

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1606

INTRODUCER: Senator Perry

SUBJECT: Insurance

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>IS</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1606 directs the Florida Hurricane Catastrophe Fund to reimburse collateral protection (force-placed) insurance that covers the amount requested by the mortgage lender, which may be limited to the remaining indebtedness on the property.

The bill requires the Department of Highway Safety and Motor Vehicles to create an online verification system for motor vehicle insurance by July 1, 2023. It also creates a task force to assist, review, and report on the implementation of the system.

The bill reduces the prohibition on cancelling motor vehicle insurance policies for nonpayment of premium from 60 days to 30 days to correspond to a previous reduction in prepayment of premium.

The bill creates a new chapter within the Florida Insurance Code to regulate the transaction of travel insurance. The new chapter incorporates the National Association of Insurance Commissioners' Travel Insurance Model Act (#632).

The bill eliminates the required affidavit surplus lines agent must file detailing the policies they have placed with surplus lines insurers and attesting to coverage rejections obtained before exporting a policy to a surplus lines insurer. The information reported on the affidavit is otherwise available in electronic data filings.

The bill requires workers' compensation insurers in receivership to continue reporting certain loss, expense, and claims experience to the Office of Insurance Regulation for ratemaking purposes.

The bill allows a licensed general lines agent or personal lines agent to sell motor vehicle servicing agreements, service warranty agreements, and home warranties without securing a separate salesperson or sales representative license.

The bill requires a financial institution, mortgagee, or assignee to deposit insurance proceeds into a segregated, interest bearing account at a federally insured financial institution for the benefit of the insured, and to notify the insured of each requirement the insured must fulfill in order to obtain release of the funds. Insurance proceeds received by a financial institution, mortgagee, or assignee which relate to contents insurance coverage in which such party does not have a security interest, or which relate to additional living expenses, must be promptly distributed to the insured.

The bill takes effect July 1, 2020.

II. Present Situation:

Hurricane Catastrophe Fund – Collateral Protection Insurance

The Florida Hurricane Catastrophe Fund (FHCF)¹ is a tax-exempt trust fund created by the Legislature in 1993 as a form of reinsurance for residential property losses. The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage of hurricane losses to residential property above the insurer's retention (deductible).² As a condition of doing business in Florida, property insurers are required to enter into reimbursement contracts with FHCF.³ The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.⁴

The FHCF reimburses its participating insurers for losses on covered policies, subject to limitations.⁵ Collateral protection insurance⁶ is included as a covered policy.⁷ Collateral protection insurance is placed by a lender when a borrower's policy on the property has lapsed.

Motor Vehicle Insurance Online Verification System

Chapter 324, F.S., is the Financial Responsibility Law of 1955.⁸ The intent of ch. 324, F.S., is to [R]ecognize the existing privilege to own or operate a motor vehicle when such vehicles are used with due consideration for others and their property, and to

¹ Section 215.555, F.S.

² Sections 215.555(3) and 215.555(4)(b)1, F.S.

³ Section 215.555(4), F.S.

⁴ Section 215.555(1)(e),(f), F.S.

⁵ Section 215.555(1)(d), F.S.

⁶ "Collateral protection insurance" means commercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document. Collateral protection insurance is not residential coverage.

Section 624.6085, F.S.

⁷ Section 215.555(2)(c), F.S.

⁸ Section 324.251, F.S.

promote safety and provide financial security requirements for such owners or operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle. Therefore, the law requires that the operator of a motor vehicle involved in a crash or convicted of certain traffic offenses is required to provide proof of financial ability to respond for damages in future accidents as a requisite to his or her future exercise of operating a motor vehicle.⁹

Section 316.646, F.S., requires persons required by law to maintain certain motor vehicle insurance coverage, to possess proof of insurance, and specifies when the person is required to provide proof of motor vehicle insurance. If a person is cited for violating this requirement and can provide proof of insurance that was valid at the time of the citation, the clerk of the court may dismiss the case and may assess a dismissal fee of up to \$10.¹⁰

Section 320.02, F.S., requires the registration of motor vehicles. Proof of purchase of personal injury protection¹¹ and property damage insurance must be provided in order to register a motor vehicle.¹² If the registrant is required to purchase bodily injury liability coverage as a result of a conviction of driving under the influence, then proof of bodily injury liability coverage is also required at that time.¹³

Section 324.0221, F.S., requires motor vehicle insurers to notify the Department of Highway Safety and Motor Vehicles (DHSMV) of cancellations or nonrenewals of motor vehicle insurance within 10 days after the processing or effective date of each cancellation or nonrenewal. Furthermore, the statute requires insurers to notify DHSMV within 10 days of the issuance of new insurance policies from persons not previously insured by that insurance company.¹⁴ When DHSMV receives a notice of cancellation from an insurer, DHSMV's system will attempt to verify if additional insurance has been provided and if the registration for the vehicle is still valid. If no additional insurance is verified for the registered vehicle after 20 days, the system will create a financial responsibility case on the owner or registrant's driver license and registration. Five days after the case is created a letter is generated and submitted to the vehicle owner or registrant notifying him or her that replacement proof of insurance is required for the registered vehicle. If insurance information is not provided, or the owner or registrant does not cancel the registration, the owner or registrant's driver license and registration will be suspended at 12:01 a.m. on the 15th day from the date of the postmarked letter.¹⁵

Currently, there is no mechanism in place to determine in real time that a proof of insurance coverage for the required financial responsibility is valid. The current process requires insurance carriers to report insurance information so that it can be compared to DHSMV-maintained

⁹ Section 324.011, F.S.

¹⁰ Section 318.18(2)(b)3, F.S.

¹¹ Personal injury protection insurance is not necessary to register a taxi, limousine, or school bus. *See* s. 627.733(1), F.S.

¹² Section 320.02(5)(a), F.S.

¹³ *Id.* *See also* s. 324.023, F.S.

¹⁴ Section 324.0221(1)(a), F.S.

¹⁵ Section 322.251(2), F.S.

vehicle registration. Under this reporting process, any vehicle registrations that are not tied to an insurance record are considered uninsured.¹⁶

Several industry advisory and trade groups have highlighted the ineffectiveness of the current insurance data reporting process. The Insurance Industry Committee on Motor Vehicle Administration (IICMVA),¹⁷ the liaison between insurance industry and the motor vehicle departments of the US and Canada, recently noted:

Despite the lack of objective evidence that state reporting programs are, or can be, effective at identifying uninsured motorists, new state reporting programs continue to become law and continue to be implemented.¹⁸

The American Association of Motor Vehicle Administrators noted the absence of a meaningful correlation between insurance data reporting programs and the uninsured motorist rate:

[T]here is no correlation between compulsory insurance and the number of uninsured motor vehicles on the highway. The same absence of correlation can be said of insurance data reporting programs. Between the 1989 and 1999 IRC studies, of the 18 states with reporting programs in place for 5 years or more, 12 showed an increase in the uninsured motorists and 6 experienced improvement. These results suggest there may be other factors involved such as level of enforcement and consistency of penalties.¹⁹

A number of states have implemented online motor vehicle insurance verification programs including Alabama,²⁰ Oklahoma,²¹ Texas,²² and Tennessee.²³ Most of the states that have implemented online motor vehicle verification programs require that the systems generally meet standards developed by IICMVA.

States that have instituted motor vehicle insurance verification programs have reported reductions in the number of uninsured motorists. For example, Alabama's uninsured motorist

¹⁶ See s. 324.011, F.S.

¹⁷ The Insurance Industry Committee on Motor Vehicle Administration (IICMVA) is an all-industry advisory group formed in January 1968, as the official liaison between the insurance industry and Motor Vehicle Departments in the US and Canada. <https://www.iicmva.com/> (last visited January 28, 2020).

¹⁸ Insurance Industry Committee on Motor Vehicle Administration, *Making the Case for Using Web Services to Verify Evidence of Auto Liability Insurance* (November 2017), <https://www.iicmva.com/Making%20V2.1.pdf> (last visited January 29, 2020).

¹⁹ American Association of Motor Vehicle Administrators Financial Responsibility and Insurance Standing Committee, *Financial Responsibility & Insurance Resource Guide* (2002), https://www.aamva.org/uploadedFiles/MainSite/Content/DriverLicensingIdentification/Auto_Insurance_Financial_Responsibility/FR%20Guide.pdf (last visited January 29, 2020). See also Insurify Insights, *Uninsured and High-Risk: State with the Most Uninsured Motorists* (December 30, 2019), <https://insurify.com/insights/states-with-the-most-uninsured-motorists/> (last visited January 29, 2020) (noting a statistically significant inverse correlation between median household income and the state's uninsured motorist rate).

²⁰ Alabama Act 2011-688.

²¹ Okla. Stat. tit. 47, s. 7-600.2.

²² Tex. Transp. Code Ann. Ss.601.053(c) and 601.191.

²³ Tenn. Code Ann. Ss. 55-12-201 – 55-12-215.

rate dropped from 26 percent (2007)²⁴ to 18.4 percent (2015)²⁵ following its adoption of a motor vehicle insurance verification program. Texas's uninsured motorist rate dropped from 15 percent (2007)²⁶ to 14.1 percent (2015)²⁷ following its adoption of a motor vehicle insurance verification program. Online verification is not the only possible cause of reductions in the number of uninsured motorists. Oklahoma's uninsured motorist rate dropped from 24 percent (2007)²⁸ to 10.5 percent (2015)²⁹ *before* its 2018 implementation of a motor vehicle insurance verification program.

IICMVA Model Legislation

Beginning in 2005, the IICMVA developed model legislation for state adoption of a motor vehicle online insurance verification system. The final version of the Vehicle Insurance Verification Act³⁰ was published in 2017. IICMVA's model legislation provides a set of recommendations and standards for implementing real-time insurance verification. Such IICMVA standards include:

- Placing responsibility on each insurer to maintain the data necessary to verify the evidence of auto liability insurance for their own policyholders;
- Placing responsibility on each insurer to maintain a web port or service through which online evidence of insurance verification can take place by trading partners;
- Requiring valid verification required be made using unique key information to route a request to the appropriate carrier for a response;
- Protecting policyholder privacy by limiting the information exchanged to only those items needed to accurately route the request and confirm evidence of the insurance;
- Requiring the industry to set a standard format for transmitting requests; and
- Requiring confirmation of evidence of auto liability insurance, or lack thereof, is sent back to the requesting entity in real time.³¹

Prepayment of Premium on Initial Policy Purchase and Cancellation of Motor Vehicle Insurance Policies

Florida law requires that a policy³² of private passenger motor vehicle insurance or a binder³³ for such a policy may be initially issued only if, before the effective date of such binder or policy,

²⁴ Insurance Research Council, *Economic Downturn May Push Percentage of Uninsured Motorists to All-Time High* (January 21, 2009), https://insurance-research.org/sites/default/files/downloads/IRC_UM_012109.pdf (last visited January 29, 2020).

²⁵ Insurance Research Council, *Countrywide Rate Increases as Several States Experience Significant Decrease* (October 9, 2017), <https://insurance-research.org/sites/default/files/downloads/UMNR1005.pdf> (last visited January 29, 2020).

²⁶ *See supra* at Note 24.

²⁷ *See supra* at Note 25.

²⁸ *See supra* at Note 24.

²⁹ *See supra* at Note 25.

³⁰ Insurance Industry Committee on Motor Vehicle Administration, *Vehicle Insurance Verification Act*, <https://www.iicmva.com/Model%20Law%20final%20document.doc> (last visited February 3, 2020).

³¹ Insurance Industry Committee on Motor Vehicle Administration, *The Source for Online Verification Modeling: Executive Summary* (November 2017), <https://www.iicmva.com/OLV%20Source.pdf> (last visited February 3, 2020).

³² 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.

³³ Section 627.7295(1)(b), F.S., defines "binder" as a binder that provides motor vehicle personal injury protection and property damage liability coverage.

the insurer or agent has collected from the insured an amount equal to one month's premium.³⁴ 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.³⁵

Prior to July 2019, insurers were required to collect 2 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).³⁶ 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.

Travel Insurance

The Florida Insurance Code³⁷ 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.³⁸

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.³⁹

A group policy for travel insurance is exempt from filing rates and forms.⁴⁰ Currently, a travel insurance policy that is sold directly from an insurance company to a consumer is required to

³⁴ Section 627.7295(7), F.S.

³⁵ Section 627.7295(4), F.S.

³⁶ Chapter 2019-108, s. 16, L.O.F.

³⁷ The Florida Insurance Code in chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. Section 624.01, F.S.

³⁸ Section 626.321, F.S. A travel insurance license is a limited license.

³⁹ 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).

⁴⁰ 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.

make annual rate filings.⁴¹ Regardless of whether a travel insurance rate is required to be filed, it may not be excessive, inadequate, or unfairly discriminatory.⁴²

Travel Insurance Agent Licensing

A travel insurance agent or agency license may be issued to only:⁴³

- 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, 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.
 - 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.⁴⁴

⁴¹ 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.

⁴² Section 627.062(1), F.S.

⁴³ Section 626.321(1)(c), F.S.

⁴⁴ Section 624.501(9), F.S. *See also* s. 626.381, F.S.

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, 2017.⁴⁵ NAIC used the NCOIL model act as a template to create a model of their own.⁴⁶ At least 42 states have implemented portions of the NAIC Model Act.⁴⁷

Surplus Lines

Surplus lines insurance refers to a category of insurance for risks that the admitted market is unable or unwilling to provide coverage.⁴⁸ There are three basic categories of surplus lines risks:

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

Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code, which means they do not obtain a certificate of authority from OIR to transact insurance in Florida.⁴⁹ Rather, surplus lines insurers are “unauthorized” insurers⁵⁰ that may transact surplus lines insurance, if they are made eligible by OIR.⁵¹

The Florida Surplus Lines Service Office (FSLSO) is a self-regulating, nonprofit association of eligible unauthorized insurers established by the Legislature in 1997. The FSLSO was created to protect consumers seeking surplus line insurance in the state, monitor marketplace compliance, and protect state revenues.⁵² All licensed surplus lines agents are deemed to be members of the FSLSO. The FSLSO operates under the supervision of a nine-member board of governors, which has oversight responsibilities for the Florida surplus lines market.

“To export” a policy⁵³ means to place it with an unauthorized insurer under the Surplus Lines Law.⁵⁴ Unless an exception applies, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers before the agent can place insurance in the surplus

⁴⁵ 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).

⁴⁶ 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).

⁴⁷ 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).

⁴⁸ The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. Section 626.921, F.S.

⁴⁹ Section 624.09(1), F.S.

⁵⁰ Section 624.09(2), F.S.

⁵¹ Section 62.915, F.S.

⁵² See s. 626.921, F.S., and Florida Surplus Lines Office, *About*, <https://www.fslso.com/about> (last visited January 29, 2020).

⁵³ Section 626.914(3), F.S.

⁵⁴ Sections 626.913 – 626.937, F.S., constitute the “Surplus Lines Law.” Section 626.913(1), F.S.

lines market.⁵⁵ “Diligent effort” means, subject to certain exceptions,⁵⁶ seeking coverage from and being rejected by at least three authorized insurers in the admitted market.⁵⁷ The law further specifies that:⁵⁸

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- For personal residential property risks,⁵⁹ the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

Surplus Lines Agents

Surplus lines agents are authorized to handle the placement of insurance coverages with surplus lines insurers.⁶⁰ Licensed resident general lines agents who meet the statutory criteria for licensure are eligible for licensure as a surplus lines agent.⁶¹ In order to place coverage with a surplus lines carrier, the agent must make a “diligent effort” to place the policy with a Florida-authorized insurer, i.e., one with a certificate of authority from OIR.⁶² Surplus lines agents are required to report and file with the FLSO specified information on each surplus lines insurance policy within 30 days of the effective date of the transaction, must transmit service fees to the FLSO each month, and must transmit assessment and tax payments to the FLSO quarterly.⁶³ When requested by DFS or the FLSO, surplus lines agents are also required to submit a copy of any policy and certain other information.⁶⁴ Surplus lines agents are required to maintain each surplus lines contract, including applications and all certificates, and other detailed information about each surplus lines policy, in their agency office for a period of 5 years.⁶⁵

⁵⁵ Section 626.916(1)(a), F.S.

⁵⁶ Exceptions include commercial lines risk, such as “excess or umbrella, surety and fidelity, boiler and machinery and leakage and fire extinguishing equipment,” and so on, as specified in s. 627.062(3)(d)1., F.S. Section 626.916(3)(b), F.S.

⁵⁷ If the cost to replace a residential dwelling is \$1,000,000 or more, then only one coverage rejection is needed prior to export. Section 626.914(4), F.S. When exporting a flood insurance policy, diligent effort requirements do not apply until July 1, 2019, or the Insurance Commissioner declares an adequate flood insurance market among admitted insurers, whichever occurs first. Section 627.715(4), F.S.

⁵⁸ Section 626.916(1), F.S.

⁵⁹ Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

⁶⁰ Section 626.914(1), F.S.

⁶¹ Section 626.927, F.S. Generally, to be licensed as a surplus lines agent, an individual must be: (1) deemed by DFS to have sufficient experience in the insurance business; (2) have 1-year experience working for a licensed surplus lines agent or have completed 60 class hours in an approved surplus lines course; and (3) pass a written examination.

⁶² There are certain exceptions to the diligent effort requirement. *See supra* at Note 51.

⁶³ Sections 626.921(2) and 626.931, F.S.

⁶⁴ Section 626.923, F.S.

⁶⁵ Section 626.930, F.S.

Workers' Compensation Insurance Reporting Requirements

Workers' compensation insurance carriers are required to record and report certain loss, expense, and claims experience to aid OIR in making determinations concerning the adequacy of workers' compensation experience for ratemaking purposes.⁶⁶ Additionally, carriers are required to provide the following information annually on both Florida experience and nationwide experience separately:

- Payrolls by classification;
- Manual premiums by classification;
- Standard premiums by classification;
- Losses by classification and injury type; and
- Expenses.⁶⁷

Carriers satisfy these requirements by providing their data to the National Council on Compensation Insurance, Inc. (NCCI). When a carrier goes into receivership due to insolvency, they cease reporting to NCCI and, therefore, their data no longer is reported to OIR.

Agent Licensing

General Lines Agent

A general lines agent⁶⁸ is one who sells the following lines of insurance: property,⁶⁹ casualty,⁷⁰ including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,⁷¹ or a workers' compensation self-insurance fund;⁷² surety;⁷³ health;⁷⁴ and marine.⁷⁵ The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance.⁷⁶ If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.⁷⁷

Personal Lines Agent

A personal lines agent is a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.⁷⁸

⁶⁶ Section 627.914(1), F.S. *See also* Rule 69O-189.0055, F.A.C.

⁶⁷ Section 627.914(2), F.S.

⁶⁸ Section 626.015(5), F.S.

⁶⁹ Section 624.604, F.S.

⁷⁰ Section 624.605, F.S.

⁷¹ As defined in s. 624.462, F.S.

⁷² Pursuant to s. 624.4621, F.S.

⁷³ Section 626.606, F.S.

⁷⁴ Section 624.603, F.S.

⁷⁵ Section 624.607, F.S.

⁷⁶ Section 626.827, F.S.

⁷⁷ Section 626.829, F.S.

⁷⁸ Section 626.015(17), F.S.

Motor Vehicle Servicing Agreements

Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. A motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended.⁷⁹ Motor vehicle service agreements can only be sold by a licensed and appointed salesperson.⁸⁰ Salespersons are licensed in the same manner as insurance representatives under ch. 626, F.S., with some exceptions to the requirements applied to insurance representatives.⁸¹

Service Warranty Contracts

A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.⁸² No person or entity shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative.⁸³

Home Warranty Contracts

A home warranty is any contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss.⁸⁴ No person shall not solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative.⁸⁵

Unfair Insurance Trade Practices Act

The Unfair Insurance Trade Practices Act,⁸⁶ among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.⁸⁷ It provides an extensive

⁷⁹ Section 634.011(8), F.S.

⁸⁰ Section 634.031, F.S.

⁸¹ Section 634.171, F.S.

⁸² Section 634.401(13), F.S.

⁸³ Section 634.419, F.S. A "sales representative" is any person, retail store, corporation, partnership, or sole proprietorship utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties. However, in the case of service warranty associations selling service warranties from one or more business locations, the person in charge of each location may be considered the sales representative. Section 634.401(12), F.S.

⁸⁴ Section 634.301, F.S.

⁸⁵ Section 634.317, F.S. "Sales representative" is any person with whom an insurer or home inspection or warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term includes all employees of an insurer or association engaged directly in the sale or issuance of home warranties. Section 634.301(12), F.S.

⁸⁶ Chapter 626, F.S., pt. IX.

⁸⁷ Section 626.9541, F.S.

list of prohibited methods and acts. Among these are prohibitions on misrepresenting the benefits, advantages, conditions, or terms or any insurance policy,⁸⁸ and certain inducements to the purchase of insurance, including the promise of “free” insurance.⁸⁹ 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.⁹⁰ 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.⁹¹

Disposition of Insurance Proceeds

Regulatory Oversight of Mortgagees⁹²

Chapter 494, F.S., governs the activities and regulation of loan originators, mortgage lenders, and mortgage brokers. The Florida Office of Financial Regulation (OFR) is responsible for the administration and enforcement of the chapter.⁹³ A loan originator licensed by the OFR may engage in the solicitation, negotiation, and application process for mortgage loans.⁹⁴ A licensed mortgage lender makes or services mortgage loans for others, and may offer and sell mortgage loans to noninstitutional investors.⁹⁵ A licensed mortgage broker may conduct loan originator activities through one or more licensed loan originators, whether the licensed loan originators are employed by the mortgage broker or act as independent contractors.⁹⁶

Depository institutions, such as banks and credit unions, along with their subsidiaries, are expressly exempted from regulation under ch. 494, F.S., although they are permitted to engage in similar activities.⁹⁷ Banks and credit unions may be chartered under either federal or state law. Federally chartered banks and credit unions are primarily regulated by the Office of the

⁸⁸ Section 626.9541(1)(a), F.S.

⁸⁹ Section 626.9541(1)(n), F.S.

⁹⁰ 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).

⁹¹ 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.

⁹² A mortgagee is the lender in a mortgage; a mortgagor is the borrower.

⁹³ Section 494.0011(1), F.S.

⁹⁴ Section 494.001(18), F.S.

⁹⁵ Section 494.001(24), F.S.

⁹⁶ Section 494.001(23), F.S.

⁹⁷ Section 494.00115(1)(b), F.S. Chapter 494 defines a “depository institution” as the term is defined in s. 3(c) of the Federal Deposit Insurance Act, and includes any credit union. Section 494.001(10), F.S. Section (3)(c) of the Federal Deposit Insurance Act, codified to 12 U.S.C. 1813(b), defines the term “depository institution” as “any bank or savings association.”

Comptroller of the Currency (OCC), and the National Credit Union Administration (NCUA), respectively. In Florida, if a bank or credit union is state-chartered, the OFR serves as the primary regulator.⁹⁸ Regardless of chartering authority, the depository accounts of both banks and credit unions are insured at the federal level.⁹⁹

Florida law requires that insurance proceeds received by a mortgagee licensed under ch. 494, F.S., which relate to compensation for damage to property or contents insurance coverage in which the mortgagee has a security interest must be promptly deposited into a segregated account of a federally insured financial institution.¹⁰⁰ If the mortgagee does not have a security interest, the mortgagee must promptly distribute the insurance proceeds to the insured where proceeds relate to contents insurance coverage.¹⁰¹ The mortgagee must similarly promptly distribute the insurance proceeds to the insured where the proceeds relate to additional living expenses.¹⁰²

A mortgagee's failure to accomplish any of the following constitutes a ground for disciplinary action:

- to immediately place upon receipt, and maintain until authorized to disburse, any money entrusted to the licensee as a licensee in a segregated account of a federally insured financial institution in this state;
- to account or deliver to any person any property that is not the licensee's, or that the licensee is not entitled to retain, under the circumstances and at the time that has been agreed upon or as required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery;
- to disburse funds in accordance with agreements; or
- to misuse, misapply, or misappropriate personal property entrusted to the licensee's care to which the licensee had no current property right at the time of entrustment.¹⁰³

Pursuant to the Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities, Form OFR-494-14, which has been incorporated by reference in Rule 69V-40.111, Florida Administrative Code, such a failure may result in a fine of up to \$10,000 or suspension of licensure up to 30 days.¹⁰⁴

A Florida-licensed mortgagee or servicer may choose to do business with Fannie Mae, such as, but not limited to, through the sale of a mortgage loan or participation interest, upon the approval of Fannie Mae.¹⁰⁵ Fannie Mae provides liquidity to the single family market by purchasing and

⁹⁸ Section 655.012(1)(a), F.S. *See generally*: s. 658.48, F.S. (governing state bank loan powers), and s. 657.038, F.S. (governing state credit union loan powers).

⁹⁹ Bank deposit accounts are insured by the Federal Deposit Insurance Corporation; member depository accounts at credit unions are insured by the NCUA.

¹⁰⁰ Section 494.0026(2), F.S.

¹⁰¹ Section 494.0026(3), F.S.

¹⁰² Section 494.0026(4), F.S.

¹⁰³ Section 494.00255(1)(a)-(d), F.S.

¹⁰⁴ Office of Financial Regulation, Division of Consumer Finance, *Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities, Form-494-14*. <https://flofr.com/sitePages/documents/494SanctionTable.pdf> (Last visited January 30, 2020).

¹⁰⁵ Fannie Mae, *Servicing Guide; Part A: Doing Business with Fannie Mae* (May 15, 2019), <https://www.fanniemae.com/content/guide/servicing/index.html> (last visited January 30, 2020).

guaranteeing residential, single family mortgage loans, and issuing debt securities. Fannie Mae also works with a national network of participating lender consumers to finance apartment buildings, and provides liquidity to the multifamily market by transforming multifamily loans into mortgage backed securities.¹⁰⁶

In order to do business with Fannie Mae, an eligible mortgagee must apply and be approved by Fannie Mae.¹⁰⁷ Doing business with Fannie Mae requires the performance of certain contractual obligations.¹⁰⁸ Mortgagees must abide by Fannie Mae's Servicing Guide (Servicing Guide), which includes requirements for the disposition of insurance proceeds.

Pursuant to the Servicing Guide, a mortgage servicer that has agreed to do business with Fannie Mae must release insurance loss proceeds received from the insurance carrier based on whether the property can be legally rebuilt, and the status of the mortgage loan at the time of the loss event.¹⁰⁹ The amount of insurance loss proceeds in relation to the unpaid balance on the mortgage loan, delinquency, and abandonment, foreclosure, or lack of desire to repair the subject property may effect distribution.¹¹⁰

Mortgage servicers that do business with Fannie Mae must deposit insurance proceeds not yet disbursed to the borrower in an interest bearing account.¹¹¹ The interest-bearing account must be with a depository institution that meets Fannie Mae's eligibility criteria for a custodial depository and yield interest for the borrower's benefit in an amount equivalent to the interest the borrower could expect to obtain from a savings or money market account.¹¹² The mortgage servicer must pay the accumulated interest to the borrower once the repairs to the property have been completed, unless the borrower requests an earlier disbursement of the interest, or applicable law allows for the accumulated interest to be applied to the unpaid principal balance.¹¹³

III. Effect of Proposed Changes:

Florida Hurricane Catastrophe Fund Reimbursement of Collateral Protection Insurance

Section 1 amends s. 215.555, F.S., to revise the requirements for Cat Fund reimbursement of collateral protection ("force-placed") insurance. Currently, the Cat Fund provides reimbursement for a loss under force-placed coverage if the coverage is in an amount at least equal to the coverage amount for the dwelling under the lapsed policy. The bill directs the Cat Fund to also make reimbursement available if the force-placed policy covers the amount requested by the mortgage lender, which may be limited to the remaining indebtedness on the property. Cat Fund

¹⁰⁶ Fannie Mae, *What We Do*, <https://www.fanniemae.com/portal/about-fm/what-we-do.html> (last visited January 30, 2019).

¹⁰⁷ Fannie Mae, *Servicing Guide; Part A: Doing Business with Fannie Mae* (May 15, 2019), <https://www.fanniemae.com/content/guide/servicing/index.html> (last visited January 30, 2020).

¹⁰⁸ *Id.*

¹⁰⁹ If the property cannot be legally rebuilt, then the servicer must use any insurance loss proceeds to reduce the outstanding mortgage loan debt. If the property can be legally rebuilt, then the servicer must determine the appropriate actions based on the status of the mortgage loan at the time of the loss event. *Id.*

¹¹⁰ *Id.* at 189-193.

¹¹¹ *Id.* at 193.

¹¹² *Id.* at 194.

¹¹³ *Id.*

reimbursement must also be available if the homeowner requested the coverage amount on the force-placed policy.

Online Verification System for Motor Vehicle Insurance

Requirements for the Online Verification System

Section 4 creates s. 324.252, F.S., to require DHSMV to establish an online verification system for motor vehicle insurance. The system's goal is to identify uninsured motorists and aid DHSMV in enforcing the financial responsibility law. The online verification system must:

- Be accessible through the Internet by authorized personnel of DSHMV, the courts, law enforcement personnel, any other entities authorized by DHSMV, and insurers authorized by OIR to offer motor vehicle insurance.
- Send requests to insurers for verification of evidence of insurance for motor vehicles registered in this state via online services established by the insurers in compliance with IICMVA specifications and standards, with enhancements, additions, and modifications, as DSHMV requires. However, the enhancements, additions, and modifications may not conflict with, nullify, or add requirements that are inconsistent with IICMVA specifications or standards.
- Be operational by July 1, 2023. The task force must conduct a pilot program for at least 9 months to test the system before statewide use. The system may not be used in any enforcement action until successful completion of the pilot program.
- Be available 24 hours a day, except for permitted downtime for system maintenance and other work, as needed, to verify the insurance status of any vehicle registered in this state through the insurer's National Association of Insurance Commissioners (NAIC) company code, in combination with other identifiers such as vehicle identification number, policy number, or other characteristics or markers as specified by the task force.
- Include appropriate provisions, consistent with industry standards, as specified by the task force, to secure the system's data against unauthorized access.
- Include a disaster recovery plan to ensure service continuity in the event of a disaster.
- Include information that enables DHSMV to make inquiries of evidence of insurance by using multiple data elements for greater matching accuracy, specifically the insurer's NAIC company code, in combination with other identifiers such as vehicle identification number, policy number, or other characteristics or markers as specified by the task force.
- Include a self-reporting mechanism for insurers with fewer than 2,000 vehicles insured within this state or for individual entities that are self-insured.

DHSMV Powers and Duties Related to the Online Verification System

The section provides DHSMV the following powers and duties:

- Upon advance notice, DHSMV must allow online services established by an insurer to have reasonable downtime for system maintenance and other work, as needed. An insurer is not subject to administrative penalties or disciplinary actions when its online services are not available under such circumstances or when an outage is unplanned by the insurer and is reasonably outside its control.
- Upon recommendation of the task force, DHSMV may contract with a private vendor that has personnel with extensive operational and management experience in the development, deployment, and operation of insurance online verification systems.

- DSHMV and its private vendor, if any, must each maintain a contact person for the insurers during the establishment, implementation, and operation of the system.
- DHSMV must maintain a historical record of the system data for 6 months after the date of any verification request and response.

Insurer Obligations and Immunity From Civil Liability

An insurance company authorized to issue insurance policies for motor vehicles registered in this state:

- Must comply with the verification requirements of motor vehicle insurance for every motor vehicle insured by that company in this state as required by DSHMV rule.
- Must maintain policyholder records in order to confirm insurance coverage for 6 months after the date of any verification request and response.
- Must cooperate with DHSMV in establishing, implementing, and maintaining the system.
- Is immune from civil liability for good faith efforts to comply with statutory requirements related to the online verification system. An online verification request or response may not be used as the basis of a civil action against an insurer.

The section's motor vehicle verification system does not apply to commercial motor vehicle coverage. Insurers providing such coverage may voluntarily participate.

Motor Vehicle Insurance Online Verification Task Force

Section 5 creates s. 324.255, F.S., to require DHSMV to form within the department the Motor Vehicle Insurance Online Verification Task Force (task force). The task force must:

- Facilitate the implementation of the motor vehicle insurance online verification system, including recommending data and cybersecurity processes and protocols.
- Assist in the development of a detailed guide for insurers by providing data fields and other information necessary for compliance with the online verification system.
- Coordinate a pilot program and conduct the program for at least nine months to test the online verification system and identify necessary changes to be implemented before statewide use.
- Issue recommendations based on periodic reviews of the online verification system.

The task force consists of nine voting members and one nonvoting member. DHSMV's executive director, who is a nonvoting member, serves as its chair. The nine voting members must be appointed by July 31, 2020, as follows:

- Three appointed by DHSMV's executive director, representing the Florida Highway Patrol, the Division of Motorist Services, and the Information Systems Administration.
- One appointed by the Commissioner of Insurance, representing the Office of Insurance Regulation (OIR).
- Three appointed by the Chief Financial Officer, representing the motor vehicle insurance industry, as follows:
 - One member representing the motor vehicle insurer with the largest national market share as of December 31, 2019.
 - One member representing the motor vehicle insurer with the largest Florida market share as of December 31, 2019.

- One member selected from a list of representatives recommended by the IICMVA.
- One appointed by the Chief Financial Officer, representing the Department of Financial Services (DFS).
- One appointed by the executive director of the Agency for State Technology, representing the agency.

By September 30, 2020, the task force must meet to establish procedures for conducting its business, and elect a vice chair. The task force must meet at the call of the chair, who is responsible for preparing the agenda for each meeting with the consent of the task force. A majority of the voting members of the task force constitutes a quorum, and a quorum is necessary for the purpose of voting on any action or recommendation of the task force. All meetings must be held in Tallahassee.

DSHMV must provide the task force members with administrative and technical support. Task force members serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

No later than 6 months after the pilot program concludes, the task force must issue a report to DHSMV, the President of the Senate, and the Speaker of the House of Representatives. The report must evaluate the online verification system's effectiveness in identifying uninsured motorists. The task force may also make recommendations for system enhancements in the report or at any time before the task force's completion of its work.

By July 1, 2023, the task force must complete its work and submit its final report evaluating the online verification system's effectiveness and making recommendations for system enhancements to DHSMV, the President of the Senate, and the Speaker of the House of Representatives. Upon submission of the report, the task force expires.

Conforming Changes Related to the Online Verification System

Section 2 amends s. 316.646, F.S., to direct a law enforcement officer during a traffic stop or crash investigation to verify the motor vehicle operator's proof of insurance using the online verification system created in Section 4.

Section 3 amends s. 320.02, F.S., to allow the online verification system created in Section 4 to be used in place of the current verification procedures for the proof of insurance required to register a motor vehicle.

Property Insurance Proceeds Received by a Mortgagee, Assignee, or Financial Institution

Section 6 amends s. 494.0026, F.S., which requires that insurance proceeds received by a mortgagee or assignee related to compensation for damage to property or contents insurance coverage in which the mortgagee or assignee has a security interest be promptly deposited into a segregated account of a federally insured financial institution. The section requires the segregated account to be interest bearing for the benefit of the borrower. The section requires the mortgagee to provide the insured with notice of the requirements the insured must fulfill to secure the release of the deposited proceeds along with the accrued interest.

Section 25 creates s. 655.969, F.S., to require any financial institution¹¹⁴ or subsidiary thereof, regardless of chartering authority, which holds mortgage loans to promptly endorse and deposit insurance proceeds into a segregated, interest bearing account at a federally insured financial institution for the benefit of the insured. The interest to be paid to the insured must be no less than the interest the insured could expect to obtain from a savings or money market account, must begin to accrue upon endorsement, and must be paid out upon the final distribution of the proceeds. Financial institutions and subsidiaries holding insurance proceeds are further required to notify the insured of each requirement the insured must fulfill in order to obtain release of the funds. Insurance proceeds received by a financial institution or subsidiary which relate to contents insurance coverage in which the financial institution or subsidiary does not have a security interest, or which relate to additional living expenses, must be promptly distributed to the insured, unless the financial institution cannot determine which part of the proceeds relates to the additional living expenses or contents insurance. This section expressly does not prevent an insurance company from paying the insured directly.

Limited License to Transact Travel Insurance

Section 7 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 18 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;

¹¹⁴ Section 655.0015(1)(i), F.S., defines the term “financial institution” as “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.”

- 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.
- 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.

Surplus Lines Agent Affidavits

Section 8 amends s. 626.931, F.S., to eliminate the required quarterly affidavits of surplus lines agents. The FLSO receives relevant information electronically in ongoing data filings.

Section 9 amends s. 626.932, F.S., to provide for the remittance of surplus lines taxes to the FLSO at the time of the delivery of the policy, instead of the current quarterly schedule.

Section 10 amends s. 626.935, F.S., to remove the statutory reference to required quarterly affidavits as provided under s. 626.931, F.S.

Cancellation of Motor Vehicle Insurance for Nonpayment of Premium

Section 11 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.

Reports of Information by Workers' Compensation Insurers in Receivership

Section 12 amends s. 627.914, F.S., to require workers' compensation carriers that enter receivership to continue to report the required data on payrolls, manual premiums, standard premiums, losses, and expenses. The receiver, who is now in possession of the carrier, is

permitted to do so directly or outsource the reporting to a third party. OIR may approve a modified reporting plan to accommodate limited data reporting.

The section also specifies that the OIR may use the information reported in this section in the OIR's adoption of workers' compensation rates and experience ratings modifications.

Transaction of Motor Vehicle Service Agreements, Home Warranties, and Service Warranties by Licensed Personal Lines Agents and General Lines Agents

Section 13 amends s. 634.171, F.S., to allow a licensed general lines agent or licensed personal lines agent to advertise, solicit, negotiate, or sell motor vehicle service agreements without being separately licensed as a sales representative or insurance representative.

Section 14 amends s. 634.317, F.S., to allow a licensed general lines agent or licensed personal lines agent to advertise, solicit, negotiate, or sell home warranty contracts without being separately licensed as a sales representative or insurance representative.

Section 15 amends s. 634.419, F.S., to allow a licensed general lines agent or licensed personal lines agent to advertise, solicit, negotiate, or sell service warranty contracts without being separately licensed as a sales representative or insurance representative.

Regulation of Travel Insurance and Travel Insurers

Section 16 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.

Purpose and Application

Section 17 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 covering any resident of Florida that is sold, solicited, negotiated, or offered in this state, as well as policies and certificates that are delivered or issued in this state; and
- Policies and certificates that are delivered or issued for delivery in Florida.

It specifies provisions outlined in this chapter supersede any general provisions otherwise applicable to travel insurance. This chapter does not apply to:

- Major medical plans that provide medical protection for travelers with trips lasting longer than 6 months; and
- Travel assistance services and cancellation waivers.

Definitions

Section 18 creates s. 647.02, F.S., defines the following terms used in the chapter:

- “Aggregator site” – a website providing access to information regarding insurance products from more than one insurer for use in comparison shopping.
- “Blanket travel insurance” – travel insurance issued to an eligible group that provides coverage to all members of the group.
- “Cancellation fee waiver” – a contract between a supplier of travel services and its customer to waive all or part of the nonrefundable cancellation fee provisions of the supplier’s underlying travel contract; such waiver is not insurance.
- “Department” – the Department of Financial Services.
- “Eligible group” – for purposes of travel insurance, at least two people engaged in a common enterprise or who have an economic, educational, or social affinity or relationship. The definition specifies a number of examples of eligible groups.
- “Fulfillment materials” – documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the plan’s coverage and assistance details.
- “Group travel insurance” – travel insurance issued to an eligible group.
- “Travel administrator” – a person who underwrites policies for, collects charges, collateral, or premium from, or adjusts or settles claims on, Florida residents, in connection with travel insurance. Such person is not a travel administrator if the person works for a travel administrator, is an insurance producer (agent) acting within the scope of such licensure, a registered travel retailer, an attorney who does not collect premiums for such insurance, or a business entity 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 such as security advisories, destination information, vaccination and immunization information services, travel reservation services, entertainment, activity and event planning, translation assistance, and other specified services. The term encompasses any services furnished in connection with planned travel.
- “Travel insurance” – insurance coverage for personal risks incidental to planned travel, including¹¹⁵:
 - 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 approved by the OIR.
- “Travel protection plan” – a plan that provides one or more of the following: travel insurance, travel assistance services, and cancellation fee waivers.

Insurance Premium Tax

Section 19 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,

¹¹⁵ The term does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting longer than 6 months, including major medical plans for those working or residing overseas as expatriates, or any other product that requires a specific insurance producer license.

certificate holder, or blanket policyholder.¹¹⁶ The premium paid does not include amounts received for travel assistance services or cancellation waivers.

Travel Protection Plans – Authorization of Sales and Required Disclosures

Section 20 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.

Sales Practices

Section 21 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 10 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),¹¹⁷ 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 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

¹¹⁶ 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.

¹¹⁷ Chapter 626, Part IX, F.S.

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.

Travel Administrators

Section 22 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, pt 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.

Classification of Travel Insurance Policies

Section 23 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 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.

Rulemaking Authority

Section 24 creates s. 647.08, F.S., to authorize DFS to adopt rules to administer ch. 647, F.S.

Effective Date

Section 26 provides 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:

Section 25 of the bill may implicate issues of federal preemption as it applies to “financial institution[s],” a term which, as defined by current Florida law, includes federally chartered financial institutions that the OFR does not have regulatory authority over.

The Supremacy Clause of the United States Constitution requires courts to follow federal, not state, law if Congress, in enacting the federal statute, intended to exercise its constitutionally delegated authority to set aside, i.e., preempt, the laws of a state.¹¹⁸

The analysis of preemption principles as they apply to state banking laws is complex; banking has been subject to dual [federal-state] regulatory control since the passage of the first National Bank Act in 1863.¹¹⁹ Generally, federally chartered banks are subject to state laws of general application in their daily business to the extent such laws do not conflict with the letter or the general purposes of the National Bank Act (NBA), or prevent or impair a bank’s exercise of its authority, be it enumerated or incidental.¹²⁰

States traditionally retain some power to regulate national banks in certain areas of law, such as contracts, debt collection, acquisition and transfer of property, taxation, zoning, criminal and tort law.¹²¹ Some state laws expressly apply to federally-chartered financial institutions; for example, state consumer financial laws are applicable with limited exceptions, such as when the application of the law would have a discriminatory effect on national banks, or the law prevents or significantly interferes with the exercise by the national bank of its powers, or when the law is preempted by another provision of federal law.¹²²

However, state laws regarding certain national bank powers, such as those subjecting a national bank to visitation, i.e., audit, without the authorization of federal law or the court, are expressly preempted; it is well-settled that state auditors and examiners may not evaluate the records or practices of a national bank, with very limited exceptions.¹²³ States may not prohibit national banks from accepting deposits or otherwise interfere with their right to receive deposits.¹²⁴ Further, state law does not govern the definition of interest for national banks under the NBA.¹²⁵ At least two courts have held that the NBA

¹¹⁸ *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), citing U.S. Const., Art. VI, cl. 2; *California Fed. Sav. & Loan Assn. v. Guerra*, 479 U.S. 272 (1987).

¹¹⁹ *Bank of America v. City and County of San Francisco*, 309 F.3d 551 (9th Cir. 2002), quoting *National State Bank v. Long*, 630 F.2d 981, 985 (3d Cir. 1980).

¹²⁰ *Watters v. Wachovia*, 550 U.S. 1 (2007), citing 12 U.S.C. s. 21 *et. seq.*

¹²¹ *Wells Fargo Bank N.A. v. Boutris*, 419 F.3d 949 (9th Cir. 2005); *See also*; 12 C.F.R. s. 7.4007.

¹²² 12 U.S.C. s. 25b.

¹²³ 12 U.S.C. s. 484; *Watters v. Wachovia*, 550 U.S. 1 (2007); *Cuomo v. Clearing House Ass’n, LLC*, 557 U.S. 519 (2009);

¹²⁴ *First National Bank of San Jose v. State of Cal.*, 262 U.S. 366 (1923); *Capital One Bank (USA) N.A. v. McGrawI*, 563 F.Supp.2d 613 (S.D.W.Va. 2008).

¹²⁵ *Taft v. Wells Fargo Bank, N.A.*, 828 F.Supp.2d 1031 (D.Minn. 2011).

Lines 317-322 create a situation whereby a single motor vehicle insurer could have two voting members on Motor Vehicle Insurance Online Verification Task Force if the insurer had both the largest national market share and largest Florida market share.

Line 406 appears to place the review of travel policies under DFS instead of the OIR. If the intent is for OIR to no longer review travel insurance policies and rates, the corresponding statutes should be stricken.

Lines 761-1127 would make travel insurance an inland marine product. Currently, travel insurance is filed under the miscellaneous casualty line of business. Since most travel products are personal, it would still be subject to review by OIR. If the policy is issued as a group policy to a commercial entity, it might be treated as a commercial inland marine insurance, in which case it would not be subject to form and rate filing requirements. It may avoid confusion if these provisions were amended to clarify how this type of policy should be treated for rate and form filing purposes.

VII. Related Issues:

To the extent Section 25 of this bill may be preempted by federal law and subject state-chartered financial institutions to a competitive disadvantage, s. 655.061, F.S., authorizes the OFR to issue an order of general application. An order of general application functions as a mechanism to allow state financial institutions to exercise any power which they could make or exercise if incorporated or operating in this state as a federally chartered or regulated financial institution of the same type.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.555, 316.646, 320.02, 494.0026, 626.321, 626.931, 626.932, 626.935, 627.7295, 627.914, 634.171, 634.317, and 634.419.

This bill creates the following sections of the Florida Statutes: 324.252, 324.255, 647.01, 647.02, 647.03, 647.04, 647.05, 647.06, 647.07, 647.08, and 655.969.

IX. Additional Information:

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

None.

B. **Amendments:**

None.