

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 301 Insurance

SPONSOR(S): Commerce Committee; Civil Justice Subcommittee; Insurance & Banking Subcommittee; Santiago

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|-------------------------------------|------------------|-----------|------------------------------------------|
| 1) Insurance & Banking Subcommittee | 9 Y, 4 N, As CS | Lloyd | Luczynski |
| 2) Civil Justice Subcommittee | 15 Y, 0 N, As CS | Rochester | Poche |
| 3) Commerce Committee | 20 Y, 0 N, As CS | Lloyd | Hamon |

SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

- **Florida Hurricane Catastrophe Fund** – Effective January 1, 2020, increases reimbursement for loss adjustment expenses from 5 percent to 10 percent of reimbursed losses beginning with contracts issued after January 1, 2020.
- **Motor Vehicle Salvage** – Authorizes titles to be surrendered electronically; permits current law with an effective date to go into effect earlier, if a condition is met; and provides that electronic signatures complying with Florida law may be used for required signatures.
- **Applications for Insurance** – Provides that workers' compensation insurance applicants and their agents are not required to have their sworn statements notarized.
- **Right of Contribution for Defense Costs** – Provides that, if more than one liability insurer has a duty to defend an insured, the insurer(s) that defend the insured are entitled to contribution for defense costs from the insurer(s) that do not defend; the court will allocate such costs and order the insurer(s) that did not defend to pay their share of defense costs from the date they received the notice of claim. This applies after January 1, 2020. It does not apply to motor vehicle insurance or medical professional liability insurance.
- **Civil Remedies Against Insurers** – Prohibits an insured from filing a civil remedy notice within 60 days after an appraisal is invoked; removes a provision authorizing the Department of Financial Services to return the notice for lack of specificity.
- **Risk-based Capital** – Changes the method of determining risk-based capital for multi-state health maintenance organizations and multi-state prepaid limited health service organizations.
- **Surplus Lines Export Eligibility** – Lowers the home value threshold to \$700,000 for exporting property insurance for a residential dwelling to a surplus lines insurer after one authorized insurer coverage rejection.
- **Agent Fees** – Removes the \$35 cap on the per-policy fee agents may charge for each exported policy; allows retail agents to receive a reasonable per-policy fee; provides fee notice requirements.
- **Unfair Insurance Trade Practices** – Permits an insurer to offer and give insureds goods or services of any value for the purposes of loss control or loss mitigation related to covered risks.
- **Discounts for Purchase of Multiple Insurance Policies** – Expands the allowance of multiple policy discounts in certain circumstances.
- **Proof of Mailing** – Permits 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.
- **Secondary Notice Prior to Life Insurance Policy Lapse** – Requires a life insurer to provide a notice of lapse to the agent servicing a life insurance in addition to other required notices, subject to certain exceptions.
- **Property Insurance Claim Mediation** – Allows the insurer to issue the required notice at the time the insurer decides that a loss is covered and is issuing payment or, as currently provided, at the time a claim is filed.
- **Prepayment of Motor Vehicle Insurance Premium** – Reduces the minimum amount of premium that must be collected for motor vehicle insurance at the initial issuance of a policy.

The bill has no impact on state revenues or local government. It has a negative impact on state expenditures. It has positive and negative impacts on the private sector.

Except as otherwise expressly provided, the bill is effective July 1, 2019.

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

STORAGE NAME: h0301d.COM

DATE: 4/2/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt trust fund created by the Legislature in 1993 as a form of reinsurance for residential property losses. The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage of hurricane losses to residential property above the insurer's retention (deductible). As a condition of doing business in Florida, property insurers are required to enter into reimbursement contracts with FHCF. The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

The FHCF charges insurers the actuarially indicated premium for the coverage it provides, based on the insurer's relative exposure to hurricane losses. The FHCF reimburses an insurer for a selected percentage of the insurer's hurricane losses above the insurer's retention (deductible), up to a maximum payout. The current coverage options are 90 percent, 75 percent, or 45 percent, as selected by the insurer when it executes its FHCF reimbursement contract. In addition to reimbursement for hurricane losses, the FHCF is required to reimburse insurers for loss adjustment expenses (LAE).¹ Currently, insurers are reimbursed for LAE at the rate of 5 percent of reimbursed losses.²

Effect of the Bill

The bill increases reimbursement for LAE from 5 percent to 10 percent of reimbursed losses beginning with contracts issued after January 1, 2020.

Motor Vehicles - Certificate of Salvage Title and Certificate of Destruction

The owner of a motor vehicle or mobile home that is considered to be salvage³ is required to forward the title to the motor vehicle or mobile home to the Department of Highway Safety and Motor Vehicles (DHSMV) for processing within 72 hours after the motor vehicle or mobile home becomes salvage.⁴ However, an insurance company that pays money as compensation for the total loss of a motor vehicle or mobile home must obtain the certificate of title for the motor vehicle or mobile home, make the required notification to the National Motor Vehicle Title Information System,⁵ and, within 72 hours after receiving such certificate of title, forward such title to DHSMV for processing. Currently, the statute is silent as to how these certificates of title are to be forwarded to DHSMV. The owner or insurance company may not dispose of a vehicle or mobile home that is a total loss before it obtains from DHSMV a salvage certificate of title or certificate of destruction.

To facilitate the issuance of salvage certificates of title and certificates of destruction when the insurer has been unable to obtain the title from the insured so that it may be surrendered to DHSMV, effective July 1, 2023:

¹ Loss adjustment expenses are "[t]he sum insurers pay for investigating and settling insurance claims, including the cost of defending a lawsuit in court." Insurance Information Institute, I.I.I. Glossary, <https://www.iii.org/resource-center/iii-glossary/L> (last visited Mar. 29, 2019).

² S. 215.555(4)(b)1., F.S.

³ "Salvage" is defined as a motor vehicle or mobile home which is a total loss. S. 319.30(1)(t), F.S. A motor vehicle is a "total loss:"

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

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

⁴ S. 319.30(3)(b), F.S.

⁵ The National Motor Vehicle Title Information System (NMVTIS) is an electronic system that provides consumers with valuable information about a vehicle's condition and history. NMVTIS allows consumers to find information on a vehicle's title, most recent odometer reading, brand history, and, in some cases, historical theft data. https://www.vehiclehistory.gov/nmvtis_consumers.html (Last visited Mar. 29, 2019).

- The insurer may receive a salvage certificate of title or certificate of destruction from DHSMV 30 days after paying the claim, if:
 - There is no electronic lien on the motor vehicle or mobile home; and
 - The insurer has:
 - Obtained a release of all liens;
 - Provided proof of payment of the total loss claim; and
 - Provided an affidavit⁶ on letterhead signed by the insurance company or its authorized agent stating the attempts⁷ that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail.⁸

The “Electronic Signature Act of 1996”⁹ provides that unless otherwise provided by law, an electronic signature¹⁰ may be used to sign a writing and has the same force and effect as a written signature.

Effect of the Bill

The bill authorizes the certificate of title of a salvage vehicle to be forwarded to DHSMV via electronic means, the United States Postal Service, or other commercial delivery service (e.g., FedEx or UPS). It allows the DHSMV to begin issuing salvage certificates of title and certificates of destruction when the insurer has been unable to obtain the title from the insured upon the completion of the Motorist Modernization Project¹¹ or July 1, 2023, whichever is earlier. The bill also provides that an electronic signature consistent with ch. 668, F.S., relating to electronic commerce, satisfies any signature required related to the issuance of a salvage certificate of title or certificate of destruction when this new process becomes effective.^{12, 13}

Workers’ Compensation – Applications for Insurance

Employers who file applications for workers compensation insurance coverage are required to file in a form prescribed by the Financial Services Commission. The application must contain a sworn statement by the employer attesting to the accuracy of the information submitted. The application must also contain a sworn statement by the agent attesting that the agent explained to the employer or officer the classification codes that are used for premium calculations. Submission of an application that

⁶ The affidavit must include a request that the salvage certificate of title or certificate of destruction be issued in the insurance company’s name due to payment of a total loss claim to the owner or lienholder. S. 319.30(3)(b)1.c., F.S.

⁷ The attempts to contact the owner may be by written request delivered in person or by first-class mail with a certificate of mailing to the owner’s or lienholder’s last known address. S. 319.30(3)(b)1.c., F.S. If the owner or lienholder is notified of the request for title in person, the insurance company must provide an affidavit attesting to the in-person request for a certificate of title. S. 319.30(3)(b)1.c.2., F.S.

⁸ The request to the owner or lienholder for the certificate of title must include a complete description of the motor vehicle or mobile home and the statement that a total loss claim has been paid on the motor vehicle or mobile home. S. 319.30(3)(b)1.c.3., F.S.

⁹ Ch. 668, part I, F.S.

¹⁰ Section 668.003(4), F.S., defines “electronic signature” as any letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.

¹¹ “The Motorist Modernization [Project] initiative is a multi-year phased plan for re-engineering the Department of Highway Safety and Motor Vehicles’ driver license and motor vehicle systems to create efficiencies in the department’s work processes, enhance safety features for law enforcement agencies and streamline interactivity for customers now and into the future. When complete, the initiative will modernize driver license and vehicle registration systems to serve Florida’s growing population, without growing government.” Florida Department of Highway Safety and Motor Vehicles, Motorist Modernization, <https://www.flhsmv.gov/motorist-modernization/> (last visited Mar. 29, 2019).

¹² The only signature expressly required in s. 319.30(3), F.S., is on the affidavit of the insurance company that begins use in July 2023 to facilitate issuance of salvage certificates of title or certificates of destruction when the insurer cannot obtain the original title from the owner. Other documents are referenced in the section, which may have to be signed, but the signature requirement is not expressed. S. 319.30(3)(b), F.S.

¹³ According to DHSMV, when a title changes hands, even in a salvage vehicle situation, the federal Truth in Mileage Act of 1986 requires the owner of the vehicle to sign, in the form of an original “wet” signature, an odometer disclosure. Pub. L. 99-579. In 2015, Congress passed the FAST Act allowing states to adopt electronic odometer disclosure systems while the National Highway Traffic Safety Administration (NHTSA) worked on e-odometer disclosure rules. Pub. L. 114-94. However, NHTSA’s rules have not yet been promulgated. While states can move forward with the use of electronic signatures, there is a risk that the requirements DHSMV develops will not comply with NHTSA’s rules, once they are adopted, forcing DHSMV (and the industries it interfaces with) to incur the expense to update or replace the electronic signature protocol to comply with NHTSA’s rules. Email from Kevin Jacobs, Deputy Director of Legislative Affairs, Department of Highway Safety and Motor Vehicles, RE., HB 765 Electronic Signatures, (Mar. 7, 2019).

contains false, misleading, or incomplete information provided with the purpose of avoiding or reducing the amount of premiums for workers' compensation coverage is a felony of the second degree.¹⁴

The Financial Services Commission is allowed to adopt rules regarding the submission of such applications. The rules are to provide that an application must include information on the employer, the type of business, past and prospective payroll, estimated revenue, previous workers' compensation experience, employee classification, employee names, and any other information necessary to enable a carrier to accurately underwrite the applicant. Rule 69O-189.003, F.A.C., promulgated by the Financial Services Commission requires the sworn statements by an applicant and agent that are required to be submitted with the application to the OIR must be notarized.

Effect of the Bill

The bill provides that workers' compensation insurance applicants and their agents are not required to have their sworn statements notarized. This eliminates the requirement provided by rule.

Liability Insurance – Right of Contribution for Defense Costs

The insurer and insured contract for various obligations when entering into an insurance contract. One of the insurer's duties is to defend the insured against claims, lawsuits, and any other actions related to covered losses. Depending on the circumstances, more than one insurer may have the duty to defend the matter. Where multiple insurers have a duty to defend, a waiting game may ensue prior to one insurer taking on the defense of the matter and beginning to incur defense costs. This is because courts have found that, where there is an independent duty to defend a mutual insured, the insurer that does defend the matter is not entitled to contribution to defense costs from the other insurer.¹⁵ Alternatively, if the mutual insurance is due to an indemnification provision, the obligation that is met by the indemnified party's insurer must be compensated by the indemnifying party's insurer.¹⁶ Depending upon the circumstances, the other insurer may enter later or not at all; however, each insurer with a duty to defend the matter, regardless of whether they directly participated, may be liable for a share of the defense costs, but may refuse to voluntarily contribute their appropriate share of the defense costs.

Effect of the Bill

The bill provides that, if more than one liability insurer, including surplus lines insurers, have a duty to defend an insured, the insurer(s) that does defend the insured is entitled to contribution from the insurer(s) that does not defend the insured for defense costs; to have the court allocate such costs; and for the court to order the insurer(s) that did not defend the insured to pay their share of defense costs from the date they received the notice of claim. This applies to civil claims initiated on or after January 1, 2020. It does not apply to motor vehicle insurance or medical professional liability insurance.

Civil Remedies Against Insurers

INSURANCE AND INSURER OBLIGATIONS

Insurance is a contract, commonly referred to as a "policy," under which, for stipulated consideration called a "premium," one party, the insurer, undertakes to compensate the other, the insured, for loss on a specified subject from specified perils. Florida residents often obtain two major categories of insurance: property insurance and liability insurance. Property insurance protects individuals from the loss of or damage to property and, in some instances, personal liability pertaining to the property. One of the common lines of insurance in this category is homeowner's insurance. Automobile liability insurance¹⁷ covers suits against the insured for such damages as injury or death to another driver or

¹⁴ This felony is punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S. S. 440.381, F.S.

¹⁵ *Continental Cas. Co. v. United Pacific Ins. Co.*, 637 So. 2d 270 (Fla. 5th DCA 1994).

¹⁶ *Progressive Express Ins. Co. v. Florida Dept. of Financial Services*, 125 So. 3d 201 (Fla. 4th DCA 2013).

¹⁷ In Florida, every owner or operator of an automobile is required to maintain liability insurance to cover a minimum of \$10,000 in coverage for damage to another's property in a crash. Additionally, every owner or registrant of an automobile is required to maintain personal injury protection, which covers medical expenses related to a car accident regardless of fault up to \$10,000. Ss. 324.022 and 627.733, F.S.

passenger, as well as property damage. It is insurance for those damages for which the driver can be held liable due to the operation of the automobile.

A liability insurer generally owes two major contractual duties to its insured in exchange for premium payments—the duty to indemnify and the duty to defend.¹⁸ The duty to indemnify refers to the insurer's obligation to issue payment to the insured or a beneficiary on a valid claim.¹⁹ The duty to defend refers to the insurer's duty to provide a defense for the insured in court against a third party with respect to a claim within the scope of the insurance contract.²⁰

STATUTORY AND COMMON LAW BAD FAITH

Common Law Bad Faith - "Third Party Claims"

As early as 1938, Florida courts recognized an additional duty that does not arise directly from the contract, the common law duty of good faith on the part of an insurer to the insured in negotiating settlements with third-party claimants.²¹ Under a liability policy, the insured's role is essentially limited to selecting the type and desired level of coverage and paying the corresponding premium.²² As part of the contract, the insured surrenders to the insurer all control over the negotiations and decision making as to third-party claims.²³ The insured's role is relegated to the obligation to cooperate with the insurer's efforts to adjust the loss.²⁴ The insurer makes all the decisions with regard to third-party claims handling and thereby has the power to settle and foreclose an insured's exposure to liability, or to refuse to settle and leave the insured exposed to liability in excess of the policy limits.²⁵ As a result, "the relationship between the parties arising from the bodily injury liability provisions of the policy is fiduciary in nature, much akin to that of attorney and client," because the insurer owes a duty to refrain from acting solely on the basis of its own interests in the settlement of third-party claims.²⁶ Accordingly, and because of this relationship, the insurer owes a duty to the insured to "exercise the utmost good faith and reasonable discretion in evaluating the claim" and negotiating for a settlement within the policy limits.²⁷ When the insurer fails to act in the best interests of the insured in settling a third-party claim, an injured insured is entitled to hold the insurer accountable for its "bad faith"²⁸ if a third party obtains a judgment against the insured in excess of his or her insurance coverage.²⁹ A third-party claim can be brought by the insured, having been held liable for judgment in excess of policy limits by the third-party claimant,³⁰ or it can be brought by the third party directly or through an assignment of the insured's rights.³¹

Statutory Bad Faith -- First- and Third-Party Claims

In 1982 the Legislature enacted s. 624.155, F.S., which provides that *any person* may bring a claim for "bad faith" against an insurer for "not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests,"³² the same as the common law standard.³³ Section 624.155, F.S., codifies third-party claims for "bad faith," but does not preempt the common law remedy.³⁴

¹⁸ 16 Williston on Contracts s. 49:105 (4th ed.).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Auto. Mut. Indemnity Co. v. Shaw*, 184 So. 852 (Fla. 1938).

²² Rutledge R. Liles, *Florida Insurance Bad Faith Law: Protecting Businesses and You*, 85 Fla. Bar. J. No. 3, p. 8 (Mar. 2011).

²³ *Id.*

²⁴ *Id.*

²⁵ *State Farm v. Laforet*, 658 So. 2d 55, 58 (Fla. 1995).

²⁶ *Baxter v. Royal Indem. Co.*, 285 So. 2d 652, 655 (Fla. 1st DCA 1973), *cert. discharged*, 317 So. 2d 725 (Fla. 1975).

²⁷ *Id.*

²⁸ Liles, *supra* note 22.

²⁹ *Opperman v. Nationwide Mut. Fire Ins. Co.*, 515 So. 2d 263, 265 (Fla. 5th DCA 1987).

³⁰ *See Powell v. Prudential Prop. and Cas. Ins. Co.*, 584 So. 2d 12 (Fla. 3d DCA 1991).

³¹ *See Thompson v. Commercial Union Ins. Co.* 250 So. 2d 259 (Fla. 1971)(recognizing a direct third-party claim under the common law before the enactment of s. 624.155, F.S.); *State Farm Fire and Cas. Co. v. Zebrowski*, 706 So. 2d 275 (Fla. 1997).

³² S. 624.155(1)(b), F.S.

³³ Fla. Standard Jury Instr. 404.4 (Civil).

³⁴ S. 624.155(8), F.S.

Additionally, s. 624.155, F.S., recognizes a claim for bad faith against an insurer not only in the instance of settlement negotiations with a third party, but also for an insured seeking payment from his or her own insurance company. Although Florida courts recognized a bad faith cause of action in the context of liability policies at common law, they did not impose the same obligation in the context of first-party insurance contracts, when the injured party was also the insured under the insurance policy.³⁵ At common law, first-party insurance policies were enforced solely through traditional contract remedies.³⁶

In a first-party action under s. 624.155, F.S., there is never a fiduciary relationship between the parties, but an arm's length contractual one based on the insurance contract. A first-party claim against the insurer does not accrue until the conclusion of the underlying litigation for contractual benefits or the insured prevails in the appraisal process and coverage is otherwise established by acceptance or court decision.³⁷ The underlying action against the insurer must be resolved in favor of the insured, because the insured cannot allege bad faith if it is not shown that the insurer should have paid the claim.

In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer and the Department of Financial Services (DFS) 60 days' written notice of the alleged violation.³⁸ The notice must include:

- The statutory provision which the insurer allegedly violated;
- The facts and circumstances giving rise to the violation;
- The name of any individual involved in the violation;
- Reference to specific policy language that is relevant to the violation, unless the person bringing the civil action is a third party claimant; and
- A statement that the notice is given to perfect the right to pursue a civil remedy.³⁹

Within 20 days of receipt of the notice, DFS may return any notice that does not provide the specific information required and indicate the specific deficiencies the notice contains.⁴⁰

"ACTING FAIRLY" TO SETTLE THIRD-PARTY CLAIMS

In interpreting what it means for an insurer to act fairly toward its insured, Florida courts have held that when the insured's liability is clear and an excess judgment is likely due to the extent of the resulting damage, the insurer has an affirmative duty to initiate settlement negotiations.⁴¹ If a settlement is not reached, the insurer has the burden of showing that there was no realistic possibility of settlement within policy limits.⁴² Failure to settle on its own does not mean that an insurer acts in bad faith.

The question of whether an insurer has acted in bad faith in handling claims against the insured is determined under the totality of the circumstances standard. Each case is determined on its own facts and ordinarily the question of failure to act in good faith with due regard for the interests of the insured is for the jury.⁴³

In light of the heightened duty on the part of the insurer as a fiduciary, Florida courts focus on the actions of the insurer during the time when it was acting under a duty to the insured, not the claimant.⁴⁴

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Cammarata v. State Farm Florida Ins. Co.*, 152 So. 3d 606 (Fla. 4th DCA 2014).

³⁸ S. 624.155(3)(a), F.S.

³⁹ S. 624.155(3)(b), F.S.

⁴⁰ S. 624.155(3)(c), F.S.

⁴¹ *See Powell v. Prudential Property and Casualty Insurance Company*, 584 So. 2d 12, 14 (Fla. 3d DCA 1991).

⁴² *Id.*

⁴³ *See Berges v. Infinity Ins. Co.*, 896 So. 2d 665, 680 (Fla. 2004).

⁴⁴ *Id.* at 677.

Insurance companies often include an appraisal clause in property insurance policies.⁴⁵ The appraisal clause provides a procedure to resolve disputes between the policyholder and the insurer concerning the value of a covered loss. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process *generally* works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and attempt to reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both appraisers. A decision agreed to by any two of the three will set the amount of the loss.
- The insurance company or the policyholder may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.⁴⁶

RIPENESS OF BAD FAITH CLAIMS FOLLOWING INCREASES IN PROPERTY DAMAGE AMOUNTS WON THROUGH THE APPRAISAL PROCESS (*Cammarata v. State Farm Florida Ins. Co.*⁴⁷)

In 2014, the Fourth District Court of Appeal (4th DCA) issued an opinion in *Cammarata v. State Farm Florida Ins. Co.* (*Cammarata*) dealing with the ripeness of bad faith actions against insurers, which resolved an apparent conflict between two prior 4th DCA cases.⁴⁸ Both cases involved property damage from Hurricane Wilma and followed a nearly identical fact pattern, including the use of the appraisal process following a lawsuit for breach of contract. In both cases, the insured achieved an increase in the assessed damages compared to the insurer's appraisal and the insurer paid both claims following the appraisal process. In both cases, the insurer, by paying following the appraisal process, admitted that coverage existed and the insured prevailed on the claim because more insurance benefits were paid than were offered in settlement. These are the two generally accepted prerequisites to a bad faith claim. However, both cases resulted in appeals related to the breach of contract claims.

In the first case, known as *Lime Bay*, the 4th DCA upheld a dismissal by the trial court. The 4th DCA found that the insured must win a breach of contract claim to be able to pursue the insurer for bad faith. In other words, a breach of contract was required to claim insurer bad faith. In the other case, known as *Trafalgar*, the 4th DCA found that since the insured won in the appraisal process, there was no requirement for a finding that the insurer breached the contract to support a bad faith claim. So, in the *Cammarata* case, in which the insured prevailed in the appraisal process but had not claimed there was a breach of contract, the insurer argued for summary using *Lime Bay's* required breach finding, while the insured countered with *Trafalgar's* finding that prevailing in the appraisal process was sufficient to support a bad faith claim. The trial court granted the insurer summary judgement, relying on *Lime Bay* and the breach of contract requirement. The *Cammarata* case was appealed to the 4th DCA.

⁴⁵ *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So. 3d 578 (Fla. 3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America*, 540 So. 2d 162 (Fla. 3d DCA 1989), contain examples of appraisal clauses.

⁴⁶ See s. 627.70151, F.S.

⁴⁷ *Cammarata v. State Farm Florida Ins. Co.*, 152 So. 3d 606 (Fla. 4th DCA 2014).

⁴⁸ *Lime Bay Condominium, Inc. v. State Farm Florida Insurance Co.*, 94 So. 3d 698 (Fla. 4th DCA 2012) and *Trafalgar at Greenacres, Ltd. v. Zurich American Insurance Co.*, 100 So. 3d 1155 (Fla. 4th DCA 2012).

Following a review and analysis of relevant case law,⁴⁹ the Court stated that “we stand by our numerous prior opinions holding that, where the insurer’s liability for coverage and the extent of damages have not been determined in any form, an insurer’s liability for the underlying claim and the extent of damages must be determined before a bad faith action becomes ripe.”⁵⁰ The 4th DCA receded from *Lime Bay* and held that the insured’s success in the appraisal process and the insurer’s admission that coverage existed were sufficient to support a bad faith claim.

Effect of the Bill

The bill prohibits an insured from filing a civil remedy notice within 60 days after an appraisal is invoked. This may reduce the number of bad faith claims and the insurer’s exposure to punitive damages by allowing the insurer time to cure a violation before a civil remedy notice is filed. This will affect only statutory bad faith claims, i.e., first-party claims and those third-party claims where the third party elects to pursue statutory remedies.

The bill also removes the provision authorizing DFS to return a civil remedy notice to the insured for lack of specificity. As a result, if an insurer objects to a civil remedy notice because it lacks specificity, the insurer may challenge the sufficiency of the notice in court instead of through DFS.

Risk-based Capital of Health Maintenance Organizations and Prepaid Limited Health Service Organizations

Risk-based capital (RBC) is a capital adequacy standard that represents the amount of required capital an insurer must maintain, based on the inherent risks in the insurer’s operations. It is determined by a formula that considers certain material risks depending on the type of insurer, and generates the regulatory minimum amount of capital that a company is required to maintain to avoid regulatory action. RBC is a safety net for insurers, is uniform among states, and gives state insurance regulators authority for timely corrective action.

In March 2006, the National Association of Insurance Commissioners (NAIC)⁵¹ adopted revisions to the Risk-Based Capital for Insurers Model Act (#312), which provides that states must require both life and health and property and casualty insurers to submit RBC filings with their regulators. In 2010, the NAIC adopted a recommendation to make the Risk-Based Capital for Health Organizations (#315) Model Act an accreditation standard. This model act defines “health organization” to include HMOs and PLHSOs, except, for the purposes of RBC. For RBC purposes, HMOs and PLHSOs are tested under the standard for property and casualty insurers.

Model Act #315 permits insurance commissioners to exempt single-state HMOs and PLHSOs who meet specified criteria from the RBC requirements. Accordingly, effective January 1, 2015, it was mandatory for member states to require multi-state and non-exempt single-state HMOs and PLHSOs to submit risk-based capital filings in order to maintain accreditation.

In 2014, Florida adopted the RBC standard for multi-state⁵² HMOs and PLHSOs.⁵³ Florida’s implementation uses the RBC requirements for life and health insurers, while Model Act #315 specifies that the RBC requirements for HMOs and PLHSOs should be done under the standard applicable to property and casualty insurers. This has resulted in a negative accreditation audit finding by NAIC for Florida.

⁴⁹ *Blanchard v. State Farm Mut. Auto. Ins. Co.*, 575 So. 2d 1289 (Fla. 1991), *Vest v. Travelers Ins. Co.*, 710 So. 2d 982, 984 (Fla. 1st DCA 1998) and *Brookins v. Goodson*, 640 So. 2d 110 (Fla. 4th DCA 1994).

⁵⁰ *Cammarata* 152 So. 3d at 613.

⁵¹ The NAIC is a voluntary association of insurance regulators from all 50 states. The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. The NAIC accreditation is a certification that legal, financial and organizational standards are being fulfilled by the OIR.

⁵² Defined to include those authorized in Florida and one or more other states or countries. S. 636.4085(1)(g), F.S.

⁵³ Ch. 2014-101, Laws of Fla.

Effect of the Bill

The bill changes the method of determining risk-based capital for multi-state HMOs and multi-state PLHSOs from the method for life and health insurers to the method for property and casualty insurers. This makes the statute consistent with the NAIC accreditation standard on this point.

Surplus Lines Export Eligibility

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.⁵⁴ There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code,⁵⁵ which means they do not obtain a certificate of authority from Office of Insurance Regulation (OIR) to transact insurance in Florida.⁵⁶ Rather, surplus lines insurers are “unauthorized” insurers,⁵⁷ but may transact surplus lines insurance if they are made eligible by OIR.

“To export” a policy means an insurance agent,⁵⁸ with the consent of the insurance applicant, placing a policy with an unauthorized insurer under the Surplus Lines Law through a surplus lines agent.⁵⁹ Unless an exception applies, before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.⁶⁰ “Diligent effort” means seeking and coverage being rejected from at least three authorized insurers in the admitted market; however, if the cost to replace a residential dwelling is \$1 million or more, then only one coverage rejection is needed prior to export. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.⁶¹ The law further specifies that:⁶²

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- For personal residential property risks,⁶³ the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

As of January 1, 2017, Citizens decreased the maximum coverage limit for dwellings from \$1 million to \$700,000 statewide, except for in counties where OIR has determined there is not a reasonable degree

⁵⁴ The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.

⁵⁵ The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

⁵⁶ S. 624.09(1), F.S.

⁵⁷ S. 624.09(2), F.S.

⁵⁸ Typically, the applicant’s usual insurance agent works with the surplus lines agent to arrange the placement, rather than the applicant working directly with the surplus lines agent.

⁵⁹ S. 626.914(3), F.S.

⁶⁰ S. 626.916(1)(a), F.S.

⁶¹ S. 626.914(4), F.S.

⁶² S. 626.916(1), F.S.

⁶³ Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

of competition.⁶⁴ Currently, OIR has determined that Miami-Dade and Monroe counties do not have a reasonable degree of competition. A homeowner seeking insurance for a personal residential property with a replacement cost of at least \$700,000 and less than \$1 million in Miami-Dade or Monroe counties is likely to be denied coverage from an authorized Florida insurer and to be referred to and receive coverage from Citizens. Surplus lines coverage may be the only coverage option as an alternative to Citizens in high-risk areas. Consequently, homeowners in Miami-Dade and Monroe counties of properties with a replacement cost of \$700,000 or more and less than \$1 million are required to comply with a more burdensome process to become eligible for surplus lines coverage and may be more likely to seek coverage from Citizens.

Effect of the Bill

The bill allows homeowner's property insurance for a residential dwelling with a replacement cost of \$700,000 or more to be exported to a surplus lines insurer following a single coverage rejection. This reduces, from three to one, the number of coverage rejections required prior to exportation for homes valued between \$700,000 and \$1 million. This aligns the exporting provision with the coverage limitation from Citizens in the majority of Florida counties and may mitigate the volume of coverage Citizens writes in Miami-Dade and Monroe.

Agent Fees Related to Surplus Lines Insurance Policies

Surplus lines agents are authorized to handle the placement of insurance coverages with surplus lines insurers.⁶⁵ Licensed general lines agents who meet the statutory criteria are eligible for licensure as a surplus lines agent.⁶⁶ In order to place coverage with a surplus lines carrier, the agent must make a "diligent effort" to place the policy with a Florida-authorized insurer, i.e., one with a certificate of authority from OIR.⁶⁷

Surplus lines agents are required to report and file with the FLSO specified information on each surplus lines insurance policy within 30 days of the effective date of the transaction, must transmit service fees to the FLSO each month, and must transmit assessment and tax payments to the FLSO quarterly.⁶⁸ When requested by the DFS or the FLSO, surplus lines agents are also required to submit a copy of any policy and certain other information.⁶⁹ Surplus lines agents are required to maintain each surplus lines contract, including applications and all certificates, and other detailed information about each surplus lines policy, in their agency office for a period of five years.⁷⁰

Florida law requires a surplus lines agent to file a quarterly affidavit with the FLSO to document all surplus lines insurance transacted in the quarter.⁷¹ The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts.⁷² To account for the administrative costs surplus lines agents incur to comply with reporting requirements, the agent may charge a reasonable per-policy fee, not to exceed \$35, for each policy exported.⁷³ This fee has not been adjusted since it was raised from \$25 to \$35 in 2001.⁷⁴

⁶⁴ <https://www.citizensfla.com/-/20160726-maximum-coverage-limit-decreased> (last visited Feb. 8, 2019).

⁶⁵ S. 626.914(1), F.S.

⁶⁶ S. 626.927, F.S. Generally, to be licensed as a surplus lines agent, an individual must be: (1) deemed by the Department of Financial Services to have sufficient experience in the insurance business (2) have 1-year experience working for a licensed surplus lines agent or have completed 60 class hours in an approved surplus lines course, and (3) pass a written examination.

⁶⁷ Exceptions include commercial lines risk, such as "excess or umbrella, surety and fidelity, boiler and machinery and leakage and fire extinguishing equipment," and so on, as specified in s. 627.062(3)(d)1., F.S. S. 626.916(3)(b), F.S.

⁶⁸ Ss. 626.921(2) and 626.931, F.S.

⁶⁹ S. 626.923, F.S.

⁷⁰ S. 626.930, F.S.

⁷¹ FLORIDA SURPLUS LINES SERVICE OFFICE, *Quarterly Report Affidavit as Required by the Surplus Lines Law*, <https://www.fslso.com/docs/default-source/default-document-library/BusinessForms/QuarterlyAffidavit.pdf?sfvrsn=24> (last visited Feb. 14, 2019).

⁷² FLSO states that the affidavit is unnecessary and that they collect relevant information through electronic data filings. Email from Bryan Young, Assistant Director, Agent and Insurer Services, RE: HB 387 and affidavit (Feb. 15, 2019).

⁷³ S. 626.916(4), F.S.

⁷⁴ Ch. 2001-213, Laws of Fla.

Effect of the Bill

The bill removes the \$35 cap on the per-policy fee surplus lines agents may charge for each exported policy. The fee must be reasonable and itemized separately before purchase and enumerated on the policy. It also allows retail agents to receive a reasonable per-policy fee, which must be itemized to the customer prior to the insurance purchase.

Unfair Insurance Trade Practices

The Unfair Insurance Trade Practices Act,⁷⁵ among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.⁷⁶ It provides an extensive list of prohibited methods and acts. Among these are prohibitions on certain inducements to the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to the prospective insurance purchaser. The law also describes prohibited discrimination. There are also many exceptions to the prohibitions defined by law.

Among the exceptions is authorization for insurers and their agents to offer and make gifts of charitable contributions, merchandise, goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items up to \$100 per calendar year to an insured, prospective insured, or any person for the purpose of advertising.⁷⁷ There are several similar limitations on advertising gifts under the Florida Insurance Code related to the advertising practices of title insurance agents, agencies and insurers, public adjusters, group and individual health benefit plans, and motor vehicle service agreement companies.⁷⁸

Effect of the Bill

The bill adds another exception, authorizing an insurer to offer and give insureds goods or services for the purposes of loss control or loss mitigation related to covered risks.⁷⁹

Discounts for Purchase of Multiple Insurance Policies

Florida law allows an insurer to include a discount in the premium charged for any policy, contract, or certificate of insurance, because another policy, contract, or certificate of any type has been purchased by the insured from the same insurer or insurer group.⁸⁰ Additionally, the discount is allowed when an agent is servicing both an open-market policy for the insured and one issued by Citizens or an insurer that removed the policy from Citizens through the takeout process.⁸¹

Effect of the Bill

The bill expands this allowance of multiple policy discounts to also allow premium discounts for:

- An insured's purchase of policies from insurers operating under a joint marketing arrangement;

⁷⁵ Ch. 626, F.S., part IX.

⁷⁶ S. 626.9541, F.S.

⁷⁷ Rule 69B-186.010, F.A.C., Unlawful Inducements Related to Title Insurance Transactions, governs inducements related to title insurance, but exempts gifts within the value limitation of s. 626.9541(1)(m), F.S. However, federal law prohibits any fee, kickback or thing of value given for referral of real estate settlement services on mortgage loans related to federal programs. 12 U.S.C. §2607 (2017).

⁷⁸ Public adjusters, their apprentices, and anyone acting on behalf of the public adjuster are prohibited from giving gifts of merchandise valued in excess of \$25 as an inducement to contract. S. 626.854(10), F.S. A group or individual health benefit plan may provide merchandise without limitation in value as part of an advertisement for voluntary wellness or health improvement programs. S. 626.9541(4)(a), F.S. Motor vehicle service agreement companies are prohibited from giving gifts of merchandise in excess of \$25 to agreement holders, prospective agreement holders, or others for the purpose of advertising. S. 634.282(17), F.S.

⁷⁹ Loss control devices related to a covered risk could include things such as sensors that sound an alarm when the environment around high-value art exceeds set temperature or humidity levels or when a leak is detected. Loss mitigation services may include remediation of hazardous conditions or temporary secured storage.

⁸⁰ S. 627.0655, F.S.

⁸¹ Florida law provides two methods to depopulate Citizens policies: 1) insurers may "takeout" policies currently issued by Citizens through offers of coverage, and 2) insurance applicants may be prevented from being issued a new or renewal Citizens policy through a clearinghouse listing process. Ss. 627.351(6) and 627.3518, F.S.

- Where the same agent is servicing policies for an insured where one was obtained through the Citizens clearinghouse process; or
- The same agent is servicing policies the insured purchased from multiple insurers.

Proof of Mailing - Notice of Defense and Notice of Refusal to Defend by Insurers

A liability insurer may not deny coverage using a particular coverage defense unless certain conditions are met. Two such conditions are the mailing of a written reservation of the right to assert a coverage defense and the mailing of a written notice of the insurer's refusal to defend the insured, if either is applicable to the claim. Such mailings must be sent by registered or certified mail.

Effect of the Bill

The bill permits use of the Intelligent Mail barcode,⁸² or a similar method approved by the United States Postal Service, to establish proof that the liability insurer mailed the written notices, if either notice is required.

Secondary Notice Prior to Life Insurance Policy Lapse

Insurance coverage may lapse for non-payment of premium. The Florida Insurance Code provides a number of protections to insureds before a lapse in coverage can be enforced by the insurer through a cancellation or denial of coverage following expiration of a grace period. Generally, this occurs through a notice of lapse or notice of cancellation sent by the insurer to the insured. Cognitive impairment, loss of functional capacity, or extended convalescence can prevent individuals from receiving the notice or understanding that their insurance policy may lapse due to non-payment.

In the case of long-term care insurance, the insurer must allow a grace period of no less than 30 days and issue the notice of lapse to the insured and a second person, designated by the insured, at least 30 days before the effective date of the cancellation.⁸³ Additionally, the long-term care policy must be reinstated during a minimum five-month period following cancellation, in certain circumstances.⁸⁴

In the case of life insurance, the insured is entitled to a minimum 30-day grace period for non-payment.⁸⁵ A notice of lapse must be issued after expiration of the grace period and at least 21 days prior to the effective date of the lapse. If the policy provides a grace period greater than 51 days (the standard minimum 30-day grace period, plus the 21-day pre-lapse notice period), then the insurer must issue the notice of lapse at least 21 days prior to the expiration of the grace period.⁸⁶ In addition, the insured is entitled to name a second person to receive the notice of lapse on their behalf.

Effect of the Bill

The bill requires a life insurer to notify⁸⁷ the agent of the lapsing policy or provide⁸⁸ a copy of the notice of lapse to the agent servicing the policy, in addition to the insured and a second person designated by the insured, 21 days prior to the effective date of the lapse (i.e., cancellation of coverage). The insurer is not required to issue secondary notice to the agent servicing the life insurance policy, if:

- The insurer provides:
 - An online method for the agent to identify lapsing policies; or
 - A process for the agent to determine that the pre-lapse notice was sent to the insured;
- The insurer has no record of the agent servicing the policy; or
- The agent is employed by the insurer or its affiliate.

⁸² <https://postalpro.usps.com/> (last visited Apr. 1, 2019).

⁸³ S. 627.94073(1) and (2), F.S.

⁸⁴ S. 627.94073(3), F.S.

⁸⁵ S. 627.453, F.S.

⁸⁶ S. 627.4555, F.S.

⁸⁷ See Section III. C., Drafting Issues or other Comments, below.

⁸⁸ The insurer must provide the agent their copy of the pre-lapse notice by mail or electronically.

The agent's receipt of the notice required by the bill does not make the agent responsible for the lapse.

Property Insurance Claim Mediation

DFS administers alternative dispute resolution programs for various types of insurance. It has mediation programs for property insurance⁸⁹ and automobile insurance⁹⁰ claims and a neutral evaluation program, similar to mediation, for sinkhole insurance claims.⁹¹ DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.⁹²

For property insurance claims⁹³ involving personal lines and commercial residential claims, only the policyholder, as a first-party claimant, or the insurer may request mediation under DFS' program.⁹⁴ This means that third parties cannot utilize the program; however, an insurer may elect to mediate with the third party. This is true even if the policyholder assigns their policy benefit rights to the third party.⁹⁵ The insurer must notify the policyholder of the right to mediation under the program upon receipt of the claim. The mediation costs are generally the responsibility of the insurer.

Effect of the Bill

The bill allows the insurer to issue the required notice of the right to mediation at the time the insurer decides that a loss is covered and is issuing payment (which is an outcome the insured may disagree with) or, as currently provided, at the time a claim is filed (which is before the insurer has taken any action that the insured may disagree with).

Motor Vehicles – Prepayment of Premium on Initial Policy Purchase

Section 627.7295, F.S., relates to motor vehicle insurance contracts. Section 627.7295(7), F.S., provides that a policy⁹⁶ of private passenger motor vehicle insurance or a binder⁹⁷ for such a policy may be initially issued only if, before the effective date of such binder or policy, the insurer or agent has collected from the insured an amount equal to two months' premium. An insurer, agent, or premium finance company may not, directly or indirectly, take any action resulting in the insured having paid from the insured's own funds an amount less than the required two months' premium. This applies without regard to whether the premium is financed by a premium finance company or is paid pursuant to a periodic payment plan of an insurer or an insurance agent. The statute also provides various circumstances where this would not apply including policy renewal, coverage to active duty or former military personnel, and payments by automatic payroll deduction or electronic funds transfer.

Effect of the Bill

The bill reduces the required prepayment of policy premium when the policy is initially issued from two months' premium to one month's premium. The requirement that this prepayment come from the insured's own funds is conformed to this reduction of prepayment requirement.

⁸⁹ S. 627.7015, F.S.

⁹⁰ S. 626.745, F.S.

⁹¹ S. 627.7074, F.S.

⁹² Ss. 627.7015, 627.7074, and 627.745, F.S.

⁹³ An eligible claim is one that does not involve: suspected fraud; there is no coverage under the policy; one where the insurer reasonably believes the policyholder has made material misrepresentations relevant to the claim and request for payment has been denied for that reason; one for less than \$500 (unless agreed to by the parties); or, windstorm or hurricane loss if the required notice of claim was not issued in compliance with law. S. 627.7015(9), F.S.

⁹⁴ Policyholders may have the assistance of legal counsel during the mediation process. Litigants in the county and circuit court may be referred to the program. Commercial coverages, private passenger motor vehicle coverages, and liability coverages of property insurance policies are not eligible for the property insurance mediation program. S. 627.7015(1), F.S.

⁹⁵ S. 627.7015(1), F.S.

⁹⁶ Section 627.7295(1)(a), F.S., defines "policy" as a motor vehicle insurance policy that provides personal injury protection coverage, property damage liability coverage, or both.

⁹⁷ Section 627.7295(1)(b), F.S., defines "binder" as a binder that provides motor vehicle personal injury protection and property damage liability coverage.

B. SECTION DIRECTORY:

Section 1: Effective January 1, 2020, amends s. 215.555, F.S., relating to Florida Hurricane Catastrophe Fund.

Section 2: Amends s. 319.30, F.S., relating to definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.

Section 3: Amends s. 440.381, F.S., relating to application for coverage; reporting payroll; payroll audit procedures; penalties.

Section 4: Creating s. 624.1055, F.S., relating to right of contribution among liability insurers for defense costs.

Section 5: Amends s. 624.155, F.S., relating to civil remedy.

Section 6: Amends s. 624.4085, F.S., relating to risk-based capital requirements for insurers.

Section 7: Amends s. 626.914, F.S., relating to definitions.

Section 8: Amends s. 626.916, F.S., relating to eligibility for export.

Section 9: Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 10: Amends s. 627.0655, F.S., relating to policyholder loss or expense-related premium discounts.

Section 11: Amends s. 627.426, F.S., relating to claims administration.

Section 12: Amends s. 627.4555, F.S., relating to secondary notice.

Section 13: Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 14: Amends s. 627.7295, F.S., relating to motor vehicle insurance contracts.

Section 15: Providing construction related to section 4 of the bill.

Section 16: Provides an effective date, except as otherwise expressly provided, of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Subject to the FHCF's claims-paying capacity, expenditures for FHCF reimbursable loss adjustment expenses will double. Loss adjustment expense reimbursement is paid at the rate of 5 percent of reimbursable losses; the bill doubles the rate to 10 percent, subject to the FHCF's reimbursement capacity.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Florida Hurricane Catastrophe Fund – increasing reimbursement of loss adjustment expenses may reduce the impact of losses on participating insurers. If an insurer's loss adjustment expenses are less than 10 percent of reimbursed losses, they may recover more than necessary to cover their expenses.

Motor Vehicle Salvage – increasing opportunities to handle salvage related transactions electronically may reduce costs for the private sector.

Applications for Insurance – removing the notarization requirement for sworn statements on applications for workers' compensation insurance may reduce application costs.

Civil Remedies Against Insurers – Preventing an insured from filing the civil remedy notice within 60 days after appraisal is invoked may reduce insurance costs, and therefore rates, because punitive damages would be available in fewer instances.

Surplus Lines Export Eligibility – Reducing the number of coverage rejections required prior to exportation of a residential dwelling valued between \$700,000 and \$1 million to the surplus lines market may remove some of these risks from the admitted market in the state. Owners in this home value range may find it easier to obtain coverage at a price acceptable to them. In Miami-Dade and Monroe counties, this will allow easier access to the surplus lines market for more homeowners, which should help reduce Citizens' policy count. Outside of Miami-Dade and Monroe counties, this will provide easier access to the surplus lines for higher-valued homes that may have special coverage needs (and are ineligible for Citizens coverage).

Agent Fees – Removing the cap on surplus lines agent's reasonable per-policy fees and allowing the retail agent to charge a reasonable per-policy fee may increase costs to consumers.

Unfair Insurance Trade Practices – Allowing the gifting of loss control devices and loss mitigation services may reduce losses, and therefore rates.

Discounts for Purchase of Multiple Insurance Policies – Expanding opportunities for multiple policy discounts may reduce insurance costs for consumers purchasing multiple policies through a single agent who represents multiple insurers.

Secondary Notice Prior to Life Insurance Policy Lapse – Requiring a secondary notice of lapse of life insurance coverage to the agent may keep coverage in force, thus keeping premium in the market and avoiding inadvertent loss of coverage and benefits by the insured and beneficiaries. Implementing the additional secondary notice may increase administrative costs of life insurers.

Prepayment of Motor Vehicle Insurance Premium – Reducing the amount of premium required to be prepaid at initial policy inception will reduce the initial cost of the policy to the consumer, but overall premium cost over the term of the policy will be unaffected.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2019, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The following changes were made to the bill:

- **Deletions**

The bill no longer:

- Authorizes the Florida Workers' Compensation Joint Underwriting Association, Inc., to retain unclaimed dividends and premium refunds instead of continuing to report them to the Department of Financial Services, Division of Unclaimed Property;
- Reduces the Citizens Property Insurance Corporation premium increase glide path in Monroe County from 10 percent to 5 percent;
- Prohibits application of a contingency risk multiplier for attorney fees allowed under the Florida Insurance Code for life insurance policies and annuity contracts;
- Clarifies application of the deductible to Personal Injury Protection insurance medical reimbursements.

- **Revisions**

- Unfair Insurance Trade Practices – the bill clarifies the sponsor's intent by replacing the term "offerings" with the term "merchandise, goods, wares, or other items of value;"
- Discounts for Purchase of Multiple Insurance Policies – as filed, the bill proposed to broaden the authority of insurers to offer multiple policy premium discounts to allow such discounts whenever an insured purchases multiple policies, rather than only in the specific circumstances provided under current law. As revised, the bill expands the list of specific circumstances where such discounts may be offered to authorize such discounts: 1) for an insured's purchase of policies from insurers operating under a joint marketing arrangement, 2) where the same agent is servicing policies for an insured where one was obtained through the Citizens clearinghouse process, or 3) if the same agent is servicing policies the insured purchased from multiple insurers;
- Secondary Notice Prior to Life Insurance Policy Lapse – the bill clarifies the process the insurer must follow when issuing a pre-lapse notice to the agent on the policy and specifies the circumstances when an insurer is not required to provide the required pre-lapse notice to the agent on the policy.

On March 13, 2019, the Civil Justice & Claims Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The following changes were made to the bill:

- Removed a provision tolling the 60-day period before an insured may bring a civil action against an insurer.

- Removed a provision authorizing the Department of Financial Services to return a civil remedy notice for lack of specificity.
- Prohibited an insured from filing the civil remedy notice within 60 days after appraisal is invoked.

On March 28, 2019, the Commerce Committee considered the bill, adopted four amendments, and reported the bill favorably as a committee substitute. The following changes were made to the bill:

- Creates an additional exception to the proposed additional secondary prelapse notice if the life agent servicing the policy is able to independently determine that the insurer has sent the insured the required prelapse notice. This avoids unintended impacts on insurers.
- Allows an insurer to surrender the title of a motor vehicle that was a total loss electronically, by U.S. Mail, or through another commercial delivery service. Current law does not specify how the titles must be surrendered.
- Permits certain requirements related to obtaining a salvage certificate of title or certification of destruction to go into effect upon completion of the Motorist Modernization Project by the DHSMV or on July 1, 2023, whichever is earlier and provides that an affidavit required by current law may be signed electronically, if done in compliance with Florida's electronic signature statute.
- Specifies that the required sworn statements on workers' compensation insurance applications do not have to be notarized.
- Resolves a negative accreditation audit finding by the National Association of Insurance Commissioners (NAIC). It changes the method of determining risk-based capital for multi-state health maintenance organizations and multi-state prepaid limited health service organizations from the method for life and health insurers to the method for property and casualty insurers. This makes the statute consistent with the NAIC accreditation standard on this point.
- Conforms the bill to the portion of CS/HB 387, which passed the House on March 27, 2019, that removes the \$35 cap on the reasonable per-policy fee available to surplus lines agents. It also allows retail agents to receive a reasonable per-policy fee, which must be itemized to the customer prior to the insurance purchase.
- In addition to registered or certified mail, authorizes liability insurers to use U.S. postal proof of mailing, a mailing using the Intelligent Mail barcode, or similar method approved by the U.S. Postal Service when issuing a required notice of coverage defense or notice of refusal to defend, which are sent to named insureds.
- Reduces the minimum amount of premium that must be collected for motor vehicle insurance at the initial issuance of a policy from two month's premium to one month's premium.
- Provides that, if more than one liability insurer, including surplus lines insurers, have a duty to defend an insured, the insurer(s) that does defend the insured is entitled to contribution from the insurer(s) that does not defend the insured for defense costs; to have the court allocate such costs; and for the court to order the insurer(s) that did not defend the insured to pay their share of defense costs from the date they received the notice of claim. This applies to civil claims initiated on or after January 1, 2020. It does not apply to motor vehicle insurance or medical professional liability insurance.
- Effective January 1, 2020, changes to amount of loss adjustment expenses that may be recovered from the Florida Hurricane Catastrophe Fund from 5 percent of reimbursed losses to 10 percent.

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