The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1046
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Brandes
SUBJECT:	Insurance
DATE:	April 22, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Favorable**
3.	Betta/Knudson	Hansen	AP	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 1046 makes numerous changes to the insurance laws.

The bill will have an indeterminate fiscal impact relating to citations issued for no proof of motor vehicle insurance. According to the Annual Uniform Traffic Citation statistics, for 2011, there were 353,703 citations issued for no proof of motor vehicle insurance." The Department of Highway Safety and Motor Vehicles indicates that the use of electronic cards may reduce the number of such citations.

The bill:

- Continues exempting medical malpractice insurance from Florida Hurricane Catastrophe Fund (FHCF) emergency assessments until May 31, 2016.
- Authorizes motor vehicle proof of insurance cards to be issued in electronic form.
- Revises the criteria for being authorized to inspect boilers.
- Extends the examination period for licensing foreign or alien insurers.

- Exempts from insurance agency licensure, a licensed agent who is a sole-practitioner and conducts business in his or her own name.
- Exempts from insurance agency licensure branch agencies that transact business under the same name as a licensed insurance agency.
- Revises insurance agency licensure application requirements.
- Includes employees within the scope of limited licenses to transact motor vehicle rental insurance that are issued to a business entity that offers motor vehicle for rent or lease.
- Allows an insurance agency license to continue in force until cancelled, suspended, revoked or terminated.
- Provides the Department of Financial Services (DFS) with additional authority to regulate mediators and neutral evaluators under the alternative dispute resolution programs run by the DFS for property, motor vehicle, and sinkhole claims.
- Revises the application for a certificate of authority to be an insurance administrator.
- Allows an insurer to use a qualified third party to conduct required reviews of an insurance administrator.
- Allows annual financial statements of insurance administrators to cover the prior fiscal year.
- Repeals the requirement that surplus lines agents file an affidavit with the Florida Surplus Lines Service Office (FSLSO).
- Includes using a straight average of hurricane model results or output ranges as factors the Office of Insurance Regulation (OIR) must consider in a rate filing.
- Increases from 60 days to 180 days the time an insurer is not required to use the newest version of an approved hurricane model.
- Allows workers' compensation insurance retrospective rating plans that provide for negotiation of rating factors between the insurer and employer in specified instances.
- Requires the Florida Hurricane Catastrophe Fund (FHCFFHCF) and Citizens Property Insurance Corporation (Citizens) to provide annual reports to the Legislature detailing the aggregate net probable maximum losses, financing options, and potential assessments and.
- Establishes a uniform 120 day advance written notice of nonrenewal, cancellation, or termination for personal or commercial lines residential property insurance policies.
- Authorizes a licensed company adjuster to provide the sworn statement of liability insurance coverage required by current law.
- Allows a policyholder to elect electronic delivery of policy documents.
- Allows a Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium.
- Requires dissolution of the Florida Comprehensive Health Association.
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- Creates the Citizens Sinkhole Stabilization Repair Program ("Repair Program"). All verified claims for sinkhole loss against a Citizens policy covering sinkhole loss must be included in the Repair Program by March 31, 2014, for the purpose of stabilizing the land and structure and making repairs to the foundation.
- Requires Citizens to offer sinkhole loss deductibles of 2 percent, 5, percent, and 10 percent of the policy dwelling limits and offer appropriate premium discounts with each deductible amount.
- Creates conflict of interest standards for appraisers in residential property insurance claims.

- Clarifies that the annual update to the Personal Injury Protection medical fee schedule applies until the last day of February in the following year.
- Allows application of premium finance company charges for a payment that is declined to debit, credit, and electronic funds transfers.
- Deletes a bond requirement on non-resident licensed risk retention and purchasing group insurance agents.
- Allows a financial guaranty insurance corporation to be organized and licensed as a mutual property and casualty insurer.
- Exempts captive insurers from the statutory trust deposit required under s. 624.411, F.S.
- Provides exceptions to certain financial requirements applicable to service warranty associations.

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

This bill substantially amends the following sections of the Florida Statutes: 215.555, 316.646, 320.02, 554.1021, 554.107, 554.109, 624.413, 626.0428, 626.112, 626.172, 626.321, 626.382, 626.601, 626.8411, 626.8805, 626.8817, 626.882, 626.883, 626.884, 626.89, 626.931, 626.932, 626.935, 626.936, 627.062, 627.0628, 627.072, 627.281, 627.351, 627.3519, 627.4133, 627.4137, 627.421, 627.43141, 627.6484, 627.7015, 627.706, 627.7074, 627.736, 627.745, 627.841, 627.952, 627.971, 627.972, 628.901, 628.909, and 634.406.

The bill creates the following section of the Florida Statutes: 627.70151.

The bill repeals the following sections of the Florida Statutes: 626.747, 627.64872, 627.648, 627.6482, 627.6484, 627.6486, 627.6488, 627.6489, 627.649, 627.6492, 627.6494, 627.6496, 627.6498, 627.6499.

II. Present Situation:

Florida Hurricane Catastrophe Fund Emergency Assessments

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt fund administered by the State Board of Administration (SBA) that was created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. Insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF must charge insurers the "actuarially indicated" premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

Reimbursements to insurers for losses above the current cash balance of the fund are financed through bonding. The bonds are funded by assessments on direct premiums for all property and casualty lines of business in Florida except workers' compensation and medical malpractice. The exemption for medical malpractice is scheduled for automatic repeal on May 31, 2013.

Proof of Financial Responsibility

Every owner or operator of a motor vehicle that is required to be registered in Florida must:

- Maintain security to meet required levels of personal injury protection specified by the Florida Motor Vehicle No-Fault Law.[1]
- Demonstrate financial responsibility to cover up to $10,000 of property damage resulting from the use of the motor vehicle.[2]
- For individuals who have been found guilty or entered a plea of nolo contendre to driving under the influence must demonstrate financial responsibility to cover up to:[3]
  - $100,000 for death or injury to any one person;
  - $300,000 for death or injury to two or more people; and
  - $50,000 for property damage in any one crash.

Section 316.646, F.S., specifies how proof of the financial security described above must be maintained. The statute requires that a person must have in his or her immediate possession at all times while operating a motor vehicle:

- A uniform proof-of-insurance card in a form prescribed by the Department of Highway Safety and Motor Vehicles;
- A valid insurance policy;
- An insurance policy binder;
- A certificate of insurance; or
- Such other proof as may be prescribed by the department.

Motor Vehicle Registration

Every person who owns a motor vehicle that is operated on Florida roads is required to register that vehicle with Department of Highway Safety and Motor Vehicles.[4] In order to register a vehicle, the owner must provide proof that the coverages required under s. 324.022, F.S., s. 324.023, F.S., and s. 627.733, F.S., have been purchased. Section 320.02(5), F.S., specifies that the proof this coverage can be satisfied by a number of alternative documents, one of which is a proof-of-purchase card. The statute requires that an insurer providing the required coverage must issue to its policyholder a uniform proof-of-purchase card in a form prescribed by the department that contains:

- The name of the insurance company;
- The coverage identification number;
- The make, year, and vehicle identification number of the vehicle; and
- A statement notifying the applicant of the penalty specified in s. 316.646(4), F.S.

[1] Sections 627.730 – 627.405, F.S., comprise the "Florida Motor Vehicle No-Fault Law." Section 627.733, F.S., requires that every owner or operator of a motor vehicle that is required to be registered in Florida must maintain security to meet required levels of personal injury protection specified by the Florida Motor Vehicle No-Fault Law. Section 627.736, F.S., requires that coverage of $10,000 for medical and disability benefits and $5,000 for death benefits must be purchased to cover: the named insured, relatives residing in the same household, persons operating the motor vehicle, passengers, and other people struck by the vehicle who are not in another vehicle at the time. Section 627.736, F.S., specifies that the provisions contained in ch. 324, F.S., for maintaining proof of financial responsibility also apply to the Florida Motor Vehicle No-Fault Law.
[2] See s. 324.022, F.S.
[3] See s. 324.023, F.S.
[4] Section 320.02(1), F.S.

Boiler Safety Inspections

A boiler is a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam is superheated, under pressure or vacuum, for use external to itself, by the direct application of energy. The Boiler Safety Act (Chapter 554, F.S.) requires all boilers placed in use after October 1, 1987, to submit the A.S.M.E. (American Society of Mechanical Engineers) manufacturers date report to the chief boiler inspector of the state. All boilers located in public assembly locations must be inspected for compliance with the State Boiler Code, which is based on standards for boilers and other pressure vessels promulgated by the A.S.M.E. The inspection must be conducted by the chief inspector (appointed by the state Chief Financial Officer), a deputy inspector (employed by the Department of Financial Services), or special inspectors (a qualified inspector employed by an insurer licensed to insure boilers in this state).

Regulation of Branch Insurance Agencies

The DFS is the state agency responsible for licensing insurance agencies in accordance with s. 626.172, F.S. In Florida, insurance agents who are sole proprietors and do not employ other insurance agents must be licensed as both an insurance agent and an insurance agency. According to the DFS, no other state requires licensure of an insurance agency when the licensed insurance agent is the sole proprietor of the agency.

Current law also requires each insurance agency location be licensed. Other states do not have a similar licensing requirement for branch locations of agencies. Licenses for an insurance agency expire every three years under current law.

According to DFS, when the agency licensing law was created, some existing agencies were given the opportunity to register the agency in lieu of licensing the agency. The primary benefit of registration over licensing is that registrations do not expire whereas licenses expire every three years. DFS indicates Florida is the only state that registers insurance agencies in lieu of licensing them. Thus, insurance agencies registered in Florida cannot be recognized in other states because the states only recognize licensed agencies. As a result, insurance agencies have been turning in their registrations to the DFS and applying for a Florida agency license. This allows the agency to also obtain an agency license in other states. The DFS asserts the number of registered agencies is steadily declining. Over the past four years an average of 27 registered agencies per month have canceled their registrations. Currently, there are over two times as many licensed insurance agencies as registered ones, with over 38,000 licensed agencies and over 13,000 registered ones.

Foreign or Alien Insurer Application for Certificate

A foreign insurer is defined as being formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida.[5] A domestic insurer is defined as being formed under the laws of Florida.[6] An alien insurer is defined as an insurer other than a foreign

[5] S. 624.06(2), F.S.
[6] S. 624.06(1), F.S.

or domestic insurer.[7] When a foreign or alien insurer applies for a certificate of authority in Florida, it must submit a report of its most recent examination certified by the insurance official in its state of domicile or of entry into the United States. The end of the most recent year covered by the examination must be within the three-year period preceding the date of application.[8] In lieu of the certified examination report, the OIR can accept an audited certified public accountant's report prepared on a basis consistent with the insurance laws of the insurer's state of domicile, certified by the insurance official in its state of domicile or of entry into the United States.

Limited Agent Licenses

Section 626.321, F.S., establishes categories for which the DFS will issue a license that authorizes an agent to transact a limited class of business. The following enumerated categories qualify for limited license:

- Motor vehicle physical damage and mechanical breakdown insurance;
- Industrial fire or burglary insurance;
- Travel insurance;
- Motor vehicle rental insurance;
- Credit life or disability insurance;
- Credit insurance;
- Credit property insurance;
- Crop hail and multi-peril crop insurance; In-transit and storage personal property insurance; and
- Communications equipment property insurance, communications equipment inland marine insurance, and communications equipment service warranty insurance.

Under a limited license for motor vehicle rental insurance, the licensee may sell coverage only when the coverage is offered or sold incidental to the rental or lease of a motor vehicle, the lease or rental period is for no more than 60 days, and the coverage is limited to only those risks specified in statute. Further, the license may be issued only to an employee of a licensed general lines agent or to a business entity that offers motor vehicles for lease or rent. A limited license that is issued to such a business entity encompasses each office or place of business that uses the entity's name to offer the specified coverage.

Inquiries into Improper Conduct

Current law provides that the DFS and the OIR are authorized to inquire into any alleged improper conduct of any licensed, approved, or certified insurance agency, agent, adjuster, service representative, managing general agent, customer representative, title insurance agent, title insurance agency, mediator, neutral evaluator, continuing education course provider, instructor, school official, or monitor group under the insurance code.[9] The DFS or the OIR may

[7] S. 624.06(3), F.S.
[8] S. 624.413(1)(f), F.S.
[9] S. 626.601, F.S.

then initiate an investigation if it has reasonable cause to believe there has been a violation of the code.

Insurance Administrators

An insurance administrator is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with an insurance policy. To operate as an insurance administrator, a person must obtain a certificate of authority to act as an administrator from the Office of Insurance Regulation.[10] An insurer who utilizes an insurance administrator must at least semiannually conduct a review of the operations of an administrator that administers more than 100 certificateholders of that insurer.[11] An administrator must have a written agreement between itself and each insurer for which it performs administrative functions.[12] Administrators must also file an annual financial statement with the OIR containing the administrator's financial condition, transactions, and affairs no later than March 1 of each year.[13]

Hurricane Loss Projection Models

The Florida Commission on Hurricane Loss Projection Methodology (Commission) was established by the Legislature to serve as an independent body to provide expert evaluation of computer models that project hurricane losses.[14] The Commission is assigned to the State Board of Administration. The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Members of the Commission include:[15]

- The Insurance Consumer Advocate;
- The person responsible for FHCF operations;
- The Executive Director of Citizens Property Insurance Corporation;
- The Director of Emergency Management;
- An actuary member from the FHCF Advisory Council;
- An actuary employed by the OIR;
- An appointment by the state Chief Financial Officer who is an actuary employed with a property and casualty insurer;
- An appointment by the state Chief Financial Officer who is an expert in insurance finance and who is a full-time faculty member in the State University System;
- An appointment by the state Chief Financial Officer who is an expert in statistics in meteorology and who is a full-time faculty member in the State University System; and
- An appointment by the state Chief Financial Officer who is an expert in computer system design and who is a full-time faculty member in the State University System.

[10] S. 626.8805, F.S.
[11] S. 626.8817, F.S.
[12] S. 626.882, F.S.
[13] S. 626.89
[14] See s. 627.0628, F.S.
[15] S. 627.0628(2) (b), F.S.

The Commission sets standards for loss projection methodology and examines the methods employed in hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards. Only hurricane loss models or methods that the Commission has found to be accurate can be used by insurers to estimate the hurricane losses that are used to set property insurance rates. After the Commission finds a model to be accurate, an insurer has 60 days to use the model to predict the insurer's probable maximum loss "with respect to a rate filing."[16]

Florida Comprehensive Health Care Association (FCHA)

The FCHA is Florida's high-risk pool for individuals who are unable to obtain health insurance, due to their health status. The FCHA, formerly named the State Comprehensive Health Association, was created in 1982.[17] About 7,500 individuals were insured with the FCHA in 1991, but due to increasing losses, legislation that year closed the FCHA to new enrollment, but allowed existing insureds to renew coverage. At the end of 2012, there were 176 individuals insured with the FCHA.

The FCHA is organized as a not-for-profit entity. All health insurers, as a condition of doing business, must be members of the association. The FCHA is governed by a three-member board of directors appointed by the Chief Financial Officer and regulatory oversight is provided by OIR.

The FCHA is funded through a combination of premiums paid by FCHA policyholders and an assessment on all health insurers and HMOs in the state to cover FCHA operating losses. The annual assessment on health insurers is based on the earned premiums of the insurers.[18] FCHA policyholder premiums are based on commercial standard risk rates as determined by OIR and are set at 200 percent, 225 percent and 250 percent of the individual market standard risk rate, depending on the level of risk.[19]

For 2012, premiums paid by FCHA members were $1,252,788 compared to claims of $1,700,473. The operating loss of the association and the related insurance industry assessment for 2012 was $810,539. The operating loss and the resulting insurance industry assessment for 2011 was $2,245,828.[20]

Retrospective Rating Plan in Workers' Compensation

Retrospective rating plans[21] may be used by workers' compensation insurance carriers to compete on price. Under a retrospective rating plan, the final premium paid by the employer is based on the actual loss experience of the employer during the policy, plus insurer expenses and an insurance charge. If the employer is able to limit the amount and the magnitude of claims, it

[16] S. 627.0628(3) (d), F.S.
[17] SS. 627.648-627.6498, F.S. is cited as Florida Comprehensive Health Association Act.
[18] S. 627.6492, F.S.
[19] S. 627.6498, F.S.
[20] Florida Comprehensive Health Association data, on file in committee.
[21] See "2012 Workers' Compensation Annual Report" (December 2012) by the Florida Office of Insurance Regulation. Available at http://www.floir.com.

will pay lower premiums. Before there were large deductible programs, retrospective rating plans were the dominant rating plan for large employers.

Notice of Cancellation or Nonrenewal

The requirements for an insurer to give notice of cancelling or nonrenewing a residential property insurance policy are contained in s. 627.4133(2), F.S. The specific notice depends on the particular circumstances of the policy being nonrenewed, as follows:

- Generally, an insurer must give the insured 100 days written notice of nonrenewal or cancellation;
- For any nonrenewal or cancellation that would be effective between June 1 and November 30 (hurricane season), an insurer must give notice by June 1, or 100 days, whichever is earlier;
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the reason is a revision in sinkhole coverage, the insurer must give the insured 100 days written notice of nonrenewal;
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the policy is to be nonrenewed by Citizens pursuant to an approved assumption plan by an authorized insurer, Citizens must give the insured 45 days written notice of nonrenewal;
- If the insured structure has been insured by the insurer or an affiliate for at least 5 years, the insurer must give 120 days' notice of nonrenewal or cancellation;
- If the cancellation is for nonpayment of premium, the insurer must give 10 days' notice of cancellation accompanied by the reason for the cancellation;
- If the OIR finds that the early cancellation is necessary to protect the best interests of the public or policyholders, the insurer must give the insured 45 days' written notice of cancellation or nonrenewal;
- If a policy covers both home and motor vehicle, the insurer must give the insured 100 days written notice of nonrenewal.

Required Disclosures by Liability Insurers

Under current law, a liability insurer must provide to a claimant a statement containing the following information within 30 days of a written request by the claimant:

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to the such insurer at the time of filing such statement; and
- A copy of the policy.

Further, the above statement must be under oath by a corporate officer or the insurer's claims manager or superintendent.

Delivery of Insurance Policies

Part II of s. 627, F.S., generally applies to all insurance contracts except for those covering reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance.[22] Under this part, every insurance policy must be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect.[23]

In June 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act (ESIGN) to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically.[24] ESIGN provides that contracts formed using electronic signatures on electronic records will not be denied legal effect merely because they are electronic. ESIGN, however, requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under ESIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to the use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications. Insurance is specifically included in ESIGN. Section 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), has provisions similar to the federal ESIGN. UETA specifically applies to insurance and provides a requirement that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

Notice of Change in Policy Terms

Section 627.43141, F.S., requires that when an insurer makes a change in the terms of an insurance policy upon the renewal of that policy, the insurer must give the named insured written notice of the change, and the notice must be enclosed with the written notice of renewal premium required by ss. 627.4133, F.S., and 627.728, F.S.

Alternative Procedure for Resolution of Disputed Property Insurance Claims

The DFS has established alternative dispute resolution programs for various types of insurance. The property insurance claim mediation program is authorized under s. 627.7015, F.S.; the automobile insurance claim mediation program is authorized under s. 627.745, F.S.; and the sinkhole claim neutral evaluation program is authorized under s. 627.7074, F.S.

The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluation program for sinkhole insurance claims. To qualify as a mediator for the property or automobile mediation programs, a person must meet specific

[22] S. 627.401, F.S.
[23] S. 627.421, F.S.
[24] See Federal Trade Commission and Department Of Commerce publication: "Electronic Signatures in Global and National Commerce Act," published June 2001, available at http://www.ftc.gov/os/2001/06/esign7.htm.

education or experience requirements set out in statute,[25] and must successfully complete a training program approved by the DFS. According to DFS, the required mediation training program is no longer available from outside vendors due to the low volume of DFS mediators. In order to ensure there is a training program available for those who want to be DFS mediators, for the past several years DFS has approved the mediator training program offered by the courts.

Sinkhole Insurance

Insurers offering property insurance must make available to policyholders, for an appropriate additional premium, sinkhole coverage for losses on any structure, including personal property contents.[26] Sinkhole coverage includes repairing the home, stabilizing the underlying land, and foundation repairs. Insurance companies must also provide coverage for catastrophic ground cover collapse.[27] Insurers may restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building as defined in the insurance policy. An insurer may require a property inspection prior to issuing sinkhole loss coverage. Residential property insurance policies may include deductibles applicable to sinkhole losses of 1 percent, 2, percent, 5 percent, or 10 percent of the policy dwelling limits and must provide a corresponding premium discount with each deductible amount. All Citizens sinkhole loss policies, however, must have a 10 percent deductible, effective May 1, 2012 for new policies and June 1, 2012 for renewal policies.

Sinkhole coverage is payable when a "sinkhole loss" occurs.[28] A sinkhole loss is defined in statute as structural damage to the covered building, including the foundation, caused by sinkhole activity.[29] Five distinct types of damage constitute structural damage, and each type of damage is tied to standards contained in the Florida Building Code or used in the construction industry.[30] "Sinkhole activity" is the settlement or systematic weakening of the earth supporting the covered building that results from contemporaneous movement or raveling of soils, sediments, or rock into subterranean voids created by the effect of water on a limestone or similar rock formation.[31] Accordingly, in order for the policyholder to obtain policy benefits for sinkhole loss, the insured structure must sustain structural damage that is caused by sinkhole activity.

Sinkhole insurance claims increased substantially both in number and cost over the past two decades and most dramatically over the last several years.[32] The drastic increase in sinkhole claims is harming the financial stability of Citizens Property Insurance Corporation (Citizens) and private market insurers and making residential property insurance increasingly unaffordable or unavailable for consumers. According to data submitted in 2011 by 211 property insurers to the Office of Insurance Regulation (OIR), the insurers' total reported claims increased from

[25] s. 627.745 (3)(b), F.S., requires a mediator to possess certain masters or doctorate degrees, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.
[26] S. 627.706, F.S.
[27] Catastrophic ground cover collapse refers to extreme damage in which a property is essentially destroyed and uninhabitable.
[28] See s. 627.706(1)(b), F.S., and s. 627.707(5), F.S.
[29] S. 627.706(2)(j), F.S.
[30] S. 627.706(2)(k), F.S.
[31] S. 627.706(2)(i), F.S.
[32] The increase in claims frequency and severity is based on data collected from 211 insurers by the Office of Insurance Regulation (OIR) in the Fall of 2010, (*Report on Review of the 2010 Sinkhole Data Call* (OIR Report),

2,360 in 2006 to 6,694 in 2010, totaling 24,671 claims throughout that period.[33] Total sinkhole claim costs for these insurers amounted to approximately $1.4 billion for the same period.[34] These losses resulted in large premium increases for sinkhole coverage, particularly in Hillsborough, Pasco, and Hernando counties. The 2011 Legislature enacted legislation in (CS/CS/CS/SB 408) to address the large increases in sinkhole policyholder premiums and losses.

Payment of Sinkhole Claims

If a covered building suffers a sinkhole loss or catastrophic ground cover collapse, the insured must repair such damage in accordance with the insurer's professional engineer's recommended repairs. However, if repairs cannot be completed within policy limits, the insurer has the option to either pay to complete the recommended repairs or tender policy limits without a reduction for any repair expenses already incurred. Payment shall be made to conduct such repairs in accordance with the recommendations of the professional engineer retained by the insurer under s. 627.707(2), F.S. The insurer may limit payment to the actual cash value of the sinkhole loss not including below-ground repair techniques until the policyholder enters into a contract for the performance of building stabilization repairs.

The two most commonly recommended stabilization techniques are grouting and underpinning. Under the grouting procedure, a grout mixture (composed of cement, sand, fly ash, and water) is injected into the ground to stabilize the subsurface soils to minimize further subsidence damage by increasing the density of the soils beneath the building as well as sealing the top of the limestone surface to minimize future raveling. Underpinning consists of steel pipes drilled or pushed into the ground to stabilize the building's foundation.

The contract for below-ground repairs must be made in accordance with the recommendations set forth in the insurer's sinkhole report issued pursuant to s. 627.7073, F.S., and must be entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss. The time period is tolled if either party invokes neutral evaluation. Stabilization and all other repairs to the structure and contents must be completed within 12 months after the policyholder enters into the contract for repairs unless the insurer and policyholder mutually agree otherwise, the claim is in litigation, or the claim is in neutral evaluation, appraisal or mediation.

Insurance Contract Appraisal Process

Most insurance contracts contain an appraisal clause which establishes a procedure for resolving disputed amounts under a claim. Disputes over coverage are determined by the courts, but an appraisal process can be used to resolve disputed amounts. Generally, the appraisal process works as follows:

[33] The sources for the report included sinkhole policy and claims information collected from 211 insurers for the period 2006 to 2010, pursuant to a data call by the Office of Insurance Regulation. The report also utilized policy and claims data submitted by Citizens Property Insurance Corporation, individual insurers as well as background and research information collected by committee staff.
[34] See id.

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers cannot agree on the amount of damages, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both parties.
- If the two parties agree to the amount of the loss, that amount becomes the claim amount. If one of the parties does not agree, the case can still be litigated in court.

Current law does not address disqualification of an umpire due to impartiality. As a result, a party seeking to disqualify an umpire must go to Circuit Court and have a judge rule on the umpire's impartiality. There are no parameters in current law for a judge to rule on an umpire's impartiality.

Personal Injury Protection Insurance (PIP)

In 2012, the Legislature enacted HB 119,[35] making substantial changes to laws applying to Florida's PIP requirements. Among numerous other changes, the bill amended s. 627.736(5)(a) 2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The new provision states, in part:

> [T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered…and the applicable fee schedule or payment limitation applies throughout the remainder of that year….

The above language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied just to the end of the calendar year or applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,[36] stating that the plain language of the section requires the fee schedule in place on March 1, to apply throughout the following 365 days, or until March 1, of the following year.

Risk Retention Group Agents

A risk retention group is defined in s. 627.942(9), F.S., as a corporation or limited liability association whose primary activity consists of spreading the liability exposure of its group members. Within the definition, the statute imposes numerous requirements and limitations for operating a risk retention group.

Section 627.952 (1), F.S., establishes requirements for risk retention and purchasing group agents. The statute requires that any person selling, purchasing, or servicing an insurance

[35] Ch. 2012-151, L.O.F.
[36] Available at http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx. Last visited March 16, 2013.

contract for a purchasing group or risk retention group to a Florida resident must have an appointment to act general lines agent. In order to place business through a surplus lines carrier, a resident agent must be licensed and appointed as a surplus lines agent. If not a resident of Florida, the agent must be licensed and appointed as a surplus lines agent in her or his state of residence and must file and maintain a fidelity bond. The statute specifies the amount ($50,000) and the conditions that are required for the fidelity bond.

Financial Guaranty Insurance

Financial guaranty insurance is defined[37] as a surety bond, insurance policy, or similar guaranty, under which payment is made upon the occurrence of financial loss to an insured, as a result of:

- The failure of an obligor on a debt to make payments when due, if the failure is the result of a financial default or insolvency;
- Changes in the levels of interest rates;
- Changes in the rate of exchange of currency;
- Changes in the value of specific assets or commodities, or price levels in general; or
- Other events which the OIR determines are substantially similar to any of the foregoing.

Section 627.971, F.S., defines a financial guaranty insurance corporation as a stock insurer licensed to transact financial guaranty insurance business in this state. The definition makes no provision for mutual insurers. A stock insurer is defined as an incorporated insurer with its capital divided into shares and owned by its stockholders.[38] A mutual insurer is defined as an incorporated insurer without permanent capital stock, the governing body of which is elected in accordance with part I of ch. 628, F.S.[39]

Captive Insurance

A captive insurer is an insurance company that primarily or exclusively insures a business entity, or entities, that owns or is an affiliate of the captive insurer. The insured business entities pay premiums to the captive insurer for specified insurance coverages. Under current law, captive insurance is regulated by the Office of Insurance Regulation (OIR) under part V of ch. 628, F.S., which defines a "captive insurance company" as a domestic insurer established under part V, and includes a pure captive insurance company, a special purpose captive insurance company, or an industrial captive insurance company, with each of these formations also separately defined.

Each formation may vary in allowable corporate structure, capital and surplus, underwritten risks, and number of owners. Most captive insurance companies are formed as pure captives,[40] meaning that the captive is a wholly-owned subsidiary that insures the risks of its parent and affiliates.

[37] S. 627.971(1) (a), F.S.
[38] S. 628.021, F.S.
[39] S. 628.031, F.S.
[40] Theriault, Patrick. Captive Insurance Companies (2008). Page 9. www.captive.com.

Chapter 628, F.S., also defines "captive reinsurance company" as a stock corporation reinsurer formed under part V of ch. 628, F.S., that is wholly owned by a qualifying reinsurance parent company. A "qualifying reinsurance parent company" is defined as a reinsurer that:

- Holds a certificate of authority or a letter of eligibility; or
- Is an accredited or a satisfactory non-approved reinsurer in Florida and possesses consolidated GAAP net worth of at least $500 million and a consolidated debt to total capital ratio of not greater than 0.50.

Service Warranty Associations

A service warranty is generally defined as a contract to perform the repair or replacement of a consumer product for failure due to a defect.[41] A service warranty association is defined as any person, other than an authorized insurer, issuing service warranties.[42]

Section 634.406, F.S., establishes the financial requirements, ratios, and limitations on service warranty associations. A service warranty association can allow its premiums to exceed the ratio to net assets limitations of s. 634.406, F.S., only if the association meets all of the following:

- Maintains net assets of at least $750,000.
- Utilizes a contractual liability insurance policy approved by the office which reimburses the service warranty association for 100 percent of its claims liability.
- The insurer issuing the contractual liability insurance policy:
  - Maintains a policyholder surplus of at least $100 million.
  - Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the OIR.
  - Is in no way affiliated with the warranty association.
  - Provides a statement certifying the gross written premiums is covered under the contractual liability policy, whether or not it has been reported.

The statute further requires that a contractual liability policy must insure 100 percent of an association's claims exposure under all of the association's service warranty contracts, unless numerous specified conditions are met.

III. Effect of Proposed Changes:

Florida Hurricane Catastrophe Fund Exemption for Medical Malpractice Insurance

Section 1 amends s. 215.555(6)(b), F.S., to continue exempting medical malpractice insurance from Florida Hurricane Catastrophe Fund emergency assessments until May 31, 2016.

Proof of Motor Vehicle Insurance in Electronic Form

Sections 2 and 3 amend ss. 316.646 and 320.02, F.S., to authorize the uniform motor vehicle proof of insurance card to be issued in electronic form. A person who displays proof-of-insurance by presenting an electronic device to a law enforcement officer is not consenting to

[41] S. 634.401(13), F.S.
[42] S. 634.401(14), F.S.

allow access to other information on the device. The law enforcement officer is not liable, however, for damage to the device. The bill grants the DHSMV rulemaking authority to implement s. 316.646, F.S.

Boiler Inspection

Sections 4 through 6 amend ss. 554.1021, 554.107, and 554.109, F.S., to allow boiler inspections to be done by an "authorized inspection agency" which is defined as:

- A county, city, town, or other governmental subdivision that has adopted and administers Section I of the A.S.M.E. (American Society of Mechanical Engineers) Boiler and Pressure Vessel Code and whose inspectors hold valid certificates of competency under s. 554.443, F.S.; or
- An insurance company licensed or registered in any state or Canadian province whose inspectors hold valid certificates of competency under s. 554.113, F.S.

This change will allow an insurer that does not write policies in Florida to serve as an "authorized inspection agency" of boilers if its inspectors hold valid certificates of competency.

Certificates of Authority Application Process for Foreign and Alien Insurers

Section 7 amends s. 624.413, F.S., to allow a foreign or alien insurer applying for a certificate of authority to submit a copy of the report of the most recent examination certified by the public official having supervision of insurance in its state of domicile or of entry into the United States that is up to 5 years old as of the date of the insurer's application. Under current law, the examination may be no greater than 3 years old.

Insurance Agent Supervision of Agencies and Branch Agencies

Section 8 creates s. 626.0428(4), F.S., regarding agency personnel powers, duties and limitations. The CS takes the branch agency requirements of s. 626.747, F.S., and places them in this section, with amendments. The subsection:

- Requires each place of business to be in the active, full time charge of a licensed and appointed agent holding the required agent licenses to transact the lines of insurance being handled at the location (currently in s. 626.747(1)(a), F.S.).
- Allows the licensed agent in charge of an insurance agency to be the agent in charge of additional branch office locations if insurance activities requiring licensure do not occur at the branch locations when the agent is not present (currently in s. 626.747(1)(b), F.S.).
- Requires an insurance agency and each branch place of business to designate an agent in charge. The agent in charge is responsible to supervise all individuals in the agency location and accountable for wrongful acts, misconduct, or violations of the insurance code committed by the agent or anyone the agent supervises. Criminal liability only attaches if the supervising agent knew or should have known of the act and facts that constitute the violation. The agent's name and license number and the physical address of the agency must be filed at a DFS website. Changes of the agent in charge are effective 30 days after the DFS is notified.

Section 14 repeals s. 626.747, F.S., which contains the current branch agency licensure requirements.

Section 15 amends s. 626.8411, F.S., to correct a cross-reference.

Exemptions from Insurance Agency Licensure – Certain Branch Agencies and Insurance Agents Who Own and Operate a Business in Their Own Name

Section 9 amends s. 626.112(7), F.S., to exempt from agency licensure requirements:

- An insurance agency that is owned and operated by a single licensed agent who conducts business in his or her individual name and does not employ, otherwise use, or appoint other licensees.
- A branch agency that is established by a licensed agency if the branch agency transacts business under the same name and federal tax identification number of the licensed agency that established it. The agency that established the branch agency must also designate a licensed agent in charge of the location under s. 626.0428, F.S. The registration and licensure requirements for such agencies are repealed.

Effective October 1, 2013, the DFS must convert the registration of an approved registered insurance agency to an insurance agency license.

Insurance Agency Licensure Applications

Section 10 amends s. 626.172, F.S., to require an applicant for agency licensure to provide a valid e-mail address of the insurance agency and the physical address of each branch agency including its name, e-mail address, and telephone number and the date the branch location began transacting business. The CS also adds a fingerprinting requirement for any person in control of insurance agency bank accounts.

Scope of Limited Licensure for Motor Vehicle Rental Insurance

Section 11 amends s. 626.321, F.S., to include employees within the scope of limited licenses to transact motor vehicle rental insurance that are issued to a business entity that offers motor vehicles for rent or lease.

Continuation of Insurance Agency Licensure

Section 12 amends s. 626.382, F.S., to allow an insurance agency license to continue in force until it is cancelled, suspended, revoked, or terminated. Under current law, the license is issued for a 3-year period and may be renewed.

Department of Financial Services Oversight of Mediators and Neutral Evaluators

Section 13 amends s. 626.601, F.S., to authorize the Department of Financial Services to inquire into alleged improper conduct of mediators and neutral evaluators and subsequently to initiate and conduct an investigation if reasonable cause exists of an insurance code violation.

Section 39 amends s. 627.7015(4)(b), F.S., to delete the requirement that the Department of Financial Services adopt rules that qualify mediators for the property insurance mediation program who are eligible pursuant to the Florida Rules of Certified and Court Appointed Mediators, or that the DFS determines have appropriate education, training, or expertise to serve as a mediator. The bill retains current law that the DFS adopt rules specifying that mediators be qualified under the requirements of s. 627.745, F.S., but adds language specifying that s. 627.745, F.S., also governs the denial of application, suspension, revocation and other penalties for mediators in the program.

Section 41 amends s. 627.706(2)(c), F.S., to specify that a sinkhole neutral evaluator is a person who is not otherwise ineligible for certification as a neutral evaluator under s. 627.7074, F.S.

Section 42 amends s. 627.7074, F.S., to require the Department of Financial Services to adopt rules for certifying, denying certification, suspending certification, and revoking certification as a neutral evaluator. The rules must be based on the neutral evaluator qualifications contained in ss. 627.7074, 627.706, and s. 627.745(4), F.S.

Section 44 amends s. 627.745, F.S., to change the requirements for qualifying as a mediator under the motor vehicle insurance claim mediation program for personal injury claims of $10,000 or less, or for property damage claims of any amount. A mediator must possess an active certification as a Florida Circuit Court Mediator or be an appointed department mediator as of July 1, 2013, who has conducted at least one mediation on behalf of the DFS within 4 years prior to that date. The bill eliminates the 40-hour mediation training program and test that all mediators under the program currently must complete in order to be approved as a mediator under the program.

The bill also requires the DFS to deny an application or revoke its approval of a mediator or neutral evaluator for any of the following:

- Lack of one or more of the qualifications required for approval or certification.
- Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain approval or certification.
- Demonstrated lack of fitness or trustworthiness to act as a mediator or neutral evaluator.
- Fraudulent or dishonest practices in the conduct of mediation or neutral evaluation or in conducting business in the financial services industry.
- Violation of any provision of the Florida Insurance Code; a lawful order or rule of the DFS; or aiding, instructing, or encouraging another party to commit such a violation.

The bill grants rulemaking authority to administer this requirement.

Insurance Administrators – Certificate of Authority Requirements

Section 16 amends s. 626.8805, F.S., changing the information that must be filed with the OIR or made available for OIR inspection as part of an application for a certificate of authority to act as an insurance administrator. The CS requires the applicant to provide the names, addresses, official positions and professional qualifications of individuals who are employed or retained by

the administrator and who are responsible for the conduct of the affairs of the administrator. Current law contains a broader standard, requiring information of any person who exercises control or influence over the affairs of the administrator.

Insurance Administrators – Oversight Responsibilities of Insurers

Sections 17, 18, 19 and 20 amend ss. 626.8817, 626.882, 626.883, and 626.884, F.S., to allow an insurer who uses the services of an administrator to contract with a qualified third party to conduct the required semiannual review of an administrator that administers benefits for more than 100 certificateholders on behalf of the insurer.

The CS also specifies that the written agreement between an insurer and an administrator that details the responsibilities of the insurer and administrator governs the rights, duties, and obligations of the administrator and insurer. Any restrictions regarding the proprietary rights of the insurer and administrator related to continuing access to books and records maintained by the administrator are governed by the written agreement between the parties required under s. 626.8817, F.S.

Insurance Administrators – Annual Financial Statement

Section 21 amends s. 626.89, F.S., to change to April 1 the date by which an administrator must file an annual financial statement with the OIR. The CS also allows the financial statement to cover the previous fiscal year, rather than a calendar year, if the administrator's accounting is on a fiscal year basis.

Repeal of Surplus Lines Agent Affidavit Requirement

Section 22 amends s. 626.931, F.S., to eliminate the requirement that each surplus lines agent must, on or before the 45th day following each calendar quarter, file with the Florida Surplus Lines Service Office (FSLSO) an affidavit stating that all surplus lines insurance he or she transacted during that calendar has been submitted to the FSLSO and that includes efforts made to place coverage with authorized insurers and the results of those efforts.

Sections 23, 24, and 25 amend ss. 626.932, 626.935, and 626.936, F.S., to conform to the elimination of the affidavit requirement in s. 626.89, F.S.

Use of Hurricane Models in Rate Filings

Section 26 amends s. 627.062, F.S., to specify that the Office of Insurance Regulation, when reviewing a rate filing, must consider projections of hurricane losses that have been estimated using a straight average of model results or output ranges independently found acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628, F.S.[43]

[43] Section 627.0628, F.S., tasks the Florida Commission on Hurricane Loss Projection Methodology with considering actuarial methods, principles, standards, models, or output ranges that have the potential for improving the accuracy or reliability of hurricane loss projections used in rate filing and probable maximum loss levels. Insurers are prohibited from

Section 27 amends s. 627.0628, F.S., to increase from 60 days to 180 days the time an insurer is not required to use the newest version of a model approved by the Commission on Hurricane Loss Projection Methodology. This section also specifies that an insurer is not prohibited from using a straight average of model results or output ranges or using straight averages in a rate filing.

Workers' Compensation Retrospective Rating Plans

Section 28 amends s. 627.072, F.S., to allow workers' compensation insurance retrospective rating plans that authorize the employer and insurer to negotiate and determine the retrospective rating factors used to calculate the employer's premium if the employer has exposure in more than one state, an estimated annual standard premium in Florida of $175,000, and an estimated countrywide standard premium of $1 million or more for workers' compensation coverage.

Section 29 contains a technical, conforming change to s. 627.281, F.S.

Reports of Citizens Sinkhole Policies; Creation of the Citizens Sinkhole Stabilization Repair Program

Section 30 amends s. 627.351(6), F.S., to require Citizens to report to the OIR and Insurance Consumer Advocate at least once every 6 months the total number of residential sinkhole loss requests for coverage, policies issued, coverage requests declined, and reasons for declining such coverage.

Summary of the Citizens Sinkhole Stabilization Repair Program

The bill creates the Citizens Sinkhole Stabilization Repair Program ("Repair Program"). All verified claims for sinkhole loss against a Citizens policy covering sinkhole loss must be included in the Repair Program by March 31, 2014, for the purpose of stabilizing the land and structure and making repairs to the foundation. Under the Repair Program, Citizens will select a stabilization repair contractor ("contractor") to perform stabilization repairs to repair the land and structure and repair the foundation (usually grouting or underpinning). The contractor will be selected from a pool of contractors approved by Citizens and enter into a fixed price contract with Citizens to perform stabilization repairs. Cosmetic repairs to the structure will be governed by the insurance contract and are not part of the Repair Program.

Once sinkhole testing has been conducted and Citizens receives a completed engineering report, the report will be made available to all contractors within a qualified contractor pool within 30 days of the completion of the report. All contractors within the qualified contractor pool may submit an offer to perform the repairs recommended in the engineering report. Citizens will review the offers and provide the policyholder with a list of contractors whom the policyholder may select to perform stabilization repairs. Citizens may include or exclude contractors on the list to the policyholder based upon quality, cost-effectiveness, and other criteria. If the

using in a rate filing a modified or adjusted model, actuarial method, principle, standard, or output range that the commission has found accurate or reliable.

policyholder does not select the contractor within 30 days, Citizens may select the contractor. If no contractors submit an offer to perform stabilization repairs, or all offers are above policy limits, Citizens may either enter the process into the selection process again or pay policy limits.

Citizens may not require the policyholder to advance the cost of repairs under the Repair Program. Specific performance of stabilization repairs is the sole remedy for resolving disputes between the policyholder and Citizens. Citizens may elect, however, to pay policy limits in lieu of specific performance if the repairs recommended by the engineer exceed policy limits or no contractors submit offers to perform repairs. The Repair Program supersedes s. 627.707(5), F.S., which provides the process by which insurers must pay sinkhole claims, except for s. 627.707(5)(e), F.S., which authorizes the insurer to make payment directly to persons selected by the policyholder to perform repairs if such payments are authorized in writing by any lienholders on the property.

Under the Repair Program Citizens is not responsible for serving as a stabilization repair contractor. Citizens' obligations under the repair program are not an election to repair and do not create a new contractual relationship with the policyholder. Citizens' liability related to stabilization repairs and all other repair activity is no greater than the insurance policy limits on the structure. The Repair Program does not prohibit Citizens from establishing a managed repair program for other repairs to the structure in accordance with the terms of the policy.

Qualifications and Duties of Stabilization Repair Contractors

The Repair Program requires contractors to meet specified requirements in order to be eligible to perform stabilization repairs. The repair contractor must meet minimum requirements including being a certified contractor under s. 489.113(1), F.S.; demonstrating experience in stabilizing sinkhole activity; demonstrating capacity to be bonded and provide performance, surety or other bonds; demonstrating insurance coverage requirements such as commercial general liability coverage and workers' compensation; maintaining a drug-free workplace program; and any other requirements established by Citizens. The contractor must agree to perform repairs to stabilize the land and structure and repair the foundation of the structure under a fixed-price contract with Citizens. The fixed-price contract is not subject to the procurement requirements of s. 627.736(6)(e), F.S. [competitive solicitation requirement for goods or services greater than $25,000] or s. 287.057, F.S. [contains the general competitive solicitation process for state procurement of goods and services]. The contractor is solely responsible for the performance of all necessary stabilization repairs specified in the engineering report and recommendations of the engineer.

The Contract between Citizens and the Stabilization Repair Contractor

Citizens must develop a standard stabilization repair contract that requires the contractor to make all stabilization repairs identified in the engineering report at a fixed price; post a payment bond in favor of Citizens for each project assigned and post a performance bond, secured by a third-party surety, in favor of Citizens, in an amount equal to the total cost of all fixed-price contracts annually awarded to that contractor; and provide at least a 5-year warranty of stabilization repairs secured by a third-party surety. The contract must also require the engineer to monitor the property and confirm that stabilization has been satisfactorily completed and remedies the

damage identified in the engineering report and the recommendation of the engineer. If the engineer concludes additional stabilization repair is necessary to complete repairs in the engineering report and recommendations of the engineer, the contractor must perform the additional repairs at no cost to the corporation. The contract must specify the remedy and sanctions for failing to perform additional repairs.

Sinkhole Deductibles Offered By Citizens

The bill requires Citizens to offer sinkhole loss deductibles of 2 percent, 5, percent, and 10 percent of the policy dwelling limits. Appropriate premium discounts must be offered with each deductible amount.

Citizens and FHCF Annual Reports of Probable Maximum Losses, Financing Options, and Potential Assessments

Section 31 amends s. 627.3519, F.S., to require Citizens and the FHCF to annually provide the Legislature and Financial Services Commission a report detailing the aggregate net probable maximum losses, financing options, and potential assessments. Currently, the Financial Services Commission is required to produce an annual report regarding the probable maximum losses, financing options, and potential assessments of Citizens and the FHCF.

Notice of Non-Renewal for Residential Property Insurance Policies

Section 32 amends s. 627.4133, F.S., to reduce to 120 days the advance written notice of nonrenewal, cancellation, or termination an insurer must give the first-named insured of a personal lines or commercial residential property insurance policy.

Insurer Sworn Statement Detailing Liability Coverage and Alleged Defenses

Section 33 amends s. 627.4137, F.S., to authorize the licensed company adjuster of an insurer that provides liability insurance coverage to provide the sworn statement required by current law setting forth the name of the insurer, the name of each insured, the limits of liability coverage, a statement of each policy defense the insurer reasonably believes is available, and a copy of the policy. Current law allows the sworn statement to be provided by the insurer's claims manager or superintendent, or a corporate officer of the insurer.

Electronic Delivery of Personal Lines Insurance Policy Documents

Section 34 amends s. 627.421(1), F.S., to authorize an insurer to allow a policyholder of personal lines insurance to elect electronic delivery of policy documents, rather than delivery by mail. The bill does not alter the requirement that the insurer provide the policy no later than 60 days after the effectuation of coverage.

Notice of Change in Policy Terms Delivered Separately from Notice of Renewal Premium

Section 35 amends s. 627.43131(2), F.S., to allow the Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium. If a separate notice is used, it must comply

with the nonrenewal mailing time requirement for that particular line of business. Insurers must also provide or make available electronically to the insured's insurance agent the Notice of Change in Policy Terms before or at the same time the notice is given to the insured.

Dissolution of the Florida Comprehensive Health Association

Sections 36, 37, and 38 require dissolution of the Florida Comprehensive Health Association (FCHA). Coverage for each FCHA policyholder would be terminated on June 30, 2014, or on the date that health insurance coverage is effective with another insurer, whichever is earlier. The FCHA would be required to assist each policyholder in obtaining health insurance coverage, including identification of insurers and HMOs offering coverage and other specified information. The FCHA would be required to provide a written notice to each policyholder by September 1, 2013, regarding termination of their coverage and information on how to obtain other coverage.

The bill specifies that by March 15, 2015, the FCHA must determine the final assessment to be collected from member insurers or, if surplus funds remain, the refund to be provided to insurers based on the same pro-rata formula. The bill specifies the actions the FCHA must take to dissolve the corporation by September 1, 2015, including transfer of all records to DFS as custodian. According to representatives of the FHCA, typical responsibilities would include providing copies of claims records to policyholders. The FCHA would be required to transfer any remaining funds (such as proceeds from the sale of assets) to the Chief Financial Officer for deposit in the General Revenue Fund.

All of the statutes that relate solely to the operations of the FHCA would be repealed, effective October 1, 2015, which is one month later than the September 1, 2015, date that the FCHA must be dissolved.

Conflict of Interest Standards for Residential Property Insurance Appraisal Umpires

Section 40 creates s. 627.70151, F.S., to provide conflict of interest standards for appraisers in residential property insurance claims. The insurer or policyholder may challenge impartiality and seek to disqualify the appraisal umpire only if:

- A familial relationship within the third degree exists between the umpire and a party or a representative of a party;
- The umpire previously represented any party or a representative of any party in a professional capacity in the same or a substantially related matter;
- The umpire has represented another person in a professional capacity on the same or a substantially related matter, including the claim, on the same property, or on an adjacent property and that other person's interests are materially adverse to the interests of any party; or
- The umpire has worked as an employer or employee of any party within the preceding 5 years.

Personal Injury Protection Medical Fee Schedule Clarification

Section 43 amends s. 627.736(5)(a), F.S., to clarify that the Personal Injury Protection medical fee schedule that is effective on March 1 of each year applies until the last day of the following February.

Premium Finance Company Return Charges

Section 45 amends s. 627.841, F.S., to specify that a premium finance company may apply the $15 charge for a payment that is declined or cannot be processed due to insufficient funds to debit, credit, and electronic funds transfers.

Non-Resident Risk Retention and Purchasing Group Agents

Section 46 amends s. 627.952, F.S., to delete the requirement that non-resident licensed risk retention and purchasing group insurance agents, in order to place business through Florida eligible surplus lines carriers, must file and maintain a fidelity bond of at least $50,000 in favor of the people of the State of Florida that is issued by an admitted surety company.

Allowing Financial Guaranty Insurance Corporations to Organize as Mutual Insurers

Sections 47 and 48 amend s. 627.972, F.S., to allow a financial guaranty insurance corporation to be organized and licensed as a mutual property and casualty insurer under the Florida Insurance Code. Current law only permits organization as a stock property and casualty insurer. The bill makes a conforming change to s. 627.971, F.S., revising the definition of "financial guaranty insurance corporation" to include a mutual insurer.

Statutory Deposit for Captive Insurers

Section 49 amends s. 628.901(13), F.S., to revise the definition of a "qualifying reinsurer parent company" to include a reinsurer that qualifies for credit reinsurance under s. 624.610(3), F.S. Holding a letter of eligibility or accreditation as a satisfactory non-approved reinsurer in Florida are removed as criteria for being a qualifying reinsurer parent company.

Repeal of Captive Insurer Trust Deposit Requirement

Section 50 amends s. 628.909, F.S., to exempt captive insurers from the statutory trust deposit required under s. 624.411, F.S., as a condition of obtaining a certificate of authority to transact insurance.

Service Warranty Association Financial Requirements

Section 51 amends s. 634.406, F.S., to revise the requirement that if a service warranty association's premiums to exceed the statutorily required 7-to-1 ratio of gross written premium to net assets, it must maintain net assets of $750,000 and maintain a contractual liability insurance policy that reimburses the service warranty association for 100 percent of its claims liability and is approved by the office. Under the bill, the contractual liability policy may be issued by an affiliate of the warranty association. Additionally, the insurer issuing the policy

must either maintain at least a $100 million policyholder surplus or maintain a policyholder surplus of at least $200 million and issue a policy that complies with the provisions of subsection (3).[44]

Effective Date

Section 52 Except as otherwise expressly provided, the bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Issuance of proof of motor vehicle insurance cards in electronic format implicates the "Plain View Doctrine" of the Fourth Amendment of the United States Constitution. The doctrine provides that when a person voluntarily grants access to an otherwise protected area, evidence discovered in the course of that search is admissible if the evidence discovered in the course of that search is in plain view; the officer discovers evidence, contraband, or a fruit or instrumentality of a crime; and the officer has probable cause to believe that the item is evidence, contraband, or a fruit or instrumentality of a crime.[45]

[44] Subsection (3) of s. 634.406, F.S., states that a warranty association need not establish an unearned premium reserve if it purchases contractual liability insurance that covers 100 percent of its claims liability from an authorized insurer. The terms of the policy must contain the following (a) the insurer will pay losses and unearned premium refunds directly to a person making a claim under the warranty association contract in the event the services warranty association does not do so; (b) the insurer must assume full responsibility for administering claims if the warranty association cannot do so; (c) 60 days written notice must be given to the OIR prior to policy cancellation; (4) the policy must insure all service warranty contracts issued while the policy was in effect whether or not the premium has been remitted to the insurer; (e) If the insurer is fulfilling the service warranty covered by the policy and the service warranty holder cancels the warranty, the insurer must fully refund unearned premium, subject to a cancellation fee under s. 634.414, F.S.; and (f) a warranty association may not use an unearned premium reserve and contractual liability insurance policy simultaneously. However, the warranty association may have contractual liability coverage on service warranties previously sold and sell new service warranties covered by the unearned premium reserve, and the converse. The warranty association must be able to distinguish how each individual service warranty is covered.

[45] See *Arizona v. Hicks*, 480 U.S. 321 (1987).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Extending the medical malpractice insurance exemption from FHCF emergency assessments until May 31, 2016, will prevent future assessments on such policies.

Representatives from the Department of Highway Safety and Motor Vehicles note that "according to the Department's Annual Uniform Traffic Citation statistics, in 2011 there were 353,703 citations issued for no proof of motor vehicle insurance." The use of electronic cards may reduce the number of such citations.

The creation of the Citizens Sinkhole Stabilization Repair Program may reduce the number and severity of sinkhole loss costs incurred by Citizens related to such claims by eliminating the ability of policyholders to file such claims in an effort to obtain monetary recovery. Instead, the sole remedy for repairs to stabilize the land and structure and repair the foundation will be specific performance (repairs). If the Repair Program is successful in reducing sinkhole-related loss costs, it should lead to reduced sinkhole insurance premiums for policyholders.

The bill will likely reduce the recovery of a policyholder in situations where a contractor begins stabilization repairs but does not complete them because the repairs will exceed policy limits. Under s. 627.707(5)(c), F.S., if repairs begin and the engineer selected by the insurer determines repair cannot be completed within policy limits, the insurer must complete the repair or tender policy limits without a reduction for repair expenses incurred. However, the Repair Program opts out of this provision and instead states that Citizens' liability related to repair activity is no greater than the policy limits on the structure. It is likely that Citizens will reduce the amount payable by repair expenses incurred when Citizens elects to pay policy limits when repairs begin but cannot be completed.

C. Government Sector Impact:

Representatives from the Department of Highway Safety and Motor Vehicles note that "according to the Department's Annual Uniform Traffic Citation statistics, in 2011 there were 353,703 citations issued for no proof of motor vehicle insurance." The use of electronic cards may reduce the number of such citations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Appropriations on April 18, 2013:
The committee substitute makes the following changes to the bill:

- Continues exempting medical malpractice insurance from Florida Hurricane Catastrophe Fund (FHCF) emergency assessments until May 31, 2016.
- Requires the Florida Hurricane Catastrophe Fund (FHCF) and Citizens Property Insurance Corporation (Citizens) to provide annual reports to the Legislature detailing the aggregate net probable maximum losses, financing options, and potential assessments.
- Creates the Citizens Sinkhole Stabilization Repair Program ("Repair Program"). All verified claims for sinkhole loss against a Citizens policy covering sinkhole loss must be included in the Repair Program by March 31, 2014, for the purpose of stabilizing the land and structure and making repairs to the foundation.
- Requires Citizens to offer sinkhole loss deductibles of 2 percent, 5, percent, and 10 percent of the policy dwelling limits and offer appropriate premium discounts with each deductible amount.
- Deletes a provision that would have, effective July 1, 2014, eliminated the requirement that an insurer must offer a $500 deductible applicable to losses not caused by a hurricane prior to issuing a personal lines residential policy and instead required the insurer to offer a $750 deductible and a 1 percent deductible. The CS also removed a provision that, effective January 1, 2019, would have adjusted the $750 deductible for inflation in $50 increments every five years.
- Deletes bill provisions that would have expanded the risks industrial insured captive insurance companies may insure and allowed pure captive insurers to develop risk management control standards and submit them to the OIR for approval.

CS by Banking and Insurance on April 2, 2013:
The Committee Substitute makes the following changes to the bill:

- Removes a provision that would prevent the expiration on May 31, 2013, of the exemption of medical malpractice insurance premiums from Florida Hurricane Catastrophe Fund Emergency Assessments;
- Removes a provision that would eliminate the registration requirements for viatical life expectancy providers;
- Revises the criteria for being authorized to inspect boilers;
- Exempts from insurance agency licensure, a licensed agent who is a sole-practitioner and conducts business in his or her own name;
- Exempts from insurance agency licensure branch agencies that transact business under the same name as a licensed insurance agency;
- Revises insurance agency licensure application requirements;

- Allows an insurance agency license to continue in force until cancelled, suspended, revoked or terminated;
- Revises the application for a certificate of authority to be an insurance administrator;
- Allows an insurer to use a qualified third party to conduct required reviews of an insurance administrator;
- Allows annual financial statements of insurance administrators to cover the prior fiscal year;
- Repeals the requirement that surplus lines agents file an affidavit with the Florida Surplus Lines Service Office (FSLSO);
- Includes using a straight average of hurricane model results or output ranges as factors the OIR must consider in a rate filing;
- Increases from 60 days to 180 days the time an insurer is not required to use the newest version of an approved hurricane model;
- Allows workers' compensation insurance retrospective rating plans that provide for negotiation of rating factors between the insurer and employer in specified instances;
- Establishes a uniform 120 day advance written notice of nonrenewal, cancellation, or termination for personal or commercial lines residential property insurance policies;
- Requires dissolution of the Florida Comprehensive Health Association;
- Effective July 1, 2014, eliminates the requirement that an insurer must offer a $500 deductible applicable to losses not caused by a hurricane prior to issuing a personal lines residential policy. Instead, the insurer must offer a $750 deductible and a 1 percent deductible. Effective January 1, 2019, the $750 deductible will be adjusted for inflation in $50 increments every 5 years;
- Removes a provision that would expand the use of separate sinkhole deductibles to all property insurance policies;
- Clarifies that the Personal Injury Protection medical fee schedule applies until the last day of February in the following year;
- Allows application of premium finance company charges for a payment that is declined to debit, credit, and electronic funds transfers;
- Expands the risks industrial insured captive insurance companies may insure; and
- Allows pure captive insurers to develop risk management control standards and submit them to the OIR for approval.

B. Amendments:

None.