

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 Infrastructure and Security

BILL: CS/CS/SB 1606

INTRODUCER: Infrastructure and Security Committee, Banking and Insurance Committee, and Senator Perry

SUBJECT: Insurance Administration

DATE: February 19, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1606:

- Requires that an electronic signature used to satisfy the signature requirement for a salvage certificate of title must be executed using a system providing a Level 2 authentication level ;
- Requires insurers to file with the Department of Financial Services (DFS or department) the name and email address of the person who will receive civil remedy notices;
- Amends the civil remedy notices statute of limitations when an appraisal is invoked from 60 days after it is invoked instead of 65 days after mailing of notice;
- Prohibits the Office of Insurance Regulation (OIR) from disseminating aggregated information if it contains trade secret information that can be individually extrapolated;
- Provides that when the OIR period for reviewing specified rates and forms end on a weekend or holiday, the period is extended until the conclusion of the next business day;
- Clarifies that the maximum amount that a condominium unit owner's assessment insurance coverage may be assessed is the loss assessment coverage limit in effect one day before the date of the occurrence that gave rise to the loss;
- Allows insurers to cancel auto policies for non-payment after 30 days, instead of the current 60 days;
- Allows for an electronic method of workers compensation payments to be used; and
- Establishes a new chapter of Florida Statutes regulating travel insurance based on the National Association of Insurance Commissioners (NAIC) Model Act.

The bill takes effect July 1, 2020.

II. Present Situation:

The Present Situation of each portion of the bill is included in the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Electronic Signature Requirement for a Motor Vehicle Salvage Certificate of Title (Section 1) *Present Situation*

The owner of a motor vehicle or mobile home that is considered to be salvage¹ is required to forward the title of 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.² 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,³ and, within 72 hours after receiving such certificate of title, forward such title to DHSMV for processing. The certificates of title may be forwarded to DHSMV via electronic means, the United States Postal Service, or other commercial delivery service (e.g., FedEx or UPS). 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, 2020:

- 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

¹ “Salvage” is defined as a motor vehicle or mobile home that 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.

² S. 319.30(3)(b), F.S.

³ 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 Dec. 18, 2019).

- Provided an affidavit⁴ on letterhead signed by the insurance company or its authorized agent stating the attempts⁵ that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail.⁶

The “Electronic Signature Act of 1996”⁷ provides that unless otherwise provided by law, an electronic signature⁸ may be used to sign a writing and has the same force and effect as a written signature.

In 2019, the Legislature passed HB 301, related to Insurance.⁹ Among other things, the bill addressed the use of electronic signatures for automotive title transactions. It authorized an electronic signature consistent with ch. 668, F.S., relating to electronic commerce, to be used to satisfy any signature requirement related to the issuance of a salvage certificate of title or certificate of destruction when this new process becomes effective. However, it required an electronic signature on an odometer disclosure to meet specific security requirements.

For an odometer disclosure related to a certificate of destruction, the electronic signature must meet or exceed Level 2 requirements for Identity Assurance Level, Authenticator Assurance Level, and Federation Assurance Level, as described in the National Institute of Standards and Technology Special Publication 800-63-3, as of December 1, 2017. For a salvage certificate of title, the electronic signature must meet or exceed Level 3 requirements of this standard. While there are several differences between Level 2 and Level 3 requirements that affect the relative security of the electronic signature, one difference limits the use of electronic signatures when executing electronic signatures for odometer disclosures related to salvage certificates of title. Level 3 requires in-person identity proofing, while Level 2 allows remote or in-person identity proofing.

The security levels were chosen based on ongoing federal rule development that governs odometer disclosures. The draft federal regulations included the use of Level 2 requirements in certain instances and Level 3 requirements in others. HB 301 mirrored this structure; however, the final federal regulation was published with an unexpected change after the passage of HB 301. Only Level 2 requirements were implemented. So, the Level 3 requirement of s. 319.30(3)(d), F.S., applicable to odometer disclosures for obtaining salvage certificates of title exceed the federal standard.¹⁰

⁴ 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.

⁵ 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.

⁶ 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.

⁷ Ch. 668, part I, F.S.

⁸ 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.

⁹ Ch. 2019-108. Laws of Fla.

¹⁰ 84 Fed. Reg. 52664, at 52665 (Oct. 2, 2019).

Effect of Proposed Changes

Section 1 amends s. 319.30, F.S., to allow electronic signatures on odometer disclosures related to salvage certificates of title to use Level 2 security requirements, consistent with the applicable federal standard. This applies the same security requirements to electronic signatures on odometer disclosures for both certificates of destruction and salvage certificates of title and allows certificate applicants to electronically sign odometer disclosures remotely in both instances, rather than remotely when applying for a certificate of destruction, but in-person only for salvage certificates of title.

*Workers Compensation Insurance Reporting Requirements (Sections 2 and 3)**Present Situation*

When a compensable work-related injury occurs, the employer and their insurance carrier may be liable for payment of lost wages to the injured worker. Payment for lost wages is interchangeably referred to as indemnity benefits or compensation. Currently, indemnity benefits, including penalties associated with incorrect or untimely payment of indemnity, may be paid to the injured worker by check or, upon authorization of the injured worker, deposited into a financial institution or to a prepaid card.^{11,12} Carriers are required to keep records of all payments made, and the DFS audits employers and carriers for appropriate payment of indemnity benefits.

Effect of Proposed Changes

Sections 2 and 3 amends ss. 440.12 and 440.20, F.S., to allow employers and their carriers, upon authorization of the injured worker, to pay indemnity benefits, including associated monetary penalties, by sending money electronically to the injured worker via their account with a money transmitter. Indemnity and penalties paid via money transmitter accounts is considered paid on the date the funds become available to the injured worker for withdrawal.

The money transmitter must be licensed under ch. 560, part II, F.S. A money transmitter is a type of money services business licensed and regulated by the Florida Office of Financial Regulation (OFR).¹³

¹¹ S. 440.12(1)(a), F.S. For the purposes of workers' compensation indemnity payments, "financial institution" means a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

¹² Pursuant to s. 440.12(1)(b), F.S., a carrier may use a prepaid card to deliver the payment of compensation to an employee if the employee is: 1. provided with at least one means of accessing his or her entire compensation payment once per week without incurring fees; 2. provided with the ability to make point-of-sale purchases without incurring fees from the financial institution issuing the prepaid card; and 3. provided with the terms and conditions of the prepaid card program, including a description of any fees that may be assessed. The obligation to pay indemnity benefits is satisfied when it is directly deposited compensation onto the prepaid card; further, it is considered paid on the date the funds become available for withdrawal by the injured worker. S. 440.20(1)(a), F.S.

¹³ A money services business must have a net worth of \$100,000. If the licensee is operating in more than one location, the net worth requirement is increased by \$10,000, per location, up to a maximum of \$2,000,000. Licensees are required to obtain annual financial reports for submission to OFR. Additionally, prior to licensing, a licensee must provide a surety bond to OFR in amount between \$50,000 and \$2,000,000, as specified in rule. In the alternative, the licensee may deposit cash, securities, or alternative security devices as provided by rule with a federally insured financial institution that are pledged to OFR. The surety bond or collateral deposit must remain in place for five years after the licensee ceases business operations in this state. S. 560.209, F.S. Currently, a money transmitter must calculate their surety bond or collateral deposit based on the number of active branches operated and combined monetary value of the volume of money transmission and payment instruments sold. If the money services business operates 250 or more branches, the required bond is at least

Civil Remedy Notices (Sections 4 and 7)

Present Situation

Pre-Suit Notice and Tolling of the Statute of Limitation Following Issuance of Pre-Suit Notice
 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,"¹⁴ the same as the common law standard.¹⁵ In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer and DFS 60 days' written notice of the alleged violation.¹⁶ The 60-day period begins on the date the notice is filed. While the notice is required to be provided to both DFS and the insurer,¹⁷ the statute is silent on what constitutes filing and whether the filing date is the date the notice is received by DFS or the date it was received by the insurer.¹⁸

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.¹⁹

The statute of limitation for the filing of a lawsuit under s. 624.155, F.S., is tolled for 65 days following the issuance of the notice described above. This extends the claimant's right to sue the insurer until after the conclusion of the 60-day period following the notice within which the insurer may respond to the notice by addressing the alleged violation.

In 2019, the Legislature revised s. 624.155, F.S., to prohibit the issuance of the notice when the insurer invokes the appraisal process. However, the appraisal process, which can be invoked for the first time following receipt of the pre-suit notice,²⁰ is unlikely to be completed within the 60-

\$2,000,000. If they are operating fewer than 250 branches, then the bond is equal to two percent of the combined value of the previous year's money transmissions and payment instruments sold, rounded up to the next \$50,000 increment. Form OFR-560-07 (eff. Oct. 18, 2009), R. 69V-560.1012, F.A.C. License applicant's surety bonds are determined based on the monetary value of projected first-year business. Form OFR-560-01 (eff. Jan. 2, 2014), R. 69V-560.1012, F.A.C. Bonds are then adjusted annually based on actual operations.

¹⁴ S. 624.155(1)(b), F.S.

¹⁵ Fla. Standard Jury Instr. 404.4 (Civil).

¹⁶ S. 624.155(3)(a), F.S.

¹⁷ Filing of the notice with the correct insurer has been held to be a condition precedent to maintaining a bad faith suit against the insurer. *Lopez v. GEICO Casualty Co.*, 968 F.Supp. 2d 1202, at 1209 (S.D. Fla. 2013). In *Lopez*, the plaintiff filed the notice with Government Employees Insurance Company, a similarly named sister company instead of the actual insurer, GEICO Casualty Company. Because the statute of limitation had run out following the flawed delivery of the notice, the *Lopez* case was dismissed with prejudice.

¹⁸ Filing of the notice with DFS has been held to establish the date that starts the 60-day cure period. *Harper v. GEICO Gen. Ins. Co.*, 272 So. 3d 448 (Fla. 2nd DCA 2019). In *Harper*, the plaintiff filed the notice with DFS electronically on Dec. 19, 2013, and mailed the notice to GEICO with it being received by GEICO on Dec. 26, 2013. When GEICO later paid the claim on Feb. 21, 2014, the payment was 65 days from the date DFS received the notice, but 57 days from the date GEICO received the notice. The trial court held that GEICO paid the claim within the 60-day cure period. On appeal, the Second DCA held that the 60-day cure period ran from the date DFS received the notice. The result allowed the plaintiff to pursue a bad faith claim against GEICO for untimely payment of the claim.

¹⁹ S. 624.155(3)(b), F.S.

²⁰ Invoking the appraisal process along with timely payment, if required, can be used by the insurer to cure its claims handling violations and prevent a bad faith claim. See *Effect of the Bill*, p. 5.

day cure period or the 65-day tolling of the applicable statute of limitations. If the appraisal process extends beyond the date the statute of limitation expires following the current tolling period, then the right to sue the insurer in civil court is lost.

Property Appraisal Process

Insurance companies often include an appraisal clause in property insurance policies.²¹ 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.²²

Effect of Proposed Changes

Sections 4 and 7 amends ss. 624.155 and 624.422, F.S., to require the notice to the authorized insurer must be provided by the DFS to the e-mail address designated by the insurer.

The bill adds an additional tolling period to s. 624.155, F.S. It tolls the statute of limitation for 60 days following the date appraisal is invoked in a residential property insurance claim. In combination it also changes the current 65-day tolling period resulting from the filing of the notice, to a 60-day period after the insurer receives notice from the DFS. The statute of limitation could be tolled for up to 120 days to allow the insurer the 60-day cure period and also allow the parties to pursue the appraisal process prior to expiration of the statute of limitation.

Additionally, the bill clarifies that the 60-day cure period runs from the date the insurer receives the notice, rather than following "filing," which is not defined.

²¹ *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.

²² See s. 627.70151, F.S.

Trade Secret Information (Sections 5 and 6)

Present Situation

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution.²³ The general law must state with specificity the public necessity justifying the exemption²⁴ and must be no more broad than necessary to accomplish its purpose.²⁵

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act²⁶ (Act) provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In the same manner as the Florida Constitution requires a statement of public necessity and limits the breadth of a public records exemption, an exemption under the Act may be no more broad than necessary to meet one of the following purposes:²⁷

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.²⁸ Specified questions must be considered by the Legislature during the review process.²⁹

Trade Secrets

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt³⁰ from public record requirements. Some exemptions only protect trade

²³ FLA. CONST. art. I, s. 24(c).

²⁴ This portion of a public record exemption is commonly referred to as a "public necessity statement."

²⁵ FLA. CONST. art. I, s. 24(c).

²⁶ S. 119.15, F.S.

²⁷ S. 119.15(6)(b), F.S.

²⁸ S. 119.15(3), F.S.

²⁹ Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

³⁰ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See*

secrets, while others protect “proprietary business information” and define that term to specifically include trade secrets. Generally, trade secret³¹ information received by the OIR or DFS is not protected as confidential and exempt public record information,³² but the insurer is given the opportunity to receive notice of a public records request and a period of time to respond so that the insurer can move to protect the trade secret through an action in circuit court, if they so desire.³³ When an insurer submits trade secret information under the Florida Insurance Code³⁴ or OIR rules, the insurer may file a Notice of Trade Secret and mark and segregate the trade secret information provided to OIR.³⁵ This protection relates to public records requests from the public that would result in the publication of materials covered under a Notice of Trade Secret. It does not expressly extend to publication of aggregate information such as OIR’s Annual Report or other OIR or DFS publications or reports that are not done in response to a public records request.

Effect of Proposed Changes

Sections 5 and 6 amends ss. 624.307 and 624.315, F.S., to limit the release of aggregate information by OIR and DFS if protected trade secret information can be extrapolated from the aggregate information that OIR or DFS would otherwise release. This could occur where aggregate information is reported on a line of insurance in which a small number of companies participate such that one or more of the participating companies could back-out their own data from the reported aggregate information and discern the trade secret information of their competitor. The bill does not create a new public records exception, rather, it limits what OIR and DFS may do with public record information that is protected as a trade secret, but is not confidential and exempt public record information.

Extension of Deadlines in Insurance Rate and Form Filing (Sections 9 through 11)

Present Situation

Florida law provides certain requirements regarding OIR’s review and approval of property and casualty insurance rate and form filings, including timeframes within which OIR must review these filings.³⁶ However, the law is silent on the applicable deadline should the closure of the review period fall on a weekend or a holiday.

WFTV, Inc. v. The School Board of Seminole, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

³¹ “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

S. 626.002(4), F.S.

³² Trade secret information contained in an insurance administrator’s records that is obtained by OIR is confidential and exempt. S. 626.884(2), F.S.,

³³ S. 624.4213(2), F.S.

³⁴ The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

³⁵ S. 624.4213(1), F.S.

³⁶ S. 627.062, F.S. (which controls rating requirements for property and casualty insurance in general), s. 627.0651, F.S. (which controls rating requirements for motor vehicle insurance), and s. 627.410 (which controls form filings in general). While the statutes differentiate between issuance of a notice of intent to approve or disapprove a property and casualty rate filing, other than a motor vehicle rate filing, and simply approving or disapproving a motor vehicle rate filing following review, the practical effect of the review process is the same.

Effect of Proposed Changes

Sections 9 through 11 amend ss. 627.062, 627.0651 and 627.410, F.S., to establish that if the last day of the timeframe for OIR to review and approve or disapprove a rate filing for property, casualty, or surety insurance, including motor vehicle insurance, or to review an insurer's form filing, falls on a weekend or holiday recognized by Florida governmental agencies or branches, then the period shall be extended until the conclusion of the next business day.

Residential Condominium Loss Assessments (Section 12)

Present Situation

Loss assessment coverage is insurance coverage for condominium unit owners that provides protection for situations where the owner of a condominium unit, as the owner of shared property, is held financially responsible for:

- Deductibles owed when a claim is made under a condominium association's property insurance policy;
- Damage that occurs to the condominium building or the common areas of a condominium property; or
- Injuries that occur in the common areas of a condominium property.³⁷

Florida law requires that property insurance policies held by condominium unit owners include a minimum property loss assessment coverage of \$2000 for all assessments made as a result of the same direct loss to the condominium property.³⁸ The law further establishes that the maximum amount of any unit owner's coverage that can be assessed for any loss is an amount equal to the unit owner's loss assessment coverage limit in effect one day before the date of an occurrence, but it does not specify exactly what occurrence is referenced.³⁹

Effect of Proposed Changes

Section 12 amends s. 627.714, F.S., to provide that the amount of loss assessment coverage that can be assessed against a unit owner is based upon the coverage limit for loss assessment that was in effect in the unit owner's policy one day before the date of an occurrence that resulted in a loss for which the unit owner is being assessed. Further, the bill establishes that the coverage in place at that time applies regardless of the date on which the condominium association assesses the unit owner.

³⁷ The Balance, *Loss Assessment Explained for Condo Insurance*, <https://www.thebalance.com/loss-assessment-explained-for-condo-insurance-4060435> (last visited Jan. 8, 2020).

³⁸ S. 627.714(1), F.S.

³⁹ S. 627.714(2), F.S.

Prepayment of Premium on Initial Policy Purchase and Cancellation of Motor Vehicle Insurance Policies (Section 13)

Present Situation

Florida law requires that a policy⁴⁰ of private passenger motor vehicle insurance or a binder⁴¹ 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 one month's premium.⁴² 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 one month 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. The insurer may not cancel the policy during the first 60 days, unless the reason for the cancellation is the issuance of a check for the premium that is dishonored for any reason or any other type of premium payment that was subsequently determined to be rejected or invalid.⁴³

Prior to July 2019, insurers were required to collect two months of premium prior to issuing a private passenger motor vehicle policy. This was reduced to one month's premium by CS/CS/CS HB 301 (2019).⁴⁴ However, the cancellation limitation was not reduced at the same time. Now an insurer is only required to collect one month's premium, but cannot cancel the policy for 60 days.

Effect of Proposed Changes

Section 13 amends s. 627.7295, F.S., to reduce the limitation on insurer cancellation from 60 days to 30 days consistent with the 2019 law change that reduced the required collection of initial premium from 2 month's premium to one month's premium.

Travel Insurance (Sections 8 and 14 through 22)

Present Situation

The Florida Insurance Code⁴⁵ generally regulates travel insurance. OIR currently reviews policies relating to travel insurance, pursuant to s. 626.321 (1)(c), F.S. DFS is responsible for licensing of individuals and entities that sell travel insurance.⁴⁶

⁴⁰ 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.

⁴¹ Section 627.7295(1)(b), F.S., defines "binder" as a binder that provides motor vehicle personal injury protection and property damage liability coverage.

⁴² Section 627.7295(7), F.S.

⁴³ Section 627.7295(4), F.S.

⁴⁴ Chapter 2019-108, s. 16, L.O.F.

⁴⁵ The Florida Insurance Code in chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. Section 624.01, F.S.

⁴⁶ Section 626.321, F.S. A travel insurance license is a limited license.

Travel Insurance Rates and Forms

Policies and certificates of travel insurance may provide coverage for risks incidental to travel, planned travel, or accommodations while traveling, including, but not limited to, accidental death and dismemberment of a traveler; trip or event cancellation, interruption, or delay; loss of or damage to personal effects or travel documents; damages to travel accommodations; baggage delay; emergency medical travel or evacuation of a traveler; or medical, surgical, and hospital expenses related to an illness or emergency of a traveler. Such policy or certificate may be issued for longer terms, but each policy or certificate must be limited to coverage for travel or use of accommodations of no longer than 90 days.⁴⁷

A group policy for travel insurance is exempt from filing rates and forms.⁴⁸ Currently, a travel insurance policy that is sold directly from an insurance company to a consumer is required to make annual rate filings.⁴⁹ Regardless of whether a travel insurance rate is required to be filed, it may not be excessive, inadequate, or unfairly discriminatory.⁵⁰

Travel Insurance Agent Licensing

A travel insurance agent or agency license may be issued to only:⁵¹

- A full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency and may authorize the sale of such ticket policies only in connection with the sale of transportation tickets, or to the full-time salaried employee of such an agent. No such policy shall be for a duration of more than 48 hours or for the duration of a specified one way trip or round trip.
- An individual that is:
 - The developer of a timeshare plan that is the subject of an approved public offering statement under ch. 721, F.S.;
 - A managing entity operating a timeshare plan approved under ch. 721, F.S.;
 - A seller of travel as defined in ch. 559, F.S.; or
 - A subsidiary or affiliate of any of the entities described above.
- The full-time salaried employee of a licensed general lines agent or to a business entity that offers motor vehicles for rent or lease if insurance sales activities authorized by the license are in connection with and incidental to the rental or lease of a motor vehicle.
 - A license issued to a business entity that offers motor vehicles for rent or lease encompasses each office, branch office, employee, and authorized representative located at a designated branch, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to this paragraph.

⁴⁷ Section 626.321(1)(c), F.S. A policy or certificate providing coverage for air ambulatory services only may exceed the 90 day limit on travel/accommodation (due to illness or injury, and unforeseeable length of time may pass before return home by air ambulance).

⁴⁸ Travel insurance is not subject to rate requirements listed in s. 627.062(2)(a), F.S., or s. 627.062(2)(f), F.S., as long as it is "issued as a master group policy with a situs in another state where each certificate holder pays less than \$30 in premiums for each covered trip and where the insurer has written less than \$1 million in annual written premiums in the travel insurance product in this state during the most recent calendar year." Section 627.062(3)(d)1.n., F.S.

⁴⁹ Each rating organization filing rates for, and each insurer writing, any line of property or casualty insurance is required to complete annual filings. Section 627.0645(1)(c), F.S.

⁵⁰ Section 627.062(1), F.S.

⁵¹ Section 626.321(1)(c), F.S.

- The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee must notify the department within 30 days after closing or terminating an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.
- A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees.

The travel insurance agency license is only issued to the business entity. Each of its branches must be appointed by the insurers the agency and branch represents and the appointments must be filed with DFS. Appointments are subject to an original appointment filing fee and a renewal fee every 24 months.⁵²

Travel Insurance Model Act

In 2016, the National Conference of Insurance Legislators (NCOIL) began considering the adoption of a Travel Insurance Model Act. The final version of this Travel Insurance Model Act was approved on July 15, 2017.⁵³ NAIC used the NCOIL model act as a template to create a model of their own.⁵⁴ At least 42 states have implemented portions of the NAIC Model Act.⁵⁵

Unfair Insurance Trade Practices Act

The Unfair Insurance Trade Practices Act,⁵⁶ among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.⁵⁷ It provides an extensive list of prohibited methods and acts. Among these are prohibitions on misrepresenting the benefits, advantages, conditions, or terms or any insurance policy,⁵⁸ and certain inducements to the purchase of insurance, including the promise of “free” insurance.⁵⁹ 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.⁶⁰ There are several

⁵² Section 624.501(9), F.S. *See also* s. 626.381, F.S.

⁵³ National Conference of Insurance Legislators, *Travel Insurance Model Act* (July 15, 2017), <http://ncoil.org/wp-content/uploads/2017/07/travel-insurance-model-final.pdf> (last visited January 29, 2020).

⁵⁴ National Association of Insurance Commissioners, *Synopsis: The 2017 Spring National Meeting* (April 24, 2017), https://www.naic.org/documents/prod_serv_naic_state_syn_zs.pdf (last visited January 29, 2020).

⁵⁵ National Association of Insurance Commissioners, *Travel Insurance Model Act* (4th Quarter 2018), <https://www.naic.org/store/free/MDL-632.pdf> (last visited January 29, 2020).

⁵⁶ Chapter 626, F.S., pt. IX.

⁵⁷ Section 626.9541, F.S.

⁵⁸ Section 626.9541(1)(a), F.S.

⁵⁹ Section 626.9541(1)(n), F.S.

⁶⁰ 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

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.⁶¹

Effect of Proposed Changes

Section 8 amends s. 626.321, F.S., to revise current travel insurance agent and agency licensing requirements.

Any person licensed in a major line of authority as an insurance producer, including a property and casualty insurance producer who is not appointed by an insurer, may transact travel insurance. A licensed “producer” is a licensed insurance agent.

The bill requires the DFS issue a travel insurance limited license to each limited lines travel insurance producer (travel insurance producer) that properly files an application with the DFS. The limited license authorizes the travel insurance producer to sell, solicit, or negotiate travel insurance through a licensed insurer. A travel insurance producer is defined in section 16 of the bill as:

- A licensed administrator or third-party administrator;
- A licensed insurance producer, including a limited lines producer; or
- A travel administrator.

The section also creates a registration requirement for travel retailers, which are business entities that make, arrange, or offer planned travel. Under the bill, a travel retailer may also offer and disseminate travel insurance to its customers on behalf of and under the license of a travel insurance producer. To do so, the travel retailer must be registered and appointed under a licensed limited lines travel insurance producer to transact travel insurance and the following requirements are met:

- The travel insurance producer or travel retailer provides to purchasers of travel insurance:
 - The material terms of the insurance coverage, or a description thereof;
 - A description of the process for filing a claim;
 - A description of the review or cancellation process for the insurance; and
 - The identity and contact information of the insurer and the limited lines travel insurance producer.
- The travel insurance producer must maintain a register of each travel retailer offering travel insurance on its behalf.
- The travel insurance producer must designate one employee responsible for compliance issues applicable to the licensee and the registered travel retailers appointed under the licensee.

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).

⁶¹ 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(9), 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.

- The travel insurance producer has paid all applicable licensing fees.
- The travel insurance producer must provide for the training of all employees and appointees.

The travel insurance producer is responsible for the acts of the travel retailer and must use reasonable means to ensure compliance by the travel retailer with this section.

Travel retailers must make available to prospective purchasers written materials approved by the travel insurer that provide the contact information of the travel insurance producer, explain that the purchase of travel insurance is not necessary in order to purchase other products from the travel retailer, and explain the information that may be provided by the travel retailer. Travel retailer employees or authorized representatives who are not licensed as an insurance producer may not evaluate or interpret the terms of the travel insurance contract, evaluate or provide advice concerning the prospective purchaser's existing insurance coverage, or hold himself or herself out as an insurance expert. Properly registered travel retailers and their employees may receive compensation from the travel insurance producer.

Section 14 directs the Division of Law Revision to create ch. 647, F.S., encompassing ss. 647.01-647.08, F.S., to be entitled "Travel Insurance." Chapter 647, F.S., incorporates the substance of the NAIC's Travel Insurance Model Act (#635) into the Florida Insurance Code.

Section 15 creates s. 647.01, F.S., to provide a purpose statement that promotes the public welfare by creating a comprehensive legal framework within which travel insurance may be sold in Florida. It defines the scope of the chapter as applicable to:

- Travel insurance that covers any resident of this state and that is sold, solicited, negotiated, or offered in this state; and
- Policies and certificates that are delivered or issued for delivery in Florida.

The bill does not apply to cancellation fee waivers or travel assistance services, except as expressly provided.

It specifies that all other applicable provisions of the insurance laws of this state continue to apply to travel insurance, except that the specific provisions of this chapter shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

Section 16 creates s. 647.02, F.S., defines the following terms used in the chapter:

- "Aggregator site" – a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping.
- "Blanket travel insurance" – a policy of travel insurance issued to an eligible group providing coverage to all members of the eligible group without a separate charge to individual members of the eligible group.
- "Cancellation fee waiver" – a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.
- "Department" – the Department of Financial Services.

- “Eligible group” – for the purposes of travel insurance, means two or more persons who are engaged in a common enterprise or who have an economic, educational, or social affinity or relationship. The bill provides numerous examples of the types of groups included.
- “Fulfillment materials” – documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan’s coverage and assistance details.
- “Group travel insurance” – travel insurance issued to an eligible group.
- “Limited lines travel insurance producer” means:
 - A licensed or third-party administrator;
 - A licensed insurance producer, including a limited lines producer; or
 - A travel administrator.
- “Travel administrator” – a person who directly or indirectly underwrites policies for; collects charges, collateral, or premiums from; or adjusts or settles claims made by residents of this state in connection with travel insurance, except that a person is not considered a travel administrator if the person is:
 - A person working for a travel administrator, to the extent that the person’s activities are subject to the supervision and control of the travel administrator;
 - An insurance producer selling insurance or engaged in administrative and claims-related activities within the scope of the producer’s license;
 - A travel retailer, as defined s. 626.321(1)(c)2., offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with s. 626.321(1)(c);
 - A person adjusting or settling claims in the normal course of the person’s practice or employment as an attorney at law, without collecting charges or premiums in connection with insurance coverage; or
 - A business entity that is affiliated with a licensed insurer while acting as a travel administrator for the direct and assumed insurance business of the affiliated insurer.
- “Travel assistance services” – noninsurance services for which the consumer is not indemnified based on a fortuitous event, and the provision of which does not result in the transfer or shifting of risk which would constitute the business of insurance. Travel assistance services are not insurance and are not related to insurance.
- “Travel insurance” – insurance coverage for personal risks incidental to planned travel, including:
 - Interruption or cancellation of trip or event;
 - Loss of baggage or personal effects;
 - Damages to accommodations or rental vehicles;
 - Sickness, accident, disability, or death occurring during travel;
 - Emergency evacuation;
 - Repatriation of remains; or
 - Any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as determined by the OIR.

The term does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting longer than six months, including major medical plans for those working or residing overseas as expatriates, or any other product that requires a specific insurance producer license.

- “Travel protection plan” – a plan that provides one or more of the following: travel insurance, travel assistance services, and cancellation fee waivers.

Section 17 creates s. 647.03, F.S., to require the travel insurer must pay a premium tax, as required under s. 624.509, F.S., on travel insurance premiums paid by the primary policyholder, certificateholder, or blanket travel insurance policyholder.⁶² The premium paid does not include amounts received for travel assistance services or cancellation waivers.

The bill provides that the premium tax is subject to any apportionment rules that apply to an insurer across multiple taxing jurisdictions or that authorize an insurer to allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

Section 18 creates s. 647.04, F.S., to allow the sale of travel protection plans for one price provided the plan provides to the consumer, at or before the time of purchase:

- Disclosure that the plan includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable and disclosure and opportunity for the consumer to obtain additional information regarding the features and pricing of each.
- Fulfillment materials describing each of its features and pricing of each constituent feature, all disclosure required by ch. 647, F.S., and the contact information for the persons providing travel assistance services and cancellation fee waivers.

Section 19 creates s. 647.05, F.S., to require that travel insurance documents provided to a consumer before purchase must be consistent with the travel insurance policy. Information on any preexisting condition exclusion must be provided before purchase.

Fulfillment materials, and mandatory disclosures under s. 626.321(1)(c)3.a., F.S., must be sent to the purchaser of a travel protection plan after purchase, confirming the purchase and outlining the details of the plan. Fulfillment materials must include whether the travel insurance is primary or secondary to other applicable coverage and whether the policy has preexisting condition exclusions.

A policyholder or certificate holder can cancel a policy or certificate for a full refund up to 15 days after date of delivery, if delivered by postal mail, and ten days after date of delivery, if delivered by means other than postal mail.

A person offering, soliciting, or negotiating travel insurance or protection plans may not do so using an opt-out option that requires a consumer to take an affirmative action when purchasing a trip.

Any person offering travel insurance is subject to the Unfair Insurance Trade Practices Act (UITPA),⁶³ unless otherwise specified. If a conflict arises between UITPA and this chapter, the provisions of this chapter will control. If a destination jurisdiction requires travel insurance

⁶² This does not appear to be a new tax. Travel insurance is already subject to premium tax under the Florida Insurance Code. This provision appears to be included to clarify the applicability of premium tax requirements to the newly created ch. 647, F.S.

⁶³ Chapter 626, Part IX, F.S.

coverage, it is not an unfair trade practice to require the consumer to purchase the required coverage through the travel retailer or the limited lines insurance producer supplying the trip or package, or to require that the consumer obtain and provide proof of coverage from another source, provided it meets the jurisdiction's requirements and is purchased prior to departure. It is not an unfair trade practice to market travel insurance directly to a consumer online, as long as the web page provides an accurate summary or short description of the coverage and the consumer has access to the full policy provisions through electronic means. Conversely, a person commits an unfair trade practice under UITPA if he or she offers or sells a policy that could never result in payment of any claims or markets blanket travel insurance coverage as free.

Section 20 creates s. 647.06, F.S., to allow a person to act or represent himself or herself as a travel administrator if he or she is a licensed and appointed property and casualty insurance producer in Florida, is appointed as a managing agent in Florida, or holds a valid third party administrator license. A travel administrator and its employees are exempt from the licensing requirements listed in ch. 626, part VI, F.S. An insurer has the responsibility of ensuring a travel administrator acts in accordance with this chapter and maintains books and records, which must be available to DFS upon request.

Section 21 creates s. 647.07, F.S., to classify travel insurance under the inland marine line of insurance for purposes of rates and forms. Coverage for sickness, accident, disability, or death or incidental limited property and casualty benefits, such as baggage or trip cancellation, during travel may be classified and filed under the accident and health or the inland marine line of insurance. Travel insurance may be in the form of an individual, group or blanket policy.

Travel insurance programs may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels.

Section 22 creates s. 647.08, F.S., which requires DFS to adopt rules to administer ch. 647, F.S.

Effective Date

Section 23 provides except as otherwise expressly provided in the bill and except for Section 23, which shall take effect upon this act becoming a law, the bill has an effective date of July 1, 2020.

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:

The bill does not appear to impose or raise a state tax or fee in violation of Article VII, section 19 of the Florida Constitution. Travel insurance is currently subject to premium tax under the Florida Insurance Code.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DFS and the OIR may have an indeterminate negative fiscal impact implementing the newly created ch. 647, F.S., entitled "Travel Insurance."

VI. Technical Deficiencies:

Lines 862 and 865 create two new violations of the Unfair Insurance Trade Practices Act in relation to travel insurance. It may avoid confusion if these provisions were amended into the Act at ch. 626, part IX, F.S., rather than stating them in a separate chapter of statute.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 319.30, 440.12, 440.20, 624.155, 624.307, 324.315, 624.422, 626.321, 627.062, 627.0651, 627.410, 627.714, and 627.7295.

This bill creates the following sections of the Florida Statutes: 647.01, 647.02, 647.03, 647.04, 647.05, 647.06, 647.07, and 647.08.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Infrastructure and Security on February 17, 2020:**

- Deletes the provisions of the bill that required the DHSMV to create an online verification system for motor vehicle insurance, and created a task force to assist, review, and report on the implementation of the system;
- Requires that an electronic signature used to satisfy the signature requirement for a salvage certificate of title must be executed using a system providing a Level 2 authentication level;
- Requires insurers to file with the DFS the name and email address of the person who will receive civil remedy notices;
- Amends the civil remedy notices statute of limitations when an appraisal is invoked from 60 days after it is invoked instead of 65 days after mailing of notice;
- Prohibits OIR from disseminating aggregated information if it contains trade secret information that can be individually extrapolated;
- Provides that when the OIR period for reviewing specified rates and forms end on a weekend or holiday, the period is extended until the conclusion of the next business day;
- Clarifies that the maximum amount that a condominium unit owner's assessment insurance coverage may be assessed is the loss assessment coverage limit in effect 1 day before the date of the occurrence that gave rise to the loss;
- Allows insurers to cancel auto policies for non-payment after 30 days, instead of the current 60 days;
- Allows for an electronic method of workers compensation payments to be used; and
- Establishes the National Association of Insurance Commissioners (NAIC) Model Act for travel insurance.

CS by Banking and Insurance on February 4, 2020:

- Retains the bill's provisions requiring the DHSMV to create a motor vehicle insurance online verification system, and requiring the creation of a task force to assist, review, and report on the implementation of the system.
- Amends s. 316.646, F.S., to require law enforcement officers, during a traffic stop or crash investigation, to access the motor vehicle insurance online verification system 18 months after its implementation.
- Authorizes the DHSMV to enter into use agreements with any public or private entity accessing the system to verify insurance coverage.
- Increases the period of time the insurers must maintain policyholder records in order to confirm coverage after the date of any verification request and response, from six months to three years.
- Increases the number of voting Motor Vehicle Insurance Online Verification Task Force members from nine to ten; adds one voting member who must be a member of local law enforcement, appointed by the executive director of the DHSMV.

- Eliminates the bill's provision requiring the Motor Vehicle Insurance Online Verification Task Force to issue a report to the DHSMV, President of the Senate, and Speaker of the House of Representatives no later than six months after the conclusion of the pilot program, evaluating the system's effectiveness in identifying uninsured motorists and making recommendations for system enhancements.
- Predicates the effectiveness of the bill on a specific appropriation.
- Deletes all other sections of the bill.

B. Amendments:

None.