The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 714
INTRODUCER:	Banking and Insurance Committee and Senator Brandes
SUBJECT:	Insurance
DATE:	March 13, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 714 makes changes to a number of insurance related issues. The bill:

- Allows the Office of Insurance Regulation (OIR) to establish a uniform loss adjustment expense percentage to be used in calculating the amount the Florida Hurricane Catastrophe Fund (FHCF) reimburses insurers for their loss adjustment expenses related to claims paid by the FHCF. The reimbursement amount may not exceed 15 percent of losses reimbursed by the FHCF.
- Prohibits a pre-suit notice for a bad faith action under s. 624.155, F.S., from being filed during the first 60 days of the appraisal process outlined in the insurance contract.
- Deletes a provision allowing the Department of Financial Services (DFS) to return a pre-suit notice for a bad faith action under s. 624.155, F.S., if the notice lacks specific, required information.
- Provides that workers compensation insurance applicants and their agents are no longer required to have their sworn statements notarized as currently required by OIR rule.
- Allows 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. Currently it is an unfair insurance trade practice to provide items or services to an insured valued at more than $100 per year.
- Allows a property, casualty, or surety insurer to offer multiple policy discounts based on the fact that another policy has been purchased from another insurer under a joint marketing arrangement or an insurer that issued the policy pursuant to the Citizens clearinghouse program.

- Requires a life insurer to provide a notice of lapse to the agent servicing a life insurance policy 21 days prior to the effective date of the lapse unless the insurer provides an online method for the agent to identify lapsing policies, the insurer has no record of the agent servicing the policy, or the agent is employed by the insurer or its affiliate.
- Allows the insurer to issue the required right to mediation notice at the time the insurer applies coverage and determines payment or at the time a claim is filed.

The effective date of the bill is July 1, 2019.

II. Present Situation:

The Florida Hurricane Catastrophe Fund (FHCF)

The FHCF is a tax-exempt[1] fund created in 1993[2] after Hurricane Andrew[3] as a form of mandatory reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration (SBA)[4] and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent)[5] of hurricane losses above the insurer's retention (deductible). The FHCF provides insurers an additional source of reinsurance that is less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers.

FHCF Mandatory Coverage

All insurers admitted to do business in this state writing residential property insurance that includes wind coverage must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF is authorized by statute to sell $17 billion of mandatory layer coverage.[6] Each insurer that purchases coverage may receive up to its proportional share of the $17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. Each insurer may select a reimbursement contract wherein the FHCF promises to reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 5 percent[7] of loss adjustment expenses.[8]

FHCF Premiums

The FHCF must charge insurers the actuarially indicated premium[9] for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on

[1] s. 215.555(1)(f), F.S.
[2] ch. 93-409, L.O.F.
[3] https://www.nhc.noaa.gov/1992andrew.html (last viewed March 11, 2019).
[4] https://www.sbafla.com/fsb/ (last viewed March 11, 2019).
[5] s. 215.555(2)(e), F.S.
[6] s. 215.555(4)(c)1., F.S.
[7] s. 215.555(4)(b), F.S.
[8] Loss adjustment expenses are costs incurred by insurers when investigating, adjusting and processing a claim.
[9] s. 215.555(2)(a), F.S.

Hurricane Loss Projection Methodology.[10] The actuarially indicated premium is an amount that is adequate to pay current and future obligations and expenses of the fund. In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. The cost of FHCF coverage is generally lower than the cost of private reinsurance because the fund is a tax-exempt non-profit corporation and does not charge a risk load as it relates to overhead and operating expenses incurred by other private insurers.[11]

FHCF Bonding and Assessment Authority

When the moneys in the FHCF are or will be insufficient to cover losses, the law[12] authorizes the FHCF to issue revenue bonds funded by emergency assessments on all lines of insurance except medical malpractice and workers compensation.[13] Emergency assessments may be levied up to 6 percent of premium for losses attributable to any one contract year, and up to 10 percent of premium for aggregate losses from multiple years. The FHCF's broad-based assessment authority is one of the reasons the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.[14]

Workers Compensation Insurance Sworn Statements

Employers who file applications for workers compensation insurance coverage are required to file in a form prescribed by the Financial Services Commission. 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. Submission of an application that 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.[15] 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

[10] https://www.sbafla.com/method/ (last viewed March 11, 2019).
[11] https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943 (last viewed March 11, 2019).
[12] s. 215.555(6), F.S.
[13] s. 215.555(6)(b), F.S.
[14] The U.S. Internal Revenue Service has, by a Private Letter Ruling, authorized the FHCF to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, for 5 years until June 30, 2003. On May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that the prior exemption, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis (on file with the Committee on Banking and Insurance).
[15] Such a felony is punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

attesting that the agent explained to the employer or officer the classification codes that are used for premium calculations.

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.

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 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 insurance[16] covers suits against the insured for damages such as injury or death to another driver or 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.[17] The duty to indemnify refers to the insurer's obligation to issue payment to the insured or a beneficiary on a valid claim.[18] 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.[19]

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.[20] 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.[21] As part of the contract, the insured surrenders to the insurer all control over the negotiations and decision making as to third-party claims.[22] The insured's role is relegated to the obligation to cooperate with the insurer's efforts to adjust the loss.[23] The insurer

[16] 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. Sections 324.022 and 627.733, F.S.

[17] 16 Williston on Contracts s. 49:105 (4th ed.).

[18] *Id.*

[19] *Id.*

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

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

[22] *Id.*

[23] *Id.*

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.[24] 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.[25] 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.[26] 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"[27] if a third party obtains a judgment against the insured in excess of his or her insurance coverage.[28] 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,[29] or it can be brought by the third party directly or through an assignment of the insured's rights.[30]

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,"[31] the same as the common law standard.[32] Section 624.155, F.S., codifies third-party claims for "bad faith," but does not preempt the common law remedy.[33]

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.[34] At common law, first-party insurance policies were enforced solely through traditional contract remedies.[35]

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

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[24] *State Farm v. Laforet*, 658 So.2d 55, 58 (Fla. 1995).
[25] *Baxter v. Royal Indem. Co*., 285 So.2d 652, 655 (Fla. 1st DCA 1973), *cert. discharged*, 317 So.2d 725 (Fla. 1975).
[26] *Id*.
[27] Liles, *supra* note 6.
[28] *Opperman v. Nationwide Mut. Fire Ins. Co.*, 515 So.2d 263, 265 (Fla. 5th DCA 1987).
[29] *See Powell v. Prudential Prop. and Cas. Ins. Co.*, 584 So.2d 12 (Fla. 3d DCA 1991).
[30] *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).
[31] Section 624.155(1)(b), F.S.
[32] Fla. Standard Jury Instr. 404.4 (Civil).
[33] Section 624.155(8), F.S.
[34] *Id.*
[35] *Id.*

contractual benefits or the insured prevails in the appraisal process and coverage is otherwise established by acceptance or court decision.[36] 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 60 days' written notice of the alleged violation.[37] The insurer has 60 days after the required notice is filed to pay the damages or correct the circumstances giving rise to the violation.[38] Because first-party claims are only statutory, that cause of action does not exist until the 60-day cure period provided in the statute expires without payment by the insurer.[39] However, because third-party claims exist both in statute and at common law, the insurer cannot guarantee avoidance of a third-party bad faith claim by curing within the statutory period.[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]

Property Insurance Appraisers and Umpires

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

[36] *Cammarata v. State Farm Florida Ins. Co.*, 152 So.3d 606 (Fla. 4th DCA 2014).
[37] Section 624.155(3)(a), F.S.
[38] Section 624.155(3)(d), F.S.
[39] *Talat Enterprises, Inc. v. Aetna Cas. & Sur. Co.*, 753 So.2d 1278, 1284 (Fla. 2000).
[40] *Macola v. Gov. Employees Ins. Co.*, 953 So.2d 451, 458 (Fla. 2007) (holding that an insurer's tender of the policy limits to an insured in response to the filing of a civil remedy notice, after the initiation of a lawsuit against the insured but before entry of an excess judgment, does not preclude a common law cause of action against the insurer for third-party bad faith).
[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.
[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.

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

[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).

claim. The trial court granted the insurer summary judgment, relying on *Lime Bay* and the breach of contract requirement. The *Cammarata* case was appealed to the 4th DCA.

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.

Unfair Insurance Trade Practices

The Unfair Insurance Trade Practices Act,[51] among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.[52] 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.[53] 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.[54]

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.[55] Additionally, the discount is allowed when an agent is servicing both an open-market policy for the insured and

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[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* at 613.
[51] Ch. 626, F.S., part IX.
[52] Section 626.9541, F.S.
[53] 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. s. 2607 (2017).
[54] 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. Section 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. Section 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. Section 634.282(17), F.S.
[55] Section 627.0655, F.S.

one issued by Citizens or an insurer that removed the policy from Citizens through the takeout process.[56]

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.[57] Additionally, the long term care policy must be reinstated during a minimum 5-month period following cancellation, in certain circumstances.[58]

In the case of life insurance, the insured is entitled to a minimum 30-day grace period for non-payment.[59] 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.[60] In addition, the insured is entitled to name a second person to receive the notice of lapse on their behalf.

Property Insurance Claim Mediation

The Department of Financial Services (DFS) administers alternative dispute resolution programs for various types of insurance. DFS has mediation programs for property insurance[61] and automobile insurance[62] claims. DFS has a neutral evaluation program, similar to mediation, for sinkhole insurance claims.[63] DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.[64]

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[56] 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 Citizens policy if an insurer offers the applicant coverage for no more than 15 percent more than the Citizens’ premium through a clearinghouse listing process prior to being issued a Citizens policy. Sections 627.351(6) and 627.3518, F.S.
[57] Section 627.94073(1) and (2), F.S.
[58] Section 627.94073(3), F.S.
[59] Section 627.453, F.S.
[60] Section 627.4555, F.S.
[61] Section 627.7015, F.S.
[62] Section 626.745, F.S.
[63] Section 627.7074, F.S.
[64] Sections 627.7015, 627.7074, and 627.745, F.S.

For property insurance claims[65] involving personal lines and commercial residential claims, only the policyholder, as a first-party claimant, or the insurer may request mediation under DFS' program.[66] 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.[67] 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.

III. Effect of Proposed Changes:

Section 1. Names the act "Omnibus Prime."

The Florida Hurricane Catastrophe Fund

Section 2. Amends s. 215.555, F.S., to provide that the loss adjustment expenses paid by the Florida Hurricane Catastrophe Fund are to be the lesser of 15 percent of the insurer's reimbursed losses or the uniform loss adjustment expense percentage of the insurer's reimbursed losses adopted by rule by the Financial Services Commission.

This section is effective January 1, 2020.

Section 3. Creates s. 215.55953, F.S., to require the Financial Services Commission (FSC) to establish by rule a uniform loss adjustment expense reimbursement percentage for the reasonable reimbursement by the FHCF of loss adjustment expenses (LAE) incurred by insurers in adjusting losses for policies covered by the FHCF. The uniform loss adjustment expense reimbursement percentage is to be adopted by rule by December 1, 2019; for future contract years, however, the percentage can be changed by recommendation of the OIR by March 1 of the calendar year following a covered event. When determining the percentage the FSC is to take into account:

- The total losses and loss adjustment expenses that have been incurred by authorized insurers related to losses caused by covered events.
- The actual claims paying capacity of the Florida Hurricane Catastrophe Fund.
- Other information the commission finds is relevant to determining the reasonable loss expenses incurred in adjusting losses reimbursable by the Florida Hurricane Catastrophe Fund.

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[65] 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. Section 627.7015(9), F.S.

[66] 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. Section 627.7015(1), F.S.

[67] Section 627.7015(1), F.S.

Workers Compensation Sworn Statements

Section 4. Amends s. 440.381, F.S., to provide that workers' compensation insurance applicants and their agents are no longer required to have their sworn statements notarized as currently required by 69O-189.003, F.A.C.

Civil Remedies Against Insurers

Section 5. Amends s. 624.155, F.S., to prohibit the filing of a civil remedy notice for a bad faith action under s. 624.155, F.S., during the first 60 days of the appraisal process outlined in the insurance contract. The bill also repeals current law that allows the Department of Financial Services to return a civil remedy notice for lack of specificity.

Unfair Insurance Trade Practices

Section 6. Amends s. 626.9541(5), F.S., to allow insurers to offer and give insureds goods or services of any value for the purposes of loss control or loss mitigation related to covered risks. Currently it is an unfair insurance trade practice to provide items or services to an insured valued at more than $100 per year.

Discounts for Purchase of Multiple Insurance Policies

Section 7. Amends s. 627.0655, F.S., to allow an insurer to offer multiple policy discounts on property, casualty, and surety insurance based on the fact that another policy has been purchased from another insurer under a joint marketing arrangement or an insurer that issued the policy pursuant to the Citizens clearinghouse program.

Secondary Notice Prior to Life Insurance Policy Lapse

Section 8. Amends s. 627.4555, F.S., to require a life insurer to provide a notice of lapse to the agent servicing a life insurance policy 21 days prior to the effective date of the lapse. The insurer is not required to issue secondary notice to the agent servicing the life insurance policy, if: 1) the insurer provides an online method for the agent to identify lapsing policies, 2) the insurer has no record of the agent servicing the policy, or 3) the agent is employed by the insurer or its affiliate. Receipt of the notice does not make the agent responsible for any lapse.

Property Insurance Claim Mediation

Section 9. Amends s. 627.7015, F.S., to allow the insurer to, at the time the insurer applies coverage and determines payment or, as currently provided, at the time a claim is filed, provide notice to the policyholder of the policyholder's right to participate in the mediation program for disputed property insurance claims.

Effective Date

Section 10. Except as otherwise expressly provided, the effective date of the bill is July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Increasing the amount of reimbursement for LAE from the Florida Hurricane Catastrophe Fund should have a positive impact for insurers as some insurers obtain private market reinsurance to cover LAE expenses that often costs more than FCHF premiums. Increasing the amount of loss adjustment expenses covered by the Florida Hurricane Catastrophe Fund, however, could result in drawing down the fund quicker, and increasing the risk of assessments being needed. If assessments are needed they would be levied to all lines of insurance excluding medical malpractice and workers compensation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 6 regarding notice for mediation does not appear to require the notice to be sent when a claim is denied. Mediation is available for most reasons for denial; some of the exceptions are suspected fraud, no coverage under the policy, or material misrepresentation by the policyholder.[68]

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[68] s. 627.7015(9), F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.155, 626.9541, 627.0655, 627.4555, and 627.7015.

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 Banking and Insurance on March 11, 2019:
The CS:
- Revises the reimbursement that insurers receive from the FHCF for loss adjustment expenses from 5 percent of losses to the lesser of15 percent of losses or the uniform loss adjustment percentage established by rule.
- Deletes a requirement that workers compensation insurance applicants and their agents must have their sworn statements notarized.
- Prohibits filing during the first 60 days of the appraisal process outlined in the insurance contract a civil remedy notice for a bad faith action under s. 624.155, F.S.
- Repeals current law that allows the Department of Financial Services to return for lack of specificity a civil remedy notice.

B. Amendments:

None.