

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1185 Consumer Protection

SPONSOR(S): Commerce Committee and Insurance & Banking Subcommittee, Giallombardo and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1398

FINAL HOUSE FLOOR ACTION: 113 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 1185 passed the House as amended on April 28, 2023. The bill was amended in the Senate on May 1, 2023, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on May 4, 2023.

The bill makes changes related to consumer protection, including:

- **Mortgage lender locations:** allows loan originators to work from a remote location if certain criteria are met.
- **Crowd-funding campaigns:** identifies unlawful acts and practices regarding online crowd-funding campaigns related to disasters.
- **Distributed energy generation system (DEGS) disclosures:** adds to the information and disclosures that must be provided to customers when they purchase or lease DEGS.
- **Check-cashing businesses:** prohibits licensed check-cashing businesses from cashing corporate checks when the total amount of all checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy coverage; makes it a third-degree felony for someone to knowingly cash such checks.
- **Insurance agency and adjusting firm names:** allows the Department of Financial Services to disapprove the name of an adjusting firm on the same grounds under which it can disapprove of the name of an insurance agency.
- **Public adjusters:** significantly alters the requirements for contracts between public adjusters and insureds or claimants; provides for additional disclosures to accompany such contracts; provides for recordkeeping requirements for public adjusters.
- **Insurer advertisements:** establishes it is an unfair method of competition, or an unfair or deceptive act or practice, if an insurer fails to disclose a third party that it receives royalties, referral fees, or other money for sponsorship, marketing, or use of third-party branding for a health insurance contract.
- **Insurance coverage for hurricanes:** defines hurricane deductible as the deductible applicable to loss caused by a hurricane.
- **Insurer underwriting timeframes:** reduces the time that an insurer has to cancel a policy for reasons other than material misstatement, nonpayment of premium, or failure to comply with underwriting requirements from 90 days to 60 days, but allows Citizens Property Insurance Corporation 90 days to underwrite when it has assumed policies from insurers placed into receivership.
- **Annuities:** revises the law to reflect the most recent changes to the National Association of Insurance Commissioners' Annuity Transactions Model Regulation.
- **Service agreements and manufacturer warranties:** provides an additional exception to unearned premium reserve requirements for service agreement companies; revises solvency requirements for manufacturers who sell service warranties.

The bill was approved by the Governor on May 24, 2023, ch. 2023-130, and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Mortgage Lender Locations

Background

The Office of Financial Regulation (OFR) is responsible for the regulation of banks, credit unions, and other financial institutions, finance companies, and the security industry.¹ OFR is responsible for the administration and enforcement of ch. 494, F.S., relating to loan originators and mortgage brokers. OFR licenses and regulates the practice of these individuals.

A loan originator is an individual who, directly or indirectly:²

- Solicits or offers to solicit a mortgage loan;
- Accepts or offers to accept an application for a mortgage loan;
- Negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender; or
- Negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

The term loan originator does not include an employee of a mortgage broker or lender who only handles a completed application form or transmits a completed application form to a lender on behalf of a prospective borrower.³

A mortgage broker conducts loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.⁴ In contrast, a mortgage lender makes a mortgage loan or services a mortgage loan for others or, for compensation or gain, directly or indirectly, sells or offers to sell a mortgage loan to a noninstitutional investor.⁵ A mortgage lender may act as a mortgage broker.⁶

Each mortgage broker and lender must maintain, and transact business from, a principal place of business,⁷ which is a primary office with a street address or physical location designated on a licensure application.⁸ A mortgage broker or lender may also operate out of a branch office,⁹ but each branch office must be separately licensed¹⁰ and operated by a branch manager¹¹ who must be licensed as a loan originator. Currently, mortgage brokers and lenders are not legally authorized to work from remote locations and doing so may result in administrative action by OFR.

¹ S. 20.121(3)(a)2., F.S.

² S. 494.001(18), F.S.

³ *Id.*

⁴ S. 494.001(23), F.S.

⁵ S. 494.001(24), F.S.

⁶ See s. 494.0073, F.S.

⁷ Ss. 494.0039, and 494.0073, F.S.

⁸ S. 494.001(31), F.S.

⁹ See s. 494.001(3), F.S.

¹⁰ Ss. 494.0036(1) and 494.0066(1), F.S.

¹¹ Ss. 494.0035(2) and 494.00665(2), F.S.

Effect of the Bill

The bill adds a remote location to the definition of a mortgage broker's or lender's branch office. It defines a remote location as:

- A location, other than a principal place of business or a branch office;
- At which a loan originator of a licensee may conduct business.

Licensees may allow loan originators to work from a remote location if:

- The licensee has written policies and procedures for supervision of loan originators working from a remote location;
- Access to company platforms and customer information meets the licensee's comprehensive written information security plan;
- An in-person customer interaction does not occur at a loan originator's residence, unless the residence is a licensed location;
- Physical records are not maintained at a remote location;
- Customer interactions and conversations about consumers comply with federal and state information security requirements;
- Loan originators working at a remote location access the company's secure systems via a virtual private network or comparable system;
- The licensee ensures that appropriate security updates, patches, or other security alterations used at remote locations are installed and maintained;
- The licensee has the ability to remotely lock or erase company-related contents of any device or remotely limit access to secure systems; and
- The Nationwide Multistate Licensing System and Registry's¹² record of a loan originator who works from a remote location designates the principal place of business as the loan originator's registered location or the loan originator has elected a licensed branch office as a registered location.

The bill changes the locations where a mortgage lender may lawfully conduct business to include a branch office or remote location in addition to a principal place of business.

Crowd-funding Campaigns

Background

Responses to natural disasters, including hurricanes, often include crowd-funding campaigns to raise money to help those who have been affected.¹³ Unfortunately, some of these campaigns are scams that prey on people's willingness to help disaster victims.¹⁴ Online crowd-funding platforms receive donations and distribute them without oversight and may be unable to determine whether the funds received were used appropriately.¹⁵

Effect of the Bill

The bill creates a statutory framework for unlawful acts and practices regarding online crowd-funding campaigns. It provides relevant definitions for crowd-funding campaign, crowd-funding platform, disaster, and organizer. The bill defines crowd-funding campaign as an online fundraising initiative that is:

- Intended to receive monetary donations; and

¹² The Nationwide Multistate Licensing System is centralized online database that is used by mortgage and finance regulatory agencies to maintain state licensing programs. Rocket Mortgage, *What is NMLS?*, <https://www.rocketmortgage.com/learn/what-is-nmls> (last visited Mar. 19, 2023).

¹³ Florida Department of Financial Services (DFS), Agency Analysis of 2023 House Bill 1185, p. 2 (Feb. 27, 2023).

¹⁴ *Id.*

¹⁵ *Id.* at p. 3.

- Created by an organizer in the interest of a beneficiary.

The bill defines an organizer as a person who:

- Resides or is domiciled in Florida; and
- Has an account on a crowd-funding platform and has created a crowd-funding campaign either as a beneficiary or on behalf of a beneficiary.

The bill requires that a crowd-funding platform do the following for crowd-funding campaigns arising from a disaster:

- Collect contact information regarding the organizer and retain it for one year after the date of the disaster;
- Require the organizer to indicate on the crowd-funding campaign the state in which they are located;
- Cooperate with law enforcement investigations;
- Clearly display and direct donors to fundraisers that comply with their terms of service;

When an organizer arranges a crowd-funding campaign related to a disaster, the organizer must attest that:

- All information provided in connection with a crowd-funding campaign is accurate, complete, and not likely to deceive.
- All donations contributed to the campaign will be used solely as described in information provided by the organizer.

Distributed Energy Generation System Disclosures

Background

Under current law, when a customer purchases or leases a distributed energy generation system (DEGS), including solar panels, certain information and disclosures must be provided to the customer, including contact information for the installer, cost and rebate information, and financial considerations.¹⁶ However, contact information for the regulator of the system installer is not included.¹⁷ Disclosures about how these DEGS may impact a customer's homeowners' insurance premiums and coverage or the life of their roof is also not provided.¹⁸

Effect of the Bill

The bill adds to the information and disclosures that must be provided to customers when they purchase or lease DEGS. The customer must be given phone number for the Department of Business and Professional Regulation's customer contact center.

Customers must be informed that they should consider the age and remaining life of their roofs before installing DEGS and that replacement of their roofs may require reinstallation of the DEGS. The bill also requires that customers be given a statement informing them that:

- Placing DEGS on their roof may impact their future insurance premiums; and
- Customers are responsible for contacting their insurers prior to entering a purchase or lease agreement for the DEGS to determine whether their current policy or coverage needs modification upon installing the DEGS onto their dwelling.

¹⁶ S. 520.23, F.S.

¹⁷ DFS, *supra*, note 13 at p. 3.

¹⁸ *Id.*

Check Cashing

Background

The Office of Financial Regulation (OFR) licenses and regulates check cashers pursuant to ch. 560, F.S. Florida law imposes various requirements on check cashers, including requiring the licensee to maintain copies of each payment instrument cashed.¹⁹ If the payment instrument exceeds \$1,000, the following additional information must be maintained:

- Customer files, as prescribed by rule,²⁰ on all customers who cash corporate payment instruments that exceed \$1,000;
- A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer; and
- A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.²¹

In addition to the information that a licensee must maintain, the following information must be entered into the check cashing database operated by OFR before entering into each check cashing transaction for each payment instrument being cashed if the payment exceeds \$1,000:

- Transaction date;
- Payor name as displayed on the payment instrument;
- Payee name as displayed on the payment instrument;
- Conductor²² name, if different from the payee name;
- Amount of the payment instrument;
- Amount of currency provided;
- Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument;
- Amount of the fee charged for cashing of the payment instrument;
- Branch or location where the payment instrument was accepted;
- The type of identification and the identification number presented by the payee or conductor;
- Payee's workers' compensation insurance policy number or exemption certificate number, if the payee is a business; and
- Such additional information as required by rule.²³

OFR must ensure that the check cashing database provides an interface with the Secretary of State's database for purposes of verifying corporate registration and articles of incorporation and with the Department of Financial Services' (DFS) database for purposes of determining proof of coverage for workers' compensation.²⁴

Effect of the Bill

The bill prohibits licensed check cashing businesses from cashing corporate checks when the total amount of all checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy coverage. This change is meant to prevent an employer committing workers' compensation fraud by:

- Making a corporate check out to itself or to "cash";

¹⁹ S. 560.310(1), F.S.

²⁰ R. 69V-560.704, F.A.C.

²¹ S. 560.310(2)(a)-(c), F.S.

²² The term "conductor" is defined as "a natural person who presents himself or herself to a [check casher] for purposes of cashing a payment instrument." S. 560.103(9), F.S. The term is used in the context of the cashing of a corporate payment instrument, which is a payment instrument on which the payee is not a natural person (i.e., the payee is a corporate entity). S. 560.103(10), F.S. A check casher may accept or cash a corporate payment instrument from a conductor who is an authorized officer of the corporate payee named on the instrument's face. S. 560.309(4), F.S.

²³ S. 560.310(1)(d), F.S.

²⁴ S. 560.310(5), F.S.

- Cashing the check at a check cashing business; and
- Using the cash to pay employees “off the books” or “under the table”.

By paying employees in cash, the employer would show a smaller amount of payroll and be charged a lesser premium by its workers’ compensation insurer for coverage for its employees.

The bill also makes it a third-degree felony for someone to knowingly cash checks in excess of the above amount.

Insurance Agency and Adjusting Firm Names

Background

DFS recently began licensing adjusting firms.²⁵ However, unlike the authority to disapprove names of insurance agencies, DFS does not have the authority to disapprove misleading names of adjusting firms.²⁶ If the adjusting firm name contains certain words, such as a city, county, or government name, that could lead customers to believe they are doing business with a governmental entity.²⁷

Current law allows insurance agencies to use the words “Medicare” and “Medicaid” in their names.²⁸ However, the provision of law allowing the use of those words is set to expire on June 30, 2023.²⁹

Effect of the Bill

The bill establishes that DFS may disapprove the use of adjusting firm names on the same grounds under which it can disapprove of insurance agency names. As of July 1, 2023, the bill also repeals the statutory provision that allows an insurance agency to use the word “Medicare” or “Medicaid” in its name, because the provision allowing the use of those words is set to expire.

Public Adjusters

Background

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.³⁰ In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.³¹ At present, such a contract may only be canceled within ten days after the date the contract was executed.³²

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.³³

²⁵ DFS, *supra*, note 13 at p. 3.

²⁶ See s. 626.602, F.S.

²⁷ DFS, *supra*, note 13 at p. 3.

²⁸ S. 626.602(4)(b), F.S.

²⁹ *Id.*

³⁰ S. 626.854, F.S.

³¹ See *id.*

³² *Id.*

³³ DFS, Agency Analysis of 2021 House Bill 717, p. 3 (Feb. 25, 2021).

Effect of the Bill

The bill clarifies that certain actions constitute the practice of public adjusting regardless of how a public adjuster describes or presents his or her services. The bill establishes that, after July 1, 2023, when entering a contract for adjusting services, a public adjuster:

- May not collect a fee for services on payments made to a name insured unless they have a written contract with the named insured, or his or her legal representative.
- May not contract for services to be provided by a third party on behalf of the named insured or in pursuit of settlement of the name insured's claim, if the cost of the services is to be paid by the named insured unless the named insured agrees in writing to accept the third-party's services.
- Must pay the third-party's fees, if contracting with a third-party to provide services, without first obtaining the insured's written consent.
- Must be paid by the third party, if representing anyone other than the named insured in a claim.

The bill allows an insured or claimant to cancel a contract with a public adjuster without penalty or obligation within 30 days after the date of the event, or 10 days after the date on which the contract is executed, whichever is later, if the insured or claimant signed the contract based on events that were the subject of an emergency declaration by the Governor. The public adjuster's contract must contain information regarding the cancellation period and must also notify the insured or claimant that he or she may cancel the contract if the public adjuster fails to provide the insured or claimant and the insurer a copy of a written estimate of damages within 60 days of the execution of the contract.

The bill changes many of the requirements for the contracts for services between public adjusters and insureds or claimants, including the following:

- The contract must be titled "Public Adjuster Contract" in at least 12-point font.
- The anti-fraud statement required in the contract must be in at least 18-point bold font and placed in the space above the insured or claimant's signature.
- A copy of the executed contract must be provided to the insured or claimant at the time of execution and to the insurer within ten days thereafter.
- The public adjuster shall not provide services until both the insured and insurer have been provided with unaltered copies of the executed contract.
- Before signing the contract, the public adjuster must provide the insured with a separate disclosure that the insured must sign that does the following:
 - Defines the types of adjusters who may be involved in the claims process, including company adjuster, independent adjuster, and public adjuster.
 - Explains that the public adjuster is not a representative or employee of the insurer.
 - Explains that the insured is not required to hire a public adjuster.
 - Explains that the insured has the right to communicate directly with the insured's attorney, the insurer, the company adjuster, the insurer's attorney, or any person regarding the settlement of the claim.
 - Explains that public adjuster's salary, fee, commission, or other consideration to be paid to the public adjuster is the insured's responsibility.

Any public adjuster contract that does not comply with these requirements is invalid and unenforceable.

The bill establishes the following additional limitations on the payment or commissions received by a public adjuster:

- One percent of the amount of insurance claim payments or settlements that an insurer pays to an insured for any coverage under the policy where the claim payment or insurer's agreement to pay is equal to or greater than the policy limit for that part of the policy, if the payment or written agreement to pay is provided by the latter of:
 - Fourteen days after the date of loss; or

- Ten days after the date that the public adjusting contract is signed.
- No fees or commission when the payment or agreement to pay occurs before the date that the public adjusting contract is signed.

The bill states that appointed independent adjusters and licensed public adjusters must post their licenses in a conspicuous place in their principal places of business or have the licenses in their possession if they are conducting business away from the principal places of business. It mandates that adjusters have their records available for inspection by DFS during certain times.

The bill also requires that adjusters maintain the following records for at least five years:

- The name, address, phone number, and email address of the insured, and name of the insured's attorney if applicable.
- The date, location, and amount of the loss.
- An unaltered copy of the signed document containing the disclosures that the public adjuster is required to give the insured and the contract signed by the insured.
- A copy of the estimate of damages provided to the insurer.
- Name of the insurer, claims representative, amount, expiration date, and number of each policy under which the loss is covered.
- An itemized statement of the recoveries by the insured from sources known to the public adjuster.
- An itemized statement of all compensation received by the public adjuster in connection with the loss.
- A register of all money received, deposited, disbursed, and withdrawn in connection with a transaction with the insured, including fees, transfer, and disbursements in connection with the loss.

Insurer Advertisements

Background

The Unfair Insurance Trade Practices Act (Act),³⁴ among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.³⁵ It provides an extensive list of prohibited methods and acts. Among these are prohibitions on certain advertisements, inducements to the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to the prospective insurance purchaser. An insurer is prohibited from knowingly making, issuing, circulating any estimate, illustration, circular, statement, sales presentation, omission, comparison, or altered property or casualty insurance certificate that falsely advertises insurance policies.³⁶

Effect of the Bill

The bill establishes that it is an unfair method of competition, or an unfair or deceptive act or practice, by misrepresentation or false advertising of an insurance policy, if an insurer fails to disclose a third party that receives royalties, referral fees, or other money for sponsorship, marketing, or use of third-party branding for a health insurance contract.³⁷

Insurance Coverage for Hurricanes

Background

³⁴ Ch. 626, F.S., part IX.

³⁵ S. 626.9541, F.S.

³⁶ S. 626.9541(1)(a), F.S.

³⁷ The health insurance contract is defined in s. 624.603, F.S., as "insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto." It does not include workers' compensation insurance.

Property insurance policies in Florida typically include a separate deductible applicable to hurricane losses.³⁸ Hurricane deductibles are often higher than the deductibles applicable to all other covered losses. Current law provides a broad timeframe under which a hurricane is considered to be affecting the state.³⁹ A hurricane deductible can be applied during this timeframe, which may lead to significant out-of-pocket expenditures by policyholders.

The timeframe for a hurricane begins when a hurricane watch or warning is issued anywhere in Florida and ends 72 hours after the termination of the last hurricane watch or warning.⁴⁰ A hurricane watch may be issued up to 48 hours before the anticipated onset of tropical-storm-force winds in an area.⁴¹

Effect of the Bill

The bill reduces the statutory timeframe for the duration of a hurricane as follows:

- It excludes a hurricane watch; and
- It deletes the provision that a hurricane continues for the time period during which hurricane conditions exist anywhere in Florida.

Based upon these changes, a hurricane deductible would apply from the issuance of a hurricane warning until 72 hours past the issuance of the last hurricane warning issued for the state.

The bill also defines hurricane deductible as the deductible applicable to loss caused by a hurricane.

Insurer Underwriting Timeframes

Background

Once coverage has been bound⁴² and a premium is quoted and paid, an insurer issuing property or casualty insurance has 90 days to complete its underwriting process to determine whether an applicant meets its guidelines.⁴³ Coverage is extended to the policyholder during the underwriting period and the insurer has earned the premium for the number of days that the coverage was available during that period.⁴⁴ Once the underwriting period is complete, the insurer will either accept or decline the risk.⁴⁵

After the conclusion of the underwriting period, an insurer may only cancel the policy for the following reasons:⁴⁶

- Material misstatement.
- Nonpayment of premium.
- Failure to comply with underwriting requirements established within 90 days of the effective date of coverage.
- Substantial change in the risk covered by the policy.

³⁸ See s. 627.701, F.S.

³⁹ See s. 627.4025(2), F.S.

⁴⁰ S. 627.4025(2), F.S.; DFS, *supra*, note 13 at p. 3.

⁴¹ National Ocean Service, *What is the Difference Between a Hurricane Watch and Hurricane Warning?*, <https://oceanservice.noaa.gov/facts/watch-warning.html#:~:text=A%20hurricane%20watch%20is%20issued,to%20instructions%20from%20local%20officials> (last visited Mar. 20, 2023). A hurricane watch means that hurricane conditions (sustained winds of 74 miles per hour or greater) are *possible* within a specified area. A hurricane warning means that hurricane conditions are *expected* somewhere within the specified area.

⁴² The term bound refers to confirmation that coverage is in place.

⁴³ DFS, *supra*, note 13 at p. 3.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ S. 627.4133, F.S.

- When the cancellation is for all insureds in a given class.⁴⁷

Of the 50 states: 38 have a homeowners' insurance underwriting period of 60 days; five have less than 60-day periods; one has a 70-day period; five states, including Florida, have 90-day periods; and one state has a period greater than 90 days.⁴⁸

Effect of the Bill

The bill reduces the time that a private insurer has to cancel a property or casualty policy for reasons other than those detailed immediately above from 90 days to 60 days. It preserves the 90-day underwriting period for policies written by Citizens Property Insurance that were most recently written by an insurer that was placed into receivership due to insolvency.

Motor Vehicle Service Agreements

Background

Warranty associations and companies in Florida, including those associations selling home and service warranties, and those companies selling motor vehicle service agreements, are regulated by the Office of Insurance Regulation (OIR).⁴⁹ Motor vehicle service agreements provide vehicle owners with protection when a manufacturer's warranty has run out. Companies that sell such agreements are regulated by the OIR, and must currently establish and maintain an unearned premium reserve equal to a minimum of 50 percent of the unearned gross written premium on each service agreement.⁵⁰ These companies must maintain net assets of at least \$500,000.⁵¹ In lieu of maintaining an unearned premium reserve, the company may secure and maintain a contractual liability insurance policy (CLIP),⁵² which protects business owners against the financial consequences of liabilities assumed from entering a contract.⁵³

Effect of the Bill

The bill establishes that a service agreement policy that maintains a CLIP in lieu of maintaining unearned premium reserve may either pay 100 percent of claims as they are incurred or 100 percent of claims due in the event of the failure of the service agreement company to pay claims when due.

Manufacturer Warranties

Background

⁴⁷ A class is a group of insureds with similar exposures and experience that are grouped together for rating purposes. IRMI, *Class*, <https://www.irmi.com/term/insurance-definitions/class#:~:text=A%20class%20is%20a%20group.grouped%20together%20for%20rating%20purposes> (last visited Mar. 20, 2023).

⁴⁸ DFS, *supra*, note 13 at p. 4.

⁴⁹ See ch. 634, F.S.

⁵⁰ S. 634.041, F.S.

⁵¹ *Id.*

⁵² *Id.*

⁵³ The Hartford, *Contractual Liability Insurance*, <https://www.thehartford.com/general-liability-insurance/contractual-liability-insurance#:~:text=Contractual%20liability%20insurance%20helps%20cover.with%20contracts%2C%20such%20as%20contractors> (last visited Mar. 20, 2023).

A service warranty is a contract that generally covers the repair, replacement, or maintenance of a consumer product.⁵⁴ While warranties are not considered traditional insurance products, OIR regulates warranty associations and companies similarly to the way in which it regulates insurers.⁵⁵ Service warranty associations must be licensed by OIR⁵⁶ and must maintain certain minimum financial standards in order to do warranty business in Florida.⁵⁷

Licensed service warranty sellers may include the manufacturers of the products on which warranties are offered. The Code defines a manufacturer as any entity or its affiliate which:⁵⁸

- Derives a majority of its revenues from products manufactured, built, assembled, constructed or produced under a product name controlled by the entity or the affiliate;
- Issues service warranties only for consumer products manufactured, built, assembled, constructed or produced under a product name controlled by the entity or the affiliate;
- Is listed and traded on a stock exchange, National Association of Security Dealers Automated Quotation system and publicly traded in the over-the-counter-securities markets, is required to file certain forms with the U.S. Securities and Exchange Commission, or whose American Depositary Receipts are listed on a recognized stock exchange and publicly traded;
- Maintains outstanding debts obligations, if any, rated in the top four rating categories by a recognized rating service;⁵⁹
- Has and maintains a minimum net worth of at least \$10 million as evidenced by certified financial statements; and
- Is authorized to do business in Florida.

Effect of the Bill

The bill revises solvency requirements for manufacturers who sell service warranties. It removes the requirement that a manufacturer maintain outstanding debt obligations in the top four rating categories by a recognized rating service. However, it also increases the minimum net worth requirement for a manufacturer from \$10 million to \$100 million.

Annuities

Background⁶⁰

An annuity is a contract between a buyer and an insurance company that provides guaranteed payments over a period of time. Annuities are designed to meet retirement and long-range planning goals and are long-term contracts that typically restrict an investor's ability to access his/her money.

There are two basic types of annuities, fixed and variable. Fixed annuities guarantee both the rate of return and the amount of payout. Variable annuities do not guarantee the rate of return, which can fluctuate based on the performance of underlying investment options chosen by the purchaser. Another product, equity indexed annuities, is considered a hybrid of both fixed and variable annuities.

⁵⁴ S. 634.402, F.S.

⁵⁵ See ch. 634, F.S.

⁵⁶ S. 634.403, F.S.

⁵⁷ S. 634.406, F.S.

⁵⁸ S. 634.401(17), F.S.

⁵⁹ See U.S. Securities and Exchange Commission, *Updated Investor Bulletin: The ABCs of Credit Ratings*, https://www.sec.gov/oiaa/investor-alerts-and-bulletins/ib_creditratings (last visited Mar. 23, 2023).

⁶⁰ See *Annuities a Guide for Consumers*, https://www.myfloridacfo.com/docs-sf/consumer-services-libraries/consumerservices-documents/understanding-coverage/consumer-guides/annuities-guide.pdf?sfvrsn=93cf03d5_2 (last visited Mar. 20, 2023); See also National Association of Insurance Commissioners (NAIC), *Annuities*, <https://content.naic.org/cipr-topics/annuities#:~:text=The%20NAIC%20Suitability%20in%20Annuity,the%20time%20of%20the%20transaction>. (last visited Mar. 20, 2023).

Annuities can be either immediate or deferred. With immediate annuities, the premium is paid in a single lump sum, and the purchaser receives an immediate and regular stream of payments for a period of time. By contrast, purchasers of deferred annuities pay one or more premiums over time (the accumulation period) and begin to receive annuity payments at a future point in time (the payout period or annuitization phase).

Fixed annuities are considered insurance contracts because of the mortality risk associated with payout options, and are regulated by state insurance departments. With a variable annuity, premium dollars are placed into a variety of investment options called subaccounts. Because variable annuities involve risk and provide no guarantee of principal, they are considered investments and fall within the jurisdiction of both securities regulators and state insurance departments. Agents selling variable annuities must hold a variable annuity license from the state and also possess a securities license and hold an active securities registration with a broker dealer. As investments, variable annuities also have accompanying prospectuses with disclosures regarding risk. All sales of variable annuities are subject to suitability standards established by the Financial Industry Regulatory Authority (FINRA).⁶¹ Variable annuities generally involve an accumulation phase and a payout phase.

Equity indexed annuities provide a minimum guaranteed interest rate in combination with an index-linked component. A guaranteed minimum interest rate may still create a loss of principal if the guarantee is based on an amount less than the amount of premium or initial payment. Investors who find it necessary to cancel an annuity to access funds prior to maturity of the contract may also lose principal through detrimental features such as surrender charges, hidden penalties, costs, fees, and massive multi-year surrender charges.

In 2003, the National Association of Insurance Commissioners (NAIC) adopted "Senior Protection in Annuity Transactions Model Regulation" (Senior Protection Model Regulation), designed to help protect senior citizens when they purchase or exchange annuity products. In 2004, Florida adopted the Senior Protection Model Regulation in s. 627.4554, F.S. This section provides protection for senior citizens in annuity transactions, requiring insurance companies and agents offering these products to clearly document the basis for selling the product, including consideration of a senior citizen's financial and tax status, as well as investment objectives. In 2006, the NAIC removed the age restriction from its Model Regulation, extending the annuity protections to consumers of any age.

In 2008, Florida amended s. 627.4554, F.S. Although the legislation did not incorporate the 2006 change to the Senior Protection Model Regulation, it provided additional safeguards for senior consumers, including:

- Requiring insurers and agents to have an "objectively" reasonable basis for recommending a particular annuity product.
- Specifying the minimum information that an insurer or agent must obtain and use to determine the suitability of a recommendation before executing a purchase or exchange of a policy.
- Requiring suitability information obtained from a consumer to be recorded on a Department of Financial Services' (DFS) form, which must be completed and signed by the applicant and the agent, with a copy given to the consumer.
- Requiring the insurer or agent, in exchange situations, to provide the consumer with specified information on a DFS form concerning differences between the policy being recommended for purchase and an existing policy that would be surrendered or replaced.
- Increasing the "free look" refund period.
- Authorizing the OIR to rescind an annuity and provide a full refund of premiums paid or the accumulation value, whichever is greater, when a consumer is harmed by a violation of the suitability statute.

⁶¹ The Financial Industry Regulatory Authority (FINRA) is the largest independent regulator for all securities firms doing business in the United States.

In 2010, the Legislature also increased the unconditional refund period for senior consumers in annuity transactions to 21 days and required insurers to attach a cover page with specified information, including notice of the refund period, contact information, and the name of the issuing company and selling agent, to each annuity sold.⁶²

In March 2010, the NAIC revised its Senior Protection Model Regulation to clarify that insurers are responsible for compliance with the model's requirements, even if the insurer contracts with a third party; requiring insurers to review all annuity transactions; and establishing both general and product-specific training requirements for insurance agents. The Legislature incorporated these changes to the Senior Protection Model Regulation in 2013.

In 2020, the NAIC issued the Suitability in Annuity Transactions Model Regulation (Suitability Model Regulation), to set forth standards and procedures for recommendations to consumers that result in an annuity transaction.⁶³

Effect of the Bill

Effective January 1, 2024, the bill revises the statutory framework for the issuance of annuities in Florida, based upon the Suitability Model Regulation. It requires that agents act in consumers' best interests when recommending an annuity to a consumer and that insurers establish and maintain a system of supervision over agents to make sure that the consumers' insurance needs and financial objectives are effectively addressed.

The bill defines an agent as a person or entity required to be licensed under Florida law to sell, solicit, or negotiate insurance, including annuities. It defines cash compensation as any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit that an agent receives in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from a consumer. The bill defines consumer profile information, which includes various information about the consumer's financial needs, net worth and financial resources, and risk tolerance.

The bill defines intermediary as an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by agents. It defines material conflict of interest as financial interest of the agent in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation, but it does not include cash or noncash compensation.

Under the bill nonguaranteed elements means the premiums, credited interest rates, including any bonus, benefits, values, dividends, noninterest based credits, charges, or elements of formulas used to determine any of these. Such nonguaranteed elements are subject to company discretion and are not guaranteed at issue.

The bill revises the statutory definition of recommendation so that it refers to advice provided by an agent to an individual consumer that was intended to result, or does result, in a purchase, an exchange, or a replacement of an annuity. Recommendation does not include general communication to the public, generalized customer services, assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material. The bill also provides additional definitions, clarification of existing definitions, and deletes unnecessary definitions, related to annuities.

⁶² Section 626.99, F.S.

⁶³ NAIC, *Annuities*, <https://content.naic.org/cipr-topics/annuities#:~:text=The%20NAIC%20Suitability%20in%20Annuity,the%20time%20of%20the%20transaction> (last visited Mar. 20, 2023); NAIC, *Suitability in Annuity Transactions Model Regulation*, <https://content.naic.org/sites/default/files/inline-files/MDL-275.pdf> (last visited Mar. 20, 2023).

The bill requires that, when recommending an annuity, an agent must act in the best interests of the consumer under the circumstances known at the time the recommendation is made, without placing the agent's or insurer's financial interest ahead of the consumer's interest. The bill considers an agent to have acted in the consumer's best interest if the agent has met the following obligations and documentation requirements:

- The agent exercised reasonable diligence, care, and skill to:
 - Know the consumer's financial situation, insurance needs, and financial objectives.
 - Understand the available options after making a reasonable inquiry into the options available to the agent.
 - Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product.
 - Communicate the reasons for the recommendation.
- The agent must also:
 - Make reasonable efforts to obtain consumer profile information from the consumer before recommending an annuity.
 - Consider the types of products the agent may recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives.
 - Have a reasonable basis to believe the consumer would benefit from certain features of the annuity recommended.
- If an annuity is being exchanged or replaced, the agent must consider whether:
 - The consumer will incur a surrender charge; be subject to a new surrender period; lose existing benefits; or be subject to increased fees or charges.
 - The replacement annuity would substantially benefit the consumer in comparison to the replaced product.
 - The consumer has had another annuity exchange or replacement, including one within the preceding 60 months.
- Before the recommendation or sale of an annuity, the agent must disclose the following:
 - A description of the scope and terms of the relationship with the consumer and the role of the agent in the transaction.
 - A statement regarding the types of annuities and other products that the agent is licensed and authorized to sell.
 - A statement describing the insurers for which the agent is authorized, contracted or appointed, or otherwise able to sell insurance products.
 - A description of the sources and types of cash and noncash compensation the agent will receive.
 - A notice of the consumer's right to request additional information regarding the cash compensation to be received by the agent.

The bill requires that an agent identify and avoid or reasonably manage and disclose material conflicts of interest, including those related to an ownership interest. At the time of recommendation or sale, an agent shall:

- Make a written record of any recommendation and the basis for it.
- Obtain a statement signed by a consumer documenting the following, as applicable:
 - A consumer's refusal to provide consumer profile information; and
 - A consumer's understanding of the ramifications of not providing sufficient consumer profile information.
 - If an annuity transaction is not based on the agent's recommendation, a consumer's acknowledgment that the annuity transaction is not recommended.

The bill obligates an insurer to establish and maintain reasonable procedures to:

- Assess, prior to, or upon issuance and delivery of, an annuity, whether the agent provided the required information to the consumer.
- Identify and address suspicious consumer refusals to provide consumer profile information.

- Identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation based on the sales of specific annuities within a limited time period.

While an insurer is required to have a system to supervise agents, the system is not required to include consideration of, or comparison to, options available to the agent or other products offered by the insurer. However, an insurer's supervision system must include supervision of contractual performance.

The bill provides a safe harbor for recommendations made by an agent in compliance with business rules, controls, and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. However, OIR or DFS can still investigate potential violations of the statutes relating to the sales of annuities.

The bill defines comparable standards as:

- With respect to broker-dealers and registered representatives of broker-dealers, applicable Securities and Exchange Commission and FINRA rules related to best interest obligations and supervision of annuity recommendations;
- With respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment adviser representatives; and
- With respect to plan fiduciaries, the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA,⁶⁴ or the Internal Revenue Code.

Under the bill, the insurer is responsible for monitoring registered financial professionals and providing the information gathered to others who are responsible for supervising financial professionals. Financial professional is defined as an agent that is regulated and acting as:

- A broker dealer registered under federal or state securities laws or a registered representative of a broker dealer;
- An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the registered adviser;
- A plan fiduciary under ERISA or fiduciary under the Internal Revenue Code.

The bill establishes detailed training requirements for agents who sell annuities. An agent is prohibited from selling an annuity product unless the agent has adequate knowledge of the produce to recommend the annuity and the agent is compliant with the insurer's product knowledge training standards.

Additionally, the bill requires that an agent who sells annuity products must complete a one-time four-hour training course separate from an agent's continuing education requirements. Under the bill, agents who hold life insurance sales authority, and who wish to sell annuities, must complete the annuity training course, as well. Agents who completed an OIR-approved training course prior to the four-hour course requirement set forth in the bill must either complete a new four-hour training course approved by OIR, or an additional one-time one-credit course approved by OIR.

The required training course must include information on the following topics:

- Types and classifications of annuities.
- Identification of the parties to an annuity.
- How product-specific annuity contract features affect consumers.
- The application of income taxation of qualified and nonqualified annuities.
- The primary use of annuities.

⁶⁴ ERISA is the Employee Retirement Income Security Act of 1974, but is commonly referred to by its acronym. It sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans. United States Department of Labor, *Employee Retirement Income Security Act (ERISA)*, <https://www.dol.gov/general/topic/retirement/erisa#:~:text=The%20Employee%20Retirement%20Income%20Security,for%20individuals%20in%20these%20plans> (last visited Mar. 19, 2023).

- Appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

Providers of the annuity training course must register with the state as a continuing education provider and comply with the applicable rules and guidelines set forth for continuing education providers in the Code. Annuity training courses may be completed in a classroom or by self-study. Other courses, including those from other states, that are substantially similar to the four-hour training course described in the bill may satisfy the training requirements established by the bill.

The bill requires that the insurer verify that an agent has completed the required annuity training course before allowing the agent to sell an annuity product for that insurer. An insurer may satisfy this requirement by obtaining certificates of completion of the training course by an agent or by obtaining reports provided by approved continuing education providers.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate positive and negative direct economic impact on the private sector. As a result of the public adjuster provisions set forth in the bill, public adjusters may receive less compensation for their services. As such, consumers who use the services of public adjusters may save money on those services.

D. FISCAL COMMENTS:

None.