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 Judiciary

BILL:	CS/CS/SB 784
INTRODUCER:	Judiciary Committee; Banking and Insurance Committee and Senator Brandes
SUBJECT:	Insurance
DATE:	February 21, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Stallard	Cibula	JU	**Fav/CS**
3.			AGG	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 784 amends numerous provisions of the Florida Insurance Code. This bill:

- Exempts foreign insurers (insurers domiciled in another state) from certain regulations regarding insurer's investments, including regulations on the valuation of those investments, and sets forth alternative regulations in these areas;
- Adds two categories of persons to the list of individuals who are not required to take the examination to become an all-lines insurance adjuster, namely a person certified as a Claims Adjuster Certified Professional from WebCE, Inc. and a person who has a designation similar to one of those set forth in statute and who meets the other requirements;
- Repeals a requirement that surplus lines insurers request eligibility from the Florida Surplus Lines Service Office;
- Provides a uniform surplus lines tax of 4.936 percent;
- Updates the requirement that the rules of the Department of Financial Services (DFS) and the Financial Services Commission relating to insurers' use of insureds' private information comport with the Gramm-Leach-Bliley Act, specifying that the rules must be consistent with the amended version of the Act;
- Provides that an insurer may issue an insurance policy without it being signed by one of its officers, attorneys in fact, employees, or duly authorized representatives;
- Requires that a notice of policy change sent in advance of a renewal include a summary of the changes;

- Permits a third party, as an assignee of policy benefits, to request mediation, but also permits an insurer to not attend a mediation request by the third party;
- Allows motor vehicle insurers to use the Intelligent Mail barcode, or similar method approved by the United States Postal Service, to document proof of mailing of certain required notices;
- Expands the confidentiality of documents submitted to the OIR under Own-Risk and Solvency Assessment requirements to make them inadmissible as evidence in any private civil action, regardless of from whom they were obtained;
- Revises unearned premium reserve requirements for reciprocal insurers; and
- Allows for electronic posting of certain policy information by health maintenance organizations and motor vehicle service agreement companies.

II. Present Situation:

This bill addresses a number of issues related to insurance.

Foreign Insurers (Sections 1 and 2)

Chapter 625, F.S., regulates the financial affairs of insurers admitted in Florida. Sections 625.151 and 625.325, F.S., govern the valuation of securities other than bonds and limit an insurer's ability to invest in its subsidiaries and related corporations. If the insurer's surplus including investments in subsidiaries does not exceed $100 million, shall be valued in an amount in which the aggregate does not exceed the lesser of:

- Ten percent of the insurer's admitted assets; or
- Fifty percent of the insurer's surplus in excess of the minimum required surplus.[1]

If the surplus of an insurer, including investments in subsidiaries, is $100 million or more, investments in subsidiaries and related corporations shall be valued in an amount in which the aggregate does not exceed 25 percent of the insurer's admitted assets.[2]

The investment portfolio of a foreign or alien insurer shall be as permitted by the laws of its domicile if of a quality substantially as high as that required for similar funds of like domestic insurers.[3]

Insurance Adjuster Licensure Examination (Section 3)

An adjuster is an individual employed by an insurer to evaluate losses and settle policyholder claims.[4] An adjuster may be licensed as either an "all-lines adjuster" or a "public adjuster."[5] An all-lines adjuster "is a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect

[1] Sections 625.151(3)(a) and 625.325(2), F.S.
[2] Section 625.151(3)(b), F.S.
[3] Section 625.340, F.S.
[4] INSURANCE INFORMATION INSTITUTE, GLOSSARY (defining "adjuster"), https://www.iii.org/resource-center/iii-glossary/A (last visited Feb. 14, 2018).
[5] Section 626.864, F.S.

settlement of such claim, loss, or damage."[6] Subject to certain exceptions, a public adjuster is someone that is paid by an insured to prepare and file a claim against their insurer.[7]

Among other requirements, an applicant must pass an examination to obtain an adjuster's license; however, the examination requirement is waived if the applicant has attained certain professional designations that document their successful completion of professional education coursework. An examination is not required for all-lines adjuster applicants with the following professional designations:

- Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state;
- Associate in Claims (AIC) from the Insurance Institute of America;
- Professional Claims Adjuster (PCA) from the Professional Career Institute;
- Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy;
- Certified Adjuster (CA) from ALL LINES Training;
- Certified Claims Adjuster (CCA) from AE21 Incorporated; or
- Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM).

DFS must approve the curriculum, which must include comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license.[8] The curriculum must include 40 hours of instruction covering all of the topics in the all-lines adjuster Examination Content Outline adopted by DFS.[9] DFS only approves curriculum related to adjuster licensing for designations listed in s. 626.221(2)(j), F.S.

WebCE, Inc., is a national provider of professional and continuing educational courses.[10] They provide education related to multiple professions, including: insurance, financial planning, accounting, and tax. Participants can obtain the following professional designations from WebCE: Certified Financial Planner (CFP), Certified Investment Management Analyst (CIMA), Certified Private Wealth Advisor (CPWA), and Certified Fraud Examiner (CFE). WebCE provides continuing education to insurance professionals with courses in subjects of life and health, property and casualty, adjuster, and limited lines.

Surplus Lines Insurance (Sections 4 and 5)

Surplus lines insurance refers to insurance coverage that is not available from insurers licensed in the state, called admitted companies, and must be purchased from a non-admitted carrier. Examples include risks of an unusual nature that require greater flexibility in policy terms and conditions than exist in standard forms or where the highest rates allowed by state regulators are considered inadequate by admitted companies.[11] Surplus lines insurance is sold by surplus lines insurance agents.

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[6] Sections 626.015(2) and 626.8548, F.S.
[7] Section 626.854, F.S.
[8] Section 626.221(2)(j), F.S.
[9] Rule 69B-227.320, F.A.C.
[10] See WebCE.com for more information about the continuing education and CPE courses that it offers.
[11] INSURANCE INFORMATION INSTITUTE, GLOSSARY (defining "surplus lines"), https://www.iii.org/resource-center/iii-glossary/?glossary_search=surplus+lines (last visited Feb. 14, 2018).

Surplus Lines Insurer Registration

In the past, for a surplus lines insurer to become eligible to underwrite insurance risks in this state, the Florida Surplus Lines Service Office (FSLSO)[12] had file a written request with OIR on the underwriter's behalf. However, subsequent to the adoption of this requirement, Congress passed the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA).[13] The NRRA requires the eligibility of surplus lines insurers to be determined in compliance with its criteria, unless the state has adopted nationwide uniform eligibility requirements.[14] The OIR has implemented such eligibility determination standards that may be accessed directly by interested surplus lines insurers. Accordingly, surplus lines insurers apply directly to OIR rather than having FSLSO make the written request. The statute requiring such a written request by FSLSO[15] has become superfluous because it conflicts with NRRA and is no longer implemented.

Surplus Lines Premium Tax

Surplus lines policies are taxed at 5 percent of all gross premiums.[16] However, a surplus lines policy written in Florida may cover risks that are only partially located in this state. This is because the insured's business, property, or other risks cross state lines. Because not all states use gross premiums as the taxable base nor use the same tax rate, this can lead to disparities in cost associated with the applicable premium tax law of other states. Florida law provides that, if Florida is the "home" state, as defined the federal Nonadmitted and Reinsurance Reform Act of 2010, the tax is computed on the gross premium to facilitate uniform application of the tax rate to the gross premiums paid on multi-state risks.[17] The law also provides that the surplus lines premium tax is limited to the tax rate in the state where the risk is located. This can result in an effective tax rate on total taxable premiums that is lower than the statutory 5 percent.

Privacy Disclosures (Section 6)

DFS and the Financial Services Commission (Commission) are required to adopt rules governing the use of a consumer's non-public personal financial and health information by regulated entities. The rules must be consistent with and not more restrictive than the requirements of Title V of the Gramm-Leach-Bliley Act of 1999. However, in December 2015, the Gramm-Leach-Bliley Act was amended by the Fixing America's Surface Transportation (FAST) Act, Public Law No. 114-94.

Execution of Policies (Section 7)

Every insurance policy shall be executed in the name of and on behalf of the insurer by its officer, attorney in fact, employee, or representative duly authorized by the insurer. The person executing the policy must sign the policy, either with an original signature or a facsimile

[12] Section 626.921, F.S.
[13] 15 U.S.C. ss. 8201 *et seq.*
[14] 15 U.S.C. ss. 8204.
[15] Section 626.918(2)(a), F.S.
[16] Section 626.932(1), F.S.
[17] Section 626.932(3), F.S.

signature.[18] However, insurer representatives have suggested it would be more efficient to allow policies to be issued without a signature as long as consumer protections remain in place.

Notice of Change in Policy Terms (Section 8)

An insurer may not change policy terms at renewal unless the insurer issues advance written notice of the change in policy terms.[19] However, the notice may not be used to add optional coverages that increase premium, unless the policyholder affirmatively accepts the optional coverage.[20] The notice is required to be titled a "Notice of Change in Policy Terms." However, there is no explicit requirement for any other specific content of the notice. Therefore, it is arguable that a bare notice with the title "Notice of Change in Policy Terms" and containing no meaningful explanation of the change in policy terms complies with the law.

A change in policy terms includes the modification, addition, or deletion of any term, coverage, duty, or condition from the previous policy, not including typographical or scrivener's errors or the application of mandated legislative changes.[21]

If the insurer fails to issue the advance written notice, coverage under the old terms continues until the earlier of the next renewal with proper service of notice or replacement coverage is obtained by the policyholder.

Mediation through the DFS (Section 9)

The statutes set forth a mediation program for claims under personal lines and commercial residential property insurance policies. Mediation may be requested only by the policyholder, as a first-party claimant, or the insurer. The insurer must pay the costs of the mediation. If a settlement agreement is reached and is not rescinded, it is binding and acts as a release of all specific claims that were presented in that mediation conference.[22]

Issues have arisen over whether an assignee of policy benefits, such as vendor or contractor, is allowed to request mediation through the DFS program.

Proof of Mailing (Section 10)

Current law requires motor vehicle insurers to mail a notice of cancellation or non-renewal to the first named insured on the policy and the applicable insurance agent at least 45 days prior to the effective date of the cancellation or non-renewal. However, in the case of a cancellation or non-renewal based on a non-payment of premium, only a 10-day notice is required. For each of these required notices the insurer must use United States postal proof of mailing, certified mail, or

[18] Section 627.416(1)-(2), F.S.
[19] Section 627.43141(2), F.S.
[20] Section 627.43141(3), F.S.
[21] Section 627.43141(1)(a), F.S.
[22] Section 627.7015, F.S.

registered mail.[23] However, current law does not provide for use of the United States Postal Service tracking system known as "intelligent mail barcode."[24]

Bonds for Construction Contracts (Sections 11 and 12)

Under Florida law, there are generally two ways a contractor, subcontractor, materialman, or laborer may help secure or guarantee payment for work performed on a construction project. The first is by filing a lien against the owner's property.

The second way of helping to secure or guarantee payment for work on a construction project is by filing a claim against a payment bond. A "payment bond" is "[a] bond given by a surety to cover any amounts that, because of the general contractor's default, are not paid to a subcontractor or materials supplier."[25] In Florida, a surety issuing a contract bond, such as a payment bond, is treated as an insurer and regulated by the Insurance Code.[26]

Surety insurers[27] that issue construction bonds are governed by the Insurance Code.[28] Under the Code, owners, subcontractors, laborers, or materialmen are deemed insureds or beneficiaries of a construction bond.[29] If an insured or beneficiary must bring a lawsuit against a surety insurer to force payment under the construction bond and prevails, the insured or beneficiary is entitled to attorney's fees under s. 627.428, F.S. However, contractors are not deemed insureds or beneficiaries for purposes of s. 627.756, F.S., and therefore may not recover attorney fees if they file a lawsuit to recover against a payment bond.

Filing Exception for Specialty Insurers (Section 13)

In 2014, the Legislature passed CS/CS/SB 1308,[30] which implemented elements of model legislation developed by the National Association of Insurance Commissioners (NAIC) related to risk-based capital, holding company systems, standard valuation, and actuarial opinions and memoranda. This was primarily in response to the financial crisis of 2008. A contributing factor of the financial crisis was common ownership and control of insurance and financial services companies, such that when one company became financially troubled or insolvent, the value and solvency of related companies also became affected. This led regulators to have an interest in knowing and understanding the web of controlling interests among related companies. This

[23] Section 627.728, F.S.
[24] Information on the "intelligent mail barcode" can be found here: https://postalpro.usps.com/node/217 (last visited Feb. 14, 2018).
[25] BLACK'S LAW DICTIONARY (10th ed. 2014).
[26] *See* Section 624.606(1)(a), F.S. ("'Surety insurance' includes: (a) A contract bond, including a bid, payment, or maintenance bond, or a performance bond, which guarantees the execution of a contract other than a contract of indebtedness or other monetary obligation[.]"). *See also* BLACK'S LAW DICTIONARY (10th ed. 2014) ("Although a surety is similar to an insurer, one important difference is that a surety often receives no compensation for assuming liability. A surety differs from a guarantor, who is liable to the creditor only if the debtor does not meet the duties owed to the creditor; the surety is directly liable.").
[27] Section 624.606(1)(a), F.S.
[28] Section 624.01, F.S. (defining the "Florida Insurance Code" to include ch. 627, F.S.).
[29] Section 627.756(1), F.S.
[30] Ch. 2014-101, Laws of Fla.

legislation created a presumption of control in certain interests and acquisitions among related companies.

The 2014 bill allowed insurers to overcome the presumption of control by either filing a disclaimer of control on a form prescribed by OIR or by providing a copy of the applicable Schedule 13G on file with the federal Securities and Exchange Commission (SEC).

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. Specialty insurers must meet similar requirements addressing solvency and organizational risk controls as those created for insurers; however, they do not have the option of filing their SEC Schedule 13G to rebut the presumption of control.

Specialty insurers are defined as:[31]
- Motor vehicle service agreement companies;
- Home warranty associations;
- Service warranty associations;
- Prepaid limited health service organizations;
- Authorized health maintenance organizations;
- Authorized prepaid health clinics;
- Legal expense insurance corporations;
- Providers licensed to operate a facility that undertakes to provide continuing care;
- Multiple-employer welfare arrangements;
- Premium finance companies; and
- Corporations authorized to accept donor annuity agreements.

Own-Risk and Solvency Assessment (Section 14)

The Risk Management and Own Risk and Solvency Assessment (ORSA) Model Act by the National Association of Insurance Commissioners requires insurers to conduct their own internal assessment of all reasonably foreseeable and relevant material risks (e.g., underwriting, credit, market) potentially affecting their ability to meet policyholder obligations. This information provides regulators with a more comprehensive view of the ability of an insurer to withstand financial stress. Florida adopted portions of the model act in 2016.[32]

Pursuant to these provisions, insurers or insurance groups must:
- Maintain a risk management framework for identifying, assessing, monitoring, managing, and reporting on its material, relevant risks;
- Conduct an ORSA at least annually (and whenever there have been significant changes to the risk profile of the insurer or the insurance group);
- File an ORSA summary report with the appropriate regulator; and
- File a corporate governance annual disclosure with the OIR.[33]

[31] Section 627.4615(1), F.S.
[32] Ch. 2016-206, Laws of Fla.
[33] Section 628.8015, F.S.

ORSA documents and corporate governance reports are generally exempt from disclosure as public records.[34] In addition, the filings and related documents are privileged such that they may not be produced in response to a subpoena or other discovery directed to the OIR. And if any of these filings and related documents are obtained from the OIR, they are nonetheless inadmissible in evidence in any private civil action.[35]

Reciprocal Insurance Reserve Requirements (Section 15)

Reciprocal insurance is an alternative to traditional insurance. The fundamental difference between reciprocal and traditional insurance is that in reciprocal insurance arrangements, the "subscribers" bear the risk instead of an insurance company. Subscribers' premiums are paid into a fund from which claims are drawn. And each subscriber's liability is limited to its premium.[36] There are currently four companies active in Florida and licensed as reciprocal insurers under s. 629.401, F.S.[37]

The statutes define reciprocal insurance as insurance "resulting from an interexchange among persons, known as 'subscribers,' of reciprocal agreements of indemnity, the interexchange being effectuated through an 'attorney in fact' common to all such persons."[38] The rights and powers of the attorney in fact are as provided in the power of attorney given to it by the subscribers.[39] "In general, the attorney in fact manages the reciprocal's finances and handles underwriting, claims administration and investments."[40]

Twenty-five or more persons domiciled in Florida may organize a domestic reciprocal insurer and apply to OIR for authority to transact insurance.[41] Reciprocal insurers may transact any kind of insurance other than life insurance or title insurance.[42]

Reciprocal insurers offering property insurance are required to maintain an unearned premium reserve consistent with the requirement generally applicable to property insurers under the Insurance Code.[43] An unearned premium reserve is a fund comprised of premium money that has been paid by subscribers but is not yet due, or earned, by the insurer. For example, if a subscriber's policy required him or her to pay $1,000 in premiums for year 1 of the policy, that sum was paid in full at the beginning of the year, and if he or she was 6 months into the first year, then there would be $500 in unearned premiums held by the insurer.[44]

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[34] Section 624.4212(3), F.S.
[35] Section 628.8015(4), F.S.
[36] *See* Zacks Investment Research, *What is a Reciprocal Insurance Company?* https://finance.zacks.com/reciprocal-insurance-company-7135.html (last visited Feb. 14, 2018).
[37] See Florida Office of Insurance Regulation, Active Company Search, https://www.floir.com/CompanySearch/ (last visited Feb. 14, 2018) for the identity of these reciprocal insurers.
[38] Section 629.011, F.S.
[39] Sections 629.101, F.S.
[40] *See* Kevin Moriarty, *Twenty Things You'd Always Wanted to Know about Reciprocals (But May Not Have Thought to Ask)*, THE RISK RETENTION REPORTER, July 2003.
[41] Section 629.081(1), F.S.
[42] Section 629.041(1), F.S.
[43] *See* ss. 625.051 and 629.041(6)(b), F.S.
[44] *See* INVESTOPEDIA, *Unearned Premium* https://www.investopedia.com/terms/u/unearned-premium.asp (last visited Feb. 15, 2018)

This reserve requirement ensures the availability of funds for transfer to loss reserves when losses are incurred during the policy period or refunds that become due before the premium is earned, among other things. Premiums ceded to reinsurers for the purchase of reinsurance may be deducted from unearned premiums.

Section 625.051, F.S., requires property insurers to retain unearned premiums on reserve in the following proportions based upon the length of the policy period, as follows:

Policy Term	Proportion Required to be Reserved	
1 year or less		1/2
2 years	1st year	3/4
	2nd year	1/4
3 years	1st year	5/6
	2nd year	1/2
	3rd year	1/6
4 years	1st year	7/8
	2nd year	5/8
	3rd year	3/8
	4th year	1/8
5 years	1st year	9/10
	2nd year	7/10
	3rd year	1/2
	4th year	3/10
	5th year	1/10
Over 5 years		pro rata

In the alternative, insurers are allowed to calculate unearned premium reserves on a monthly or more frequent pro rata basis.[45] Reciprocal insurers must calculate unearned premium reserves on a monthly or more frequent basis.[46]

NAIC has developed a model act for regulation of reciprocals. Section 7, Reserves, of NAIC Model Act 356, Model Indemnity Contracts Act,[47] provides for an unearned premium reserve, as follows:

> There shall at all times be maintained as a reserve a sum in cash or convertible securities equal to fifty percent (50%) of the net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run and pro rata on those for longer periods. Net annual deposits shall be construed to mean the advance payments of subscribers after deducting the

[45] Section 625.051(3), F.S.
[46] Section 629.401(6)(b)24., F.S.
[47] National Association of Insurance Commissioners, *Model Indemnity Contracts Act*, http://www.naic.org/store/free/MDL-356.pdf (last visited February 7, 2018).

amounts specifically provided in the subscribers' agreements, for expenses. The sum shall at no time be less than $25,000, and if at any time fifty percent (50%) of the deposits so collected and credited shall not equal that amount, then the subscribers, or their attorney for them, shall make up any deficiency.

Delivery of Policies by Motor Vehicle Service Agreement Companies and Health Maintenance Organizations (Sections 16 and 17)

The law requires most insurance policies[48] to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect.[49] Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed.

Insurers are allowed to post property or casualty insurance policies not containing policyholder personal identifiable information on the insurer's website instead of mailing or delivering the policy to the insured. Casualty insurance includes automobile policies, workers' compensation policies, liability policies, and malpractice policies, among others.[50] Property insurance policies include homeowner's, tenant's, condominium unit owner's, mobile home owner's, condominium association, and commercial business property insurance policies.[51]

If an insurer opts to post an insurance policy online instead of mailing it, the policy must be easily accessible on the insurer's website and posted in a format that allows the policy to be printed by the policyholder free of charge. Insurers posting policies on their website must notify each policyholder of his or her right to request and obtain a paper or electronic copy of the policy without charge, but policyholder consent is not required for an insurer to post an insurance policy online. Insurers must also notify policyholders of this right if the insurer changes a policy. Furthermore, insurers posting policies online must archive expired policies for 5 years on the insurer's website and archived policies must be available to policyholders at their request.

III. Effect of Proposed Changes:

Foreign Insurers (Sections 1 and 2)

Section 1 provides that the valuation requirements in s. 625.151, F.S., do not apply to stock of a subsidiary corporation or related entity of a foreign insurer if the stock meets the valuation requirements under the laws of that insurer's state of domicile and if that state is a member of the National Association of Insurance Commissioners (NAIC).

Section 2 exempts foreign insurers, under certain circumstances, from the restrictions in s. 625.325, F.S. on insurers' investments in their subsidiaries. Section 625.325, F.S., in general terms, prohibits insurers from investing too heavily in their subsidiaries. The bill exempts a foreign insurer from these restrictions if the insurer is domiciled in a NAIC member state, and the investments are permitted under the laws of the insurer's state of domicile and are:

[48] Section 627.402, F.S., defines policy to include endorsements, riders, and clauses.
[49] Section 627.421, F.S.
[50] Section 624.605, F.S.
[51] Sections 624.604 and 627.4025, F.S.

- Assigned a rating of 1, 2, or 3 by the National Association of Insurance Commissioners' Securities Valuation Office; or
- Qualify for the NAIC's exemption rule and are assigned a rating by a nationally recognized statistical rating organization that would be equivalent to a rating of 1, 2, or 3 by the National Association of Insurance Commissioners' Securities Valuation Office.

The Office of Insurance Regulation's asserts that "[l]owering Florida's investment limitation standards to those of the domiciliary state would reduce protection for Florida policyholders and weaken effective solvency regulation."[52]

The Securities Valuation Office (SVO) is responsible for the day-to-day credit quality assessment and valuation of securities owned by state regulated insurance companies. The SVO conducts credit analysis on these securities for the purpose of assigning an NAIC designation. These designations are produced for the benefit of NAIC members who may use them as part of the member's monitoring of the financial condition of its domiciliary insurers.[53] An NAIC rating of 1 means the obligation should be eligible for the most favorable treatment provided under the NAIC Financial Conditions Framework. An NAIC rating of 2 means that credit risk is low but may increase in the intermediate future and the issuer's credit profile are reasonably stable. It should be eligible for relatively favorable treatment under the NAIC Financial Conditions Framework. A rating of 3 is assigned to obligations of medium quality. Credit risk is intermediate. Ratings of 4, 5, and 6 means the obligations are low quality.[54]

Nationally recognized statistical rating organizations (NRSRO) are credit rating agencies that provide an assessment of the creditworthiness of a company or a financial instrument. In 2006, Congress provided the Securities and Exchange Commission with the authority to establish a registration and oversight program for credit rating agencies registered as NRSROs.[55] The NRSROs registered with the SEC are:

- A.M. Best Rating Services, Inc.
- DBRS, Inc.
- Egan-Jones Ratings Co.
- Fitch Ratings, Inc.
- HR Ratings de México, S.A. de C.V.
- Japan Credit Rating Agency, Ltd.
- Kroll Bond Rating Agency, Inc.
- Moody's Investors Service, Inc.
- Morningstar Credit Ratings, LLC
- S&P Global Ratings[56]

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[52] Office of Insurance Regulation, *2018 Agency Legislative Bill Analysis [SB 784]* (on file with the Senate Committee on Judiciary).
[53] National Association of Insurance Commissioners, Securities Valuation Office, http://www.naic.org/svo.htm (last visited Feb. 15, 2018).
[54] National Association of Insurance Commissioners, *NAIC Publicly Traded Securities Listing Definitions* http://www.naic.org/documents/svo_naic_public_listing.pdf?353 (last visited Feb. 15, 2018).
[55] U.S. Securities and Exchange Commission, *Learn More About NCSROs*, https://www.sec.gov/ocr/ocr-learn-nrsros.html (last visited Feb. 15, 2018).
[56] *Id*. The chart containing ratings equivalent to SVO ratings is found here: http://www.naic.org/documents/svo_naic_aro.pdf (last visited Feb. 15, 2018).

Insurance Adjuster Licensure Examination (Section 3)

The bill exempts a person who receives a Claims Adjuster Certified Professional (CACP) designation from WebCE, Inc from the all-lines adjuster licensing exam requirement. The bill also authorizes the DFS to accept similar designations from similar entities to those listed in the statute for purposes for the examination exemption.

Surplus Lines Insurance (Sections 4, and 5)

Section 4 repeals s. 626.918(2)(a), F.S., which currently requires an unauthorized insurer that desires to become eligible as a surplus lines insurers to request eligibility from the Florida Surplus Lines Surplus Officer.

Section 5 of the bill lowers the surplus lines premium tax rate to 4.936 percent instead of the current 5 percent. It allows the tax to exceed the tax rate where the risk or exposure is located.

Privacy Disclosures (Section 6)

Current law requires the Department of Financial Services to develop rules governing the use of a consumer's nonpublic personal financial and health information. In addition to other requirements for these rules, they must be consistent with the standards contained in Title V of the Gramm-Leach-Bliley Act of 1999. This act has since been amended, namely in Title LXXV of the Fixing America's Surface Transportation (FAST) Act. The bill specifies that the privacy rules developed by the DFS must be consistent with the amendments made by the FAST Act. Title LXXV of the FAST Act provides that companies that have not made changes to certain privacy policies are not required to send an annual notice of changes. If changes are made, the companies must notify customers.

Execution of Insurance Policies (Section 7)

Section 7 amends s. 627.416, F.S., to provide that an insurer may elect to issue an insurance policy without it being executed by one of its officers, attorneys in fact, employees, or duly authorized representatives. If such a policy is issued, it is not invalid despite not being executed.

Notice of Change in Policy Terms (Section 8)

Under current law, a policy that is being renewed may contain a change in policy terms, in which case the insurer must give the insured advance written "notice" of the change. However, this notice is not explicitly required to contain any summary or explanation of the change. The bill, on the other hand, requires that this notice contain a summary of the changes.

Mediation through the DFS (Section 9)

Under current law, mediation on a claim for insurance benefits may be requested by the policyholder, as a first-party claimant, or the insurer. The bill amends s. 627.7015, F.S., to also permit a third party, as assignee of policy benefits, to request mediation. However, when mediation is requested by a third party, as assignee of policy benefits, the insurer is not required

to participate in the mediation. The bill also replaces the term "insured" with the term "policyholder" in several places in s. 627.7015, F.S.

Proof of Mailing (Section 10)

Section 10 amends s. 627.728, F.S., relating to the sufficient proof that a person has received a notice of cancellation, intention not to renew, or of reasons for cancellation, or of the intention of the insurer to issue a policy by an insurer under the same ownership or management. Under current law, United States postal proof of mailing or certified or registered mailing of these items to the first-named insured at the address shown in the policy is sufficient proof of notice. Under the bill, an insurer may also show proof of notice by using the Intelligent Mail barcode or other similar tracking method used approved by the USPS.

Bonds for Construction Contracts (Sections 11 and 12)

Section 11 amends s. 627.756(1), F.S., of the Insurance Code to extend the ability to collect attorney's fees against an insurer under s. 627.428(1), F.S., to contractors by also deeming them an insured or beneficiary. This change will apply when a contractor successfully enforces a claim against the bond of a subcontractor that has breached a contract with the contractor. **Section 12** provides that this provision applies to payment or performance bonds issued on or after October 1, 2018.

Specialty Insurers (Section 13)

Section 13 amends s. 628.4615, F.S., to add viatical settlement providers to the list of specialty insurers and allows any specialty insurer to overcome the presumption of control by filing with OIR a disclaimer of control on an OIR form or a copy of their SEC Schedule 13G.

Own-Risk and Solvency Assessment (Section 14)

Section 14 amends s. 628.8015, F.S., to expand the confidentiality of documents submitted to the OIR under ORSA requirements. The bill provides that such documents may not be admitted as evidence in a private civil action regardless of the source of the documents, rather than only when they are obtained from the OIR.

Reciprocal Insurer Reserve Requirements (Section 15)

Section 15 amends s. 629.401, F.S., to revise the unearned premium reserve requirement that must be met by a reciprocal insurer, regardless of the line of insurance underwritten. The reciprocal insurer must retain 50 percent of "net written premiums" on policies having a policy period of 1 year or less. "Net written premiums" means premium payments made or due from subscribers after deducting expenses specified in the subscriber's agreement, including reinsurance costs and subscriber fees. To take the deduction from "net written premiums" for subscriber fees, the power of attorney agreement must contain an explicit provision to return subscriber fees on a pro rata basis for cancelled policies. The bill requires an unearned premium reserve of $100,000, at all times, and provides a mechanism to return the reserve to that amount if it is not maintained at the required amount.

Delivery of Policies by Motor Vehicle Service Agreement Companies and Health Maintenance Organizations (Sections 16 and 17)

The bill requires motor vehicle service agreement companies and health maintenance organizations (HMO) to deliver motor vehicle service agreements and HMO contracts in compliance with the standards applicable to insurers. This changes the timeline for delivery of a motor vehicle service agreement from 45 days to 60 days and for HMO contracts from 10 days from enrollment to 60 days. It also allows posting of the non-personal portions of agreements and contracts, as applicable, on a website in the manner allowed for policies by insurers. The personal portions of these documents would be delivered by other allowable means, usually mailing.

Effective Date (Section 18)

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Changes to the mailing requirement in section 10 could result in cost savings to insurers.

C. Government Sector Impact:

The Revenue Estimating Conference does not anticipate a significant impact from the surplus line tax change in section 5 of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 625.151, 625.325, 626.221, 626.932, 626.9651, 627.416, 627.41341, 627.7015, 627.728, 627.756, 628.4615, 628.8015, 629.401, 634.121, and 641.3107.

The bill repeals paragraph 626.918(2)(a) of the Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on February 20, 2018:
The committee substitute removed a provision from the underlying bill that would have lowered from $1 million to $700,000 the threshold for exporting a homeowner's property insurance risk to a surplus lines insurer following a single coverage rejection. Additionally, the committee substitute clarified a provision in the property insurance mediation statute.

CS by Banking and Insurance on February 6, 2018:
The CS removed provisions that:

- Provides that a third-party vendor, as an assignee of policy benefits, is not a consumer for purposes of consumer complaints received by the DFS Division of Consumer Services;
- Provides that complaints from third-party vendors as assignees of policy benefits will not count as complaints for purposes of the complaint ratio calculations;
- Provides that the reporting of certain information used by the Department of Financial Services to prevent insurance fraud is not mandatory;
- Provides that the insurance nonjoinder statute applies to surplus lines insurers;
- Allows the Office of Insurance Regulation (OIR) to waive the requirement that a surplus lines insurer has operated for the previous 3 years before seeking eligibility to operate in Florida if the insurer provides a product or service not readily available to Florida consumers or has operated successfully for a period of at least 1 year next preceding and has capital and surplus of not less than $30 million;
- Increases the ability of motor vehicle insurers to exclude coverage when drivers are engaged in transportation network company activities; and
- Provides that any person who sells prepaid limited health service contracts that only cover the cost of transportation provided by an air ambulance service is not required to be licensed as a health insurance agent.

The CS adds provisions that:

- Provide if an applicant for licensure as an all-lines adjuster is certified as a Claims Adjuster Certified Professional from WebCE, Inc., the applicant does not have to take the adjuster examination;
- Repeal a requirement that surplus lines insurers request eligibility from the Florida Surplus Lines Service Office;
- Provide a uniform surplus lines tax of 4.936 percent;
- Lower from $1 million to $700,000 the threshold for exporting a homeowner's property insurance risk to a surplus lines insurer following a single coverage rejection;
- Provide that an insurer may issue an insurance policy without certain signatures;
- Require that a notice of policy change summarize the changes made to the policy before renewal;
- Revise unearned premium reserve requirements for reciprocal insurers; and
- Allow for electronic posting of certain policy information by health maintenance organizations and motor vehicle service agreement companies and increases the time for delivering such contracts.

B. Amendments:

None.