

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1137 Consumer Protection

**SPONSOR(S):** Commerce Committee, Insurance & Banking Subcommittee, Clemons

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1492

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Fortenberry	Cooper
2) Government Operations & Technology Appropriations Subcommittee	13 Y, 0 N	Helping	Topp
3) Commerce Committee	23 Y, 0 N, As CS	Fortenberry	Hamon

### SUMMARY ANALYSIS

The bill makes the following changes to the laws governing the divisions under the Florida Department of Financial Services (DFS):

- **Motor Vehicles-Certificates of Title and Destruction**—The bill updates the electronic signature requirements for salvage certificates of title.
- **Consumer Credit Scores and Security Freezes**—The bill prohibits consumer reporting agencies from charging a fee for a personal identification number used to place a security freeze. It requires that insurers notify applicants of the availability of DFS’s financial literacy resources at certain times.
- **Consumer Services**—The bill requires that licensees provide documents when responding to written requests from DFS or the Office of Insurance Regulation and it eliminates obsolete penalties.
- **Professions**—The bill establishes insurance adjusting firms’ licensure requirements and penalties, adds grounds upon which DFS may revoke or suspend licenses, and permits suspension of a title insurance agent’s license for two years
- **Agency Names**—This bill provides the specific authority for DFS to disapprove agency names containing the words “Medicaid” and “Medicare.”
- **Industrial Class Insurers**—The bill amends the laws regarding industrial life insurance, small policies written upon individual lives, so that no such policies may be sold in Florida after July 1, 2020.
- **Policyholder Rights**—The bill extends the time that a policyholder has to cancel a contract with a public adjuster, and amends the Homeowners Claim Bill of Rights and property insurer claim’s handling requirements, including policyholder notification of a change in adjuster.
- **Company Employee Adjuster**—The bill adds adjusters employed by an insurer’s affiliate to the definition of public company adjuster.
- **Export to Surplus Lines**—The bill mandates that the notification regarding the export of a policy to the surplus lines market, currently given only to commercial policyholders, be given to all policyholders.
- **Unfair or Deceptive Acts**—The bill adds two grounds, based upon effectuating an entire insurance policy without consent, to the list of acts that constitute sliding.
- **Foreign Venue Clauses Prohibited**—The bill requires dispute resolution for policies sold in Florida, and insuring property in Florida, on the admitted or surplus lines markets, occurs in Florida.
- **Florida Insurance Guaranty Association (FIGA) Deductible**—Currently, a policyholder whose claim is covered by FIGA must pay a \$100 deductible on that claim. The bill eliminates that deductible.
- **Unclaimed Property**—Florida law provides a detailed framework for the recovery of unclaimed property held by DFS. The bill creates uniform forms for use by claimants’ representatives involved in the recovery process and caps the fees such representatives may charge.

The bill may have a positive impact on state revenues. It has no impact on state expenditures or local government revenues or expenditures. The bill may have a positive economic benefit to consumers and a possible indeterminate negative economic impact on insurers.

Except where otherwise provided, the bill is effective upon becoming law.

### FULL ANALYSIS

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

STORAGE NAME: h1137e.COM

DATE: 2/17/2020

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

The Department of Financial Services (DFS) is composed of 13 divisions and one independent office. They are the Divisions of:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services (DIFS);
- Public Assistance Fraud (DPAF);
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

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

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

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

- The insurer may receive a salvage certificate of title or certificate of destruction from DHSMV 30 days after paying the claim, if:
  - There is no electronic lien on the motor vehicle or mobile home; and
  - The insurer has:
    - Obtained a release of all liens;
    - Provided proof of payment of the total loss claim; and

---

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

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

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

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

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

- Provided an affidavit<sup>4</sup> on letterhead signed by the insurance company or its authorized agent stating the attempts<sup>5</sup> that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail.<sup>6</sup>

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

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

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

The security levels were chosen based on ongoing federal rule development that governs odometer disclosures. The draft federal regulations included the use of Level 2 requirements in certain instances and Level 3 requirements in others. HB 301 mirrored this structure; however, the final federal regulation was published after the 2019 session with an unexpected change. Only Level 2 requirements were implemented. So, the Level 3 requirement of s. 319.30(3)(d), F.S., applicable to odometer disclosures for obtaining salvage certificates of title exceed the federal standard.<sup>10</sup>

### *Effect of the Bill*

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

## **Consumer Credit Reports and Scores and Security Freezes**

---

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

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

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

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

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

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

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

## Security Freezes

Section 501.0051, F.S., permits a consumer to put a security freeze on his or her credit report, which prohibits a consumer reporting agency from releasing the consumer's credit report, credit score, or any information contained within the consumer report without express authorization. In order to place a security freeze, a consumer must utilize a unique personal identification number (PIN). In 2018, the law was amended to prevent a credit reporting agency from charging a fee of up to \$10 for a consumer to place a security freeze.<sup>11</sup> However, current law permits a consumer reporting agency to charge a consumer up to \$10 to provide or reissue a unique PIN to a consumer.

### *Effect of the Bill*

The bill removes a credit reporting agency's ability to charge a fee of \$10 or less to reissue or provide a unique PIN to a consumer to use to obtain a credit report security freeze.

## Credit Reports or Scores

Under certain circumstances, insurers are permitted to utilize applicants' credit reports and scores in underwriting and rating decisions.<sup>12</sup> The insurer must notify applicants that credit reports and scores are being utilized for these purposes.<sup>13</sup> DFS currently offers free financial literacy programs and maintains a toll-free insurance consumer helpline and a website to assist consumers with insurance questions, concerns, and complaints.<sup>14</sup> Insurers are not required to provide applicants with information regarding these resources when they notify them of the use of their credit reports and scores.

### *Effect of the Bill*

The bill provides that, at the same time that insurers inform consumers of the use of credit reports and scores for underwriting and rating purposes, the insurers must provide consumers with notification that DFS offers free financial literacy programs to assist them in understanding how credit scores are calculated, what factors are considered, and how credit works.

## **Companies' Responses to Department of Financial Services Division of Consumer Services**

Current law requires that licensees holding certificates of authority from DFS (agents and agencies) or the Office of Insurance Regulation (OIR) (insurance companies) must respond to written requests from DFS or OIR concerning consumer complaints. It does not require that the licensees provide documents in response to such requests.<sup>15</sup> Additionally, the law contains administrative penalties for an individual's noncompliance with DFS's or OIR's written requests related to consumer complaints that have never been utilized and are obsolete.<sup>16</sup>

### *Effect of the Bill*

The bill adds requested documents to the response that a licensee must provide to DFS or OIR when one of those agencies makes a written request to a licensee regarding a consumer complaint, but specifies that documents need not be released if they are protected by attorney-client or work-product privilege. It also eliminates the monetary penalties for noncompliance by an individual, while leaving them in place for noncompliance by a licensed entity.

## **Requirements Placed on Licensees of the Department of Financial Services**

---

<sup>11</sup> Ch. 2018-62, Laws of Fla.

<sup>12</sup> See s. 626.9741, F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Florida Department of Financial Services, Agency Analysis of House Bill 1137, p. 3 (Jan. 15, 2020).

<sup>15</sup> S. 627.307, F.S.

<sup>16</sup> Florida Department of Financial Services (DFS), Agency Analysis of House Bill 1137, p. 2 (Jan. 15, 2020).

## Agents, Customer and Service Representatives, Adjusters, Insurance Agencies, Managing General Agents, and Insurance Adjusting Firms

Section 626.112, F.S., sets forth various requirements that insurance agents, agencies, adjusters, customer and service representatives, and managing general agents must meet in order to operate within Florida. However, it includes no requirements for insurance adjusting firms. DFS has indicated that the lack of requirements renders them unable to track and address concerns with adjusting firms and adjusters who work for them.<sup>17</sup>

Additionally, while current law provides penalties for acting as an unlicensed insurance agent, adjuster, customer or service representative, or managing general agent, it does not provide any penalties for aiding or abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities within the state.

### *Effect of the Bill*

The bill establishes that no individual or entity may act as an adjusting firm unless it complies with the legal requirements for obtaining an adjusting firm license for each location where activity occurs that only a licensed adjuster may perform. However, a licensed adjusting firm owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or using the services of other licensees is exempt from this requirement. If an adjusting firm is required to be licensed, but fails to apply for licensure, it may be assessed an administrative penalty of up to \$10,000.

The bill also establishes that any person who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in Florida without a license commits a third-degree felony.

## Grounds for Refusal, Suspension, or Revocation of Agent's, Adjuster's, Customer or Service Representative's, or Managing General Agent's License or Appointment

Section 626.621, F.S., provides grounds under which DFS may deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of an applicant, agent, adjuster, customer or service representative, or managing general agent. Currently, these licensees or appointees are not required to maintain the privacy of consumers' financial and medical information.<sup>18</sup> Additionally, Florida law does not provide for administrative action when a person violates Federal Trade Commission laws regarding telephone solicitation.<sup>19</sup>

### *Effect of the Bill*

The bill adds the following to the grounds for which DFS can deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of the above-listed persons:

- taking action that allows a consumer's or customer's personal financial or medical information to be made available or accessible to the general public; and
- initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless the prospective customer requests such contact.

## Title Insurance Agents

DFS regulates title insurance agents under ch. 626, part v, F.S. While Florida law provides that the licenses of most insurance agents or agencies may be suspended for two years for violations of the Florida Insurance Code, s. 626.8443, F.S., only provides DFS with the authority to suspend a title insurance agent's or agency's license for one year.<sup>20</sup>

---

<sup>17</sup> *Id.*

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

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

<sup>20</sup> *Id.* at 3.

### *Effect of the Bill*

The bill extends the period for which a title agent's or agency's license can be suspended from one year to two years to conform to suspension periods for other license types, to allow the agent or agency more time to renew the suspended license before it expires, and to ensure greater consumer protection.<sup>21</sup>

### **Bail Bond Agents**

Under s. 648.30, F.S., bail bond agents and temporary bail bond agents must be licensed in order to operate within Florida. While this statute provides for penalties for operating as a bail bond agent or temporary bail bond agent without a license, it does not currently provide any penalty for a licensee under ch. 648, F.S., who aids or abets an unlicensed individual to violate the provisions of the chapter.<sup>22</sup>

### *Effect of the Bill*

The bill provides that any licensee under ch. 648, F.S. who knowingly aids or abets an unlicensed person in violating the licensure and appointment requirements of the chapter commits a third-degree felony.

### **Agency Names**

Existing Florida law permits DFS to disapprove insurance agency names under certain circumstances, including when those names may mislead the public.<sup>23</sup> DFS has concerns that the inclusion of the words "Medicare" or "Medicaid" in the name of an insurance agency may confuse "vulnerable consumers" about the nature of the agency, but it lacks the specific authority to disapprove an agency name that includes those words.<sup>24</sup>

### *Effect of the Bill*

The bill adds Medicare and Medicaid to the grounds for which DFS may disapprove an insurance agency name. An agency licensed as of July 1, 2020, whose name contains the word Medicare or Medicaid, may continue to use the name as long as its license remains valid. If its license expires, is suspended, or is revoked, it may not be relicensed using the existing name.

### **Industrial Class Insurers**

Industrial class insurers write industrial life insurance policies, which are life insurance policies written upon individual lives in small amounts for which agents generally collect weekly or monthly premiums.<sup>25</sup> In general, the prevalence of industrial life insurance policies has continued to decline. Based upon data available from DFS, no new industrial life insurance has been written in the past year and few licensed life insurers continue to maintain industrial life insurance policies.<sup>26</sup>

### *Effect of the Bill*

The bill amends and repeals the statutes related to industrial class insurers and industrial life insurance so that no industrial life insurance policy may be sold in Florida after July 1, 2020. The bill has no effect

---

<sup>21</sup> *Id.* at 6.

<sup>22</sup> S. 648.30, F.S.

<sup>23</sup> S. 626.062, F.S.

<sup>24</sup> DFS, *supra*, at 2.

<sup>25</sup> Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/industrial%20life%20insurance> (last visited January 26, 2020).

<sup>26</sup> DFS, *supra*, at 3.

on industrial life insurance policies that were sold prior to that date and have continued to remain in force.

## **Policyholder Rights**

### Public Adjusters

Public adjusters are regulated under ch. 626, part VI, F.S. Florida law defines a public adjuster as someone who, for something of value, directly or indirectly, prepares, completes, or files an insurance claim for an insured or third-party claimant, or who, for something of value, acts on behalf of, or aids, an insured or third-party claimant in settling a claim for loss or damage covered by an insurance contract, or who advertises for employment as an adjuster of such claims.<sup>27</sup> In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.<sup>28</sup> At present, such a contract may only be canceled within three days after the latter of the date on which the contract was executed on which the claimant has notified the insurer of the claim.<sup>29</sup> Public adjusters who have contracted with claimants must also provide to the claimant a written estimate of loss to assist the claimant with obtaining a claim payment from the insurance company. According to information received from DFS, following the hurricanes that have affected Florida in recent years, consumers have complained about claims resolution delays due to the lack of responsiveness of public adjusters they hired and the inability to cancel contracts they have executed with these adjusters.<sup>30</sup>

### *Effect of the Bill*

The bill establishes that, during a state of emergency declared by the Florida Governor, and for one year after the date of loss, an insured or claimant may cancel a contract with a public adjuster without penalty or obligation within the latter of 14 calendar days after the date on which the contract was executed or the date on which the insured or claimant notified the insurer of the claim. In the absence of a declared state of emergency and beyond the one-year period following any declared state of emergency, an insured or claimant has seven calendar days, after the latter of the date on which the policyholder executed a contract with a public adjuster or the date on which the insured or claimant notified the insurer of the claim, to cancel the contract without penalty or obligation. Additionally, the written estimate that the public adjuster must provide to the claimant must include a written itemized per unit estimate of the repairs, including itemized information on equipment, materials, and labor and supplies. A public adjuster's failure to provide the estimate within 45 days of the date the claimant executed a contract with the public adjuster restores the claimant's right to cancel the contract. If the adjuster fails to provide the estimate 50 days after the contract is executed, the contract is void.

### Homeowner Claims Bill of Rights and Policy Delivery

Section 627.7142, F.S., contains a Homeowners Claim Bill of Rights (Bill of Rights) that insurers issuing personal lines residential property insurance policies in Florida must provide to policyholders within 14 days after receiving an initial communication with respect to a claim. While the Bill of Rights does not contain all of the rights of a policyholder, it is designed to summarize some of the significant rights, including rights regarding communications from insurers, payments of claims, and resolution of disputed claims.<sup>31</sup> At present, when timeframes are listed in the Bill of Rights, they do not specify whether they are determined in calendar or business days.<sup>32</sup> The Bill of Rights contains no requirements that an insurer notify the policyholder when it assigns a different adjuster to the claim. It does not specify that a policyholder may be entitled to receive interest from an insurer when they insurer fails to timely fulfil claim obligations. Furthermore, the Bill of Rights does not mention that a policyholder may take video of damage before and after repairs in addition to photographs of the damage.

---

<sup>27</sup> S. 626.854, F.S.

<sup>28</sup> *See id.*

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

<sup>30</sup> DFS, *supra*, at 3.

<sup>31</sup> S. 627.7142, F.S.

<sup>32</sup> *Id.*

Section 627.421, F.S., provides certain requirements for the delivery of an insurance policy to a policyholder following the inception of coverage. However, it does not require that a personal lines residential policyholder receive notice of his or her hurricane coverages at any point following the initial delivery of a policy.

#### *Effect of the Bill*

The bill amends the Bill of Rights in the following ways:

- clarifies that all timeframes mentioned within it will be calculated based upon calendar days;
- states that a policyholder to which the Bill of Rights applies must receive notification from the insurance company within 14 calendar days if there has been a change in the company adjuster assigned to a claim and the notification must include the assigned adjuster's contact information
- states that a policyholder to which the Bill of Rights applies must receive the payment of interest from the insurance company if the insurance company does not pay full settlement of a claim or deny the claim within 90 calendar days after the claim is filed; and
- clarifies that in addition to photographs, a policyholder may take video of damage before and after repairs.

The bill amends the statute regarding delivery of insurance policies to require that for personal lines residential property insurance policies, between March 1, and June 1, each year, the insurer shall deliver an outline of hurricane coverage and a copy of their declarations page to all policyholders. This notification will be provided only to policyholders who have a valid email address on file with their insurers.

#### Insurer's Duties to Acknowledge and Investigate Claims

Pursuant to Florida law, residential property insurers have certain obligations regarding the handling of claims, including responding to communications and timely payment or denial of claims.<sup>33</sup> Policyholders have complained to DFS that repeated changes in adjusters for insurance companies have contributed to significant claim delays.<sup>34</sup> In addition, policyholders have indicated that because of a lack of access to claims information, their insurance agents are not able to respond claims-related questions in a meaningful way.<sup>35</sup>

The applicable law neither requires that any licensed adjuster assigned by an insurer to conduct a physical inspection of damage property provide the policyholder with his or her name, license number, and contact information, nor requires that the insurer provide a copy of the inspection report to the policyholder following receipt from the adjuster. There is no statutory requirement that an insurer notify a policyholder when it has assigned a new adjuster to the policyholder's claim. Further, the law does not contain any mandate that the insurer inform the policyholder of the fact that an estimate may be preliminary in nature and may be revised or the fact that when a partial payment is issued the insurer is continuing to evaluate a claim and may issue additional payments.

#### *Effect of the Bill*

The bill makes the following changes existing law regarding the investigation and adjusting of residential property insurance claims:

- If an investigation of a claim involves a physical inspection of property, a licensed adjuster assigned by the insurer must provide a policyholder with his or her name, license number, and contact information.
- If an insurer assigns the claim to a new licensed adjuster following the receipt of the report, the insurer must provide the policyholder with the name, license number, and contact information

---

<sup>33</sup> See s. 627.70131, F.S.

<sup>34</sup> DFS, *supra*, at 4.

<sup>35</sup> *Id.*



for the newly assigned licensed adjuster within seven days after the change. Any subsequent changes to the assigned licensed adjuster must be handled in the same way.

- An insurer must establish a process so that the named agent of record<sup>36</sup> or another designated point of contract for an insurance policy is provided access to the information gathered from an inspection by an adjuster so that the agent of record can answer policyholder questions regarding claims.
- When providing a preliminary or partial damage claim estimate or a preliminary or partial claim payment, an insurer must provide a detailed disclosure as specified in the bill.

The bill establishes that s. 627.70131, F.S., regarding residential property insurance claims, shall be applicable to surplus lines policies in addition to policies written on the admitted market.

## **Company Employee Adjusters**

A “company employee adjuster” is a licensed insurance adjuster who is appointed and employed on an insurer’s adjusting staff or a wholly owned subsidiary of the adjuster.<sup>37</sup> The duties of such an adjuster include determining the amount of claim, loss, or damage payable under an insurance policy, and settling the claim, loss, or damage.<sup>38</sup>

### *Effect of the Bill*

The bill adds adjusters employed by an insurer’s affiliate to the definition of company employee adjuster.

## **Export of Policies to Surplus Lines**

### Notification of Export

When insurance is not available to Florida consumers from authorized insurance carriers<sup>39</sup>, it generally becomes necessary and legally permissible to obtain a policy on the surplus lines market.<sup>40</sup> However, under current surplus lines law, only consumers purchasing commercial insurance policies on the surplus lines market receive notification at the time of purchase that policies are being issued on that market.<sup>41</sup> Consequently, the first time that some residential policyholders are informed that their policies have been issued by surplus lines carriers is after their policies have been issued.<sup>42</sup> The notification currently provided to commercial policyholders whose policies are issued on the surplus lines market also includes the statement that “superior coverage may be available in the admitted market and at a lesser cost.”<sup>43</sup>

### *Effect of the Bill*

The bill amends surplus lines law to require that, at the time policies are exported to the surplus lines market, the notification statement currently signed by consumers whose commercial insurance policies are being exported to the surplus lines market must be signed, or otherwise acknowledged by all consumers whose insurance policies are being exported to the surplus lines market. The bill also replaces the statement “superior coverage may be available in the admitted market and at a lesser cost,” with “coverage may be available in the admitted market.”

### Export of Flood Insurance to Surplus Lines

---

<sup>36</sup> An agent of record means that agent named on the declarations page of the insurance policy.

<sup>37</sup> S. 626.856, F.S.

<sup>38</sup> *Id.*

<sup>39</sup> Authorized insurance carriers are those who have received a certificate of authority from OIR to transact insurance business within the state. S. 624.06, F.S.

<sup>40</sup> *See* s. 626.913, F.S.

<sup>41</sup> S. 626.916(3)(b)3, F.S.

<sup>42</sup> DFS, *supra*, at 3.

<sup>43</sup> S. 626.916(3)(b)3, F.S.

In general, before a surplus lines insurance agent may export insurance to the surplus lines market, the agent must conduct due diligence to determine the insurance is not available from a company currently writing in the state.<sup>44</sup> Until July 1, 2019, however, a surplus lines agent could export a contract or endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek the coverage from three or more admitted carriers.<sup>45</sup>

#### *Effect of the Bill*

The bill renews the exemption from statutory due diligence when exporting flood insurance to surplus lines insurers so that the exemption is effective until July 1, 2025, but removes this exception earlier if OIR determines that there is an adequate admitted market for flood insurance coverage.

### **Unfair Methods of Competition and Unfair or Deceptive Acts—Sliding**

The Florida Insurance Code prohibits licensees from engaging in unfair methods of competition and unfair or deceptive acts or practices, including sliding.<sup>46</sup> Sliding is the practice of an insurance agent's failure to fully disclose the details of, and obtain consent to, the purchase of services and products.<sup>47</sup> Under Florida law, sliding currently includes: representing to an applicant that a specific ancillary coverage or product is required by law when it is not; representing to an applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge where there is a charge for it; and charging an applicant for a specific ancillary coverage or product, in addition to the cost of insurance applied for, without informing the applicant.<sup>48</sup> According to DFS, some Florida insurers have begun a practice of effectuating entire policies without informing consumers they have done so.<sup>49</sup>

#### *Effect of the Bill*

The bill adds the following to the list of prohibited conduct that constitutes sliding:

- Initiating, effectuating, binding, or otherwise issuing an insurance policy without prior informed consent from the owner of the property being insured; and
- Mailing, transmitting, or otherwise submitting a premium invoice to a mortgagee or escrow agent in order to effectuate an insurance policy without the prior informed consent from the owner of the property being insured. However, collateral protection insurance by a mortgagee or escrow does not constitute sliding.

### **Foreign Venue Clauses in Property Insurance Policies**

Currently, Florida law does not mandate that property claims dispute resolution for policies sold in Florida, whether such resolution occurs through litigation, arbitration, or mediation, occur within Florida. The law contains no distinction for the location of dispute resolution regardless of whether a property insurance policy was issued on the admitted or surplus lines markets.<sup>50</sup>

#### *Effect of the Bill*

The bill provides that no property insurance policy sold in Florida, insuring property located in Florida, after July 1, 2020, whether issued on the admitted or surplus lines markets, may require that an insured engage in dispute resolution, through litigation, arbitration, or mediation, outside Florida.

---

<sup>44</sup> S. 626.916(1)(a), F.S. Section 626.914(4), F.S. defines “diligent effort” as seeking coverage from and having been rejected by at least three authorized insurers currently writing the type of coverage applied for and documenting these rejections.

<sup>45</sup> S. 627.715, F.S.

<sup>46</sup> S. 626.9541, F.S.

<sup>47</sup> Insurance Journal, *Michigan Bulletin Warns Insurance Produces Against ‘Sliding’*, <https://www.insurancejournal.com/news/midwest/2018/05/11/489050.htm> (last visited January 26, 2020)

<sup>48</sup> S. 626.9541(1)(z), F.S.

<sup>49</sup> DFS, *supra*, at 3.

<sup>50</sup> DFS, *supra*, at p.4.

## Florida Insurance Guaranty Association Deductible

Under federal law, insurance companies cannot file for bankruptcy.<sup>51</sup> Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers<sup>52</sup> in Florida and sets up guaranty associations where necessary.<sup>53</sup> Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA).<sup>54</sup> FIGA provides a “mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer.”<sup>55</sup> It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.<sup>56</sup> When a Florida property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. Florida law provides that FIGA is only obligated to pay the portions of claims made to insolvent property and casualty insurers, which are in excess of \$100, and less than \$300,000.<sup>57</sup> Under current law, therefore, there is a \$100 deductible on all property and casualty claims covered by FIGA.

### *Effect of the Bill*

The bill eliminates the \$100 deductible on claims paid by FIGA so that such claims will be covered for any amount exceeding \$0 and less than \$300,000.

## Unclaimed Property

Chapter 717, F.S., provides a framework for the rightful owners to obtain unclaimed property that is held by DFS. Currently, licensed claimants’ representatives are registered with DFS to gain access to DFS’s unclaimed property database and to seek authorizations from claimants to file claims on their behalf for unclaimed property held by DFS.<sup>58</sup> Each registrant who files claims utilizes a unique power of attorney through which claimants provide authorization to registrants.<sup>59</sup> The lack of uniformity in the use of the powers of attorney poses problems for both consumers and for DFS staff.

Additionally, under current law, if a Full Disclosure Statement has been provided to an unclaimed property claimant, fees collected by a claimant’s representative for providing services related to the collection of the unclaimed property are unlimited.<sup>60</sup> If the Full Disclosure Statement has not been provided to the claimant, then the fees are capped at 20% of the value of the property recovered, and \$1,000 per account claimed in the recovery.<sup>61</sup>

### *Effect of the Bill*

The bill changes the unclaimed property claims law to further streamline the process for consumers. It provides that DFS will adopt forms by rule entitled “Florida Uniform Property Recovery Agreement” (Recovery Agreement) and “Florida Uniform Property Purchase Agreement” (Purchase Agreement). These Agreements will be the exclusive means of a claimant’s representative engaging a claimant or seller to file an unclaimed property claim with DFS.

---

<sup>51</sup> 11 U.S.C. § 109(b)(2).

<sup>52</sup> An “insolvent insurer” means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. S. 631.904(4), F.S.

<sup>53</sup> Ch. 631, F.S.

<sup>54</sup> Ch. 631, part II, F.S.

<sup>55</sup> S. 631.51, F.S.

<sup>56</sup> S. 631.52, F.S.

<sup>57</sup> S. 631.57(1), F.S.

<sup>58</sup> DFS, *supra*, at 4.

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

<sup>60</sup> S. 717.135, F.S. The text of the Full Disclosure Statement is located in s. 717.135(3)(a), F.S.

<sup>61</sup> *Id.*

The bill significantly amends s. 717.135, F.S., to eliminate the current power of attorney requirements and replace them with requirements for the Recovery Agreement and Purchase Agreement. Pursuant to the bill, the Recovery Agreement and Purchase Agreement must include and disclose:

- The total dollar amount of the unclaimed property accounts claimed or sold;
- Either the total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing registered claimant's representative;
- Either the total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing registered claimant's representative;
- The net dollar amount the claimant or seller will receive;
- The unclaimed property account number and name of the owner for each account claimed;
- For the purchase agreement, a statement that the purchase price will be remitted to the seller within 30 days after the seller executes the form;
- The name, contact information, and license number of the registered claimant's representative;
- The manual signature of the claimant or seller and the date signed;
- The social security number or taxpayer identification number of the claimant or seller, if available; and
- A limit of total fees and costs, or the total discount amount in the case of a purchase agreement, to no more than 20 percent of the claimed amount, unless the apparent owner of the unclaimed property is deceased with an estate that is required to be probated. The bill provides a specific schedule of fees that a claimant's representative may charge if an estate must be probated.

The Recovery Agreement and Purchase Agreement may not contain language that makes them irrevocable or that creates an assignment of any unclaimed property held by DFS. For the Purchase Agreement, if DFS does not receive proof that the seller received payment, then the claim is void.

All references to "power of attorney" within the remainder of the unclaimed property claims laws are changed to the Recovery Agreement and Purchase Agreement, as appropriate, so that these forms will be utilized in unclaimed property claims going forward in lieu of powers of attorney. Section 717.1351, F.S., relating to the acquisition of unclaimed property is repealed because it is no longer necessary following the additional changes to the unclaimed property claims laws set forth within the bill.

## B. SECTION DIRECTORY:

**Section 1.** Amends s. 319.30, F.S., relating to definitions; dismantling, destruction, change of identify of motor vehicle or mobile home; salvage.

**Section 2.** Amends s. 501.0051, F.S., relating to protected consumer report security freeze.

**Section 3.** Amends s. 624.307, F.S., relating to general powers; duties.

**Section 4.** Amends s. 626.112, F.S., relating to license and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.

**Section 5.** Amends s. 626.602, F.S., relating to insurance agency names; disapproval.

**Section 6.** Amends s. 626.621, F.S., relating to grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.

**Section 7.** Amends s. 626.782, F.S., relating to the definition of "Industrial class insurer."

**Section 8.** Amends s. 626.783, F.S., relating to the definition of "Ordinary-combination class insurer."

- Section 9.** Repeals s. 626.796, F.S., relating to representing another insurer in same industrial debit territory.
- Section 10.** Amends s. 626.8443, F.S., relating to duration of suspension or revocation.
- Section 11.** Amends s. 626.854, F.S., relating to “Public adjuster” defined; prohibitions.
- Section 12.** Amends s. 626.856, F.S., relating to the definition of “Company employee adjuster”.
- Section 13.** Amends s. 626.916, F.S., relating to eligibility for export.
- Section 14.** Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.
- Section 15.** Amends s. 626.9741, F.S., relating to use of credit reports and credit scores by insurers.
- Section 16.** Amends s. 626.9957, F.S., to conform cross-references.
- Section 17.** Amends s. 627.062, F.S., to conform cross-references.
- Section 18.** Amends s. 627.421, F.S., relating to delivery of policy.
- Section 19.** Amends s. 627.502, F.S., relating to the definition of “Industrial life insurance”; reporting; prohibition on new policies after a certain date.
- Section 20.** Amends s. 627.70131, F.S., relating to insurer’s duty to acknowledge communications regarding claims; investigation.
- Section 21.** Creates s. 627.7031, relating to foreign venue clauses prohibited.
- Section 22.** Amends s. 627.7142, F.S., relating to Homeowner Claims Bill of Rights.
- Section 23.** Amends s. 627.715, F.S., relating to flood insurance.
- Section 24.** Amends s. 631.57, F.S., relating to powers and duties of the association.
- Section 25.** Amends s. 648.30, F.S., relating to licensure and appointment required; prohibited acts; penalties.
- Section 26.** Amends s. 717.124, F.S., relating to unclaimed property claims.
- Section 27.** Amends s. 717.12404, F.S., relating to claims on behalf of a business entity or trust.
- Section 28.** Amends s. 717.1315, F.S., relating to retention of records by claimant’s representatives and buyers of unclaimed property.
- Section 29.** Amends s. 717.1322, F.S., relating to administrative and civil enforcement.
- Section 30.** Amends s. 717.135, F.S., relating to power of attorney to recover reported property in the custody of the department.
- Section 31.** Repeals s. 717.1351, F.S., relating to acquisition of unclaimed property.
- Section 32.** Provides an effective date of upon becoming law, except as otherwise provided.

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has the potential to result in increased revenues in the form of administrative fines collected for violations of ss. 624.307 and 626.112, F.S.

Proceeds from the sale of unclaimed property are deposited into the Unclaimed Property Trust Fund. DFS retains \$15 million to make payments for claims and to administer the program. Remaining funds are deposited by DFS into the State School Trust Fund.<sup>62</sup> Modifications to the unclaimed property claims process may impact the funding available for transfer to the State School Trust Fund. However, the modifications in the bill should not substantially impact revenue deposited into the State School Trust Fund. DFS provided the following statement:

“There will be no impact on the total amounts paid each year – only a possible and likely shifting of amounts within and among the claimants and various claimant’s representatives. The fiscal will not change.”<sup>63</sup>

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have positive economic impacts for consumers. It removes fees charged for the issuance of PIN numbers and eliminates the deductible FIGA charges for claims it covers. Portions of the bill are intended to expedite the handling of property insurance claims. If repairs are made sooner, policyholders will be able to return home and, in some cases, return to work quicker. Businesses may also benefit economically when homeowners, as consumers, are able to recover sooner after catastrophes. Additionally, by streamlining the unclaimed property claim process using new forms and by capping the fees that a claimants’ representatives can charge, consumers may be able to keep a greater percentage of the unclaimed property they recover.

The bill has the potential for negative direct economic impacts on the private sector. The inability of a consumer reporting agency to charge a fee for a PIN will result in a loss of revenue for the consumer reporting agencies. The amount of this loss is unknown.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

---

<sup>62</sup> S. 717.123, F.S.

<sup>63</sup> Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, Department of Financial Regulation, RE: HB 1137 Unclaimed Property (Jan. 30, 2020).

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

2. Other:

Article VII, s. 19, Fla. Const., may apply given the nature of the administrative penalty created in Section 3 of the bill.

B. RULE-MAKING AUTHORITY:

The bill requires DFS to promulgate two new forms related to unclaimed property claims (Recovery Agreement and Purchase Agreement) to be adopted pursuant to rule. Because s. 717.138, F.S., provides sufficient rulemaking authority for DFS to adopt rules pursuant under ch. 120, F.S., no additional rulemaking authority is necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Insurance & Banking Subcommittee considered the bill, adopted one strike all amendment, and reported the bill favorably as a committee substitute. The strike-all amendment contained the provisions of the original bill and made the following modifications and clarifications:

- Clarified that the documents that a licensee must provide to DFS or OIR in response to a written request are only those documents that are not subject to attorney-client privilege.
- Clarified that consumers must either sign or otherwise acknowledge receipt of the disclosure notifying them of the export of their insurance policies to the surplus lines market and eliminated from that disclosure the statement that coverage on the admitted market may not be cheaper.
- Clarified that collateral protection insurance by a mortgagee does not constitute sliding.
- Eliminated the requirement that personal lines residential property insurers must send the Homeowner Claims Bill of Rights to policyholders each year. It also expanded the period during which insurers must mail hurricane coverage information to policyholders from March 3 through April 1, to March 1 through June 1, and provides that this information will only be provided to policyholders who have email addresses on file with their insurers.
- Eliminated the requirement that an insurer send a copy of a physical inspection report from an adjuster to a policyholder.
- Changed the effective date for certain sections of the bill to January 1, 2021.
- Made various formatting and technical changes to the bill.

On February 13, 2020, the Commerce Committee considered the bill, adopted one strike all amendment, and reported the bill favorably as a committee substitute. The strike-all amendment contained the provisions of the prior committee substitute and made the following modifications and clarifications:

- Added a section amending the electronic signature requirements for salvage certificates of title.
- Clarified that an insurer need not produce work-product privileged documents in response to information requests from DFS or OIR.
- Changed the number of days that a policyholder has to cancel a contract with a public adjuster from 21 days during a state of emergency, and for one year thereafter, to 14 days.
- Changed the requirements regarding the estimate that a public adjuster must provide to a policyholder to include itemized details about the cost of repairs, and to provide the policyholder an opportunity to cancel the contract if the public adjuster does not provide the estimate within 45 days from the date of the execution of the contract.
- Amended the definition of company employee adjuster.
- Specified that a property insurer will send a copy of a policyholder's declarations page along with the outline of hurricane coverage each year.
- Changed the number of days that a property insurer has to notify an insured of a change in adjuster from seven to 14 days.

- Expanded the prohibition on foreign venue clauses in property insurance policies covering real property located in Florida so that it applies to all personal and commercial property insurance policies.
- Increased the amount of fees that a claimant's representative can charge for the recovery of unclaimed property if the apparent owner of the unclaimed property is deceased with an estate that is required to be probated.
- Made various formatting and technical changes.

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