The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1260
INTRODUCER:	Senators Brandes and Soto
SUBJECT:	Insurance
DATE:	March 18, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Pre-meeting**
2.			AGG	
3.			AP	

I. Summary:

SB 1260 enacts the following changes related to insurance:

- Revises the criteria for being authorized to inspect boilers;
- Revises the criteria for establishing a not-for-profit self-insurance fund;
- Revises insurance agency licensure application requirements;
- Allows an insurance agency license to continue in force until cancelled, suspended, revoked or terminated;
- Creates a license for unaffiliated insurance agents;
- Expands the scope limited licenses to transact motor vehicle rental insurance issued to a business entity that offers motor vehicles for rent or lease;
- Provides the Department of Financial Services (DFS) with additional authority to regulate mediators, navigators, and sinkhole neutral evaluators;
- 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 motor vehicle insurance rating territories to encompass a single zip code.
- Allows workers' compensation insurance retrospective rating plans that provide for negotiation of rating factors between the insurer and employer in specified instances;
- Allows the Florida Workers' Compensation Joint Underwriting Association to retain dividends or premium refunds that are not paid to former insureds who cannot be found;

- Prohibits insurers from denying residential property insurance claims on the basis of credit information that is publicly available if the insurance policy has been effective for more than 90 days;
- Establishes a uniform 120 day advance written notice of nonrenewal, cancellation, or termination for personal and 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 an insurance agent recommending the surrender of an annuity or life insurance policy with a cash value, but is not recommending the proceeds be used to fund another life insurance or annuity product, to provide specified disclosures;
- Creates conflict of interest standards for appraisers in residential property insurance claims;
- Specifies instances when an insurer need not provide notice of the availability of sinkhole neutral evaluation;
- Clarifies that the annual update to the Personal Injury Protection medical fee schedule applies until the last day of February in the following year;
- Creates exemptions to the required preinsurance inspection of private passenger motor vehicles;
- Changes the date by which title insurers and title insurance agencies must annually submit financial data to the Office of Insurance Regulation (OIR);
- 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;
- Revises requirements related to the acquisition of controlling stock in an insurer; and
- Provides exceptions to certain financial requirements applicable to service warranty associations.

II. Present Situation:

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. (Americal 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).

Not-For-Profit Self-Insurance Funds

Under s. 624.4625, F.S., two or more not-for-profit corporations located and organized under Florida law may form a self-insurance fund. The purpose of the self-insurance fund must be to pool and spread the property and casualty liabilities of group members. The fund must meet a number of requirements including having annual normal premiums in excess of $5 million; each participating member receiving at least 75 percent of its revenues from local, state, and federal governmental sources; using a qualified actuary to determine actuarially sound rates and adequate reserves; maintaining excess insurance coverage; submitting annually audited financial statements; and other requirements set forth under the statute.

Licensing of Insurance Agents Selling Motor Vehicle Rental Insurance

In general, insurance agents transact insurance on behalf of an insurer or insurers. Agents must be licensed by DFS to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.[1]

Limited lines insurance agents are individuals, or in some cases entities, licensed as insurance agents but limited to selling one or more of the following forms of insurance (each requiring a separate license):

- Motor vehicle physical damage and mechanical breakdown insurance;
- Industrial fire or burglary;
- Travel insurance;
- Motor vehicle rental insurance;
- Credit insurance;
- Crop hail and multiple-peril crop insurance;
- In-transit and storage personal property insurance; and
- Portable electronics insurance.2

A limited lines insurance agent license generally has fewer requirements for licensing than other insurance agents. These licensees must, however, file an application with DFS and be appointed by an insurance company.

The Department of Financial Services

The DFS licenses insurance agencies and agents. The DFS Division of Agent and Agency Services receives licensing applications, issues licenses, and investigates violations of the Insurance Code.[3] In order to transact insurance, a person must be licensed by the DFS and appointed by an insurer to transact insurance on its behalf.[4] If an agent fails to maintain an

[1] s. 626.112, F.S.
[2] s. 626.321, F.S.
[3] The Division of Agent and Agency Services website is found at http://www.myfloridacfo.com/Division/Agents/#.UxnmwPldUeG (last accessed March 7, 2013).
[4] *See* ss. 626.015(3) and 626.112 F.S.

appointment during a 4-year period, the agent's license expires and the agent must qualify as a first time applicant before transacting insurance.[5]

Section 624.310, F.S., gives the DFS the authority to initiate administrative proceedings to seek cease and desist orders, to seek the removal of affiliated parties, to impose administrative fines, and to suspend or revoke licenses. Any service of documents authorized or required by s. 624.310, F.S., must be made by certified mail, personal delivery, or by service of process in accordance with ch. 48, F.S. Section 624.310, F.S., does not allow for service by electronic mail.

Insurance Agency Licensure and Registration

The DFS is responsible for licensing insurance agencies in accordance with s. 626.172, F.S. An application for licensure must be signed by the owner of the agency.[6] 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.[7]

Each place of business where an agent transacts insurance must have an agency license.[8] Section 626.747, F.S., requires a licensed insurance agent to be at each branch location where activities requiring licensure as an insurance agent occur. Such an agent is commonly referred to as the "agent in charge."

Section 626.112(7), F.S., provides that agencies existing prior to January 1, 2003, are allowed to file an application for registration in lieu of applying for licensure. A benefit of registration over licensing is that registrations do not expire, whereas licenses expire every 3 years.[9] DFS staff indicates that Florida is the only state that registers insurance agencies in lieu of licensing them and that many registered agencies are seeking licensure.[10]

Insurance Agents

A "general lines agent" is an agent who transacts property insurance, casualty insurance, surety insurance, certain types of health insurance, and marine insurance.[11] A "customer representative" means an individual appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.[12] A "limited customer representative" is a customer representative appointed by a general lines agent or agency to assist that agent or agency in transacting only the business of private passenger motor vehicle insurance from the office of that agent or agency.[13]

[5] *See* s. 626.431, F.S.
[6] *See* s. 626.172(2), F.S.
[7] *See* s. 626.112(7), F.S.
[8] *See* s. 626.112(7), F.S.
[9] *See* s. 626.382, F.S.
[10] Interview with DFS staff, March 7, 2014.
[11] *See* s. 626.015(5), F.S.
[12] *See* s. 626.015(4), F.S.
[13] *See*. S. 626.015(11), F.S.

Regulation of Navigators

In 2010, the federal Patient Protection and Affordable Care Act became law. The act created "navigators" to aid consumers in selecting a health plan. Part XIII of ch. 626, F.S., requires navigators to register with the DFS and creates a registration process for navigators.[14] Section 626.9957, F.S., provides disciplinary rules for navigators and grounds for the denial of registration.

Alternative Dispute Resolution Programs

The DFS administers alternative dispute programs for various types of insurance and has mediation programs for property insurance[15] and automobile insurance[16] claims. The DFS has a neutral evaluation program, similar to mediation, for sinkhole insurance claims.[17] The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.[18]

To qualify as a mediator for the property or automobile mediation programs, a person must possess graduate level degrees in specified areas, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for 4 years.[19] In addition, an applicant must complete a training program approved by the DFS.[20]

To qualify as a neutral evaluator for sinkhole insurance claims, a neutral evaluator must be a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution approved by the DFS and who is determined by the DFS to be fair and impartial.[21]

According to an analysis provided by the DFS,[22] the number of reported mediations and neutral evaluations is:

	Fiscal Year 2010-2011	Fiscal Year 2011-2012	Fiscal Year 2012-2013
Mediations	3,489	3,323	3,966
Neutral Evaluations	2,245	2,681	1,867

[14] http://www.myfloridacfo.com/Division/Agents/Industry/News/Navigators.htm#.UxsW4vldUeE (last accessed March 8, 2014).
[15] *See* s. 627.7015, F.S.
[16] *See* s. 626.745, F.S.
[17] *See* s. 627.7074, F.S.
[18] *See* ss. 627.7015, 627.7074, and 627.745, F.S.
[19] *See* ss. 627.7015, 627.745(3), F.S.
[20] *See* ss. 627.7015, 627.745(3), F.S.
[21] *See* s. 627.706, F.S.
[22] *See* Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014) (on file with the Committee on Banking and Insurance).

The DFS does not have the explicit authority to investigate, remove, or discipline mediators and neutral evaluators.

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.[23] 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.[24] An administrator must have a written agreement between itself and each insurer for which it performs administrative functions.[25] 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.[26]

Surplus Lines Agent Affidavit

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance is sold by surplus lines insurance agents. Before a surplus lines insurance agent can place insurance in the surplus lines market, s. 626.916, F.S., requires the insurance agent to make a diligent effort to procure the desired coverage from admitted insurers. Section 626.914, F.S., defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is $1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

Surplus lines insurance agents must report surplus lines insurance transactions to the Florida Surplus Lines Service Office (FSLSO or Office) within 30 days of the effective date of the transaction, must transmit service fees to the Office each month, and must transmit assessment and tax payments to the Office quarterly.

Current law also requires a surplus lines agent to file a quarterly affidavit with the FSLSO to document all surplus lines insurance transacted in the quarter it was submitted to the FSLSO. The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts.

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

[23] S. 626.8805, F.S.
[24] S. 626.8817, F.S.
[25] S. 626.882, F.S.
[26] S. 626.89, F.S.

computer models that project hurricane losses.[27] 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:[28]

- 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 insurance finance expert and who is a full-time faculty member in the State University System;
- An appointment by the state Chief Financial Officer who is a statistics expert 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.

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."[29]

Zip Codes and Rating Territories for Motor Vehicle Insurance

Section 627.062, F.S., is Florida's rating law. Among other requirements, it provides that insurance rates cannot be excessive, inadequate, or unfairly discriminatory. Insurer rate filings that comply with the law and are adequately supported by actuarial justification must be accepted by the OIR. Pursuant to s. 627.0651, F.S., the use of a single zip code as a rating territory for motor vehicle insurance rates is deemed unfairly discriminatory and is thus prohibited.

Workers' Compensation Retrospective Rating Plans

Florida law requires every workers' compensation insurer to file with the Office of Insurance Regulation (OIR) its rates and classifications that the insurer proposes to use.[30] Section 627.072, F.S., prescribes factors used in the determination of rates. Section 627.091(1), F.S., requires

[27] See s. 627.0628, F.S.
[28] S. 627.0628(2) (b), F.S.
[29] S. 627.0628(3) (d), F.S.
[30] Section 627. 091(4), F.S., allows an insurer to satisfy this obligation by becoming a member of a licensed rating organization, which makes such filings on its behalf. The law expressly provides that an insurer is not required to be a member of any rating organization, but all workers' compensation insurers in Florida have chosen to do so. Currently, all workers' compensation insurers are members of the National Council on Compensation Insurance.

every insurer to file with the OIR every manual of classifications, rules, and rates, and every rating plan, which it proposes to use. Rate filings for workers' compensation are subject to approval by the OIR before they become effective. The standard for approving insurance rates in Florida and most states is that the rate may not be excessive, inadequate, or unfairly discriminatory.[31]

Current Florida law and the rating plans approved by OIR allow for various ways for insurers to compete in the market by varying or adjusting premiums, including retrospective (retro) rating plans that adjust the premium at the end of the policy period to reflect the actual loss experience of the employer. In a retro rating plan, the insurer and employer agree that the final premium paid will be based upon losses actually incurred in the policy period. The insurer and employer negotiate on certain expenses, charges, taxes, and assessments, based upon minimum and maximum premiums. Retrospective rating has been a component of workers' compensation rating for over 50 years in Florida and nationwide. The National Council on Compensation Insurance (NCCI) has filed actuarially sound rating plans.

In 1991, the NCCI filed the Large Risk Alternative Rating Option (LRARO) in Florida. The LRARO was described as providing greater flexibility of negotiation between an insurer and employer for risks with over $1,000,000 in standard premium." In 1991, the Department of Insurance (predecessor of the Office of Insurance Regulation) disapproved the use of the LRARO on the basis that it did not comply with s. 627.091(1), F.S., and that the LRARO was not a rating plan but an agreement to use any factors acceptable to both parties.[32] Subsequently, in 1993, an insurer filed its own version of the LRARO and the Department of Insurance disapproved it. The rejection of the plan was primarily on the basis that the use of the LRARO would not allow agency oversight as to the determination of premiums since it proposed to allow the insurer and prospective insureds to agree unilaterally on the components to be used in the rating process.[33] The insurer appealed the disapproval to the Division of Administrative Hearings (DOAH) and DOAH found that the Department of Insurance was justified in disapproving the plan.

Currently, the LRARO plans are available in the majority of the states. However, Alaska, Arkansas, Florida, and Nebraska do not allow its use.[34] The NCCI retro plan rule, which does not apply in Florida, provides that an insured is eligible for the LRARO if the estimated standard premium individually or in any combination with any other commercial casualty lines of insurance exceeds an annual standard premium eligibility threshold of $500,000 for the term of a retrospective rating plan. The following table provides examples of states with different annual standard premium eligibility thresholds for LRARO.[35]

[31] Section 627.062, F.S.
[32] *See Liberty Mutual Insurance Company, et. al., v. State of Florida, Department of Insurance, Case No. 94-0892 (Fla. DOAH 1994).*
[33] *Id.*
[34] E-mail from Lori Lovgren, NCCI (Mar. 4, 2014) (on file with Senate Committee on Banking and Insurance).
[35] *Id.*

LRARO Premium Eligibility Threshold by State	
State	**Annual Standard Premium Eligibility Threshold**
Arizona	$250,000
Kansas	$1,000,000
Minnesota	$250,000
Nevada	$250,000
New Hampshire	$250,000
North Carolina	$250,000

Refunds to Insureds from the Workers' Compensation Joint Underwriting Association

The Florida Workers' Compensation Joint Underwriting Association (FWCJUA)[36] is the market of last resort for workers' compensation and employers liability coverage. Only employers that cannot find coverage in the voluntary market are eligible for coverage in the FWCJUA. At the end of October 2013, the FWCJUA had 1,636 policies with corresponding premiums of $29.4 million.[37]

The FWCJUA has a three-tier rating plan. As a brief overview, Tier 1 is for employers with good loss experience; Tier 2 is for employers with moderate loss experience and non-rated new employers; and Tier 3 is for employers not eligible for Tiers 1 or 2.[38] As of January 1, 2014, the premium for Tier 1 is 5 percent above voluntary rates, Tier 2 is 20 percent above voluntary rates, and Tier 3[39] is 75 percent above voluntary rates. Additionally, all three tiers have a flat surcharge of $475. Tier 3 policies are also subject to assessment if premiums are not sufficient to cover losses and expenses.

Misrepresentations on Insurance Applications and Cancellation of Insurance Policies

Section 627.409, F.S., provides recovery under an insurance policy may be prevented if a misrepresentation, omission, concealment of fact, or incorrect statement on an application for insurance (1) is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by the insurer or (2) if the true facts had been known to the insurer, the insurer would not have issued the policy, would not have issued it at the same premium rate, would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss. If an insurer discovers a misrepresentation or omission after issuing the policy, it may deny coverage after a claim is made. In *Nationwide Mutual Fire Insurance*

[36] The Florida Workers' Compensation Insurance Plan (FWCIP) was the residual market for Florida until the FWCJUA was created on January 1, 1994.
[37] *See* "2013 Workers' Compensation Annual Report," Florida Office of Insurance Regulation (December 31, 2013). Available at: http://www.floir.com/search/search.aspx#2013 workers compensation annual report (Last accessed February 5, 2014).
[38] For further specifics, see the FWCJUA's website: http://www.fwcjua.com/.
[39] In addition, an Assigned Risk Adjustment Program (ARAP) surcharge applies for Tier 3.

Company v. Kramer,[40] an insurer refused to pay a claim for a stolen automobile because the insureds did not disclose a previous bankruptcy filing. In *Kieser v. Old Line Insurance Company of America*,[41] an insurance company refused to pay a life insurance policy because the insured failed to disclose certain health conditions and failed to disclose that he was shopping for other life insurance policies. In *Universal Property and Casualty Insurance Company v. Johnson*,[42] an insurance company refused to pay a property insurance claim because the insureds failed to disclose prior criminal history. A misrepresentation from or an omission in an insurance application need not be intentional in order for the insurance company to deny recovery.[43]

Section 627.4133(2), F.S., requires notice to the insured before an insurer can cancel, nonrenew, or terminate any personal lines or commercial residential property insurance policy. The timing of the notice ranges from 10 days for nonpayment of premium to 120 days for certain policyholders.[44] After the policy has been in effect for 90 days, such a policy cannot be canceled unless that has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements with 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy.[45] According to the DFS, there are instances of insurance companies reviewing a policyholder's application for insurance after a claim has been filed and denying coverage based on misrepresentations about credit history.[46]

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;

[40] 725 So.2d 1141 (Fla. 2d DCA 1998).
[41] 712 So.2d 1261 (Fla. 1st DCA 1998).
[42] 114 So.3d 1031 (Fla. 1st DCA 2013).
[43] *Universal Property and Casualty Insurance Company*, 114 So.3d at 1035.
[44] *See* s. 627.4133(2), F.S.
[45] *Id*.
[46] *See* Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014)(on file with the Committee on Banking and Insurance).

- 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 Electronically

Section 627.421, F.S., requires every insurance policy[47] to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed. The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.[48] Insurance is specifically included in E-SIGN.[49] E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, 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 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.

In addition, s. 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by

[47] s. 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. (see s. 627.401, F.S.)
[48] Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.
[49] *Id.*

delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

In 2013, legislation[50] was enacted allowing all insurance policies to be electronically transmitted to the policyholder. The legislation also contained specific electronic delivery parameters for insurance covering commercial risks.

Change of Policy Terms in Insurance Policies

Under current law, to make a change in the terms of a property and casualty insurance contract, the insurer must give the policyholder written Notice of Change in Policy Terms with the policy renewal notice and the policy renewal notice must be provided to the policyholder in accordance with current law, which requires insurers to give notice of renewal 45 days prior to the renewal date.[51] A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide the Notice of Change in Policy Terms to the policyholder, the terms of the insurance policy are not changed.

Mitigation Discount Verification for Citizens Property Insurance Corporation

Since 2003, insurers have been required to provide mitigation credits, discounts, other rate differentials, or reductions in deductibles (mitigation discounts) to reduce residential property insurance premiums for properties with mitigation features.[52] Section 627.711, F.S., requires insurers to clearly notify an applicant or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The notice must be provided when the policy is issued and renewed.

Typically, policyholders are responsible for substantiating to their insurers that the insured property has mitigation features. Policyholders submit a completed uniform mitigation verification inspection form to the insurer to substantiate mitigation features. Insurers must accept mitigation forms prepared by home inspectors, building code inspectors, contractors, engineers, and architects and may accept forms prepared by persons determined to be qualified by the insurer to prepare the form.

Insurers can require mitigation forms provided to the insurer by mitigation inspectors or a mitigation inspection company be independently verified for quality assurance purposes before accepting the mitigation form as valid. The insurer must pay for the independent verification.[53] At their expense, insurers can also independently verify, for quality assurance purposes, mitigation forms submitted by policyholders or insurance agents.

[50] Ch. 2013-190, L.O.F.
[51] s. 627.43141, F.S.
[52] s. 627.0629(1)(a), F.S. Mitigation features are construction techniques used or items purchased and installed by a property owner to protect a structure against windstorm damage and loss. (e.g., hurricane shutters, hip roof, specified roof covering).
[53] s. 627.711(8), F.S.

Personal Injury Protection Insurance (PIP)

In 2012, the Legislature enacted HB 119,[54] 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,[55] 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.

Preinsurance Inspection of Private Passenger Motor Vehicles

Section 627.744, F.S., requires preinsurance inspections of private passenger motor vehicles, but lists various exemptions, including for new, used motor vehicles "purchased" from a licensed motor vehicle dealer or leasing company when the insurer is provided with the bill of sale, buyer's order, or copy of the title and certain other documentation. Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed five dollars.

Title Insurance

In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance. Pursuant to s. 627.782, F.S., the Financial Services Commission (FSC) is mandated to adopt a rule specifying the premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent. The FSC must review the premium not less than once every 3 years. Title insurers and title insurance agencies are required to submit to the Office of Insurance Regulation (OIR), on or before March 31st of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry.

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

Model Holding Company Act and Regulations

For years, the OIR's financial oversight authority has included a review of transactions among affiliates and members of insurance holding companies by adopting the NAIC's Model Insurance Holding Company Act.

In response to the recent financial crisis, the NAIC's Solvency Modernization Initiative (SMI)[56] studied key group supervision issues for insurance holding company systems. In light of the 2008 liquidity crisis and collapse of American International Group, Inc., the SMI's efforts focused on the risks and activities of non-insurance entities within insurance holding companies, concluded there was a corresponding regulatory need to obtain affiliates' financial information, such as enterprise risk. The NAIC model act defines "enterprise risk" as:

[A]ny activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer of its insurance company as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital as set forth in [state requirement] or would cause the insurer to be in a hazardous financial condition.[57]

As a result, the NAIC adopted revisions to its *Model Insurance Holding Company System Regulatory Act and Regulations* in December 2010**,** which states must adopt as an accreditation component. These revisions include:

- expansions to regulators' ability to evaluate any entity within an insurance holding company system;
- enhancements to the regulator's rights to access books and records and to compel production of information;
- establishment of expectation of funding with regard to regulator participation in supervisory colleges;
- enhancements in corporate governance, such as board of directors and senior management responsibilities;
- the inclusion of financial statements as part of an affiliate's registration requirements; and
- enterprise risk reporting requirements.

Currently, s. 628.461, F.S., provides that a person or affiliated person[58] must file a letter of notification and a statement for the OIR's approval before concluding a tender offer to acquire 5 percent or more of a domestic stock insurer or of a controlling company. The statute also sets forth the information required to be disclosed in the statement, which includes criminal and regulatory history information. Alternatively, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation of control, and such disclaimer must fully disclose all material relationships and affiliation with the insurer, as well as the reason for such disclaimer (this disclaimer is mandatory for acquisitions of more than 10 percent).

[56] NAIC Solvency Modernization Initiative (last viewed February 3, 2014), at http://www.naic.org/index_smi.htm
[57] Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.
[58] Currently, "affiliated person" is defined in s. 628.461(12)(a), F.S., to include spouses, parents and lineal descendants, and persons affiliated through 5 percent ownership, common control, or management.

During the pendency of the OIR's review of an acquisition filing, the insurer is not permitted to make a "material change" to its operation or management, unless the OIR has approved or been notified, respectively. A "material change" consists of a disposal or obligation of 5 percent or more of the insurer's capital and surplus, or a change in management involving a person who has the authority to dispose or obligate 5 percent of the insurer's capital and surplus.

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.[59] A service warranty association is defined as any person, other than an authorized insurer, issuing service warranties.[60]

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 and is issued by an insurer that maintains a policyholder surplus of at least $100 million; or
  - Complies with the requirements of subsection (3) and is issued by an insurer that maintains a policyholder surplus of at least $200 million.
- 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:

Boiler Inspection

Sections 1 through 3 amend ss. 554.1021, 554.107, and 554.109, F.S., to allow boiler inspections to be performed 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

[59] S. 634.401(13), F.S.
[60] S. 634.401(14), F.S.

- 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.

Not-For-Profit Self-Insurance Funds

Section 4 amends s.624.4625(1)(b), F.S., to require that each participating member of a not-for-profit self-insurance fund qualify as a publicly supported organization as evidenced by the participating member's most recently filed Internal Revenue Service Form 990. This requirement supplants current law which requires that each member receive at least 75 percent of its revenues from local, state, or federal government sources.

Unaffiliated Agents (Sections 5, 6, 10, and 39)

According to the DFS, some insurance agents act as advisors to clients for a fee. These agents provide advice and recommendations regarding, among other things, insurance products but do not sell the products. **Section 6** defines in s. 626.015(18), F.S., a new type of insurance agent, an unaffiliated insurance agent, and **Section 10** specifies the scope of the license in s. 626.311, F.S. This agent acts as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by a written contract signed by the parties. This bill defines this type of agent as a licensed insurance agent, except a limited lines agent, who is not appointed by or affiliated with any insurer, but is self-appointed. This bill prohibits an unaffiliated insurance agent from holding an appointment from an insurer, from transacting an insurance contract for an insurer, and from interfering with commissions from an appointed insurance agent. Unaffiliated insurance agents may continue to receive commissions on sales made before the date of appointment as an unaffiliated insurance agent as long as the agent discloses the receipt of commissions to the client when making recommendations or evaluating products of the entity from which commissions are received.

The unaffiliated agent is not appointed by an insurer to sell insurance products. This can lead to a situation where an agent's license expires because the agent is not appointed during a 4 year period.[61] This bill allows an unaffiliated agent to appoint himself or herself. S**ection 5** amends s. 624.501, F.S., to require unaffiliated insurance agents to pay the same agent appointment fees required under current law for agents appointed by insurers.

Section 39 creates s. 627.4553, F.S., to require insurance agents, insurers, or persons performing insurance agent activities under an exemption from licensure, who recommend that a consumer surrender an annuity or life insurance policy with a cash value, but who do not recommend that another such policy be purchased with the proceeds from the surrender, to provide the consumer with information relating to the product to be surrendered before execution of the surrender. The information must include that the amount of any surrender charge, tax consequences resulting from the transaction, and forfeited death benefit. The consumer must also be informed about the

[61] Phone interview with DFS staff.

loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction. This bill requires the DFS to adopt rules and forms so the required information can be provided.

Agent in Charge and Branch Agencies (Sections 7, 14, and 15)

Effective January 1, 2015, **Section 7** creates s. 626.0428(4), F.S., which defines an agent in charge as the licensed and appointed agent responsible for the supervision of all individuals within an insurance agency location. Each business location established by an agent or insurance agency must be in the active full-time charge of a licensed and appointed agent holding the required licenses for the lines of insurance transacted at the location. The agent in charge of an insurance agency may be the agent in charge of additional branch locations if: (1) insurance activities requiring licensure as an insurance agent do not occur at the locations when an agent is not physically present and (2) unlicensed employees at the locations do not engage in insurance activities that require licensure as an insurance agent or customer representative.

This bill requires each insurance agency and branch office to designate an agent in charge and to file the agent's name, license number, and physical address of the insurance agency location with the DFS at the DFS website. A change of the designated agent in charge must be reported to the DFS within 30 days, and becomes effective upon notification to the DFS.

This bill provides that an insurance agency location is precluded from conducting the business of insurance unless an agent in charge is designated by and providing services to the agency at all times. When the agent in charge ends his or her affiliation with the agency, the agency must designate another agent in charge within 30 days. If the agency fails to make such designation within 90 days after the designated agent has ended his or her affiliation with the agency, the agency license automatically expires 91 days after the designated agent ended his or her affiliation with the agency.

This bill provides that an agent in charge of an insurance agency is accountable for the wrongful acts, misconduct or violations committed by the licensee or agent or by any person under her or his supervision acting on behalf of the agency. However, the agent in charge is not criminally liable for the misconduct unless she or he personally committed the act or knew or should have known of the acts and of the facts that constitute the violation.

Section 14 repeals s. 626.747, F.S., relating to branch agencies, effective January 1, 2015. The section is incorporated and expanded in the new s. 624.0428(4), F.S.

Section 15 amends, s. 626.8411(1)(b), F.S., correcting a cross reference to properly cite the new branch agency requirements created by Section 7.

Insurance Agency Licensing and Registration (Sections 8 and 9)

Section 8 amends s. 626.112, F.S., eliminating the insurance agency licensing requirement for agencies that are owned and operated by a single licensed agent who conducts business in her or his own name and does not employ or use other insurance licensees.

The bill provides that a branch place of business established by a licensed agency is considered a branch agency.[62] A branch agency is not required to be licensed if it: (1) transacts business under the same name and federal tax identification number as the licensed agency and has designated with the DFS a licensed agent in charge of the branch location; and (2) has submitted to the DFS for inclusion in the licensing record of the licensed agency the address and telephone number of the branch location within 30 days after insurance transactions began at the branch location.

This bill no longer allows certain insurance agencies to obtain a registration in lieu of a license and makes conforming changes due to this repeal. This bill converts all agency registrations to licenses effective October 1, 2015. Effective January 1, 2015, the bill also eliminates the 3-year expiration of an agency license. Thus, an agency license will continue in force until canceled, suspended, revoked, or until it is otherwise terminated or it expires by operation of law. The bill also prohibits the DFS from issuing limited customer service licenses, effective October 1, 2014.

Section 9 amends s. 626.172, F.S., allowing an owner, partner, officer, director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management and control of the agency, to complete and sign an insurance agency application. This bill also allows a third party to complete, submit, and sign an agency license application on the agency's behalf. However, the agency is responsible for ensuring that the information provided by the third party is true and correct and is accountable for any misstatements or misrepresentations.

This bill also requires additional information relating to an agency or branch agency to be provided on the agency license application. Such additional information includes the name, address, and e-mail address of the agency's registered agent or person authorized to accept service on the agency's behalf, the physical address of the branch location, including its name, e-mail address, and telephone number, the date that the branch office began transacting insurance, and the fingerprints of each individual required to be listed in the agency application.

Motor Vehicle Retail Insurance License

Section 11 amends s. 626.321(1), F.S., changing the limited license statute for motor vehicle rental insurance. Under current law, a limited license to sell motor vehicle rental insurance can be issued to a business that offers motor vehicles for rent or lease. A license issued to a rental business covers each office, branch office, or place of business associated with the rental business. The bill expands this coverage to include each employee working at the rental business. Thus, all employees would be covered by the rental business' license to sell rental insurance. According to DFS, the agency interprets the current law relating to rental insurance licensing to mean the license for the rental company business covers each branch office and each employee working at the rental business. Thus, the change made by the bill is clarifying and is consistent with the application of the current law by DFS.

[62] This bill further provides that a license issued to a business entity that offers motor vehicles for rent encompasses each employee or authorized representative at a designated branch.

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, terminated, or expires by operation of law. Under current law, the license is issued for a 3-year period and may be renewed.

Mediators, Navigators, and Neutral Evaluators (Sections 13, 40, 42, 43, and 47)

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

Section 40 amends s. 627.7015(4)(b), F.S., to specify that the requirements for qualification as a mediator of liability claims under s. 627.745, F.S., are also the standards that DFS applies for denial of application, suspension, revocation and other penalties for mediators who participate in the DFS property insurance mediation program.

Section 42 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.

Sections 43 and 47 amend s. 627.7074, F.S., and s. 627.745, F.S., to require 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 these requirements.

Section 47 also changes 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. Under the bill, a mediator must possess an active certification as a Florida Circuit Court Mediator or be an appointed department mediator as of July 1, 2014, who has conducted at least one mediation on behalf of the DFS within 4 years prior to that date. This provision essentially grandfathers in current and active DFS mediators so they can continue to be DFS mediators, even if they are not certified as a Florida Circuit Court Mediator. 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.
In order to become certified as a Florida Circuit Court Mediator, one must fulfil education requirements set by the Florida Supreme Court, complete a mediation training program certified

by the Florida Supreme Court, and observe and conduct mediations under the supervision of a certified mediator.[63]

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 bill 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 bill also specifies that the written agreement between an insurer and an administrator that details the responsibilities of the insurer and administrator specifies 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 bill 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 year has been submitted to the FSLSO and that includes efforts made to place coverage with authorized insurers and the results of those efforts. However, surplus lines agents must still file a copy of information on each surplus lines transaction with the FSLSO in accordance with the FSLSO's plan of operation.

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.

[63] *See* http://www.flcourts.org/core/fileparse.php/283/urlt/HowToBecomeMediator.pdf (last accessed February 7, 2014).

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 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.[64]

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.

Motor Vehicle Insurance Rating

Section 28 amends s. 627.0651, F.S., to permit new motor vehicle insurance rating programs or changes to existing programs that result in at least a single zip code as a rating territory for motor vehicle insurance rates. As is currently the case, insurers must provide support that their rating territories are actuarially appropriate. OIR notes that the general prohibition on rates that are unfairly discriminatory in ss. 627.0651 and 627.062, F.S., would likely be used to disapprove a filing that made an overt attempt to redline. However, OIR adds that, disparate impact situations (where the boundaries are established based on insurance data or other data proven relevant to projecting loss costs and the result is significantly higher premium for some protected class) are more difficult to detect and uncertain in legal status; thus the protection against redlining is lessened.

Workers' Compensation Retrospective Rating Plans

Section 29 amends s. 627.0651, F.S., allowing an insurer and employer to negotiate the retrospective plan rating factors that can be used for calculating the premium when the employer has multistate exposure, an estimated annual standard premium in Florida of at least $175,000, and an annual estimated countrywide standard premium of $1 million or more for workers' compensation.

Section 30 provides a technical conforming cross reference in s. 627.281, F.S.

Florida Workers' Compensation Joint Underwriting Association Dividend and Premium Refunds

Section 31 amends s. 627.311(5)(h), F.S., authorizing the FWCJUA to retain for future use any dividends or premium refunds that cannot be paid to former insureds of the FWCJUA because

[64] 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 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.

they cannot reasonably be located. Currently, the FWCJUA reports the property[65] and owner's name, last known address, and other information to the Department of Financial Services, Bureau of Unclaimed Property. The owner can claim her or his property at no cost, any time, regardless of the amount.[66] The bill eliminates the ability of a person to recover unclaimed property that is left in possession of the FWCJUA at any time in the future. The FWCJUA will not report unclaimed property to the DFS and will ultimately use the unclaimed funds in its possession.

Repeal of Duplicative Citizens Property Insurance Corporation Report

Section 33 repeals 627.3519, F.S., because it requires a report that is duplicative of the report required under s. 627.35191, F.S.

Misrepresentations on Insurance Applications and Cancellation of Insurance Policies

Section 34 amends s. 627.409, F.S. The bill provides that if a residential property insurance policy or contract has been in effect for more than 90 days, a claim filed by the insured cannot be denied based on credit information available in the public record. The bill does not change the law relating to other types of insurance or other types of misrepresentations (such as a misrepresentation regarding health or criminal history).

Section 35 amends s. 627.4133(2)(b), F.S., to provide that after a policy or contract has been in effect for more than 90 days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records.

Residential Property Insurance Notice of Cancellation Requirements

Section 35 amends s. 627.4133(2)(b), 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.

Section 32 provides a technical conforming cross reference in s. 627.3518, F.S. The cross reference is improperly drawn and should refer to s. 627.4133(2)(b)5., not s. 627.4133(2)(b)4.

Insurer Sworn Statement Detailing Liability Coverage and Alleged Defenses

Section 36 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 only the insurer's claims manager or superintendent, or a corporate officer of the insurer.

[65] Over the past 5 years, the FWCJUA has reported unclaimed property totaling $279,499.06 to the DFS. The amount for each year follows: $16,388.32 (2009); $87,813.27 (2010); $63,552.52 (2011); $73,631.27 (2012); $38,113.68 (2013). Correspondence from the FWCJUA dated February 7, 2014, on file with staff of the Insurance & Banking Subcommittee.
[66] *See* chap. 717, F.S., (the Florida Disposition of Unclaimed Property Act) and information on unclaimed property on the website of the Florida Department of Financial Services: http://www.myfloridacfo.com.

Electronic Delivery of Personal Lines Insurance Policies

Section 37 amends s. 627.421, F.S., allowing insurers to deliver insurance policies by electronic means in lieu of delivery by mail if the policyholder affirmatively elects electronic delivery. The bill does not likely implicate E-SIGN or UETA because it requires the affirmative consent of the policyholder before the electronic delivery of insurance policy documents.

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

Section 38 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 the Notice of Change in Policy Terms to the insured's insurance agent before or at the same time the notice is given to the insured.

Information Required With the Surrender of Life Insurance or Annuity

Section 39 creates s. 627.4553, F.S., to require insurance agents, insurers, or persons performing insurance agent activities under an exemption from licensure, who recommend that a consumer surrender an annuity or life insurance policy with a cash value, but who do not recommend that another such policy be purchased with the proceeds from the surrender, to provide the consumer with information relating to the product to be surrendered before execution of the surrender. The information must include that the amount of any surrender charge, tax consequences resulting from the transaction, and forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction. This bill requires the DFS to adopt rules and forms so the required information can be provided.

Conflict of Interest Standards for Residential Property Insurance Appraisal Umpires

Section 41 creates s. 627.70151, F.S., to only allow a residential property insurer or policyholder to challenge the impartiality of an appraisal umpire if:

- A familial relationship within the third degree exists between the umpire and a party or a representative of a party;
- The umpire previously professionally represented a party or party representative in the same or a substantially related matter;
- The umpire has represented another person in a professional capacity on the same claim or a substantially related claim whose interests are materially adverse to the interests of any party; or
- The umpire has been an employer or employee of a party within the preceding 5 years.

Notice to Policyholder of Availability of Sinkhole Neutral Evaluation

Section 43 amends s. 627.7074(3), F.S., to limit the circumstances when an insurer must notify a policyholder of the right to participate in neutral evaluation of a sinkhole claim. The insurer must provide the notice only if there is sinkhole coverage on the damaged property and if the sinkhole

claim was submitted within the statute of limitations period which is 2 years after the policyholder knew or reasonably should have known about the sinkhole loss. There are no parameters under current law about notification of neutral evaluation. Thus, insurers are required to notify a policyholder about neutral evaluation in cases where there is no sinkhole coverage or when the sinkhole claim is untimely filed.

Section 44 amends s. 627.711(8), F.S., to provide an exception to the mitigation form independent verification process for Citizens only. The bill does not allow independent verification of mitigation discount forms submitted to Citizens if a quality assurance program approved by Citizens reviewed and verified the form when it was submitted. In addition, Citizens is not allowed to reinspect a property to confirm mitigation features if the mitigation form was reviewed and verified by a quality assurance program approved by them.

Personal Injury Protection Medical Fee Schedule Clarification

Section 45 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.

Exemptions to the Preinsurance Inspection of Private Passenger Motor Vehicles

Section 46 amends s. 627.744, F.S., to exempt from preinsurance inspection new, unused motor vehicles that are leased from a licensed motor vehicle dealer or leasing company if the insurer is provided with a lease agreement that contains a full description of the motor vehicle or a copy of the registration and a copy of the window sticker. Additionally, it deletes language that exempts from preinsurance inspection, new, unused motor vehicles that are purchased only if the bill of sale or buyer's order contains a full description of all options and accessories or, when a copy of the title is provided to the insurer, permits the dealer invoice to be submitted as appropriate supporting documentation.

Title Insurance Data Submission to the OIR

Section 48 amends s. 627.782, F.S., to extend the date by which title insurers and title insurance agencies must annually submit data on the title insurance industry to the OIR for the most recently concluded year from March 31 to May 31.

Premium Finance Company Insufficient Funds Charges

Section 49 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.

Requirements Related to Acquisition of Controlling Stock

Section 50 amends s. 628.461, F.S., relating to acquisition of controlling stock, and specifies that the acquiring party's statement must include an agreement to file an "annual enterprise risk report," if control exists. Effective January 1, 2015, the bill provides that the person required to file the statement pursuant to s. 628.461(1), F.S., will provide the annual report specified in s. 628.801(2), F.S., if control exists. The bill provides that a person may rebut a presumption of

control by filing a disclaimer of control on a form prescribed by the OFR, as required by the model act, or by providing a copy of a Schedule 13G on file with the U.S. Securities and Exchange Commission. After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless the OIR disallows the disclaimer. Any controlling person of a domestic insurer that seeks to divest its controlling interest in the domestic insurer is required to file with the OIR a confidential notice of its proposed divestiture at least 30 days prior to the relinquishment of control.

Currently, s. 628.461, F.S., provides that a person or affiliated person must file a letter of notification and a statement for the OIR's approval before concluding a tender offer to acquire 5 percent or more of a domestic stock insurer or of a controlling company. The statement must contain certain criminal, employment, and regulatory history information. Alternatively, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation of control, and such disclaimer must fully disclose all material relationships and affiliation with the insurer, as well as the reason for such disclaimer (this disclaimer is mandatory for acquisitions of more than 10 percent).

During the pendency of the OIR's review of an acquisition filing, the insurer may not make a "material change" to its operation or management, unless the OIR has approved or has been notified, respectively. A "material change" consists of a disposal or obligation of 5 percent or more of the insurer's capital and surplus, or a change in management involving a person who has the authority to dispose or obligate 5 percent of the insurer's capital and surplus.

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).[67]

[67] 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) state 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; (d) 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.

Effective Date:

Section 52 provides that except as otherwise expressly provided, the act is effective July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would allow workers' compensation insurers and larger employers greater flexibility in negotiating retrospective rating plans by allowing the parties to determine the rating factors used to calculate premium. This change may result in a reduction in premiums for such employers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 554.1021, 554.107, 554.109, 624.4625, 624.501, 626.015, 626.0428, 626.112, 626.172, 626.311, 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, 627.0651, 627.072, 627.281, 627.311, 627.3518, 627.409,

627.4133, 627.4137, 627.421, 627.43141, 627.4553, 627.7015, 627.706, 627.7074, 627.711, 627.736, 627.744, 627.745, 627.782, 627.841, 628.461, 634.406

This bill creates the following sections of the Florida Statutes: 627.4553, 627.70151

This bill repeals the following sections of the Florida Statutes: 626.747, 627.3519

IX. Additional Information:

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

None.

B. Amendments:

None.

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