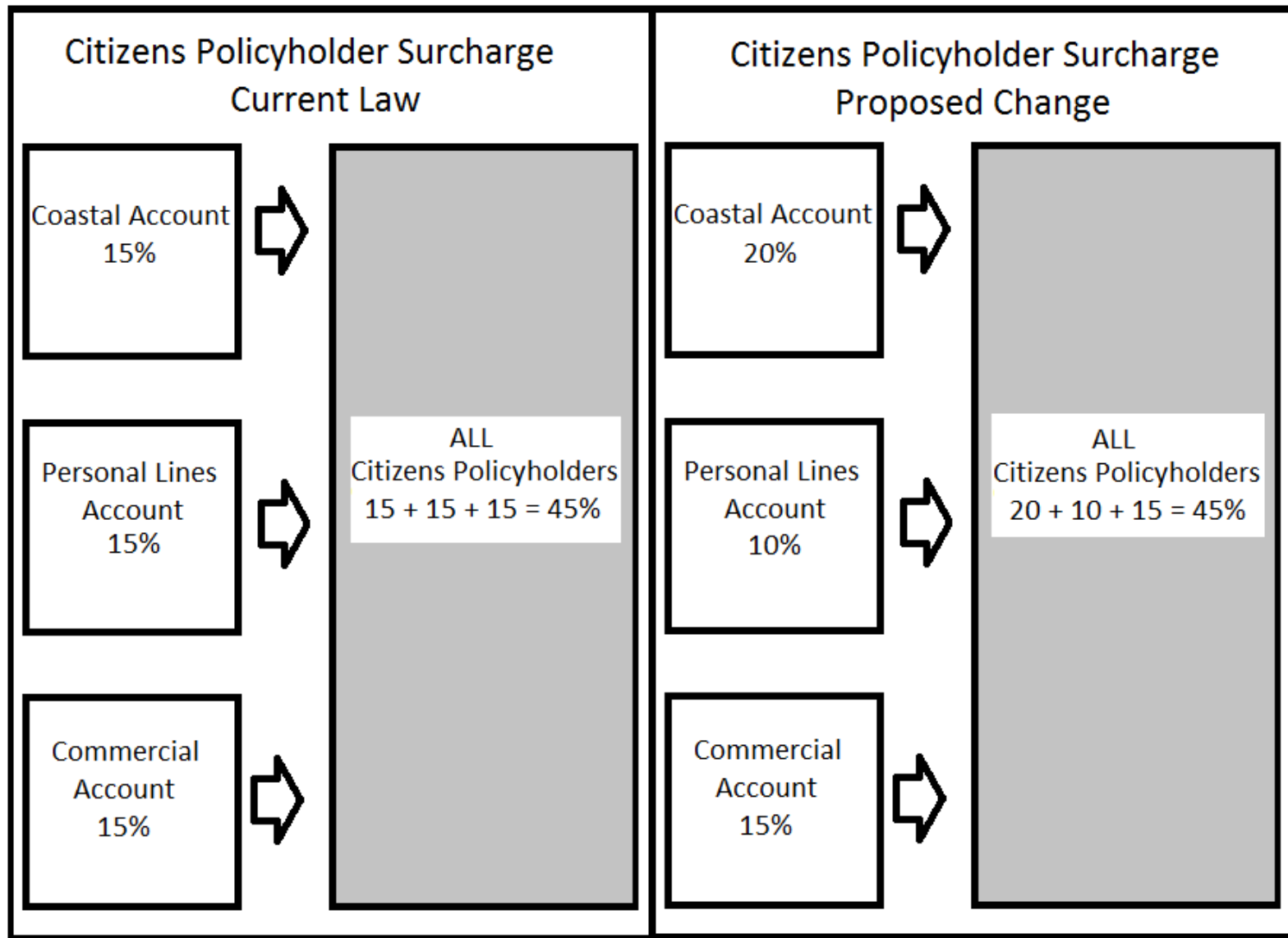
670 627.701 Liability of insureds; coinsurance; deductibles.-

671 (7) ~~Before~~ ~~Prior~~ to issuing a personal lines residential  
 672 property insurance policy on or after January 1, 2015 ~~April 1,~~  
 673 ~~1997,~~ or ~~before~~ ~~prior~~ to the first renewal of a residential  
 674 property insurance policy on or after January 1, 2015 ~~April 1,~~  
 675 ~~1997,~~ the insurer must offer a deductible equal to \$1,000 ~~\$500~~  
 676 applicable to losses from perils other than hurricane. The  
 677 insurer must provide the policyholder with notice of the  
 678 availability of the deductible specified in this subsection in a  
 679 form approved by the office at least once every 3 years. The  
 680 failure to provide such notice constitutes a violation of this  
 681 code but does not affect the coverage provided under the policy.  
 682 An insurer may require a higher deductible only as part of a  
 683 deductible program lawfully in effect on June 1, 1996, or as  
 684 part of a similar deductible program.

685 Section 8. Except as otherwise expressly provided in this  
 686 act, this act shall take effect July 1, 2014.

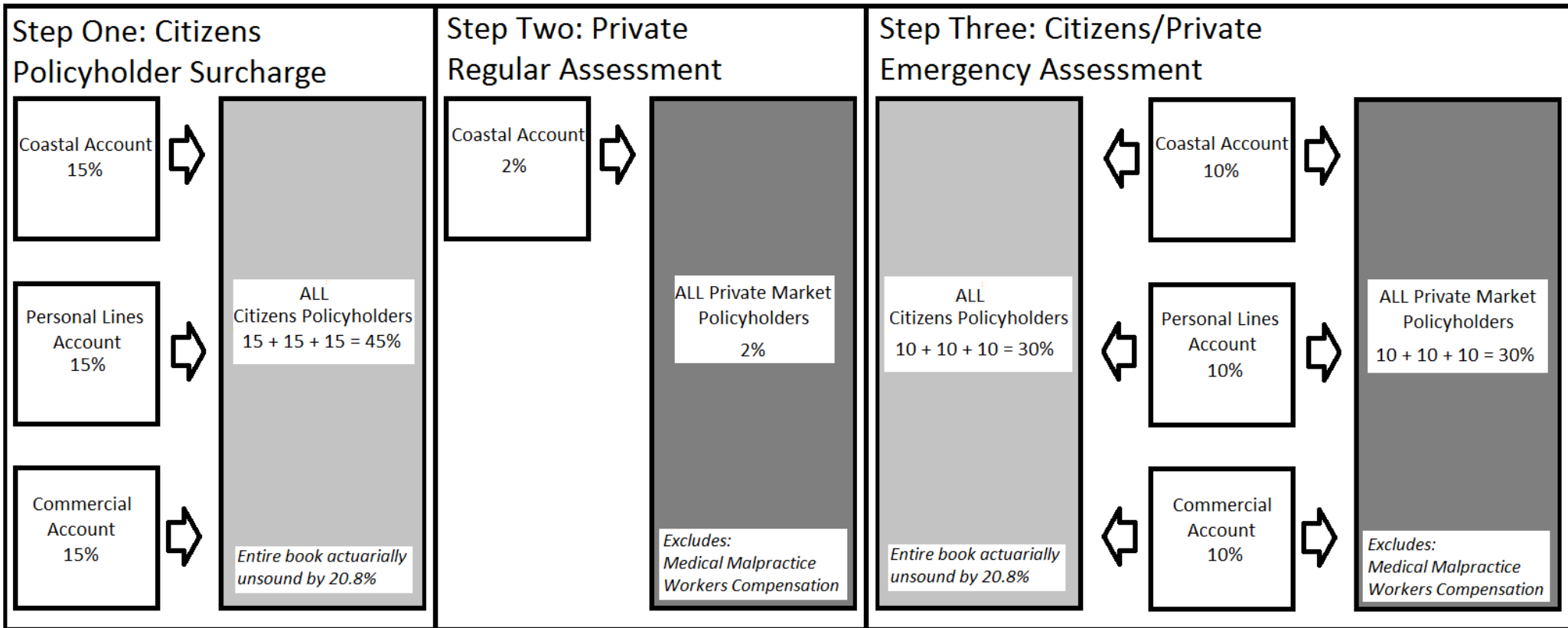
Page 24 of 24

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



- Citizens' current book of business for all three accounts is -20.8% actuarially unsound.
- Depending on the storm scenario this proposal could result in more, less, or no change to the Citizens Policyholder Surcharge.
- Based on Citizens' current book of business the effect of the proposed change only occur between a 1-60 and a 1-100 year size storm.
- Under this proposal, the cost to a Citizens' policyholder after a 1-60 year storm is \$89 on average.
- Under this proposal, the savings to a private market policyholder after a 1-60 year storm is \$7 on average.

# Current Law Citizens Surcharges and Assessments



Maximum Citizens Policyholder: (15 + 15 + 15 + 10 + 10 + 10) = 75%

Maximum Private Policyholder: (2 + 10 + 10 + 10) = 32%

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/11/2014  
Meeting Date

Topic CITIZENS

Bill Number 7062  
*(if applicable)*

Name CHRISTIAN CÁMARA

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title STATE DIRECTOR

Address PO Box 10577  
*Street*

Phone (305) 608-4300

TALLAHASSEE, FL 32302  
*City State Zip*

E-mail CCAMARA@RSDIRECTOR.ORG

Speaking:  For  Against  Information

Representing R- Street INST.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/11/14

*Meeting Date*

Topic Citizens Property Insurance

Bill Number SB 7062  
*(if applicable)*

Name Carolyn Johnson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Policy Director

Address 136 S Bronough St

Phone 521-1235

*Street*

Tallahassee

FL

32301

*City*

*State*

*Zip*

E-mail cjohnson@flchamber.com

Speaking:  For  Against  Information

Representing FL Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

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

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

---

Prepared By: The Professional Staff of the Committee on Banking and Insurance

---

BILL: CS/CS/CS/SB 542

INTRODUCER: Banking and Insurance Committee, Appropriations Committee, Banking and Insurance Committee and Senator Brandes and others

SUBJECT: Flood Insurance

DATE: March 12, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow/Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>
4.	<u>Matiyow/Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/CS/SB 542 creates s. 627.715, F.S., which contains requirements that authorized insurers are subject to when offering flood insurance on any residential structure or its contents in Florida. The bill requires an authorized insurer that issues flood insurance under s. 627.715, F.S., to also offer coverage equivalent to that provided under a standard National Flood Insurance Program (NFIP) flood insurance policy. The bill defines flood in accord with the current definition used by the NFIP, and requires all flood coverage to, at a minimum, cover “flood” in accordance with this definition. Insurers may also include water intrusion, as defined by the policy, within flood coverage.

An insurer may establish rates using any method currently authorized under the Florida Insurance Code or may use the alternative informational rate filing method. Under the newly created informational rate filing, the insurer may use rates, rating schedules, or rating manuals filed with the Office of Insurance Regulation (OIR) that allows the insurer a reasonable rate of return on flood coverage. The OIR may require the insurer to submit to an examination at the insurer’s expense to determine if the rate is excessive, inadequate, or unfairly discriminatory using the existing standards in law. If a rate violates these standards, the insurer is prohibited from writing additional flood coverage until the office has approved the rate. This rate filing method may be used to establish rates filed with the OIR before July 1, 2024.

The bill also:

- Allows flood deductibles to be a stated dollar amount or a percentage of coverage. If flood coverage will satisfy a mortgage requirement, the deductible must be acceptable to federal mortgage and banking regulators.
- Allows flood insurance policies to be offered that adjust claims on the basis of replacement cost or actual cash value.
- Allows the policy limit for flood coverage to be any agreed upon amount, including the outstanding mortgages on the property.
- Makes the following coverages optional: (1) additional living expense coverage; (2) personal property or contents; and (3) law and ordinance coverage. The insurer must offer, however, law and ordinance coverage comparable to such coverage contained in a NFIP policy.
- Allows coverage to be restricted to the principal building, as defined by the policy.
- Requires the declarations page of the policy to disclose policy limits, deductibles, and other coverage limitations.
- Requires the agent, prior to issuing a policy under s. 627.715, F.S., to obtain from the applicant a signed statement that provides the applicant written notice of potential differences in comparison to NFIP coverage. The applicant's signature creates a conclusive presumption that the policyholder understood and selected the limitations on coverage in the policy as compared to a NFIP policy.
- Allows a surplus lines agent to export a flood contract or endorsement without making a diligent effort to seek coverage from three or more authorized insurers. Expires July 1, 2017.
- Requires the insurer to provide 60 days written notice to the insured, regulated lending institutions, and federal agency mortgagees of the cancellation or nonrenewal of flood coverage. An insured may only cancel a policy for reasons permitted under the NFIP.
- Requires insurers to notify the OIR at least 30 days before writing flood insurance in Florida, file a plan of operation and financial projections with the OIR, offer flood coverage on forms approved by the OIR under the form approval statute in s. 627.410, F.S., and file all reinsurance contracts with the office on or before June 30th of each year.
- Prohibits Citizens Property Insurance Corporation from providing flood insurance.
- Prohibits the Florida Hurricane Catastrophe Fund from reimbursing flood losses.
- Exempts commercial nonresidential policies, excess flood coverage policies, and policies issued by or on behalf of the NFIP from the provisions of s. 627.715, F.S.
- Provides that the provisions of s. 627.715, F.S., supersede any conflicting provisions in the Insurance Code with regard to flood insurance.
- Allows flood rates to be established using models or an average of models approved by the Florida Commission on Hurricane Loss Projection Methodology.
- Authorizes the OIR Commissioner to provide a certification that is a condition under federal law or rule of qualifying for private flood insurance or disaster assistance.

The bill has no fiscal impact to state funds. The Florida Commission on Hurricane Loss Projection Methodology estimates a fiscal impact of \$350,000 to develop the standards outlined in the bill. The commission is funded by the Florida Hurricane Catastrophe Fund.

## II. Present Situation:

The National Flood Insurance Program (NFIP) was created by the passage of the National Flood Insurance Act of 1968.<sup>1</sup> The NFIP is administered by Federal Emergency Management Agency (FEMA) and provides property owners located in flood-prone areas the ability to purchase flood insurance protection from the federal government. Flood insurance through the NFIP is only available in communities that adopt and enforce federal floodplain management criteria.<sup>2</sup>

### Standard NFIP Flood Insurance

The standard flood insurance policy dwelling form offered by the NFIP<sup>3</sup> is a single peril flood policy that pays for direct physical damage to the insured residential property up to the replacement cost<sup>4</sup> (RCV) or actual cash value (ACV) or the policy limit.<sup>5</sup> The maximum coverage limit for a NFIP standard flood insurance policy is \$250,000. The NFIP also offers up to \$100,000 in personal property (contents) coverage, which is always valued at ACV.<sup>6</sup> Most NFIP policies also include Increased Cost of Compliance (ICC) coverage of up to \$30,000 of the cost to comply with state or community floodplain management laws or ordinances after a flood in which a building has been declared substantially damaged or repetitively damaged.<sup>7</sup> The maximum coverage available to a condominium association is \$250,000 per unit multiplied by the total number of units.<sup>8</sup> The limits of coverage for NFIP flood insurance on non-residential buildings are \$500,000 in coverage to the building and \$500,000 in contents coverage.<sup>9</sup>

Flood is defined in the standard NFIP policy as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;

<sup>1</sup> <http://www.fema.gov/media-library/assets/documents/7277?id=2216> (Last accessed by staff on January 2, 2014)

<sup>2</sup> *National Flood Insurance Program: Program Description*, pgs. 2-4., Federal Emergency Management Agency/Federal Insurance and Mitigation Administration (August 1, 2002) <http://www.fema.gov/media-library/assets/documents/1150?id=1480> (Last accessed by staff on January 7, 2014).

<sup>3</sup> The standard form insures one-to-four family residential buildings and single-family dwelling units in a condominium building. The NFIP also offers (a) a general property form that is used to insure five-or-more-family residential buildings and non-residential buildings and (b) a residential condominium building association policy form that insures residential condominium association buildings.

<sup>4</sup> To obtain RCV coverage under the NFIP dwelling form, the building must be a single-family dwelling, be the principal residence of the insured at the time of loss (the insured lives there at least 80 percent of the year), and the building coverage of at least 80 percent of the full replacement cost of the building or its the maximum available for the property under the NFIP.

<sup>5</sup> *National Flood Insurance Program: Summary of Coverage*, Federal Emergency Management Agency (FEMA F-679/November 2012) [http://www.fema.gov/media-library-data/20130726-1620-20490-4648/f\\_679\\_summaryofcoverage\\_11\\_2012.pdf](http://www.fema.gov/media-library-data/20130726-1620-20490-4648/f_679_summaryofcoverage_11_2012.pdf) (Last accessed by staff on January 7, 2014).

<sup>6</sup> See footnote 4.

<sup>7</sup> The total amount of a building claim and ICC claim cannot exceed the maximum limit for building property coverage. For a single-family home, this is the \$250,000 maximum limit on coverage to the building. See footnote 4 and footnote 5 at page 26.

<sup>8</sup> *FDIC Compliance Manual*, V – 6.8. <http://www.fdic.gov/regulations/compliance/manual/index.html> (Last accessed by staff on January 7, 2014).

<sup>9</sup> *Reducing Damage from Localized Flooding: A Guide for Communities*, 11-2. <http://www.fema.gov/media-library/assets/documents/1012> (Last accessed by staff on January 7, 2014).

- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.<sup>10</sup>

The minimum deductibles for NFIP flood coverage are:

- For properties built before the effective date of the first Flood Insurance Rate Map<sup>11</sup> (FIRM) for a community, the minimum deductible is:
  - \$1,500 if the property is insured for \$100,000 or less.
  - \$2,000 if the property is insured for over \$100,000.
- For properties built after the effective date of the first Flood Insurance Rate Map (FIRM) for a community, the minimum deductible is:
  - \$1,000 if the property is insured for \$100,000 or less.
  - \$1,250 if the property is insured for over \$100,000.

### **Federal Requirements to Obtain Flood Insurance**

In 1973<sup>12</sup> the U.S. Congress passed the Flood Disaster Protection Act. The Act mandated property owners with mortgages issued by federally regulated or insured lenders must purchase flood insurance if their properties are located in Special Flood Hazard Areas. Special Flood Hazard Areas are defined by FEMA as high-risk areas where there is at least a 1 in 4 chance of flooding during a 30-year mortgage.<sup>13</sup>

The National Flood Insurance Reform Act of 1994<sup>14</sup> (1994 Reform Act) required federal financial regulatory agencies<sup>15</sup> to revise their flood insurance regulations. The 1994 Reform Act applied flood insurance requirements to loans purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) and to agencies that provide government insurance or guarantees such as the Small Business Administration, the Federal Housing Administration, and the Veterans Administration. Lending institutions regulated by federal agencies are prohibited from offering loans on properties located in a Special Flood Hazard Area (SFHA) of a community participating in the NFIP unless the property is covered by flood insurance.<sup>16</sup> The amount of flood insurance required by lending institutions must be at least equal to the outstanding principal balance of the loan, or the maximum amount available under the NFIP, whichever is less.

---

<sup>10</sup> <http://www.fema.gov/national-flood-insurance-program/definitions> (Last accessed by staff on January 2, 2014).

<sup>11</sup> The effective date of the first FIRM for Florida communities can be found at <http://www.fema.gov/cis/FL.pdf> (Last accessed by staff on January 10, 2014).

<sup>12</sup> [http://www.fema.gov/media-library-data/20130726-1545-20490-9247/frm\\_acts.pdf](http://www.fema.gov/media-library-data/20130726-1545-20490-9247/frm_acts.pdf) (Last accessed by staff on January 2, 2014).

<sup>13</sup> [http://www.floodsmart.gov/floodsmart/pages/flooding\\_flood\\_risks/defining\\_flood\\_risks.jsp](http://www.floodsmart.gov/floodsmart/pages/flooding_flood_risks/defining_flood_risks.jsp) (Last accessed by staff on January 2, 2014).

<sup>14</sup> Title V of the Riegle Community Development and Regulatory Improvement Act of 1994. Pub. L. 103-325, Title V, 108 Stat. 2160, 2255-87 (September 23, 1994).

<sup>15</sup> Office of Comptroller of Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Farm Credit Administration and Federal Reserve.

<sup>16</sup> *FDIC Compliance Manual*, V – 6.1. <http://www.fdic.gov/regulations/compliance/manual/index.html> (Last accessed by staff on January 7, 2014).

## The Biggert-Waters Flood Insurance Reform Act

In 2012<sup>17</sup> the United States Congress passed the Biggert-Waters Flood Insurance Reform Act (Biggert-Waters Act). The Biggert-Waters Act reauthorized the National Flood Insurance Program for 5 years. Key provisions of the legislation require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how Flood Insurance Rate Map updates impact policyholders. These changes by Congress have resulted in premium rate increases for approximately 20 percent of NFIP policyholders nationwide.

The Biggert-Waters Act increases flood insurance premiums purchased through the program for second homes, business properties, severe repetitive loss properties, and substantially improved damaged properties by requiring premium increases of 25 percent per year until premiums meet the full actuarial cost of flood coverage. Most residences immediately lose their subsidized rates if the property is sold, the policy lapses, repeated and severe flood losses occur, or a new policy is purchased. Policyholders whose communities adopt a new, updated Flood Insurance Rate Map (FIRM) that results in higher rates will experience a 5-year phase in of rate increases to achieve rates that incorporate the full actuarial cost of coverage.

### NFIP Flood Insurance in Florida

Over 2 million NFIP policies are written on Florida properties, with approximately 268,500 policies receiving subsidized rates.<sup>18</sup> This accounts for approximately 37 percent of the total policies written by the NFIP.

Historically, properties insured in Florida have paid approximately \$3.60 in premium for NFIP flood coverage for every \$1 received in claims payments.<sup>19</sup> The rate impact of the Biggert-Waters Act on subsidized policies in Florida is approximately as follows:

- Approximately 50,000 secondary residences, businesses, and severe repetitive loss properties are subject to immediate, annual 25 percent increases until their premiums are full risk premiums.
- Approximately 103,000 primary residences will lose their subsidy if the property is sold, the policy lapses, the property suffers severe, repeated flood losses, or a new policy is purchased.
- Approximately 115,000 non-primary residences, business properties, and severe repetitive loss properties are subject to the elimination of subsidies once FEMA develops guidance for their removal.

---

<sup>17</sup> <http://www.fema.gov/flood-insurance-reform-act-2012> (Last accessed by staff on January 2, 2014).

<sup>18</sup> Office of Insurance Regulation, *The Biggert-Waters Flood Insurance Reform Act of 2012*, (Presentation to the Florida Senate Banking and Insurance Committee on October 8, 2013). [http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket\\_2346.pdf](http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket_2346.pdf).

<sup>19</sup> Wharton Center for Risk Management and Decision Processes, *Who's Paying and Who's Benefiting Most From Flood Insurance Under the NFIP? A Financial Analysis of the U.S. National Flood Insurance Program (NFIP)*, (Issue Brief, Fall 2011).

### III. Effect of Proposed Changes:

#### **Allowing Insurers to Offer Residential Flood Insurance Pursuant to s. 627.715, F.S.; Requiring Insurers Offering Flood Insurance to Offer Coverage Equivalent to NFIP Coverage; Defining Flood [s. 627.715(1) and (2), F.S.]**

The bill creates s. 627.715, F.S., which contains requirements that authorized insurers are subject to when offering flood insurance on any residential structure or its contents in Florida. The bill requires an authorized insurer that issues flood insurance under s. 627.715, F.S., to also offer coverage equivalent to that provided under a standard National Flood Insurance Program (NFIP) flood insurance policy.

The bill defines flood in accord with the current definition used by the NFIP, and requires all flood coverage to, at a minimum, cover “flood” in accordance with this definition. Insurers may also include water intrusion, as defined by the policy, within flood coverage.

#### **Flood Policy Limits, Deductibles, Optional Coverages, Coverage Restrictions, and Claims Adjustment Methods [s. 627.715(3), F.S.]**

The bill authorizes insurers to offer the following flood coverage options:

- *Deductibles* – Deductibles may be based on a stated dollar amount or a percentage of the coverage. If the flood coverage will satisfy a mortgage requirement, the deductible must be acceptable to federal mortgage and banking regulators.
- *Loss Adjustment Method* – Losses may be adjusted on the basis of:
  - Actual cash value of the property; or
  - Replacement costs up to policy limits.
- *Insure Only the Principal Building* – Flood coverage may be restricted to the principal building, as defined in the policy.
- *Policy Limits* – The policy limit may be in an agreed-upon amount, including the balance of all outstanding mortgages on the property.
- *Optional Coverages* – Flood policies may be offered that do not include coverage for:
  - Additional living expenses.
  - Personal property or contents.
  - Law and ordinance coverage as included in policies under Florida law. However, the insurer must offer the limited law and ordinance coverage that is provided in NFIP policies.<sup>20</sup>

#### **Disclosures and Written Notices to Policyholders [s. 627.715(4) and (5), F.S.]**

The bill specifies the disclosures and notices that must be provided to the policyholder. The declarations or face page of the policy to prominently disclose deductibles, policy limits, and

---

<sup>20</sup> Such coverage is called increased cost of compliance (ICC) coverage under the NFIP and, for the NFIP standard policy, provides up to \$30,000 to elevate, demolish, or relocate the insured dwelling if such action is required because a floodplain management ordinance finds the structure is substantially damaged or repetitively damaged by flood. Under the NFIP, ICC coverage cannot increase the maximum limit for coverage to the structure (\$250,000 for a dwelling or \$500,000 for a business).

other coverage limitations which the Office of Insurance Regulation (OIR) requires to be included.

The bill also requires the insurance agent, prior to issuing a flood policy, to obtain a signed acknowledgment from the applicant that states: “By accepting this flood insurance policy, I have read and understand the limitations that may apply to my policy.” The signed acknowledgment form creates a conclusive presumption that the applicant understood and selected on behalf of all insureds the limitations on coverage in the policy, as compared to NFIP coverage. The signed acknowledgment must also include notice to the policyholder that flood insurance is available from the NFIP and that the policyholder should contact his or her agent with any questions about NFIP coverage. The following notices are required if relevant to the coverage provided under the policy:

- For a policy that provides less than full replacement cost coverage, notice that the policyholder may incur high out-of-pocket expenses that put the policyholder’s equity at risk.
- For a policy that insures a dwelling on an actual cash value basis, notice that the policyholder may incur high out-of-pocket expenses.
- If the structure was previously insured by the NFIP at a subsidized rate, notice that the policyholder may lose eligibility for the NFIP subsidized rate by accepting a private flood policy.
- For a policy that provides the limited law-and-ordinance coverage offered by the NFIP, notice that the law and ordinance coverage is limited and the policyholder should consult with his or her agent with questions about coverage.

### **Rate Filings for Flood Coverage [s. 627.715(6), F.S.]**

The bill specifies that an insurer may establish rates using any method currently authorized under the Florida Insurance Code or may use the alternative informational rate filing created in s. 627.715(6), F.S. Under the newly created informational rate filing, the insurer may use rates, rating schedules, or rating manuals filed with the OIR that allow the insurer a reasonable rate of return on flood coverage. The rates are exempt from s. 627.062(2)(a) and (f), F.S., which contain the “file and use” and “use and file” rate review requirements and the authority of the OIR to require an insurer to provide information at the time of a rate filing to evaluate the reasonableness of the filing and the condition of the company. However, the amendment requires insurers to maintain actuarial data related to flood for 2 years after the effective date of a rate change and authorizes the office to require the insurer to submit to an examination at the insurer’s expense. The OIR examination will determine if the rate is excessive, inadequate, or unfairly discriminatory using the existing standards in law. If a rate violates these standards, the insurer is prohibited from writing additional flood coverage until the office has approved the rate. This rate filing method may be used to establish rates filed with the OIR before July 1, 2024.

### **Other Provisions**

The bill:

- Allows flood rates to be established using models or an average of models approved by the Florida Commission on Hurricane Loss Projection Methodology. [s. 627.062(2)(b), F.S., and s. 627.0628(3), F.S.]



- Permits a surplus lines agent to export a flood contract or endorsement without making a diligent effort to seek coverage from three or more authorized insurers. Expires July 1, 2017. [s. 627.715(7), F.S.]
- Requires the insurer to provide 60 days written notice to the insured, regulated lending institutions, and federal agency mortgagees of the cancellation or nonrenewal of flood coverage. An insured may only cancel a policy for reasons permitted under the NFIP. [s. 627.715(8), F.S.]
- Requires insurers to notify the OIR at least 30 days before writing flood insurance in Florida, file a plan of operation and financial projections with the OIR, offer flood coverage on forms approved by the OIR under the form approval statute in s. 627.410, F.S., and file all reinsurance contracts with the office on or before June 30th of each year. [s. 627.715(9), F.S.]
- Prohibits Citizens Property Insurance Corporation from providing flood insurance. [s. 627.715(10), F.S.]
- Prohibits the Florida Hurricane Catastrophe Fund from reimbursing flood losses. [s. 627.715(11), F.S.]
- Exempts commercial nonresidential policies, excess flood coverage policies, and policies issued by or on behalf of the NFIP (i.e. the NFIP Write Your Own program) from the provisions of s. 627.715, F.S. [s. 627.715(12), F.S.]
- Provides that s. 627.715, F.S., will supersede any other provisions of the Florida Insurance Code in the event of a conflict. [s. 627.715(13), F.S.]
- Authorizes the OIR Commissioner to provide a certification that is a condition under federal law or rule of qualifying for private flood insurance or disaster assistance.
- Is effective upon becoming a law.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

It is anticipated that the implementation of CS/CS/CS/SB 542 will result in additional private insurers offering flood insurance which may increase competition in the marketplace and provide consumers with more coverage options.

**C. Government Sector Impact:**

The bill requires the Florida Commission on Hurricane Loss Projection Methodology to develop standards for the review of flood models. The commission estimates the fiscal impact of the bill is \$350,000. The commission is funded by the Florida Hurricane Catastrophe Fund. The development of such standards will require the commission to incur costs associated with additional commission meetings, research, workshops, consultants, and possible meetings at the location of each modeler.

According to the OIR, the bill will be implemented within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 627.062 and 627.0628.

This bill creates section 627.715 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/CS by Banking and Insurance on March 11, 2014:**

- Requires an insurer that issues flood insurance under s. 627.715, F.S., to also offer coverage equivalent to that provided under a standard National Flood Insurance Program (NFIP) flood insurance policy.
- Revises and clarifies the information that must be included on the cover page of the policy.
- Requires the insurance agent, prior to issuing a flood policy, to make specified written disclosures to the policyholder and obtain a signed acknowledgment from the applicant. The signed acknowledgment creates a conclusive presumption that the applicant understood the limitations of coverage in the policy compared to a NFIP flood insurance policy.

- Revises the flood insurance rating options in the bill, specifying that an insurer may establish rates using any method currently authorized under the Florida Insurance Code or may use the alternative informational rate filing created in s. 627.715(6), F.S.
- Deletes the legislative findings in CS/CS/SB 542.
- Permits a surplus lines agent to export a flood contract or endorsement without making a diligent effort to seek coverage from three or more authorized insurers. Expires July 1, 2017.
- Insurers must notify the OIR at least 30 days before writing flood insurance in Florida, file a plan of operation and financial projections with the OIR, offer flood coverage on forms approved by the OIR under the form approval statute in s. 627.410, F.S., and file all reinsurance contracts with the office on or before June 30<sup>th</sup> of each year.
- Exempts commercial nonresidential policies, excess flood coverage policies, and policies issued by or on behalf of the NFIP (i.e. the NFIP Write Your Own program) from the provisions of s. 627.715, F.S.

**CS/CS by Appropriations on February 20, 2014:**

- Changes the sunset that limits the use of alternative rate filing options for flood insurance to filings submitted to the OIR from July 1, 2017, to July 1, 2024.
- Eliminates the provision restricting surplus lines insurers from providing flood coverage only valued at \$1 million or more.
- Deletes the provision of the bill which added two members to the Florida Commission on Hurricane Loss Projection Methodology thereby keeping the commission membership the same as in current law.
- Changes the date by which the Florida Commission on Hurricane Loss Projection Methodology must adopt actuarial methods, principles, standards, models, or output ranges for flood loss from July 1, 2015, to July 1, 2016.
- Authorizes the OIR to require insurers offering flood insurance coverage submit to an examination under which the OIR may determine whether the rates charged are excessive, inadequate, or unfairly discriminatory when the rates charged are based on an “individual risk rating” or a “written consent rating.”
- Prohibits Citizens Property Insurance Corporation from providing insurance for the peril of flood.
- Prohibits the Florida Hurricane Catastrophe Fund from providing reimbursement for losses caused by the peril of flood.

**CS by Banking and Insurance on January 8, 2014:**

- Limits the use of alternative rate filing options for flood insurance to filings submitted to the OIR before July 1, 2017.
- Limits the ability of a surplus lines agent to export flood insurance to a surplus lines insurer without making a diligent effort to place coverage with authorized insurers to coverage of \$1 million or more. The provision expires July 1, 2017.
- Requires the insurance commissioner to provide a certification if so required by federal law or federal rule as a condition of qualifying for private flood insurance or disaster relief.

- Requires insurers to offer law and ordinance coverage for flood equivalent to NFIP law and ordinance coverage.

B. Amendments:

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---



823760

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (b) of subsection (2) of section  
627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(b) Upon receiving a rate filing, the office shall review  
the filing to determine if a rate is excessive, inadequate, or



823760

11 unfairly discriminatory. In making that determination, the  
12 office shall, in accordance with generally accepted and  
13 reasonable actuarial techniques, consider the following factors:

14 1. Past and prospective loss experience within and without  
15 this state.

16 2. Past and prospective expenses.

17 3. The degree of competition among insurers for the risk  
18 insured.

19 4. Investment income reasonably expected by the insurer,  
20 consistent with the insurer's investment practices, from  
21 investable premiums anticipated in the filing, plus any other  
22 expected income from currently invested assets representing the  
23 amount expected on unearned premium reserves and loss reserves.

24 The commission may adopt rules using reasonable techniques of  
25 actuarial science and economics to specify the manner in which  
26 insurers calculate investment income attributable to classes of  
27 insurance written in this state and the manner in which  
28 investment income is used to calculate insurance rates. Such  
29 manner must contemplate allowances for an underwriting profit  
30 factor and full consideration of investment income that produce  
31 ~~which produce~~ a reasonable rate of return; however, investment  
32 income from invested surplus may not be considered.

33 5. The reasonableness of the judgment reflected in the  
34 filing.

35 6. Dividends, savings, or unabsorbed premium deposits  
36 allowed or returned to ~~Florida~~ policyholders, members, or  
37 subscribers in this state.

38 7. The adequacy of loss reserves.

39 8. The cost of reinsurance. The office may not disapprove a



823760

40 rate as excessive solely due to the insurer having obtained  
41 catastrophic reinsurance to cover the insurer's estimated 250-  
42 year probable maximum loss or any lower level of loss.

43 9. Trend factors, including trends in actual losses per  
44 insured unit for the insurer making the filing.

45 10. Conflagration and catastrophe hazards, if applicable.

46 11. Projected hurricane losses, if applicable, which must  
47 be estimated using a model or method found to be acceptable or  
48 reliable by the Florida Commission on Hurricane Loss Projection  
49 Methodology, and as further provided in s. 627.0628.

50 12. Projected flood losses, if applicable, which may be  
51 estimated using a model, a method, or an average of models or  
52 methods determined to be acceptable or reliable by the Florida  
53 Commission on Hurricane Loss Projection Methodology, and as  
54 further provided in s. 627.0628.

55 ~~13.12.~~ A reasonable margin for underwriting profit and  
56 contingencies.

57 ~~14.13.~~ The cost of medical services, if applicable.

58 ~~15.14.~~ Other relevant factors that affect the frequency or  
59 severity of claims or expenses.

60  
61 The provisions of this subsection do not apply to workers'  
62 compensation, employer's liability insurance, and motor vehicle  
63 insurance.

64 Section 2. Subsection (3) of section 627.0628, Florida  
65 Statutes, is amended to read:

66 627.0628 Florida Commission on Hurricane Loss Projection  
67 Methodology; public records exemption; public meetings  
68 exemption.-



823760

69 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

70 (a) The commission shall consider ~~any~~ actuarial methods,  
71 principles, standards, models, or output ranges that have the  
72 potential for improving the accuracy ~~of~~ or reliability of the  
73 hurricane loss projections and flood loss projections used in  
74 residential property insurance rate filings. The commission  
75 shall, ~~from time to time,~~ adopt and update findings, as needed,  
76 as to the accuracy or reliability of particular methods,  
77 principles, standards, models, or output ranges.

78 (b) The commission shall consider ~~any~~ actuarial methods,  
79 principles, standards, or models that have the potential for  
80 improving the accuracy ~~of~~ or reliability of projecting probable  
81 maximum loss levels. The commission shall adopt and update  
82 findings, as needed, as to the accuracy or reliability of  
83 particular methods, principles, standards, or models related to  
84 probable maximum loss calculations.

85 (c) In establishing reimbursement premiums for the Florida  
86 Hurricane Catastrophe Fund, the State Board of Administration  
87 must, to the extent feasible, employ actuarial methods,  
88 principles, standards, models, or output ranges found by the  
89 commission to be accurate or reliable.

90 (d) With respect to a rate filing under s. 627.062, an  
91 insurer shall employ and may not modify or adjust actuarial  
92 methods, principles, standards, models, or output ranges found  
93 by the commission to be accurate or reliable in determining  
94 hurricane loss factors for use in a rate filing under s.  
95 627.062. An insurer shall employ and may not modify or adjust  
96 models found by the commission to be accurate or reliable in  
97 determining probable maximum loss levels pursuant to paragraph





823760

98 (b) with respect to a rate filing under s. 627.062 made more  
99 than 60 days after the commission has made such findings. This  
100 paragraph does not prohibit an insurer from averaging model  
101 results or output ranges or from using an average for the  
102 purpose of a flood insurance rate filing under s. 627.062.

103 (e) The commission shall adopt actuarial methods,  
104 principles, standards, models, or output ranges for flood loss  
105 by July 1, 2016.

106 (f)~~(e)~~ The commission shall revise ~~adopt revisions to~~  
107 previously adopted actuarial methods, principles, standards,  
108 models, or output ranges every odd-numbered ~~odd~~ year.

109 (g)~~(f)~~ 1. A trade secret, as defined in s. 688.002, which  
110 ~~that~~ is used in designing and constructing a hurricane loss  
111 model and which ~~that~~ is provided pursuant to this section, by a  
112 private company, to the commission, office, or consumer advocate  
113 appointed pursuant to s. 627.0613, is confidential and exempt  
114 from s. 119.07(1) and s. 24(a), Art. I of the State  
115 Constitution.

116 2.a. That portion of a meeting of the commission or of a  
117 rate proceeding on an insurer's rate filing at which a trade  
118 secret made confidential and exempt by this paragraph is  
119 discussed is exempt from s. 286.011 and s. 24(b), Art. I of the  
120 State Constitution. The closed meeting must be recorded, and no  
121 portion of the closed meeting may be off the record.

122 b. The recording of a closed portion of a meeting is exempt  
123 from s. 119.07(1) and s. 24(a), Art. I of the State  
124 Constitution.

125 c. This subparagraph is subject to the Open Government  
126 Sunset Review Act in accordance with s. 119.15 and shall stand



823760

127 repealed on October 2, 2015, unless reviewed and saved from  
128 repeal through reenactment by the Legislature.

129 Section 3. Section 627.715, Florida Statutes, is created to  
130 read:

131 627.715 Flood insurance.—Subject to the requirements of  
132 this section, an insurer may issue an insurance policy,  
133 contract, or endorsement providing coverage for the peril of  
134 flood on any residential structure or its contents in this  
135 state. Such insurer must also offer coverage equivalent to that  
136 provided under a standard flood insurance policy issued under  
137 the National Flood Insurance Program (NFIP)

138 (1) As used in this section, the term “flood” means a  
139 general and temporary condition of partial or complete  
140 inundation of 2 acres or more of normally dry land area or of  
141 two or more properties, at least one of which is the  
142 policyholder’s property, from:

143 (a) Overflow of inland or tidal waters;

144 (b) Unusual and rapid accumulation or runoff of surface  
145 waters from any source;

146 (c) Mudflow; or

147 (d) Collapse or subsidence of land along the shore of a  
148 lake or similar body of water as a result of erosion or  
149 undermining caused by waves or currents of water exceeding  
150 anticipated cyclical levels.

151 (2) At a minimum, coverage for the peril of flood must  
152 cover a flood as defined in subsection (1). Coverage for the  
153 peril of flood may also include water intrusion, as defined by  
154 the policy, which originates from outside the structure and is  
155 not otherwise covered under the definition of flood.



823760

156 (3) An insurer may offer a flood coverage policy, contract,  
157 or endorsement that:

158 (a) Has a flood deductible based on a stated dollar amount  
159 or a percentage of the coverage amount. The deductible amount  
160 must be acceptable to federal mortgage and banking regulators if  
161 such policy, contract, or endorsement is intended to satisfy a  
162 mortgage requirement;

163 (b) Provides that any flood loss will be adjusted on the  
164 basis of:

165 1. The actual cash value of the property; or

166 2. Replacement costs up to the policy limits as provided  
167 under s. 627.7011(3);

168 (c) Restricts flood coverage to the principal building, as  
169 defined in the applicable policy;

170 (d) Is in an agreed-upon amount, including coverage limited  
171 to the amount of all outstanding mortgages applicable to the  
172 covered property. However, if a policy, contract, or endorsement  
173 does not limit flood coverage to the replacement cost of the  
174 covered property, the policy, contract, or endorsement may not  
175 include a provision penalizing the policyholder for not insuring  
176 the covered property up to replacement cost; or

177 (e) As to the peril of flood, does not cover:

178 1. Additional living expenses;

179 2. Personal property or contents; or

180 3. Law and ordinance coverage. However, an insurer must  
181 offer law and ordinance coverage that is comparable to the law  
182 and ordinance coverage offered in the standard NFIP policy.

183 (4) The deductibles and policy limits as to the peril of  
184 flood, and any other limitations on coverage required to be



823760

185 included by the office, must be prominently disclosed on the  
186 declarations page or face page of the policy in at least 12-  
187 point uppercase and boldfaced type and be accompanied by a  
188 statement encouraging the policyholder to review the entire  
189 policy carefully because it contains coverage limitations.

190 (5) Before issuing a flood insurance policy, contract, or  
191 endorsement under this section, the insurance agent must obtain  
192 from an applicant an acknowledgement signed by the applicant  
193 that includes the following statement in at least 12-point bold,  
194 uppercase type: "BY ACCEPTING THIS FLOOD INSURANCE POLICY I HAVE  
195 READ AND UNDERSTAND THE LIMITATIONS THAT MAY APPLY TO MY  
196 POLICY." The signed acknowledgment must also include, in at  
197 least 12-point bold, uppercase type, for a policy, contract, or  
198 endorsement:

199 (a) That limits flood coverage to an amount less than the  
200 full replacement cost of the property, the following statement:  
201 "THIS POLICY LIMITS FLOOD COVERAGE TO LESS THAN THE FULL COST OF  
202 REPLACEMENT FOR THE PROPERTY, WHICH MAY RESULT IN HIGH OUT-OF-  
203 POCKET EXPENSES TO YOU AND MAY PUT YOUR EQUITY IN THIS PROPERTY  
204 AT RISK."

205 (b) That insures a dwelling on the basis of actual cash  
206 value, the following statement: "THIS POLICY PAYS YOU THE  
207 DEPRECIATED VALUE OF YOUR PROPERTY THAT IS DAMAGED BY FLOOD,  
208 WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU IF YOUR  
209 PROPERTY NEEDS TO BE REPAIRED OR REPLACED."

210 (c) The following disclosure: "FLOOD INSURANCE COVERAGE IS  
211 AVAILABLE FROM THE NATIONAL FLOOD INSURANCE PROGRAM. YOU SHOULD  
212 CONSULT YOUR AGENT IF YOU HAVE QUESTIONS ABOUT NATIONAL FLOOD  
213 INSURANCE PROGRAM COVERAGE."



214 (d) On a structure that was previously insured through the  
215 NFIP at a subsidized rate, the following statement: "BY  
216 ACCEPTING A PRIVATE FLOOD INSURANCE POLICY, YOU MAY LOSE YOUR  
217 SUBSIDIZED RATE IN THE NATIONAL FLOOD INSURANCE PROGRAM IF YOU  
218 RETURN TO THE NATIONAL FLOOD INSURANCE PROGRAM AT A LATER TIME."

219 (e) That includes the law and ordinance coverage that must  
220 be offered under subparagraph (3)(e)3., the following  
221 disclosure: "LAW AND ORDINANCE COVERAGE UNDER THIS POLICY MIGHT  
222 HAVE LIMITATIONS ON WHAT IS COVERED IN THE EVENT OF A LOSS. YOU  
223 SHOULD CONSULT YOUR AGENT IF YOU HAVE QUESTIONS ABOUT THE  
224 COVERAGE OFFERED UNDER THIS POLICY."

225  
226 If this form is signed, it is conclusively presumed that the  
227 applicant understood and selected on behalf of all insureds the  
228 limitations of coverage in the policy as compared to a flood  
229 insurance policy offered by the NFIP.

230 (6) In addition to any other method authorized under the  
231 Florida Insurance Code, an insurer or rating organization may  
232 establish and use flood coverage rates, rating schedules, or  
233 rating manuals, filed by the insurer with the office, which  
234 allow the insurer a reasonable rate of return on flood coverage  
235 written in this state. Flood coverage rates established under  
236 this subsection are not subject to s. 627.062(2)(a) and (f).

237 (a) An insurer shall notify the office of any change to  
238 rates within 30 days after the effective date of the change. The  
239 notice must include the name of the insurer and the average  
240 statewide percentage change in rates.

241 (b) Actuarial data with regard to rates for flood coverage  
242 shall be maintained by the insurer for 2 years after the



823760

243 effective date of such rate change and may be examined by the  
244 office pursuant to s. 624.319. The office may require the  
245 insurer to incur the costs associated with an examination. Upon  
246 examination, the office, in accordance with generally accepted  
247 and reasonable actuarial techniques, shall consider the rate  
248 factors specified in s. 627.062(2)(b), (c), and (d), and  
249 standards specified in s. 627.062(2)(e) to determine if the rate  
250 is excessive, inadequate, or unfairly discriminatory. If the  
251 office finds that the rate is excessive, inadequate, or unfairly  
252 discriminatory, the office shall order the insurer to make a  
253 full and complete rate filing under s. 627.062. Upon issuance of  
254 the order, the insurer may not write additional flood insurance  
255 coverage until the office has approved the rate.

256 (c) This subsection applies to the establishment and use of  
257 flood coverage rates filed with the office before July 1, 2024.

258 (7) A surplus lines agent may export a contract or  
259 endorsement to an eligible surplus lines insurer without making  
260 a diligent effort to seek such coverage from three or more  
261 authorized insurers under s. 626.916(1)(a). This subsection  
262 expires July 1, 2017.

263 (8) The insurer shall notify the insured and any regulated  
264 lending institution or federal agency mortgagee, in writing, at  
265 least 60 days before the cancellation or nonrenewal of the  
266 policy, contract, or endorsement providing flood coverage. An  
267 insurer or insured may cancel the policy, contract, or  
268 endorsement while in force or upon renewal if the cancellation  
269 would be permitted under the NFIP.

270 (9) In addition to any other applicable requirements, an  
271 insurer providing flood coverage under this section shall:



823760

272 (a) Notify the office at least 30 days before writing flood  
273 insurance in this state;

274 (b) File a plan of operation and financial projections or  
275 revisions to such plan, as applicable, with the office;

276 (c) Offer flood insurance on a form that has been filed  
277 with and approved by the office pursuant to s. 627.410. The  
278 filed form may be substantially similar to the form used by the  
279 NFIP; and

280 (d) File all reinsurance contracts with the office on or  
281 before June 30 of each year.

282 (10) Citizens Property Insurance Corporation may not  
283 provide insurance for the peril of flood.

284 (11) The Florida Hurricane Catastrophe Fund may not  
285 reimburse losses proximately caused by the peril of flood,  
286 including losses that occur during a covered event as defined  
287 under s. 215.555(2).

288 (12) This section does not apply to:

289 (a) Policies, contracts, and endorsements that provide  
290 flood coverage for commercial nonresidential properties or  
291 policies that provide excess flood coverage over the amount  
292 recoverable under any other policy covering the same property.

293 (b) A flood insurance policy issued by or on behalf of the  
294 NFIP.

295 (13) With respect to the regulation of flood insurance  
296 coverage written in this state by admitted insurers, this  
297 section supersedes any other provision in the Florida Insurance  
298 Code in the event of a conflict.

299 Section 4. If federal law or rule requires a certification  
300 by a state insurance regulatory official as a condition of



301 qualifying for private flood insurance or disaster assistance,  
302 the Commissioner of the Office of Insurance Regulation may  
303 provide the certification. The certification is not subject to  
304 review under chapter 120.

305 Section 5. This act shall take effect upon becoming a law.

306

307 ===== T I T L E A M E N D M E N T =====

308 And the title is amended as follows:

309 Delete everything before the enacting clause  
310 and insert:

311 A bill to be entitled

312 An act relating to flood insurance; amending s.  
313 627.062, F.S.; adding projected flood losses to the  
314 factors that must be considered by the Office of  
315 Insurance Regulation in reviewing certain rate  
316 filings; amending s. 627.0628, F.S.; requiring the  
317 commission to adopt standards and guidelines relating  
318 to flood loss by a certain date; creating s. 627.715,  
319 F.S.; authorizing insurers to offer flood insurance on  
320 residential property in this state; requiring the  
321 insurer to also offer coverage equivalent to that  
322 provided by the National Flood Insurance Program  
323 (NFIP); defining the term "flood"; establishing the  
324 minimum coverage requirements for a flood insurance  
325 policy; providing coverage limitations that an insurer  
326 may include in such policies; requiring that certain  
327 limitations and notices be noted on the policy  
328 declarations or face page; requiring the insurer to  
329 obtain a signed acknowledgement from the applicant





330 which provides certain specified information;  
331 providing the insurer with rate options; authorizing  
332 the office to conduct an examination with respect to  
333 any rate change; authorizing an insurer to export a  
334 contract or endorsement to a surplus lines insurer  
335 without meeting certain requirements; requiring prior  
336 notice for cancellation or nonrenewal of a policy;  
337 providing additional requirements with respect to  
338 notifying the Office of Insurance Regulation before  
339 writing flood insurance, filing a plan of operation  
340 with the office, using forms that have been approved  
341 by the office, and filing reinsurance contracts before  
342 a certain date; prohibiting Citizens Property  
343 Insurance Corporation from writing flood insurance;  
344 prohibiting the Florida Hurricane Catastrophe Fund  
345 from reimbursing losses caused by flooding; providing  
346 certain exemptions; preempting any conflicts with  
347 other provisions of the Florida Insurance Code;  
348 providing that the Commissioner of the Office of  
349 Insurance Regulation may provide certification that a  
350 condition qualifies for flood insurance or disaster  
351 assistance; providing that such certification is not  
352 subject to ch. 120, F.S.; providing an effective date.

By the Committees on Appropriations; and Banking and Insurance;  
and Senators Brandes, Simpson, Benacquisto, Galvano, Bradley,  
and Latvala

576-01913-14

2014542c2

1 A bill to be entitled  
2 An act relating to flood insurance; amending s.  
3 627.062, F.S.; adding projected flood losses to the  
4 factors that must be considered by the Office of  
5 Insurance Regulation in reviewing certain rate  
6 filings; amending s. 627.0628, F.S.; requiring the  
7 commission to adopt standards and guidelines relating  
8 to flood loss by a certain date; creating s. 627.715,  
9 F.S.; authorizing insurers to offer flood insurance on  
10 residential property in this state; providing  
11 legislative findings; defining the term "flood";  
12 establishing the minimum coverage requirements for a  
13 flood insurance policy; providing coverage limitations  
14 that an insurer may include in such policies;  
15 requiring that certain limitations be noted on the  
16 policy declarations or face page; providing the  
17 insurer with rate options; requiring the insurer to  
18 provide notice that flood insurance is available from  
19 the National Flood Insurance Program; authorizing an  
20 insurer to export a contract or endorsement to a  
21 surplus lines insurer without meeting certain  
22 requirements; requiring prior notice for cancellation  
23 or nonrenewal of a policy; providing additional  
24 requirements with respect to notifying the Office of  
25 Insurance Regulation before writing flood insurance,  
26 filing a plan of operation with the office, using  
27 forms that have been approved by the office, and  
28 filing reinsurance contracts before a certain date;  
29 requiring that policies replacing subsidized policies

Page 1 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-01913-14

2014542c2

30 include a statement that the subsidized rate may be  
31 lost; prohibiting Citizens Property Insurance  
32 Corporation from writing flood insurance; prohibiting  
33 the Florida Hurricane Catastrophe Fund from  
34 reimbursing losses caused by flooding; preempting any  
35 conflicts with other provisions of the Florida  
36 Insurance Code; requiring the Commissioner of the  
37 Office of Insurance Regulation to provide  
38 certification that a condition qualifies for flood  
39 insurance or disaster assistance; providing an  
40 effective date.  
41  
42 Be It Enacted by the Legislature of the State of Florida:  
43  
44  
45 Section 1. Paragraph (b) of subsection (2) of section  
46 627.062, Florida Statutes, is amended to read:  
47 627.062 Rate standards.—  
48 (2) As to all such classes of insurance:  
49 (b) Upon receiving a rate filing, the office shall review  
50 the filing to determine if a rate is excessive, inadequate, or  
51 unfairly discriminatory. In making that determination, the  
52 office shall, in accordance with generally accepted and  
53 reasonable actuarial techniques, consider the following factors:  
54 1. Past and prospective loss experience within and without  
55 this state.  
56 2. Past and prospective expenses.  
57 3. The degree of competition among insurers for the risk  
58 insured.

Page 2 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-01913-14

2014542c2

59 4. Investment income reasonably expected by the insurer,  
 60 consistent with the insurer's investment practices, from  
 61 investable premiums anticipated in the filing, plus any other  
 62 expected income from currently invested assets representing the  
 63 amount expected on unearned premium reserves and loss reserves.  
 64 The commission may adopt rules using reasonable techniques of  
 65 actuarial science and economics to specify the manner in which  
 66 insurers calculate investment income attributable to classes of  
 67 insurance written in this state and the manner in which  
 68 investment income is used to calculate insurance rates. Such  
 69 manner must contemplate allowances for an underwriting profit  
 70 factor and full consideration of investment income that produces  
 71 ~~which produce~~ a reasonable rate of return; however, investment  
 72 income from invested surplus may not be considered.

73 5. The reasonableness of the judgment reflected in the  
 74 filing.

75 6. Dividends, savings, or unabsorbed premium deposits  
 76 allowed or returned to ~~Florida~~ policyholders, members, or  
 77 subscribers in this state.

78 7. The adequacy of loss reserves.

79 8. The cost of reinsurance. The office may not disapprove a  
 80 rate as excessive solely due to the insurer having obtained  
 81 catastrophic reinsurance to cover the insurer's estimated 250-  
 82 year probable maximum loss or any lower level of loss.

83 9. Trend factors, including trends in actual losses per  
 84 insured unit for the insurer making the filing.

85 10. Conflagration and catastrophe hazards, if applicable.

86 11. Projected hurricane losses, if applicable, which must  
 87 be estimated using a model or method found to be acceptable or

Page 3 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-01913-14

2014542c2

88 reliable by the Florida Commission on Hurricane Loss Projection  
 89 Methodology, and as further provided in s. 627.0628.

90 12. Projected flood losses, if applicable, which may be  
 91 estimated using a model, a method, or an average of models or  
 92 methods determined to be acceptable or reliable by the Florida  
 93 Commission on Hurricane Loss Projection Methodology, and as  
 94 further provided in s. 627.0628.

95 ~~13.12.~~ A reasonable margin for underwriting profit and  
 96 contingencies.

97 ~~14.13.~~ The cost of medical services, if applicable.

98 ~~15.14.~~ Other relevant factors that affect the frequency or  
 99 severity of claims or expenses.

100

101 The provisions of this subsection do not apply to workers'  
 102 compensation, employer's liability insurance, and motor vehicle  
 103 insurance.

104 Section 2. Subsection (3) of section 627.0628, Florida  
 105 Statutes, is amended to read:

106 627.0628 Florida Commission on Hurricane Loss Projection  
 107 Methodology; public records exemption; public meetings  
 108 exemption.-

109 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.-

110 (a) The commission shall consider ~~any~~ actuarial methods,  
 111 principles, standards, models, or output ranges that have the  
 112 potential for improving the accuracy ~~of~~ or reliability of the  
 113 hurricane loss projections and flood loss projections used in  
 114 residential property insurance rate filings. The commission  
 115 shall, ~~from time to time,~~ and update findings, as needed,  
 116 as to the accuracy or reliability of particular methods,

Page 4 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-01913-14

2014542c2

117 principles, standards, models, or output ranges.

118 (b) The commission shall consider ~~any~~ actuarial methods,  
 119 principles, standards, or models that have the potential for  
 120 improving the accuracy ~~of~~ or reliability of projecting probable  
 121 maximum loss levels. The commission shall adopt and update  
 122 findings, as needed, as to the accuracy or reliability of  
 123 particular methods, principles, standards, or models related to  
 124 probable maximum loss calculations.

125 (c) In establishing reimbursement premiums for the Florida  
 126 Hurricane Catastrophe Fund, the State Board of Administration  
 127 must, to the extent feasible, employ actuarial methods,  
 128 principles, standards, models, or output ranges found by the  
 129 commission to be accurate or reliable.

130 (d) With respect to a rate filing under s. 627.062, an  
 131 insurer shall employ and may not modify or adjust actuarial  
 132 methods, principles, standards, models, or output ranges found  
 133 by the commission to be accurate or reliable in determining  
 134 hurricane loss factors for use in a rate filing under s.  
 135 627.062. An insurer shall employ and may not modify or adjust  
 136 models found by the commission to be accurate or reliable in  
 137 determining probable maximum loss levels pursuant to paragraph

138 (b) with respect to a rate filing under s. 627.062 made more  
 139 than 60 days after the commission has made such findings. This  
 140 paragraph does not prohibit an insurer from averaging model  
 141 results or output ranges or from using an average for the  
 142 purpose of a flood insurance rate filing under s. 627.062.

143 (e) The commission shall adopt actuarial methods,  
 144 principles, standards, models, or output ranges for flood loss  
 145 by July 1, 2016.

576-01913-14

2014542c2

146 ~~(f)(e)~~ The commission shall revise ~~adopt~~ ~~revisions~~ to  
 147 previously adopted actuarial methods, principles, standards,  
 148 models, or output ranges every ~~odd-numbered~~ ~~odd~~ year.

149 ~~(g)(f)~~ 1. A trade secret, as defined in s. 688.002, which  
 150 ~~that~~ is used in designing and constructing a hurricane loss  
 151 model and which ~~that~~ is provided pursuant to this section, by a  
 152 private company, to the commission, office, or consumer advocate  
 153 appointed pursuant to s. 627.0613, is confidential and exempt  
 154 from s. 119.07(1) and s. 24(a), Art. I of the State  
 155 Constitution.

156 2.a. That portion of a meeting of the commission or of a  
 157 rate proceeding on an insurer's rate filing at which a trade  
 158 secret made confidential and exempt by this paragraph is  
 159 discussed is exempt from s. 286.011 and s. 24(b), Art. I of the  
 160 State Constitution. The closed meeting must be recorded, and no  
 161 portion of the closed meeting may be off the record.

162 b. The recording of a closed portion of a meeting is exempt  
 163 from s. 119.07(1) and s. 24(a), Art. I of the State  
 164 Constitution.

165 c. This subparagraph is subject to the Open Government  
 166 Sunset Review Act in accordance with s. 119.15 and shall stand  
 167 repealed on October 2, 2015, unless reviewed and saved from  
 168 repeal through reenactment by the Legislature.

169 Section 3. Section 627.715, Florida Statutes, is created to  
 170 read:

171 627.715 Flood insurance.—Subject to the requirements of  
 172 this section, an insurer may issue an insurance policy,  
 173 contract, or endorsement providing coverage for the peril of  
 174 flood on any residential structure or its contents in this

576-01913-14 2014542c2

175 state. This section does not apply to commercial lines risks  
 176 policies that provide coverage in excess of an underlying  
 177 policy.

178 (1) The Legislature finds that:

179 (a) The National Flood Insurance Program (NFIP) is a  
 180 federal program that enables property owners in participating  
 181 communities to purchase flood insurance. A community  
 182 participates in the federal program by adopting and enforcing  
 183 floodplain management regulations that meet or exceed federal  
 184 floodplain management criteria designed to reduce future flood  
 185 risk to new construction in floodplains. The program was created  
 186 by Congress in 1968 because insurance covering the peril of  
 187 flood was often unavailable in the private insurance market and  
 188 was intended to reduce the amount of financial aid paid by the  
 189 Federal Government in the aftermath of flood-related disasters.  
 190 After the creation of the NFIP, flood insurance coverage  
 191 continued to be generally unavailable for purchase from private  
 192 market insurance companies.

193 (b) The Biggert-Waters Flood Insurance Reform Act of 2012  
 194 reauthorized and revised the NFIP. The act increased flood  
 195 insurance premiums purchased through the program for second  
 196 homes, business properties, severe repetitive loss properties,  
 197 and substantially improved damaged properties by requiring  
 198 premium increases of 25 percent per year until premiums meet the  
 199 full actuarial cost. Most residences lose their subsidized rates  
 200 if the property is sold, the policy lapses, repeated and severe  
 201 flood losses occur, or a new policy is purchased. Policyholders  
 202 whose communities adopt a new, updated Flood Insurance Rate Map  
 203 (FIRM) that results in higher rates will experience a 5-year

576-01913-14 2014542c2

204 phase in of rate increases to achieve required rate levels.

205 (c) The Biggert-Waters Flood Insurance Reform Act of 2012  
 206 also encourages the use and acceptance of private market flood  
 207 insurance. The Legislature finds, however, that there has been a  
 208 long-term inadequacy of private market flood insurance available  
 209 in this state. Such inadequacy suggests that the private market  
 210 in this state is unlikely to expand unless the Legislature  
 211 provides multiple options for the regulation of flood insurance.  
 212 The Legislature also finds that the consumers of this state  
 213 would benefit from the availability of competitively priced  
 214 private market flood insurance due to the continued availability  
 215 of the NFIP flood insurance, the likely availability of  
 216 alternative private market flood insurance coverage options, and  
 217 the oversight of the Office of Insurance Regulation.

218 (d) The NFIP, as amended by the Biggert-Waters Flood  
 219 Insurance Reform Act of 2012, is likely to prevent many property  
 220 owners from obtaining affordable flood insurance coverage in  
 221 this state. The absence of affordable flood insurance threatens  
 222 the public health, safety, and welfare and the economic health  
 223 of this state. Therefore, the state has a compelling public  
 224 purpose and interest in providing alternatives to coverage from  
 225 the NFIP by promoting the availability of flood insurance from  
 226 private market insurers at potentially lower premium rates in an  
 227 effort to facilitate the remediation, reconstruction, and  
 228 replacement of damaged or destroyed property in order to reduce  
 229 or avoid harm to public health, safety, and welfare, to the  
 230 economy of this state, and to the revenues of state and local  
 231 governments which are needed to provide for the public welfare.

232 (2) As used in this section, the term "flood" means a

576-01913-14

2014542c2

233 general and temporary condition of partial or complete  
 234 inundation of 2 acres or more of normally dry land area or of  
 235 two or more properties, at least one of which is the  
 236 policyholder's property, from:

237 (a) Overflow of inland or tidal waters;  
 238 (b) Unusual and rapid accumulation or runoff of surface  
 239 waters from any source;

240 (c) Mudflow; or  
 241 (d) Collapse or subsidence of land along the shore of a  
 242 lake or similar body of water as a result of erosion or  
 243 undermining caused by waves or currents of water exceeding  
 244 anticipated cyclical levels.

245 (3) At a minimum, coverage for the peril of flood must  
 246 cover a flood as defined in subsection (2). Coverage for the  
 247 peril of flood may also include water intrusion, as defined by  
 248 the policy, which originates from outside the structure and is  
 249 not otherwise covered under the definition of flood.

250 (4) An insurer may offer a flood coverage policy, contract,  
 251 or endorsement that:

252 (a) Has a flood deductible based on a stated dollar amount  
 253 or a percentage of the coverage amount. The deductible amount  
 254 must be acceptable to federal mortgage and banking regulators if  
 255 such policy, contract, or endorsement is intended to satisfy a  
 256 mortgage requirement;

257 (b) Provides that any flood loss will be adjusted on the  
 258 basis of:

259 1. The actual cash value of the property; or  
 260 2. Replacement costs up to the policy limits as provided  
 261 under s. 627.7011(3);

Page 9 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-01913-14

2014542c2

262 (c) Restricts flood coverage to the principal building, as  
 263 defined in the applicable policy;

264 (d) Is in an agreed-upon amount, including coverage limited  
 265 to the amount of all outstanding mortgages applicable to the  
 266 covered property. However, if a policy, contract, or endorsement  
 267 does not limit flood coverage to the replacement cost of the  
 268 covered property, the policy, contract, or endorsement may not  
 269 include a provision penalizing the policyholder for not insuring  
 270 the covered property up to replacement cost; or

271 (e) As to the peril of flood, does not cover:

272 1. Additional living expenses;  
 273 2. Personal property or contents; or  
 274 3. Law and ordinance coverage. However, an insurer must  
 275 offer law and ordinance coverage that is comparable to the law  
 276 and ordinance coverage offered in the standard NFIP policy. A  
 277 policy, contract, or endorsement that includes the law and  
 278 ordinance coverage that must be offered under this paragraph  
 279 must include the following disclosure in at least 12-point  
 280 uppercase and boldfaced type: "LAW AND ORDINANCE COVERAGE UNDER  
 281 THIS POLICY MIGHT HAVE LIMITATIONS ON WHAT IS COVERED IN THE  
 282 EVENT OF A LOSS. YOU SHOULD CONSULT WITH YOUR AGENT IF YOU HAVE  
 283 QUESTIONS ABOUT THE COVERAGE OFFERED UNDER THIS POLICY."

284 (5) Any limitations on flood coverage or policy limits as  
 285 to the peril of flood, including, but not limited to, flood  
 286 deductibles or flood coverage limited to the amount of all  
 287 outstanding mortgages, must be prominently disclosed on the  
 288 declarations page or face page of the policy in at least 12-  
 289 point uppercase and boldfaced type and be sufficiently clear so  
 290 as to be readily understandable by the agent and the property

Page 10 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-01913-14

2014542c2

291 owner.

292 (a) A policy that limits flood coverage to an amount less  
 293 than the full replacement cost of the property must include the  
 294 following statement: "THIS POLICY LIMITS FLOOD COVERAGE TO LESS  
 295 THAN THE FULL COST OF REPLACEMENT FOR THE PROPERTY, WHICH MAY  
 296 RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU AND MAY PUT YOUR  
 297 EQUITY IN THIS PROPERTY AT RISK."

298 (b) A policy that insures a dwelling on the basis of actual  
 299 cash value must include the following statement: "THIS POLICY  
 300 PAYS YOU THE DEPRECIATED VALUE OF YOUR PROPERTY THAT IS DAMAGED  
 301 BY FLOOD, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU  
 302 IF YOUR PROPERTY NEEDS TO BE REPAIRED OR REPLACED."

303 (6) An insurer may establish and use flood coverage rates  
 304 in accordance with the rate standards under s. 627.062. For  
 305 flood coverage rates filed with the office before July 1, 2024,  
 306 the insurer may also elect one or more of the following options:

307 (a) In accordance with the rates, rating schedules, or  
 308 rating manuals filed by the insurer with the office which allow  
 309 the insurer a reasonable rate of return on flood coverage  
 310 written in this state. Flood coverage rates established under  
 311 this paragraph are not subject to s. 627.062(2) (a) and (f). An  
 312 insurer shall notify the office of any change to rates within 30  
 313 days after the effective date of the change. The notice must  
 314 include the name of the insurer and the average statewide  
 315 percentage change in rates. Actuarial data with regard to rates  
 316 for flood coverage must be maintained by the insurer for 2 years  
 317 after the effective date of such rate change and is subject to  
 318 examination by the office. The office may require the insurer to  
 319 incur the costs associated with an examination. Upon

Page 11 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-01913-14

2014542c2

320 examination, the office, in accordance with generally accepted  
 321 and reasonable actuarial techniques, shall consider the rate  
 322 factors and standards specified in s. 627.062 to determine if  
 323 the rate is excessive, inadequate, or unfairly discriminatory.

324 (b) Through individual risk rating as provided in  
 325 627.062(3) (a) and (b). Upon examination, the office, in  
 326 accordance with generally accepted and reasonable actuarial  
 327 techniques, shall determine if the rate is excessive,  
 328 inadequate, or unfairly discriminatory.

329 (c) With the written consent of the insured signed before  
 330 the policy inception date and filed with the insurer, using a  
 331 flood coverage rate that has not been approved by the office.  
 332 The signed consent form must notify the insured that the rate is  
 333 not subject to the approval of the office. A copy of the form  
 334 shall be maintained by the insurer for 3 years and must be  
 335 available for review by the office. An insurer is not required  
 336 to obtain subsequent written consents upon renewal, but shall  
 337 provide notice at each renewal that the rate is not subject to  
 338 office approval. Section 627.171(2) does not apply to policies  
 339 issued under this section. Upon examination, the office, in  
 340 accordance with generally accepted and reasonable actuarial  
 341 techniques, shall determine if the rate is excessive,  
 342 inadequate, or unfairly discriminatory.

343 (7) A policy, contract, or endorsement providing coverage  
 344 for the peril of flood must provide notice that flood insurance  
 345 coverage is available from the NFIP.

346 (8) A surplus lines agent may export a contract or  
 347 endorsement to an eligible surplus lines insurer without making  
 348 a diligent effort to seek such coverage from three or more

Page 12 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-01913-14 2014542c2

349 authorized insurers under s. 626.916(1)(a). This subsection  
 350 expires July 1, 2017.

351 (9) A policy, contract, or endorsement providing coverage  
 352 for the peril of flood must require the insurer to give 45 days'  
 353 written notice before cancellation or nonrenewal to the insured  
 354 and any regulated lending institution or federal agency that is  
 355 a mortgagee. An insurer or insured may cancel during the term of  
 356 the policy or upon renewal if the cancellation is for a valid  
 357 reason under the NFIP.

358 (10) In addition to any other applicable requirements, an  
 359 insurer providing flood coverage under this section must:

360 (a) Notify the office at least 30 days before writing flood  
 361 insurance in this state;

362 (b) File a plan of operation and financial projections or  
 363 revisions to such plan, as applicable, with the office unless  
 364 the insurer maintains at least \$35 million in surplus. For  
 365 purposes of this paragraph, an insurer may demonstrate such  
 366 surplus if the insurer group surplus is used to support covered  
 367 flood insurance risks through a pooling arrangement or  
 368 intercompany reinsurance;

369 (c) Offer flood insurance on a form that has been filed  
 370 with and approved by the office pursuant to s. 627.410. If an  
 371 insurer files a form with the office that is substantially  
 372 similar to a form used by the NFIP, the office may not extend  
 373 the 30-day period as provided under s. 627.410(2); and

374 (d) File all reinsurance contracts with the office on or  
 375 before June 30 of each year.

376 (11) For a policy on a structure that was previously  
 377 insured through the NFIP at a subsidized rate, the policy must

576-01913-14 2014542c2

378 include the following statement: "BY ACCEPTING A PRIVATE FLOOD  
 379 INSURANCE POLICY, YOU MAY LOSE YOUR SUBSIDIZED RATE IN THE  
 380 NATIONAL FLOOD INSURANCE PROGRAM WHEN RETURN TO THE NATIONAL  
 381 FLOOD INSURANCE PROGRAM AT A LATER TIME."

382 (12) Citizens Property Insurance Corporation may not  
 383 provide insurance for the peril of flood.

384 (13) The Florida Hurricane Catastrophe Fund may not provide  
 385 reimbursement for losses proximately caused by the peril of  
 386 flood, including losses that occur during a covered event as  
 387 defined under s. 215.555(2).

388 (14) With respect to the regulation of flood insurance  
 389 coverage written in this state by private insurers, this section  
 390 supersedes any other provision in the Florida Insurance Code in  
 391 the event of a conflict.

392 Section 4. If federal law or rule requires a certification  
 393 by a state insurance regulatory official as a condition of  
 394 qualifying for private flood insurance or disaster assistance,  
 395 the Commissioner of the Office of Insurance Regulation shall  
 396 provide such certification, and such certification is not  
 397 subject to review under chapter 120.

398 Section 5. This act shall take effect upon becoming a law.



# CS/CS/SB 542 Flood Insurance

## Summary of Amendment Barcode 823760

### **Authorizing Private Flood Insurance, Defining Flood [Lines 131-155]**

The amendment allows insurers to offer flood insurance under the provisions contained in the bill. The amendment adds a new provision to the bill requiring an insurer that issues flood insurance to also offer coverage equivalent to that provided under a standard National Flood Insurance Program (NFIP) flood insurance policy. The amendment defines flood in accord with the current definition used by the NFIP, and requires all flood coverage to, at a minimum, define “flood” in accordance with this definition. Insurers may also include water intrusion, as defined by the policy, within flood coverage.

### **Flood Policy Limits, Deductibles, Optional Coverages, and Claims Adjustment Methods [Lines 156-182]**

The amendment retains provisions in CS/CS/SB 542 that authorize insurers to offer the following flood coverage options:

- *Deductibles* – Deductibles may be based on a stated dollar amount or a percentage of the coverage. If the flood coverage will satisfy a mortgage requirement, the deductible must be acceptable to federal mortgage and banking regulators
- *Loss Adjustment Method* – Losses may be adjusted on the basis of:
  - Actual cash value of the property; or
  - Replacement costs up to policy limits.
- *Policy Limits* – The policy limit may be in an agreed-upon amount, including the balance of all outstanding mortgages on the property.
- *Optional Coverages* – Flood policies may be offered that do not include coverage for additional living expenses, personal property or contents. Law and ordinance coverage as included in policies under Florida law is optional, but the insurer must offer the limited law and ordinance coverage that is provided in NFIP policies.

### **Disclosures and Written Notices to Policyholders [Lines 183-229]**

The amendment revises and clarifies provisions in CS/CS/SB 542 related to the disclosures and notices that must be provided to the policyholder. The amendment requires the declarations or face page of the policy to prominently disclose deductibles, policy limits, and other coverage limitations which the Office of Insurance Regulation (OIR) requires to be included.

The amendment contains a new provision requiring the insurance agent, prior to issuing a flood policy, to obtain a signed acknowledgment from the applicant that states: “By accepting this flood insurance policy, I have read and understand the limitations that may apply to my policy.”

The signed acknowledgment form creates a conclusive presumption that the applicant understood and selected on behalf of all insureds the limitations on coverage in the policy, as compared to NFIP coverage. The signed acknowledgment must also include notice to the policyholder that flood insurance is available from the NFIP and that the policyholder should contact his or her with any questions about NFIP coverage. The following notices are required if relevant to the coverage provided under the policy:

- For a policy that provides less than full replacement cost coverage, notice that the policyholder may incur high out-of-pocket expenses that put the policyholder's equity at risk.
- For a policy that insures a dwelling on an actual cash value basis, notice that the policyholder may incur high out-of-pocket expenses.
- If the structure was previously insured by the NFIP at a subsidized rate, notice that the policyholder may lose eligibility for the NFIP subsidized rate by accepting a private flood policy.
- For a policy that provides the limited law-and-ordinance coverage offered by the NFIP, notice that the law and ordinance coverage is limited and the policyholder should consult with his or her agent with questions about coverage.

### **Rate Filings for Flood Coverage [Lines 230-257]**

The amendment revises the rating options in CS/CS/SB 542, specifying that an insurer may establish rates using any method currently authorized under the Florida Insurance Code or may use the alternative informational rate filing created by the amendment.

Under the newly created informational rate filing, the insurer may use rates, rating schedules, or rating manuals filed with the OIR that allow the insurer a reasonable rate of return on flood coverage. The rates are exempt from s. 627.062(2)(a) and (f), F.S., which contain the "file and use" and "use and file" rate review requirements and the authority of the OIR to require an insurer to provide information at the time of a rate filing to evaluate the reasonableness of the filing and the condition of the company. However, the amendment requires insurers to maintain actuarial data related to flood for 2 years after the effective date of a rate change and authorizes the office to require the insurer to submit to an examination at the insurer's expense. The OIR examination will determine if the rate is excessive, inadequate, or unfairly discriminatory using the existing standards in law. If a rate violates these standards, the insurer is prohibited from writing additional flood coverage until the office has approved the rate. This rate filing method may be used to establish rates filed with the OIR before July 1, 2024.

## Other Provisions

The amendment:

- Allows flood rates to be established using models or an average of models approved by the Florida Commission on Hurricane Loss Projection Methodology [Lines 50-54, 73, 99-105]
- Deletes the legislative findings in CS/CS/SB 542.
- Permits a surplus lines agent to export a flood contract or endorsement without making a diligent effort to seek coverage from three or more authorized insurers. Expires July 1, 2017. [Lines 258-262]
- Requires the insurer to provide 60 days written notice to the insured, regulated lending institutions, and federal agency mortgagees of the cancellation or nonrenewal of flood coverage. An insured may only cancel a policy for reasons permitted under the NFIP. [Lines 263-269]
- Insurers must notify the OIR at least 30 days before writing flood insurance in Florida, file a plan of operation and financial projections with the OIR, offer flood coverage on forms approved by the OIR under the form approval statute in s. 627.410, F.S., and file all reinsurance contracts with the office on or before June 30<sup>th</sup> of each year. [Lines 270-281]
- Prohibits Citizens Property Insurance Corporation from providing flood insurance. [Lines 282-283]
- Prohibits the Florida Hurricane Catastrophe Fund from reimbursing flood losses. [Lines 284-287]
- Exempts commercial nonresidential policies, excess flood coverage policies, and policies issued by or on behalf of the NFIP (i.e. the NFIP Write Your Own program) from the provisions of s. 627.715, F.S. [Lines 288-294]
- Provides that s. 627.715, F.S., will supersede any other provisions of the Florida Insurance Code in the event of a conflict. [Lines 295-298]
- Authorizes the OIR Commissioner to provide a certification that is a condition under federal law or rule of qualifying for private flood insurance or disaster assistance. [Lines 299-304]
- Makes the act effective upon becoming a law. [Line 305]

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic Flood Insurance

Bill Number 542  
*(if applicable)*

Name TED THOMAS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title REALTOR

Address 1469 Vieux Campe Rd  
*Street*

Phone 850-545-1241

Tallahassee FL 32308  
*City State Zip*

E-mail tallythomas@comcast.net

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/11/14

*Meeting Date*

Topic Flood Insurance

Bill Number SB 542  
*(if applicable)*

Name Carolyn Johnson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Policy Director

Address 136 S Bronough St

Phone 521-1235

*Street*

Tallahassee

FL

32301

E-mail cjohnson@flchamber.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing FL Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.11.13

Meeting Date

Topic flood insurance

Bill Number 542 (if applicable)

Name Ashley Mayer

Amendment Barcode (if applicable)

Job Title lobbyist

Address 101 E. Gallyhol

Phone 222-9079

Street

City

State

Zip

Speaking: [X] For [ ] Against [ ] Information

Representing ATF

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/11/14

Meeting Date

Topic Flood Insurance

Bill Number 542  
*(if applicable)*

Name TRAVIS MOORE

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address P.O. Box 781  
*Street*

Phone 727.421.6902

Largo FL 33779  
*City State Zip*

E-mail mooret@tampabay.fl.com

Speaking:  For  Against  Information

Representing Community Associations Institute (CAI)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-11

Meeting Date

Topic FLOOD INSURANCE

Bill Number ~~557~~ 542  
*(if applicable)*

Name MONTY STEVENS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title DEPUTY CHIEF OF STAFF

Address 200 E. GAINES  
*Street*

Phone \_\_\_\_\_

TALLY FL 32399  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing OIR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)



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

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

---

Prepared By: The Professional Staff of the Committee on Banking and Insurance

---

BILL: SB 1262

INTRODUCER: Senator Brandes

SUBJECT: Public Records and Meetings/Insurance Flood Loss Model

DATE: March 10, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	<b>Favorable</b>
2.			GO	
3.			RC	

---

**I. Summary:**

SB 1262 makes confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Trade secrets used in designing and constructing flood loss models that are provided to the Florida Commission on Hurricane Loss Projection Methodology (methodology commission), the Office of Insurance Regulation (OIR), or the consumer advocate under s. 627.0628, F.S.
- The portion of a meeting by the methodology commission or a rate filing by an insurer in which trade secrets pertaining to flood models are discussed.

The bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

As this bill creates a new public records exemption, the bill also provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it would require a two-thirds vote for final passage.

**II. Present Situation:**

**Public Records Laws**

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or

employee of the state, or of persons acting on their behalf.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>10</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>11</sup> The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>12</sup>

---

<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

## Florida Commission on Hurricane Loss Projection Methodology

In 1995, the Florida Legislature created the Florida Commission on Hurricane Loss Projection Methodology (methodology commission), under s. 627.0628, F.S., which describes the legislative intent “to encourage the use of the most sophisticated actuarial methods to assure that consumers are charged lawful rates for residential property insurance coverage.”<sup>13</sup> The commission is administratively housed within the State Board of Administration, but independently exercises its powers and duties as specified in the statute.

A number of vendors produce highly complex computer models that purport to reflect an average annual expected loss from hurricanes and other perils. Models of this nature are driven by an array of internal assumptions, within a variety of scientific disciplines (e.g., meteorology, structural engineering, actuarial science, statistics, computer science). Although some basic assumptions may be common to more than one model, many of the detailed internal assumptions have been developed only after considerable research by each vendor, which closely guards that information as a trade secret. If all internal information of a model were published, that model could be replicated, and the vendor that produced the model would lose the entirety of its value.

Initially, s. 627.0628, F.S., did not contain an exemption from public records or public meetings. Accordingly, the methodology commission undertook a process to evaluate the participating computer models, which contained proprietary information, without the ability to exempt either records or meetings from full public disclosure. The methodology commission first established detailed standards that a model was required to meet in order to obtain approval. For the portion of the model that was nonproprietary, the methodology commission members questioned the vendor in open meetings; for the portion that was proprietary, the methodology commission hired a “professional team” of experts which went on-site to determine whether the model met the applicable standards, and reported its findings to the methodology commission in an open hearing.

In 2005, the Legislature enacted s. 627.0628(3)(f), which pertains to public records exemptions for the methodology commission.<sup>14</sup> The public records exemptions are:

- Section 627.0628(3)(f)1., F.S., which provides that trade secrets used in designing and constructing a hurricane loss model and submitted by a private company to the methodology commission, the OIR, or the consumer advocate are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.
- Section 627.0628(3)(f)2., F.S., which provides that a portion of a meeting of the methodology commission or of a rate proceeding at which trade secrets used in designing and constructing a hurricane loss model are discussed is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

### III. Effect of Proposed Changes:

The bill makes confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

---

<sup>13</sup> s. 6, ch. 95-276, L.O.F.

<sup>14</sup> s. 3, ch. 2005-264, L.O.F.

- Trade secrets used in designing and constructing flood loss models that are provided to the methodology commission, the OIR, or the consumer advocate under s. 627.0628, F.S.
- The portion of a meeting by the methodology commission or a rate filing by an insurer in which trade secrets pertaining to flood models are discussed.

Similar public records exemptions<sup>15</sup> currently exist in law<sup>16</sup> for trade secrets used in designing and constructing hurricane loss models.

The bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

As this bill creates a new public records exemption, the bill also provides a statement of public necessity as required by the State Constitution.

The bill shall take effect upon becoming a law if SB 542 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

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

None.

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

Section 24(c), Art. I of the Florida Constitution requires a newly created public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill creates a new public records exemption; therefore, it requires a two-thirds vote for final passage.

Section 24(c), Art. I of the Florida Constitution requires a law creating a new public records exemption to contain a public necessity statement justifying the exemption. This bill creates a new public records exemption; therefore, it contains a public necessity statement.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

---

<sup>15</sup> s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

<sup>16</sup> s. 627.0628(3)(f)1., F.S.

**B. Private Sector Impact:**

The exemptions will allow private vendors that produce models that project expected losses from flood to participate in the processes of the methodology commission without concern that its model will be replicated.

**C. Government Sector Impact:**

The exemptions will allow members of the methodology commission, the Office of Insurance Regulation, and the consumer advocate to have access to all information underlying the models that project flood losses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 627.0628 of the Florida Statutes:

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

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

None.

**B. Amendments:**

None.

By Senator Brandes

22-00990-14

20141262\_\_

A bill to be entitled

An act relating to public records and meetings; amending s. 627.0628, F.S.; providing an exemption from public records and public meetings requirements for trade secrets used to design an insurance flood loss model held in records or discussed in meetings of the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or the appointed consumer advocate; providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (f) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

(f)1. A trade secret, as defined in s. 688.002, ~~which that~~ is used in designing and constructing a hurricane or flood loss model and ~~which that~~ is provided pursuant to this section, by a private company, to the commission, office, or consumer advocate appointed pursuant to s. 627.0613~~7~~ is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Page 1 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

22-00990-14

20141262\_\_

2.a. That portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing at which a trade secret made confidential and exempt by this paragraph is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. The closed meeting must be recorded, and no portion of the closed meeting may be off the record.

b. The recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

c. This ~~paragraph~~ ~~subparagraph~~ is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019 ~~2015~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that a trade secret, as defined in s. 688.002, Florida Statutes, which is used in designing and constructing a flood loss model and which is provided by a private company to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or a consumer advocate appointed pursuant to s. 627.0613, Florida Statutes, be made confidential and exempt from public records requirements and from public meetings requirements.

(1) Disclosing trade secrets would negatively impact the business interests of a private company that has invested substantial economic resources in developing such model, and competitor companies would gain an unfair competitive advantage if provided access to such information. Reliable projections of flood losses are necessary in order to ensure that rates for flood insurance meet the statutory requirement that rates be

Page 2 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

22-00990-14

20141262\_\_

59 neither excessive nor inadequate. This goal is served by  
60 enabling the commission, the office, and the consumer advocate  
61 to have access to all aspects of flood loss models and by  
62 encouraging private companies to submit such models to the  
63 commission, office, and consumer advocate for review without  
64 concern that trade secrets will be disclosed through a public  
65 records request.

66 (2) In addition, the Legislature finds that it is a public  
67 necessity to protect trade secrets relating to such model which  
68 are discussed during a meeting of the commission or during a  
69 rate proceeding on an insurer's rate filing held by the office,  
70 because the release of such information via a public meeting or  
71 proceeding would allow competitors and other persons to attend  
72 those meetings and discover the protected trade secrets and  
73 would defeat the purpose of the public records exemption. The  
74 Legislature also finds that it is a public necessity to exempt  
75 from public records requirements the recordings generated during  
76 those portions of a commission meeting or a rate proceeding at  
77 which confidential and exempt trade secrets are discussed.  
78 Release of such recordings would compromise the discussions that  
79 take place during the closed meeting or proceeding and would  
80 negate the public meetings exemption. Current law provides a  
81 public records exemption for trade secrets. As such, release of  
82 the recordings generated during those closed portions of a  
83 meeting or proceeding on trade secrets would compromise the  
84 current protections already afforded to trade secrets.

85 Section 3. This act shall take effect upon becoming a law  
86 if SB 542 or similar legislation is adopted in the same  
87 legislative session or an extension thereof and becomes a law.

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

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

---

Prepared By: The Professional Staff of the Committee on Banking and Insurance

---

BILL: SM 1058

INTRODUCER: Senator Brandes

SUBJECT: Biggert-Waters Flood Insurance Reform Act

DATE: March 10, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SM 1058 urges Congress and the President of the United States to delay the implementation of the Biggert-Waters Flood Insurance Reform Act of 2012. The memorial also urges the repeal or delay of any requirement that the National Flood Insurance Program immediately increase property owners' policies to the full-risk rate.

**II. Present Situation:**

The National Flood Insurance Program (NFIP) was created by the passage of the National Flood Insurance Act of 1968. The NFIP is administered by Federal Emergency Management Agency (FEMA) and provides property owners located in flood-prone areas the ability to purchase flood insurance protection from the federal government. Flood insurance through the NFIP is only available in communities that adopt and enforce federal floodplain management criteria.

**The Biggert-Waters Flood Insurance Reform Act**

In 2012 the United States Congress passed the Biggert-Waters Flood Insurance Reform Act (Biggert-Waters Act). The Biggert-Waters Act reauthorized the National Flood Insurance Program for 5 years. Key provisions of the legislation require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how Flood Insurance Rate Map updates impact policyholders. These changes by Congress have resulted in premium rate increases for approximately 20 percent of NFIP policyholders nationwide.

The Biggert-Waters Act increases flood insurance premiums purchased through the program for second homes, business properties, severe repetitive loss properties, and substantially improved damaged properties by requiring premium increases of 25 percent per year until premiums meet the full actuarial cost of flood coverage. Most residences immediately lose their subsidized rates if the property is sold, the policy lapses, repeated and severe flood losses occur, or a new policy is purchased. Policyholders whose communities adopt a new, updated Flood Insurance Rate Map



(FIRM) that results in higher rates will experience a 5-year phase in of rate increases to achieve rates that incorporate the full actuarial cost of coverage.

### **NFIP Flood Insurance in Florida**

Over two million NFIP policies are written on Florida properties, with approximately 268,500 policies receiving subsidized rates. This accounts for approximately 37 percent of the total policies written by the NFIP.

Historically, properties insured in Florida have paid approximately \$3.60 in premium for NFIP flood coverage for every \$1 received in claims payments. The rate impact of the Biggert-Waters Act on subsidized policies in Florida is approximately as follows:

- Approximately 50,000 secondary residences, businesses, and severe repetitive loss properties are subject to immediate, annual 25 percent increases until their premiums are full risk premiums.
- Approximately 103,000 primary residences will lose their subsidy if the property is sold, the policy lapses, the property suffers severe, repeated flood losses, or a new policy is purchased.
- Approximately 115,000 non-primary residences, business properties, and severe repetitive loss properties are subject to the elimination of subsidies once FEMA develops guidance for their removal.

### **Proposed Congressional Changes**

On March 4<sup>th</sup> 2014, the United States House of Representatives passed H.R. 3370<sup>1</sup> which reverses some of the changes in the Biggert-Waters Flood Insurance Reform Act of 2012. Some of the provision in H.R. 3370:

- Prevents FEMA from raising rates on individual policies above 18 percent per year.
- Repeals the provision in Biggert-Waters that requires homebuyers to pay a full-risk rate at the time of purchase.
- Repeals the provision in Biggert-Waters that required full-risk rate if a property owner voluntarily purchases a new policy.
- Establishes a Flood Insurance Advocate within FEMA to answer current and prospective policyholder questions about the flood mapping process and flood insurance rates.
- Requires FEMA to clearly communicate full flood risk determinations to policyholders even if their premium rates are less than full risk.
- Requires FEMA to certify its mapping process is technologically advanced and to notify and justify to communities that the mapping model it plans to use to create the community's new flood map are appropriate.
- Requires FEMA, at least 6 months prior to implementation of rate increases as a result of this Act to make publicly available the rate tables and underwriting guidelines that provide the basis for the change, providing consumers with greater transparency.

---

<sup>1</sup> <http://thomas.loc.gov/cgi-bin/bdquery/z?d113:h.r.3370>: (Last viewed March 9<sup>th</sup> 2014.)

On January 30<sup>th</sup> 2014, the United States Senate passed S.1926<sup>2</sup> which would delay the implementation of certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012. Some of the provisions in S. 1926:

- Delays the flood insurance premium increases mandated under the Biggert-Waters Flood Insurance Reform Act for 4 years.
- Requires FEMA to develop a plan to reduce premiums by reassessing the flood insurance rate maps.
- Repeals the provision in Biggert-Waters that requires homebuyers to pay a full-risk rate at the time of purchase.

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

If passed, copies of SM 1058 are to be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress. The memorial urges Congress and the President of the United States to delay the implementation of the Biggert-Waters Flood Insurance Reform Act until FEMA has completed the required economic impact study in order to provide a substantive analysis of the proposed rate increases and their impact. The memorial also urges the repeal or delay of any requirement that the National Flood Insurance Program immediately increase property owner's policies to the full-risk rate.

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

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

None.

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

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

---

<sup>2</sup> <http://thomas.loc.gov/cgi-bin/bdquery/z?d113:s.1926>: (Last viewed March 9<sup>th</sup> 2014.)

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

None.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Brandes

22-01207B-14

20141058\_\_

## Senate Memorial

A memorial to the United States Congress and the President of the United States, urging Congress to delay implementation of the Biggert-Waters Flood Insurance Reform Act of 2012 until specified conditions are met and to eliminate any requirement to immediately increase a property owner's insurance procured through the National Flood Insurance Program to a full-risk rate, and, if the Congress fails to act, urging the President to delay any resulting rate increases.

WHEREAS, the National Flood Insurance Act of 1968 was created after record flooding led the private sector to abandon the flood insurance market and stop writing flood policies, and

WHEREAS, on July 6, 2012, President Barack Obama signed into law the Surface Transportation Extension Act of 2012, H.R. 4348, also known as the Biggert-Waters Flood Insurance Reform Act, which reauthorizes the National Flood Insurance Program through 2017, and

WHEREAS, the Legislature of the State of Florida believes that because of the Biggert-Waters Flood Insurance Reform Act, Florida homeowners will experience overwhelming rate increases for insurance, and those increases will lessen real estate sales in the state, deteriorate home values, and make it almost impossible for pending home sales to be completed, further eroding Florida's economy, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

22-01207B-14

20141058\_\_

That the Legislature of the State of Florida respectfully urges:

(1) The United States Congress to delay implementation of the Biggert-Waters Flood Insurance Reform Act until the Federal Emergency Management Agency completes the required economic impact study in order to provide a substantive analysis of the proposed rate increases and their impact, and to eliminate any requirement to immediately increase a property owner's insurance procured through the National Flood Insurance Program to a full-risk rate; and

(2) If the United States Congress fails to act to delay the implementation of the Biggert-Waters Flood Insurance Reform Act, the President of the United States to use his executive authority to administratively delay rate increases to the National Flood Insurance Program resulting from the implementation of the Biggert-Waters Flood Insurance Act.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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

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

---

Prepared By: The Professional Staff of the Committee on Banking and Insurance

---

BILL: SB 870

INTRODUCER: Senator Smith

SUBJECT: Insurance

DATE: March 10, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	_____	_____	<u>JU</u>	_____

---

**I. Summary:**

SB 870 provides that the absence of a countersignature does not affect the validity of an property, casualty, or surety insurance policy or contract. This could reduce the risk that an insured loses coverage due to events the insured cannot control.

Current law provides that no property, casualty, or surety insurer shall assume direct liability unless the policy or contract of insurance is countersigned by a licensed agent. The purpose of the countersignature requirement is “to protect the public...by requiring such policies to be issued by resident, licensed agents over whom the state can exercise control and thus prevent abuses.” However, the countersignature requirement may be waived by the insurer. Whether the requirement has been waived is a factual question.

This bill takes effect July 1, 2014.

**II. Present Situation:**

Section 624.425(1), F.S., requires that a property, casualty, or surety insurance policy or contract be issued and countersigned by an agent who is licensed as an agent and appointed as an agent for the insurer. The purpose of the countersignature requirement is “to protect the public...by requiring such policies to be issued by resident, licensed agents over whom the state can exercise control and thus prevent abuses.”<sup>1</sup> The absence of a countersignature does not necessarily make the insurance policy invalid. The absence of a countersignature may be waived.<sup>2</sup> If the countersignature requirement is not waived, a policy may not be enforceable against the insurer.<sup>3</sup> In the absence of a countersignature, whether a policy is valid is a factual matter determined on a

---

<sup>1</sup> *Wolfe v. Aetna Insurance Company*, 436 So.2d 997, 999 (Fla. 5<sup>th</sup> DCA 1983).

<sup>2</sup> *See Meltsner v. Aetna Casualty and Surety Company of Hartford, Conn.*, 233 So.2d 849 (Fla. 3d DCA 1969)(holding under the facts of that case that the countersignature requirement was waived).

<sup>3</sup> *See generally* 43 Am. Jur. 2d Insurance s. 225.

case-by-case basis.<sup>4</sup> There has been at least one case where a defendant has argued the lack of countersignature as a defense in breach of contract action.<sup>5</sup>

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

SB 870 provides that the absence of a countersignature does not affect the validity of the insurance policy or contract. This could reduce the risk that an insured loses coverage due to events the insured cannot control.

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

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

None.

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

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

#### **C. Government Sector Impact:**

None.

### **VI. Technical Deficiencies:**

None.

### **VII. Related Issues:**

None.

---

<sup>4</sup> See *Meltsner*, 233 So.2d at 850 (finding a waiver of the countersignature requirement); *Wolfe*, 436 So.2d at 999 (finding a waiver of the countersignature requirement).

<sup>5</sup> See *FCCI Insurance Company v. Gulfwind Companies, LLC*, 2003 CC 003056 NC (Fla. Sarasota County Court).

**VIII. Statutes Affected:**

This bill substantially amends section 624.425 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---

By Senator Smith

31-01023-14

2014870\_\_

1 A bill to be entitled  
 2 An act relating to insurance; amending s. 624.425,  
 3 F.S.; providing that the absence of a countersignature  
 4 does not affect the validity of a policy or contract;  
 5 providing an effective date.  
 6  
 7 Be It Enacted by the Legislature of the State of Florida:  
 8  
 9 Section 1. Subsection (1) of section 624.425, Florida  
 10 Statutes, is amended to read:  
 11 624.425 Agent countersignature required, property,  
 12 casualty, surety insurance.—  
 13 (1) Except as stated in s. 624.426, no authorized property,  
 14 casualty, or surety insurer shall assume direct liability as to  
 15 a subject of insurance resident, located, or to be performed in  
 16 this state unless the policy or contract of insurance is issued  
 17 by or through, and is countersigned by, an agent who is  
 18 regularly commissioned and licensed currently as an agent and  
 19 appointed as an agent for the insurer under this code. However,  
 20 the absence of a countersignature does not affect the validity  
 21 of the policy or contract. If two or more authorized insurers  
 22 issue a single policy of insurance against legal liability for  
 23 loss or damage to person or property caused by ~~a~~ the nuclear  
 24 energy hazard, or a single policy insuring against loss or  
 25 damage to property by radioactive contamination, whether or not  
 26 also insuring against one or more other perils that may be  
 27 insured ~~proper to insure~~ against in this state, such policy if  
 28 otherwise lawful may be countersigned on behalf of all of the  
 29 insurers by a licensed and appointed agent of the ~~any~~ insurer

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

31-01023-14

2014870\_\_

30 appearing thereon. The producing agent shall receive on each  
 31 policy or contract the full and usual commission allowed and  
 32 paid by the insurer to its agents on business written or  
 33 transacted by them for the insurer.  
 34 Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-11-2014

Meeting Date

Topic Countersignature

Bill Number SB 870  
*(if applicable)*

Name Meredith Snowden

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Consultant

Address 215 S. Monroe St. Suite 701

Phone 850-510-9257

Street

Tall. FL 32301

City

State

Zip

E-mail msnowden@cft.law.com

Speaking:  For  Against  Information

Representing FCCI Insurance Group

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

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

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

---

Prepared By: The Professional Staff of the Committee on Banking and Insurance

---

BILL: CS/SB 1210

INTRODUCER: Banking and Insurance Committee and Senator Bean

SUBJECT: Division of Insurance Agents and Agency Services

DATE: March 12, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			AGG	
3.			AP	

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

COMMITTEE SUBSTITUTE - Technical Changes

---

**I. Summary:**

CS/SB 1210 amends statutes relating to the regulation of insurance agents and agencies by the Department of Financial Services (DFS). This bill:

- Eliminates the insurance agency licensing requirement for agencies owned and operated by a single licensed agent under certain conditions.
- Allows third parties to sign agency applications.
- Specifies circumstances under which branch agencies do not have to be licensed.
- Repeals a provision allowing insurance agencies to obtain a registration in lieu of a license, converts all agency registrations to licenses, and eliminates the 3-year expiration period for agency licenses.
- Repeals current law governing branch agencies and defines agent in charge and specifies the responsibilities of the agent in charge.
- Provides for agency licenses to automatically expire if the agency does not designate a new agent in charge with the DFS within 90 days after the agent in charge on record has left the agency.
- Creates a new type of insurance agent, an unaffiliated insurance agent, and specifies the scope of the license.
- Requires the DFS to immediately suspend the license or appointment of licensees charged with crimes that would preclude them from applying for licensure from the DFS.
- Exempts members of the United States Armed Forces, their spouses, and veterans who have retired within 24 months from the application filing fee for specified licenses.

- Requires agents who recommend the surrender of an annuity or life insurance policy to provide financial information to the consumer.
- Amends eligibility requirements for mediators under alternative dispute resolution programs administered by the DFS.
- Requires the DFS to deny an application to be a mediator or neutral evaluator or revoke or suspend a mediator or neutral evaluator in certain circumstances.
- Authorizes the DFS to investigate improper conduct of mediators, neutral evaluators, and navigators.
- Allows the DFS to share investigative information with other regulatory bodies.
- Amends requirements for licensure as a nonresident surplus lines agent.
- Bars issuance of any new limited customer representative licenses after September 30, 2014.
- Authorizes additional methods for service of process in certain administrative actions.
- Deletes requirement that applicants who take a licensure examination in Spanish must pay all associated costs.

The DFS informs that the exemption from licensing application fees for members of the military will have minimal fiscal impact.

The bill is effective July 1, 2014, except as otherwise provided.

## II. Present Situation:

### The Department of Financial Services

The DFS licenses insurance agencies and agents. The DFS Division of Agent and Agency Services receives licensing applications, issues licenses, and investigates violations of the Insurance Code.<sup>1</sup> In order to transact insurance, a person must be licensed by the DFS and appointed by an insurer to transact insurance on its behalf.<sup>2</sup> If an agent fails to maintain an appointment during a four year period, the agent's license expires and the agent must qualify as a first time applicant before transacting insurance.<sup>3</sup>

Section 624.310, F.S., gives the DFS the authority to initiate administrative proceedings to seek cease and desist orders, to seek the removal of affiliated parties, to impose administrative fines, and to suspend or revoke licenses. Any service of documents authorized or required by s. 624.310, F.S., must be made by certified mail, personal delivery, or by service of process in accordance with ch. 48, F.S. Section 624.310, F.S., does not allow for service by electronic mail.

### Insurance Agency Licensure and Registration

The DFS is responsible for licensing insurance agencies in accordance with s. 626.172, F.S. An application for licensure must be signed by the owner of the agency.<sup>4</sup> Insurance agents who are

---

<sup>1</sup> The Division of Agent and Agency Services website is found at <http://www.myfloridacfo.com/Division/Agents/#.UxnmwPldUeG> (last accessed March 7, 2013).

<sup>2</sup> See ss. 626.015(3) and 626.112 F.S.

<sup>3</sup> See s. 626.431, F.S.

<sup>4</sup> See s. 626.172(2), F.S.

sole proprietors and do not employ other insurance agents must be licensed as both an insurance agent and an insurance agency.<sup>5</sup>

Each place of business where an agent transacts insurance must have an agency license.<sup>6</sup> Section 626.747, F.S., requires a licensed insurance agent to be at each branch location where activities requiring licensure as an insurance agent occur. Such an agent is commonly referred to as the “agent in charge.”

Section 626.112(7), F.S., provides that agencies existing prior to January 1, 2003, are allowed to file an application for registration in lieu of applying for licensure. A benefit of registration over licensing is that registrations do not expire, whereas licenses expire every 3 years.<sup>7</sup> DFS staff indicates that Florida is the only state that registers insurance agencies in lieu of licensing them and that many registered agencies are seeking licensure.<sup>8</sup>

### **Insurance Agents**

A “general lines agent” is an agent who transacts property insurance, casualty insurance, surety insurance, certain types of health insurance, and marine insurance.<sup>9</sup> A “customer representative” means an individual appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.<sup>10</sup> A “limited customer representative” is a customer representative appointed by a general lines agent or agency to assist that agent or agency in transacting only the business of private passenger motor vehicle insurance from the office of that agent or agency.<sup>11</sup>

### **Regulation of Navigators**

In 2010, the federal Patient Protection and Affordable Care Act became law. The act created “navigators” to aid consumers in selecting a health plan. Part XIII of ch. 626, F.S., requires navigators to register with the DFS and creates a registration process for navigators.<sup>12</sup> Section 626.9957, F.S., provides disciplinary rules for navigators and grounds for the denial of registration.

### **Alternative Dispute Resolution Programs**

The DFS administers alternative dispute programs for various types of insurance and has mediation programs for property insurance<sup>13</sup> and automobile insurance<sup>14</sup> claims. The DFS has a

---

<sup>5</sup> See s. 626.112(7), F.S.

<sup>6</sup> See s. 626.112(7), F.S.

<sup>7</sup> See s. 626.382, F.S.

<sup>8</sup> Interview with DFS staff, March 7, 2014.

<sup>9</sup> See s. 626.015(5), F.S.

<sup>10</sup> See s. 626.015(4), F.S.

<sup>11</sup> See S. 626.015(11), F.S.

<sup>12</sup> <http://www.myfloridacfo.com/Division/Agents/Industry/News/Navigators.htm#UxsW4vldUeE> (last accessed March 8, 2014).

<sup>13</sup> See s. 627.7015, F.S.

<sup>14</sup> See s. 626.745, F.S.

neutral evaluation program, similar to mediation, for sinkhole insurance claims.<sup>15</sup> The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.<sup>16</sup>

To qualify as a mediator for the property or automobile mediation programs, a person must possess graduate level degrees in specified areas, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.<sup>17</sup> In addition, an applicant must complete a training program approved by the DFS.<sup>18</sup>

To qualify as a neutral evaluator for sinkhole insurance claims, a neutral evaluator must be a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution approved by the DFS and who is determined by the DFS to be fair and impartial.<sup>19</sup>

According to an analysis provided by the DFS,<sup>20</sup> the number of reported mediations and neutral evaluations is:

	Fiscal Year 2010-2011	Fiscal Year 2011-2012	Fiscal Year 2012-2013
Mediations	3,489	3,323	3,966
Neutral Evaluations	2,245	2,681	1,867

The DFS does not have the explicit authority to investigate, remove, or discipline mediators and neutral evaluators.

**III. Effect of Proposed Changes:**

Section 1 of this bill changes the name of the Division of Insurance Agents and Agency Services within the DFS to the Division of Agent and Agency Services.

Section 2 of this bill authorizes the DFS to serve administrative complaints and other documents required to be served pursuant to s. 624.310, F.S., by electronic mail if service by mail cannot be obtained. This bill allows for service by hand delivery by DFS investigators. According to the DFS, the department will send electronic mail and will receive an electronic receipt from the person once the email is received. The DFS will receive a second receipt once the email is opened. In addition, the DFS will ask the recipient to respond and confirm receipt of the email. If the recipient does not confirm receipt, the DFS will serve the document by delivery or publication.<sup>21</sup>

<sup>15</sup> See s. 627.7074, F.S.

<sup>16</sup> See ss. 627.7015, 627.7074, and 627.745, F.S.

<sup>17</sup> See ss. 627.7015, 627.745(3), F.S.

<sup>18</sup> See ss. 627.7015, 627.745(3), F.S.

<sup>19</sup> See s. 627.706, F.S.

<sup>20</sup> See Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014) (on file with the Committee on Banking and Insurance).

<sup>21</sup> Interview with DFS staff, March 6, 2014.

Section 3 prohibits DFS and OIR investigators from removing original records from the offices of any person that is being examined or investigated without the advance, written consent of such person or pursuant to a court order.

#### **Unaffiliated Agents (Sections 4, 5, 14)**

According to the DFS, some insurance agents act as advisors to clients for a fee. These agents provide advice and recommendations regarding, among other things, insurance products but do not sell the products. This bill defines in statute a new type of insurance agent, an unaffiliated insurance agent, and specifies the scope of the license. This agent acts as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by a written contract signed by the parties. This bill defines this type of agent as a licensed insurance agent, except a limited lines agent, who is not appointed by or affiliated with any insurer, but is self-appointed. This bill prohibits an unaffiliated insurance agent from holding an appointment from an insurer, from transacting an insurance contract for an insurer, and from interfering with commissions from an appointed insurance agent. Unaffiliated insurance agents may continue to receive commissions on sales made before the date of appointment as an unaffiliated insurance agent as long as the agent discloses the receipt of commissions to the client when making recommendations or evaluating products of the entity from which commissions are received.

The unaffiliated agent is not appointed by an insurer to sell insurance products. This can lead to a situation where an agent's license expires because the agent is not appointed during a four year period.<sup>22</sup> This bill allows an unaffiliated agent to appoint himself or herself and requires unaffiliated insurance agents to pay the same agent appointment fees required under current law for agents appointed by insurers.

#### **Agent in Charge and Branch Agencies (Section 6, 22)**

Effective January 1, 2015, this bill creates s. 626.0428(4), F.S., which defines an agent in charge as the licensed and appointed agent responsible for the supervision of all individuals within an insurance agency location. Each business location established by an agent or insurance agency must be in the active full-time charge of a licensed and appointed agent holding the required licenses for the lines of insurance transacted at the location. The agent in charge of an insurance agency may be the agent in charge of additional branch locations if: (1) insurance activities requiring licensure as an insurance agent do not occur at the locations when an agent is not physically present and (2) unlicensed employees at the locations do not engage in insurance activities that require licensure as an insurance agent or customer representative.

This bill requires each insurance agency and branch office to designate an agent in charge and to file the agent's name, license number, and physical address of the insurance agency location with the DFS at the DFS website. A change of the designated agent in charge must be reported to the DFS within 30 days, and becomes effective upon notification to the DFS.

---

<sup>22</sup> Phone interview with DFS staff.

This bill provides that an insurance agency location is precluded from conducting the business of insurance unless an agent in charge is designated by and providing services to the agency at all times. When the agent in charge ends his or her affiliation with the agency, the agency must designate another agent in charge within 30 days. If the agency fails to make such designation within 90 days after the designated agent has ended his or her affiliation with the agency, the agency license automatically expires 91 days after the designated agent ended his or her affiliation with the agency.

This bill provides that an agent in charge of an insurance agency is accountable for the wrongful acts, misconduct or violations committed by the licensee or agent or by any person under her or his supervision acting on behalf of the agency. However, the agent in charge is not criminally liable for the misconduct unless she or he personally committed the act or knew or should have known of the acts and of the facts that constitute the violation.

This bill repeals s. 626.747, F.S., relating to branch agencies, effective January 1, 2015. The section is incorporated and expanded in the new s. 624.0428(4), F.S.

### **Customer Representatives and Limited Customer Representatives (Sections 7, 12, 21)**

Section 7 provides that no new limited customer representative licenses may be issued after September 30, 2014. Section 21 of the bill amends s. 626.7355, F.S., to allow an applicant for a customer representative license to obtain a temporary license if the applicant is not disqualified by s. 626.207, F.S. Current law provides an applicant cannot obtain a temporary license if the applicant has been convicted of or entered a guilty or nolo contendere plea to a felony within the previous 5 years. Section 626.207, F.S., provides that persons convicted of felony crimes are disqualified from applying for licensure for periods ranging from seven years to a permanent bar. The length of the disqualification depends on the severity of the crime.

### **Insurance Agency Licensing and Registration (Sections 8, 10, 15, 16)**

Section 8 of this bill eliminates the insurance agency licensing requirement for agencies that are owned and operated by a single licensed agent who conducts business in her/his own name and does not employ or use other insurance licensees. Section 8 is effective January 1, 2015.

The bill provides that a branch place of business established by a licensed agency is considered a branch agency.<sup>23</sup> A branch agency is not required to be licensed if it: (1) transacts business under the same name and federal tax identification number as the licensed agency and has designated with the DFS a licensed agent in charge of the branch location; and (2) has submitted to the DFS for inclusion in the licensing record of the licensed agency the address and telephone number of the branch location within 30 days after insurance transactions began at the branch location.

This bill repeals current law allowing certain insurance agencies to obtain a registration in lieu of a license and makes conforming changes due to this repeal. This bill converts all agency registrations to licenses effective October 1, 2015. Effective January 1, 2015, the bill also

---

<sup>23</sup> This bill further provides that a license issued to a business entity that offers motor vehicles for rent encompasses each employee or authorized representative at a designated branch.

eliminates the three-year expiration of an agency license. Thus, an agency license will continue in force until canceled, suspended, revoked, or until it is otherwise terminated or it expires by operation of law.

Section 10 allows an owner, partner, officer, director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management and control of the agency, to complete and sign an insurance agency application. This bill also allows a third party to complete, submit, and sign an agency license application on the agency's behalf. However, the agency is responsible for ensuring that the information provided by the third party is true and correct and is accountable for any misstatements or misrepresentations.

This bill also requires additional information relating to an agency or branch agency to be provided on the agency license application. Such additional information includes the name, address, and e-mail address of the agency's registered agent or person authorized to accept service on the agency's behalf, the physical address of the branch location, including its name, e-mail address, and telephone number, the date that the branch office began transacting insurance, and the fingerprints of each individual required to be listed in the agency application.

### **Licensure Filing Fees and Members of the Military (Section 9)**

This bill exempts members of the United States Armed Forces, their spouses, and veterans who have retired within 24 months who apply for licensure as an insurance agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary from the application filing fee. This bill lists documents applicants can submit with the application to establish eligibility for the exemption.

### **Suspension of Licenses (Sections 11, 18)**

This bill requires the DFS, upon receipt of information or an indictment, to immediately temporarily suspend a license or appointment when the licensee is charged with a felony enumerated in s. 626.207(3), F.S. Those felonies include all capital and first degree felonies, crimes involving fraud, embezzlement, or money laundering, or a felony directly related to the financial services business. The suspension shall continue if the licensee is found guilty of, or pleads guilty or nolo contendere to, the crime, regardless of whether a judgment or conviction is entered, during a pending appeal.

### **Licensure Examinations in Spanish (Section 13)**

Current law requires that an applicant who wishes to take licensure examinations in Spanish must bear the cost of the development, preparation, administration, grading, and evaluation of the examination. This bill removes that requirement. The DFS said the changes will be implemented using the current budget.<sup>24</sup>

---

<sup>24</sup> Department of Financial Services, *Bill Analysis and Fiscal Impact Statement*, (February 25, 2014) (on file with the Senate Committee on Banking and Insurance).



**Mediators, Navigators, and Neutral Evaluators (Sections 17, 29, 30, 31, 32)**

Section 17 gives the DFS the authority to investigate mediators, neutral evaluators, and navigators in the same manner it investigates agencies and agents. This bill allows the DFS to initiate investigations of neutral evaluators, navigators, and mediators on its own authority or after a complaint is received. The DFS may require a neutral evaluator, navigator, or mediator to open its books and records for inspection.

The bill gives the DFS the authority to discipline mediators and neutral evaluators. Section 29 of the bill requires the DFS to adopt rules for the denial of application, suspension, and other penalties for mediators. Section 31 requires the DFS to adopt rules for certifying, denying certification, and revoking the certification as a neutral evaluator.

Section 31 provides that the DFS must deny an application of a neutral evaluator or suspend or revoke the approval of a neutral evaluator if there is:

- A material misstatement, misrepresentation, or fraud in the attempt to obtain approval;
- A demonstrated lack of fitness and trustworthiness to act as a neutral evaluator; and
- Fraudulent or dishonest practices in the conduct of an evaluation or in the conduct of financial services business, or violations of statutes, DFS rules, or DFS orders.

The DFS has similar power to discipline insurance agents and other regulated persons or entities.

Section 32 provides that the DFS must deny an application as a mediator or suspend or revoke the certification of a mediator if there is:

- A material misstatement, misrepresentation, or fraud in the attempt to obtain approval or certification;
- A demonstrated lack of fitness and trustworthiness to act as a mediator;
- Fraudulent or dishonest practices in the conduct of mediation or financial services business; and
- A violation of statutes, DFS rules, DFS orders, or the Florida Rules for Certified and Court-Appointed Mediators.

The DFS has similar power to discipline insurance agents and other regulated persons or entities.

Section 32 replaces the DFS mediator education, experience, and training program requirements. The bill provides that an individual with an active certification as a Florida Circuit Court Mediator is qualified to be a mediator for the DFS. An individual not certified as a Florida Circuit Court Mediator can be a DFS mediator if the person is an approved DFS mediator on July 1, 2014, and has conducted at least one DFS mediation from July 1, 2010, through July 1, 2014. This provision essentially grandfathered in current and active DFS mediators so they can continue to be DFS mediators, even if they are not certified as a Florida Circuit Court Mediator.

In order to become certified as a Florida Circuit Court Mediator, one must fulfill education requirements set by the Florida Supreme Court, complete a mediation training program certified

by the Florida Supreme Court, and observe and conduct mediations under the supervision of a certified mediator.<sup>25</sup>

### **Appointment of Agents by Insurers (Section 20)**

When certain entities enter into an agency contract with an insurer, all members, corporate officers and stockholders who solicit, negotiate, or effect insurance contracts must qualify and be licensed individually as agents or customer representatives. Each property and casualty insurer entering into an agency contract is required to individually appoint each such agent, unless the insurer's aggregate net written premium in the agency is \$25,000 or less. The bill deletes the exception for insurers within no more than \$25,000 in net written premium within an agency, and requires insurers to appoint only those agents who solicit, negotiate, or effect insurance contracts for the insurer.

### **Licensure Examination to Solicit or Sell Variable Products (Section 23)**

Current law prohibits individuals from soliciting or selling variable life insurance, variable annuity contracts, or any other indeterminate value or variable contract unless the person has successfully completed a DFS authorized and approved licensure examination relating to variable "annuity" contracts. This bill deletes language limiting the scope of the licensing examination to variable annuity contracts, and requires that the examination relate to variable contracts.

### **Nonresident Surplus Lines Agents (Sections 27, 33)**

Surplus lines insurers are only permitted to write coverage that is not available in the private market. Under current law, applicants for licensure as nonresident surplus lines agents must satisfy the same licensing requirements as resident surplus lines agents. This bill amends licensing requirements for nonresident surplus lines agents to exempt these applicants from the experience or coursework and examination requirements.

Section 627.952, F.S., requires that persons who offer, solicit, sell, purchase, administer, or service insurance contracts, certificates, or agreements for any purchasing group or risk retention group to any Florida resident must be licensed and appointed as a general lines agent (either a resident or nonresident agent). To place business through Florida eligible surplus lines carriers, the agent must also be licensed and appointed as either a resident or nonresident surplus lines agent. Nonresident agents must be licensed and appointed as a surplus lines agent in their state of residence and file a fidelity bond payable to the State of Florida. The bill eliminates the fidelity bond requirement and requires that such persons be licensed and appointed as a surplus lines agent in their state of residence and be licensed and appointed as a nonresident surplus lines agent in Florida.

### **Information Required With the Surrender of Life Insurance or Annuity (Section 28)**

This bill creates s. 627.4553, F.S., to require insurance agents, insurers, or persons performing insurance agent activities under an exemption from licensure, who recommend that a consumer

---

<sup>25</sup> See <http://www.flcourts.org/core/fileparse.php/283/urlt/HowToBecomeMediator.pdf> (last accessed February 7, 2014).

surrender an annuity or life insurance policy with a cash value, but who do not recommend that another such policy be purchased with the proceeds from the surrender, to provide the consumer with information relating to the product to be surrendered before execution of the surrender. The information must include that the amount of any surrender charge, tax consequences resulting from the transaction, and forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction. This bill requires the DFS to adopt rules and forms so the required information can be provided.

### **Other Provisions**

Section 34 requires insurers that write bail bonds to submit a sample power of attorney to Office of Insurance Regulation for approval. Currently, these forms are submitted to and approved by the DFS.

Section 35 prohibits bail bond agents whose license has been suspended or revoked from engaging in any transaction requiring a license or appointment under ch. 648, F.S., until the license is reinstated or a new license is issued.

Sections 36 and 37 prohibits individuals seeking licensure from the DFS who have sealed or expunged criminal history records from denying or failing to acknowledge the arrests covered by the records.

Except as otherwise provided, the bill is effective July 1, 2014.

## **IV. Constitutional Issues:**

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## **V. Fiscal Impact Statement:**

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

**C. Government Sector Impact:**

The DFS reports the changes to current systems required by this bill will be implemented using the current budget.<sup>26</sup> The DFS reports that its Division of Legal Services used process servers 121 times for Agent and Agency cases, at an average cost of \$97 per service. The DFS believes that service of process could have been achieved by email or by delivery by the department investigators. The DFS anticipates some cost savings from the email and hand delivery provisions in this bill.<sup>27</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.121, 624.310, 624.318, 624.501, 626.015, 626.0428, 626.112, 626.171, 626.172, 626.207, 626.241, 626.261, 626.311, 626.321, 626.382, 626.601, 626.611, 626.641, 626.733, 626.7355, 626.7845, 626.8411, 626.861, 626.862, 626.9272, 627.7015, 627.706, 627.7074, 627.745, 627.952, 648.43, 648.49, 943.0585, and 943.059.

This bill creates section 627.4553 of the Florida Statutes.

This bill repeals section 626.747 of the Florida Statutes.

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

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

**CS by Banking and Insurance on March 11, 2014:**

The committee adopted two amendments to correct a drafting error relating to the effective date of one section of the bill and to add statutory citations.

**B. Amendments:**

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---

<sup>26</sup> Department of Financial Services, *Bill Analysis and Fiscal Impact Statement*, (February 25, 2014).

<sup>27</sup> Email from the DFS staff (on file with the Committee on Banking and Insurance).



333272

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment**

Delete lines 282 - 343

and insert:

Section 7. Paragraph (b) of subsection (1) of section 626.112, Florida Statutes, is amended to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.—

(1)



333272

11 (b) Except as provided in subsection (6) or in applicable  
12 department rules, and in addition to other conduct described in  
13 this chapter with respect to particular types of agents, a  
14 license as an insurance agent, service representative, customer  
15 representative, or limited customer representative is required  
16 in order to engage in the solicitation of insurance. Effective  
17 October 1, 2014, new limited customer representative licenses  
18 may not be issued. For purposes of this requirement, as  
19 applicable to ~~any of~~ the license types described in this  
20 section, the solicitation of insurance is the attempt to  
21 persuade any person to purchase an insurance product by:

- 22 1. Describing the benefits or terms of insurance coverage,  
23 including premiums or rates of return;
- 24 2. Distributing an invitation to contract to prospective  
25 purchasers;
- 26 3. Making general or specific recommendations as to  
27 insurance products;
- 28 4. Completing orders or applications for insurance  
29 products;
- 30 5. Comparing insurance products, advising as to insurance  
31 matters, or interpreting policies or coverages; or
- 32 6. Offering or attempting to negotiate on behalf of another  
33 person a viatical settlement contract as defined in s. 626.9911.

34  
35 However, an employee leasing company licensed under  
36 ~~pursuant to~~ chapter 468 which is seeking to enter into a  
37 contract with an employer that identifies products and services  
38 offered to employees may deliver proposals for the purchase of  
39 employee leasing services to prospective clients of the employee



333272

40 leasing company setting forth the terms and conditions of doing  
41 business; classify employees as permitted by s. 468.529; collect  
42 information from prospective clients and other sources as  
43 necessary to perform due diligence on the prospective client and  
44 to prepare a proposal for services; provide and receive  
45 enrollment forms, plans, and other documents; and discuss or  
46 explain in general terms the conditions, limitations, options,  
47 or exclusions of insurance benefit plans available to the client  
48 or employees of the employee leasing company were the client to  
49 contract with the employee leasing company. Any advertising  
50 materials or other documents describing specific insurance  
51 coverages must identify and be from a licensed insurer or its  
52 licensed agent or a licensed and appointed agent employed by the  
53 employee leasing company. The employee leasing company may not  
54 advise or inform the prospective business client or individual  
55 employees of specific coverage provisions, exclusions, or  
56 limitations of particular plans. As to clients for which the  
57 employee leasing company is providing services pursuant to s.  
58 468.525(4), the employee leasing company may engage in  
59 activities permitted by ss. 626.7315, 626.7845, and 626.8305,  
60 subject to the restrictions specified in those sections. If a  
61 prospective client requests more specific information concerning  
62 the insurance provided by the employee leasing company, the  
63 employee leasing company must refer the prospective business  
64 client to the insurer or its licensed agent or to a licensed and  
65 appointed agent employed by the employee leasing company.

66 Section 8. Effective January 1, 2015, subsection (7) of  
67 section 626.112, Florida Statutes, is amended to read:

68 626.112 License and appointment required; agents, customer



333272

69 representatives, adjusters, insurance agencies, service  
70 representatives, managing general agents.-





110598

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment**

Delete lines 1204 - 1393  
and insert:

Section 35. Paragraphs (a) and (c) of subsection (4) of section 943.0585, Florida Statutes, are amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history



110598

11 information to the extent such procedures are not inconsistent  
12 with the conditions, responsibilities, and duties established by  
13 this section. Any court of competent jurisdiction may order a  
14 criminal justice agency to expunge the criminal history record  
15 of a minor or an adult who complies with the requirements of  
16 this section. The court shall not order a criminal justice  
17 agency to expunge a criminal history record until the person  
18 seeking to expunge a criminal history record has applied for and  
19 received a certificate of eligibility for expunction pursuant to  
20 subsection (2). A criminal history record that relates to a  
21 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
22 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
23 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
24 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
25 any violation specified as a predicate offense for registration  
26 as a sexual predator pursuant to s. 775.21, without regard to  
27 whether that offense alone is sufficient to require such  
28 registration, or for registration as a sexual offender pursuant  
29 to s. 943.0435, may not be expunged, without regard to whether  
30 adjudication was withheld, if the defendant was found guilty of  
31 or pled guilty or nolo contendere to the offense, or if the  
32 defendant, as a minor, was found to have committed, or pled  
33 guilty or nolo contendere to committing, the offense as a  
34 delinquent act. The court may only order expunction of a  
35 criminal history record pertaining to one arrest or one incident  
36 of alleged criminal activity, except as provided in this  
37 section. The court may, at its sole discretion, order the  
38 expunction of a criminal history record pertaining to more than  
39 one arrest if the additional arrests directly relate to the



110598

40 original arrest. If the court intends to order the expunction of  
41 records pertaining to such additional arrests, such intent must  
42 be specified in the order. A criminal justice agency may not  
43 expunge any record pertaining to such additional arrests if the  
44 order to expunge does not articulate the intention of the court  
45 to expunge a record pertaining to more than one arrest. This  
46 section does not prevent the court from ordering the expunction  
47 of only a portion of a criminal history record pertaining to one  
48 arrest or one incident of alleged criminal activity.

49 Notwithstanding any law to the contrary, a criminal justice  
50 agency may comply with laws, court orders, and official requests  
51 of other jurisdictions relating to expunction, correction, or  
52 confidential handling of criminal history records or information  
53 derived therefrom. This section does not confer any right to the  
54 expunction of any criminal history record, and any request for  
55 expunction of a criminal history record may be denied at the  
56 sole discretion of the court.

57 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
58 criminal history record of a minor or an adult which is ordered  
59 expunged by a court of competent jurisdiction pursuant to this  
60 section must be physically destroyed or obliterated by any  
61 criminal justice agency having custody of such record; except  
62 that any criminal history record in the custody of the  
63 department must be retained in all cases. A criminal history  
64 record ordered expunged that is retained by the department is  
65 confidential and exempt from the provisions of s. 119.07(1) and  
66 s. 24(a), Art. I of the State Constitution and not available to  
67 any person or entity except upon order of a court of competent  
68 jurisdiction. A criminal justice agency may retain a notation



110598

69 indicating compliance with an order to expunge.

70 (a) The person who is the subject of a criminal history  
71 record that is expunged under this section or under other  
72 provisions of law, including former s. 893.14, former s. 901.33,  
73 and former s. 943.058, may lawfully deny or fail to acknowledge  
74 the arrests covered by the expunged record, except when the  
75 subject of the record:

76 1. Is a candidate for employment with a criminal justice  
77 agency;

78 2. Is a defendant in a criminal prosecution;

79 3. Concurrently or subsequently petitions for relief under  
80 this section, s. 943.0583, or s. 943.059;

81 4. Is a candidate for admission to The Florida Bar;

82 5. Is seeking to be employed or licensed by or to contract  
83 with the Department of Children and Families, the Division of  
84 Vocational Rehabilitation within the Department of Education,  
85 the Agency for Health Care Administration, the Agency for  
86 Persons with Disabilities, the Department of Health, the  
87 Department of Elderly Affairs, or the Department of Juvenile  
88 Justice or to be employed or used by such contractor or licensee  
89 in a sensitive position having direct contact with children, the  
90 disabled, or the elderly; ~~or~~

91 6. Is seeking to be employed or licensed by the Department  
92 of Education, any district school board, any university  
93 laboratory school, any charter school, any private or parochial  
94 school, or any local governmental entity that licenses child  
95 care facilities; or

96 7. Is seeking to be licensed by the Division of Insurance  
97 Agent and Agency Services within the Department of Financial



110598

98 Services.

99 (c) Information relating to the existence of an expunged  
100 criminal history record which is provided in accordance with  
101 paragraph (a) is confidential and exempt from the provisions of  
102 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
103 except that the department shall disclose the existence of a  
104 criminal history record ordered expunged to the entities set  
105 forth in subparagraphs (a)1., 4., 5., 6., and 7. ~~7.~~ for their  
106 respective licensing, access authorization, and employment  
107 purposes, and to criminal justice agencies for their respective  
108 criminal justice purposes. It is unlawful for any employee of an  
109 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
110 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7.  
111 ~~subparagraph (a)7.~~ to disclose information relating to the  
112 existence of an expunged criminal history record of a person  
113 seeking employment, access authorization, or licensure with such  
114 entity or contractor, except to the person to whom the criminal  
115 history record relates or to persons having direct  
116 responsibility for employment, access authorization, or  
117 licensure decisions. Any person who violates this paragraph  
118 commits a misdemeanor of the first degree, punishable as  
119 provided in s. 775.082 or s. 775.083.

120 Section 36. Paragraphs (a) and (c) of subsection (4) of  
121 section 943.059, Florida Statutes, are amended to read:

122 943.059 Court-ordered sealing of criminal history records.-  
123 The courts of this state shall continue to have jurisdiction  
124 over their own procedures, including the maintenance, sealing,  
125 and correction of judicial records containing criminal history  
126 information to the extent such procedures are not inconsistent



110598

127 with the conditions, responsibilities, and duties established by  
128 this section. Any court of competent jurisdiction may order a  
129 criminal justice agency to seal the criminal history record of a  
130 minor or an adult who complies with the requirements of this  
131 section. The court shall not order a criminal justice agency to  
132 seal a criminal history record until the person seeking to seal  
133 a criminal history record has applied for and received a  
134 certificate of eligibility for sealing pursuant to subsection  
135 (2). A criminal history record that relates to a violation of s.  
136 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
137 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
138 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
139 916.1075, a violation enumerated in s. 907.041, or any violation  
140 specified as a predicate offense for registration as a sexual  
141 predator pursuant to s. 775.21, without regard to whether that  
142 offense alone is sufficient to require such registration, or for  
143 registration as a sexual offender pursuant to s. 943.0435, may  
144 not be sealed, without regard to whether adjudication was  
145 withheld, if the defendant was found guilty of or pled guilty or  
146 nolo contendere to the offense, or if the defendant, as a minor,  
147 was found to have committed or pled guilty or nolo contendere to  
148 committing the offense as a delinquent act. The court may only  
149 order sealing of a criminal history record pertaining to one  
150 arrest or one incident of alleged criminal activity, except as  
151 provided in this section. The court may, at its sole discretion,  
152 order the sealing of a criminal history record pertaining to  
153 more than one arrest if the additional arrests directly relate  
154 to the original arrest. If the court intends to order the  
155 sealing of records pertaining to such additional arrests, such



110598

156 intent must be specified in the order. A criminal justice agency  
157 may not seal any record pertaining to such additional arrests if  
158 the order to seal does not articulate the intention of the court  
159 to seal records pertaining to more than one arrest. This section  
160 does not prevent the court from ordering the sealing of only a  
161 portion of a criminal history record pertaining to one arrest or  
162 one incident of alleged criminal activity. Notwithstanding any  
163 law to the contrary, a criminal justice agency may comply with  
164 laws, court orders, and official requests of other jurisdictions  
165 relating to sealing, correction, or confidential handling of  
166 criminal history records or information derived therefrom. This  
167 section does not confer any right to the sealing of any criminal  
168 history record, and any request for sealing a criminal history  
169 record may be denied at the sole discretion of the court.

170 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal  
171 history record of a minor or an adult which is ordered sealed by  
172 a court of competent jurisdiction pursuant to this section is  
173 confidential and exempt from the provisions of s. 119.07(1) and  
174 s. 24(a), Art. I of the State Constitution and is available only  
175 to the person who is the subject of the record, to the subject's  
176 attorney, to criminal justice agencies for their respective  
177 criminal justice purposes, which include conducting a criminal  
178 history background check for approval of firearms purchases or  
179 transfers as authorized by state or federal law, to judges in  
180 the state courts system for the purpose of assisting them in  
181 their case-related decisionmaking responsibilities, as set forth  
182 in s. 943.053(5), or to those entities set forth in  
183 subparagraphs (a)1., 4., 5., 6., and 8. ~~8.~~ for their respective  
184 licensing, access authorization, and employment purposes.



110598

185 (a) The subject of a criminal history record sealed under  
186 this section or under other provisions of law, including former  
187 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
188 deny or fail to acknowledge the arrests covered by the sealed  
189 record, except when the subject of the record:

190 1. Is a candidate for employment with a criminal justice  
191 agency;

192 2. Is a defendant in a criminal prosecution;

193 3. Concurrently or subsequently petitions for relief under  
194 this section, s. 943.0583, or s. 943.0585;

195 4. Is a candidate for admission to The Florida Bar;

196 5. Is seeking to be employed or licensed by or to contract  
197 with the Department of Children and Families, the Division of  
198 Vocational Rehabilitation within the Department of Education,  
199 the Agency for Health Care Administration, the Agency for  
200 Persons with Disabilities, the Department of Health, the  
201 Department of Elderly Affairs, or the Department of Juvenile  
202 Justice or to be employed or used by such contractor or licensee  
203 in a sensitive position having direct contact with children, the  
204 disabled, or the elderly;

205 6. Is seeking to be employed or licensed by the Department  
206 of Education, any district school board, any university  
207 laboratory school, any charter school, any private or parochial  
208 school, or any local governmental entity that licenses child  
209 care facilities; ~~or~~

210 7. Is attempting to purchase a firearm from a licensed  
211 importer, licensed manufacturer, or licensed dealer and is  
212 subject to a criminal history check under state or federal law;  
213 or





110598

214           8. Is seeking to be licensed by the Division of Insurance  
215 Agent and Agency Services within the Department of Financial  
216 Services.

217           (c) Information relating to the existence of a sealed  
218 criminal record provided in accordance with the provisions of  
219 paragraph (a) is confidential and exempt from the provisions of  
220 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
221 except that the department shall disclose the sealed criminal  
222 history record to the entities set forth in subparagraphs (a)1.,  
223 4., 5., 6., and 8. ~~8.~~ for their respective licensing, access  
224 authorization, and employment purposes. It is unlawful for any  
225 employee of an entity set forth in subparagraph (a)1.,  
226 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or  
227 subparagraph (a)8. ~~subparagraph (a)8.~~ to disclose information  
228 relating to the existence of a sealed criminal history record of  
229 a person seeking employment, access authorization, or licensure  
230 with such entity or contractor, except to the person to whom the  
231 criminal history record relates or to persons having direct  
232 responsibility for employment, access authorization, or  
233 licensure decisions. Any person who violates the provisions of  
234 this paragraph commits a misdemeanor of the first degree,  
235 punishable as provided in s. 775.082 or s. 775.083.

By Senator Bean

4-00504C-14

20141210\_\_

1 A bill to be entitled  
 2 An act relating to the Division of Insurance Agents  
 3 and Agency Services; amending s. 20.121, F.S.;  
 4 revising the name of the division; amending s.  
 5 624.310, F.S.; revising service delivery methods;  
 6 amending s. 624.318, F.S.; prohibiting the removal of  
 7 specified original documents under certain conditions;  
 8 amending s. 624.501, F.S.; revising original  
 9 appointment and renewal fees related to certain  
 10 insurance representatives; amending s. 626.015, F.S.;  
 11 defining the term "unaffiliated insurance agent";  
 12 amending s. 626.0428, F.S.; requiring a branch place  
 13 of business to have an agent in charge; authorizing an  
 14 agent to be in charge of more than one branch office  
 15 under certain circumstances; providing requirements  
 16 relating to the designation of an agent in charge;  
 17 providing that the agent in charge is accountable for  
 18 wrongful acts, misconduct, and violations committed by  
 19 the licensee and any person under his or her  
 20 supervision; prohibiting an insurance agency from  
 21 conducting insurance business at a location without a  
 22 designated agent in charge; providing for expiration  
 23 of an agency license under specified circumstances;  
 24 amending s. 626.112, F.S.; prohibiting new limited  
 25 customer representative licenses from being issued  
 26 after a specified date; providing licensure exemptions  
 27 that allow specified individuals or entities to  
 28 conduct insurance business at specified locations  
 29 under certain circumstances; revising licensure

Page 1 of 49

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00504C-14

20141210\_\_

30 requirements and penalties with respect to registered  
 31 insurance agencies; providing that the registration of  
 32 an approved registered insurance agency automatically  
 33 converts to an insurance agency license on a specified  
 34 date; amending s. 626.171, F.S.; providing an  
 35 exemption from certain licensure application fees;  
 36 amending s. 626.172, F.S.; revising requirements  
 37 relating to applications for insurance agency  
 38 licenses; amending s. 626.207, F.S.; conforming a  
 39 cross-reference; amending s. 626.241, F.S.; revising  
 40 the scope of the examination for a limited agent  
 41 license; amending s. 626.261, F.S.; deleting a  
 42 provision requiring certain costs to be paid by  
 43 applicants who request licensure examinations in  
 44 Spanish; amending s. 626.311, F.S.; limiting the types  
 45 of business that may be transacted by certain agents;  
 46 amending s. 626.321, F.S.; providing that a license  
 47 issued to a business renting or leasing motor vehicles  
 48 applies to employees and authorized representatives;  
 49 amending s. 626.382, F.S.; providing that an insurance  
 50 agency license continues in force until canceled,  
 51 suspended, revoked, terminated, or expired; amending  
 52 s. 626.601, F.S.; revising terminology relating to  
 53 investigations conducted by the Department of  
 54 Financial Services and the Office of Insurance  
 55 Regulation with respect to individuals and entities  
 56 involved in the insurance industry; amending s.  
 57 626.611, F.S.; requiring the department to suspend  
 58 certain licenses and appointments; amending s.

Page 2 of 49

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00504C-14

20141210\_\_

59 626.641, F.S.; conforming a cross-reference; amending  
 60 s. 626.733, F.S.; revising applicability of certain  
 61 appointment provisions; amending s. 626.7355, F.S.;  
 62 revising qualifications for a temporary customer  
 63 representative's license; repealing s. 626.747, F.S.,  
 64 relating to branch agencies, agents in charge, and the  
 65 payment of additional county tax under certain  
 66 circumstances on a specified date; amending s.  
 67 626.7845, F.S.; revising a prohibition against  
 68 unlicensed transaction of life insurance; amending ss.  
 69 626.8411, 626.861, and 626.862, F.S.; conforming  
 70 cross-references; amending s. 626.9272, F.S.; revising  
 71 requirements for the licensure of nonresident surplus  
 72 lines agents; creating s. 627.4553, F.S.; requiring an  
 73 insurance agent who recommends the surrender of  
 74 certain annuity or life insurance to provide certain  
 75 information to the department; amending s. 627.7015,  
 76 F.S.; revising the rulemaking authority of the  
 77 department with respect to qualifications and  
 78 specified types of penalties covered under the  
 79 property insurance mediation program; amending s.  
 80 627.706, F.S.; revising the definition of the term  
 81 "neutral evaluator"; amending s. 627.7074, F.S.;  
 82 providing grounds for the department to deny an  
 83 application, or suspend or revoke approval of  
 84 certification, of a neutral evaluator; requiring the  
 85 department to adopt rules; amending s. 627.745, F.S.;  
 86 revising qualifications for approval as a mediator by  
 87 the department; providing grounds for the department

Page 3 of 49

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00504C-14

20141210\_\_

88 to deny an application, or suspend or revoke approval,  
 89 of a mediator; requiring the department to adopt  
 90 rules; amending s. 627.952, F.S.; providing that  
 91 certain persons who are not residents of this state  
 92 must be licensed and appointed as nonresident surplus  
 93 lines agents in this state in order to engage in  
 94 specified activities with respect to servicing  
 95 insurance contracts, certificates, or agreements for  
 96 purchasing or risk retention groups; deleting a  
 97 fidelity bond requirement applicable to certain  
 98 nonresident agents who are licensed as surplus lines  
 99 agents in another state; amending s. 648.43, F.S.;  
 100 revising requirements for the submission of a power of  
 101 attorney; amending s. 648.49, F.S.; revising  
 102 provisions relating to the duration of suspension or  
 103 revocation of a license; amending ss. 943.0585 and  
 104 943.059, F.S.; prohibiting a person seeking a license  
 105 from the Division of Insurance Agent and Agency  
 106 Services who is the subject of an expunged or sealed  
 107 criminal history record from denying or failing to  
 108 acknowledge arrests covered by the record; providing  
 109 effective dates.

111 Be It Enacted by the Legislature of the State of Florida:

112  
 113 Section 1. Paragraph (g) of subsection (2) of section  
 114 20.121, Florida Statutes, is amended to read:

115 20.121 Department of Financial Services.—There is created a  
 116 Department of Financial Services.

Page 4 of 49

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00504C-14 20141210\_\_

117 (2) DIVISIONS.—The Department of Financial Services shall  
118 consist of the following divisions:

119 (g) The Division of Insurance Agent Agents and Agency  
120 Services.

121 Section 2. Subsection (6) of section 624.310, Florida  
122 Statutes, is amended to read:

123 624.310 Enforcement; cease and desist orders; removal of  
124 certain persons; fines.—

125 (6) ADMINISTRATIVE PROCEDURES.—All administrative  
126 proceedings under subsections (3), (4), and (5) shall be  
127 conducted in accordance with chapter 120. Any service required  
128 or authorized to be made by the department or office under this  
129 code shall be made:

130 (a) By certified mail, return receipt requested, delivered  
131 to the addressee only;

132 (b) By e-mail, delivery receipt required, sent to the most  
133 recent e-mail address provided to the department by the  
134 applicant or licensee in accordance with s. 626.171, s. 626.551,  
135 s. 648.34, or s. 648.421, if service by mail cannot be obtained  
136 at the last address provided to the department by the recipient;

137 (c) By personal delivery, including hand delivery by  
138 department investigators;

139 (d) By publication in accordance with s. 120.60; or

140 (e) In accordance with chapter 48.

141  
142 The service provided for in this subsection herein shall be  
143 effective from the date of delivery.

144 Section 3. Subsection (5) of section 624.318, Florida  
145 Statutes, is amended to read:

4-00504C-14 20141210\_\_

146 624.318 Conduct of examination or investigation; access to  
147 records; correction of accounts; appraisals.—

148 (5) ~~Neither~~ The department, the office, ~~or an~~ ~~nor any~~  
149 examiner may not shall remove an original any record, account,  
150 document, file, or other property of the person being examined  
151 from the offices of such person except with the person's written  
152 consent ~~of such person~~ given in advance of such removal or  
153 pursuant to a court ~~an order of court~~ ~~duly obtained~~.

154 Section 4. Paragraphs (a) and (c) of subsection (6) and  
155 subsections (7) and (8) of section 624.501, Florida Statutes,  
156 are amended to read:

157 624.501 Filing, license, appointment, and miscellaneous  
158 fees.—The department, commission, or office, as appropriate,  
159 shall collect in advance, and persons so served shall pay to it  
160 in advance, fees, licenses, and miscellaneous charges as  
161 follows:

162 (6) Insurance representatives, property, marine, casualty,  
163 and surety insurance.

164 (a) Agent's original appointment and biennial renewal or  
165 continuation thereof, each insurer or unaffiliated agent making  
166 an appointment:

167	Appointment fee.....	\$42.00
168	State tax.....	12.00
169	County tax.....	6.00
170	Total.....	\$60.00

171 (c) Nonresident agent's original appointment and biennial  
172 renewal or continuation thereof, appointment fee, each insurer  
173 or unaffiliated agent making an appointment.....\$60.00

174 (7) Life insurance agents.

4-00504C-14 20141210\_\_

175 (a) Agent's original appointment and biennial renewal or  
 176 continuation thereof, each insurer or unaffiliated agent making  
 177 an appointment:  
 178 Appointment fee.....\$42.00  
 179 State tax.....12.00  
 180 County tax.....6.00  
 181 Total.....\$60.00

182 (b) Nonresident agent's original appointment and biennial  
 183 renewal or continuation thereof, appointment fee, each insurer  
 184 or unaffiliated agent making an appointment \$60.00

185 (8) Health insurance agents.

186 (a) Agent's original appointment and biennial renewal or  
 187 continuation thereof, each insurer or unaffiliated agent making  
 188 an appointment:  
 189 Appointment fee.....\$42.00  
 190 State tax.....12.00  
 191 County tax.....6.00  
 192 Total.....\$60.00

193 (b) Nonresident agent's original appointment and biennial  
 194 renewal or continuation thereof, appointment fee, each insurer  
 195 or unaffiliated agent making an appointment \$60.00

196 Section 5. Present subsection (18) of section 626.015,  
 197 Florida Statutes, is renumbered as subsection (19), and a new  
 198 subsection (18) is added to that section, to read:  
 199 626.015 Definitions.—As used in this part:  
 200 (18) "Unaffiliated insurance agent" means a licensed  
 201 insurance agent, except a limited lines agent, who is self-  
 202 appointed and who practices as an independent consultant in the  
 203 business of analyzing or abstracting insurance policies,

4-00504C-14 20141210\_\_

204 providing insurance advice or counseling, or making specific  
 205 recommendations or comparisons of insurance products for a fee  
 206 established in advance by written contract signed by the  
 207 parties. An unaffiliated insurance agent may not be affiliated  
 208 with an insurer, insurer-appointed insurance agent, or insurance  
 209 agency contracted with or employing insurer-appointed insurance  
 210 agents.

211 Section 6. Effective January 1, 2015, section 626.0428,  
 212 Florida Statutes, is amended to read:  
 213 626.0428 Agency personnel powers, duties, and limitations.—  
 214 (1) An employee of individual ~~employed by~~ an agent or  
 215 agency on salary who devotes full time to clerical work, with  
 216 incidental taking of insurance applications or quoting or  
 217 receiving premiums on incoming inquiries in the office of the  
 218 agent or agency, is not ~~deemed to be~~ an agent or customer  
 219 representative if his or her compensation does not include in  
 220 whole or in part any commissions on such business and is not  
 221 related to the production of applications, insurance, or  
 222 premiums.

223 (2) An employee, or an authorized representative located at  
 224 a designated branch of an agent or agency may not bind insurance  
 225 coverage unless licensed and appointed as an agent or customer  
 226 representative.

227 (3) An employee or an authorized representative located at  
 228 a designated branch of an agent or agency may not initiate  
 229 contact with any person for the purpose of soliciting insurance  
 230 unless licensed and appointed as an agent or customer  
 231 representative. As to title insurance, an employee of an agent  
 232 or agency may not initiate contact with an any individual

4-00504C-14 20141210\_\_

233 proposed to be insured for the purpose of soliciting title  
 234 insurance unless licensed as a title insurance agent or exempt  
 235 from such licensure pursuant to s. 626.8417(4).

236 (4) (a) Each place of business established by an agent or  
 237 agency, firm, corporation, or association must be in the active  
 238 full-time charge of a licensed and appointed agent holding the  
 239 required agent licenses to transact the lines of insurance being  
 240 handled at the location.

241 (b) However, the licensed agent in charge of an insurance  
 242 agency may also be the agent in charge of additional branch  
 243 office locations of the agency if insurance activities requiring  
 244 licensure as an insurance agent do not occur at a location when  
 245 an agent is not physically present and unlicensed employees at  
 246 the location do not engage in insurance activities requiring  
 247 licensure as an insurance agent or customer representative.

248 (c) An insurance agency and each branch place of business  
 249 of an insurance agency shall designate an agent in charge and  
 250 file the name and license number of the agent in charge and the  
 251 physical address of the insurance agency location with the  
 252 department at the department's designated website. The  
 253 designation of the agent in charge may be changed at the option  
 254 of the agency. A change of the designated agent in charge is  
 255 effective upon notification to the department, which shall be  
 256 provided within 30 days after such change.

257 (d) For the purposes of this subsection, an "agent in  
 258 charge" is the licensed and appointed agent who is responsible  
 259 for the supervision of all individuals within an insurance  
 260 agency location, regardless of whether the agent in charge  
 261 handles a specific transaction or deals with the general public

4-00504C-14 20141210\_\_

262 in the solicitation or negotiation of insurance contracts or the  
 263 collection or accounting of moneys.

264 (e) An agent in charge of an insurance agency is  
 265 accountable for wrongful acts, misconduct, or violations of this  
 266 code committed by the licensee or agent or by any person under  
 267 his or her supervision while acting on behalf of the agency.  
 268 This section does not render an agent in charge criminally  
 269 liable for an act unless the agent in charge personally  
 270 committed the act or knew or should have known of the act and of  
 271 the facts constituting a violation of this chapter.

272 (f) An insurance agency location may not conduct the  
 273 business of insurance unless an agent in charge is designated  
 274 by, and providing services to, the agency at all times. If the  
 275 agent in charge designated with the department ends his or her  
 276 affiliation with the agency and the agency fails to designate  
 277 another agent in charge within the 30 days provided for in  
 278 paragraph (c) and such failure continues for 90 days, the agency  
 279 license shall automatically expire on the 91st day after the  
 280 date the designated agent in charge ended his or her affiliation  
 281 with the agency.

282 Section 7. Effective January 1, 2015, paragraph (b) of  
 283 subsection (1) and subsection (7) of section 626.112, Florida  
 284 Statutes, are amended to read:

285 626.112 License and appointment required; agents, customer  
 286 representatives, adjusters, insurance agencies, service  
 287 representatives, managing general agents.-

288 (1)

289 (b) Except as provided in subsection (6) or in applicable  
 290 department rules, and in addition to other conduct described in

4-00504C-14 20141210\_\_

291 this chapter with respect to particular types of agents, a  
 292 license as an insurance agent, service representative, customer  
 293 representative, or limited customer representative is required  
 294 in order to engage in the solicitation of insurance. Effective  
 295 October 1, 2014, new limited customer representative licenses  
 296 may not be issued. For purposes of this requirement, as  
 297 applicable to ~~any of~~ the license types described in this  
 298 section, the solicitation of insurance is the attempt to  
 299 persuade any person to purchase an insurance product by:

- 300 1. Describing the benefits or terms of insurance coverage,  
 301 including premiums or rates of return;
- 302 2. Distributing an invitation to contract to prospective  
 303 purchasers;
- 304 3. Making general or specific recommendations as to  
 305 insurance products;
- 306 4. Completing orders or applications for insurance  
 307 products;
- 308 5. Comparing insurance products, advising as to insurance  
 309 matters, or interpreting policies or coverages; or
- 310 6. Offering or attempting to negotiate on behalf of another  
 311 person a viatical settlement contract as defined in s. 626.9911.

312 However, an employee leasing company licensed ~~under pursuant to~~  
 313 chapter 468 which is seeking to enter into a contract with an  
 314 employer that identifies products and services offered to  
 315 employees may deliver proposals for the purchase of employee  
 316 leasing services to prospective clients of the employee leasing  
 317 company setting forth the terms and conditions of doing  
 318 business; classify employees as permitted by s. 468.529; collect  
 319

Page 11 of 49

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00504C-14 20141210\_\_

320 information from prospective clients and other sources as  
 321 necessary to perform due diligence on the prospective client and  
 322 to prepare a proposal for services; provide and receive  
 323 enrollment forms, plans, and other documents; and discuss or  
 324 explain in general terms the conditions, limitations, options,  
 325 or exclusions of insurance benefit plans available to the client  
 326 or employees of the employee leasing company were the client to  
 327 contract with the employee leasing company. Any advertising  
 328 materials or other documents describing specific insurance  
 329 coverages must identify and be from a licensed insurer or its  
 330 licensed agent or a licensed and appointed agent employed by the  
 331 employee leasing company. The employee leasing company may not  
 332 advise or inform the prospective business client or individual  
 333 employees of specific coverage provisions, exclusions, or  
 334 limitations of particular plans. As to clients for which the  
 335 employee leasing company is providing services pursuant to s.  
 336 468.525(4), the employee leasing company may engage in  
 337 activities permitted by ss. 626.7315, 626.7845, and 626.8305,  
 338 subject to the restrictions specified in those sections. If a  
 339 prospective client requests more specific information concerning  
 340 the insurance provided by the employee leasing company, the  
 341 employee leasing company must refer the prospective business  
 342 client to the insurer or its licensed agent or to a licensed and  
 343 appointed agent employed by the employee leasing company.

344 (7) ~~(a) An~~ Effective October 1, 2006, ~~no~~ individual, firm,  
 345 partnership, corporation, association, or ~~any~~ other entity may  
 346 not shall act in its own name or under a trade name, directly or  
 347 indirectly, as an insurance agency, unless it complies with s.  
 348 626.172 with respect to possessing an insurance agency license

Page 12 of 49

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00504C-14 20141210\_\_

349 for each place of business at which it engages in an any  
 350 activity ~~that which~~ may be performed only by a licensed  
 351 insurance agent. ~~However, an insurance agency that is owned and~~  
 352 ~~operated by a single licensed agent conducting business in his~~  
 353 ~~or her individual name and not employing or otherwise using the~~  
 354 ~~services of or appointing other licensees is exempt from the~~  
 355 ~~agency licensing requirements of this subsection.~~

356 (a) A branch location of a business which is established by  
 357 a licensed insurance agency is considered a branch agency and is  
 358 not required to be licensed if it transacts business under the  
 359 same name and federal tax identification number as the licensed  
 360 agency and has designated with the department a licensed agent  
 361 in charge of the branch location as required by s. 626.0428 and  
 362 the address and telephone number of the branch location have  
 363 been submitted to the department for inclusion in the licensing  
 364 record of the licensed agency within 30 days after insurance  
 365 transactions begin at the branch location Each agency engaged in  
 366 business in this state before January 1, 2003, which is wholly  
 367 owned by insurance agents currently licensed and appointed under  
 368 this chapter, each incorporated agency whose voting shares are  
 369 traded on a securities exchange, each agency designated and  
 370 subject to supervision and inspection as a branch office under  
 371 the rules of the National Association of Securities Dealers, and  
 372 each agency whose primary function is offering insurance as a  
 373 service or member benefit to members of a nonprofit corporation  
 374 may file an application for registration in lieu of licensure in  
 375 accordance with s. 626.172(3). Each agency engaged in business  
 376 before October 1, 2006, shall file an application for licensure  
 377 or registration on or before October 1, 2006.

4-00504C-14 20141210\_\_

378 (b)1- If an agency is required to be licensed but fails to  
 379 file an application for licensure in accordance with this  
 380 section, the department shall impose ~~on the agency an~~  
 381 administrative penalty ~~in an amount~~ of up to \$10,000.

382 ~~2. If an agency is eligible for registration but fails to~~  
 383 ~~file an application for registration or an application for~~  
 384 ~~licensure in accordance with this section, the department shall~~  
 385 ~~impose on the agency an administrative penalty in an amount of~~  
 386 ~~up to \$5,000.~~

387 (c)(b) Effective October 1, 2015, the department must  
 388 convert the registration of an approved a registered insurance  
 389 agency to shall, as a condition precedent to continuing  
 390 business, obtain an insurance agency license if the department  
 391 finds that, with respect to any majority owner, partner,  
 392 manager, director, officer, or other person who manages or  
 393 controls the agency, any person has:

394 1. Been found guilty of, or has pleaded guilty or nolo  
 395 contendere to, a felony in this state or any other state  
 396 relating to the business of insurance or to an insurance agency,  
 397 without regard to whether a judgment of conviction has been  
 398 entered by the court having jurisdiction of the cases.

399 2. Employed any individual in a managerial capacity or in a  
 400 capacity dealing with the public who is under an order of  
 401 revocation or suspension issued by the department. An insurance  
 402 agency may request, on forms prescribed by the department,  
 403 verification of any person's license status. If a request is  
 404 mailed within 5 working days after an employee is hired, and the  
 405 employee's license is currently suspended or revoked, the agency  
 406 shall not be required to obtain a license, if the unlicensed



4-00504C-14

20141210\_\_

407 person's employment is immediately terminated.

408 ~~3. Operated the agency or permitted the agency to be~~

409 ~~operated in violation of s. 626.747.~~

410 ~~4. With such frequency as to have made the operation of the~~

411 ~~agency hazardous to the insurance buying public or other~~

412 ~~persons:~~

413 ~~a. Solicited or handled controlled business. This~~

414 ~~subparagraph shall not prohibit the licensing of any lending or~~

415 ~~financing institution or creditor, with respect to insurance~~

416 ~~only, under credit life or disability insurance policies of~~

417 ~~borrowers from the institutions, which policies are subject to~~

418 ~~part IX of chapter 627.~~

419 ~~b. Misappropriated, converted, or unlawfully withheld~~

420 ~~moneys belonging to insurers, insureds, beneficiaries, or others~~

421 ~~and received in the conduct of business under the license.~~

422 ~~c. Unlawfully rebated, attempted to unlawfully rebate, or~~

423 ~~unlawfully divided or offered to divide commissions with~~

424 ~~another.~~

425 ~~d. Misrepresented any insurance policy or annuity contract,~~

426 ~~or used deception with regard to any policy or contract, done~~

427 ~~either in person or by any form of dissemination of information~~

428 ~~or advertising.~~

429 ~~e. Violated any provision of this code or any other law~~

430 ~~applicable to the business of insurance in the course of dealing~~

431 ~~under the license.~~

432 ~~f. Violated any lawful order or rule of the department.~~

433 ~~g. Failed or refused, upon demand, to pay over to any~~

434 ~~insurer he or she represents or has represented any money coming~~

435 ~~into his or her hands belonging to the insurer.~~

Page 15 of 49

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00504C-14

20141210\_\_

436 ~~h. Violated the provision against twisting as defined in s.~~

437 ~~626.9541(1) (1).~~

438 ~~i. In the conduct of business, engaged in unfair methods of~~

439 ~~competition or in unfair or deceptive acts or practices, as~~

440 ~~prohibited under part IX of this chapter.~~

441 ~~j. Willfully overinsured any property insurance risk.~~

442 ~~k. Engaged in fraudulent or dishonest practices in the~~

443 ~~conduct of business arising out of activities related to~~

444 ~~insurance or the insurance agency.~~

445 ~~l. Demonstrated lack of fitness or trustworthiness to~~

446 ~~engage in the business of insurance arising out of activities~~

447 ~~related to insurance or the insurance agency.~~

448 ~~m. Authorized or knowingly allowed individuals to transact~~

449 ~~insurance who were not then licensed as required by this code.~~

450 ~~5. Knowingly employed any person who within the preceding 3~~

451 ~~years has had his or her relationship with an agency terminated~~

452 ~~in accordance with paragraph (d).~~

453 ~~6. Willfully circumvented the requirements or prohibitions~~

454 ~~of this code.~~

455 Section 8. Present subsection (6) of section 626.171,

456 Florida Statutes, is renumbered as subsection (7), and a new

457 subsection (6) is added to that section, to read:

458 626.171 Application for license as an agent, customer

459 representative, adjuster, service representative, managing

460 general agent, or reinsurance intermediary.—

461 (6) Members of the United States Armed Forces and their

462 spouses, and veterans of the United States Armed Forces who have

463 retired within 24 months before application for licensure, are

464 exempt from the application filing fee prescribed in s. 624.501.

Page 16 of 49

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00504C-14

20141210\_\_

465 Qualified individuals must provide a copy of a military  
 466 identification card, military dependent identification card,  
 467 military service record, military personnel file, veteran  
 468 record, discharge paper, or separation document, or separation  
 469 document that indicates such members of the United States Armed  
 470 Forces are currently in good standing or were honorably  
 471 discharged.

472 Section 9. Subsections (2), (3), and (4) of section  
 473 626.172, Florida Statutes, are amended to read:

474 626.172 Application for insurance agency license.—

475 (2) An application for an insurance agency license must be  
 476 signed by an individual specified in paragraph (a) shall be  
 477 signed by the owner or owners of the agency. An insurance agency  
 478 may permit a third party to complete, submit, and sign an  
 479 application on the insurance agency's behalf; however, the  
 480 insurance agency is responsible for ensuring that the  
 481 information on the application is true and correct and is  
 482 accountable for any misstatements or misrepresentations. If the  
 483 agency is incorporated, the application shall be signed by the  
 484 president and secretary of the corporation. The application must  
 485 for an insurance agency license shall include:

486 (a) The name of each majority owner, partner, officer, and  
 487 director, president, senior vice president, secretary,  
 488 treasurer, and limited liability company member who directs or  
 489 participates in the management or control of the insurance  
 490 agency, whether through ownership of voting securities, by  
 491 contract, by ownership of an agency bank account, or otherwise.

492 (b) The residence address of each person required to be  
 493 listed in the application under paragraph (a).

4-00504C-14

20141210\_\_

494 (c) The name, principal business street address, and valid  
 495 e-mail address of the insurance agency and the name, address,  
 496 and e-mail address of the agency's registered agent or person or  
 497 company authorized to accept service on behalf of the agency and  
 498 ~~its principal business address.~~

499 (d) The physical address location of each branch agency,  
 500 including its name, e-mail address, and telephone number, and  
 501 the date that the branch location began transacting insurance  
 502 office and the name under which each agency office conducts or  
 503 will conduct business.

504 (e) The name of the each agent to be in full-time charge of  
 505 the an agency office, including branch locations, and his or her  
 506 corresponding location specification of which office.

507 (f) The fingerprints of each of the following:

- 508 1. A sole proprietor;
- 509 2. Each individual specified in paragraph (a) partner; and
- 510 ~~3. Each owner of an unincorporated agency;~~
- 511 3.4. Each individual owner who directs or participates in  
 512 the management or control of an incorporated agency whose shares  
 513 are not traded on a securities exchange;
- 514 ~~5. The president, senior vice presidents, treasurer,~~  
 515 ~~secretary, and directors of the agency; and~~
- 516 ~~6. Any other person who directs or participates in the~~  
 517 ~~management or control of the agency, whether through the~~  
 518 ~~ownership of voting securities, by contract, or otherwise.~~

519  
 520 Fingerprints must be taken by a law enforcement agency or other  
 521 entity approved by the department and must be accompanied by the  
 522 fingerprint processing fee specified in s. 624.501. Fingerprints

4-00504C-14 20141210\_\_

523 ~~must~~ shall be processed in accordance with s. 624.34. However,  
524 fingerprints need not be filed for an any individual who is  
525 currently licensed and appointed under this chapter. This  
526 paragraph does not apply to corporations whose voting shares are  
527 traded on a securities exchange.

528 (g) Such additional information as the department requires  
529 by rule to ascertain the trustworthiness and competence of  
530 persons required to be listed on the application and to  
531 ascertain that such persons meet the requirements of this code.  
532 However, the department may not require that credit or character  
533 reports be submitted for persons required to be listed on the  
534 application.

535 (3)(h) Beginning October 1, 2005, The department ~~must~~ shall  
536 accept the uniform application for nonresident agency licensure.  
537 The department may adopt by rule revised versions of the uniform  
538 application.

539 ~~(3) The department shall issue a registration as an~~  
540 ~~insurance agency to any agency that files a written application~~  
541 ~~with the department and qualifies for registration. The~~  
542 ~~application for registration shall require the agency to provide~~  
543 ~~the same information required for an agency licensed under~~  
544 ~~subsection (2), the agent identification number for each owner~~  
545 ~~who is a licensed agent, proof that the agency qualifies for~~  
546 ~~registration as provided in s. 626.112(7), and any other~~  
547 ~~additional information that the department determines is~~  
548 ~~necessary in order to demonstrate that the agency qualifies for~~  
549 ~~registration. The application must be signed by the owner or~~  
550 ~~owners of the agency. If the agency is incorporated, the~~  
551 ~~application must be signed by the president and the secretary of~~

4-00504C-14 20141210\_\_

552 ~~the corporation. An agent who owns the agency need not file~~  
553 ~~fingerprints with the department if the agent obtained a license~~  
554 ~~under this chapter and the license is currently valid.~~

555 ~~(a) If an application for registration is denied, the~~  
556 ~~agency must file an application for licensure no later than 30~~  
557 ~~days after the date of the denial of registration.~~

558 ~~(b) A registered insurance agency must file an application~~  
559 ~~for licensure no later than 30 days after the date that any~~  
560 ~~person who is not a licensed and appointed agent in this state~~  
561 ~~acquires any ownership interest in the agency. If an agency~~  
562 ~~fails to file an application for licensure in compliance with~~  
563 ~~this paragraph, the department shall impose an administrative~~  
564 ~~penalty in an amount of up to \$5,000 on the agency.~~

565 ~~(c) Sections 626.6115 and 626.6215 do not apply to agencies~~  
566 ~~registered under this subsection.~~

567 (4) The department ~~must~~ shall issue a license ~~or~~  
568 ~~registration~~ to each agency upon approval of the application,  
569 and each agency location must shall display the license ~~or~~  
570 ~~registration~~ prominently in a manner that makes it clearly  
571 visible to any customer or potential customer who enters the  
572 agency location.

573 Section 10. Subsection (7) of section 626.207, Florida  
574 Statutes, is amended to read:

575 626.207 Disqualification of applicants and licensees;  
576 penalties against licensees; rulemaking authority.—

577 (7) After the disqualifying period has been met, the burden  
578 is on the applicant to demonstrate that the applicant has been  
579 rehabilitated, does not pose a risk to the insurance-buying  
580 public, is fit and trustworthy to engage in the business of

4-00504C-14 20141210\_\_

581 insurance pursuant to s. 626.611(1)(g) ~~s. 626.611(7)~~, and is  
 582 otherwise qualified for licensure.

583 Section 11. Subsection (5) of section 626.241, Florida  
 584 Statutes, is amended to read:

585 626.241 Scope of examination.—

586 (5) Examinations given applicants for a limited agent  
 587 ~~license as agent or as customer representative~~ shall be limited  
 588 in scope to the kind of business to be transacted under such  
 589 license.

590 Section 12. Subsection (5) of section 626.261, Florida  
 591 Statutes, is amended to read:

592 626.261 Conduct of examination.—

593 (5) The department may provide licensure examinations in  
 594 Spanish. ~~Applicants requesting examination or reexamination in~~  
 595 ~~Spanish must bear the full cost of the department's development,~~  
 596 ~~preparation, administration, grading, and evaluation of the~~  
 597 ~~Spanish-language examination.~~ When determining whether it is in  
 598 the public interest to allow the examination to be translated  
 599 into and administered in Spanish, the department shall consider  
 600 the percentage of the population who speak Spanish.

601 Section 13. Present subsection (6) of section 626.311,  
 602 Florida Statutes, is renumbered as subsection (7), and a new  
 603 subsection (6) is added to that section, to read:

604 626.311 Scope of license.—

605 (6) An agent who appoints his or her license as an  
 606 unaffiliated insurance agent may not hold an appointment from an  
 607 insurer for any license he or she holds; transact, solicit, or  
 608 service an insurance contract on behalf of an insurer; interfere  
 609 with commissions received or to be received by an insurer—

4-00504C-14 20141210\_\_

610 appointed insurance agent or an insurance agency contracted with  
 611 or employing insurer-appointed insurance agents; or receive  
 612 compensation or any other thing of value from an insurer, an  
 613 insurer-appointed insurance agent, or an insurance agency  
 614 contracted with or employing insurer-appointed insurance agents  
 615 for any transaction or referral occurring after the date of  
 616 appointment as an unaffiliated insurance agent. An unaffiliated  
 617 insurance agent may continue to receive commissions on sales  
 618 that occurred before the date of appointment as an unaffiliated  
 619 insurance agent if the receipt of such commissions is disclosed  
 620 when making recommendations or evaluating products for a client  
 621 that involve products of the entity from which the commissions  
 622 are received.

623 Section 14. Paragraph (d) of subsection (1) of section  
 624 626.321, Florida Statutes, is amended to read:

625 626.321 Limited licenses.—

626 (1) The department shall issue to a qualified applicant a  
 627 license as agent authorized to transact a limited class of  
 628 business in any of the following categories of limited lines  
 629 insurance:

630 (d) *Motor vehicle rental insurance.*—

631 1. License covering only insurance of the risks set forth  
 632 in this paragraph when offered, sold, or solicited with and  
 633 incidental to the rental or lease of a motor vehicle and which  
 634 applies only to the motor vehicle that is the subject of the  
 635 lease or rental agreement and the occupants of the motor  
 636 vehicle:

637 a. Excess motor vehicle liability insurance providing  
 638 coverage in excess of the standard liability limits provided by

4-00504C-14 20141210\_\_

639 the lessor in the lessor's lease to a person renting or leasing  
 640 a motor vehicle from the licensee's employer for liability  
 641 arising in connection with the negligent operation of the leased  
 642 or rented motor vehicle.

643 b. Insurance covering the liability of the lessee to the  
 644 lessor for damage to the leased or rented motor vehicle.

645 c. Insurance covering the loss of or damage to baggage,  
 646 personal effects, or travel documents of a person renting or  
 647 leasing a motor vehicle.

648 d. Insurance covering accidental personal injury or death  
 649 of the lessee and any passenger who is riding or driving with  
 650 the covered lessee in the leased or rented motor vehicle.

651 2. Insurance under a motor vehicle rental insurance license  
 652 may be issued only if the lease or rental agreement is for no  
 653 more than 60 days, the lessee is not provided coverage for more  
 654 than 60 consecutive days per lease period, and the lessee is  
 655 given written notice that his or her personal insurance policy  
 656 providing coverage on an owned motor vehicle may provide  
 657 coverage of such risks and that the purchase of the insurance is  
 658 not required in connection with the lease or rental of a motor  
 659 vehicle. If the lease is extended beyond 60 days, the coverage  
 660 may be extended one time only for up to 60 ~~a period not to~~  
 661 ~~exceed an~~ additional 60 days. Insurance may be provided to the  
 662 lessee as an additional insured on a policy issued to the  
 663 licensee's employer.

664 3. The license may be issued only to the full-time salaried  
 665 employee of a licensed general lines agent or to a business  
 666 entity that offers motor vehicles for rent or lease if insurance  
 667 sales activities authorized by the license are in connection

4-00504C-14 20141210\_\_

668 with and incidental to the rental or lease of a motor vehicle.

669 a. A license issued to a business entity that offers motor  
 670 vehicles for rent or lease encompasses each office, branch  
 671 office, employee, and authorized representative located at a  
 672 designated branch or place of business making use of the  
 673 entity's business name in order to offer, solicit, and sell  
 674 insurance pursuant to this paragraph.

675 b. The application for licensure must list the name,  
 676 address, and phone number for each office, branch office, or  
 677 place of business that is to be covered by the license. The  
 678 licensee shall notify the department of the name, address, and  
 679 phone number of any new location that is to be covered by the  
 680 license before the new office, branch office, or place of  
 681 business engages in the sale of insurance pursuant to this  
 682 paragraph. The licensee must notify the department within 30  
 683 days after closing or terminating an office, branch office, or  
 684 place of business. Upon receipt of the notice, the department  
 685 shall delete the office, branch office, or place of business  
 686 from the license.

687 c. A licensed and appointed entity is directly responsible  
 688 and accountable for all acts of the licensee's employees.

689 Section 15. Effective January 1, 2015, section 626.382,  
 690 Florida Statutes, is amended to read:

691 626.382 Continuation, expiration of license; insurance  
 692 agencies.—The license of an any insurance agency ~~shall be issued~~  
 693 ~~for a period of 3 years and~~ shall continue in force until  
 694 canceled, suspended, or ~~revoked,~~ or until it is otherwise  
 695 terminated or expires by operation of law. ~~A license may be~~  
 696 ~~renewed by submitting a renewal request to the department on a~~

4-00504C-14

20141210\_\_

697 ~~form adopted by department rule.~~

698 Section 16. Section 626.601, Florida Statutes, is amended  
699 to read:

700 626.601 Improper conduct; investigation inquiry;  
701 fingerprinting.-

702 (1) The department or office may, upon its own motion or  
703 upon a written complaint signed by an any interested person and  
704 filed with the department or office, inquire into the any  
705 alleged improper conduct of any licensed, approved, or certified  
706 licensee, insurance agency, agent, adjuster, service  
707 representative, managing general agent, customer representative,  
708 title insurance agent, title insurance agency, mediator, neutral  
709 evaluator, navigator, continuing education course provider,  
710 instructor, school official, or monitor group under this code.  
711 The department or office may thereafter initiate an  
712 investigation of any such individual or entity licensee if it  
713 has reasonable cause to believe that the individual or entity  
714 licensee has violated any provision of the insurance code.  
715 During the course of its investigation, the department or office  
716 shall contact the individual or entity licensee being  
717 investigated unless it determines that contacting such  
718 individual or entity person could jeopardize the successful  
719 completion of the investigation or cause injury to the public.

720 (2) In the investigation by the department or office of any  
721 the alleged misconduct, an individual or entity the licensee  
722 shall, if whenever so required by the department or office,  
723 cause the individual's or entity's his or her books and records  
724 to be open for inspection for the purpose of such investigation  
725 inquiries.

Page 25 of 49

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00504C-14

20141210\_\_

726 (3) ~~The~~ Complaints against an individual or entity any  
727 licensee may be informally alleged and are not required to  
728 include need not be in any such language as is necessary to  
729 charge a crime on an indictment or information.

730 (4) The expense for ~~any~~ hearings or investigations  
731 conducted under this section law, as well as the fees and  
732 mileage of witnesses, may be paid out of the appropriate fund.

733 (5) ~~If the department or office~~, after investigation, the  
734 department or office has reason to believe that an individual a  
735 licensee may have been found guilty of or pleaded guilty or nolo  
736 contendere to a felony or a crime related to the business of  
737 insurance in this or any other state or jurisdiction, the  
738 department or office may require the individual licensee to file  
739 with the department or office a complete set of his or her  
740 fingerprints, ~~which shall be~~ accompanied by the fingerprint  
741 processing fee set forth in s. 624.501. The fingerprints shall  
742 be taken by an authorized law enforcement agency or other  
743 department-approved entity.

744 (6) The complaint and any information obtained pursuant to  
745 the investigation by the department or office are confidential  
746 and are exempt from ~~the provisions of~~ s. 119.07, unless the  
747 department or office files a formal administrative complaint,  
748 emergency order, or consent order against the individual or  
749 entity licensee. ~~Nothing in~~ This subsection does not shall be  
750 construed to prevent the department or office from disclosing  
751 the complaint or such information as it deems necessary to  
752 conduct the investigation, to update the complainant as to the  
753 status and outcome of the complaint, or to share such  
754 information with any law enforcement agency or other regulatory

Page 26 of 49

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00504C-14

20141210\_\_

755 body.

756 Section 17. Section 626.611, Florida Statutes, is amended  
757 to read:

758 626.611 Grounds for compulsory refusal, suspension, or  
759 revocation of agent's, title agency's, adjuster's, customer  
760 representative's, service representative's, or managing general  
761 agent's license or appointment.—

762 (1) The department shall deny an application for, suspend,  
763 revoke, or refuse to renew or continue the license or  
764 appointment of an any applicant, agent, title agency, adjuster,  
765 customer representative, service representative, or managing  
766 general agent, and it shall suspend or revoke the eligibility to  
767 hold a license or appointment of any such person, if it finds  
768 that as to the applicant, licensee, or appointee any one or more  
769 of the following applicable grounds exist:

770 (a)(1) Lack of one or more of the qualifications for the  
771 license or appointment as specified in this code.

772 (b)(2) Material misstatement, misrepresentation, or fraud  
773 in obtaining the license or appointment or in attempting to  
774 obtain the license or appointment.

775 (c)(3) Failure to pass to the satisfaction of the  
776 department any examination required under this code.

777 (d)(4) If the license or appointment is willfully used, or  
778 to be used, to circumvent any of the requirements or  
779 prohibitions of this code.

780 (e)(5) Willful misrepresentation of any insurance policy or  
781 annuity contract or willful deception with regard to any such  
782 policy or contract, done either in person or by any form of  
783 dissemination of information or advertising.

4-00504C-14

20141210\_\_

784 (f)(6) If, as an adjuster, or as an agent licensed and  
785 appointed to adjust claims under this code, he or she has  
786 materially misrepresented to an insured or other interested  
787 party the terms and coverage of an insurance contract with  
788 intent and for the purpose of effecting settlement of claim for  
789 loss or damage or benefit under such contract on less favorable  
790 terms than those provided in and contemplated by the contract.

791 (g)(7) Demonstrated lack of fitness or trustworthiness to  
792 engage in the business of insurance.

793 (h)(8) Demonstrated lack of reasonably adequate knowledge  
794 and technical competence to engage in the transactions  
795 authorized by the license or appointment.

796 (i)(9) Fraudulent or dishonest practices in the conduct of  
797 business under the license or appointment.

798 (j)(10) Misappropriation, conversion, or unlawful  
799 withholding of moneys belonging to insurers or insureds or  
800 beneficiaries or to others and received in conduct of business  
801 under the license or appointment.

802 (k)(11) Unlawfully rebating, attempting to unlawfully  
803 rebate, or unlawfully dividing or offering to divide his or her  
804 commission with another.

805 (l)(12) Having obtained or attempted to obtain, or having  
806 used or using, a license or appointment as agent or customer  
807 representative for the purpose of soliciting or handling  
808 "controlled business" as defined in s. 626.730 with respect to  
809 general lines agents, s. 626.784 with respect to life agents,  
810 and s. 626.830 with respect to health agents.

811 (m)(13) Willful failure to comply with, or willful  
812 violation of, any proper order or rule of the department or

4-00504C-14

20141210\_\_

813 willful violation of any provision of this code.

814 ~~(n)(14)~~ Having been found guilty of or having pleaded  
815 guilty or nolo contendere to a felony or a crime punishable by  
816 imprisonment of 1 year or more under the law of the United  
817 States of America or of any state thereof or under the law of  
818 any other country which involves moral turpitude, without regard  
819 to whether a judgment of conviction has been entered by the  
820 court having jurisdiction of such cases.

821 ~~(o)(15)~~ Fraudulent or dishonest practice in submitting or  
822 aiding or abetting any person in the submission of an  
823 application for workers' compensation coverage under chapter 440  
824 containing false or misleading information as to employee  
825 payroll or classification for the purpose of avoiding or  
826 reducing the amount of premium due for such coverage.

827 ~~(p)(16)~~ Sale of an unregistered security that was required  
828 to be registered, pursuant to chapter 517.

829 ~~(q)(17)~~ In transactions related to viatical settlement  
830 contracts as defined in s. 626.9911:

831 ~~1.(a)~~ Commission of a fraudulent or dishonest act.

832 ~~2.(b)~~ No longer meeting the requirements for initial  
833 licensure.

834 ~~3.(c)~~ Having received a fee, commission, or other valuable  
835 consideration for his or her services with respect to viatical  
836 settlements that involved unlicensed viatical settlement  
837 providers or persons who offered or attempted to negotiate on  
838 behalf of another person a viatical settlement contract as  
839 defined in s. 626.9911 and who were not licensed life agents.

840 ~~4.(d)~~ Dealing in bad faith with viators.

841 (2) Upon receipt of an information or indictment, the

4-00504C-14

20141210\_\_

842 department shall immediately temporarily suspend a license or  
843 appointment issued under this chapter if the licensee is charged  
844 with a felony enumerated in s. 626.207(3). The suspension shall  
845 continue if the licensee is found guilty of, or pleads guilty or  
846 nolo contendere to, the crime, regardless of whether a judgment  
847 or conviction is entered, during a pending appeal. A person may  
848 not transact insurance business after suspension of his or her  
849 license or appointment.

850 Section 18. Subsection (2) of section 626.641, Florida  
851 Statutes, is amended to read:

852 626.641 Duration of suspension or revocation.—

853 (2) No person or appointee under any license or appointment  
854 revoked by the department, nor any person whose eligibility to  
855 hold same has been revoked by the department, shall have the  
856 right to apply for another license or appointment under this  
857 code within 2 years after ~~from~~ the effective date of such  
858 revocation or, if judicial review of such revocation is sought,  
859 within 2 years after ~~from~~ the date of final court order or  
860 decree affirming the revocation. An applicant for another  
861 license or appointment pursuant to this subsection must apply  
862 and qualify for licensure in the same manner as a first-time  
863 applicant, and the application may be denied on the same grounds  
864 that apply to first-time applicants for licensure pursuant to  
865 ss. 626.207, 626.611, and 626.621. In addition, the department  
866 may shall not grant a new license or appointment or reinstate  
867 eligibility to hold such license or appointment if it finds that  
868 the circumstance or circumstances for which the eligibility was  
869 revoked or for which the previous license or appointment was  
870 revoked still exist or are likely to recur, or ~~or~~ if an



4-00504C-14

20141210\_\_

871 individual's license as agent or customer representative or  
 872 eligibility to hold same has been revoked upon the ground  
 873 specified in s. 626.611(1) (1) ~~s. 626.611(12)~~, the department  
 874 ~~shall refuse to grant or issue any new license or appointment so~~  
 875 ~~applied for.~~

876 Section 19. Section 626.733, Florida Statutes, is amended  
 877 to read:

878 626.733 Agency firms and corporations; special  
 879 requirements.—If a sole proprietorship, partnership,  
 880 corporation, or association holds an agency contract, all  
 881 members thereof who solicit, negotiate, or effect insurance  
 882 contracts, and all officers and stockholders of the corporation  
 883 who solicit, negotiate, or effect insurance contracts, must are  
 884 ~~required to~~ qualify and be licensed individually as agents or  
 885 customer representatives,<sup>r</sup> and all of such agents must be  
 886 individually appointed as to each property and casualty insurer  
 887 entering into an agency contract with such agency. Each ~~such~~  
 888 appointing insurer ~~as seen as known to it~~ shall comply with this  
 889 section and shall determine and require that each agent so  
 890 associated ~~in or so connected~~ with such agency is likewise  
 891 appointed as to the same such insurer and for the same type and  
 892 class of license. However, an ~~no~~ insurer is not required to  
 893 comply with the appointment provisions of this section for an  
 894 agent within an agency who does not solicit, negotiate, or  
 895 effect insurance contracts for that insurer if such insurer  
 896 ~~satisfactorily demonstrates to the department that the insurer~~  
 897 ~~has issued an aggregate net written premium, in an agency, in an~~  
 898 ~~amount of \$25,000 or less.~~

899 Section 20. Paragraphs (a) and (g) of subsection (1) of

4-00504C-14

20141210\_\_

900 section 626.7355, Florida Statutes, are amended to read:

901 626.7355 Temporary license as customer representative  
 902 pending examination.—

903 (1) The department shall issue a temporary customer  
 904 representative's license with respect to a person who has  
 905 applied for such license upon finding that the person:

906 (a) Has filed an application for a customer  
 907 representative's license ~~or a limited customer representative's~~  
 908 ~~license~~ and has paid any fees required under s. 624.501(5) in  
 909 connection with such application ~~for a customer representative's~~  
 910 ~~license or limited customer representative's license.~~

911 (g) Is not disqualified from licensure by the department  
 912 under s. 626.207 ~~Within the last 5 years, has not been~~  
 913 ~~convicted, found guilty or pleaded nolo contendere to a felony~~  
 914 ~~or a crime punishable by imprisonment of 1 year or more under~~  
 915 ~~the law of any municipality, county, state, territory, or~~  
 916 ~~country, whether or not a judgment of conviction has been~~  
 917 ~~entered.~~

918 Section 21. Effective January 1, 2015, section 626.747,  
 919 Florida Statutes, is repealed.

920 Section 22. Subsection (1) of section 626.7845, Florida  
 921 Statutes, is amended to read:

922 626.7845 Prohibition against unlicensed transaction of life  
 923 insurance.—

924 (1) An individual may not solicit or sell variable life  
 925 insurance, variable annuity contracts, or any other  
 926 indeterminate value or variable contract as defined in s.  
 927 627.8015~~7~~, unless the individual has successfully completed a  
 928 licensure examination relating to variable ~~annuity~~ contracts

4-00504C-14 20141210\_\_

929 authorized and approved by the department.

930 Section 23. Effective January 1, 2015, subsection (1) of

931 section 626.8411, Florida Statutes, is amended to read:

932 626.8411 Application of Florida Insurance Code provisions

933 to title insurance agents or agencies.—

934 (1) The following provisions ~~of part II~~ applicable to

935 general lines agents or agencies also apply to title insurance

936 agents or agencies:

937 (a) Section 626.734, relating to liability of certain

938 agents.

939 (b) Section 626.0428(4) (a) and (b) ~~626.747~~, relating to

940 branch agencies.

941 (c) Section 626.749, relating to place of business in

942 residence.

943 (d) Section 626.753, relating to sharing of commissions.

944 (e) Section 626.754, relating to rights of agent following

945 termination of appointment.

946 Section 24. Subsection (2) of section 626.861, Florida

947 Statutes, is amended to read:

948 626.861 Insurer's officers, insurer's employees, reciprocal

949 insurer's representatives; adjustments by.—

950 (2) If any such officer, employee, attorney, or agent in

951 connection with the adjustment of any such claim, loss, or

952 damage engages in ~~any of~~ the misconduct described in or

953 contemplated by s. 626.611(1) (f) ~~s. 626.611(6)~~, the office may

954 suspend or revoke the insurer's certificate of authority.

955 Section 25. Section 626.862, Florida Statutes, is amended

956 to read:

957 626.862 Agents; adjustments by.—A licensed and appointed

4-00504C-14 20141210\_\_

958 insurance agent may, without being licensed as an adjuster,

959 adjust losses for the insurer represented by him or her as agent

960 if ~~se~~ authorized by the insurer. The license and appointment of

961 the agent may be suspended or revoked for violation of or

962 misconduct prohibited by s. 626.611(1) (f) ~~s. 626.611(6)~~.

963 Section 26. Subsection (2) of section 626.9272, Florida

964 Statutes, is amended to read:

965 626.9272 Licensing of nonresident surplus lines agents.—

966 (2) The department may not issue a license unless the

967 applicant satisfies the same licensing requirements under s.

968 626.927 as required of a resident surplus lines agent, excluding

969 the required experience or coursework and examination. The

970 department may refuse to issue such license or appointment if

971 ~~when~~ it has reason to believe that any of the grounds exist for

972 denial, suspension, or revocation of a license as set forth in

973 ss. 626.611 and 626.621.

974 Section 27. Section 627.4553, Florida Statutes, is created

975 to read:

976 627.4553 Recommendations to surrender.—If an insurance

977 agent recommends the surrender of an annuity or life insurance

978 policy containing a cash value but does not recommend that the

979 proceeds from the surrender be used to fund or purchase another

980 annuity or life insurance policy, before execution of the

981 surrender, the insurance agent, or the insurance company if no

982 agent is involved, must provide, on a form that satisfies the

983 requirements of the rule adopted by the department, information

984 relating to the annuity or policy to be surrendered. Such

985 information must include, but need not limited to, the amount of

986 any surrender charge, the loss of any minimum interest rate

4-00504C-14 20141210\_\_

987 guarantees, the amount of any tax consequences resulting from  
 988 the transaction, the amount of any forfeited death benefit, and  
 989 the value of any other investment performance guarantees being  
 990 forfeited as a result of the transaction. This section also  
 991 applies to a person performing insurance agent activities  
 992 pursuant to an exemption from licensure under this part.

993 Section 28. Paragraph (b) of subsection (4) of section  
 994 627.7015, Florida Statutes, is amended to read:

995 627.7015 Alternative procedure for resolution of disputed  
 996 property insurance claims.—

997 (4) The department shall adopt by rule a property insurance  
 998 mediation program to be administered by the department or its  
 999 designee. The department may also adopt special rules which are  
 1000 applicable in cases of an emergency within the state. The rules  
 1001 shall be modeled after practices and procedures set forth in  
 1002 mediation rules of procedure adopted by the Supreme Court. The  
 1003 rules shall provide for:

1004 (b) Qualifications, denial of application, suspension,  
 1005 revocation, and other penalties for ~~of~~ mediators as provided in  
 1006 s. 627.745 and ~~in~~ the Florida Rules for ~~of~~ Certified and Court-  
 1007 Appointed Court Appointed Mediators, ~~and for such other~~  
 1008 ~~individuals as are qualified by education, training, or~~  
 1009 ~~experience as the department determines to be appropriate.~~

1010 Section 29. Paragraph (c) of subsection (2) of section  
 1011 627.706, Florida Statutes, is amended to read:

1012 627.706 Sinkhole insurance; catastrophic ground cover  
 1013 collapse; definitions.—

1014 (2) As used in ss. 627.706-627.7074, and as used in  
 1015 connection with any policy providing coverage for a catastrophic

4-00504C-14 20141210\_\_

1016 ground cover collapse or for sinkhole losses, the term:

1017 (c) "Neutral evaluator" means a professional engineer or a  
 1018 professional geologist who has completed a course of study in  
 1019 alternative dispute resolution designed or approved by the  
 1020 department for use in the neutral evaluation process, ~~and~~ who is  
 1021 determined by the department to be fair and impartial, and who  
 1022 is not otherwise ineligible for certification as provided in s.  
 1023 627.7074.

1024 Section 30. Subsections (7) and (18) of section 627.7074,  
 1025 Florida Statutes, are amended to read:

1026 627.7074 Alternative procedure for resolution of disputed  
 1027 sinkhole insurance claims.—

1028 (7) Upon receipt of a request for neutral evaluation, the  
 1029 department shall provide the parties a list of certified neutral  
 1030 evaluators. The department shall allow the parties to submit  
 1031 requests to disqualify evaluators on the list for cause.

1032 (a) The department shall disqualify neutral evaluators for  
 1033 cause based only on any of the following grounds:

1034 1. A familial relationship exists between the neutral  
 1035 evaluator and either party or a representative of either party  
 1036 within the third degree.

1037 2. The proposed neutral evaluator has, in a professional  
 1038 capacity, previously represented either party or a  
 1039 representative of either party, in the same or a substantially  
 1040 related matter.

1041 3. The proposed neutral evaluator has, in a professional  
 1042 capacity, represented another person in the same or a  
 1043 substantially related matter and that person's interests are  
 1044 materially adverse to the interests of the parties. The term

4-00504C-14

20141210\_\_

1045 "substantially related matter" means participation by the  
1046 neutral evaluator on the same claim, property, or adjacent  
1047 property.

1048 4. The proposed neutral evaluator has, within the preceding  
1049 5 years, worked as an employer or employee of a ~~any~~ party to the  
1050 case.

1051 (b) The department shall deny an application, or suspend or  
1052 revoke its certification, of a neutral evaluator to serve in  
1053 such capacity if the department finds that one or more of the  
1054 following grounds exist:

1055 1. Lack of one or more of the qualifications specified in  
1056 this section for certification.

1057 2. Material misstatement, misrepresentation, or fraud in  
1058 obtaining or attempting to obtain certification.

1059 3. Demonstrated lack of fitness or trustworthiness to act  
1060 as a neutral evaluator.

1061 4. Fraudulent or dishonest practices in the conduct of an  
1062 evaluation or in the conduct of financial services business.

1063 5. Violation of any provision of this code or of a lawful  
1064 order or rule of the department or aiding, instructing, or  
1065 encouraging another party in committing such a violation.

1066 (c) ~~(b)~~ The parties shall appoint a neutral evaluator from  
1067 the department list and promptly inform the department. If the  
1068 parties cannot agree to a neutral evaluator within 14 business  
1069 days, the department shall appoint a neutral evaluator from the  
1070 list of certified neutral evaluators. The department shall allow  
1071 each party to disqualify two neutral evaluators without cause.  
1072 Upon selection or appointment, the department shall promptly  
1073 refer the request to the neutral evaluator.

4-00504C-14

20141210\_\_

1074 ~~(d)(e)~~ Within 14 business days after the referral, the  
1075 neutral evaluator shall notify the policyholder and the insurer  
1076 of the date, time, and place of the neutral evaluation  
1077 conference. The conference may be held by telephone, if feasible  
1078 and desirable. The neutral evaluator shall make reasonable  
1079 efforts to hold the conference within 90 days after the receipt  
1080 of the request by the department. Failure of the neutral  
1081 evaluator to hold the conference within 90 days does not  
1082 invalidate either party's right to neutral evaluation or to a  
1083 neutral evaluation conference held outside this timeframe.

1084 (18) The department shall adopt rules of procedure for the  
1085 neutral evaluation process and rules for certifying, denying  
1086 certification of, suspending certification of, and revoking  
1087 certification as a neutral evaluator.

1088 Section 31. Subsection (3) of section 627.745, Florida  
1089 Statutes, is amended, present subsections (4) and (5) of that  
1090 section are renumbered as subsections (5) and (6), respectively,  
1091 and a new subsection (4) is added to that section, to read:

1092 627.745 Mediation of claims.—

1093 (3)(a) ~~The department shall approve~~ Mediators who to  
1094 conduct mediations pursuant to this section. All mediators must  
1095 file an application under oath and be approved by the department  
1096 for approval as a mediator.

1097 ~~(b)~~ To qualify for approval as a mediator, an individual a  
1098 person must meet one of the following qualifications:

1099 (a)1- Possess active certification as a Florida Supreme  
1100 Court certified circuit court mediator. A Florida Supreme Court  
1101 certified circuit court mediator in a lapsed, suspended,  
1102 sanctioned, or decertified status is not eligible to participate

4-00504C-14

20141210\_\_

1103 ~~in the mediation program a masters or doctorate degree in~~  
 1104 ~~psychology, counseling, business, accounting, or economics, be a~~  
 1105 ~~member of The Florida Bar, be licensed as a certified public~~  
 1106 ~~accountant, or demonstrate that the applicant for approval has~~  
 1107 ~~been actively engaged as a qualified mediator for at least 4~~  
 1108 ~~years prior to July 1, 1990.~~

1109 (b)2- Be an approved department mediator as of July 1,  
 1110 2014, and have conducted at least one mediation on behalf of the  
 1111 department within 4 years immediately preceding ~~that~~ the date  
 1112 the application for approval is filed with the department, have  
 1113 completed a minimum of a 40-hour training program approved by  
 1114 the department and successfully passed a final examination  
 1115 included in the training program and approved by the department.  
 1116 The training program shall include and address all of the  
 1117 following:

- 1118 a. ~~Mediation theory.~~
- 1119 b. ~~Mediation process and techniques.~~
- 1120 c. ~~Standards of conduct for mediators.~~
- 1121 d. ~~Conflict management and intervention skills.~~
- 1122 e. ~~Insurance nomenclature.~~

1123 (4) The department shall deny an application, or suspend or  
 1124 revoke its approval, of a mediator to serve in such capacity if  
 1125 the department finds that one or more of the following grounds  
 1126 exist:

- 1127 (a) Lack of one or more of the qualifications specified in  
 1128 this section for approval or certification.
- 1129 (b) Material misstatement, misrepresentation, or fraud in  
 1130 obtaining or attempting to obtain the approval or certification.
- 1131 (c) Demonstrated lack of fitness or trustworthiness to act

4-00504C-14

20141210\_\_

1132 as a mediator.

1133 (d) Fraudulent or dishonest practices in the conduct of  
 1134 mediation or in the conduct of business in the financial  
 1135 services industry.

1136 (e) Violation of any provision of this code or of a lawful  
 1137 order or rule of the department, violation of the Florida Rules  
 1138 for Certified and Court Appointed Mediators, or aiding,  
 1139 instructing, or encouraging another party in committing such a  
 1140 violation.

1141 The department shall adopt rules for the approval or denial of  
 1142 mediator applications and the suspension and revocation of  
 1143 approval of mediators.

1144 Section 32. Paragraph (b) of subsection (1) of section  
 1145 627.952, Florida Statutes, is amended to read:

1146 627.952 Risk retention and purchasing group agents.—

1147 (1) Any person offering, soliciting, selling, purchasing,  
 1148 administering, or otherwise servicing insurance contracts,  
 1149 certificates, or agreements for any purchasing group or risk  
 1150 retention group to any resident of this state, either directly  
 1151 or indirectly, by the use of mail, advertising, or other means  
 1152 of communication, shall obtain a license and appointment to act  
 1153 as a resident general lines agent, if a resident of this state,  
 1154 or a nonresident general lines agent if not a resident. Any such  
 1155 person shall be subject to all requirements of the Florida  
 1156 Insurance Code.

1157 (b) ~~Any person required to be licensed and appointed under~~  
 1158 ~~this subsection,~~ In order to place business through a Florida-  
 1159 eligible Florida-eligible surplus lines carrier carriers, a  
 1160 eligible Florida-eligible surplus lines carrier carriers, a

4-00504C-14

20141210\_\_

1161 person required to be licensed and appointed under this  
 1162 subsection must:

1163 1. If a resident of this state, be licensed and appointed  
 1164 as a surplus lines agent.

1165 2. If not a resident of this state, ~~such person must~~ be  
 1166 licensed and appointed as a surplus lines agent in her or his  
 1167 state of residence and be licensed and appointed as a  
 1168 nonresident surplus lines agent in this state file and maintain  
 1169 a fidelity bond in favor of the people of the State of Florida  
 1170 executed by a surety company admitted in this state and payable  
 1171 to the State of Florida; however, such nonresident is limited to  
 1172 the provision of insurance for purchasing groups. The bond must  
 1173 be continuous in form and in the amount of not less than  
 1174 \$50,000, aggregate liability. The bond must remain in force and  
 1175 effect until the surety is released from liability by the  
 1176 department or until the bond is canceled by the surety. The  
 1177 surety may cancel the bond and be released from further  
 1178 liability upon 30 days' prior written notice to the department.  
 1179 The cancellation does not affect any liability incurred or  
 1180 accrued before the termination of the 30-day period. Upon  
 1181 receipt of a notice of cancellation, the department shall  
 1182 immediately notify the agent.

1183 Section 33. Subsection (1) of section 648.43, Florida  
 1184 Statutes, is amended to read:

1185 648.43 Power of attorney; to be approved by department;  
 1186 filing of copies; notification of transfer bond.-

1187 (1) Every insurer engaged in the writing of bail bonds  
 1188 through bail bond agents in this state shall submit ~~and have~~  
 1189 approved by the department a sample power of attorney to the

Page 41 of 49

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00504C-14

20141210\_\_

1190 office for prior approval, which shall ~~will~~ be the only form of  
 1191 power of attorney the insurer issues ~~will issue~~ to bail bond  
 1192 agents in this state.

1193 Section 34. Subsection (3) of section 648.49, Florida  
 1194 Statutes, is amended to read:

1195 648.49 Duration of suspension or revocation.-

1196 (3) During the period of suspension, ~~or after~~ revocation of  
 1197 the license and until the license is reinstated or a new license  
 1198 is issued, the former licensee may not engage in or attempt to  
 1199 profess to engage in any transaction or business for which a  
 1200 license or appointment is required under this chapter. A Any  
 1201 person who violates this subsection commits a felony of the  
 1202 third degree, punishable as provided in s. 775.082, s. 775.083,  
 1203 or s. 775.084.

1204 Section 35. Paragraph (a) of subsection (4) of section  
 1205 943.0585, Florida Statutes, is amended to read:

1206 943.0585 Court-ordered expunction of criminal history  
 1207 records.-The courts of this state have jurisdiction over their  
 1208 own procedures, including the maintenance, expunction, and  
 1209 correction of judicial records containing criminal history  
 1210 information to the extent such procedures are not inconsistent  
 1211 with the conditions, responsibilities, and duties established by  
 1212 this section. Any court of competent jurisdiction may order a  
 1213 criminal justice agency to expunge the criminal history record  
 1214 of a minor or an adult who complies with the requirements of  
 1215 this section. The court shall not order a criminal justice  
 1216 agency to expunge a criminal history record until the person  
 1217 seeking to expunge a criminal history record has applied for and  
 1218 received a certificate of eligibility for expunction pursuant to

Page 42 of 49

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00504C-14 20141210\_\_

1219 subsection (2). A criminal history record that relates to a  
 1220 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
 1221 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
 1222 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
 1223 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
 1224 any violation specified as a predicate offense for registration  
 1225 as a sexual predator pursuant to s. 775.21, without regard to  
 1226 whether that offense alone is sufficient to require such  
 1227 registration, or for registration as a sexual offender pursuant  
 1228 to s. 943.0435, may not be expunged, without regard to whether  
 1229 adjudication was withheld, if the defendant was found guilty of  
 1230 or pled guilty or nolo contendere to the offense, or if the  
 1231 defendant, as a minor, was found to have committed, or pled  
 1232 guilty or nolo contendere to committing, the offense as a  
 1233 delinquent act. The court may only order expunction of a  
 1234 criminal history record pertaining to one arrest or one incident  
 1235 of alleged criminal activity, except as provided in this  
 1236 section. The court may, at its sole discretion, order the  
 1237 expunction of a criminal history record pertaining to more than  
 1238 one arrest if the additional arrests directly relate to the  
 1239 original arrest. If the court intends to order the expunction of  
 1240 records pertaining to such additional arrests, such intent must  
 1241 be specified in the order. A criminal justice agency may not  
 1242 expunge any record pertaining to such additional arrests if the  
 1243 order to expunge does not articulate the intention of the court  
 1244 to expunge a record pertaining to more than one arrest. This  
 1245 section does not prevent the court from ordering the expunction  
 1246 of only a portion of a criminal history record pertaining to one  
 1247 arrest or one incident of alleged criminal activity.

4-00504C-14 20141210\_\_

1248 Notwithstanding any law to the contrary, a criminal justice  
 1249 agency may comply with laws, court orders, and official requests  
 1250 of other jurisdictions relating to expunction, correction, or  
 1251 confidential handling of criminal history records or information  
 1252 derived therefrom. This section does not confer any right to the  
 1253 expunction of any criminal history record, and any request for  
 1254 expunction of a criminal history record may be denied at the  
 1255 sole discretion of the court.

1256 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
 1257 criminal history record of a minor or an adult which is ordered  
 1258 expunged by a court of competent jurisdiction pursuant to this  
 1259 section must be physically destroyed or obliterated by any  
 1260 criminal justice agency having custody of such record; except  
 1261 that any criminal history record in the custody of the  
 1262 department must be retained in all cases. A criminal history  
 1263 record ordered expunged that is retained by the department is  
 1264 confidential and exempt from the provisions of s. 119.07(1) and  
 1265 s. 24(a), Art. I of the State Constitution and not available to  
 1266 any person or entity except upon order of a court of competent  
 1267 jurisdiction. A criminal justice agency may retain a notation  
 1268 indicating compliance with an order to expunge.

1269 (a) The person who is the subject of a criminal history  
 1270 record that is expunged under this section or under other  
 1271 provisions of law, including former s. 893.14, former s. 901.33,  
 1272 and former s. 943.058, may lawfully deny or fail to acknowledge  
 1273 the arrests covered by the expunged record, except when the  
 1274 subject of the record:

1275 1. Is a candidate for employment with a criminal justice  
 1276 agency;

4-00504C-14 20141210\_\_

1277 2. Is a defendant in a criminal prosecution;

1278 3. Concurrently or subsequently petitions for relief under

1279 this section, s. 943.0583, or s. 943.059;

1280 4. Is a candidate for admission to The Florida Bar;

1281 5. Is seeking to be employed or licensed by or to contract

1282 with the Department of Children and Families, the Division of

1283 Vocational Rehabilitation within the Department of Education,

1284 the Agency for Health Care Administration, the Agency for

1285 Persons with Disabilities, the Department of Health, the

1286 Department of Elderly Affairs, or the Department of Juvenile

1287 Justice or to be employed or used by such contractor or licensee

1288 in a sensitive position having direct contact with children, the

1289 disabled, or the elderly; or

1290 6. Is seeking to be employed or licensed by the Department

1291 of Education, any district school board, any university

1292 laboratory school, any charter school, any private or parochial

1293 school, or any local governmental entity that licenses child

1294 care facilities.

1295 7. Is seeking to be licensed by the Division of Insurance

1296 Agent and Agency Services within the Department of Financial

1297 Services.

1298 Section 36. Paragraph (a) of subsection (4) of section

1299 943.059, Florida Statutes, is amended to read:

1300 943.059 Court-ordered sealing of criminal history records.—

1301 The courts of this state shall continue to have jurisdiction

1302 over their own procedures, including the maintenance, sealing,

1303 and correction of judicial records containing criminal history

1304 information to the extent such procedures are not inconsistent

1305 with the conditions, responsibilities, and duties established by

4-00504C-14 20141210\_\_

1306 this section. Any court of competent jurisdiction may order a

1307 criminal justice agency to seal the criminal history record of a

1308 minor or an adult who complies with the requirements of this

1309 section. The court shall not order a criminal justice agency to

1310 seal a criminal history record until the person seeking to seal

1311 a criminal history record has applied for and received a

1312 certificate of eligibility for sealing pursuant to subsection

1313 (2). A criminal history record that relates to a violation of s.

1314 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.

1315 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter

1316 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.

1317 916.1075, a violation enumerated in s. 907.041, or any violation

1318 specified as a predicate offense for registration as a sexual

1319 predator pursuant to s. 775.21, without regard to whether that

1320 offense alone is sufficient to require such registration, or for

1321 registration as a sexual offender pursuant to s. 943.0435, may

1322 not be sealed, without regard to whether adjudication was

1323 withheld, if the defendant was found guilty of or pled guilty or

1324 nolo contendere to the offense, or if the defendant, as a minor,

1325 was found to have committed or pled guilty or nolo contendere to

1326 committing the offense as a delinquent act. The court may only

1327 order sealing of a criminal history record pertaining to one

1328 arrest or one incident of alleged criminal activity, except as

1329 provided in this section. The court may, at its sole discretion,

1330 order the sealing of a criminal history record pertaining to

1331 more than one arrest if the additional arrests directly relate

1332 to the original arrest. If the court intends to order the

1333 sealing of records pertaining to such additional arrests, such

1334 intent must be specified in the order. A criminal justice agency



4-00504C-14 20141210\_\_  
 1335 may not seal any record pertaining to such additional arrests if  
 1336 the order to seal does not articulate the intention of the court  
 1337 to seal records pertaining to more than one arrest. This section  
 1338 does not prevent the court from ordering the sealing of only a  
 1339 portion of a criminal history record pertaining to one arrest or  
 1340 one incident of alleged criminal activity. Notwithstanding any  
 1341 law to the contrary, a criminal justice agency may comply with  
 1342 laws, court orders, and official requests of other jurisdictions  
 1343 relating to sealing, correction, or confidential handling of  
 1344 criminal history records or information derived therefrom. This  
 1345 section does not confer any right to the sealing of any criminal  
 1346 history record, and any request for sealing a criminal history  
 1347 record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal  
 1348 history record of a minor or an adult which is ordered sealed by  
 1349 a court of competent jurisdiction pursuant to this section is  
 1350 confidential and exempt from the provisions of s. 119.07(1) and  
 1351 s. 24(a), Art. I of the State Constitution and is available only  
 1352 to the person who is the subject of the record, to the subject's  
 1353 attorney, to criminal justice agencies for their respective  
 1354 criminal justice purposes, which include conducting a criminal  
 1355 history background check for approval of firearms purchases or  
 1356 transfers as authorized by state or federal law, to judges in  
 1357 the state courts system for the purpose of assisting them in  
 1358 their case-related decisionmaking responsibilities, as set forth  
 1359 in s. 943.053(5), or to those entities set forth in  
 1360 subparagraphs (a)1., 4., 5., 6., and 8. for their respective  
 1361 licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under

4-00504C-14 20141210\_\_  
 1364 this section or under other provisions of law, including former  
 1365 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
 1366 deny or fail to acknowledge the arrests covered by the sealed  
 1367 record, except when the subject of the record:

- 1368 1. Is a candidate for employment with a criminal justice
- 1369 agency;
- 1370 2. Is a defendant in a criminal prosecution;
- 1371 3. Concurrently or subsequently petitions for relief under
- 1372 this section, s. 943.0583, or s. 943.0585;
- 1373 4. Is a candidate for admission to The Florida Bar;
- 1374 5. Is seeking to be employed or licensed by or to contract
- 1375 with the Department of Children and Families, the Division of
- 1376 Vocational Rehabilitation within the Department of Education,
- 1377 the Agency for Health Care Administration, the Agency for
- 1378 Persons with Disabilities, the Department of Health, the
- 1379 Department of Elderly Affairs, or the Department of Juvenile
- 1380 Justice or to be employed or used by such contractor or licensee
- 1381 in a sensitive position having direct contact with children, the
- 1382 disabled, or the elderly;
- 1383 6. Is seeking to be employed or licensed by the Department
- 1384 of Education, any district school board, any university
- 1385 laboratory school, any charter school, any private or parochial
- 1386 school, or any local governmental entity that licenses child
- 1387 care facilities; or
- 1388 7. Is attempting to purchase a firearm from a licensed
- 1389 importer, licensed manufacturer, or licensed dealer and is
- 1390 subject to a criminal history check under state or federal law.
- 1391 8. Is seeking to be licensed by the Division of Insurance
- 1392 Agent and Agency Services within the Department of Financial

4-00504C-14

20141210\_\_

1393 Services.

1394 Section 37. Except as otherwise expressly provided in this  
1395 act, and except for this section which shall take effect upon  
1396 becoming law, this act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/11/14  
Meeting Date

Topic AGENCY LICENSING Bill Number 1210  
Name KYLE ULRICH Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title SVP (if applicable)

Address 3159 SHAMROCK SOUTH Phone 813-4155  
Street  
TALLAHASSEE FL 32309 E-mail KULRICH@FATA.COM  
City State Zip

Speaking:  For  Against  Information

Representing FL. ASSOC. OF INSURANCE AGENTS

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/11/14

Meeting Date

Topic SB 1210

Bill Number 1210  
*(if applicable)*

Name Logan McFaddin

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Affairs Director

Address 400 S. Monroe Street LL-22

Phone 413-2890

Street

Tallahassee FL 32399

City

State

Zip

E-mail logan.mcfaddin@myfloridazcfo.com

Speaking:  For  Against  Information

Representing CFO's Office

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/11/14  
Meeting Date

1210

Topic Non-Resident Surplus Lines Licensing Bill Number ~~7562~~ (if applicable)

Name DOUG MANG Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Lobbyist

Address 1424 PIEMONTE DR. EAST Phone 850-222-7710

Street

3400  
200  
LAN  
City

FL  
State

32308  
Zip

E-mail Dmang@manglaw.com

Speaking:  For  Against  Information

Provision

Representing Florida Surplus Lines Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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

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

---

Prepared By: The Professional Staff of the Committee on Banking and Insurance

---

BILL: CS/SB 310

INTRODUCER: Banking and Insurance Committee and Senator Simpson

SUBJECT: Title Insurance

DATE: March 12, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			JU	
3.			CA	

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 310 reduces the insurance premium tax paid by title insurers. This bill provides that the premium tax shall not be imposed on any portion of the title insurance premium retained by a title insurance agent or agency.

This bill takes effect July 1, 2014.

**II. Present Situation:**

**Title Insurance**

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.<sup>1</sup> Title insurance serves to indemnify the insured against financial loss caused by defects in title arising out of events that occurred before the date of the policy.<sup>2</sup>

---

<sup>1</sup> See s. 624.608, F.S.

<sup>2</sup> See *Lawyers Title Insurance Co. v. Novastar Mortgage, Inc.*, 862 So.2d 793,797 (Fla. 4th DCA 2004).

Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (DFS) while title insurance companies are licensed and regulated by the Office of Insurance Regulation (OIR).

### **Title Insurance Premiums**

Part XIII of ch. 627, F.S., governs title insurance contracts. Premium is the charge made by a title insurer for a title insurance policy, including the charge for the performance of primary title services by a title insurer or agent, and incurring the risks incident to such policy, and upon which charge a premium tax is paid under s. 624.509, F.S.<sup>3</sup> “Primary title services” means:

- Determining insurability in accordance with sound underwriting practices based upon evaluation of a reasonable title search or a search of the records of a Uniform Commercial Code filing office and such other information as may be necessary;
- Determination and clearance of underwriting objections and requirements to eliminate risk;
- Preparation and issuance of a title insurance commitment setting forth the requirements to insure; and
- Preparation and issuance of the policy.<sup>4</sup>

Primary title services do not include closing services<sup>5</sup> or title searches.<sup>6</sup>

Section 627.782, F.S., requires the Financial Services Commission (FSC) to adopt a rule specifying the premium to be charged by title insurers and for the percentage of premium retained by title insurers if the policy is issued by agents or agencies. The percentage of such title insurance premium required to be retained by the title insurer cannot be less than 30 percent.<sup>7</sup> A title insurer is allowed to pay the remaining 70 percent of premium to a title insurance agent or agency for performing primary title services.

In 1999, the Legislature froze title insurance rates at the 1992 level for 3 years.<sup>8</sup> Rates have been unchanged since that time.<sup>9</sup> Section 627.782(8), F.S., enacted in 2012,<sup>10</sup> requires the FSC to adopt rules regarding the collection and analysis of data to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry. The FSC adopted rules in December, 2013, and has submitted one of the rules to the Legislature for consideration pursuant to s. 120.541(3), F.S. The rule would require title insurers and title insurance agents and agencies to submit data to the OIR for use in an analysis of title insurance premium rates.

---

<sup>3</sup> See s. 627.7711(2), F.S.

<sup>4</sup> See s. 627.7711(1)(b), F.S.

<sup>5</sup> “Closing services” are services performed by a licensed title insurer, title insurance agent or agency, or attorney agent in the agent’s or agency’s capacity as such, including, but not limited to, preparing documents necessary to close the transaction, conducting the closing, or handling the disbursing of funds related to the closing in a real estate closing transaction in which a title insurance commitment or policy is to be issued. See s. 627.7711(a), F.S.

<sup>6</sup> A “title search” is the compiling of title information from official or public records. See s. 627.7711(4), F.S.

<sup>7</sup> Section 627.782(1), F.S.; Rule 690-186.003(9), F.A.C. The title insurer must retain a greater percentage of the premium if the policies have larger liability. See Rule 690-186(1), F.A.C.

<sup>8</sup> See Office of Program Policy Analysis & Government Accountability, Florida Legislature, *Florida’s Current Regulatory Framework Creates Challenges for State’s Title Insurance Regulation*, Report 08-53 (September 2008) at p. 9.

<sup>9</sup> See *Id.*

<sup>10</sup> See ch. 2012-206, L.O.F.

## Premium Tax

Section 624.509, F.S., requires insurers to pay a premium tax on premiums for title insurance received during the preceding calendar year. The tax is 1.75 percent of the gross amount of premium.<sup>11</sup> Sections 624.509(4)-(7), F.S., provide various credits and deductions to reduce the premium tax.

In *Fidelity National Title Insurance Company v. State of Florida, Department of Revenue*,<sup>12</sup> the court held that the charge for the performance of primary title services by a title insurance agent is included in the definition of premium in s. 627.7711(2), F.S. The court rejected Fidelity's argument that it was only required to pay the tax on the 30 percent of the premium remitted to it by the agents.<sup>13</sup>

### III. Effect of Proposed Changes:

This bill reduces the insurance premium tax paid by title insurers. This bill provides that the premium tax shall not be imposed on any portion of the title insurance premium retained by a title insurance agent or agency. This change would make payment for primary title services no longer subject to the premium tax in s. 624.509, F.S.<sup>14</sup> This bill makes conforming changes to the definition of premium in s. 627.7711, F.S.

This bill takes effect July 1, 2014.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

<sup>11</sup> See s. 624.509(2)(a), F.S.

<sup>12</sup> Case No. 09 CA 001708 (Fla. 2d Cir. September 20, 2013).

<sup>13</sup> The case is currently on appeal to the First District Court of Appeal, Case No. 1D13-4992. Briefing is not yet completed.

<sup>14</sup> It is not clear whether this bill would affect the litigation in *Fidelity v. Department of Revenue*. As a general rule, statutes are to be applied prospectively. See *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999) ("The general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively"). But see *Lowry v. Parole and Probation Com'n*, 473 So.2d 1248, 1250 (Fla. 1985) ("When... an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof").



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

The Revenue Estimating Conference has not analyzed CS/SB 310. It analyzed a different bill, HB 657, with a similar effect on the premium tax. Assuming that premiums written before July 1, 2014, are unaffected by the change, the Revenue Estimating Conference estimated the following negative impact on general revenue:

2014-2015	(\$5.4 million)
2015-2016	(\$5.8 million)
2016-2017	(\$6.1 million)
2017-2018	(\$6.4 million)
2018-2019	(\$6.6 million) <sup>15</sup>

**B. Private Sector Impact:**

This bill will reduce the premium tax paid by title insurers.

**C. Government Sector Impact:**

The Department of Revenue (Department) reports that it uses direct written premium as reported by title insurers to the OIR and the National Association of Insurance Commissioners to calculate the premium tax due. According to the Department, it is unclear whether it would be able to use its current method of calculating the tax due if this bill passes.

The Department of Revenue also notes that premium tax is reported and paid on a calendar year basis but this bill has a July 1, 2014, effective date. According to the Department, a mid-tax year change could cause difficulties for the Department and the insurers.<sup>16</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 624.509 and 627.7711.

<sup>15</sup> Revenue Estimating Conference Analysis of HB 657 adopted February 17, 2014.

<sup>16</sup> Department of Revenue, *SB 310 Bill Analysis* (January 27, 2014).

**IX. Additional Information:**

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

**CS by Banking and Insurance on March 11, 2014:**

The committee adopted a delete everything amendment to provide that the premium tax shall not be imposed on any portion of the title insurance premium retained by a title insurance agent or agency.

- B. **Amendments:**

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---



126702

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Ring) recommended the following:

1           **Senate Amendment (with title amendment)**

2  
3           Delete everything after the enacting clause  
4 and insert:

5           Section 1. Subsection (8) of section 624.509, Florida  
6 Statutes, is amended to read:

7           624.509 Premium tax; rate and computation.—

8           (8) ~~From and after July 1, 1980,~~ The premium tax authorized  
9 by this section may ~~shall~~ not be imposed on: ~~upon~~



126702

10           (a) Any portion of the title insurance premium retained by  
11 a title insurance agent or agency; or

12           (b) Receipts of annuity premiums or considerations paid by  
13 holders in this state if the tax savings derived are credited to  
14 the annuity holders. Upon request by the Department of Revenue,  
15 an ~~any~~ insurer availing itself of this provision shall submit to  
16 the department evidence that ~~which~~ establishes that the tax  
17 savings derived have been credited to annuity holders. As used  
18 in this paragraph subsection, the term "holders" includes ~~shall~~  
19 ~~be deemed to include~~ employers contributing to an employee's  
20 pension, annuity, or profit-sharing plan.

21           Section 2. Subsection (2) of section 627.7711, Florida  
22 Statutes, is amended to read

23           627.7711 Definitions.—As used in this part, the term:

24           (2) "Premium" means the charge, as specified by rule of the  
25 commission, which ~~that~~ is made by a title insurer for a title  
26 insurance policy, including the charge for performance of  
27 primary title services by a title insurer or title insurance  
28 agent or agency, and incurring the risks incident to such  
29 policy, under the several classifications of title insurance  
30 contracts and forms, ~~and upon which charge a premium tax is paid~~  
31 ~~under s. 624.509~~. As used in this part or in any other law, with  
32 respect to title insurance, the word "premium" does not include  
33 a commission.

34           Section 3. This act shall take effect July 1, 2014.

36 ===== T I T L E   A M E N D M E N T =====

37 And the title is amended as follows:

38           Delete everything before the enacting clause



126702

39 and insert:

40                                   A bill to be entitled  
41           An act relating to tax on insurance premiums; amending  
42           s. 624.509, F.S.; revising provisions relating to  
43           premium taxes paid by insurers; providing that the tax  
44           does not apply to any portion of the premium retained  
45           by a title insurance agent or agency; amending s.  
46           627.7711, F.S.; conforming provisions to changes made  
47           by the act; providing an effective date.

By Senator Simpson

18-00466-14

2014310\_\_

1                           A bill to be entitled  
2       An act relating to title insurance; amending s.  
3       627.7711, F.S.; revising the definition of "premium"  
4       to provide that that the term does not include payment  
5       for certain title services; providing an effective  
6       date.  
7  
8   Be It Enacted by the Legislature of the State of Florida:  
9  
10       Section 1. Subsection (2) of section 627.7711, Florida  
11       Statutes, is amended to read:  
12       627.7711 Definitions.—As used in this part, the term:  
13       (2) "Premium" means the charge, as specified by rule of the  
14       commission, which ~~that~~ is made by a title insurer for a title  
15       insurance policy, endorsement, commitment, or other contract for  
16       ~~including the charge for performance of primary title services~~  
17       ~~by a title insurer or title insurance agent or agency, and~~  
18       incurring the risks incident to such policy, endorsement,  
19       commitment, or contract under the several classifications of  
20       title insurance contracts and forms, and upon which charge a  
21       premium tax is paid under s. 624.509. As used in this part or in  
22       any other law, with respect to title insurance, the ~~term word~~  
23       ~~"premium"~~ does not include a commission or apply to payment for  
24       primary title services, title searches, closing services, or any  
25       component thereof performed by a title insurer, title insurance  
26       agent, or agency.  
27       Section 2. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/11/14

Meeting Date

Topic Title Insurance

Name DOUG MANG

Job Title Lobbyist

Address 1424 Piedmont Dr, East

St. 200 TAMU, FL 32308

Street

City

State

Zip

Bill Number 310

(if applicable)

Amendment Barcode

(if applicable)

Phone 850-222-7710

E-mail Dmang@manqlaw.com

Speaking:  For  Against  Information

Representing First American Title Insurance Co.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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

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

---

Prepared By: The Professional Staff of the Committee on Banking and Insurance

---

BILL: SB 952

INTRODUCER: Senator Simpson

SUBJECT: Workers' Compensation

DATE: March 10, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	<b>Favorable</b>
2.			CM	
3.			GO	

---

**I. Summary:**

SB 952 revises provisions relating to the regulation of workers' compensation retrospective rating plans by the Office of Insurance Regulation. Currently, under such a plan, the final workers' compensation premium paid by the employer is based on the actual loss experience of the employer during the policy, plus negotiated expenses and charges. If the employer controls the amount of claims, it pays lower premiums. The bill authorizes retrospective rating plans to contain a provision that allows the employer and insurer to negotiate the premium when the employer has multistate exposure, an estimated annual standard premium in Florida of at least \$175,000, and an annual estimated countrywide standard premium of \$1 million or more.

The bill may reduce workers' compensation premiums for employers participating in such plans.

The bill has no fiscal impact on the Office of Insurance Regulation.

**II. Present Situation:**

Florida law requires every workers' compensation insurer to file with the Office of Insurance Regulation (OIR) its rates and classifications that the insurer proposes to use.<sup>1</sup> Section 627.072, F.S., prescribes factors used in the determination of rates. Section 627.091(1), F.S., requires every insurer to file with the OIR every manual of classifications, rules, and rates, and every rating plan, which it proposes to use. Rate filings for workers' compensation are subject to approval by the OIR before they become effective. The standard for approving insurance rates in

---

<sup>1</sup> Section 627.091(4), F.S., allows an insurer to satisfy this obligation by becoming a member of a licensed rating organization, which makes such filings on its behalf. The law expressly provides that an insurer is not required to be a member of any rating organization, but all workers' compensation insurers in Florida have chosen to do so. Currently, all workers' compensation insurers are members of the National Council on Compensation Insurance.



Florida and most states is that the rate may not be excessive, inadequate, or unfairly discriminatory.<sup>2</sup>

Current Florida law and the rating plans approved by OIR allow for various ways for insurers to compete in the market by varying or adjusting premiums, including retrospective (retro) rating plans that adjust the premium at the end of the policy period to reflect the actual loss experience of the employer. In a retro rating plan, the insurer and employer agree that the final premium paid will be based upon losses actually incurred in the policy period. The insurer and employer negotiate on certain expenses, charges, taxes, and assessments, based upon minimum and maximum premiums. Retrospective rating has been a component of workers' compensation rating for over 50 years in Florida and nationwide. The National Council on Compensation Insurance (NCCI) has filed actuarially sound rating plans.

In 1991, the NCCI filed the Large Risk Alternative Rating Option (LRARO) in Florida. The LRARO was described as providing greater flexibility of negotiation between an insurer and employer for risks with over \$1,000,000 in standard premium.” In 1991, the Department of Insurance (predecessor of the Office of Insurance Regulation) disapproved the use of the LRARO on the basis that it did not comply with s. 627.091(1), F.S., and that the LRARO was not a rating plan but an agreement to use any factors acceptable to both parties.<sup>3</sup> Subsequently, in 1993, an insurer filed its own version of the LRARO and the Department of Insurance disapproved it. The rejection of the plan was primarily on the basis that the use of the LRARO would not allow agency oversight as to the determination of premiums since it proposed to allow the insurer and prospective insureds to agree unilaterally on the components to be used in the rating process.<sup>4</sup> The insurer appealed the disapproval to the Division of Administrative Hearings (DOAH) and DOAH found that the Department of Insurance was justified in disapproving the plan.

Currently, the LRARO plans are available in the majority of the states. However, Alaska, Arkansas, Florida, and Nebraska do not allow its use.<sup>5</sup> The NCCI retro plan rule, which does not apply in Florida, provides that an insured is eligible for the LRARO if the estimated standard premium individually or in any combination with any other commercial casualty lines of insurance exceeds an annual standard premium eligibility threshold of \$500,000 for the term of a retrospective rating plan. The following table provides examples of states with different annual standard premium eligibility thresholds for LRARO.<sup>6</sup>

---

<sup>2</sup> Section 627.062, F.S.

<sup>3</sup> See *Liberty Mutual Insurance Company, et. al., v. State of Florida, Department of Insurance, Case No. 94-0892 (Fla. DOAH 1994)*.

<sup>4</sup> *Id.*

<sup>5</sup> E-mail from Lori Lovgren, NCCI (Mar. 4, 2014) (on file with Senate Committee on Banking and Insurance).

<sup>6</sup> *Id.*

<b>LRARO Premium Eligibility Threshold by State</b>	
<b>State</b>	<b>Annual Standard Premium Eligibility Threshold</b>
Arizona	\$250,000
Kansas	\$1,000,000
Minnesota	\$250,000
Nevada	\$250,000
New Hampshire	\$250,000
North Carolina	\$250,000

**III. Effect of Proposed Changes:**

Section 1 allows an insurer and employer to negotiate the retrospective plan rating factors that can be used for calculating the premium when the employer has multistate exposure, an estimated annual standard premium in Florida of at least \$175,000, and an annual estimated countrywide standard premium of \$1 million or more for workers’ compensation.

Section 2 provides a technical conforming cross reference.

Section 3 provides that the act takes effect July 1, 2014.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would allow insurers and larger employers greater flexibility in negotiating retrospective rating plans by allowing the parties to determine the rating factors used to

calculate premium. This change may result in a reduction in premiums for such employers.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 627.072 and 627.281.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Simpson

18-00328A-14

2014952\_\_

1 A bill to be entitled  
 2 An act relating to workers' compensation; amending s.  
 3 627.072, F.S.; authorizing employers to negotiate the  
 4 retrospectively rated premium with insurers under  
 5 certain conditions; amending s. 627.281, F.S.;  
 6 conforming a cross-reference; providing an effective  
 7 date.  
 8  
 9 Be It Enacted by the Legislature of the State of Florida:  
 10  
 11 Section 1. Present subsections (2) through (4) of section  
 12 627.072, Florida Statutes, are renumbered as subsections (3)  
 13 through (5), respectively, and a new subsection (2) is added to  
 14 that section, to read:  
 15 627.072 Making and use of rates.-  
 16 (2) A retrospective rating plan may contain a provision  
 17 that allows for negotiation of a premium between the employer  
 18 and the insurer for employers having exposure in more than one  
 19 state and an estimated annual standard premium in this state of  
 20 \$175,000 and an estimated annual countrywide standard premium of  
 21 \$1 million or more for workers' compensation.  
 22 Section 2. Subsection (2) of section 627.281, Florida  
 23 Statutes, is amended to read:  
 24 627.281 Appeal from rating organization; workers'  
 25 compensation and employer's liability insurance filings.-  
 26 (2) If such appeal is based upon the failure of the rating  
 27 organization to make a filing on behalf of such member or  
 28 subscriber which is based on a system of expense provisions  
 29 which differs, in accordance with the right granted in s.

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

18-00328A-14

2014952\_\_

30 627.072 (3) ~~s. 627.072(2)~~, from the system of expense provisions  
 31 included in a filing made by the rating organization, the office  
 32 shall, if it grants the appeal, order the rating organization to  
 33 make the requested filing for use by the appellant. In deciding  
 34 such appeal, the office shall apply the applicable standards set  
 35 forth in ss. 627.062 and 627.072.  
 36 Section 3. This act shall take effect July 1, 2014.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

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

---

Prepared By: The Professional Staff of the Committee on Banking and Insurance

---

BILL: CS/SB 1278

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Public Records/Office of Financial Regulation

DATE: March 12, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

CS/SB 1278 creates a public records exemption for informal enforcement actions of the Office of Financial Regulation (OFR) as well as an exemption for trade secrets that are held by the OFR in accordance with its statutory duties with respect to the Financial Institutions Codes. In addition, the bill defines:

- Examination report,
- Informal enforcement action,
- Working papers, and
- Personal financial information.

The OFR regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes (codes), chapters 655 to 667, Florida Statutes. The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness. Currently, s. 655.057, F.S., exempts certain records held by the OFR relating to the supervision and regulation of financial institutions chartered in Florida.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. As this bill creates a new public records exemption, the bill also provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it would require a two-thirds vote for final passage.

## II. Present Situation:

### Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>10</sup> It

---

<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>11</sup> The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>12</sup>

### **Regulation of State-Chartered Financial Institutions**

The Office of Financial Regulation (OFR) regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes (“codes”), chapters 655 to 667, F.S. The OFR ensures Florida-chartered financial institutions’ compliance with state and federal requirements for safety and soundness.

### **Current Public Records Exemptions under the Codes**

Currently, s. 655.057, F.S., of the codes contains the following public records exemptions:

- All records and information relating to an “active” investigation or examination are confidential and exempt.
- After an investigation or examination is no longer active, information remains confidential and exempt to the extent that disclosure would:
  - Jeopardize the integrity of another active investigation;
  - Impair the safety and soundness of the financial institution;
  - Reveal personal financial information;
  - Reveal the identity of a confidential source;
  - Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
  - Reveal investigative techniques or procedures.
- Reports of examination, operations, or condition, *including working papers* or portions thereof, that are prepared by or for the use of the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions.
  - Current law provides exceptions for persons to whom these reports and working papers may be released.
- Examination, operation, or condition reports of a failed financial institution, which shall be released within 1 year after the appointment of a liquidator, receiver, or conservator. However, any portion which discloses the identities of depositors, bondholders, members, borrowers, or stockholders (other than directors, officers, or controlling stockholders) remains confidential and exempt.
- Florida-chartered credit unions and mutual associations are required to maintain and submit to the OFR a list of their members’ names and residences. This list of members is confidential and exempt.
- Florida-chartered banks, trust companies, and stock associations are required to maintain and produce to the OFR lists of their shareholders’ names, addresses, and number of shares held by each shareholder. Any portion of this list which reveals the shareholders’ identities is confidential and exempt.

---

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

In addition, s. 655.059, F.S., provides that the books and records of a financial institution are “confidential” and are available to specified persons, including the OFR.<sup>13</sup> However, this is not a public records exemption from s. 119.07(1), F.S., because private organizations (such as financial institutions) are generally not subject to the ch. 119, F.S., unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity.<sup>14</sup> This statute merely prohibits financial institutions from disclosing its books and records to anyone other than the persons enumerated in s. 655.059(1)(a), F.S.

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

#### **Informal Enforcement Actions**

The bill creates a limited public records exemption for “informal enforcement actions” by the Office of Financial Regulation (OFR). An informal enforcement action is defined to mean “a board resolution, document of resolution, or an agreement in writing between the office and a financial institution” that the office imposes on an institution after considering the administrative enforcement guidelines in s. 655.031, F.S., and determining that a formal enforcement action is not an appropriate enforcement remedy. However, the bill limits the exemption by providing that after an investigation relating to an informal enforcement action is completed or ceases to be active, an informal enforcement action is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, only to the extent that disclosure would result in certain events (i.e., impair the safety and soundness of the financial institution; reveal investigative techniques or procedures, etc.).

The public necessity statement provides that public disclosure of informal enforcement actions could erode public confidence in financial institutions in this state and may lead to a reduced level of protection of the interests of the depositors and creditors of financial institutions. In addition, the public necessity statement provides that this exemption will, among other things, provide competitive equality to Florida-chartered institutions, because financial institutions that are federally chartered or chartered by other states are protected by those federal or state laws with regard to informal enforcement actions.

#### **Trade Secrets**

The bill creates a public records exemption for trade secrets, as defined in s. 688.002, F.S., that comply with s. 655.0591, F.S., and that are held by the OFR in accordance with its statutory duties with respect to the codes. The public necessity statement provides that disclosure of these trade secrets could result in a competitive disadvantage and economic loss to a financial institution.

---

<sup>13</sup> In addition, s. 655.012(1)(b), F.S., grants the OFR access to all books and records of all persons over whom the OFR exercises general supervision as is necessary for the performance of the duties and functions of the OFR, as prescribed by the codes.

<sup>14</sup> Florida Attorney General Opinion 07-27.



**Definitions**

In addition to creating a definition of “informal enforcement action” for the new exemption, the bill defines the examination report, working papers, and personal financial information to clarify the existing exemptions in s. 655.057, F.S.

**Statement of Public Necessity**

Section 2 of the bill is the statement of public necessity as required by the State Constitution. The bill provides legislative findings that informal enforcement actions and trade secrets must be kept confidential and exempt; and identified public purposes for exempting informal enforcement actions and trade secrets.

The bill also amends current exemptions in s. 655.057, F.S., to provide references to s. 24(a), Art. I of the State Constitution, instead of only s. 119.07(1), F.S. The bill provides that this section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill would take effect on the same date that SB 1012 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

None.

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

In order to pass a newly-created or expanded public records or public meetings exemption, Article I, s. 24 of the State Constitution requires a two-thirds vote of each house of the Legislature and a public necessity statement. The bill contains a public necessity statement and requires a two-thirds vote for passage.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The bill's protection of trade secrets and informal enforcement actions may benefit Florida-chartered financial institutions, since disclosure of such information could result in a competitive disadvantage in the marketplace and reputational risk.

**C. Government Sector Impact:**

The bill likely could create a minimal fiscal impact on the OFR, because OFR staff responsible for complying with public record requests could require training related to implementation of the public record exemption. In addition, the OFR could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 655.057 of the Florida Statutes.

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

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

**CS by Banking and Insurance on March 11, 2014:**

The CS provides a reference to linked bill, SB 1012.

**B. Amendments:**

None.



564502

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment**

Delete line 302  
and insert:  
SB 1012 or similar legislation takes effect, if such legislation

By Senator Richter

23-00423C-14

20141278\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 655.057, F.S.; providing an exemption from public  
 4 records requirements for certain informal enforcement  
 5 actions by the Office of Financial Regulation, to  
 6 which penalties apply for willful disclosure of such  
 7 confidential information; providing an exemption from  
 8 public records requirements for certain trade secrets  
 9 held by the office, to which penalties apply for  
 10 willful disclosure of such confidential information;  
 11 defining terms; providing for future legislative  
 12 review and repeal of the section; providing a  
 13 statement of public necessity; providing a contingent  
 14 effective date.  
 15  
 16 Be It Enacted by the Legislature of the State of Florida:  
 17  
 18 Section 1. Section 655.057, Florida Statutes, is amended to  
 19 read:  
 20 655.057 Records; limited restrictions upon public access.—  
 21 (1) Except as otherwise provided in this section and except  
 22 for such portions thereof which are otherwise public record, all  
 23 records and information relating to an investigation by the  
 24 office are confidential and exempt from ~~the provisions of~~ s.  
 25 119.07(1) and s. 24(a), Art. I of the State Constitution until  
 26 such investigation is completed or ceases to be active. For  
 27 purposes of this subsection, an investigation is considered  
 28 "active" while such investigation is being conducted by the  
 29 office with a reasonable, good faith belief that it may lead to

Page 1 of 11

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

23-00423C-14

20141278\_\_

30 the filing of administrative, civil, or criminal proceedings. An  
 31 investigation does not cease to be active if the office is  
 32 proceeding with reasonable dispatch, and there is a good faith  
 33 belief that action may be initiated by the office or other  
 34 administrative or law enforcement agency. After an investigation  
 35 is completed or ceases to be active, portions of ~~the such~~  
 36 records relating to the investigation are ~~shall be~~ confidential  
 37 and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a),  
 38 Art. I of the State Constitution to the extent that disclosure  
 39 would:  
 40 (a) Jeopardize the integrity of another active  
 41 investigation;  
 42 (b) Impair the safety and soundness of the financial  
 43 institution;  
 44 (c) Reveal personal financial information;  
 45 (d) Reveal the identity of a confidential source;  
 46 (e) Defame or cause unwarranted damage to the good name or  
 47 reputation of an individual or jeopardize the safety of an  
 48 individual; or  
 49 (f) Reveal investigative techniques or procedures.  
 50 (2) Except as otherwise provided in this section and except  
 51 for such portions thereof which are public record, reports of  
 52 examinations, operations, or condition, including working  
 53 papers, or portions thereof, prepared by, or for the use of, the  
 54 office or any state or federal agency responsible for the  
 55 regulation or supervision of financial institutions in this  
 56 state are confidential and exempt from ~~the provisions of~~ s.  
 57 119.07(1) and s. 24(a), Art. I of the State Constitution.  
 58 However, such reports or papers or portions thereof may be

Page 2 of 11

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

23-00423C-14 20141278\_\_

59 released to:

60 (a) The financial institution under examination;

61 (b) Any holding company of which the financial institution

62 is a subsidiary;

63 (c) Proposed purchasers if necessary to protect the

64 continued financial viability of the financial institution, upon

65 prior approval by the board of directors of such institution;

66 (d) Persons proposing in good faith to acquire a

67 controlling interest in or to merge with the financial

68 institution, upon prior approval by the board of directors of

69 ~~the such~~ financial institution;

70 (e) Any officer, director, committee member, employee,

71 attorney, auditor, or independent auditor officially connected

72 with the financial institution, holding company, proposed

73 purchaser, or person seeking to acquire a controlling interest

74 in or merge with the financial institution; or

75 (f) A fidelity insurance company, upon approval of the

76 financial institution's board of directors. However, a fidelity

77 insurance company may receive only that portion of an

78 examination report relating to a claim or investigation being

79 conducted by such fidelity insurance company.

80 (g) Examination, operation, or condition reports of a

81 financial institution shall be released by the office within 1

82 year after the appointment of a liquidator, receiver, or

83 conservator to ~~the such~~ financial institution. However, any

84 portion of such reports which discloses the identities of

85 depositors, bondholders, members, borrowers, or stockholders,

86 other than directors, officers, or controlling stockholders of

87 the institution, shall remain confidential and exempt from ~~the~~

23-00423C-14 20141278\_\_

88 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~

89 Constitution.

90

91 Any confidential information or records obtained from the office

92 pursuant to this paragraph shall be maintained as confidential

93 and exempt from ~~the provisions of s. 119.07(1) and s. 24(a),~~

94 Art. I of the State Constitution.

95 (3) Except as otherwise provided in this section and except

96 for such portions thereof which are otherwise public record,

97 after an investigation relating to an informal enforcement

98 action is completed or ceases to be active, the informal

99 enforcement action is confidential and exempt from s. 119.07(1)

100 and s. 24(a), Art. I of the State Constitution to the extent

101 that disclosure would:

102 (a) Jeopardize the integrity of another active

103 investigation;

104 (b) Impair the safety and soundness of the financial

105 institution;

106 (c) Reveal personal financial information;

107 (d) Reveal the identity of a confidential source;

108 (e) Defame or cause unwarranted damage to the good name or

109 reputation of an individual or jeopardize the safety of an

110 individual; or

111 (f) Reveal investigative techniques or procedures.

112 (4) Except as otherwise provided in this section and except

113 for such portions thereof which are otherwise public record,

114 trade secrets, as defined in s. 688.002, which comply with s.

115 655.0591 and which are held by the office in accordance with its

116 statutory duties with respect to the financial institutions

23-00423C-14 20141278\_\_

117 codes are confidential and exempt from s. 119.07(1) and s.  
 118 24(a), Art. I of the State Constitution.  
 119 ~~(5)(3) The provisions of This section does de~~ not prevent  
 120 or restrict:  
 121 (a) Publishing reports required to be submitted to the  
 122 office pursuant to s. 655.045(2)(a) or required by applicable  
 123 federal statutes or regulations to be published.  
 124 (b) Furnishing records or information to any other state,  
 125 federal, or foreign agency responsible for the regulation or  
 126 supervision of financial institutions, including Federal Home  
 127 Loan Banks.  
 128 (c) Disclosing or publishing summaries of the condition of  
 129 financial institutions and general economic and similar  
 130 statistics and data, provided that the identity of a particular  
 131 financial institution is not disclosed.  
 132 (d) Reporting any suspected criminal activity, with  
 133 supporting documents and information, to appropriate law  
 134 enforcement and prosecutorial agencies.  
 135 (e) Furnishing information upon request to the Chief  
 136 Financial Officer or the Division of Treasury of the Department  
 137 of Financial Services regarding the financial condition of any  
 138 financial institution that is, or has applied to be, designated  
 139 as a qualified public depository pursuant to chapter 280.  
 140  
 141 Any confidential information or records obtained from the office  
 142 pursuant to this subsection shall be maintained as confidential  
 143 and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a),  
 144 Art. I of the State Constitution.  
 145 (6)(4)(a) Orders of courts or of administrative law judges

Page 5 of 11

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

23-00423C-14 20141278\_\_

146 for the production of confidential records or information shall  
 147 provide for inspection in camera by the court or the  
 148 administrative law judge, and, after the court or administrative  
 149 law judge has made a determination that the documents requested  
 150 are relevant or would likely lead to the discovery of admissible  
 151 evidence, such said documents shall be subject to further orders  
 152 by the court or the administrative law judge to protect the  
 153 confidentiality thereof. ~~An Any~~ order directing the release of  
 154 information is shall be immediately reviewable, and a petition  
 155 by the office for review of such order ~~shall~~ automatically stays  
 156 ~~stay~~ further proceedings in the trial court or the  
 157 administrative hearing until the disposition of such petition by  
 158 the reviewing court. If any other party files such a petition  
 159 for review, it operates will operate as a stay of such  
 160 proceedings only upon order of the reviewing court.  
 161 (b) Confidential records and information furnished pursuant  
 162 to a legislative subpoena shall be kept confidential by the  
 163 legislative body or committee ~~that which~~ received the records or  
 164 information, except in a case involving investigation of charges  
 165 against a public official subject to impeachment or removal,  
 166 ~~and then~~ Disclosure of such information shall be only to the  
 167 extent determined necessary by the legislative body or committee  
 168 ~~to be necessary.~~  
 169 (7)(5) Every credit union and mutual association shall  
 170 maintain, in the principal office where its business is  
 171 transacted, full and correct records of the names and residences  
 172 of all the members of the credit union or mutual association.  
 173 Such records are shall be subject to the inspection of all the  
 174 members of the credit union or mutual association, and the

Page 6 of 11

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

23-00423C-14 20141278\_\_

175 officers authorized to assess taxes under state authority,  
 176 during business hours of each business day. A current list of  
 177 members shall be made available to the office's examiners for  
 178 their inspection and, upon the request of the office, shall be  
 179 submitted to the office. Except as otherwise provided in this  
 180 subsection, the list of the members of the credit union or  
 181 mutual association is confidential and exempt from ~~the~~  
 182 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~  
 183 Constitution.

184 ~~(8)(6)~~ Every bank, trust company, and stock association  
 185 shall maintain, in the principal office where its business is  
 186 transacted, full and complete records of the names and  
 187 residences of all the shareholders of the bank, trust company,  
 188 or stock association and the number of shares held by each. Such  
 189 records ~~are shall be~~ subject to the inspection of all the  
 190 shareholders of the bank, trust company, or stock association,  
 191 and the officers authorized to assess taxes under state  
 192 authority, during business hours of each banking day. A current  
 193 list of shareholders shall be made available to the office's  
 194 examiners for their inspection and, upon the request of the  
 195 office, shall be submitted to the office. Except as otherwise  
 196 provided in this subsection, any portion of this list which  
 197 reveals the identities of the shareholders is confidential and  
 198 exempt from ~~the provisions of s. 119.07(1) and s. 24(a), Art. I~~  
 199 of the State Constitution.

200 ~~(9)(7)~~ Materials supplied to the office or to employees of  
 201 any financial institution by other state or federal governmental  
 202 agencies, ~~federal or state,~~ shall remain the property of the  
 203 submitting agency or the corporation, and any document request

Page 7 of 11

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

23-00423C-14 20141278\_\_

204 must be made to the appropriate agency. Any confidential  
 205 documents supplied to the office or to employees of any  
 206 financial institution by other state or federal governmental  
 207 agencies ~~are, federal or state,~~ shall be confidential and exempt  
 208 from ~~the provisions of s. 119.07(1) and s. 24(a), Art. I of the~~  
 209 State Constitution. Such information shall be made public only  
 210 with the consent of such agency or the corporation.

211 ~~(10)(8)~~ Examination reports, investigatory records,  
 212 applications, and related information compiled by the office, or  
 213 photographic copies thereof, shall be retained by the office for  
 214 ~~a period of~~ at least 10 years.

215 ~~(11)(9)~~ A copy of any document on file with the office  
 216 which is certified by the office as being a true copy may be  
 217 introduced in evidence as if it were the original. The  
 218 commission shall establish a schedule of fees for preparing true  
 219 copies of documents.

220 (12) As used in this section, the term:

221 (a) "Examination report" means records submitted to or  
 222 prepared by the office as part of the office's duties performed  
 223 pursuant to s. 655.012 or s. 655.045(1).

224 (b) "Informal enforcement action" means a board resolution,  
 225 a document of resolution, or an agreement in writing between the  
 226 office and a financial institution which:

227 1. The office imposes on the institution when the office  
 228 considers the administrative enforcement guidelines in s.  
 229 655.031 and determines that a formal enforcement action is not  
 230 an appropriate administrative remedy;

231 2. Sets forth a program of corrective action to address one  
 232 or more safety and soundness deficiencies and violations of law

Page 8 of 11

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

23-00423C-14

20141278\_\_

233 or rule at the institution; and

234 3. Is not subject to enforcement by imposition of an  
 235 administrative fine pursuant to s. 655.041.

236 (c) "Personal financial information" means:

237 1. Information relating to the existence, nature, source,  
 238 or amount of a person's personal income, expenses, or debt.

239 2. Information relating to a person's financial  
 240 transactions of any kind.

241 3. Information relating to the existence, identification,  
 242 nature, or value of a person's assets, liabilities, or net  
 243 worth.

244 (d) "Working papers" means the records of the procedures  
 245 followed, the tests performed, the information obtained, and the  
 246 conclusions reached in an investigation or examination performed  
 247 under ss. 655.032 or 655.045. Working papers include planning,  
 248 documentation, work programs, analyses, memoranda, letters of  
 249 confirmation and representation, abstracts of the books and  
 250 records of a financial institution as defined in s.  
 251 655.005(1)(i), and schedules or commentaries prepared or  
 252 obtained in the course of such investigation or examination.

253 (13)-(14) A Any person who willfully discloses information  
 254 made confidential by this section ~~commits is guilty~~ of a felony  
 255 of the third degree, punishable as provided in s. 775.082, s.  
 256 775.083, or s. 775.084.

257 (14) This section is subject to the Open Government Sunset  
 258 Review Act in accordance with s. 119.15 and shall stand repealed  
 259 on October 2, 2019, unless otherwise saved from repeal through  
 260 reenactment by the Legislature.

261 Section 2. (1) The Legislature finds it a public necessity

Page 9 of 11

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

23-00423C-14

20141278\_\_

262 that informal enforcement actions and trade secrets, as defined  
 263 in s. 688.002, Florida Statutes, be kept confidential and exempt  
 264 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of  
 265 the State Constitution.

266 (2) Public disclosure of an informal enforcement action  
 267 could further impair the safety and soundness of a financial  
 268 institution that is subject to the action. Furthermore, the  
 269 public disclosure of this information could erode public  
 270 confidence in financial institutions and the financial  
 271 institution system in this state and may lead to a reduced level  
 272 of protection of the interests of the depositors and creditors  
 273 of financial institutions. Maintaining informal enforcement  
 274 actions as confidential and exempt from s. 119.07(1), Florida  
 275 Statutes, and s. 24(a), Article I of the State Constitution will  
 276 provide to the financial institutions that are chartered by this  
 277 state the same protections as those already available to  
 278 financial institutions chartered under federal law and by other  
 279 states, maintain public confidence in financial institutions  
 280 subject to the financial institutions codes, protect the safety  
 281 and soundness of the financial institution system in this state,  
 282 protect the interests of the depositors and creditors of  
 283 financial institutions, promote the opportunity for state-  
 284 chartered financial institutions to be and remain competitive  
 285 with financial institutions chartered by other states or the  
 286 United States, and otherwise provide for and promote the  
 287 purposes of the financial institutions codes as set forth in s.  
 288 655.001, Florida Statutes.

289 (3) A trade secret derives independent economic value,  
 290 actual or potential, from not being generally known to, and not

Page 10 of 11

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



23-00423C-14

20141278\_\_

291 readily ascertainable by, other persons who can obtain economic  
292 value from the disclosure or use of the trade secret. Without an  
293 exemption for a trade secret held by the office, that trade  
294 secret becomes a public record when received and must be  
295 divulged upon request. Divulging a trade secret under the public  
296 records law would give business competitors an unfair advantage  
297 and destroy the value of that property, causing a financial loss  
298 to the person or entity submitting the trade secret and  
299 weakening the position of that person or entity in the  
300 marketplace.

301 Section 3. This act shall take effect on the same date that  
302 SB \_\_\_\_ or similar legislation takes effect, if such legislation  
303 is adopted in the same legislative session or an extension  
304 thereof and becomes a law.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/11/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number SB 1278  
*(if applicable)*

Name Jo Morris

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Affairs Director

Address 200 E. Gaines St.  
*Street*

Phone \_\_\_\_\_

Tallahassee FL 32399  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Office of Financial Regulation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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

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

---

Prepared By: The Professional Staff of the Committee on Banking and Insurance

---

BILL: SB 856

INTRODUCER: Senator Detert

SUBJECT: Uniform Fraudulent Transfer Act

DATE: March 10, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SB 856 amends the Florida Uniform Fraudulent Transfer Act to expand the protection against a creditor's clawback action for charitable contributions received in good faith by qualified religious or charitable organizations. The bill protects charitable contributions made by a debtor who makes such a contribution without receiving equivalent value in exchange for the contribution while the debtor was insolvent or became insolvent as a result of making the contribution. The bill aligns this exemption with similar provisions in the Federal Bankruptcy Code.

**II. Present Situation:**

According to the National Conference of Commissioners on Uniform State Laws, the Uniform Fraudulent Transfer Act (UFTA) has been enacted by 43 states, as well as the District of Columbia and the U.S. Virgin Islands.<sup>1</sup> Florida adopted the UFTA in 1987.<sup>2</sup> Chapter 726, F.S., the Florida Uniform Fraudulent Transfer Act (FUFTA), gives a present or future creditor the ability to reach assets that a debtor has transferred to another person or entity in order to shield the assets from being used to satisfy a debt to the creditor.

For present and future creditors, s. 726.105, F.S., provides that a transfer made or an obligation incurred by a debtor is fraudulent if the debtor made the transfer or incurred the obligation:

- (1)(a) With actual intent to hinder, delay, or defraud any creditor; or
- (1)(b) Without receiving reasonably equivalent value in exchange for the transfer or obligation, and either the debtor:

---

<sup>1</sup> Uniform Law Commission, Legislative Fact Sheet – Fraudulent Transfer Act, *available at* <http://uniformlaws.org/LegislativeFactSheet.aspx?title=Fraudulent%20Transfer%20Act> (last visited Feb. 25, 2014).

<sup>2</sup> Chapter 87-79, L.O.F. The short title for ch. 726, F.S., is the “Uniform Fraudulent Transfer Act.”

- While engaged, or about to engage, in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
- Intending to incur, or believing, or with reasonably believing that he or she would incur debts beyond his or her ability to pay as they became due.<sup>3</sup>

For present creditors only, s. 726.106(1), F.S., provides that a transfer made or an obligation incurred by a debtor is fraudulent if the debtor made the transfer or incurred the obligation without receiving reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent or became insolvent because of the transfer or obligation.

For the fraudulent transfers described above, the FUFTA provides a statutory remedy for creditors primarily through a “clawback” action in which a creditor may have a debtor’s transfer or obligation voided and surrendered back to the creditor.<sup>4</sup> Clawback actions under the FUFTA are permitted in federal district and bankruptcy courts to allow receivers to bring suits “against Ponzi scheme investors to the extent that the investors have received payments in excess of the amounts invested and those payments are avoidable as fraudulent transfers.”<sup>5</sup> This remedy is subject to a 4-year statute of limitations, unless otherwise specified in s. 726.110, F.S.<sup>6</sup>

The FUFTA also provides protections for an innocent third party transferee. A transfer from a debtor is not voidable when the transferee is “a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee . . . .”<sup>7</sup> In addition to this “good faith and value” exception, in 2013, the Legislature amended the FUFTA to add specific protections for transfers received by charitable organizations, which generally do not give value in exchange for contributions and thus would not qualify for the “good faith and value” exception.<sup>8</sup>

The 2013 law protects charitable contributions that would otherwise be considered fraudulent transfers under s. 726.105(1)(b), F.S. The protections provided under the 2013 law do not apply if the charitable transfer occurred in the 2 years preceding commencement of a clawback action, insolvency proceedings, or a petition for bankruptcy, unless the transfer was consistent with the debtor’s charitable contribution practices or the transfer was received in good faith and the contribution amount did not exceed 15 percent of the debtors gross annual income.<sup>9</sup>

The 2013 law did not include protections for charitable contributions that would otherwise be considered fraudulent transfers under s. 726.106(1), F.S. As a result of the 2013 law, a charitable organization is protected against a clawback action under FUFTA for transfers under s. 726.105(1)(b), F.S., but is not protected against a clawback action for similar transfers under s. 726.106(1), F.S.

---

<sup>3</sup> Section 726.105, F.S.

<sup>4</sup> See s. 726.108, F.S.

<sup>5</sup> *Wiand v. Dancing \$, LLC*, 919 F. Supp. 2d 1296, 1300 (M.D. Fla. 2013).

<sup>6</sup> Section 726.110, F.S.

<sup>7</sup> Section 726.109(1), F.S.

<sup>8</sup> Chapter 2013-189, L.O.F.; s. 726.109(7), F.S.

<sup>9</sup> Section 726.109(7)(b), F.S.

## Federal Bankruptcy Code

Like the FUFTA, the Federal Bankruptcy Code<sup>10</sup> (bankruptcy code) allows certain fraudulent transfers made by a debtor to be voided. However, unlike the FUFTA, which relies on individual creditors to bring actions to void the transfer, the code empowers the bankruptcy trustee to bring the action to void the fraudulent transfers for the benefit of all the debtor's creditors.

Section 548 of the bankruptcy code deals exclusively with fraudulent transfers and allows a bankruptcy trustee to void fraudulent transactions.<sup>11</sup> The elements that must be established to void a fraudulent transfer under this provision are substantially similar to those that are required under the FUFTA. Section 548 also parallels the innocent transferee protections in the FUFTA by providing a "good faith and value" defense that is nearly identical to the defense provided by the FUFTA and that is available to a transferee that takes in good faith for reasonably equivalent value.<sup>12</sup> Additionally, like the 2013 amendment to the FUFTA, the bankruptcy code also provides that a transfer or contribution to a charitable or religious organization is not voidable as a fraudulent transfer, even if it does not meet the "good faith and value" defense.<sup>13</sup>

Unlike the FUFTA, however, the charitable transfer exemption under the bankruptcy code encompasses transfers identical to those identified in s. 726.106(1), F.S., in which the debtor did not receive reasonably equivalent value in exchange for the transfer and the debtor was insolvent at the time of the transfer or became insolvent because of the transfer.<sup>14</sup> Consequently, the bankruptcy code affords broader protections to charitable organizations against clawback actions than the FUFTA.

### III. Effect of Proposed Changes:

Section 726.106(1), F.S., identifies a fraudulent transfer as one in which the debtor made the transfer without receiving equivalent value in exchange for the transfer and the debtor was insolvent at the time or the debtor became insolvent due to the transfer.

**Section 1** amends s. 726.109, F.S., to expand the exemption for charitable contributions received by a qualified religious or charitable entity in good faith to include otherwise fraudulent transfers under s. 726.106(1), F.S. This addition makes the charitable contribution exemption under the FUFTA the same as that provided under the bankruptcy code.

A charitable contribution may still be subject to a clawback action if it is received within 2 years of the commencement of an action under the FUFTA, a bankruptcy petition, or an insolvency proceeding, unless the transfer was consistent with the debtor's practices in making charitable contributions or the transfer did not exceed 15 percent of the debtor's gross annual income.

**Section 2** provides that the act will take effect upon becoming law.

---

<sup>10</sup> 11 U.S.C. s. 101 et. seq.

<sup>11</sup> 11 U.S.C. s. 548(a)(1).

<sup>12</sup> 11 U.S.C. s. 548(c); *see* s. 726.109(1), F.S.

<sup>13</sup> 11 U.S.C. s. 548(a)(2); *see* s. 726.109(7), F.S.

<sup>14</sup> *Id.*

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Under the bill, creditors would not be able to void certain fraudulent transfers that they currently are able to void under the FUFTA. Thus, fewer assets may be available to make creditors whole in certain circumstances. However, charities may feel more secure about contributions they receive.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 726.109 of the Florida Statutes.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---

By Senator Detert

28-01257-14

2014856\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

A bill to be entitled

An act relating to the Uniform Fraudulent Transfer Act; amending s. 726.109, F.S.; providing that certain transfers of charitable contributions to charitable or religious organizations are exempt from s. 726.106(1), F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (7) of section 726.109, Florida Statutes, is amended to read:

726.109 Defenses, liability, and protection of transferee.—

(7) (a) The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer under s. 726.105(1) (b) or s. 726.106(1).

Section 2. This act shall take effect upon becoming a law.



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

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

---

Prepared By: The Professional Staff of the Committee on Banking and Insurance

---

BILL: CS/SB 1300

INTRODUCER: Banking and Insurance Committee and Senator Simmons

SUBJECT: Public Records/Office of Insurance Regulation

DATE: March 13, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			GO	
3.			RC	

---

**I. Summary:**

CS/SB 1300, which is linked to CS/SB 1308, a bill relating to insurer solvency, creates a public records exemption to incorporate the confidentiality elements for the Office of Insurance Regulation (OIR) to meet the National Association of Insurance Commissioners' accreditation standards. The bill provides that proprietary business information held by the OIR in accordance with its statutory duties relating to insurer solvency is confidential and exempt from public record requirements. Proprietary business information includes information contained in specified reports, such as an actuarial opinion summary, enterprise risk reports, and principle-based valuation reports. The bill specifies circumstances under which such confidential and exempt information may be disclosed.

The effective date of the bill is October 1, 2014. The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act.

Because the bill creates a public meeting exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

**II. Present Situation:**

**Public Records Laws**

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

---

<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption is created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>10</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>11</sup> The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>12</sup>

### **Office of Insurance Regulation**

The Office of Insurance Regulation (OIR) reports to the Financial Services Commission (commission), which is composed of the Governor and Cabinet members. The OIR is

---

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

responsible for activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the Insurance Code or ch. 636, F.S.<sup>13</sup>

### **National Association of Insurance Commissioners**

The OIR is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization's accreditation program. NAIC accreditation is a certification that a state insurance regulator is fulfilling legal, regulatory, and organizational oversight standards and practices. Once accredited, a member state is subject to a full accreditation review every 5 years.

### **Public Records Exemptions and the Insurance Code**

The Insurance Code currently provides a number of public records exemptions relating to insurance-related information, including trade secret documents,<sup>14</sup> risk-based capital information,<sup>15</sup> information related to orders of supervision,<sup>16</sup> and personal consumer and personal financial information.<sup>17</sup>

Section 624.319, F.S., provides that the OIR's examination and investigation reports and workpapers are confidential during the pendency of an examination or investigation. The exemption allows the OIR to share this information with other governmental entities (if disclosure is necessary for the receiving entity to perform its duties and responsibilities) and with the NAIC.

While there is no general statutory exemption for information claimed to be proprietary business information, the Legislature has created a number of exemptions from ch. 119, F.S., for proprietary business information held by certain agencies. Generally, this term is defined by the statute creating the exemption and frequently includes trade secrets. Currently, the Insurance Code contains a specific exemption relating to "proprietary business information" held by the OIR, but it relates only to such information provided by a title insurance agency or insurer.<sup>18</sup>

### **Insurer Solvency**

The NAIC periodically reviews its solvency standards as set forth in its model acts, and revises accreditation requirements to adapt to evolving industry standards. The OIR has identified several model act components not currently included in the Insurance Code that need to be

---

<sup>13</sup> See s. 20.121(3)(a)1., F.S.

<sup>14</sup> Section 624.4213, F.S. Even in the absence of a statutory exemption for particular trade secrets, s. 815.045, F.S., "should be read to exempt from disclosure as public records *all* trade secrets [as defined in s. 812.081(1)(c), F.S.]." *Sepro Corp. v. Florida Dep't of Environmental Protection*, 911 So.2d 792 (Fla. 1st DCA 2003), *review denied sub nom.*

<sup>15</sup> Section 624.40851, F.S.

<sup>16</sup> Section 624.82, F.S.

<sup>17</sup> Section 624.23, F.S.

<sup>18</sup> Section 626.94195, F.S.

implemented for a state regulator to maintain its accreditation. The linked bill, CS/SB 1308, implements the following NAIC models, which include confidentiality requirements:

### ***NAIC Property and Casualty Actuarial Opinion Model Law***

Current law requires insurers (except those providing life insurance and title insurance) to provide to the OIR a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialists, and supporting workpapers. Current law treats these documents as public records.<sup>19</sup> The NAIC model law provides that states must require insurers to provide actuarial opinion summaries and that the regulators must keep these summaries confidential.

### ***Insurance Holding Company System Regulatory Model Act and the Insurance Holding Company Model Regulation***

In response to the recent financial crisis, a NAIC workgroup focused on group supervision issues in the context of large insurers and their affiliates in their respective holding companies. The workgroup noted the corresponding regulatory need to enhance insurance regulators' ability to obtain and evaluate financial information from affiliates, especially regarding "enterprise risk."<sup>20</sup> The NAIC model act, which is codified in CS/SB 1308, provides the OIR with access to information of an insurer and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party. In adopting the model act, CS/SB 1308, also makes the following changes that are relevant to the public records exemption created by this bill:

- Requires persons seeking a controlling interest in an insurer or controlling company to file an annual enterprise risk report with the OIR.
- Provides that a controlling person of a domestic insurer may divest its controlling interest by providing notice to the OIR.
- Provides for the OIR's participation in a supervisory college, as the NAIC has also made establishment and participation in supervisory colleges an accreditation standard.

### **Insurance Valuation and Reserves**

The linked bill, CS/SB 1308, prescribes the adoption of the NAIC Valuation Manual as the authoritative source for determining reserves and implementing principle-based reserves for specified insurance products. Life insurance contracts, accident and health contracts, and deposit-type policies are subject to the valuation manual. Initially, principle based reserves would apply to term life insurance and universal life products with a secondary guarantee (also known as no-lapse guarantee). The bill requires the implementation of the Valuation Manual for policies issued on or after the operative date of the valuation manual. The Valuation Manual requires insurers to submit to the OIR various documents and reports, including, experience reporting, actuarial opinions, memorandums, and principle-based reports.

---

<sup>19</sup> Section 624.424, F.S.

<sup>20</sup> Enterprise risk is "any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedies promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance company as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital as set forth in [state statutory requirement] or would cause the insurer to be in a hazardous financial condition." Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.

### III. Effect of Proposed Changes:

This bill, which is linked to CS/SB 1308, creates a public records exemption to incorporate the necessary confidentiality elements for the OIR to meet the NAIC's accreditation standards.

The bill provides that proprietary business information held by the OIR in accordance with its statutory duties relating to insurer solvency is confidential and exempt from s. 119/07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill defines "proprietary business information" to mean information owned or controlled by an insurer, or a person or affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and:

- Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
- Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and includes, but is not limited to:
  - Trade secrets as defined in the Uniform Trade Secrets Act<sup>21</sup> that comply with the Insurance Code's trade secret document marking requirements.
  - Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
  - The source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.
  - Information relating to bids or other contractual data, the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms.
  - Internal auditing controls and reports of internal auditors.

The bill also provides that proprietary business information contained in the following items held by the OIR is confidential and exempt:

- The actuarial opinion summary required under s. 624.424(1)(b), F.S., and the documents, material, and other related information.
- A notice filed with the OIR by the person or affiliated person who seeks to divest controlling stock in an insurer.
- The insurers' annual registration statement, which is required by CS/SB 1308 and all documents, materials, and other related information.
- The enterprise risk report required by CS/SB 1308 and the documents, materials, and other information related to the enterprise risk report.
- Information provided to or obtained by the OIR pursuant to participation in a supervisory college, created by CS/SB 1308.

---

<sup>21</sup> Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that: derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The bill provides that, on or after the operative date of the Valuation Manual, the following items are confidential and exempt:

- An actuarial examination conducted pursuant to s. 625.1212(5)(c), F.S., and related information;
- The annual certification submitted by the insurer pursuant to s. 625.1212(6)(b)2, F.S., and related information;
- The principle-based valuation report filed pursuant to s. 625.1212(6)(b)3, F.S., and related information; and
- Mortality, morbidity, policyholder behavior, or expense experience and other data submitted pursuant to s. 625.1212(7), F.S., which includes potentially company-identifiable or personally identifiable information.

The bill provides that information received from another governmental entity or the NAIC, which is confidential or exempt if held by that entity and is held by the OIR for the use in the OIR's performance of its official duties, is also confidential and exempt.

The bill authorizes the OIR to disclose the confidential and exempt proprietary business information in the following circumstances:

- If the insurer to which it pertains gives prior written consent;
- Pursuant to a court order;
- To the American Academy of Actuaries upon a request stating the information is for the purpose of professional disciplinary proceedings and specifying procedures satisfactory to the OIR for preserving the confidentiality of the information;
- To other states, federal and international agencies, NAIC, and state, federal, and international law enforcement authorities, including members of a supervisory college, if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality; or
- For the purpose of aggregating information on an industry wide basis and disclosing the information to the public only if the specific identities of the insurers, or persons or affiliated persons, are not revealed.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, unless reviewed and reenacted by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution. The bill will take effect October 1, 2014, if CS/SB 1308 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

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

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

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

Section 24(c), Art. I of the Florida Constitution requires a newly created public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill creates a new public records exemption; therefore, it requires a two-thirds vote for final passage.

Section 24(c), Art. I of the Florida Constitution requires a law creating a new public records exemption to contain a public necessity statement justifying the exemption. This bill creates a new public records exemption; therefore, it contains a public necessity statement.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The public records exemption created by the bill may have an indeterminate positive impact on the private sector by protecting insurers' proprietary business information.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 624.4212 of the Florida Statutes.

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

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

**CS by Banking and Insurance on March 11, 2014:**

The CS expands the public records exemption to incorporate additional proprietary

information contained in reports and documents, relating to the Standard Valuation Law provisions of the linked bill, CS/SB 1308.

**B. Amendments:**

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---





717024

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 624.4212, Florida Statutes, is created  
to read:

624.4212 Confidentiality of proprietary business and other  
information.—

(1) As used in this section, the term "proprietary business  
information" means information, regardless of form or



717024

11 characteristics, which is owned or controlled by an insurer, or  
12 a person or an affiliated person who seeks acquisition of  
13 controlling stock in a domestic stock insurer or controlling  
14 company, and which:

15 (a) Is intended to be and is treated by the insurer or the  
16 person as private in that the disclosure of the information  
17 would cause harm to the insurer, the person, or the company's  
18 business operations and that the information has not been  
19 disclosed unless disclosed pursuant to a statutory requirement,  
20 an order of a court or administrative body, or a private  
21 agreement that provides that the information will not be  
22 released to the public;

23 (b) Is not otherwise readily ascertainable or publicly  
24 available by proper means by other persons from another source  
25 in the same configuration as requested by the office; and

26 (c) Includes, but is not limited to:

27 1. Trade secrets as defined in s. 688.002 which comply with  
28 s. 624.4213.

29 2. Information relating to competitive interests, the  
30 disclosure of which would impair the competitive business of the  
31 provider of the information.

32 3. The source, nature, and amount of the consideration used  
33 or to be used in carrying out a merger or other acquisition of  
34 control in the ordinary course of business, including the  
35 identity of the lender, if the person filing a statement  
36 regarding consideration so requests.

37 4. Information relating to bids or other contractual data,  
38 the disclosure of which would impair the efforts of the insurer  
39 or its affiliates to contract for goods or services on favorable



717024

40 terms.  
41 5. Internal auditing controls and reports of internal  
42 auditors.  
43 (2) Proprietary business information contained in the  
44 following items held by the office is confidential and exempt  
45 from s. 119.07(1) and s. 24(a), Art. I of the State  
46 Constitution:  
47 1. The actuarial opinion summary required under ss.  
48 624.424(1)(b) and 625.121(3) and information related thereto.  
49 2. A notice filed with the office by the person or  
50 affiliated person who seeks to divest controlling stock in an  
51 insurer pursuant to s. 628.461.  
52 3. The filings required under s. 628.801 and information  
53 related thereto.  
54 4. The enterprise risk report required under ss. 628.461(3)  
55 and 628.801 and information related thereto.  
56 5. Information provided to or obtained by the office  
57 pursuant to participation in a supervisory college established  
58 under s. 628.805.  
59 6. Beginning on the operative date of the valuation manual  
60 as defined in s. 625.1212(2):  
61 a. An actuarial examination conducted pursuant to s.  
62 625.1212(5)(c), and information related thereto;  
63 b. The annual certification submitted by the insurer  
64 pursuant to s. 625.1212(6)(b)2., and information related  
65 thereto;  
66 c. The principle-based valuation report filed pursuant to  
67 s. 625.1212(6)(b)3., and information related thereto; and  
68 d. Mortality, morbidity, policyholder behavior, or expense



717024

69 experience and other data submitted pursuant to s. 625.1212(7),  
70 which includes potentially company-identifiable or personally  
71 identifiable information.

72 (3) Information received from the NAIC or another  
73 governmental entity in this or another state, the Federal  
74 Government, or another nation which is confidential or exempt if  
75 held by that entity and which is held by the office for use in  
76 the office's performance of its duties relating to insurer  
77 valuation and solvency is confidential and exempt from s.  
78 119.07(1) and s. 24(a), Art. I of the State Constitution.

79 (4) The office may disclose information made confidential  
80 and exempt under this section:

81 (a) If the insurer to which it pertains gives prior written  
82 consent;

83 (b) Pursuant to a court order;

84 (c) To the American Academy of Actuaries upon a request  
85 stating that the information is for the purpose of professional  
86 disciplinary proceedings and specifying procedures satisfactory  
87 to the office for preserving the confidentiality of the  
88 information;

89 (d) To other states, federal and international agencies,  
90 the National Association of Insurance Commissioners and its  
91 affiliates and subsidiaries, and state, federal, and  
92 international law enforcement authorities, including members of  
93 a supervisory college described in s. 628.805 if the recipient  
94 agrees in writing to maintain the confidential and exempt status  
95 of the document, material, or other information and has  
96 certified in writing its legal authority to maintain such  
97 confidentiality; or



717024

98           (e) For the purpose of aggregating information on an  
99 industrywide basis and disclosing the information to the public  
100 only if the specific identities of the insurers, or persons or  
101 affiliated persons, are not revealed.

102           (5) This section is subject to the Open Government Sunset  
103 Review Act in accordance with s. 119.15 and is repealed on  
104 October 2, 2019, unless reviewed and saved from repeal through  
105 reenactment by the Legislature.

106           Section 2. (1) The Legislature finds that it is a public  
107 necessity that proprietary business information that is provided  
108 to the Office of Insurance Regulation by an insurer or by an  
109 acquiring party pursuant to the Florida Insurance Code or the  
110 Holding Company System Regulatory Act of the National  
111 Association of Insurance Commissioners in order for the office  
112 to conduct its regulatory duties with respect to insurer  
113 valuation and solvency, be made confidential and exempt from s.  
114 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
115 State Constitution. The disclosure of such information could  
116 injure an insurer in the marketplace by providing its  
117 competitors with detailed insight into the reserve assumptions  
118 and strategies, modeling methodologies, business plans, pricing  
119 and marketing strategies, management systems and operational  
120 protocols, and financial status of the insurer, thereby  
121 diminishing the advantage that the insurer maintains over  
122 competitors that do not possess such information. Without this  
123 exemption, an insurer or an acquiring party might refrain from  
124 providing accurate and unbiased data, thus impairing the  
125 office's ability to accurately evaluate the propriety of  
126 proposed acquisitions in the state and the financial condition



717024

127 of insurers and their affiliates. Proprietary business  
128 information derives actual or potential independent economic  
129 value from not being generally known to, and not being readily  
130 ascertainable by proper means by, other persons who can derive  
131 economic value from its disclosure or use. The office, in  
132 performing its duties and responsibilities, may need to obtain  
133 proprietary business information from insurers and regulated  
134 entities. Without an exemption from public records requirements  
135 for proprietary business information provided to the office,  
136 such information becomes a public record when received and must  
137 be divulged upon request. Divulgence of proprietary business  
138 information under the public records law would destroy the value  
139 of that property to the proprietor, causing a financial loss not  
140 only to the proprietor but also to the residents of this state  
141 due to the loss of reliable financial data necessary for the  
142 accurate evaluation of proposed acquisitions. Release of  
143 proprietary business information would give business competitors  
144 an unfair advantage and weaken the position in the marketplace  
145 of the proprietor who owns or controls the business information.

146 (2) The Legislature also finds that it is a public  
147 necessity that information received by the office from the  
148 National Association of Insurance Commissioners, or from an  
149 agency in this or another state or nation or the Federal  
150 Government, which is otherwise exempt or confidential pursuant  
151 to the laws of this or another state or nation or pursuant to  
152 federal law or which is confidential or exempt if held by that  
153 entity, for use by the office in the performance of duties  
154 related to insurer valuation and solvency under the Florida  
155 Insurance Code, be made confidential and exempt from s.



717024

156 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
157 State Constitution. Divulgence of such information could impede  
158 the exchange of information and communication among regulators  
159 across multiple agencies and jurisdictions and jeopardize the  
160 ability of regulators to effectively supervise insurers and  
161 groups operating in multiple jurisdictions and engaged in  
162 significant cross-border activities.

163 Section 3. This act shall take effect October 1, 2014, if  
164 SB 1308 or similar legislation is adopted in the same  
165 legislative session or an extension thereof and becomes a law.

166  
167 ===== T I T L E A M E N D M E N T =====

168 And the title is amended as follows:

169 Delete everything before the enacting clause  
170 and insert:

171 A bill to be entitled  
172 An act relating to public records; creating s.  
173 624.4212, F.S.; defining the term "proprietary  
174 business information"; creating an exemption from  
175 public records requirements for proprietary business  
176 information and information that is confidential when  
177 held by another entity in this state, the Federal  
178 Government, or another state or nation, and which is  
179 held by the Office of Insurance Regulation; providing  
180 exceptions; providing for future legislative review  
181 and repeal; providing a statement of public necessity;  
182 providing a contingent effective date.

By Senator Simmons

10-01164-14

20141300\_\_

1 A bill to be entitled  
 2 An act relating to public records; creating s.  
 3 624.4212, F.S.; creating an exemption from public  
 4 records requirements for proprietary business  
 5 information submitted to the Office of Insurance  
 6 Regulation; defining the term "proprietary business  
 7 information"; providing exceptions; providing for  
 8 future legislative review and repeal; providing a  
 9 statement of public necessity; providing a contingent  
 10 effective date.

11 Be It Enacted by the Legislature of the State of Florida:

12 Section 1. Section 624.4212, Florida Statutes, is created  
 13 to read:

14 624.4212 Confidentiality of proprietary business  
 15 information.—Proprietary business information held by the Office  
 16 of Insurance Regulation in accordance with its statutory duties  
 17 with respect to insurer solvency is confidential and exempt from  
 18 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

19 (1) As used in this section, the term "proprietary business  
 20 information" means information, regardless of form or  
 21 characteristics, which is owned or controlled by an insurer, or  
 22 a person or an affiliated person who seeks acquisition of  
 23 controlling stock in a domestic stock insurer or controlling  
 24 company, and which:

25 (a) Is intended to be and is treated by the insurer or the  
 26 person as private in that the disclosure of the information  
 27 would cause harm to the insurer, the person, or the company's  
 28

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01164-14

20141300\_\_

30 business operations and has not been disclosed unless disclosed  
 31 pursuant to a statutory requirement, an order of a court or  
 32 administrative body, or a private agreement that provides that  
 33 the information will not be released to the public;

34 (b) Is not otherwise readily ascertainable or publicly  
 35 available by proper means by other persons from another source  
 36 in the same configuration as requested by the office; and

37 (c) Includes, but is not limited to:

38 1. Trade secrets as defined in s. 688.002 which comply with  
 39 s. 624.4213.

40 2. Information relating to competitive interests the  
 41 disclosure of which would impair the competitive business of the  
 42 provider of the information.

43 3. The source, nature, and amount of the consideration used  
 44 or to be used in carrying out a merger or other acquisition of  
 45 control in the ordinary course of business, including the  
 46 identity of the lender, if the person filing a statement  
 47 regarding consideration so requests.

48 4. Information relating to bids or other contractual data  
 49 the disclosure of which would impair the efforts of the insurer  
 50 or its affiliates to contract for goods or services on favorable  
 51 terms.

52 5. Internal auditing controls and reports of internal  
 53 auditors.

54 6. The actuarial opinion summary required under ss.  
 55 624.424(1)(b) and 625.121(3) and the documents, materials, and  
 56 other information related thereto.

57 7. A notice filed with the office by the person or  
 58 affiliated person who seeks to divest controlling stock in an

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



10-01164-14

20141300\_\_

59 insurer pursuant to s. 628.461.

60 8. The filings required under s. 628.801 and all documents,  
61 materials, and other information related thereto.

62 9. The enterprise risk report required under ss. 628.461(3)  
63 and 628.801 and the documents, materials, and other information  
64 related to the enterprise risk report.

65 10. Information provided to or obtained by the office  
66 pursuant to participation in a supervisory college established  
67 under s. 628.805.

68 11. Information received from another governmental entity  
69 or the National Association of Insurance Commissioners which is  
70 confidential or exempt if held by that entity for use by the  
71 office in the office's performance of its duties.

72 (2) The office may disclose confidential and exempt  
73 proprietary business information:

74 (a) If the insurer to which it pertains gives prior written  
75 consent;

76 (b) Pursuant to a court order;

77 (c) To the American Academy of Actuaries upon a request  
78 stating that the information is for the purpose of professional  
79 disciplinary proceedings and specifying procedures satisfactory  
80 to the office for preserving the confidentiality of the  
81 information;

82 (d) To other states, federal and international agencies,  
83 the National Association of Insurance Commissioners and its  
84 affiliates and subsidiaries, and state, federal, and  
85 international law enforcement authorities, including members of  
86 a supervisory college described in s. 628.805 if the recipient  
87 agrees in writing to maintain the confidential and exempt status

10-01164-14

20141300\_\_

88 of the document, material, or other information, and has  
89 verified in writing its legal authority to maintain such  
90 confidentiality; or

91 (e) For the purpose of aggregating information on an  
92 industrywide basis and disclosing the information to the public  
93 only if the specific identities of the insurers, or persons or  
94 affiliated persons, are not revealed.

95 (3) This section is subject to the Open Government Sunset  
96 Review Act in accordance with s. 119.15 and shall stand repealed  
97 on October 2, 2019, unless reviewed and saved from repeal  
98 through reenactment by the Legislature.

99 Section 2. The Legislature finds that it is a public  
100 necessity that proprietary business information that is provided  
101 to the Office of Insurance Regulation by an insurer or acquiring  
102 party pursuant to the requirements of the Florida Insurance Code  
103 or the Holding Company System Regulatory Act of the National  
104 Association of Insurance Commissioners in order for the office  
105 to conduct its regulatory duties with respect to insurer  
106 solvency, be made confidential and exempt from s. 119.07(1),  
107 Florida Statutes, and s. 24(a), Article I of the State  
108 Constitution. The disclosure of such information could injure an  
109 insurer in the marketplace by providing its competitors with  
110 detailed insight into the financial status and strategic plans  
111 of the insurer, thereby diminishing the advantage that the  
112 insurer maintains over competitors that do not possess such  
113 information. Without this exemption, an insurer or acquiring  
114 party might refrain from providing accurate and unbiased data,  
115 thus impairing the office's ability to accurately evaluate the  
116 propriety of proposed acquisitions in the state, and the

10-01164-14

20141300\_\_

117 financial condition of insurers and their affiliates.  
118 Proprietary business information derives actual or potential  
119 independent economic value from not being generally known to,  
120 and not being readily ascertainable by proper means by, other  
121 persons who can derive economic value from its disclosure or  
122 use. The office, in performing its duties and responsibilities,  
123 may need to obtain proprietary business information from  
124 insurers and regulated entities. Without an exemption from  
125 public records requirements for proprietary business information  
126 provided to the office, such information becomes a public record  
127 when received and must be divulged upon request. Divulgence of  
128 proprietary business information under the public records law  
129 would destroy the value of that property to the proprietor,  
130 causing a financial loss not only to the proprietor but also to  
131 the residents of this state due to the loss of reliable  
132 financial data necessary for the accurate evaluation of proposed  
133 acquisitions. Release of proprietary business information would  
134 give business competitors an unfair advantage and weaken the  
135 position in the marketplace of the proprietor who owns or  
136 controls the business information. The harm to insurers in the  
137 marketplace and to the effective administration of acquisitions  
138 caused by the public disclosure of such information far  
139 outweighs the public benefits derived from its release.

140 Section 3. This act shall take effect October 1, 2014, if  
141 SB \_\_\_\_ or similar legislation is adopted in the same  
142 legislative session or an extension thereof and becomes a law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-11  
Meeting Date

Topic INSURER SOLVENCY

Bill Number 1300  
*(if applicable)*

Name Monte Stevens

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title ~~STAFF~~ DEP. CHIEF of Staff

Address 200 E. GAINES ST  
Street

Phone Monte.Stevens@flor.gov

TALLY FL 32399  
City State Zip

E-mail 413-5005

Speaking:  For  Against  Information

Representing OIR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

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

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

---

Prepared By: The Professional Staff of the Committee on Banking and Insurance

---

BILL: CS/SB 1308

INTRODUCER: Banking and Insurance Committee and Senator Simmons

SUBJECT: Insurer Solvency

DATE: March 12, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			JU	
3.			RC	

---

**I. Summary:**

CS/SB 1308 revises provisions within the Insurance Code relating to solvency requirements and regulatory oversight of insurers by the Office of Insurance Regulation (OIR). The bill incorporates provisions of model acts of the National Association of Insurance Commissioners (NAIC) and additional recommendations of the OIR. Some of the NAIC provisions in the bill are in response to the 2008 financial crisis and the globalization of the insurance market and are intended to enhance the regulation of insurers as well as their affiliated entities and provide more solvency tools for evaluating risks within insurance groups. The bill:

- Authorizes the OIR to implement principle-based reserving for life insurers, which would allow life insurers to calculate reserves that would reflect current mortality rates, the life insurer's business model, and its particular risk profile.
- Requires persons that acquire controlling interests to disclose enterprise risk, and requires that ultimate controlling persons must file an annual enterprise risk report with the OIR that identifies material risk within the insurance company holding company system that could pose a risk or have a material adverse effect upon the insurer.
- Provides that a presumption of control may be rebutted by filing a disclaimer of control on a form prescribed by the OIR or by providing a copy of a Schedule 13G on file with the Securities and Exchange Commission. After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless the OIR disallows the disclaimer.
- Incorporates a risk-based capital trend test for life and health as well as property and casualty insurers and requires health maintenance organizations and prepaid limited health service organizations to file risk-based capital reports.
- Requires insurers to file actuarial opinion summaries and supporting workpapers annually and the bill provides a privilege for memoranda supporting actuarial opinions on reserves, actuarial opinion summaries and related information and provides for confidentiality of enterprise risk reports, actuarial opinion summaries, and other information.

- Authorizes the OIR to impose sanctions for noncompliance with the requirements of s. 628.461, F.S., and s. 628.801, F.S.
- Allows the OIR to participate in supervisory colleges with other regulators for the regulation of any domestic insurer that is part of an insurance holding company system with international operations.

## II. Present Situation:

States primarily regulate insurance companies. The state of domicile serves as the primary regulator for insurers. Solvency regulation is designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. The OIR<sup>1</sup> is primarily responsible for monitoring the solvency of regulated insurers and examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. Solvency regulation includes the requirements for starting and operating an insurance company,<sup>2</sup> monitoring the financial condition of insurers through examinations and audits, and procedures for the administrative supervision,<sup>3</sup> rehabilitation,<sup>4</sup> or liquidation<sup>5</sup> of an insurance company if it is in unsound financial condition or insolvent.

### NAIC Model Acts

The National Association of Insurance Commissioners (NAIC) is a voluntary association of insurance regulators from all 50 states. The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. The NAIC accreditation is a certification that legal, financial, and organizational standards are being fulfilled by the OIR. The NAIC establishes accreditation effective dates for states to adopt in substantially similar form models and acts for purposes of NAIC accreditation review. As a member of the NAIC, the OIR is required to participate in the Financial Regulation Standards and Accreditation Program. The OIR has identified model provisions or updates that need to be incorporated in the current Insurance Code for accreditation purposes. Updates to the Insurance Code relating to the Property and Casualty Trend Test of the Risk-Based Capital Model Act and the Property and Casualty Actuarial Opinion Model Law are necessary since the accreditation effective dates for these provisions were January 1, 2012, and January 1, 2010, respectively. In addition, two other NAIC model acts, Risk-Based Capital for Health Organizations and the Life Trend Test of the Risk Based Capital Model Act are necessary for accreditation effective January 1, 2015, and January 1, 2017, respectively. The accreditation effective date for amendments to the Insurance Holding Company System Regulatory Act is January 1, 2016.

---

<sup>1</sup> Section 20.121(3)(a), F.S.

<sup>2</sup> Sections 624.411 - 624.414, F.S.

<sup>3</sup> Administrative supervision allows the Department of Financial Services (DFS) to supervise the management of a consenting troubled insurance company in an attempt to cure the company's troubles rather than close it down.

<sup>4</sup> In rehabilitation, the DFS is authorized as receiver to conduct all business of the insurer in an attempt to place the insurance company back in sound financial condition.

<sup>5</sup> In liquidation, the DFS is authorized as receiver to gather the insurance company's assets, convert them to cash, distribute them to various claimants, and shut down the company.

### ***Model Holding Company Act and Regulation***

The NAIC has adopted amendments to its Insurance Holding Company System Regulatory Model Act and the Insurance Holding Company Model Regulation with Reporting Forms and Instructions. In light of the recent financial crisis, the NAIC, insurance regulators, and other stakeholders reviewed the potential impact of non-insurance operations on insurance companies in the same group to determine the best methods to evaluate the risks and activities of entities within a holding company system. The revised model act adds the concept of “enterprise risk” and requires controlled insurers to file a new annual form (Form F) detailing specified matters relating to the holding company group. The NAIC model act defines “enterprise risk” as:

[A]ny activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance company as a whole, including, but not limited to, anything that would cause the insurer’s risk-based capital as set forth in [state requirement] or would cause the insurer to be in a hazardous financial condition.<sup>6</sup>

Amendments to the model act also address divestitures. Prior to the amendments to the model act, a person could divest control of an insurer without prior regulatory review as long as no single acquirer obtained control of 10 percent or more of the outstanding voting shares. Amendments to the model act generally require a person divesting control over an insurer to provide 30 days’ prior notice to the regulator.

The revised model act also provides insurance regulators access to information of an insurer and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party. The regulator may require any insurer registered as a controlled insurer to produce information not in the possession of the insurer if the insurer can obtain access to such. If the insurer fails to obtain the requested information, the insurer is required to provide an explanation of such failure. If the regulator determines that the explanation is without merit, the regulator may require the insurer to pay a penalty for each day’s delay, or may suspend or revoke the insurer’s certificate of authority.<sup>7</sup>

The amendments to the model acts also authorize a regulator to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance. Insurers would pay for expenses associated with the insurance regulator’s participation in a supervisory college. State, federal, and international regulators may participate in the supervision of the insurer or its affiliates.<sup>8</sup> According to the NAIC Center for Insurance Policy & Research, “a supervisory college is a meeting of insurance regulators or supervisors where the topic of discussion is regulatory oversight of one specific insurance group that is writing significant amounts of insurance in other jurisdictions.”<sup>9</sup> Supervisory colleges facilitate oversight of internationally active insurance

---

<sup>6</sup> Section 1F of the NAIC Insurance Holding Company System Regulatory Act.

<sup>7</sup> Section 6B of the NAIC Insurance Holding Company System Regulatory Act.

<sup>8</sup> Section 7 of the NAIC Insurance Holding Company System Regulatory Act.

<sup>9</sup> “Supervisory Colleges: A Regulatory Tool for Enhancing Supervisory Cooperation and Coordination,” at [http://www.naic.org/cipr\\_newsletter\\_archive/vol4\\_supervisory\\_colleges.htm](http://www.naic.org/cipr_newsletter_archive/vol4_supervisory_colleges.htm) (last visited on March 9, 2014).

companies at the group level and promote regulatory information sharing, subject to applicable confidentiality agreements.<sup>10</sup>

### ***Risk-Based Capital for Insurers and Health Organizations***

Risk-based capital (RBC) is a capital adequacy standard that represents the amount of required capital that an insurer must maintain, based on the inherent risks in the insurer's operations. It is determined by a formula that considers various risks depending on the type of insurer (e.g., subsidiary insurance companies, fixed income, equity, credit, reserves, and net written premium). The RBC standard provides a safety net for insurers, is uniform among states, and provides state insurance regulators with authority for timely corrective action.<sup>11</sup> The NAIC's *Risk-Based Capital for Insurers Model Act* provides that states must require both life and health and property and casualty insurers to submit RBC filings with their regulators. Presently, this requirement is incorporated in the Insurance Code; however, it does not apply to health maintenance organizations (HMOs) and prepaid limited health service organizations.<sup>12</sup> Prepaid limited health service organizations provide limited health services (such as dental or vision care) through an exclusive panel of providers in return for a prepayment,<sup>13</sup> and HMOs generally provide a range of health coverage with contracted providers.<sup>14</sup> The NAIC Risk-Based Capital Health Organizations Model Act will be effective as an accreditation standard beginning January 1, 2015, and applies to health maintenance organizations and prepaid limited health service organization.

In March 2006, the NAIC adopted revisions to the Risk-Based Capital for Insurers Model Act. The revisions incorporate a new Property and Casualty Trend Test for property and casualty companies. The accreditation effective date for property and casualty trend test was January 1, 2012. A statutory provision relating to a life trend test was already included in the RBC for Insurers Model Act; but the changes equalize the trigger between life and health, property, and casualty companies that prompt the need for a trend test calculation. The model was amended to cite the Property and Casualty Trend Test as a means for the company action level to be triggered.

### ***Property and Casualty Actuarial Opinion Model Law***

The NAIC Property and Casualty Actuarial Opinion Model Law specifies that states must require property and casualty insurers to submit a Statement of Actuarial Opinion, which is a public document. The model act also requires the submission of an Actuarial Opinion Summary, an Actuarial Report, and workpapers to support each actuarial opinion, which must be treated as a confidential and privileged document.

---

<sup>10</sup> NAIC on Supervisory Colleges at [http://www.naic.org/cipr\\_topics/topic\\_supervisory\\_college.htm](http://www.naic.org/cipr_topics/topic_supervisory_college.htm). (last visited on March 9, 2014). Additionally, the linked/public records bill, CS/SB 1300, provides for confidential and exempt treatment of regulatory information, including within the context of a supervisory college that is shared between insurance regulators and law enforcement, pursuant to confidentiality agreements.

<sup>11</sup> NAIC on Risk-Based Capital at [http://www.naic.org/cipr\\_topics/topic\\_risk\\_based\\_capital.htm](http://www.naic.org/cipr_topics/topic_risk_based_capital.htm) (last visited on Mar. 9, 2014).

<sup>12</sup> Section 624.4085, F.S.

<sup>13</sup> Section 636.003(7), F.S.

<sup>14</sup> Section 641.19(12), F.S.

Current law requires insurers (except those providing life insurance and title insurance) to provide to the OIR an annual statement of its financial condition and a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialists. These insurers are also required to provide supporting work papers upon the OIR's request.<sup>15</sup> Currently, these materials are not exempt from ch. 119, F.S., relating to public records.

### ***Valuation of Life Insurance and Principle-Based Reserves***

For insurance purposes, reserves are liabilities that are reported on insurers' balance sheets for the ultimate payment of future losses and policyholder benefits. Reserves are often set using factors and rates determined by an insurer's actuary consistent with guidelines for insurance products established in state law consistent with NAIC models or laws. Reserve levels for insurers operating in the United States and offering certain life insurance and annuity products are set according to a state law, with rules-based formula that, some insurers claim, results in excessive reserves that detract from the insurer's ability to maximize the value of its capital.

Critics of the current formula-based approach to reserving for life insurance contend that it: (1) is static and too conservative; (2) fails to capture all the particularized risks inherent in increasingly complicated life insurance benefits and guaranties; and (3) does not reflect life insurers' business practices, such as the hedging of risk through derivatives use plans. However, reserves are subject to an annual analysis to verify the adequacy of reserves through different models, with additional reserves established if necessary. Many industry participants argue that redundant reserve requirements force reliance upon reinsurance captives in order to reduce excessive reserves and allow life insurers to use capital more effectively.

While the current formula-based approach to quantifying reserves uses standardized formulas, principle based reserves (PBR) relies upon an insurer's internal risk modeling and analysis techniques, including the use of insurer-specific claims experience with specific portfolios of business, to incorporate consideration of particularized risks and thereby to more closely tailor calculations to the actual attributes of insurer portfolios.

In response to concerns about reserves, the National Association of Insurance Commissioners (NAIC) revised the NAIC Standard Valuation Law (SVL) and the Standard Nonforfeiture Law to incorporate the NAIC Valuation Manual as the authoritative source for reserves and other requirements.<sup>16</sup> The revised SVL, as adopted by the NAIC, would preserve state authority to require insurers to change any assumption or method, as necessary, and authorize the regulator to engage a qualified actuary at the expense of an insurer to review compliance with the valuation manual requirements. The manual includes experience reporting, actuarial opinion and memorandum requirements, PBR reporting, and corporate governance requirements. Many of the requirements are dynamic in nature, and are responsive to fluctuations in the insurance marketplace and the economy. The requirements of the manual are applicable to life insurance contracts, accident and health contracts, and other specified contracts. Some products are not subject to PBR; however, some products, such as term life insurance policies and universal life insurance policies with a secondary guarantee<sup>17</sup> issued on or after the operative date of the

---

<sup>15</sup> Section 624.424, F.S.

<sup>16</sup> The Valuation Manual was adopted by the NAIC on December 2, 2012.

<sup>17</sup> A universal life policy with a secondary guarantee is also known as a no-lapse guarantee. The policy will not lapse if



manual would be subject to PBR once the manual is operative. The PBR method will be effective only after the SVL law revisions are adopted by at least 42 states representing 75 percent of total U.S. premium and then, after a 3-year transition period. However, insurers can implement PBR anytime during the transition period.

Under current Florida law, life insurers are required to calculate reserves for life insurance policies based on a standardized formula prescribed by the NAIC Model Standard Valuation Law (SVL) and codified in s. 625.121, F.S. The SVL incorporates mortality tables. The NAIC Standard Nonforfeiture Law establishes minimum benefit values if policies are surrendered or lapsed and is codified in s. 627.476, F.S. For purposes of the implementation of PBR, the NAIC revised the Standard Nonforfeiture Law to reference the Standard Valuation Law and the Valuation Manual as the source for mortality and interest rates used in nonforfeiture calculations. However, such changes would apply to policies issued on or after the operative date of the valuation manual. The PBR requirements do not apply to policies issued prior to the operative date of the valuation manual.

In 2013, seven states enacted PBR enabling legislation (Arizona, Indiana, Louisiana, Maine, New Hampshire, Rhode Island, and Tennessee). In 2013, Texas enacted the Standard Nonforfeiture Law revisions. Nine states have introduced PBR enabling legislation in 2014 (Hawaii, Illinois, Iowa, Mississippi, Nebraska, New Mexico, Ohio, Oklahoma, and Virginia). Five more states have drafted legislation for 2014 introduction (Connecticut, Florida, Georgia, Missouri, and West Virginia).<sup>18</sup>

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

#### **Examinations**

Section 2 amends s. 624.319, F.S., relating to examinations, to provide that the production of documents during the course of an examination or investigation does not constitute waiver of the attorney-client or work-product privileges.

#### **Captives**

Section 5 requires insurers that reinsure through a captive insurance company to file with the OIR an annual report containing certain information specific to reinsurance assumed by each captive.

#### **Risk-Based Capital for Insurers and Health Organizations (Sections 4, 15, 16, and 17)**

Section 4 amends s. 624.4085, F.S., to revise the definition of the term, "life and health insurer," for purposes of risk-based capital (RBC) requirements to include HMOs and prepaid limited health service organizations that are authorized in Florida and one or more other states, jurisdictions, or countries effective January 1, 2015. The section also clarifies the RBC requirements for a life and health insurer that reports using the life and health annual statement

---

certain conditions are met.

<sup>18</sup> American Council of Life Insurers PBR Implementation Status, February 3, 2014, (on file with Senate Banking and Insurance staff).

instructions and changes a company action level event to total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level risk-based capital and 3.0.

Effective January 1, 2015, the section also defines the RBC requirements for a life and health, as well as property and casualty, insurer that reports using the health annual statement instructions and defines a company action level event as total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level RBC and 3.0 and triggers the trend test calculation. An insurer that fails the Trend Test would be subject to filing a corrective action plan with the OIR.

Sections 15-17 provides that prepaid limited health service organizations authorized in Florida are subject to the RBC requirements and confidentiality requirements pursuant to s. 624.4085, F.S., and s. 624.40851, F.S., respectively. The bill also provides that an HMO that is authorized in one or more other states, jurisdictions, or countries is subject to the risk-based capital requirements for insurers as well as the confidentiality protections of risk-based capital information provided in s. 624.4085, F.S., and s. 624.4615, F.S., respectively. Finally, an HMO that is a member of a holding company system is subject to the acquisition and enterprise risk reporting requirements of s. 628.461, F.S., but not to the acquisition requirements for specialty insurers in s. 628.4615, F.S. These provisions are effective January 1, 2015.

### **Model Insurance Holding Company Act and Regulation (Sections 1, 3, 10-14)**

Section 1 provides definitions of affiliate, affiliated person, control, and NAIC. The definitions of the terms, “affiliated person” and “controlling person” currently defined in s. 628.461(12), F.S., are modified and transferred. The bill revises the definition of the term, “affiliated person,” to include persons affiliated through 10 percent instead of 5 percent of ownership, control, or management. The bill revises the definition of the term, “controlling person,” to require a 10 percent rather than a 25 percent ownership or interest.

Section 3 amends s. 624.402, F.S., to provide a technical, conforming amendment.

Section 10 amends s. 628.461, F.S., relating to acquisition of controlling stock, and specifies that the acquiring party’s statement must include an agreement to file an “annual enterprise risk report,” if control exists as described in Section 11 of the bill. Effective January 1, 2015, the bill provides that the person required to file the statement pursuant to s. 628.461(1), F.S., will provide the annual report specified in s. 628.801(2), F.S., if control exists. The bill provides that a person may rebut a presumption of control by filing a disclaimer of control on a form prescribed by the OFR, as required by the model act, or by providing a copy of a Schedule 13G on file with the U.S. Securities and Exchange Commission. After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless the OIR disallows the disclaimer. Any controlling person of a domestic insurer that seeks to divest its controlling interest in the domestic insurer is required to file with the OIR a confidential notice of its proposed divestiture at least 30 days prior to the relinquishment of control.

Currently, s. 628.461, F.S., provides that a person or affiliated person must file a letter of notification and a statement for the OIR’s approval before concluding a tender offer to acquire

5 percent or more of a domestic stock insurer or of a controlling company. The statement must contain certain criminal, employment, and regulatory history information. Alternatively, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation of control, and such disclaimer must fully disclose all material relationships and affiliation with the insurer, as well as the reason for such disclaimer (this disclaimer is mandatory for acquisitions of more than 10 percent).

During the pendency of the OIR's review of an acquisition filing, the insurer may not make a "material change" to its operation or management, unless the OIR has approved or has been notified, respectively. A "material change" consists of a disposal or obligation of 5 percent or more of the insurer's capital and surplus, or a change in management involving a person who has the authority to dispose or obligate 5 percent of the insurer's capital and surplus.

Section 11 amends s. 628.801, F.S., relating to the regulation of insurance holding companies, to amend and update the provisions of the NAIC Insurance Holding Company System Regulatory Model Act and the Insurance Holding Company System Model Regulation by incorporating reference to the 2010 version. The section requires insurers to file an annual holding company registration statement, including disclosure of material transaction between affiliates. Currently, authorized insurers are required to register with the OIR and be subject to regulation with respect to the relationship with the holding company. Pursuant to its authority under ch. 624, F.S., the OIR may examine any insurer and its affiliates registered under this section to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party.

Effective January 1, 2015, the ultimate controlling person in an insurer's holding company must identify and report material risk within the system that could pose enterprise risk to the insurer in an annual enterprise risk report filed with the OIR. The enterprise risk report will contain detailed information including the holding company's business plan, material developments concerning risk management, and rating agency information. Effective January 1, 2015, if an insurer fails to file a registration statement, a summary of the registration statement, or enterprise risk filing report within the specified time, it is a violation of this section. The section also provides criteria under which an insurer may apply for waiver of the requirements contained in s. 628.801, F.S.

Information contained in the enterprise risk report filed with OIR is confidential and exempt as provided in s. 624.4212, F.S. The bill also adds a provision that prohibits the waiver of any applicable privilege or claim of confidentiality in the enterprise risk report because of disclosures to the OIR. The bill provides that the Department of Financial Services or the OIR may use confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office.

Section 12 amends s. 628.803, F.S., relating to sanctions against an insurance holding company, to provide that a violation of s. 628.461, F.S., (i.e., the filing requirements for acquisition of controlling stock) or s. 628.801, F.S., (i.e., filing requirements for insurance holding companies) may serve as an independent basis for the OIR to disapprove dividends and distributions and place the insurer under an order of supervision pursuant to part VI of ch. 624, F.S. This provision is effective January 1, 2015.

Currently, the Insurance Code states that noncompliant insurance holding companies (and their directors, officers, employees, and agents) can be subject to a number of sanctions that include:

- A penalty, not to exceed \$10,000, for failing to file registration statements or certificate of exemption;
- Civil forfeitures, not to exceed \$5,000 per violation, for knowingly engaging in transactions that have not been properly filed, approved, or in accordance with commission rule; or
- A cease and desist order for engaging in transactions or entering into contracts that violate commission rules, and rescission orders if in the best interests of the policyholders, creditors, or public.

Additionally, an officer, director, or employee of an insurance holding company who willfully and knowingly submits a false statement, false report, or false filing with the intent to deceive the OIR, is guilty of a felony of the third degree.

Sections 13 and 14 create ss. 628.804 and 628.805, F.S., which authorize the creation and participation by the OIR in a supervisory college with other state, federal, and international regulators charged with supervising an insurer or its affiliates, effective January 1, 2015. The bill provides the terms and conditions of participation. With respect to participation in a supervisory college, the OIR may clarify the membership and participation of other supervisors and clarify the role of other regulators, including the establishment of a groupwide supervisor.

The bill defines, the term, “groupwide supervisor,” as the chief insurance regulator for the jurisdiction who is determined by the OIR to have significant contacts with the international insurance group sufficient to conduct and coordinate groupwide supervision activities. The OIR is authorized to adopt rules to implement criteria for determining the appropriate groupwide supervisor. This language, which was requested by the OIR, is supplemental to the NAIC model provision. It is consistent with a law recently enacted in Pennsylvania. In accordance with s. 624.4212, F.S., regarding confidential information sharing, the OIR is authorized to enter into cooperative agreements with other regulators. Expenses associated with a supervisory college would be liable for the payment of reasonable expenses for the OIR’s participation.

### **Property and Casualty Actuarial Opinion Model Law (Section 5)**

The bill requires property and casualty insurers to file an annual Statement of Actuarial Opinion and Actuarial Opinion Summary in accordance with the NAIC annual statement instructions. The section also updates the Financial Services Commission’s (commission’s) rulemaking authority under this section to specify that rules must be in substantial conformity with the 2006 Annual Financial Reporting Model Regulation adopted by the NAIC. Life and health insurers are exempt from the specified reporting requirements of this section since they are governed by ss. 625.121 and 625.1212, F.S.

Proprietary business information contained in the summary is confidential and exempt under s. 624.4212, F.S. This section also protects the summary and related information from subpoena, discovery, or admissibility in any private civil action. The bill provides that the Department of Financial Services or the OIR may use confidential and exempt information in the furtherance of

any regulatory or legal action brought against an insurer as part of the official duties of the department or office.

### **Valuation of Life Insurance and Principle Based Reserves (Sections 6, 7, 8, and 9)**

#### ***Standard Valuation Law for Life Insurers***

Section 6 amends s. 625.121, F.S., relating to the Standard Valuation Law for life insurance, to provide that any memorandum or other material in support of the actuarial opinion that is currently confidential and exempt from s. 119.07(1), F.S., is not subject to subpoena or discovery, or admissible in evidence in any private civil action. Currently, authorized life insurance companies are required to submit an annual actuarial opinion of reserves, reflecting the valuation of reserve liabilities. This section also provides that neither the OIR nor any person who receives information while acting under the authority of the OIR or with whom such information is shared may testify in any private civil action concerning confidential information. These changes incorporate a provision of the NAIC Standard Valuation Law that provides that this information is not subject to subpoena or discovery, and should not be admissible in any civil action in either documentary or testimonial form. The bill provides that the Department of Financial Services or the OIR may use confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office.

The bill requires the implementation of the valuation manual and PBR for policies issued on or after the operative date of the valuation manual. Section 625.121, F.S., would apply to policies and contracts issued prior to the operative date of the valuation manual.

Section 7 creates s. 625.1212, F.S., which is applicable to the valuation of policies and contracts issued on or after the operative date of the valuation manual with some exceptions. This would include life insurance contracts, accident and health contracts, and deposit-type policies.<sup>19</sup> The operative date of the valuation manual is defined to mean the later of January 1, 2017, or the January 1 immediately following the July 1 that the Commissioner of the OIR certifies to the Financial Services Commission that the following conditions occurred on or before July 1:

- The valuation manual is adopted by the NAIC by an affirmative vote of at least 42 members, or three-fourths of the members voting, whichever is greater;
- The Standard Valuation Law, as amended by the NAIC in 2009, or substantially similar legislation, is enacted by states representing greater than 75 percent of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements; and
- The Standard Valuation Law, as amended by the NAIC in 2009, or substantially similar legislation, has been enacted by at least 42 of the 55 jurisdictions.

The bill requires the OIR to value insurer reserves annually. The OIR may accept a valuation made by another insurance state supervisory official. Insurers are required to submit an actuarial opinion of reserves and memorandum to support each actuarial opinion on an annual basis. The bill provides minimum standard of valuation with exceptions. The OIR may require an insurer to change any assumption or method. The OIR may exempt specific product forms or product lines

---

<sup>19</sup> According to the NAIC 2010 Standard Valuation Law, the term “deposit-type contract” means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

of a domestic company that is licensed and doing business in Florida from the minimum standards of valuation and the principal-based valuation requirements if certain conditions are met. The Financial Services Commission is authorized to adopt rules to implement s. 625.1212, F.S. Such rules are not subject to s. 120.541(3), F.S.

Section 8 provides that documents and other information created, produced, or obtained pursuant to ss. 625.121 and 625.1212, F.S., are privileged, confidential, and exempt as provided in s. 624.4212, F.S. CS/SB 1300, which creates s. 624.4212, F.S., is linked to this bill. These documents and other information are not subject to subpoena or discovery, or admissible in evidence in any private civil action. The bill provides that the Department of Financial Services or the OIR may use confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office.

This section also provides that neither the OIR nor any person who receives information while acting under the authority of the OIR or with whom such information is shared may be permitted or required to testify in any private civil action concerning such confidential and exempt information. These changes incorporate a provision of the NAIC Standard Valuation Law that provides that the information is not subject to subpoena or discovery, and should not be admissible in any civil action in either documentary or testimonial form.

### ***Standard Nonforfeiture Law for Life Insurers***

Section 9 provides for the application of the valuation manual for policies issued on or after the operative date of the manual. The bill provides technical conforming changes. The bill also addresses a potential federal income tax issue relating to life insurance contracts by establishing a 4 percent minimum interest rate. Currently, the interest rate per annum for any policy issued in a calendar year is equal to 125 percent of the calendar year statutory valuation interest for such policy as defined in the Standard Valuation Law. The 4 percent floor created by the bill is the annual effective rate used to determine the net single premium for purposes of cash-value accumulation test under Section 7702(b) of the IRC.<sup>20</sup> This provision would codify an amendment to Standard Nonforfeiture Law for Life Insurance, which was adopted by the NAIC.<sup>21</sup> According to the NAIC, the establishment of this floor would address a concern that the interest rate could decline below 4 percent, resulting in traditional life insurance being noncompliant with the maximum cash value requirements of the IRC Section 7702, and not qualify as a life insurance contract for federal income tax purposes.

### **Effective Date (Section 18)**

Section 18 provides that except as otherwise expressly provided in the bill, the act will take effect October 1, 2014, if CS/SB 1300 or similar legislation is adopted in the same legislative session or an extension thereof, and becomes a law.

---

<sup>20</sup> 26 U.S.C. s. 7702(a) provides that, for a contract to qualify as a life insurance contract for Federal income tax purposes, the contract must be a life insurance contract under the applicable law and must either (1) satisfy the cash value accumulation test of s. 7702(b), or (2) both meet the guideline premium requirements of § 7702(c) and fall within the cash value corridor of s. 7702(d).

<sup>21</sup> The NAIC Executive Committee adopted this change at the 2013 Fall NAIC Meeting.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Insurers may incur an indeterminate amount of administrative costs associated with complying with the additional reporting requirements and implementing principle based reserves, and the OIR's participation in the supervisory colleges. The PBR requirements would apply to policies issued on or after the operative date of the valuation manual.

Advocates of principle based reserves (PBR) state that the method will reduce redundant reserves that are required pursuant to the current formulaic approach, thereby leading to lower prices for life insurance products, increasing consumer choices of products, and freeing up capital for insurers. Insurers will have the option to phase in the PBR requirements over 3 years after the valuation manual is effective, which would be no earlier than January 1, 2017, as provided in the bill.

## C. Government Sector Impact:

The bill provides greater solvency tools and regulatory authority for the OIR. The supervisory college will provide greater coordination of efforts in the examination of multistate insurers and will reduce regulatory redundancies and expenses among the state regulators.

The OIR states there is no anticipated impact for fiscal year 2014-2015.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 624.10, 624.319, 624.402, 624.4085, 624.424, 625.121, 627.476, 628.461, 628.801, 628.803, 636.045, 641.225, and 641.255.

This bill creates the following sections of the Florida Statutes: 625.1212, 625.1214, 628.804, and 628.805.

**IX. Additional Information:**

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

**CS by Banking and Insurance on March 11, 2014:**

The CS clarifies the process for rebutting a presumption of control and clarifies the definition of the term, “operative date.” The CS also provides technical, conforming changes.

- B. **Amendments:**

None.





416922

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Simmons) recommended the following:

**Senate Amendment**

Delete line 324  
and insert:  
health insurers subject to s. 625.121(3) before the operative  
date of the valuation manual as defined in s. 625.1212(2), and  
does not apply to life and health insurers subject to s.  
625.1212(4) on or after such operative date.



919650

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Simmons) recommended the following:

**Senate Amendment**

Delete lines 523 - 554  
and insert:

1. For policies issued before ~~prior to~~ the operative date of s. 627.476(9), the ~~commissioners'~~ 1958 Commissioners Standard Ordinary (CSO) Mortality Table; except that, for any category of such policies issued on female risks, modified net premiums and present values, referred to in subsection (7), may be calculated according to an age up to ~~not more than~~ 6 years younger than the



919650

11 actual age of the insured.

12 2. For policies issued on or after the operative date of s.  
13 627.476(9), the ~~commissioners'~~ 1980 Commissioners Standard  
14 Ordinary Mortality Table or, at the election of the insurer for  
15 any one or more specified plans of life insurance, the  
16 ~~commissioners'~~ 1980 Commissioners Standard Ordinary Mortality  
17 Table with Ten-Year Select Mortality Factors.

18 3. For policies issued on or after July 1, 2004, ordinary  
19 mortality tables, adopted after 1980 by the NAIC ~~National~~  
20 ~~Association of Insurance Commissioners~~, adopted by rule by the  
21 commission for use in determining the minimum standard of  
22 valuation for such policies.

23 (b) For all industrial life insurance policies issued on  
24 the standard basis, excluding any disability and accidental  
25 death benefits in such policies:

26 1. For policies issued before ~~prior to~~ the first date ~~to~~  
27 ~~which~~ the ~~commissioners'~~ 1961 Commissioners Standard Industrial  
28 Mortality Table is applicable according to s. 627.476, the 1941  
29 Standard Industrial Mortality Table; ~~and~~

30 2. For ~~such~~ policies issued on or after that date, the  
31 ~~commissioners'~~ 1961 Commissioners Standard Industrial Mortality  
32 Table; and

33 3. For policies issued on or after October 1, 2014, a  
34 Commissioners Standard Industrial Mortality Table adopted by the  
35 NAIC after 1980 which is adopted by rule of the commission for  
36 use in determining the minimum standard of valuation for such  
37 policies.



510388

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Simmons) recommended the following:

**Senate Amendment**

Delete lines 843 - 847

and insert:

(f) "Operative date of the valuation manual" means the later of January 1, 2017, or the January 1 immediately following the July 1 that the Commissioner of the Office of Insurance Regulation certifies to the Financial Services Commission in writing that the following conditions occurred on or before July 1:



208360

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Simmons) recommended the following:

**Senate Amendment**

Delete line 1360

and insert:

(12) (a) A person may rebut a presumption of control by filing a disclaimer of control with the office. The disclaimer must fully disclose all material



605142

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Simmons) recommended the following:

**Senate Amendment**

Delete lines 1435 - 1438  
and insert:  
commercially domiciled insurers, except for ~~a~~ foreign insurers  
~~insurer~~ domiciled in states that are currently accredited by the  
NAIC National Association of Insurance Commissioners by December  
~~31, 1995~~. Except to the extent of any conflict with this code,  
the



277336

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2014	.	
	.	
	.	
	.	

---

The Committee on Banking and Insurance (Simmons) recommended the following:

**Senate Amendment**

Delete line 1647  
and insert:  
act, this act shall take effect October 1, 2014, if SB 1300 or

By Senator Simmons

10-01163A-14

20141308\_\_

1 A bill to be entitled  
 2 An act relating to insurer solvency; amending s.  
 3 624.10, F.S.; providing additional definitions  
 4 applicable to the Florida Insurance Code; amending s.  
 5 624.319, F.S.; clarifying that production of documents  
 6 does not waive the attorney-client or work-product  
 7 privileges; amending s. 624.402, F.S.; conforming a  
 8 cross-reference; amending s. 624.4085, F.S.; revising  
 9 a definition; providing additional calculations for  
 10 determining whether an insurer has a company action  
 11 level event; revising provisions relating to mandatory  
 12 control level events; amending s. 624.424, F.S.;  
 13 requiring an insurer's annual statement to include an  
 14 actuarial opinion summary; providing criteria for such  
 15 summary; providing an exception for life and health  
 16 insurers; updating provisions; requiring insurers  
 17 reinsuring through a captive insurance company to file  
 18 a report containing certain information; amending s.  
 19 625.121, F.S.; revising the Standard Valuation Law;  
 20 distinguishing the provisions from valuations done  
 21 pursuant to the National Association of Insurance  
 22 Commissioner's (NAIC) valuation manual and  
 23 incorporating certain provisions included in the  
 24 manual; exempting certain documents from civil  
 25 proceedings; revising the methods for evaluating the  
 26 valuation of industrial life insurance policies;  
 27 revising provisions relating to calculating additional  
 28 premium; updating provisions relating to reserve  
 29 calculations for indeterminate premium plans; creating

Page 1 of 57

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14

20141308\_\_

30 s. 625.1212, F.S.; providing for the valuation of  
 31 policies and contracts after the adoption of the  
 32 NAIC's valuation manual; providing applicability;  
 33 defining terms; requiring the office to value insurer  
 34 reserves; requiring actuarial opinions of the reserves  
 35 and a supporting memorandum to the opinions; requiring  
 36 the insurer to apply the standard prescribed in the  
 37 valuation manual; providing exceptions; providing  
 38 requirements for a principle-based valuation of  
 39 reserves; requiring an insurer to submit certain data  
 40 to the office; directing the Financial Services  
 41 Commission to adopt rules; creating s. 625.1214, F.S.;  
 42 providing for the use of confidential information;  
 43 prohibiting the use of such information in private  
 44 civil actions; amending s. 627.476, F.S.; revising the  
 45 Standard Nonforfeiture Law; distinguishing provisions  
 46 subject to the valuation manual and providing for the  
 47 application of tables found in the manual; amending s.  
 48 628.461, F.S.; revising the amount of outstanding  
 49 voting securities of a domestic stock insurer or a  
 50 controlling company which a person is prohibited from  
 51 acquiring unless certain requirements have been met;  
 52 deleting a provision authorizing an insurer to file a  
 53 disclaimer of affiliation and control in lieu of a  
 54 letter notifying the Office of Insurance Regulation of  
 55 the Financial Services Commission of the acquisition  
 56 of the voting securities of a domestic stock company  
 57 under certain circumstances; requiring the statement  
 58 notifying the office to include additional

Page 2 of 57

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



10-01163A-14

20141308\_\_

59 information; conforming a provision to changes made by  
 60 the act; providing that control is presumed to exist  
 61 under certain conditions; specifying how control may  
 62 be rebutted and how a controlling interest may be  
 63 divested; deleting definitions; amending s. 628.801,  
 64 F.S.; requiring an insurer to annually file a  
 65 registration statement by a specified date; revising  
 66 the requirements and standards for the rules  
 67 establishing the information and statement form for  
 68 the registration; requiring an insurer to file an  
 69 annual enterprise risk report; authorizing the office  
 70 to conduct examinations to determine the financial  
 71 condition of registrants; providing that failure to  
 72 file a registration or report is a violation of the  
 73 section; providing additional grounds, requirements,  
 74 and conditions with respect to a waiver from the  
 75 registration requirements; amending s. 628.803, F.S.;  
 76 providing sanctions for persons who violate certain  
 77 provisions relating to the acquisition of controlling  
 78 stock; creating s. 628.804, F.S.; providing for the  
 79 groupwide supervision of international insurance  
 80 groups; defining terms; providing for the selection of  
 81 a groupwide supervisor; authorizing the commission to  
 82 adopt rules; creating s. 628.805, F.S.; authorizing  
 83 the office to participate in supervisory colleges;  
 84 authorizing the office to assess fees on insurers for  
 85 participation; amending ss. 636.045 and 641.225, F.S.;  
 86 applying certain statutes related to solvency to  
 87 prepaid limited health service organizations and

Page 3 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14

20141308\_\_

88 health maintenance organizations; amending s. 641.255,  
 89 F.S.; providing for applicability of specified  
 90 provisions to a health maintenance organization that  
 91 is a member of a holding company; providing effective  
 92 dates and a contingent effective date.  
 93

94 Be It Enacted by the Legislature of the State of Florida:

95  
 96 Section 1. Section 624.10, Florida Statutes, is amended to  
 97 read:

98 624.10 Other definitions ~~Transacting insurance.~~-As used in  
 99 the Florida Insurance Code, the term:

100 (1) "Affiliate" means an entity that exercises control over  
 101 or is directly or indirectly controlled by the insurer through:

102 (a) Equity ownership of voting securities;

103 (b) Common managerial control; or

104 (c) Collusive participation by the management of the  
 105 insurer and affiliate in the management of the insurer or the  
 106 affiliate.

107 (2) "Affiliated person" of another person means:

108 (a) The spouse of the other person;

109 (b) The parents of the other person and their lineal  
 110 descendants, or the parents of the other person's spouse and  
 111 their lineal descendants;

112 (c) A person who directly or indirectly owns or controls,  
 113 or holds with the power to vote, 10 percent or more of the  
 114 outstanding voting securities of the other person;

115 (d) A person, 10 percent or more of whose outstanding  
 116 voting securities are directly or indirectly owned or

Page 4 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14

20141308\_\_

117 controlled, or held with power to vote, by the other person;

118 (e) A person or group of persons who directly or indirectly  
 119 control, are controlled by, or are under common control with the  
 120 other person;

121 (f) An officer, director, partner, copartner, or employee  
 122 of the other person;

123 (g) If the other person is an investment company, an  
 124 investment adviser of such company, or a member of an advisory  
 125 board of such company;

126 (h) If the other person is an unincorporated investment  
 127 company not having a board of directors, the depositor of such  
 128 company; or

129 (i) A person who has entered into a written or unwritten  
 130 agreement to act in concert with the other person in acquiring  
 131 or limiting the disposition of securities of a domestic stock  
 132 insurer or controlling company.

133 (3) "Control," including the terms "controlling,"  
 134 "controlled by," and "under common control with," means the  
 135 direct or indirect possession of the power to direct or cause  
 136 the direction of the management and policies of a person,  
 137 whether through the ownership of voting securities, by contract  
 138 other than a commercial contract for goods or nonmanagement  
 139 services, or otherwise. Control is presumed to exist if a  
 140 person, directly or indirectly, owns, controls, holds with the  
 141 power to vote, or holds proxies representing 10 percent or more  
 142 of the voting securities of another person.

143 (4) "NAIC" means the National Association of Insurance  
 144 Commissioners.

145 (5) "Transact" with respect to insurance includes any of

10-01163A-14

20141308\_\_

146 the following, in addition to other applicable provisions of  
 147 this code:

148 (a) ~~(1)~~ Solicitation or inducement.

149 (b) ~~(2)~~ Preliminary negotiations.

150 (c) ~~(3)~~ Effectuation of a contract of insurance.

151 (d) ~~(4)~~ Transaction of matters subsequent to effectuation of  
 152 a contract of insurance and arising out of it.

153 Section 2. Subsection (2) of section 624.319, Florida  
 154 Statutes, is amended to read:

155 624.319 Examination and investigation reports.—

156 (2) The examination report ~~when~~ so filed is shall be  
 157 admissible in evidence in any action or proceeding brought by  
 158 the department or office against the person examined, or against  
 159 its officers, employees, or agents. In all other proceedings,  
 160 the admissibility of the examination report is governed by the  
 161 evidence code. The department or office or its examiners may ~~at~~  
 162 ~~any time~~ testify and offer other proper evidence as to  
 163 information secured or matters discovered during the course of  
 164 an examination, regardless of whether ~~or not~~ a written report of  
 165 the examination has been ~~either~~ made, furnished, or filed in the  
 166 department or office. The production of documents during the  
 167 course of an examination or investigation does not constitute a  
 168 waiver of the attorney-client or work-product privileges.

169 Section 3. Paragraph (c) of subsection (8) of section  
 170 624.402, Florida Statutes, is amended to read:

171 624.402 Exceptions, certificate of authority required.—A  
 172 certificate of authority shall not be required of an insurer  
 173 with respect to:

174 (8)

10-01163A-14

20141308\_\_

175 (c) Subject to the limitations provided in this subsection,  
 176 services, including those listed in the definition of the term  
 177 "transact" in s. 624.10, may be provided by the insurer or an  
 178 affiliated person as defined in s. 624.04 under common ownership  
 179 or control with the insurer.

180 Section 4. Paragraph (g) of subsection (1), paragraph (a)  
 181 of subsection (3), and paragraph (b) of subsection (6) of  
 182 section 624.4085, Florida Statutes, are amended to read:

183 624.4085 Risk-based capital requirements for insurers.—

184 (1) As used in this section, the term:

185 (g) "Life and health insurer" means an ~~any~~ insurer  
 186 authorized or eligible under the Florida Insurance Code to  
 187 underwrite life or health insurance. The term includes a  
 188 property and casualty insurer that writes accident and health  
 189 insurance only. Effective January 1, 2015, the term also  
 190 includes a health maintenance organization that is authorized in  
 191 this state and one or more other states, jurisdictions, or  
 192 countries and a prepaid limited health service organization that  
 193 is authorized in this state and one or more other states,  
 194 jurisdictions, or countries.

195 (3)(a) A company action level event includes:

- 196 1. The filing of a risk-based capital report by an insurer  
 197 which indicates that:
- 198 a. The insurer's total adjusted capital is greater than or  
 199 equal to its regulatory action level risk-based capital but less  
 200 than its company action level risk-based capital; ~~or~~
- 201 b. If a life and health insurer reports using the life and  
 202 health annual statement instructions, the insurer has total  
 203 adjusted capital that is greater than or equal to its company

10-01163A-14

20141308\_\_

204 action level risk-based capital, but is less than the product of  
 205 its authorized control level risk-based capital and 3.0 ~~2.5~~, and  
 206 has a negative trend;

207 c. Effective January 1, 2015, if a life and health or  
 208 property and casualty insurer reports using the health annual  
 209 statement instructions, the insurer or organization has total  
 210 adjusted capital that is greater than or equal to its company  
 211 action level risk-based capital, but is less than the product of  
 212 its authorized control level risk-based capital and 3.0, and  
 213 triggers the trend test determined in accordance with the trend  
 214 test calculation included in the Risk-Based Capital Forecasting  
 215 and Instructions, Health, updated annually by the NAIC; or

216 d. If a property and casualty insurer reports using the  
 217 property and casualty annual statement instructions, the insurer  
 218 has total adjusted capital that is greater than or equal to its  
 219 company action level risk-based capital, but less than the  
 220 product of its authorized control level risk-based capital and  
 221 3.0, and triggers the trend test determined in accordance with  
 222 the trend test calculation included in the Risk-Based Capital  
 223 Forecasting and Instructions, Property/Casualty, updated  
 224 annually by the NAIC;

225 2. The notification by the office to the insurer of an  
 226 adjusted risk-based capital report that indicates an event in  
 227 subparagraph 1., unless the insurer challenges the adjusted  
 228 risk-based capital report under subsection (7); or

229 3. If, under subsection (7), an insurer challenges an  
 230 adjusted risk-based capital report that indicates an event in  
 231 subparagraph 1., the notification by the office to the insurer  
 232 that the office has, after a hearing, rejected the insurer's

10-01163A-14

20141308\_\_

233 challenge.

234 (6)

235 (b) If a mandatory control level event occurs:

236 1. With respect to a life and health insurer, the office  
 237 shall, after due consideration of s. 624.408, and effective  
 238 January 1, 2015, ss. 636.045 and 641.225, take any action  
 239 necessary to place the insurer under regulatory control,  
 240 including any remedy available under chapter 631. A mandatory  
 241 control level event is sufficient ground for the department to  
 242 be appointed as receiver as provided in chapter 631. The office  
 243 may forego taking action for up to 90 days after the mandatory  
 244 control level event if the office finds there is a reasonable  
 245 expectation that the ~~mandatory control level~~ event may be  
 246 eliminated within the 90-day period.

247 2. With respect to a property and casualty insurer, the  
 248 office shall, after due consideration of s. 624.408, take any  
 249 action necessary to place the insurer under regulatory control,  
 250 including any remedy available under chapter 631, or, in the  
 251 case of an insurer that is not writing new business, may allow  
 252 the insurer to continue to operate under the supervision of the  
 253 office. In either case, the mandatory control level event is  
 254 sufficient ground for the department to be appointed as receiver  
 255 as provided in chapter 631. The office may forego taking action  
 256 for up to 90 days after the mandatory control level event if the  
 257 office finds there is a reasonable expectation that the  
 258 ~~mandatory control level~~ event may will be eliminated within the  
 259 90-day period.

260 Section 5. Subsection (1) and paragraph (e) of subsection  
 261 (8) of section 624.424, Florida Statutes, are amended, and

Page 9 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14

20141308\_\_

262 subsection (11) is added to that section, to read:

263 624.424 Annual statement and other information.—

264 (1) (a) Each authorized insurer shall file with the office  
 265 full and true statements of its financial condition,  
 266 transactions, and affairs. An annual statement covering the  
 267 preceding calendar year shall be filed on or before March 1, and  
 268 quarterly statements covering the periods ending on March 31,  
 269 June 30, and September 30 shall be filed within 45 days after  
 270 each such date. The office may, for good cause, grant an  
 271 extension of time for filing ~~of~~ an annual or quarterly  
 272 statement. The statements must ~~shall~~ contain information  
 273 generally included in insurers' financial statements prepared in  
 274 accordance with generally accepted insurance accounting  
 275 principles and practices and in a form generally used ~~utilized~~  
 276 by insurers for financial statements, sworn to by at least two  
 277 executive officers of the insurer or, if a reciprocal insurer,  
 278 by ~~the~~ oath of the attorney in fact or its like officer if a  
 279 corporation. To facilitate uniformity in financial statements  
 280 and to facilitate office analysis, the commission may by rule  
 281 adopt the form and instructions for financial statements  
 282 approved by the NAIC in 2014 National Association of Insurance  
 283 ~~Commissioners in 2002,~~ and may ~~adopt~~ subsequent amendments  
 284 thereto if the methodology remains substantially consistent, and  
 285 may by rule require each insurer to submit to the office, or  
 286 such organization as the office may designate, all or part of  
 287 the information contained in the financial statement in a  
 288 computer-readable form compatible with the electronic data  
 289 processing system specified by the office.

290 (b) Each insurer's annual statement must contain:

Page 10 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14

20141308\_\_

291 1. A statement of opinion on loss and loss adjustment  
 292 expense reserves made by a member of the American Academy of  
 293 Actuaries or by a qualified loss reserve specialist, pursuant to  
 294 under criteria established by rule of the commission. In  
 295 adopting the rule, the commission ~~shall must~~ consider any  
 296 criteria established by the ~~NAIC National Association of~~  
 297 ~~Insurance Commissioners~~. The office may require semiannual  
 298 updates of the annual statement of opinion ~~for as to~~ a  
 299 particular insurer if the office has reasonable cause to believe  
 300 that such reserves are understated to the extent of materially  
 301 misstating the financial position of the insurer. Workpapers in  
 302 support of the statement of opinion must be provided to the  
 303 office upon request. This paragraph does not apply to life  
 304 insurance, health insurance, or title insurance.

305 2. An actuarial opinion summary written by the insurer's  
 306 appointed actuary. The summary must be filed in accordance with  
 307 the appropriate NAIC property and casualty annual statement  
 308 instructions. Proprietary business information contained in the  
 309 summary is confidential and exempt under s. 624.4212, and the  
 310 summary and related information are not subject to subpoena or  
 311 discovery or admissible in evidence in a private civil action.  
 312 Neither the office nor any person who received documents,  
 313 materials, or other information while acting under the authority  
 314 of the office, or with whom such information is shared pursuant  
 315 to s. 624.4212, may testify in a private civil action concerning  
 316 such confidential information. However, the department or office  
 317 may use the confidential and exempt information in the  
 318 furtherance of any regulatory or legal action brought against an  
 319 insurer as a part of the official duties of the department or

Page 11 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14

20141308\_\_

320 office. No waiver of any other applicable claim of  
 321 confidentiality or privilege may occur as a result of a  
 322 disclosure to the office under this section or any other section  
 323 of the insurance code. This paragraph does not apply to life and  
 324 health insurers subject to s. 625.121(3).

325 (c) The commission may by rule require reports or filings  
 326 required under the insurance code to be submitted by electronic  
 327 means in a computer-readable form compatible with the electronic  
 328 data processing equipment specified by the commission.

329 (8)

330 (e) The commission shall adopt rules to administer  
 331 ~~implement~~ this subsection, ~~which rules~~ must be in substantial  
 332 conformity with the 2006 Annual Financial Reporting Model  
 333 Regulation 1998 Model Rule requiring annual audited financial  
 334 ~~reports~~ adopted by the NAIC National Association of Insurance  
 335 ~~Commissioners~~ or subsequent amendments, except where  
 336 inconsistent with the requirements of this subsection. Any  
 337 exception to, waiver of, or interpretation of accounting  
 338 requirements of the commission must be in writing and signed by  
 339 an authorized representative of the office. An ~~No~~ insurer may  
 340 not raise an ~~as a defense in any action, any~~ exception to,  
 341 waiver of, or interpretation of accounting requirements as a  
 342 defense in an action, unless previously issued in writing by an  
 343 authorized representative of the office.

344 (11) Each insurer doing business in this state which  
 345 reinsures through a captive insurance company as defined in s.  
 346 628.901, but without regard to domiciliary status, shall, in  
 347 conjunction with the annual financial statement required under  
 348 paragraph (1) (a), file a report with the office containing

Page 12 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14 20141308\_\_

349 financial information specific to reinsurance assumed by each  
350 captive.

351 (a) The report shall be filed as a separate schedule  
352 designed to avoid duplication of disclosures required by the  
353 NAIC's annual statement and instructions.

354 (b) Insurers must:

355 1. Identify the products ceded to the captive and whether  
356 the products are subject to rule 690-164.020, Florida  
357 Administrative Code, the NAIC Valuation of Life Insurance  
358 Policies Regulation (Model #830), or the NAIC Actuarial  
359 Guideline XXXVIII (AG 38).

360 2. Disclose the assets of the captive in the format  
361 prescribed in the NAIC annual statement schedules.

362 3. Include a stand-alone actuarial opinion or certification  
363 identifying the differences between the assets the ceding  
364 company would be required to hold and the assets held by the  
365 captive.

366 Section 6. Subsection (2), paragraphs (a) and (b) of  
367 subsection (3), subsection (5), paragraph (e) of subsection (6),  
368 and subsections (10), (11), and (12) of section 625.121, Florida  
369 Statutes, are amended to read:

370 625.121 Standard Valuation Law; life insurance.—

371 (2) ANNUAL VALUATION.—The office shall annually value, or  
372 cause to be valued, the reserves ~~reserve liabilities,~~  
373 ~~hereinafter called "reserves,"~~ for all outstanding life  
374 insurance policies and annuity and pure endowment contracts of  
375 each every life insurer doing business in this state, ~~and may~~  
376 ~~certify the amount of any such reserves, specifying the~~  
377 ~~mortality table or tables, rate or rates of interest, and~~

10-01163A-14 20141308\_\_

378 ~~methods, net-level premium method or others, used in the~~  
379 ~~calculation of such reserves.~~ In the case of an alien insurer,  
380 such valuation ~~is shall be~~ limited to its insurance transactions  
381 in the United States. In calculating ~~such~~ reserves, the office  
382 may use group methods and approximate averages for fractions of  
383 a year or otherwise, ~~and. It~~ may accept ~~in its discretion~~ the  
384 insurer's calculation of such reserves. In lieu of the valuation  
385 of the reserves ~~herein~~ required of a any foreign or alien  
386 insurer, the office ~~it~~ may accept any valuation made or caused  
387 to be made by the insurance supervisory official of any state or  
388 other jurisdiction if the ~~when such~~ valuation complies with the  
389 minimum standard ~~herein~~ provided under this section ~~and if the~~  
390 ~~official of such state or jurisdiction accepts as sufficient and~~  
391 ~~valid for all legal purposes the certificate of valuation of the~~  
392 ~~office when such certificate states the valuation to have been~~  
393 ~~made in a specified manner according to which the aggregate~~  
394 ~~reserves would be at least as large as if they had been computed~~  
395 ~~in the manner prescribed by the law of that state or~~  
396 ~~jurisdiction. If a~~ When any such valuation is made by the  
397 office, the office ~~it~~ may use its the actuary ~~of the office~~ or  
398 employ an actuary for that the purpose; and the reasonable  
399 compensation of the actuary, at a rate approved by the office,  
400 plus and reimbursement of travel expenses pursuant to s. 624.320  
401 ~~upon demand by the office,~~ supported by an itemized statement of  
402 such compensation and expenses, shall be paid by the insurer  
403 upon demand of the office. ~~If~~ When a domestic insurer furnishes  
404 the office with a valuation of its outstanding policies as  
405 computed by its own actuary or by an actuary deemed satisfactory  
406 for that the purpose by the office, the valuation shall be

10-01163A-14

20141308\_\_

407 verified by the actuary of the office without cost to the  
 408 insurer. This section applies to the calculation of reserves for  
 409 policies and contracts not subject to s. 625.1212.

410 (3) ACTUARIAL OPINION OF RESERVES.—

411 (a) ~~1-~~ Each life insurer ~~insurance company~~ doing business in  
 412 this state shall annually submit the opinion of a qualified  
 413 actuary as to whether the reserves and related actuarial items  
 414 held in support of the policies and contracts specified by the  
 415 commission by rule are computed appropriately, are based on  
 416 assumptions that ~~which~~ satisfy contractual provisions, are  
 417 consistent with prior reported amounts, and comply with  
 418 applicable laws of this state. The commission by rule shall  
 419 define the specifics of this opinion and add any other items  
 420 determined ~~to be~~ necessary to its scope.

421 1.2- The opinion shall be submitted with the annual  
 422 statement and must reflect ~~reflecting~~ the valuation of such  
 423 reserve liabilities for each year ending on or before ~~after~~  
 424 December 31 of the year before the operative date of the  
 425 valuation manual as defined in s. 625.1212(2), and in accordance  
 426 with s. 625.1212(4) for each year thereafter, ~~1992.~~

427 2.3- The opinion applies ~~shall apply~~ to all business in  
 428 force, including individual and group health insurance plans, in  
 429 the form and substance acceptable to the office as specified by  
 430 rule of the commission.

431 3.4- The commission may adopt rules providing the standards  
 432 of the actuarial opinion consistent with standards adopted by  
 433 the Actuarial Standards Board on December 31, 2013 ~~2002~~, and  
 434 subsequent revisions thereto if, ~~provided that~~ the standards  
 435 remain substantially consistent.

Page 15 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14

20141308\_\_

436 ~~4.5-~~ In the case of an opinion required to be submitted by  
 437 ~~a foreign or alien company,~~ The office may accept an ~~the~~ opinion  
 438 filed by a foreign or alien insurer ~~that company~~ with the  
 439 insurance supervisory official of another state if the office  
 440 determines that the opinion reasonably meets the requirements  
 441 applicable to an insurer ~~a company~~ domiciled in this state.

442 ~~5.6-~~ As used in ~~For the purposes of~~ this subsection, the  
 443 term "qualified actuary" means a member in good standing of the  
 444 American Academy of Actuaries who also meets the requirements  
 445 specified by rule of the commission.

446 ~~6.7-~~ Disciplinary action by the office against the insurer  
 447 ~~company~~ or the qualified actuary shall be in accordance with the  
 448 insurance code and related rules adopted by the commission.

449 ~~7.8-~~ A memorandum in the form and substance specified by  
 450 rule shall be prepared to support each actuarial opinion.

451 8.9- If the insurer ~~insurance company~~ fails to provide a  
 452 supporting memorandum at the request of the office within a  
 453 period specified by rule of the commission, or if the office  
 454 determines that the supporting memorandum provided by the  
 455 insurer ~~insurance company~~ fails to meet the standards prescribed  
 456 by rule of the commission, the office may engage a qualified  
 457 actuary at the expense of the insurer ~~company~~ to review the  
 458 opinion and the basis for the opinion and prepare such  
 459 supporting memorandum as ~~is~~ required by the office.

460 ~~9.10-~~ Except as otherwise provided in this subparagraph  
 461 ~~paragraph,~~ any memorandum or other material in support of the  
 462 opinion is confidential and exempt from ~~the provisions of~~ s.  
 463 119.07(1) and is not subject to subpoena or discovery or  
 464 admissible in evidence in any private civil action; however, the

Page 16 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14

20141308\_\_

465 memorandum or other material may be released by the office with  
 466 the written consent of the insurer company, or to the American  
 467 Academy of Actuaries upon request stating that the memorandum or  
 468 other material is required for the purpose of professional  
 469 disciplinary proceedings and setting forth procedures  
 470 satisfactory to the office for preserving the confidentiality of  
 471 the memorandum or other material. If any portion of the  
 472 confidential memorandum is cited by the insurer company in its  
 473 marketing, ~~or~~ is cited before any governmental agency other than  
 474 a state insurance department, or is released by the insurer  
 475 ~~company~~ to the news media, no portion of the memorandum is  
 476 confidential. Neither the office nor any person who receives  
 477 documents, materials, or other information while acting under  
 478 the authority of the office or with whom such information is  
 479 shared pursuant to this paragraph may testify in a private civil  
 480 action concerning the confidential documents, materials, or  
 481 information. However, the department or office may use the  
 482 confidential and exempt information in the furtherance of any  
 483 regulatory or legal action brought against an insurer as a part  
 484 of the official duties of the department or office. A waiver of  
 485 an applicable privilege or claim of confidentiality in the  
 486 documents, materials, or information may not occur as a result  
 487 of disclosure to the office under this section or any other  
 488 section of the insurance code, or as a result of sharing as  
 489 authorized under s. 624.4212.

490 (b) In addition to the opinion required by paragraph (a)  
 491 ~~subparagraph (a)1-~~, the office may, pursuant to commission rule,  
 492 require an opinion of the same qualified actuary as to whether  
 493 the reserves and related actuarial items held in support of the

Page 17 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14

20141308\_\_

494 policies and contracts specified by the commission by rule, when  
 495 considered in light of the assets held by the insurer company  
 496 with respect to the reserves and related actuarial items,  
 497 including, but not limited to, the investment earnings on the  
 498 assets and considerations anticipated to be received and  
 499 retained under the policies and contracts, make adequate  
 500 provision for the insurer's company's obligations under the  
 501 policies and contracts, including, but not limited to, the  
 502 benefits under, and expenses associated with, the policies and  
 503 contracts.

504 (5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND  
 505 CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF THE STANDARD  
 506 NONFORFEITURE LAW.—Except as otherwise provided in paragraph (h)  
 507 and subsections (6), (13) (11), and (14), the minimum standard  
 508 for the valuation of all such policies and contracts issued on  
 509 or after the operative date of s. 627.476 ~~(Standard~~  
 510 ~~Nonforfeiture Law for Life Insurance)~~ shall be the  
 511 commissioners' reserve valuation method defined in subsections  
 512 (7), (11), and (14); 5 percent interest for group annuity and  
 513 pure endowment contracts and 3.5 percent interest for all other  
 514 such policies and contracts, or in the case of life insurance  
 515 policies and contracts, other than annuity and pure endowment  
 516 contracts, issued on or after July 1, 1973, 4 percent interest  
 517 for such policies issued prior to October 1, 1979, and 4.5  
 518 percent interest for such policies issued on or after October 1,  
 519 1979; and the following tables:

520 (a) For all ordinary policies of life insurance issued on  
 521 the standard basis, excluding any disability and accidental  
 522 death benefits in such policies:

Page 18 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



10-01163A-14

20141308\_\_

523 1. For policies issued ~~before~~ ~~prior~~ to the operative date  
 524 of s. 627.476(9), the commissioners' 1958 Standard Ordinary  
 525 Mortality Table; except that, for any category of such policies  
 526 issued on female risks, modified net premiums and present  
 527 values, referred to in subsection (7), may be calculated  
 528 according to an age up to not more than 6 years younger than the  
 529 actual age of the insured.

530 2. For policies issued on or after the operative date of s.  
 531 627.476(9), the ~~commissioners'~~ 1980 Standard Ordinary Mortality  
 532 Table adopted by the NAIC or, at the election of the insurer for  
 533 any one or more specified plans of life insurance, the  
 534 ~~commissioners'~~ 1980 Standard Ordinary Mortality Table with Ten-  
 535 Year Select Mortality Factors adopted by the NAIC.

536 3. For policies issued on or after July 1, 2004, ordinary  
 537 mortality tables, adopted after 1980 by the NAIC National  
 538 ~~Association of Insurance Commissioners~~, adopted by rule by the  
 539 commission for use in determining the minimum standard of  
 540 valuation for such policies.

541 (b) For all industrial life insurance policies issued on  
 542 the standard basis, excluding any disability and accidental  
 543 death benefits in such policies:

544 1. For policies issued ~~before~~ ~~prior~~ to the first date ~~to~~  
 545 ~~which the commissioners'~~ 1961 Standard Industrial Mortality  
 546 Table adopted by the NAIC is applicable according to s. 627.476,  
 547 the 1941 Standard Industrial Mortality Table; ~~and~~

548 2. For ~~such~~ policies issued on or after that date, the  
 549 ~~commissioners'~~ 1961 Standard Industrial Mortality Table adopted  
 550 by the NAIC; and.

551 3. For policies issued on or after October 1, 2014, an

10-01163A-14

20141308\_\_

552 Industrial Mortality Table adopted after 1980 by the NAIC which  
 553 is adopted by rule of the commission for use in determining the  
 554 minimum standard of valuation for such policies.

555 (c) For individual annuity and pure endowment contracts,  
 556 excluding any disability and accidental death benefits in such  
 557 policies, the 1937 Standard Annuity Mortality Table or, at the  
 558 option of the insurer, the Annuity Mortality Table for 1949,  
 559 Ultimate, or any modification of ~~either of~~ these tables approved  
 560 by the office.

561 (d) For group annuity and pure endowment contracts,  
 562 excluding any disability and accidental death benefits in such  
 563 policies, the Group Annuity Mortality Table for 1951; any  
 564 modification of such table approved by the office; or, at the  
 565 option of the insurer, any of the tables or modifications of  
 566 tables specified for individual annuity and pure endowment  
 567 contracts.

568 (e) For total and permanent disability benefits in or  
 569 supplementary to ordinary policies or contracts:

570 1. For policies or contracts issued on or after January 1,  
 571 1966, the tables of period 2 disablement rates and the 1930 to  
 572 1950 termination rates of the 1952 disability study of the  
 573 Society of Actuaries, with due regard to the type of benefit;

574 2. For policies or contracts issued on or after January 1,  
 575 1961, and ~~before~~ ~~prior~~ to January 1, 1966, either of the tables  
 576 specified in subparagraph 1. ~~these tables~~ or, at the option of  
 577 the insurer, the class three disability table (1926);

578 3. For policies issued ~~before~~ ~~prior~~ to January 1, 1961, the  
 579 class three disability table (1926); and

580 4. For policies or contracts issued on or after July 1,

10-01163A-14 20141308\_\_

581 2004, tables of disablement rates and termination rates adopted  
582 after 1980 by the NAIC National Association of Insurance  
583 ~~Commissioners~~, adopted by rule by the commission for use in  
584 determining the minimum standard of valuation for those policies  
585 or contracts.

586  
587 Any such table for active lives shall be combined with a  
588 mortality table permitted for calculating the reserves for life  
589 insurance policies.

590 (f) For accidental death benefits in or supplementary to  
591 policies:

592 1. For policies issued on or after January 1, 1966, the  
593 1959 Accidental Death Benefits Table;

594 2. For policies issued on or after January 1, 1961, and  
595 before prior to January 1, 1966, the 1959 Accidental Death  
596 Benefits either that Table or, at the option of the insurer, the  
597 Intercompany Double Indemnity Mortality Table;

598 3. For policies issued before prior to January 1, 1961, the  
599 Intercompany Double Indemnity Mortality Table; and

600 4. For policies issued on or after July 1, 2004, tables of  
601 accidental death benefits adopted after 1980 by the NAIC  
602 ~~National Association of Insurance Commissioners~~, adopted by rule  
603 by the commission for use in determining the minimum standard of  
604 valuation for those policies.

605  
606 Either table shall be combined with a mortality table permitted  
607 for calculating the reserves for life insurance policies.

608 (g) For group life insurance, life insurance issued on the  
609 substandard basis, and other special benefits, such tables as

10-01163A-14 20141308\_\_

610 may be approved by the office as being sufficient with relation  
611 to the benefits provided by such policies.

612 (h) Except as provided in subsection (6), the minimum  
613 standard for the valuation of all individual annuity and pure  
614 endowment contracts issued on or after the operative date of  
615 this paragraph and for all annuities and pure endowments  
616 purchased on or after such operative date under group annuity  
617 and pure endowment contracts shall be the commissioners' reserve  
618 valuation method defined in subsection (7) and the following  
619 tables and interest rates:

620 1. For individual annuity and pure endowment contracts  
621 issued before prior to October 1, 1979, excluding any disability  
622 and accidental death benefits in such contracts, the 1971  
623 Individual Annuity Mortality Table, or any modification of this  
624 table approved by the office, and 6 percent interest for single-  
625 premium immediate annuity contracts and 4 percent interest for  
626 all other individual annuity and pure endowment contracts.

627 2. For individual single-premium immediate annuity  
628 contracts issued on or after October 1, 1979, and before prior  
629 ~~to~~ October 1, 1986, excluding any disability and accidental  
630 death benefits in such contracts, the 1971 Individual Annuity  
631 Mortality Table, or any modification of this table approved by  
632 the office, and 7.5 percent interest. For such contracts issued  
633 on or after October 1, 1986, the 1983 Individual Annual  
634 Mortality Table, or any modification of such table approved by  
635 the office, and the applicable calendar year statutory valuation  
636 interest rate as described in subsection (6).

637 3. For individual annuity and pure endowment contracts  
638 issued on or after October 1, 1979, and before prior to October

10-01163A-14 20141308\_\_

639 1, 1986, other than single-premium immediate annuity contracts,  
 640 excluding any disability and accidental death benefits in such  
 641 contracts, the 1971 Individual Annuity Mortality Table, or any  
 642 modification of this table approved by the office, and 5.5  
 643 percent interest for single-premium deferred annuity and pure  
 644 endowment contracts and 4.5 percent interest for all other such  
 645 individual annuity and pure endowment contracts. For such  
 646 contracts issued on or after October 1, 1986, the 1983  
 647 Individual Annual Mortality Table, or any modification of such  
 648 table approved by the office, and the applicable calendar year  
 649 statutory valuation interest rate as described in subsection  
 650 (6).

651 4. For all annuities and pure endowments purchased before  
 652 ~~prior to~~ October 1, 1979, under group annuity and pure endowment  
 653 contracts, excluding any disability and accidental death  
 654 benefits purchased under such contracts, the 1971 Group Annuity  
 655 Mortality Table, or any modification of this table approved by  
 656 the office, and 6 percent interest.

657 5. For all annuities and pure endowments purchased on or  
 658 after October 1, 1979, and before ~~prior to~~ October 1, 1986,  
 659 under group annuity and pure endowment contracts, excluding ~~any~~  
 660 disability and accidental death benefits purchased under such  
 661 contracts, the 1971 Group Annuity Mortality Table, or any  
 662 modification of this table approved by the office, and 7.5  
 663 percent interest. For such contracts purchased on or after  
 664 October 1, 1986, the 1983 Group Annuity Mortality Table, or any  
 665 modification of such table approved by the office, and the  
 666 applicable calendar year statutory valuation interest rate as  
 667 described in subsection (6).

10-01163A-14 20141308\_\_

668

669 After July 1, 1973, ~~an any~~ insurer may have filed with the  
 670 former Department of Insurance a written notice of its election  
 671 to comply with ~~the provisions of~~ this paragraph after a  
 672 specified date before January 1, 1979, which shall be the  
 673 operative date of this paragraph for such insurer. However, an  
 674 insurer may elect a different operative date for individual  
 675 annuity and pure endowment contracts from that elected for group  
 676 annuity and pure endowment contracts. If an insurer does not  
 677 ~~make~~ ~~makes no~~ such election, the operative date of this  
 678 paragraph for such insurer is ~~shall be~~ January 1, 1979.

679 (i) In lieu of the mortality tables specified in this  
 680 subsection, and subject to rules previously adopted by the  
 681 former Department of Insurance, the insurance company may, at  
 682 its option:

683 1. Substitute the applicable 1958 CSO or CET Smoker and  
 684 Nonsmoker Mortality Tables, in lieu of the 1980 CSO or CET  
 685 mortality table standard, for policies issued on or after the  
 686 operative date of s. 627.476(9) and before January 1, 1989.

687 2. Substitute the applicable 1980 CSO or CET Smoker and  
 688 Nonsmoker Mortality Tables in lieu of the 1980 CSO or CET  
 689 mortality table standard.~~†~~

690 3. Use the Annuity 2000 Mortality Table for determining the  
 691 minimum standard of valuation for individual annuity and pure  
 692 endowment contracts issued on or after January 1, 1998, and  
 693 before July 1, 1998.

694 4. Use the 1994 GAR Table for determining the minimum  
 695 standard of valuation for annuities and pure endowments  
 696 purchased on or after January 1, 1998, and before July 1, 1998,

10-01163A-14

20141308\_\_

697 under group annuity and pure endowment contracts.

698 (j) The commission may adopt by rule the model regulation  
699 for valuation of life insurance policies as approved by the NAIC  
700 ~~National Association of Insurance Commissioners~~ in March 1999,  
701 including tables of select mortality factors, and may make the  
702 regulation effective for policies issued on or after January 1,  
703 2000.

704 (k) For individual annuity and pure endowment contracts  
705 issued on or after July 1, 2004, excluding ~~any~~ disability and  
706 accidental death benefits purchased under those contracts,  
707 individual annuity mortality tables adopted after 1980 by the  
708 ~~NAIC National Association of Insurance Commissioners~~, adopted by  
709 rule by the commission for use in determining the minimum  
710 standard of valuation for those contracts.

711 (l) For all annuities and pure endowments purchased on or  
712 after July 1, 2004, under group annuity and pure endowment  
713 contracts, excluding ~~any~~ disability and accidental death  
714 benefits purchased under those contracts, group annuity  
715 mortality tables adopted after 1980 by the ~~NAIC National~~  
716 ~~Association of Insurance Commissioners~~, adopted by rule by the  
717 commission for use in determining the minimum standard of  
718 valuation for those contracts.

719 (6) MINIMUM STANDARD OF VALUATION.—

720 (e) The interest rate index shall be the Moody's Corporate  
721 Bond Yield Average-Monthly Average Corporates as published by  
722 Moody's Investors Service, Inc., if the as long as this index is  
723 calculated by using substantially the same methodology ~~as~~ used  
724 by Moody's ~~it~~ on January 1, 1981. If Moody's corporate bond  
725 yield average ceases to be calculated in substantially the same

Page 25 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14

20141308\_\_

726 ~~this~~ manner, the interest rate index shall be the index  
727 specified in the valuation manual, as applicable, as provided  
728 under s. 625.1212, or an index adopted by the NAIC and approved  
729 by rule adopted promulgated by the commission. The methodology  
730 used in determining the index approved by rule must ~~shall~~ be  
731 substantially the same as the methodology employed on January 1,  
732 1981, for determining Moody's Corporate Bond Yield Average-  
733 Monthly Average Corporates as published by Moody's Investors  
734 Service, Inc.

735 (10) LOWER VALUATIONS.—An insurer that ~~which at any time~~  
736 ~~had~~ adopted a any standard of valuation producing greater  
737 aggregate reserves than those calculated according to the  
738 minimum standard ~~herein~~ provided under this section shall ~~may~~,  
739 with the approval of the office, adopt a any lower standard of  
740 valuation, but not lower than the minimum herein provided;  
741 however, for the purposes of this subsection, the holding of  
742 additional reserves previously determined by an appointed a  
743 ~~qualified~~ actuary, as defined in s. 625.1212(2), to be necessary  
744 to render the opinion required by subsection (3) may ~~shall~~ not  
745 be deemed to be the adoption of a higher standard of valuation.

746 (11) ADDITIONAL PREMIUM DEFICIENCY RESERVE.—If in any  
747 contract year the gross premium charged by a any life insurer on  
748 a any policy or contract is less than the valuation net premium  
749 for the policy or contract calculated by the method used in  
750 calculating the reserve thereon but using the minimum valuation  
751 standards of mortality and rate of interest, the minimum premium  
752 reserve required for the policy or contract shall be the greater  
753 of the reserve calculated according to the actual mortality  
754 table, rate of interest, and method used for the policy or

Page 26 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14 20141308\_\_

754 contract, or the actual method used for the policy or contract  
 755 but using the minimum valuation standards of mortality and rate  
 756 of interest and replacing the valuation net premium by the  
 757 actual gross premium in each contract year for which the  
 758 valuation net premium exceeds the actual gross premium. The  
 759 minimum valuation standards of mortality and rate of interest  
 760 are those standards there shall be maintained on such policy or  
 761 contract a deficiency reserve in addition to the reserve defined  
 762 by subsections (4), (5), and (6) (7) and (12). For each such  
 763 policy or contract, the deficiency reserve shall be the present  
 764 value, according to the minimum valuation standards of mortality  
 765 and rate of interest, of the differences between all such  
 766 valuation net premiums and the corresponding premiums charged  
 767 for such policy or contract during the remainder of the premium-  
 768 paying period. For any category of policies, contracts, or  
 769 benefits specified in subsections (5) and (6), issued on or  
 770 after the operative date of s. 627.476 (the Standard  
 771 Nonforfeiture Law for Life Insurance), the aggregate deficiency  
 772 reserves may be reduced by the amount, if any, by which the  
 773 aggregate reserves actually calculated in accordance with  
 774 subsection (9) exceed the minimum aggregate reserves prescribed  
 775 by subsection (8). The minimum valuation standards of mortality  
 776 and rate of interest referred to in this subsection are those  
 777 standards stated in subsections (5) and (6). However, For any  
 778 life insurance policy that which is issued on or after January  
 779 1, 1985, for which the gross premium in the first policy year  
 780 exceeds that of the second year and for which no comparable  
 781 additional benefit is provided in the first year for such  
 782 excess, and which provides an endowment benefit, a cash  
 783

Page 27 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14 20141308\_\_

784 surrender value, or a combination thereof in an amount greater  
 785 than such excess premium, the foregoing provisions of this  
 786 subsection shall be applied as if the method actually used in  
 787 calculating the reserve for such policy were the method  
 788 described in subsection (7), the provisions of subparagraph  
 789 (7)(a)2. being ignored. The minimum premium reserve amount ~~of~~  
 790 ~~the deficiency reserve~~, if any, at each policy anniversary of  
 791 such a policy is shall be the excess, if any, of the amount  
 792 determined by the foregoing provisions of this subsection plus  
 793 the reserve calculated by the method described in subsection  
 794 (7), the provisions of subparagraph (7)(a)2. being ignored, over  
 795 the reserve actually calculated by the method described in  
 796 subsection (7), the provisions of subparagraph (7)(a)2. being  
 797 taken into account.

798 (12) RESERVE CALCULATION FOR INDETERMINATE PREMIUM PLANS  
 799 ALTERNATE METHOD FOR DETERMINING RESERVES IN CERTAIN CASES.-In  
 800 the case of a any plan of life insurance which provides for  
 801 future premium determination, the amounts of which are to be  
 802 determined by the insurer based on then estimates of future  
 803 experience, or in the case of a any plan of life insurance or  
 804 annuity for which ~~is of such a nature that~~ the minimum reserves  
 805 cannot be determined by the methods described in subsections (7)  
 806 and (11) subsection (7), the reserves that which are held under  
 807 any such plan must shall:

808 (a) Be appropriate in relation to the benefits and the  
 809 pattern of premiums for that plan; and  
 810 (b) Be computed by a method that which is consistent with  
 811 the principles of this section, as determined by rules adopted  
 812 ~~promulgated~~ by the commission.

Page 28 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14 20141308\_\_

813 Section 7. Section 625.1212, Florida Statutes, is created  
 814 to read:

815 625.1212 Valuation of policies and contracts issued on or  
 816 after the operative date of the valuation manual.—

817 (1) APPLICABILITY.—This section applies to life insurance  
 818 contracts, accident and health insurance contracts, and deposit-  
 819 type contracts issued on or after the operative date of the  
 820 valuation manual unless the manual requires or permits an  
 821 insurer to determine reserves according to the standards in  
 822 effect before the operative date of the manual and rules adopted  
 823 by the commission as provided under s. 625.121. Subsections (5)  
 824 and (6) do not apply to policies and contracts subject to s.  
 825 625.121.

826 (2) DEFINITIONS.—As used in this section, the term:

827 (a) "Accident and health insurance" means contracts that  
 828 incorporate morbidity risk and provide protection against  
 829 economic loss resulting from accident, sickness, or medical  
 830 conditions and as may be specified in the valuation manual.

831 (b) "Appointed actuary" means a qualified actuary who is  
 832 appointed in accordance with the valuation manual to prepare the  
 833 actuarial opinion required in subsection (4).

834 (c) "Deposit-type contract" means contracts that do not  
 835 incorporate mortality or morbidity risks and as may be specified  
 836 in the valuation manual.

837 (d) "Insurer" means a person engaged as an indemnitor,  
 838 surety, or contractor in the business of entering into contracts  
 839 of insurance or reinsurance.

840 (e) "Life insurance" means policies or contracts that  
 841 incorporate mortality risk, including annuity and pure endowment

10-01163A-14 20141308\_\_

842 contracts, and as may be specified in the valuation manual.

843 (f) "Operative date of the valuation manual" means the  
 844 latter of January 1, 2017, or the first January 1 following the  
 845 first July 1 that the Commissioner of the Office of Insurance  
 846 Regulation certifies to the Financial Services Commission in  
 847 writing that:

848 1. The valuation manual is adopted by the NAIC by an  
 849 affirmative vote of at least 42 members of the NAIC or 75  
 850 percent of members voting, whichever is greater;

851 2. The Standard Valuation Law, as amended by the NAIC in  
 852 2009, or substantially similar legislation, is enacted in states  
 853 representing more than 75 percent of the direct premiums written  
 854 as reported in the 2008 annual statements for life, accident and  
 855 health, health, or fraternal society insurance; and

856 3. The Standard Valuation Law as amended by the NAIC in  
 857 2009, or substantially similar legislation, is enacted in at  
 858 least 42 of the following 55 jurisdictions: the 50 states of the  
 859 United States, the District of Columbia, American Samoa, the  
 860 American Virgin Islands, Guam, and Puerto Rico.

861 (g) "Policyholder behavior" means an action a policyholder,  
 862 contract holder, or other person who has the right to elect  
 863 options, such as a certificateholder, may take under a policy or  
 864 contract subject to this section including, but not limited to,  
 865 lapse, withdrawal, transfer, deposit, premium payment, loan,  
 866 annuitization, or benefit elections prescribed by the policy or  
 867 contract but excluding events of mortality or morbidity that  
 868 result in benefits prescribed in their essential aspects by the  
 869 terms of the policy or contract.

870 (h) "Principle-based valuation" means a reserve valuation

10-01163A-14 20141308\_\_

871 that uses one or more methods or assumptions determined by the  
 872 insurer and must comply with subsection (6) as specified in the  
 873 valuation manual.

874 (i) "Qualified actuary" means an individual who is  
 875 qualified to sign the applicable statement of actuarial opinion  
 876 in accordance with the American Academy of Actuaries  
 877 qualification standards for actuaries signing such statements  
 878 and who meets the requirements specified in the valuation  
 879 manual.

880 (j) "Tail risk" means a risk that occurs when the frequency  
 881 of low probability events is higher than expected under a normal  
 882 probability distribution or when there are observed events of  
 883 very significant size or magnitude.

884 (k) "Valuation manual" means the manual of valuation  
 885 instructions adopted by the NAIC, or as subsequently amended.

886 (3) RESERVE VALUATION.—The office shall annually value, or  
 887 cause to be valued, insurer reserves for all outstanding life  
 888 insurance contracts, accident and health contracts, and deposit-  
 889 type contracts in this state. Insurers are subject to  
 890 subsections (5) and (6) when calculating the reserves. In lieu  
 891 of the reserve valuation for a foreign or alien insurer, the  
 892 office may accept a valuation made, or caused to be made, by the  
 893 insurance supervisory official of any state or other  
 894 jurisdiction if the valuation complies with the minimum standard  
 895 required in this section.

896 (4) ACTUARIAL OPINION OF RESERVES.—

897 (a) Each insurer that has outstanding life insurance  
 898 contracts, accident and health insurance contracts, or deposit-  
 899 type contracts in this state which are subject to regulation by

10-01163A-14 20141308\_\_

900 the office must annually submit the opinion of a qualified  
 901 actuary as to whether the reserves and related actuarial items  
 902 held in support of the policies and contracts are computed  
 903 appropriately, are based on assumptions that satisfy contractual  
 904 provisions, are consistent with prior reported amounts, and  
 905 comply with applicable state law. The specifics of the opinion,  
 906 including any items deemed necessary to its scope, must be as  
 907 prescribed by the valuation manual.

908 (b) Except as exempted in the valuation manual, each  
 909 insurer that has outstanding life insurance contracts, accident  
 910 and health insurance contracts, or deposit-type contracts in  
 911 this state shall also annually include an opinion by the same  
 912 appointed actuary as to whether the reserves and related  
 913 actuarial items held in support of the policies and contracts  
 914 specified in the valuation manual, when considered in light of  
 915 the assets held by the insurer with respect to the reserves and  
 916 related actuarial items, including, but not limited to, the  
 917 investment earnings on the assets and the considerations  
 918 anticipated to be received and retained under the policies and  
 919 contracts, make adequate provision for the insurer's obligations  
 920 under the policies and contracts, including, but not limited to,  
 921 the benefits under and expenses associated with the policies and  
 922 contracts.

923 (c) The insurer shall prepare a memorandum to support each  
 924 actuarial opinion in such form and substance as specified in the  
 925 valuation manual and acceptable to the office. If the insurer  
 926 fails to provide a supporting memorandum within the period  
 927 specified in the valuation manual, or if the office determines  
 928 that the supporting memorandum fails to meet the standards

10-01163A-14 20141308\_\_

929 required by the manual or is otherwise unacceptable to the  
 930 office, the office may engage a qualified actuary at the expense  
 931 of the insurer to review the opinion and the basis for the  
 932 opinion and to prepare the supporting memorandum.

933 (d) Each opinion subject to this subsection must be  
 934 submitted with the annual statement in such form and substance  
 935 as specified in the valuation manual and acceptable to the  
 936 office, must reflect the valuation of the reserve liabilities  
 937 for each year ending on or after the operative date of the  
 938 valuation manual, and must apply to all policies and contracts  
 939 subject to paragraph (b), plus other actuarial liabilities as  
 940 may be specified in the valuation manual. The opinion must be  
 941 based on standards adopted by the Actuarial Standards Board or  
 942 its successor, and on such additional standards as may be  
 943 prescribed in the valuation manual. For a foreign or alien  
 944 insurer, the office may accept an opinion filed by the insurer  
 945 with the insurance supervisory official of another state if the  
 946 office determines that the opinion reasonably meets the  
 947 requirements applicable to an insurer domiciled in this state.

948 (e) Disciplinary action by the office against the insurer  
 949 or the appointed actuary shall be in accordance with the laws of  
 950 this state and related rules adopted by the commission.

951 (5) MINIMUM STANDARD OF VALUATION.—

952 (a) In accordance with this subsection and subsection (6),  
 953 an insurer must apply the standard prescribed in the valuation  
 954 manual as the minimum standard of valuation for contracts issued  
 955 on or after the operative date of the valuation manual, except:

956 1. For specific product forms or product lines exempted  
 957 pursuant to paragraph (f); or

10-01163A-14 20141308\_\_

958 2. That an insurer domiciled in a state that does not  
 959 require the insurer to apply the standards prescribed in the  
 960 valuation manual as the minimum standard of valuation, including  
 961 the principle-based valuation of reserves, may not apply such  
 962 standards in this state.

963 (b) If, in the opinion of the office, there is no specific  
 964 valuation requirement or a specific valuation requirement in the  
 965 valuation manual is not in compliance with this section, the  
 966 insurer shall comply with the minimum valuation standards  
 967 prescribed by the commission by rule.

968 (c) The office may engage a qualified actuary, at the  
 969 insurer's expense, to perform an actuarial examination of the  
 970 insurer and to render an opinion as to the appropriateness of  
 971 any reserve assumption or method, or computer model or modeling  
 972 software used by the insurer, or to review and provide an  
 973 opinion on the insurer's compliance with the requirements of  
 974 this section. In calculating and establishing reserves under  
 975 this section, the insurer may rely on the modeling software and  
 976 tools of a third-party vendor only if the vendor contractually  
 977 agrees to allow the insurer to provide the office with access to  
 978 the software or tools as necessary to replicate the results of  
 979 the software or tools for the purpose of evaluating and  
 980 validating reserve valuations. The office may rely upon the  
 981 opinion of a qualified actuary employed by or under contract  
 982 with the commissioner of another state, district, or territory  
 983 of the United States with respect to this section.

984 (d) The office may require an insurer to change any  
 985 assumption or method that, in the opinion of the office, is  
 986 necessary to comply with the valuation manual or this section.



10-01163A-14 20141308\_\_

987 The insurer shall adjust the reserves as required by the office.  
 988 The office may take other disciplinary action pursuant to  
 989 applicable state law and rules.

990 (e) The commission may adopt subsequent amendments to the  
 991 valuation manual by rule if the methodology and standards remain  
 992 substantially consistent with the valuation manual then in  
 993 effect.

994 (f) A domestic insurer licensed and doing business only in  
 995 this state may exempt specific product forms or product lines  
 996 from the requirements of this subsection and subsection (6) if  
 997 the insurer computes reserves for the specific product forms or  
 998 product lines using assumptions and methods used before the  
 999 operative date of the valuation manual, and the amount of  
 1000 insurance subject to the stochastic or deterministic reserve  
 1001 requirement is immaterial. The requirements of s. 625.121 apply  
 1002 to specific product forms and product lines exempted under this  
 1003 paragraph.

1004 (g) An insurer that adopted a standard of valuation  
 1005 producing greater aggregate reserves than those calculated  
 1006 according to the minimum standard provided under this section  
 1007 may, with the approval of the office, adopt a lower standard of  
 1008 valuation, but such standard may not be lower than the minimum  
 1009 provided in this subsection. For purposes of this subsection,  
 1010 holding additional reserves previously determined by an  
 1011 appointed actuary to be necessary to render the opinion required  
 1012 by subsection (3) may not be deemed to be the adoption of a  
 1013 higher standard of valuation.

1014 (6) REQUIREMENTS OF A PRINCIPLE-BASED VALUATION OF  
 1015 RESERVES.-

Page 35 of 57

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14 20141308\_\_

1016 (a) Insurers required to use a principle-based valuation of  
 1017 reserves for specified product forms and product lines and  
 1018 associated policies and contracts, pursuant to subparagraph  
 1019 (5)(a)2., must:

1020 1. Quantify the benefits and guarantees, and the funding  
 1021 associated with the policies or contracts and their risks at a  
 1022 level of conservatism that reflects conditions that:

1023 a. Include unfavorable events that have a reasonable  
 1024 probability of occurring during the lifetime of the policies or  
 1025 contracts; and

1026 b. Are appropriately adverse to quantifying the tail risk.

1027 2. Incorporate assumptions, risk analysis methods, and  
 1028 financial models and management techniques that are consistent  
 1029 with, but not necessarily identical to, those used within the  
 1030 insurer's overall risk assessment process while recognizing  
 1031 potential differences in financial reporting structures and any  
 1032 prescribed assumptions or methods.

1033 3. Incorporate assumptions that are derived in one of the  
 1034 following manners:

1035 a. The assumption is prescribed in the valuation manual.

1036 b. For assumptions that are not prescribed, the assumptions  
 1037 must:

1038 (I) Be established using the insurer's available  
 1039 experience, to the extent that it is relevant and statistically  
 1040 credible; or

1041 (II) To the extent that insurer data is not available,  
 1042 relevant, or statistically credible, be established using other  
 1043 relevant, statistically credible experience.

1044 4. Provide margins for uncertainty including adverse

Page 36 of 57

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14 20141308\_\_

1045 deviation and estimation error, such that the greater the  
 1046 uncertainty the larger the margin and resulting reserve.  
 1047 (b) An insurer using a principle-based valuation for one or  
 1048 more policies or contracts subject to this section as specified  
 1049 in the valuation manual shall:  
 1050 1. Establish procedures for corporate governance and  
 1051 oversight of the actuarial valuation function consistent with  
 1052 those prescribed in the valuation manual.  
 1053 2. Submit an annual certification to the office and the  
 1054 insurer's board of directors of the effectiveness of internal  
 1055 controls on the principle-based valuation. The internal controls  
 1056 must be designed to assure that all material risks inherent in  
 1057 the liabilities and associated assets subject to the valuation  
 1058 are included in the valuation, and that valuations are made in  
 1059 accordance with the valuation manual. The certification must be  
 1060 based on controls in place as of the end of the preceding  
 1061 calendar year.  
 1062 3. Upon request, develop and file with the office a  
 1063 principle-based valuation report that complies with standards  
 1064 prescribed in the valuation manual.  
 1065 (c) A principle-based valuation may include a prescribed  
 1066 formulaic reserve component.  
 1067 (7) EXPERIENCE REPORTING.—An insurer subject to the  
 1068 requirements of paragraph (5) (d) shall submit mortality,  
 1069 morbidity, policyholder behavior, or expense experience and  
 1070 other data as prescribed in the valuation manual to the office.  
 1071 (8) RULE ADOPTION.—The commission may adopt rules as  
 1072 necessary to administer this section, including rules requiring  
 1073 the use of the NAIC 2009 Standard Valuation Law and the NAIC

10-01163A-14 20141308\_\_

1074 2012 Valuation Manual. The adoption of such rules is not subject  
 1075 to s. 120.541(3), and the rules do not take effect until the  
 1076 operative date of the valuation manual.  
 1077 Section 8. Section 625.1214, Florida Statutes, is created  
 1078 to read:  
 1079 625.1214 Use of confidential information.—  
 1080 (1) Documents, reports, materials, and other information  
 1081 created, produced, or obtained pursuant to ss. 625.121 and  
 1082 625.1212 are privileged, confidential, and exempt as provided in  
 1083 s. 624.4212, and are not subject to subpoena or discovery, or  
 1084 admissible in evidence in any private civil action. However, the  
 1085 department or office may use the confidential and exempt  
 1086 information in the furtherance of any regulatory or legal action  
 1087 brought against an insurer as a part of the official duties of  
 1088 the department or office. A waiver of any other applicable claim  
 1089 of confidentiality or privilege may not occur as a result of a  
 1090 disclosure to the office under this section, any other section  
 1091 of the insurance code, or as a result of sharing under s.  
 1092 624.4212.  
 1093 (2) Neither the office nor any person who received  
 1094 confidential and exempt information while acting under the  
 1095 authority of the office or with whom such information is shared  
 1096 pursuant to s. 624.4212 may be permitted or required to testify  
 1097 in a private civil action concerning any confidential and exempt  
 1098 information subject to s. 624.4212. If any portion of the  
 1099 confidential memorandum is cited by the insurer in its  
 1100 marketing, is cited before a governmental agency other than a  
 1101 state insurance department, or is released by the insurer to the  
 1102 news media, no portion of the memorandum is confidential.

10-01163A-14 20141308\_\_

1103 (3) A privilege established under the law of any state or  
 1104 jurisdiction that is substantially similar to the privilege  
 1105 established under subsection (1) shall be available and enforced  
 1106 in any proceeding in and in any court of this state.

1107 Section 9. Paragraphs (h) and (i) of subsection (9) and  
 1108 subsection (14) of section 627.476, Florida Statutes, are  
 1109 amended to read:

1110 627.476 Standard Nonforfeiture Law for Life Insurance.—

1111 (9) CALCULATION OF ADJUSTED PREMIUMS AND PRESENT VALUES FOR  
 1112 POLICIES ISSUED AFTER OPERATIVE DATE OF THIS SUBSECTION.—

1113 (h) All adjusted premiums and present values referred to in  
 1114 this section shall, for all policies of ordinary insurance be  
 1115 calculated on the basis of the ~~Commissioners'~~ 1980 Standard  
 1116 Ordinary Mortality Table adopted by the NAIC or, at the election  
 1117 of the insurer for any one or more specified plans of life  
 1118 insurance, the ~~Commissioners'~~ 1980 Standard Ordinary Mortality  
 1119 Table with Ten-Year Select Mortality Factors adopted by the  
 1120 NAIC; ~~shall~~ for all policies of industrial insurance be  
 1121 calculated on the basis of the ~~Commissioners'~~ 1961 Standard  
 1122 Industrial Mortality Table adopted by the NAIC; and ~~shall~~ for  
 1123 all policies issued in a particular calendar year be calculated  
 1124 on the basis of a rate of interest not exceeding the  
 1125 nonforfeiture interest rate as defined in this subsection for  
 1126 policies issued in that calendar year. However:

1127 1. At the option of the insurer, calculations for all  
 1128 policies issued in a particular calendar year may be made on the  
 1129 basis of a rate of interest not exceeding the nonforfeiture  
 1130 interest rate, as defined in this subsection, for policies  
 1131 issued in the immediately preceding calendar year.

10-01163A-14 20141308\_\_

1132 2. Under any paid-up nonforfeiture benefit, including any  
 1133 paid-up dividend additions, any cash surrender value available,  
 1134 whether ~~or not~~ required by subsection (2), shall be calculated  
 1135 on the basis of the mortality table and rate of interest used in  
 1136 determining the amount of such paid-up nonforfeiture benefit and  
 1137 paid-up dividend additions, if any.

1138 3. An insurer may calculate the amount of any guaranteed  
 1139 paid-up nonforfeiture benefit, including any paid-up additions  
 1140 under the policy, on the basis of an interest rate no lower than  
 1141 that specified in the policy for calculating cash surrender  
 1142 values.

1143 4. In calculating the present value of any paid-up term  
 1144 insurance with accompanying pure endowment, if any, offered as a  
 1145 nonforfeiture benefit, the rates of mortality assumed may be not  
 1146 more than those shown in the ~~Commissioners'~~ 1980 Extended Term  
 1147 Insurance Table adopted by the NAIC for policies of ordinary  
 1148 insurance and not more than the ~~Commissioners'~~ 1961 Industrial  
 1149 Extended Term Insurance Table adopted by the NAIC for policies  
 1150 of industrial insurance.

1151 5. In lieu of the mortality tables specified in this  
 1152 section, at the option of the insurance company and subject to  
 1153 rules adopted by the commission, the insurance company may  
 1154 substitute:

1155 a. The 1958 CSO or CET Smoker and Nonsmoker Mortality  
 1156 Tables, whichever is applicable, for policies issued on or after  
 1157 the operative date of this subsection and before January 1,  
 1158 1989;

1159 b. The 1980 CSO or CET Smoker and Nonsmoker Mortality  
 1160 Tables, whichever is applicable, for policies issued on or after

10-01163A-14

20141308\_\_

1161 the operative date of this subsection;

1162 c. A mortality table that is a blend of the sex-distinct  
1163 1980 CSO or CET mortality table standard, whichever is  
1164 applicable, or a mortality table that is a blend of the sex-  
1165 distinct 1980 CSO or CET smoker and nonsmoker mortality table  
1166 standards, whichever is applicable, for policies that are  
1167 subject to the United States Supreme Court decision in *Arizona*  
1168 *Governing Committee v. Norris* to prevent unfair discrimination  
1169 in employment situations.

1170 6. For policies issued:

1171 a. Before the operative date of the valuation manual,  
1172 ordinary mortality tables, adopted after 1980 by the NAIC  
1173 National Association of Insurance Commissioners, adopted by rule  
1174 by the commission for use in determining the minimum  
1175 nonforfeiture standard may be substituted for the ~~Commissioners'~~  
1176 1980 Standard Ordinary Mortality Table with or without Ten-Year  
1177 Select Mortality Factors or ~~for the Commissioners'~~ 1980 Extended  
1178 Term Insurance Table adopted by the NAIC.

1179 b. On or after the operative date of the valuation manual,  
1180 the valuation manual shall provide the Standard Mortality Table  
1181 for use in determining the minimum nonforfeiture standard that  
1182 may be substituted for:

1183 (I) The 1980 Standard Ordinary Mortality Table with or  
1184 without 10-Year Select Mortality Factors or the 1980 Extended  
1185 Term Insurance Table adopted by the NAIC. If the commission  
1186 approves by rule a Standard Ordinary Mortality Table adopted by  
1187 the NAIC for use in determining the minimum nonforfeiture  
1188 standard for policies issued on or after the operative date of  
1189 the valuation manual, the minimum nonforfeiture standard

Page 41 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14

20141308\_\_

1190 supersedes the minimum nonforfeiture standard provided by the  
1191 valuation manual.

1192 (II) The 1961 Standard Industrial Mortality Table or 1961  
1193 Industrial Extended Term Insurance Table adopted by the NAIC. If  
1194 the commission approves by rule any Standard Industrial  
1195 Mortality Table adopted by the NAIC for use in determining the  
1196 minimum nonforfeiture standard for policies issued on or after  
1197 the operative date of the valuation manual, the minimum  
1198 nonforfeiture standard supersedes the minimum nonforfeiture  
1199 standard provided by the valuation manual.

1200 7. For insurance issued on a substandard basis, the  
1201 calculation of any such adjusted premiums and present values may  
1202 be based on appropriate modifications of the aforementioned  
1203 tables.

1204 (i) The nonforfeiture interest rate per year for a any  
1205 policy issued in a particular calendar year for policies issued:

1206 1. Before the operative date of the valuation manual, shall  
1207 be equal to 125 percent of the calendar year statutory valuation  
1208 interest rate for such policy as defined in the Standard  
1209 Valuation Law, rounded to the nearest one-fourth of 1 percent;  
1210 however, the nonforfeiture interest rate may not be less than 4  
1211 percent.

1212 2. On or after the operative date of the valuation manual,  
1213 shall be as provided by the valuation manual.

1214 (14) OPERATIVE DATE.—

1215 (a) After the effective date of this code, an any insurer  
1216 may file with the office a written notice or notices of its  
1217 election to comply with ~~the provisions of~~ this section on and  
1218 after a specified date or dates before January 1, 1966, as to

Page 42 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14 20141308\_\_

1219 either or both of its policies of ordinary and industrial  
 1220 insurance, in which case such specified date or dates shall be  
 1221 the operative date of this section with respect to such  
 1222 policies. The operative date of this section for policies of  
 1223 both ordinary and industrial insurance shall be the earlier of  
 1224 January 1, 1966, and any prior operative date or dates resulting  
 1225 from such previously filed written notices. With respect to  
 1226 policies of industrial insurance issued on and after the  
 1227 operative date of this section for such policies but before  
 1228 January 1, 1968, any insurer may file with the office written  
 1229 notice of its election to have the ~~Commissioners'~~ 1961 Standard  
 1230 Industrial Mortality Table and the ~~Commissioners'~~ 1961  
 1231 Industrial Extended Term Insurance Table adopted by the NAIC  
 1232 applicable with respect to subsection (8) for policies issued on  
 1233 and after the date specified in such election.

1234 (b) As used in subsection (9), the term "operative date of  
 1235 the valuation manual" has the same meaning as provided in s.  
 1236 625.1212(2).

1237 Section 10. Subsections (1), (3), (10), (12), and (13) of  
 1238 section 628.461, Florida Statutes, are amended to read:

1239 628.461 Acquisition of controlling stock.—

1240 (1) A person may not, individually or in conjunction with  
 1241 any affiliated person of such person, acquire directly or  
 1242 indirectly, conclude a tender offer or exchange offer for, enter  
 1243 into any agreement to exchange securities for, or otherwise  
 1244 finally acquire 10 ~~5~~ percent or more of the outstanding voting  
 1245 securities of a domestic stock insurer or of a controlling  
 1246 company, unless:

1247 (a) The person or affiliated person has filed with the

10-01163A-14 20141308\_\_

1248 office and sent to the insurer and controlling company a letter  
 1249 of notification regarding the transaction or proposed  
 1250 transaction ~~within no later than~~ 5 days after any form of tender  
 1251 offer or exchange offer is proposed, or ~~within no later than~~ 5  
 1252 days after the acquisition of the securities if no tender offer  
 1253 or exchange offer is involved. The notification must be provided  
 1254 on forms prescribed by the commission containing information  
 1255 determined necessary to understand the transaction and identify  
 1256 all purchasers and owners involved;

1257 (b) The person or affiliated person has filed with the  
 1258 office ~~the~~ a statement as specified in subsection (3). The  
 1259 statement must be completed and filed within 30 days after:

1260 1. Any definitive acquisition agreement is entered;

1261 2. Any form of tender offer or exchange offer is proposed;

1262 or

1263 3. The acquisition of the securities, if no definitive  
 1264 acquisition agreement, tender offer, or exchange offer is  
 1265 involved; and

1266 (c) The office has approved the tender or exchange offer,  
 1267 or acquisition if no tender offer or exchange offer is involved,  
 1268 and approval is in effect.

1269  
 1270 ~~In lieu of a filing as required under this subsection, a party~~  
 1271 ~~acquiring less than 10 percent of the outstanding voting~~  
 1272 ~~securities of an insurer may file a disclaimer of affiliation~~  
 1273 ~~and control. The disclaimer shall fully disclose all material~~  
 1274 ~~relationships and basis for affiliation between the person and~~  
 1275 ~~the insurer as well as the basis for disclaiming the affiliation~~  
 1276 ~~and control. After a disclaimer has been filed, the insurer~~

10-01163A-14

20141308\_\_

1277 ~~shall be relieved of any duty to register or report under this~~  
 1278 ~~section which may arise out of the insurer's relationship with~~  
 1279 ~~the person unless and until the office disallows the disclaimer.~~  
 1280 ~~The office shall disallow a disclaimer only after furnishing all~~  
 1281 ~~parties in interest with notice and opportunity to be heard and~~  
 1282 ~~after making specific findings of fact to support the~~  
 1283 ~~disallowance.~~ A filing ~~as~~ required under this subsection must be  
 1284 made ~~for as to~~ any acquisition that equals or exceeds 10 percent  
 1285 of the outstanding voting securities.

1286 (3) The statement to be filed with the office under  
 1287 subsection (1) and furnished to the insurer and controlling  
 1288 company must ~~shall~~ contain all the following information and any  
 1289 additional information that ~~as~~ the office deems necessary to  
 1290 determine the character, experience, ability, and other  
 1291 qualifications of the person or affiliated person of such person  
 1292 for the protection of the policyholders and shareholders of the  
 1293 insurer and the public:

1294 (a) The identity of, and the background information  
 1295 specified in subsection (4) on, each natural person by whom, or  
 1296 on whose behalf, the acquisition is to be made; and, if the  
 1297 acquisition is to be made by, or on behalf of, a corporation,  
 1298 association, or trust, as to the corporation, association, or  
 1299 trust and as to any person who controls, ~~either~~ directly or  
 1300 indirectly, the corporation, association, or trust, the identity  
 1301 of, and the background information specified in subsection (4)  
 1302 on, each director, officer, trustee, or other natural person  
 1303 performing duties similar to those of a director, officer, or  
 1304 trustee for the corporation, association, or trust. ~~+~~

1305 (b) The source and amount of the funds or other

10-01163A-14

20141308\_\_

1306 consideration used, or to be used, in making the acquisition. ~~+~~

1307 (c) Any plans or proposals that ~~which~~ such persons may have  
 1308 made to liquidate such insurer, to sell any of its assets or  
 1309 merge or consolidate it with any person, or to make any other  
 1310 major change in its business or corporate structure or  
 1311 management; and any plans or proposals that ~~which~~ such persons  
 1312 may have made to liquidate any controlling company of such  
 1313 insurer, to sell any of its assets or merge or consolidate it  
 1314 with any person, or to make any other major change in its  
 1315 business or corporate structure or management. ~~+~~

1316 (d) The number of shares or other securities that ~~which~~ the  
 1317 person or affiliated person of such person proposes to acquire,  
 1318 the terms of the proposed acquisition, and the manner in which  
 1319 the securities are to be acquired. ~~+~~ ~~and~~

1320 (e) Information as to any contract, arrangement, or  
 1321 understanding with any party with respect to any of the  
 1322 securities of the insurer or controlling company, including, but  
 1323 not limited to, information relating to the transfer of any of  
 1324 the securities, option arrangements, puts or calls, or the  
 1325 giving or withholding of proxies, which information names the  
 1326 party with whom the contract, arrangement, or understanding has  
 1327 been entered into and gives the details thereof.

1328 (f) Effective January 1, 2015, an agreement by the person  
 1329 required to file the statement that the person will provide the  
 1330 annual report specified in s. 628.801(2) if control exists.

1331 (g) Effective January 1, 2015, an acknowledgement by the  
 1332 person required to file the statement that the person and all  
 1333 subsidiaries within the person's control in the insurance  
 1334 holding company system will provide, as necessary, information

10-01163A-14 20141308\_\_

1335 to the office upon request to evaluate enterprise risk to the  
1336 insurer.

1337 (10) Upon notification to the office by the domestic stock  
1338 insurer or a controlling company that any person or any  
1339 affiliated person of such person has acquired 10 ~~5~~ percent or  
1340 more of the outstanding voting securities of the domestic stock  
1341 insurer or controlling company without complying with the  
1342 provisions of this section, the office shall order that the  
1343 person and any affiliated person of such person cease  
1344 acquisition of any further securities of the domestic stock  
1345 insurer or controlling company; however, the person or any  
1346 affiliated person of such person may request a proceeding, which  
1347 proceeding shall be convened within 7 days after the rendering  
1348 of the order for the sole purpose of determining whether the  
1349 person, individually or in connection with any affiliated person  
1350 of such person, has acquired 10 ~~5~~ percent or more of the  
1351 outstanding voting securities of a domestic stock insurer or  
1352 controlling company. Upon the failure of the person or  
1353 affiliated person to request a hearing within 7 days, or upon a  
1354 determination at a hearing convened pursuant to this subsection  
1355 that the person or affiliated person has acquired voting  
1356 securities of a domestic stock insurer or controlling company in  
1357 violation of this section, the office may order the person and  
1358 affiliated person to divest themselves of any voting securities  
1359 so acquired.

1360 (12) (a) The disclaimer must fully disclose all material  
1361 relationships and bases for affiliation between the person and  
1362 the insurer as well as the basis for disclaiming the  
1363 affiliation. The disclaimer of control shall be filed on a form

Page 47 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14 20141308\_\_

1364 prescribed by the office. A person or acquiring party may file a  
1365 disclaimer of control by filing with the office a copy of a  
1366 Schedule 13G filed with the Securities and Exchange Commission  
1367 pursuant to rules 13d-1(b) or 13d-1(c) under the Securities  
1368 Exchange Act of 1934, as amended. After a disclaimer has been  
1369 filed, the insurer is relieved of any duty to register or report  
1370 under this section which may arise out of the insurer's  
1371 relationship with the person unless the office disallows the  
1372 disclaimer.

1373 (b) A controlling person of a domestic insurer who seeks to  
1374 divest the person's controlling interest in the domestic insurer  
1375 in any manner shall file with the office, with a copy provided  
1376 to the insurer, confidential notice, not subject to public  
1377 inspection as provided under s. 624.4212, of the person's  
1378 proposed divestiture at least 30 days before the cessation of  
1379 control. The office shall determine those instances in which the  
1380 party seeking to divest or to acquire a controlling interest in  
1381 an insurer must file for and obtain approval of the transaction.  
1382 The information remains confidential until the conclusion of the  
1383 transaction unless the office, in its discretion, determines  
1384 that confidential treatment interferes with enforcement of this  
1385 section. If the statement referred to in subsection (1) is  
1386 otherwise filed, this paragraph does not apply ~~For the purpose~~  
1387 ~~of this section, the term "affiliated person" of another person~~  
1388 ~~means:~~

1389 ~~1. The spouse of such other person;~~  
1390 ~~2. The parents of such other person and their lineal~~  
1391 ~~descendants and the parents of such other person's spouse and~~  
1392 ~~their lineal descendants;~~

Page 48 of 57

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01163A-14 20141308\_\_

1393 3. Any person who directly or indirectly owns or controls,  
 1394 or holds with power to vote, 5 percent or more of the  
 1395 outstanding voting securities of such other person;  
 1396 4. Any person 5 percent or more of the outstanding voting  
 1397 securities of which are directly or indirectly owned or  
 1398 controlled, or held with power to vote, by such other person;  
 1399 5. Any person or group of persons who directly or  
 1400 indirectly control, are controlled by, or are under common  
 1401 control with such other person;  
 1402 6. Any officer, director, partner, copartner, or employee  
 1403 of such other person;  
 1404 7. If such other person is an investment company, any  
 1405 investment adviser of such company or any member of an advisory  
 1406 board of such company;  
 1407 8. If such other person is an unincorporated investment  
 1408 company not having a board of directors, the depositor of such  
 1409 company; or  
 1410 9. Any person who has entered into an agreement, written or  
 1411 unwritten, to act in concert with such other person in acquiring  
 1412 or limiting the disposition of securities of a domestic stock  
 1413 insurer or controlling company.  
 1414 (b) For the purposes of this section, the term "controlling  
 1415 company" means any corporation, trust, or association owning,  
 1416 directly or indirectly, 25 percent or more of the voting  
 1417 securities of one or more domestic stock insurance companies.  
 1418 (13) The commission may adopt, ~~amend, or repeal~~ rules that  
 1419 are necessary to administer ~~implement~~ the provisions of this  
 1420 section, ~~pursuant to chapter 120.~~  
 1421 Section 11. Section 628.801, Florida Statutes, is amended

10-01163A-14 20141308\_\_

1422 to read:  
 1423 628.801 Insurance holding companies; registration;  
 1424 regulation.-  
 1425 (1) An ~~Every~~ insurer that is authorized to do business in  
 1426 this state and that is a member of an insurance holding company  
 1427 shall, on or before April 1 of each year, register with the  
 1428 office and file a registration statement and be subject to  
 1429 regulation with respect to its relationship to the holding  
 1430 company as provided by law or rule ~~or statute~~. The commission  
 1431 shall adopt rules establishing the information and statement  
 1432 form required for registration and the manner in which  
 1433 registered insurers and their affiliates are regulated. The  
 1434 rules apply to domestic insurers, foreign insurers, and  
 1435 commercially domiciled insurers, except for a foreign insurer  
 1436 domiciled in states that were ~~are~~ accredited by the NAIC  
 1437 National Association of Insurance Commissioners by December 31,  
 1438 1995. Except to the extent of any conflict with this code, the  
 1439 rules must include all requirements and standards of ss. 4 and 5  
 1440 of the Insurance Holding Company System Regulatory Act and the  
 1441 Insurance Holding Company System Model Regulation of the NAIC  
 1442 National Association of Insurance Commissioners, as adopted in  
 1443 December 2010. The commission may adopt subsequent amendments  
 1444 thereto if the methodology remains substantially consistent. The  
 1445 rules ~~Regulatory Act and the Model Regulation existed on~~  
 1446 ~~November 30, 2001,~~ and may include a prohibition on oral  
 1447 contracts between affiliated entities. Material transactions  
 1448 between an insurer and its affiliates shall be filed with the  
 1449 office as provided by rule ~~Upon request, the office may waive~~  
 1450 ~~filing requirements under this section for a domestic insurer~~



10-01163A-14 20141308\_\_

1451 ~~that is the subsidiary of an insurer that is in full compliance~~  
 1452 ~~with the insurance holding company registration laws of its~~  
 1453 ~~state of domicile, which state is accredited by the National~~  
 1454 ~~Association of Insurance Commissioners.~~

1455 (2) Effective January 1, 2015, the ultimate controlling  
 1456 person of every insurer subject to registration shall also file  
 1457 an annual enterprise risk report on or before April 1. As used  
 1458 in this subsection, the term "ultimate controlling person" means  
 1459 a person who is not controlled by any other person. The report,  
 1460 to the best of the ultimate controlling person's knowledge and  
 1461 belief, must identify the material risks within the insurance  
 1462 holding company system that could pose enterprise risk to the  
 1463 insurer. The report shall be filed with the lead state office of  
 1464 the insurance holding company system as determined by the  
 1465 procedures within the Financial Analysis Handbook adopted by the  
 1466 NAIC and is confidential and exempt from public disclosure as  
 1467 provided in s. 624.4212.

1468 (a) An insurer may satisfy this requirement by providing  
 1469 the office with the most recently filed parent corporation  
 1470 reports that have been filed with the Securities and Exchange  
 1471 Commission which provide the appropriate enterprise risk  
 1472 information.

1473 (b) The term "enterprise risk" means an activity,  
 1474 circumstance, event, or series of events involving one or more  
 1475 affiliates of an insurer which, if not remedied promptly, are  
 1476 likely to have a materially adverse effect upon the financial  
 1477 condition or liquidity of the insurer or its insurance holding  
 1478 company system as a whole, including anything that would cause  
 1479 the insurer's risk-based capital to fall into company action

10-01163A-14 20141308\_\_

1480 level as set forth in s. 624.4085 or would cause the insurer to  
 1481 be in a hazardous financial condition.

1482 (3) Effective January 1, 2015, pursuant to chapter 624  
 1483 relating to the examination of insurers, the office may examine  
 1484 any insurer registered under this section and its affiliates to  
 1485 ascertain the financial condition of the insurer, including the  
 1486 enterprise risk to the insurer by the ultimate controlling  
 1487 party, or by any entity or combination of entities within the  
 1488 insurance holding company system, or by the insurance holding  
 1489 company system on a consolidated basis.

1490 (4) The filings and related documents filed pursuant to  
 1491 this section are confidential and exempt as provided in s.  
 1492 624.4212 and are not subject to subpoena or discovery or  
 1493 admissible in evidence in any private civil action. A waiver of  
 1494 any applicable privilege or claim of confidentiality in the  
 1495 filings and related documents may not occur as a result of any  
 1496 disclosure to the office under this section or any other section  
 1497 of the insurance code as authorized under s. 624.4212. Neither  
 1498 the office nor any person who received the filings and related  
 1499 documents while acting under the authority of the office or with  
 1500 whom such information is shared pursuant to s. 624.4212 is  
 1501 permitted or required to testify in any private civil action  
 1502 concerning any confidential documents, materials, or information  
 1503 subject to s. 624.4212. However, the department or office may  
 1504 use the confidential and exempt information in the furtherance  
 1505 of any regulatory or legal action brought against an insurer as  
 1506 a part of the official duties of the department or office.

1507 (5) Effective January 1, 2015, the failure to file a  
 1508 registration statement, or a summary of the registration

10-01163A-14 20141308\_\_

1509 statement, or the enterprise risk filing report required by this  
 1510 section within the time specified for filing is a violation of  
 1511 this section.

1512 (6) Upon request, the office may waive the filing  
 1513 requirements of this section:

1514 (a) If the insurer is a domestic insurer that is the  
 1515 subsidiary of an insurer that is in full compliance with the  
 1516 insurance holding company registration laws of its state of  
 1517 domicile, which state is accredited by the NAIC; or

1518 (b) If the insurer is a domestic insurer that writes only  
 1519 in this state and has annual direct written and assumed premium  
 1520 of less than \$300 million, excluding premiums reinsured with the  
 1521 Federal Crop Insurance Corporation and Federal Flood Program,  
 1522 and demonstrates that compliance with this section would not  
 1523 provide substantial regulatory or consumer benefit. In  
 1524 evaluating a waiver request made under this paragraph, the  
 1525 office may consider various factors including, but not limited  
 1526 to, the type of business entity, the volume of business written,  
 1527 the ownership or organizational structure of the entity, or  
 1528 whether the company is in run-off.

1529 A waiver granted pursuant to this subsection is valid for 2  
 1530 years unless sooner withdrawn due to a change in the  
 1531 circumstances under which the waiver was granted.

1532 Section 12. Effective January 1, 2015, present subsection  
 1533 (4) of section 628.803, Florida Statutes, is renumbered as  
 1534 subsection (5), and a new subsection (4) is added to that  
 1535 section, to read:

1536 628.803 Sanctions.—  
 1537

10-01163A-14 20141308\_\_

1538 (4) If the office determines that any person violated s.  
 1539 628.461 or s. 628.801, the violation may serve as an independent  
 1540 basis for disapproving dividends or distributions and for  
 1541 placing the insurer under an order of supervision in accordance  
 1542 with part VI of chapter 624.

1543 Section 13. Effective January 1, 2015, section 628.804,  
 1544 Florida Statutes, is created to read:

1545 628.804 Groupwide supervision for international insurance  
 1546 groups.—

1547 (1) As used in this section:

1548 (a) "Groupwide supervisor" means the chief insurance  
 1549 regulatory official for the jurisdiction who is determined by  
 1550 the office to have significant contacts with the international  
 1551 insurance group sufficient to conduct and coordinate groupwide  
 1552 supervision activities.

1553 (b) "International insurance group" means an insurance  
 1554 group operating internationally which includes an insurer.

1555 (2) The office may act as the groupwide supervisor for an  
 1556 international insurance group in which the ultimate controlling  
 1557 person of the group is domiciled in this state.

1558 (3) (a) If the ultimate controlling person is domiciled  
 1559 outside this state, the office, in cooperation with other  
 1560 groupwide supervisors, may:

1561 1. Determine that the office is the appropriate groupwide  
 1562 supervisor for an international insurance group with substantial  
 1563 operations concentrated in this state or in insurance operations  
 1564 conducted by subsidiary insurance companies domiciled in this  
 1565 state; or

1566 2. Acknowledge that another chief insurance regulatory

10-01163A-14 20141308\_\_

1567 official is the appropriate groupwide supervisor for the  
 1568 international insurance group.

1569 (b) Before issuing a determination, the office must notify  
 1570 the insurer and the ultimate controlling person within the  
 1571 international insurance group and provide the international  
 1572 insurance group with at least 30 days to submit information  
 1573 pertinent to the pending determination.

1574 (4) The commission may adopt rules to administer this  
 1575 section, including rules establishing the criteria for making a  
 1576 determination under paragraph (3) (a), such as the extent of  
 1577 insurance operations in this state and nation; the location of  
 1578 the executive offices, assets and liabilities, and business  
 1579 operations of the international insurance group; the domicile of  
 1580 the ultimate controlling person of the international insurance  
 1581 group; and the similarity of the regulatory systems of other  
 1582 jurisdictions acting or seeking to act as lead groupwide  
 1583 supervisor.

1584 Section 14. Effective January 1, 2015, section 628.805,  
 1585 Florida Statutes, is created to read:

1586 628.805 Supervisory colleges.—In order to assess the  
 1587 business strategy, financial position, legal and regulatory  
 1588 position, risk exposure, risk management, and governance  
 1589 processes, and as part of the examination of individual insurers  
 1590 in accordance with ss. 624.316 and 628.801, the office may  
 1591 participate in a supervisory college with other regulators  
 1592 charged with supervision of the insurer or its affiliates,  
 1593 including other state, federal, and international regulatory  
 1594 agencies. In accordance with s. 624.4212 regarding confidential  
 1595 information sharing, the office may enter into agreements that

10-01163A-14 20141308\_\_

1596 provide the basis for cooperation between the office and the  
 1597 other regulatory agencies and the activities of the supervisory  
 1598 college. This section does not delegate to the supervisory  
 1599 college the office's authority to regulate or supervise the  
 1600 insurer or its affiliates under its jurisdiction.

1601 (1) With respect to participation in a supervisory college,  
 1602 the office may:

1603 (a) Initiate the establishment of a supervisory college.

1604 (b) Clarify the membership and participation of other  
 1605 supervisors in the supervisory college.

1606 (c) Clarify the functions of the supervisory college and  
 1607 the role of other regulators, including the establishment of a  
 1608 groupwide supervisor.

1609 (d) Coordinate the ongoing activities of the supervisory  
 1610 college, including planning meetings, supervisory activities,  
 1611 and processes for information sharing.

1612 (e) Establish a crisis management plan.

1613 (2) With respect to an insurer registered under s. 628.801,  
 1614 and in accordance with this section, the office may participate  
 1615 in a supervisory college for any domestic insurer that is part  
 1616 of an insurance holding company system that has international  
 1617 operations in order to determine the insurer's compliance with  
 1618 this chapter.

1619 (3) Each registered insurer subject to this section is  
 1620 liable for and shall pay reasonable expenses for the office's  
 1621 participation in a supervisory college, including reasonable  
 1622 travel expenses. A supervisory college may be convened as a  
 1623 temporary or permanent forum for communication and cooperation  
 1624 between the regulators charged with the supervision of the

10-01163A-14 20141308\_\_

1625 insurer or its affiliates, and the office may impose a regular  
1626 assessment on the insurer for the payment of these expenses.

1627 Section 15. Effective January 1, 2015, subsection (3) is  
1628 added to section 636.045, Florida Statutes, to read:

1629 636.045 Minimum surplus requirements.—

1630 (3) A prepaid limited health service organization that is  
1631 authorized in this state and one or more other states,  
1632 jurisdictions, or countries is subject to ss. 624.4085 and  
1633 624.40851.

1634 Section 16. Effective January 1, 2015, subsection (7) is  
1635 added to section 641.225, Florida Statutes, to read:

1636 641.225 Surplus requirements.—

1637 (7) A health maintenance organization that is authorized in  
1638 this state and one or more other states, jurisdictions, or  
1639 countries is subject to ss. 624.4085 and 624.40851.

1640 Section 17. Effective January 1, 2015, subsection (3) is  
1641 added to section 641.255, Florida Statutes, to read:

1642 641.255 Acquisition, merger, or consolidation.—

1643 (3) A health maintenance organization that is a member of a  
1644 holding company system is subject to s. 628.461 but not s.  
1645 628.4615.

1646 Section 18. Except as otherwise expressly provided in this  
1647 act, this act shall take effect October 1, 2014, if SB \_\_\_\_ or  
1648 similar legislation is adopted in the same legislative session  
1649 or an extension thereof and becomes a law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-11

Meeting Date

Topic Insurer Solvency

Bill Number 1308  
*(if applicable)*

Name Monte Stevens

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title DEP. CHIEF OF STAFF

Address 200 E. GAINES ST  
*Street*

Phone 413-5005

TALLY FL 32397  
*City State Zip*

E-mail Monte.Stevens@flair.com

Speaking:  For  Against  Information

Representing OIR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 11 /  
Meeting Date

Topic \_\_\_\_\_

Bill Number 1308  
*(if applicable)*

Name Tom Meenan

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title 310 w. College

Address fall, FL.  
*Street*

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Towers Hill

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

# CourtSmart Tag Report

**Room:** EL 110  
**Caption:** Senate Banking and Insurance Committee

**Type:**  
**Judge:**

**Started:** 3/11/2014 4:05:16 PM  
**Ends:** 3/11/2014 5:48:58 PM  
**Length:** 01:43:43

4:05:17 PM Meeting called to order by Chairman Simmons  
4:05:41 PM Quorum present  
4:08:43 PM TAB 2 - CS/CS/SB 542 by Sen. Brandes, Public Records and Meetings/Insurance Flood Loss Model  
4:09:52 PM Amd. 823760 (Hays) Explanation of amendment by Sen. Brandes  
4:10:33 PM On Amd. 823760 -- without objection -- adopted  
4:11:12 PM Ted Thomas, Realtor speaking for the bill  
4:15:10 PM Ted Thomas, Realtor speaking for the bill  
4:15:12 PM Motion for CS -- Hays -- w/o - favorable  
4:16:04 PM Final vote on CS/CS/CS/SB 542 -- passed  
4:16:56 PM TAB 3 - SB 1262 by Sen. Brandes  
4:17:15 PM Exlanation of bill by Sen. Brandes  
4:17:42 PM Final vote on SB 1262 -- Passed  
4:18:37 PM TAB 4 - SM 1058 by Sen. Brandes  
4:18:54 PM Explanation of bill by Senator Brandes  
4:19:18 PM Final roll call on SM 1058 -- Favorable  
4:21:04 PM Chairman Simmons turns chair over to Sen. Clemens  
4:21:52 PM Motion to reconsider Amd. 962288 by Sen. Hays  
4:22:25 PM Motion to withdraw amd. 962288 -- w/o objection withdrawn  
4:33:31 PM Sen. Richter takes the chair  
4:33:41 PM Amd. 115044 by Sen. Clemens--explanation of amend by Sen. Clemens  
4:34:36 PM Comments on amd. by Sen. Simmons  
4:45:06 PM Senator Clemens withdraws 115044  
4:54:35 PM Senator Simmons closes on SPB 7062  
4:55:36 PM Senator Simmons -- Motion to submit as committee bill -- passed  
4:55:59 PM Final vote on SPB 7062 -- passed  
4:56:47 PM TAB 5 - SB 870 by Sen. Smith - Insurance  
4:57:40 PM Final vote on S 870 -- passed  
5:00:10 PM Final vote on S 870 -- passed  
5:00:13 PM TAB 6 - S 1210 by Sen. Bean - Div. of Insurance Agents  
5:01:32 PM Amd. 333272 (technical amd) w/o objection -- adopted  
5:01:58 PM Amd. 110598 (Hays) Technical amendment --w/o --adopted  
5:03:33 PM Motion for CS - Sen. Montford -- favorable w/o  
5:03:47 PM Fina vote on CS/SB 1210 -- Favorable  
5:04:33 PM TAB 7 - SB 310 by Sen. Simpson  
5:05:07 PM Delete all amendment 126702 (Ring) -- w/o o bjection -- adopted  
5:06:00 PM Doug Mang, First American Title Insurance Company  
5:19:14 PM Monty Stevens - Ofc. of Insurance Regulation  
5:24:43 PM Motion to TP -- Senator Hays -- roll call vote --motion fails  
5:29:35 PM Senator Simpson recognized to close on bill  
5:30:06 PM Motion for CS - Senator Lee -- w/o -- adopted  
5:30:25 PM Final Vote on CS/SB 310 - Favorable  
5:31:14 PM TAB 8 - SB 952 - workers compensation -- explanation of bill by Senator Simpson  
5:32:15 PM Final vote on SB 952 -- Favorable  
5:32:56 PM TAB 9 - S B 1278 by Sen. Richter  
5:33:20 PM Amd. 564502 (technical amendment) (Richter) -- adopted -- w/o  
5:34:14 PM Motion for CS (Richter) -- favorable w/o objection  
5:34:38 PM Final vote on CS/SB 1278 -- Favorable  
5:35:33 PM TAB 10 - SB 856 by Sen. Detert - Uniform Fraudulent Transfer Act  
5:36:32 PM Explanation of bill --Senator Detert  
5:37:12 PM Final vote on SB 856 -- Favorable  
5:37:50 PM Chairman Simmons turns chair over to Senator Clemens  
5:38:08 PM TAB 12 - SB 1308 by Sen. Simmons - Insurer Solvency

**5:38:35 PM** Sen. Simmons recognized to explain bill  
**5:38:55 PM** Amd. 416922 (Simmons) w/o --adopted  
**5:39:29 PM** Amd. 919650 (Simmons) tech. amend --w/o adopted  
**5:39:56 PM** Amd. 510388 (Simmons) w/o -- adopted  
**5:40:21 PM** Amd. 208360 (Simmons) w/o objection -- adopted  
**5:41:14 PM** Amd. 605142 (Simmons) technical amd. --w/o objection -- adopted  
**5:41:44 PM** Amd. 277336 (Simmons) without objection -- adopted  
**5:42:29 PM** Tim Meenam, Tower Hill  
**5:44:27 PM** Sen. Simmons recognized to close on bill  
**5:44:40 PM** Motion for CS -- Sen. Simmons - w/o objection  
**5:45:25 PM** Final vote on CS/SB 1308 -- Favorable  
**5:46:00 PM** TAB 11 - SB 1300 (Simmons)  
**5:46:13 PM** Sen. Simmons recognized to explain Amd. 717024 (delete all) w/o -- adopted  
**5:47:02 PM** Motion for CS (Simmons) w/o objection -- adopted  
**5:47:29 PM** Final Vote on CS/SB 1300 -- favorable  
**5:48:03 PM** Vice chair returns chair to Senator Simmons  
**5:48:15 PM** Motion to rise by Senator Montford